EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2022

2022 No. 67

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Finance to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 1(1) and (2)(a), 2(1), 3(1), (2), (3) and paragraph 1 of Schedule 2 and Schedule 3 to the Public Service Pensions Act (Northern Ireland) 2014 and is subject to the negative resolution procedure.

2. Purpose

2.1. To amend the Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 ("the 2014 Regulations") made under the Public Service Pensions Act (Northern Ireland) 2014 ("the Act"). The Act gives powers to make and maintain a pension scheme for the Civil Service and certain other (mainly public service) employers. The 2014 Regulations established such a scheme, known as the alpha scheme, which has been in operation since 1st April 2015.

2.2. The amendments correct typographical and grammatical errors and resolve anomalies that have been identified in the original Regulations. In addition, they bring the Regulations in line with the latest legislation relating to certain types of statutory leave associated with the birth/adoption of a child.

3. Background

What is being done and why

3.1. These Regulations correct drafting errors that have been identified since the 2014 Regulations were made; resolve anomalies that have recently come to light; and bring the 2014 Regulations in line with the latest legislation relating to certain types of statutory leave entitlement associated with the recent birth/adoption of a child. They also clarify the circumstances when pensionable earnings can be limited to one third for industrial staff.

Clarification of the timing of index adjustment (and which opening balance it refers to)

3.2. Regulation 2 of the 2014 Regulations provides a definition of 'index adjustment', which relates to the uprating of pension earned in a scheme year. The amendment to this definition by regulation 3(j) corrects an error to ensure that the index adjustment is applied to pension earned in the year in which the index adjustment relates to.

Total fluctuating emolument

3.3. Regulation 13 clarifies that regulation 26(5) of the 2014 Regulations applies only to industrial employees of the Northern Ireland Civil Service.

Negative retirement index adjustment

3.4. Regulation 15 provides for the calculation of the "retirement index adjustment" to be modified in respect of the scheme year starting in 2015. The retirement index adjustment is used to revalue pensions in the final year of scheme membership, and the modification provides that the revaluation in the scheme year starting in 2015 cannot be less than zero.

Actuarial buyout provisions

3.5. Chapter 5 of Part 6 of the 2014 Regulations set out options that may be available to members who leave the alpha scheme. This includes the option for those members who are entitled to immediate payment of a full retirement pension but have not reached their normal pension age, to 'buy-out' the actuarial reduction in their pension that would otherwise apply. Regulations 26 and 27 introduce a new option to such members, subject to certain conditions, to partially buy out the actuarial reduction and receive a smaller reduction in their pension. This amendment enables future changes of policy, for example, should a cap on exit payments be revisited, and does not signal or deliver any immediate change of policy.

Clarification and updating of 'assumed pay' provisions

3.6. Regulations 18, 38 and 39 clarify that where a member is receiving "assumed pay", certain calculations are made by reference to that assumed pay rather than their pensionable earnings. In addition, the amendments clarify that only ordinary maternity leave is relevant for an assumed pay scenario (in line with the policy intention) and that periods of sick absence on sick pay at pension rate are not pensionable.

Definition of Active Member

3.7. Regulation 4 amends the definition of 'Active Membership' to ensure that those on unpaid leave can continue to be treated as active members of the scheme rather than as deferred members (so that, for example, a death in service benefit may be paid in respect of a member who dies whilst on a career break).

Updated references to child related leave

3.8. Regulations 14, 42, 43 and 57 amend various provisions of the 2014 Regulations in respect of child related leave following the introduction of shared parental leave.

Death after ill-health retirement of a transition member

3.9. The 2014 Regulations provide that where a transition member (a former member of the Principal Civil Service Pension Scheme (Northern Ireland) ["PCSPS(NI)"] who transitioned into the alpha scheme on 1 April 2015) leaves on ill-health retirement, then dies before reaching their PCSPS(NI) normal pension age, their death benefit nominee is paid a death in deferment lump sum death benefit under the PCSPS(NI) and a lump sum under the alpha scheme. Regulation 40 removes an unnecessary reference to service in the PCSPS(NI) from the calculation of the latter in regulation 131(2) of the 2014 Regulations.

Regulations 41(2) and 42(2)of the 2014 Regulations

3.10. Regulations 41(2) and 42(2) of the 2014 Regulations, refer to regulations 153 and 152 respectively. The references have been transposed, and regulations 16 and 17 correct the error.

Explicitly excluding certain schemes from the definition of a 'connected scheme'

3.11. The Act provides that, subject to exceptions specified in Scheme Regulations, a scheme made under the Act and another pension scheme are connected if the schemes make provision in relation to persons of the same description. The government is committed to the reform of certain smaller public service pension schemes, and it is likely that the members of many such schemes will be transferred to the alpha scheme. However, the intention is not for those schemes to be 'connected' with the alpha scheme, and as such the amendments made by regulations 4 and 6 operate to exclude them, and compensation and injury benefit schemes, from the definition of 'connected scheme'.

Provide Scheme Manager discretion to treat service with certain other pension schemes as qualifying service in alpha

3.12. The 2014 Regulations provide that a member must complete two years qualifying service in order to receive benefits under the scheme. Regulation 20 amends the definition of 'qualifying service' in regulation 59 of the 2014 Regulations in order to allow the scheme manager to treat service in another pension scheme as qualifying service for the alpha scheme. This amendment will enable the scheme manager to exercise a discretion where, for example, a person who has been transferred into alpha as part of the reform of smaller public service pension schemes but leaves service within two years of that transfer and would otherwise not qualify for a pension.

Ill-health retirement from alpha shortly after switching whilst already on no pay

3.13. Regulation 58 provides for certain transition members to receive an enhanced rate of upper tier top up earned pension (pension payable to a member whose breakdown in health involves total incapacity for employment) if they were on a period of sick leave at nil or reduced pay in the first twelve months of their membership of the alpha scheme before taking ill-health retirement. The alpha scheme provides for an enhancement. This amendment is required to remedy an issue whereby such members would not otherwise be entitled to the same level of enhancement owing to their reduced period of service in the alpha scheme.

Change to Partnership switching time limits

3.14. The 2014 Regulations provide that a member may only switch between alpha and a Partnership Pension Account on 1 April or 1 October following three months' notice. The amendments made by regulations 9, 11 and 12 allow a member to switch on the first day of any month and reduce the notice period to two months. The definition of Partnership Pension Account is also updated to reflect changes in the governance of the Civil Service defined contribution pension schemes.

Ill-health retirement from alpha having previously taken partial retirement from the PCSPS(NI)

3.15. Regulation 23 amends regulations 72 and 73 of the 2014 Regulations to correct an error in respect of ill-health retirement. The intention is that any member who has taken partial retirement must meet the requirement for an upper tier ill-health retirement pension but will receive a pension calculated as though it were a lower tier ill-health retirement pension. The effect of the new regulation is to confirm that the restriction applies to a member who has taken partial retirement from the PCSPS(NI) not just a member who has taken partial retirement from the alpha scheme.

Removal of the requirement for a partner declaration to have been completed in order to qualify for a partner's pension

3.16. In the case of Brewster [2017] UKSC 8, the Supreme Court stated that, where an occupational pension scheme provides a survivor's pension for the unmarried partner of a scheme member, it is unlawful for the payment of that pension to be dependent on the member having nominated their partner. Regulations 30 and 31 remove the requirement to nominate an unmarried partner in order for them to receive a pension in order to give effect to the Supreme Court's decision.

Transitional protection for other public body pension schemes

3.17. Regulation 58 amends the circumstances where a member of an existing pension scheme will be given transitional protection when joining the alpha scheme. It removes the requirement that the

individual be an active member on the date their existing scheme is closed in order to remedy an issue where members may transition to alpha prior to their scheme closing date.

4. Consultation

4.1. Employee representatives were consulted about these Regulations. Those representatives indicated that they had no objections to the amendments being implemented.

5. Equality Impact

5.1. An Equality Screening Exercise was conducted on 2 November 2021 and it is the view of Civil Service Pensions that the proposed amendments will not have an adverse differential impact on any of the Section 75 groups.

6. Regulatory Impact

6.1. These Regulations impose no costs on business, charities, social economy enterprises or the voluntary sector. A Regulatory Impact Assessment is not considered necessary.

7. Financial Implications

7.1. There are no financial implications for the Department other than a minor saving in administrative expenses as a direct result of clarification and changes in approach which smooth the working of the Scheme.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Departmental Solicitor's Office has advised that the Regulations are within the scope of Section 24 of the Northern Ireland Act 1998 and are therefore within competence.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Although this is a devolved matter and the Amendment Regulation applies to The Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 only, it mirrors an amendment to The Public Service (Civil Servants and Others) Pensions Regulations 2014 in Britain and maintains the long standing convention of parity of the two schemes.

10.2. Additional amendments are included to correct typographical, grammatical and drafting errors identified and further align the Northern Ireland Regulations with Great Britain's.

10.3. They also clarify the circumstances when pensionable earnings can be limited to one third for industrial staff. The Home Civil Service no longer directly employ industrial staff so there is no equivalent in their Regulations.

11. Additional Information

11.1. Peter Philip (telephone 02871 310706 or email peter.philip@finance-ni.gov.uk) can answer any queries regarding the Regulations.