**EXPLANATORY MEMORANDUM TO**

# THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS (REMEDIABLE SERVICE) (AMENDMENT) REGULATIONS 2025

**2025 No. 1115**

## 1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Declaration

2.1 Minister Turley, Minister of State without Portfolio at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Kerrie Cureton-Williams, Deputy Director for Civil Service and Royal Mail pensions at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Kevin Hughes at the Cabinet Office can be contacted by email at the following address with any queries regarding the instrument: kevin.hughes@cabinetoffice.gov.uk. Alternatively, the department can be contacted by telephone: 07743167299.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

4.1 The instrument makes minor, technical and clarificatory amendments to legislation relating to the *McCloud* remedy, principally the 'Public Service (Civil Servants and Others) Pensions (Remediable Service) Regulations 2023' (S.I. 2023/942; the 2023 Regulations).

4.2 The amendments relate to certain affected Civil Service pension scheme members making a *McCloud* remedy choice and are categorised as:

a) Technical: - minor clarificatory additions to existing provisions, to make sure the policy detail is effected as intended.

b) Enabling: - for the scheme to process matters that have been identified since the 2023 Regulations were laid.

c) Tax related: - to facilitate the operation of HM Treasury Directions that were laid on 30 April 2025.

***Where does the legislation extend to, and apply?***

**4.3** The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

## 5. Policy Context

***What is being done and why?***

5.1 Between 2014 and 2016, new ('reformed') public service pension schemes were established by regulations made under the Public Service Pensions Act 2013 (PSPA 2013). Transitional arrangements as part of the reforms allowed pension scheme members within 10 years of retirement, as at 31 March 2012, to remain in the pre-existing pension ('legacy') schemes. Members between 10 and 13.5 years of their normal pension age (NPA) were allowed to remain in their legacy scheme beyond 31 March 2015 for a specific period relating to age ( these members are referred to as 'mixed service' members in the legislation). The Civil Service legacy scheme is the Principal Civil Service Pension Scheme (PCSPS) with the sections, classic, premium (which includes classic plus) and nuvos.

5.2 In 2018 the Court of Appeal, in Lord Chancellor and Secretary of State for Justice and another v McCloud, Secretary of State for the Home Department and 2 CO/EM/ 2022.3 others v Sargeant and others [2018] EWCA Civ 2844, found the transitional protection element of the reforms to be unlawfully discriminatory on the basis of age. This became known as the *McCloud* judgment.

5.3 On 15 July 2019 The Chief Secretary to the Treasury made a written ministerial statement setting out that the Government considered the *McCloud* judgment had implications for all reformed public service pension schemes covered by the Public Service Pensions Act 2013 (PSPA 2013). The statement explained that the Government planned to make proposals to remedy the discrimination across all of the affected public service pension schemes.

5.4 In April 2022 the Public Service Pensions and Judicial Offices Act (PSPJOA 2022) received royal assent. This provides the framework and legislative powers for the affected public service pension schemes to implement a remedy for the unlawful discrimination identified in the *McCloud* judgment.

5.5 In September 2023 the Cabinet Office laid The Public Service (Civil Servants and Others) Pensions (Remediable Service) Regulations 2023 (the 2023 regulations) to enable the second phase of the remedy. Known as the retrospective remedy stage, this aims to put affected scheme members back into the position they would have been in, had the unlawful discrimination identified in the *McCloud* judgment not occurred.

5.6 The overall Civil Service pension scheme membership remedy population is approximately 420,000 members. The scheme must provide all affected members with a choice of legacy or reformed pension scheme benefits for their remediable service (service in the remedy period 2015 to 2022). This choice may not have to be until the member starts the process to claim their pension benefits.

5.7 As the *McCloud* remedy implementation has progressed it has proved to be exceptionally complex. Each case is specific to individual scheme membership circumstances and must take into account any actions members have taken relating to

their remediable service. Matters have subsequently emerged that were not addressed in the 2023 Regulations or that were not explicitly clear in the 2023 Regulations.

5.8 The instrument is being made in order to allow the scheme to fully comply with the policy and legislative requirements of the PSPJOA 2022 in relation to the retrospective stage of the *McCloud* remedy. No new policy is being introduced.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 The instrument is made under powers conferred in the PSPA 2013 to make "scheme regulations", together with powers contained in the PSPJOA 2022 to provide for the retrospective stage of the *McCloud* remedy. It amends two sets of regulations: the 2023 regulations mentioned above; and the Public Service (Civil Servants and Others) Pensions Regulations 2014 (S.I 2014/1964, the "2014 Regulations") which contain the core rules of the reformed civil service pension scheme known as "alpha".

6.2 The instrument makes minor technical amendments to existing technical provisions so that they give effect to existing policy more clearly and fully. It amends provision in the 2014 Regulations, to extend an existing ill-health retirement underpin so that it covers all members in scope of the *McCloud* remedy who applied for ill-health retirement before 31 March 2022 and had their application determined after that date. It makes several minor adjustments to existing technical provisions in the 2023 Regulations. These do not alter the substantive effect of the provisions. These include adding clearer definitions in relation to pension sharing on divorce provisions concerning pension credit members; clearer wording in relation to transfer of remediable service benefits; and refinements to clarify the process for transfers of remediable service made under the bulk transfer arrangements.

6.3 The instrument also inserts provisions into the 2023 Regulations to further enable the scheme manager to implement the *McCloud* remedy in specific circumstances. New regulation 4A provides that, where a member has been provided with a statement, containing materially incorrect information about their *McCloud* remedy choices in a remediable service statement, the statement can be voided. Consistent with the original policy intent, regulations 62B to 62F provide for members to apply to be treated as if, but for the *McCloud* discrimination, they would have made different pensions decisions. For example, they may apply to be treated as opted out of the scheme for a period, or apply for ill-health retirement. Amendments to the Schedule, which sets out who makes *McCloud* remedy decisions on behalf of deceased members known as the 'eligible decision-maker', specify circumstances where the scheme manager may become the eligible decision-maker.

6.4 This instrument contains retrospective provision - see Part Three below.

***Why was this approach taken to change the law?***

6.5 This approach is consistent with Parliament's intention as, as expressed in the PSPJOA 2022, for public service pension schemes to deliver the retrospective stage of the *McCloud* remedy in scheme regulations under PSPA 2013 and PSPJOA 2022.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 A consultation to fulfil the scheme's statutory duty was carried out in accordance with section 21(1) of the PSPA 2013. This provides that: '*Before making scheme*

*regulations the responsible authority must consult such persons (or representatives of such persons) as appear to the authority likely to be affected by them'.*

*7.2* In accordance with section 21(2) of the PSPA 2013 the organisations the scheme would normally expect to consult with are provided in the statement held on the Civil Service Pensions website:
*https://www.civilservicepensionscheme.org.uk/media/2ftfuc1c/2024-08-14-the-public-service-civil-servants-and-others-pensions-scheme-regulations_-consultee-list.docx*

7.3 On 10 July 2025 a letter was issued to the appropriate member representative organisations together with the draft proposed Statutory Instrument and the Equality Statement. Because the amendments are minor clarifying existing regulations and do not introduce any new policy, a consultation period of four weeks was considered proportionate to the nature and impact of the proposed amendments. The consultation closing date of 11 August 2025 was communicated in the letter.

7.4 Cabinet Office officials held three meetings with the member organisations on 29, 30 and 31 July. The purpose of the meetings was to explain the proposed amendments and to allow the attendees to seek assurance and understanding of the proposed amendments. Challenge of the proposals and questions were welcomed.

7.5 Three consultation responses were received. The Civil Service Pensioners Alliance (CSPA) and the Defence Police Federation (DPF) supported the proposed amendments. The FDA and Prospect Unions submitted a joint response which listed concerns relating to administrative processes, timelines and member communications. As these matters fall outside of the scope of the consultation a separate meeting has been offered for further discussion.

## 8. Applicable Guidance

*8.1* The Civil Service pension website continues to be the main source of *McCloud* remedy information for members and is updated regularly:
*https://www.civilservicepensionscheme.org.uk/your-pension/2015-remedy/*

*8.2* In addition, members and employers are kept informed of relevant updates about the McCloud remedy activity through multi-channel communication campaigns and by meeting regularly with member and employer representatives.

*8.3* The Scheme Actuary has provided scheme administrator guidance notes for various technical *McCloud* remedy calculations. Of particular note are the extensive guidance notes relating to pension sharing on divorce. These guidance notes will be available on the Civil Service pensions website by March 2027.

# Part Two: Impact and the Better Regulation Framework

## 9. Impact Assessment

*9.1* A full Impact Assessment has not been prepared for the instrument because a full Impact Assessment was carried out by HM Treasury in this matter on laying the PSPJOA 2022:
*https://www.legislation.gov.uk/ukpga/2022/7/pdfs/ukpgaod_20220007_en.pdf*

***Impact on businesses, charities and voluntary bodies***

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument applies to the Civil Service pension arrangements.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because there is no additional cost on public bodies or the taxpayer resulting from the instrument. The instrument relates to amendments for agreed policy for the *McCloud* remedy which has already been costed and accounted for during the *McCloud* litigation and passage of the PSPJOA 2022.

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 The Cabinet Office in its role as Scheme Manager will periodically review the legislation as required for monitoring purposes.

10.2 The instrument does not include a statutory review clause as the provisions do not relate to business activity (including voluntary and community bodies).

## Part Three: Statements and Matters of Particular Interest to Parliament

## 11. Matters of special interest to Parliament

11.1 The provisions of the instrument are retrospective, in that they require and enable the scheme to treat remedy-eligible members' relevant past pensionable service in a way that remedies the *McCloud* discrimination.

11.2 These Regulations are 'scheme regulations' within the meaning of section 1 of the PSPA 2013 and under Part 1 of PSPJOA 2022. Section 3(3)(b) of PSPA 2013, which the instrument duly cites, enables scheme regulations to make retrospective provision. (Section 23 of PSPA 2013 does not apply; the provisions of the instrument are not anticipated to have any significant adverse effects for members).

## 12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

## 13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").