EXPLANATORY MEMORANDUM TO THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS (REMEDIABLE SERVICE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2026

S.R. 2026 No. 99

1. Introduction

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

1.2 The Statutory Rule is being made under powers conferred by sections 1(1) and 2(a), 2(1) (together with paragraph 1 of Schedule 2), 3(1), (2)(c) and (3) and 4(7) of the Public Service Pensions Act (Northern Ireland) 2014 (2014 c.2) and sections 5(1) and (5), 7(3), 10(1), 11(5), 19(1) and (5), 21 and 22(1), (2)(d) and (3) of the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022) (2022 c.7).

1.3 The Public Service (Civil Servants and Others) Pensions (Remediable Service) (Amendment) Regulations (Northern Ireland) 2026 shall be subject to the negative resolution procedure.

2. Purpose of the rule

2.1 The Statutory Rule 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 (Northern Ireland) 2023' (S.R. 2023/141, the 2023 Regulations).

2.2 The amendments relate to certain affected Northern Ireland Civil Service (NICS) 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 Department of Finance Directions that were made on 22 May 2025.

3. Background

3.1 In 2014 new ('reformed') public service pension schemes were established by regulations made under the Public Service Pensions Act (Northern Ireland) 2014 ('the 2014 Act'). The Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 (S.R. 2014/290, the 2014 Regulations) established the reformed NICS Pension Scheme, 'alpha'.

3.2 Transitional arrangements which were part of the 2014 reforms allowed pension scheme members within 10 years of retirement to remain in their pre-existing pension (legacy) schemes. The NICS legacy scheme is the Principal

Civil Service Pension Scheme (Northern Ireland) ('PCSPS(NI)') with the sections Classic, Premium (which includes Classic Plus) and Nuvos.

3.3 In December 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 others v Sargeant and others [2018] EWCA Civ 2844* found that transitional arrangements provided in relation to the reformed judicial and firefighters' pension schemes discriminated against younger pension scheme members, also giving rise to indirect sex and race discrimination. This became known as the *McCloud* judgment. On 27 June 2019, the Supreme Court denied the Government permission to appeal the Court of Appeal's judgement.

3.4 On 15 July 2019, the Chief Secretary to the Treasury made a written ministerial statement setting out that the Government considered that the McCloud judgment had implications for all reformed public service pension schemes. The statement explained that the Government planned to make proposals to remedy the discrimination across affected public service pension schemes.

3.5 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. Although pensions in NI are a devolved matter, public service schemes here incorporated the same transitional protection arrangements as the schemes in Britain and the implications of the Court of Appeal decision are such that all schemes must be treated as affected and so require to be remedied. In November 2021 the NI Assembly agreed a Legislative Consent Motion that the remedy provisions specified in the PSPJOA 2022 should also extend for NI schemes.

3.6 For the NICS Pension Scheme, the first stage of the remedy was to close the legacy (PSCPS(NI)) sections to future accrual and place all active NICS Pension Scheme members into alpha from 1 April 2022.

3.7 For the second, retrospective stage of the remedy, the Department of Finance laid the Public Service (Civil Servants and Others) Pensions (Remediable Service) Regulations (Northern Ireland) 2023. Known as the retrospective remedy stage, this second phase of the remedy 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. This provides all affected members with a choice of legacy or reformed pension scheme benefits for their service in the remedy period 2015 to 2022.

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

3.9 This Statutory Rule 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.

3.10 The Statutory Rule is made under powers conferred in the PSPA(NI) 2014 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 (Northern Ireland) 2014 which contain the core rules of the reformed civil service pension scheme known as "alpha".

3.11 This Statutory Rule 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.

3.12 The Statutory Rule 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.

4. Consultation

4.1 Section 21(1) of the PSPA(NI) 2014 provides that before making scheme regulations the responsible authority must consult such persons (or representatives of such persons) as appear to the responsible authority likely to be affected by them. The responsible authority for the NICS Pension Scheme is the Department of Finance. For this Statutory Rule, as the

amendments are minor, clarifying existing regulations and do not introduce any new policy, a consultation period of seven weeks was considered proportionate given the nature and impact of the proposed amendments.

4.2 With the agreement of TUS employee representatives, a consultation on the proposals ran from 15 December 2025 to 30 January 2026 in order to gather their opinions on the draft proposals. A letter was issued to the appropriate employee representative organisations together with the draft proposed Statutory Rule and the Equality Screening document. The agreed closing date was also communicated in the letter.

4.3 Department of Finance officials held a meeting with the TUS member representatives on 18 December 2025. During this meeting, the proposed amendments were explained, and the attendees were able to ask questions and seek assurance and understanding of the proposed amendments. Officials took away some points of clarification raised during the meeting and responded in writing on 22 January 2026.

4.4 Three formal responses were received to the consultation with employee representatives raising no objections to the proposed amendments proceeding. NIPSA and FDA submitted similar responses which listed some points for the scheme manager to consider concerning the administrative processes and member communications. The POA raised an issue regarding pre 1990 formal retirement rights of prison officers which falls outside of the scope of the consultation. A response letter was issued to member representatives to address the concerns raised.

5. Position in Britain

5.1 During the summer of 2025, Cabinet Office consulted on equivalent proposed amendments for the Civil Service Scheme in Britain. Cabinet Office proceeded with the amendments for the Civil Service Pension Scheme in Britain, namely *The Public Service (Civil Servants and Others) Pensions (Remediable Service) Regulations 2025 (S.I. 2025/1115)*. These were laid before Parliament on 23 October 2025 and came into force on 17 November 2025.

6. Equality Impact

6.1 The Department of Finance undertook an equality screening exercise on the Statutory Rule. A full Equality Impact Assessment is not considered necessary. The screening document is available at:

DoF Equality Screening template - Remediable Service (Amendment) Regulations - November 2025

7. Regulatory Impact

7.1 The Statutory Rule imposes no cost on business, charities, social economy enterprises or the voluntary sector. A regulatory impact assessment is not considered necessary.

8. Financial Implications

8.1 There are no financial implications for the Department of Finance.

9. EU implications

9.1 Not applicable.

10. Section 24 of the Northern Ireland Act

10.1 It is the view of the Department that the Statutory Rule is compatible with section 24 of the Northern Ireland Act 1998.

11. Additional information

11.1 These Regulations will be periodically monitored by the Department of Finance as Scheme Manager and amended as necessary. Peter Philip, Head of Public Service Pensions / Civil Service Pensions Policy, Legislation & Communications Branch (telephone 02871 310706 or email peter.philip@finance-ni.gov.uk) can be contacted with any queries regarding the Regulations.