EXPLANATORY MEMORANDUM TO

The Teachers' Pension Scheme (Amendment) Regulations (Northern Ireland) 2022.

S.R. 2022 No. 134

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Education (the Department) 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)(d), 2(1) and 3(1) and (2) of and Schedule 3 to the Public Service Pensions Act (Northern Ireland) 2014 and is subject to the negative resolution procedure.

2. Purpose

2.1. These Regulations introduce the prospective part of the McCloud remedy. This ensures the closure of the legacy 1998 Northern Ireland Teachers' Pension Superannuation Scheme to future accrual fom 1 April 2022 and that all active members of the legacy scheme are moved into the 2015 Northern Ireland Teachers' Pension Scheme from 1 April 2022.

3. Background

3.1. In April 2015, following the Hutton review, new pension schemes were introduced for each of the public sector workforces. The reforms were implemented by regulations made under the Public Service Pensions Act (Northern Ireland) 2014.

3.2. As part of the 2015 reforms, those within 10 years of retirement remained in their legacy pension schemes. This transitional protection was not a recommendation of the Hutton review but was agreed following discussions with member representatives on a UK wide basis.

3.3. In December 2018, the Court of Appeal found, in Lord Chancellor and Secretary of State for Justice versus McCloud, The Secretary of State for the Home Department versus Sargeant [2018] EWCA Civ 2844 (the McCloud judgment), that the transitional protection unlawfully discriminated against younger members of the judicial and firefighters' pension schemes, and also gave rise to indirect sex and race discrimination. On 27 June 2019, the Supreme Court denied the GB government permission to appeal the Court of Appeal's judgment

3.4. On 15 July 2019, the Chief Secretary to the Treasury's written ministerial statement set out that the GB government considered that the Court of Appeal's judgment had implications for all of the public service pension schemes and planned to come forward with proposals to remedy the discrimination across all the schemes. Legal advice confirms the identical transitional measures introduced for equivalent devolved schemes must be similarly remedied.

3.5. Following a consultation run by the Department of Finance (DoF), it was confirmed that legacy schemes would close on 31 March 2022 and that affected members would be given a choice of which pension benefits they wish to receive for the period from 1 April 2015 to 31 March 2022 when those benefits are paid. This choice of pension benefits when the pension becomes payable is referred to as a deferred choice underpin (DCU).

3.6. In the Queen's Speech on 11 May 2021, the GB government announced its intention to bring forward the necessary primary legislation in the form of the The Public Service Pensions and Judicial Offices Act 2022 (the Act) which received Royal Assent on 10 March 2022. The Act puts in place a framework to address the discrimination identified by the Court of Appeal, both retrospectively and prospectively, as well as the consequential effects of that remedy. Departments are required to make new pension scheme regulations to implement the remedy. The Department of Education has identified that two sets of scheme regulations are necessary to give effect to the requirements of the Act. These regulations will make changes to scheme rules to implement the remedy.

3.7. This proposed legislation implements the first stage (prosepctive) of the McCloud remedy for the Northern Ireland Teachers' Pension Scheme by ensuring that from 1 April 2022 all active scheme members will accrue benefits for service only in the reformed scheme.

3.8. The legislation will apply to all members who were in service on or before 31 March 2012 and who have service on or after 1 April 2015(including those with a qualifying break in service of less than 5 years). As the unlawful discrimination identified by the Courts only applied to those who were in service on or before 31 March 2012 it is therefore only that group who are in scope of the remedy.

3.9. The second set of scheme regulations to implement the second stage (retrospective) of the remedy is under development and will be consulted on in due course.

4. Consultation

4.1. The changes introduced by this statutory rule have been subject to statutory consultation which ran for 8 weeks beginning 20 December 2021 and ending on 13 February 2022.

4.2. The consultation document was published on the Department's website. The Department notified those persons, and their representatives, which appear to the Department likely to be affected by the proposed amendment in accordance with section 21 of the Public Service Pensions Act (NI) 2014.

4.3. The Department received 6 responses to the consultation: 1 from an individual, 4 from teacher unions, and 1 from a representative body.

4.4. Respondents broadly agreed that the proposed regulations achieve the Government's stated policy aims as outlined in the consultation document.

4.5. The consultation response document has been published on the Department's website.

5. Equality Impact

5.1. The McCloud remedy is designed to remedy age discrimination. The remedy proposals were equality screened during the original DoF consultation. An Equality Screening/Impact Assessment (EQIA) was carried out by the Department, and this has been published on the Department's website.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment has not been prepared for these regulations as they have no impact on businesses, charities, social economy enterprises or voluntary bodies.

7. Financial Implications

7.1. In isolation this piece of legislation has no financial implications.

8. Section 24 of the Northern Ireland Act 1998

8.1. Consideration has been given to the human rights implications of these regulations. They are considered compatible with Section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not Applicable.

10. Parity or Replicatory Measure

10.1. These regulations put in place similar amendments to those introduced by the Teachers' Pension Schemes England and Wales, and Scotland.

11. Additional Information

11.1. Matters of special interest to the Examiner of Statutory Rules.

11.2. The Department of Education apologises to the Examiner that this rule, which comes into force on 1 April 2022, is laid in breach of the 21-day rule.

11.3. The rule could not have been made and laid sooner because it is dependent on the Public Service Pensions and Judicial Offices Act 2022 (the Act), which received Royal Assent on 10 March 2022. Chapter 4 of Part 1 of the Act contains the operative prospective remedy provision necessary to bring to an end the unlawful age discrimination identified in the McCloud judgment (referenced in paragraph 3.7 above).

11.4. In particular, section [88(5) (c)] of the Act has the effect of closing the legacy public service pension schemes to future accrual after 31 March 2022. This instrument makes consequential provision for the Northern Ireland Teachers' Pension Scheme. This provision must come into force immediately after the legacy pension schemes are closed to future accrual by the Act to ensure legal certainty and fairness. If there is any delay, then there will be a period in which certain members can no longer accrue pension in the legacy scheme but scheme rules would prevent those members from joining the new scheme.

11.5. Scheme members have been on notice, through consultation processes, including the Department of Finance consultation document of August

2020 and consultation response document of February 2021, through the introduction of the Bill in the House of Lords on 19 July 2021, and through the scheme-specific consultation referenced in paragraph 4.1 above, that the commencement date for the prospective remedy would be 1 April 2022. In these circumstances, a breach of the 21-day rule should not give rise to any unfairness.