

PUBLIC SERVICE PENSIONS AND JUDICIAL OFFICES BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill as introduced in the House of Lords on 19 July 2021 (HL Bill 44).

- These Explanatory Notes have been prepared by Her Majesty's Treasury, the Ministry of Justice and the Ministry of Housing, Communities and Local Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Public Service Pensions and Judicial Offices Bill (“the Bill”) includes measures that:
 - a. Address discrimination that arose when existing public service pension schemes were closed to certain members between 2014 and 2016;
 - b. Deliver changes to public service pension schemes to ensure that all eligible public service workers have access to high quality defined benefit schemes on a fair and equal basis;
 - c. Ensure there are no reductions to members’ benefits following completion of the cost control element of the 2016 valuations;
 - d. Improve the terms for judicial resourcing to support the effective functioning of the judiciary, to meet future demands; and
 - e. Confer powers upon the Treasury to establish a new UK Asset Resolution (UKAR) Limited pension scheme.
- 2 When reformed public service pension schemes were introduced in 2014/2015 (in each case, a “new scheme”) the Government agreed, following discussions with trade unions, to allow active members of pre-existing public service pension schemes (in each case, a “legacy scheme”) who were close to retirement to remain in those schemes, rather than requiring them to start to accrue pension benefits in a new scheme. This was called transitional protection.
- 3 Following a judgment by the Court of Appeal that found transitional protection to be discriminatory in the schemes for the judiciary and firefighters, the Government consulted on proposals to allow all eligible members of the main public service pension schemes a choice between legacy and new scheme benefits in respect of any pensionable service between 1 April 2015 and 31 March 2022, so that they are able to opt for the benefits (new scheme or legacy scheme) of the greatest value to them. Eligible active and deferred members of the main public service pension schemes will be able to make this choice close to the time that their pension benefits are paid when it is clearer which option is most beneficial for them. Some members with relevant service are already in receipt of pension benefits in relation to the affected period. This group will be able to choose which benefits they wish to receive in relation to their affected service once the legislation comes into force and where there is a change in entitlement as a result; any change will apply retrospectively.
- 4 Separate arrangements are being made in the local government pension schemes because the transitional arrangements in those schemes were made in a different way. Judicial scheme members will make an immediate choice given the unique nature of their legacy schemes. All members of the public service schemes, regardless of age or joining date, will accrue benefits in the relevant new scheme from 1 April 2022. This aims to ensure fair and equal treatment going forward.
- 5 This Bill recommits to the objectives underpinning the 2015 reforms: fairness between lower and higher earners; value for the taxpayer; and ensuring a sustainable, affordable approach is taken to public service pensions. Measures in the Bill deliver changes that will ensure greater fairness in future public service pension provision and provide members with greater certainty about their benefit entitlement.
- 6 Taken together, the Bill aims to ensure that public service pension benefits are affordable, sustainable and form part of a generous remuneration package for public servants; it brings forward bespoke measures required to support the judiciary now and in the future; and establishes a new UK Asset Resolution pension scheme.

Policy background

Public service pensions reform and the Court of Appeal's judgment

- 7 In 2010 the Chancellor of the Exchequer invited Lord Hutton of Furness to chair the Independent Public Service Pensions Commission ("the IPSPC"). The IPSPC was tasked with undertaking a fundamental structural review of public service pension provision.
- 8 The IPSPC published its final report in 2011, setting out recommendations to reform public service pensions to better balance the interests of taxpayers, employers and members. The Government accepted the IPSPC's recommendations as the basis for discussions with public service workers, trades unions and other representative bodies.
- 9 In November 2011 the Government published a Command Paper¹ setting out the Government's framework for reform of the public service schemes. Further discussions were undertaken with each of the workforces to develop scheme design proposals.
- 10 In April 2015 (April 2014 in the case of the Local Government Pension Scheme in England and Wales) new schemes were introduced for each of the main workforces – local government, teachers, the NHS, the armed forces, firefighters, police, judiciary and civil service. The reforms were implemented by regulations made under the Public Service Pensions Act 2013 (PSPA 2013).
- 11 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 IPSPC but was agreed following discussions with member representatives.
- 12 In December 2018 the Court of Appeal found in *Lord Chancellor v McCloud, Secretary of State for the Home Department v 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 Government permission to appeal the Court of Appeal's judgment.
- 13 On 15 July 2019 the Chief Secretary to the Treasury made a written ministerial statement² setting out that the 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 the schemes.
- 14 On 16 July 2020, the Government published a Command Paper: *Public service pension schemes: changes to the transitional arrangements to the 2015 schemes*³. The consultation set out two proposed options for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age and proposed that the legacy schemes would be closed to all members on 31 March 2022.

¹ Public Service Pensions: good pensions that last, November 2011, Cm 8214
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last_Command_paper.pdf

² Public Service Pensions Statement made on 15 July 2019 (HCWS1725): <https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725>

³ Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Consultation, CP 253, July 2020:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Public_Service_Pensions_Consultation.pdf

- 15 It is normal practice in discrimination cases to remedy unequal treatment by reverting to the most beneficial option. However, the reforms that were introduced in 2015 were progressive reforms and were in part intended to even out the value of pensions between some of the highest and lowest earners, resulting in some, particularly lower and middle earners, being better off in the new schemes. Simply extending transitional protection to all affected members would address the discrimination identified by the Court but would also mean that some members would be placed in a worse position. Instead, the Government proposed that members should be given a choice of which scheme benefits they wish to receive during the period from when the new schemes were introduced to the date that the legacy schemes are to be closed. The consultation sought views on whether the choice should be made immediately (once the necessary legislative changes were made) or deferred until the point that a member's pension benefits become payable.
- 16 In February 2021 the Government published its response⁴, confirming that the 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 when those benefits are paid. The Government explained that it preferred this approach as it would provide members with greater certainty about their decision and avoid the need for them to make assumptions about matters such as their future career and retirement age, which would increase the risk of making imperfect decisions, particularly for younger members. The response confirmed that affected members who are already in receipt of pension benefits will be given a choice as soon as possible after necessary changes to the schemes are implemented via legislation, or earlier if possible.
- 17 Separate consultations were undertaken in relation to the Judicial Pension Schemes and the Local Government Pension Schemes because of the unique arrangements within those schemes. The Northern Ireland Department of Finance also undertook a separate consultation in relation to the public service pension schemes that are their responsibility under the devolution arrangements.
- 18 In the Queen's Speech on 11 May 2021 the Government announced its intention to bring forward legislation to implement retrospective changes to remedy the discrimination that arose when transitional protection was afforded to older public service workers when new public service schemes were introduced in 2014/15 and to ensure equal treatment for all members within each of the main public service pension schemes by moving all members into the reformed schemes on 1 April 2022.
- 19 For the main public service pension schemes (the non-judicial schemes), where the Bill refers to the "new scheme", this refers to the reformed 2015 schemes, introduced following an independent review of public service pensions, and made under the PSPA 2013. In respect of the judiciary, the scheme made under the PSPA 2013 is referred to in the Bill as the "judicial 2015 scheme" rather than "new scheme". This is to avoid confusion with the newly designed, reformed scheme which will provide for future accruals for the judiciary from April 2022. The pre-2015 public service pensions schemes are in each case referred to as the "legacy scheme".

Non-judicial schemes (except local government)

- 20 Following consultation on the approach to implementing remedy, the Government is proceeding with the Deferred Choice Underpin (DCU), which enables members to make a choice as to whether to take legacy or new scheme benefits for the remedy period when their

⁴ Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Government response to consultation, CP373, February 2021:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958635/Public_Sector_Pensions_Consultation_Response.pdf

pension benefits become payable. The Bill brings forward changes required for effective implementation of the remedy.

- 21 The new schemes themselves are not discriminatory, and the Government wishes to ensure that all members are treated equally in respect of the scheme design available to them after the discrimination has been addressed.
- 22 Therefore, all public servants who continue in service from 1 April 2022 onwards will do so as members of their respective new scheme. Legacy schemes will be closed in relation to service after 31 March 2022, closing the remedy period during which members in scope have a choice of benefits.

Local government schemes

- 23 A different approach was adopted for the Local Government Pension Schemes (LGPS), where all members still accruing benefits were moved to new schemes either on 1 April 2014, for the LGPS England and Wales, or 1 April 2015, for the LGPS for Scotland and Northern Ireland. In those schemes, older members in service on 31 March 2012 were provided with an underpin - giving them the better of accrual as if under their previous legacy scheme provisions or under the reformed scheme provisions, for pensionable service from the date they moved to their new LGPS scheme.
- 24 For these LGPS schemes there will be no change that service should be under reformed schemes. However, the underpin will be extended to all those members affected by the discrimination. The underpin will not apply to service after 31 March 2022 or for service rendered after the member's Normal Pension Age (NPA)⁵, if earlier.

Judicial schemes

- 25 There are a number of important differences between the proposed remedies for the judiciary and for the wider public service which arise from the unique nature of judicial office and the judicial legacy schemes. The key difference is that, unlike the wider public service remedy in which eligible individuals will be returned to their legacy scheme and make a choice at retirement as to the basis on which they would like their benefits calculated, for the judiciary the remedy will be provided by way of an options exercise. Subject to parliamentary timetables and approval, it is anticipated that the options exercise will take place in autumn 2022.

Cost control mechanism – 2016 valuations

- 26 The Bill also includes bespoke measures related to the cost control mechanism (CCM). The CCM aims to protect both the value of member benefits and the cost to the taxpayer from unforeseen changes in pension scheme costs. The CCM was introduced alongside the reformed schemes in 2015, following a recommendation by the Independent Public Service Pensions Commission in 2011, and subsequent discussions with trade unions. The CCM assesses certain elements of scheme costs and compares these costs to a base level (the “employer cost cap”), set at the first valuation. If the costs measured in the CCM have decreased/increased by more than the specified margins below/above the employer cost cap, then member benefits are increased/reduced to bring costs back to target. The upper and lower margins have been specified in Treasury Regulations as a percentage of pensionable pay. So, there is effectively a corridor either side of the employer cost cap, with margins representing the ‘ceiling’ and ‘floor’.

⁵ Normal Pension Age is the age at which a pension scheme member can start taking pension benefits on a voluntary basis without any reductions. NPA is set in scheme rules. A member can retire voluntarily before NPA, as long as they are over their MPA, but will then face a reduction to their benefits.

- 27 The mechanism was first tested at the 2016 valuations. However, the cost control element of the 2016 valuation process was paused in light of the McCloud judgment regarding transitional protection. The potentially significant and uncertain impact arising from the Court's judgment made it impossible to assess the value of the schemes to members with any certainty. Additionally, in 2018, the Government announced that it would ask the Government Actuary (GA) to conduct a review of the mechanism. This reflected a concern that the CCM may not be operating in line with its original objectives.
- 28 In July 2020, the Government announced that this pause would be lifted, the GA's review should proceed, and the 2016 valuation completed. The Government also announced the legislative remedy should be taken into account when completing the cost control process, as the remedy affects the value of schemes to members.
- 29 Now that the pause has been lifted and the Government is completing the cost control element of the 2016 valuations, taking account of the remedy, early estimates indicate that some schemes may breach the ceiling, which would lead to significant reductions in benefits under existing legislation.
- 30 The Government decided that there should not be reductions to member benefits as a result of the 2016 valuations, particularly based on a mechanism that may not be working as intended. The Bill therefore includes measures to waive the impact of any ceiling breaches that may occur once the results of the 2016 valuations have been finalised, so no member will see a reduction in their benefits. Any floor breaches that occur will be honoured. This means that when results have been finalised and implemented, any benefit improvements that are due will be delivered.

Judicial Pensions

- 31 The Public Service Pensions Act 2013 (PSPA 2013) introduced a statutory framework for the reform of public service pension schemes. Following a public consultation exercise, the New Judicial Pension Scheme 2015 (NJPS) was established under the Judicial Pensions Regulations 2015 (JPS 2015).
- 32 This resulted in many changes to judicial pensions, with the most significant being that members in NJPS were now subject to annual and lifetime allowance limits on the tax-relief benefits accrued due to the tax-registered nature of the scheme. These changes had a disproportionate impact on the judiciary; resulting in recruitment and retention issues. These were underlined by the fact that the first ever unfilled vacancy at the High Court occurred in the 2014/15 recruitment exercise.
- 33 In 2018, the Senior Salaries Review Body (SSRB) published its Major Review of the Judicial Salary Structure which confirmed evidence of significant and escalating recruitment and retention problems at all levels of the judiciary. They concluded that the principal cause of this was the cumulative impacts of the 2015 public pension reforms and subsequent changes to pension tax thresholds.
- 34 This is an issue for the judiciary because many senior judges are in a position where they have accrued significant private sector pensions prior to taking up judicial office, which means that the pension tax charges would be felt more acutely and by a significant proportion. Moreover, owing to the judiciary's unique constitutional role, salaried judges are not able to work in private practice after taking up office and they are also appointed on the understanding that they will not return to private practice once they have retired. Their options for supplementing their income are therefore limited. Furthermore, many judges are also in the unusual position of taking a pay cut to join the judiciary. These factors are key to explaining why the judicial pension scheme is a vital part of judicial remuneration and integral to recruitment and retention.

- 35 Responding to the SSRB’s review in June 2019, the Government introduced a temporary Recruitment and Retention Allowance for certain senior salaried judges who were eligible to join NJPS and made a commitment to develop a pensions-based solution for the whole judiciary, which would address, in the long-term, the recruitment and retention problems identified by the SSRB.
- 36 In July 2020, the Government published a consultation setting out its plan to introduce a reformed judicial pension scheme that would be in line with the main principles of the 2015 reforms but also retain key elements of the legacy schemes. For this reason, the reformed scheme contains many features of the 2015 schemes: benefits are based on career average earnings rather than final salary; the Normal Pension Age is linked to State Pension age; and members have an option to commute part of their pension in exchange for a lump sum, instead of being given an automatic lump sum on retirement. Crucially, to address the recruitment and retention issues, the reformed scheme will be tax-unregistered, like the judicial legacy schemes, and have a higher accrual rate compared to NJPS. The aim, as confirmed by the consultation, is to have this open to all eligible salaried and fee-paid judicial office holders from 2022, where they can accrue benefits under it.
- 37 The response to this consultation published by the Ministry of Justice in February 2021 confirmed the intention to implement the reformed scheme in line with the proposals set out in the published consultation document in July 2020.
- 38 Public service pensions are a devolved matter for Northern Ireland (NI) and are established under separate primary legislation to that in Great Britain. NI scheme provisions are broadly identical to the comparable schemes in Great Britain. Separate consultations were carried out for public service pensions schemes in Northern Ireland. The Department of Finance consulted on the broadly identical policy options as Treasury and the outcome of their consultation reflected that of Treasury. The Department for Communities carried out a consultation for the Local Government pension scheme NI. Their approach remains identical to that proposed for the equivalent scheme in Britain.

Judicial Allowances

- 39 The judicial allowances measure will place the power to determine allowances for judicial office holders on a statutory footing. Allowances have been used to recognise work undertaken outside of a judge’s core work of hearing cases, such as providing leadership or significant support to other judges and courts administrative staff, to address temporary recruitment and retention problems, or to recognise temporary periods of additional responsibility. Allowances are useful as, unlike judicial salaries which are subject to statutory protection, they can be removed when the need for them falls away, for example, a judge stops undertaking leadership responsibilities, and so will be used to make temporary and ad-hoc payments where appropriate.
- 40 There are inconsistencies within current legislation in that the Lord Chancellor has a statutory power to determine provision of an allowance to some, but not all, judicial office holders for which the Lord Chancellor has the power to determine salary. This measure is therefore intended to resolve such inconsistencies by putting any residual common law powers in this area on a statutory footing and to ensure sufficient flexibility in judicial remuneration in certain specific circumstances, particularly where such remuneration is on a temporary basis.

Judicial Mandatory Retirement Age

- 41 The judicial mandatory retirement age (MRA) is the upper age at which judicial office holders, including judges, tribunals’ non-legal members, magistrates, and coroners, are required to vacate office. The MRA does not prevent judicial office holders from resigning or retiring earlier should they wish to.

- 42 The MRA may be seen as an important requirement of judicial office which helps to preserve public confidence in the health and capacity of those appointed, while protecting judicial independence by avoiding the need for individual assessments and the possibility of judicial office holders being removed at the whim of the Executive. It also supports judicial resource planning and promotes the diversity of the judiciary by ensuring a steady flow of new appointments.
- 43 Although retaining an MRA remains important for the above reasons, it has been over 25 years since the MRA was set at 70 for the majority of judicial office holders. Since then, the structure and operation of courts and tribunals have developed and so have the resourcing needs of the judiciary. Meanwhile, the average life expectancy in the UK has increased significantly and a greater number of people are now working for longer.
- 44 The UK Government consulted in 2020 on proposals to increase the MRA. Following careful consideration of over 1000 responses, the Government decided to raise the MRA to 75. This is intended to help ensure the judiciary can continue to meet the demands of courts and tribunals by retaining valuable judicial expertise for longer and attracting a greater number of potential candidates for judicial office from diverse backgrounds.
- 45 Unlike judges, there is no existing provision which allows magistrates to have their appointments extended beyond the current MRA. To further support the resourcing of magistrates' courts, the Government have decided that, as part of the MRA increase, provision will be made to allow the reinstatement of those retired magistrates who are younger than 75 and who wish to return to continue sitting, where this is necessary to meet business needs.
- 46 The Scottish Government, the Welsh Government and the Department of Justice in Northern Ireland conducted separate consultations on similar proposals for those judicial office holders whose MRA is a devolved matter for their legislatures, and they have also decided to raise the MRA of those offices to 75. Their consultation response noted the importance of maintaining parity across the United Kingdom to preserve public confidence in the judiciary and ensure equal opportunities for judicial office holders across jurisdictions.

Sitting in retirement

- 47 Sitting in retirement (SIR) is the current policy which permits a salaried judge to retire from their salaried office, draw their pension in relation to that office, and continue to sit as a fee-paid judge if there is a business need to do so.
- 48 While salaried judges can apply to sit in retirement, this option is not equally available to fee-paid judges under current legislation. To remove this differential treatment and provide a policy which applies consistently across salaried and fee-paid offices, the Bill introduces a new judicial office to which both salaried and fee paid office holders in scope can apply on retirement.
- 49 While it is hoped that, in time, the changes to judicial pension and the higher MRA will lead to improvements in recruitment and retention of judicial office holders that will reduce the business need for judges to sit in retirement, drawing upon retired judicial office holders remains an important flexibility to help the judiciary meet immediate demands where there may be temporary shortages. Extending powers for judges to be appointed to sit in retirement to a wider range of judicial offices, including relevant fee-paid offices, is designed to enhance this flexibility.

UK Asset Resolution (UKAR)

- 50 The Bradford and Bingley Staff (BBS) Pension Scheme and NRAM Pension Scheme are two public sector pension schemes which respectively pay the pension payments and other

benefits of former employees (and their beneficiaries) of Bradford & Bingley plc (B&B) and Northern Rock, two banks which were taken into public ownership as a result of the 2007-2008 financial crisis.

- 51 The schemes previously resided under B&B and NRAM Limited (NRAM), two companies holding the mortgage and loan assets of B&B and Northern Rock that the Government acquired during the financial crisis. The Government has gradually been returning these assets to the private sector. The Government announced the final sale of B&B and NRAM and their remaining assets in February 2021.⁶ As part of the sale, the liability for the payment of the pensions was novated from B&B and NRAM to the Government-owned holding company UK Asset Resolution (UKAR).⁷
- 52 The Treasury has a statutory obligation to guarantee that the assets in the BBS Pension Scheme are sufficient to meet the pension liabilities.⁸ It has also extended this guarantee in relation to the NRAM Pension Scheme through a credit support deed in May 2019.
- 53 The Government are now seeking to relieve UKAR of its remaining liabilities (including the BBS and NRAM pension schemes) such that UKAR may be wound down.
- 54 In the 2020 Budget, the Treasury announced its intention to “create a new central Government pension scheme for the members of the BBS and NRAM schemes [and to] sell assets held by the NRAM and BBS schemes over 2023-24 and 2024-25, subject to the necessary legislation being brought forward, supportive market conditions and achieving value for money.”⁹
- 55 This Bill confers the necessary powers upon the Treasury to effect this policy. It confers powers on the Treasury to create one or more public pension schemes to provide for pensions and benefits to and in respect of the members of BBS and NRAM pension schemes. It also confers powers on the Treasury to transfer the assets and liabilities of the BBS and NRAM schemes to Government.
- 56 The Bill also contains a number of related provisions, including provisions to ensure that affected individuals do not experience adverse treatment; and provisions to require the surrender of personal data necessary to effect the transfer.

Legal background

Public service pension schemes and the Court of Appeal’s judgment

- 57 Public service pension schemes in respect of each workforce (civil service, NHS, teachers, police, firefighters, armed forces and judiciary) can broadly be considered to fall into two categories: legacy schemes (pre-1 April 2015) and new schemes (from 1 April 2015). Whilst there is a patchwork of enabling legislation for the legacy (largely final salary) schemes across

⁶ ‘Government completes final £5 billion sale of Bradford & Bingley plc and NRAM Limited’, 26 February 2021 <https://www.gov.uk/government/news/government-completes-final-5-billion-sale-of-bradford-bingley-plc-and-nram-limited>

⁷ Glen, John, ‘Contingent Liability Notification’, 9 May 2019 <https://questions-statements.parliament.uk/written-statements/detail/2019-05-09/hcws1553>

⁸ See Article 26 and paragraph 10 of Schedule 3 to the Bradford and Bingley plc Transfer of Securities and Property etc Order 2008 (S.I. 2008/2546)

⁹ ‘Budget 2020’, HM Treasury, 11 March 2020, p. 101 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871799/Budget_2020_Web_Accessible_Complete.pdf

These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill as introduced in the House of Lords on 19 July 2021 (HL Bill 44)

the main public service pension schemes, all of the main public service new schemes are made under (or deemed to be made under) the Public Service Pensions Act 2013 (PSPA 2013).¹⁰ Section 1(1) PSPA 2013 allows the making of regulations for the payment of pensions and other benefits in respect of persons specified in section 1(2) PSPA 2013. The person responsible for making (and maintaining) the regulations in respect of each scheme (defined in the PSPA 2013 as the “responsible authority”) is specified in Schedule 2 to the PSPA 2013 and is generally the Secretary of State of the department responsible for the administration of the relevant service (e.g. the Secretary of State for Education, in the case of teachers). Where a scheme is devolved, the responsible authority is the equivalent Scottish or Welsh Minister, or the relevant Department in Northern Ireland. In Northern Ireland, devolved schemes are established under the Public Service Pensions Act (Northern Ireland) 2014 (PSPA(NI) 2014). Where these notes refer to existing provisions in PSPA 2013 comparable provisions currently exist for the devolved schemes under PSPA (NI) 2014, unless otherwise indicated. Before being made, the Treasury (or the Department of Finance in Northern Ireland) must consent to scheme regulations, unless an exception applies (as is the case for some but not all devolved schemes) (see sections 3(5) and 3(6) PSPA 2013).

- 58 PSPA 2013 permits a scheme made under section 1(1) to make provision as to any of the matters specified in Schedule 3 – this includes eligibility for membership, the conditions subject to which benefits are payable, the recovery of overpaid benefits, the exclusion of double recovery of compensation or damages, interest on late payment of contributions, the return of contributions (with or without interest), the payment or receipt of transfer values for the purpose of creating or restoring rights to benefits, and the administration and management of the scheme (see section 3(2)(a) PSPA 2013).
- 59 A scheme made under section 1(1) PSPA 2013, if a defined benefits scheme, must be a career average revalued earnings scheme, as defined in section 8(4) of the PSPA 2013 (see section 8(2) PSPA 2013), or a defined benefits scheme of such other description as Treasury directions may specify. A scheme made under section 1(1) PSPA 2013 cannot be a final salary scheme (section 8(3) of the PSPA 2013). The legacy schemes were closed by section 18(1) of the PSPA 2013; the closing date was 31 March 2014 for the legacy Local Government Pension Scheme for England and Wales and 31 March 2015 for any other legacy scheme (note that different provisions applied to public body pension schemes such as those listed in Schedule 10 of the PSPA 2013).
- 60 Sections 18(5), 18(5A) and 18(6) allowed for scheme regulations to make further exceptions for those members who were in service immediately before 1 April 2012, or who had ceased to be members of a legacy scheme before that date. Most main public service pension scheme regulations made under section 1(1) of the PSPA 2013 exercised the powers contained in sections 18(5), 18(5A), and 18(6) to introduce transitional and tapered protection. Provisions in section 31 PSPA 2013, largely mirroring those in section 18 PSPA 2013, apply to the legacy schemes of certain public bodies currently listed in Schedule 10, such as the Secret Intelligence Service and the Security Service.
- 61 Those members who did not benefit from an exception in section 18(3) or scheme regulations made under sections 18(5), 18(5A) and 18(6) PSPA 2013 were afforded a ‘final salary link’ in accordance with section 20 and Schedule 7 PSPA 2013. In brief, the provisions providing for a

¹⁰ The reformed Local Government Pension Scheme for England and Wales was made under section 7 of the Superannuation Act 1972 and, to the extent that the scheme makes provision for the payment of pensions and other benefits to (or in respect of) a person in relation to that person’s service on or after 1 April 2014 and such provision could also be made under section 1(1) PSPA 2013, the scheme had effect as if it were a scheme made under section 1(1) PSPA 2013 (see section 28 PSPA 2013).

final salary link ensure that, although the member is not accruing further pensionable service in a legacy scheme, it is a member's salary on leaving service that is used for the purposes of calculating the value of any pension accrued in a final salary legacy scheme before 1 April 2015. Without this provision, a member would be regarded as having left that legacy final salary scheme and their accrued rights under a legacy final salary scheme would therefore be determined by their salary upon leaving that scheme (i.e. on or before 1 April 2015) rather than upon leaving service.

- 62 As set out above, the genesis of the Bill was the judgment of the Court of Appeal in *Lord Chancellor v McCloud, Secretary of State for the Home Department v Sargeant* [2018] EWCA Civ 2844, which found that the judicial and the firefighters' new pension schemes, that were introduced under the PSPA 2013 with effect from 1 April 2015, contained transitional provisions which led to unlawful direct age discrimination, and in neither case could that discrimination be justified; there was also a finding of unlawful indirect discrimination in relation to equal pay and indirect race discrimination.
- 63 The Bill provides a comprehensive remedy to address the discrimination identified by the Court of Appeal, both retrospectively and prospectively, as well as the consequential effects of that remedy.

Cost control mechanism (CCM)

- 64 The Government made provisions to establish the CCM in the PSPA 2013. However, the detail regarding the parameters of the CCM – including the costs or changes in costs that are to be taken into account for the purposes of measuring changes in the cost of a scheme – are delegated to Treasury directions made under sections 12(3) and 12(4) of the PSPA 2013. These directions are known as The Public Service Pensions (Valuations and Employer Cost Cap) Directions 2014, as amended.
- 65 A key component of the CCM is the “employer cost cap”. Section 12(3) of the PSPA 2013 requires that the “employer cost cap” (i.e. the rate, expressed as a percentage of pensionable earnings of members of the scheme, to be used for the purpose of measuring changes in the cost of the scheme) is set in accordance with Treasury directions. Those Treasury directions may in particular specify how the first valuation of a new scheme (carried out under section 11 of the PSPA 2013) is to be taken into account in establishing the ‘employer cost cap’ for that scheme. The “employer cost cap” was incorporated into the secondary legislation (made under section 1 of the PSPA 2013) containing each scheme.
- 66 Section 12(6) of the PSPA 2013 allowed a new scheme to provide for a procedure for returning the scheme to the “target cost” in agreement with employers and members (or their representatives), with a default where agreement could not be reached. Schemes set the default as a change to the rate of accrual. A consequence of this framework is that scheme regulations also require the cost of a scheme to be returned to the “target cost” when there is a breach of the employer cost cap in excess of the margins.
- 67 Treasury regulations (made under section 12(5) of the PSPA 2013) specify the upper and lower margins as specific percentages of pensionable pay above and below the employer cost cap, and require that the cost of the relevant scheme must remain within those margins. The upper margin forms a ‘ceiling’, with the lower margin forming a ‘floor’. Where the cost of the scheme has gone beyond those margins on either side of the employer cost cap, the regulations (as required by section 12(5)(a) of the PSPA 2013) specify that the cost of the scheme must be brought back to the “target cost”. The Regulations set the “target cost”, which must be between the margins, in accordance with section 12(5)(b) of the PSPA 2013. The target cost is currently the employer cost cap, which, as mentioned above, was set for each scheme pursuant to the first valuations.

Judicial schemes

- 68 The older judicial pension schemes for salaried judges were substantially set out in primary legislation: most notably the Judicial Pensions Act 1981 (the 1981 Act) and the Judicial Pensions and Retirement Act 1993 (JUPRA). The 1981 Act consolidated the legislation applying to different salaried judicial offices, while JUPRA provided a unified scheme for all holders of salaried qualifying judicial office. The 1981 Act schemes closed to new members on 31 March 1995. The JUPRA scheme was open to all holders of salaried qualifying judicial office appointed on or after that date, and also to judges who held office before that date who elected that it should apply to them or who were appointed to a different office where the 1981 Act would have required a change in pension arrangements.
- 69 As a result of the *O'Brien* litigation,¹¹ the Fee-Paid Judicial Pension Scheme (FPJPS 2017) was commenced on 1 April 2017. FPJPS 2017 was established under the Judicial Pensions (Fee-Paid Judges) Regulations 2017 (FPJR 2017), which were made under a new power inserted into JUPRA (section 18A) by the Pension Schemes Act 2015. FPJPS 2017 provides benefits for eligible fee-paid judicial office holders which are intended to mirror as far as possible those available to salaried judicial office holders under JUPRA.
- 70 The PSPA 2013 implemented the cross-Government pension reforms following the Hutton report. It provides the vires for the new Judicial Pension Scheme 2015 (NJPS) which was established under the Judicial Pensions Regulations 2015 (JPS 2015), which came into effect on 1 April 2015. On 1 April 2015, active scheme members of the legacy schemes were transferred into the NJPS except where a judge was entitled to either full or tapered transitional protection; and by the operation of section 18(1) PSPA 2013, the legacy schemes were closed to further accrual except where a judge was entitled to either full or tapered transitional protection.
- 71 These transitional protections were intended to protect judges closest to retirement. They were given effect by regulation 14 of and Schedule 2 to NJPS, which provide for exceptions to section 18(1) PSPA 2013. The exceptions gave full protection to judges who were in service on 1 April 2012 and aged 55 years (i.e. within 10 years of the NPA in the legacy schemes) or older at that date, thereby allowing them to remain in the legacy schemes until retirement. Tapered protection was available to judges who were in service on 1 April 2012 and aged between 51 and a half and 55 years. These judges were given the choice of whether to join NJPS on 1 April 2015 or to 'taper' across at a later date, determined by their date of birth, so that those judges retained Legacy Scheme benefits for a longer period of time. These provisions were found to be unlawful in the *McCloud* litigation and Chapter 2 of Part 1 addresses this discrimination for the judiciary.

Judicial Pensions

- 72 Provision for the reformed judicial pension scheme will be made in secondary legislation under the existing power in section 1 of the PSPA 2013. The use of this existing power will permit the reformed scheme to be delivered in accordance with the principles of the 2015 pension reforms. The PSPA 2013 provides a broad power for scheme regulations to establish new career average revalued earnings (CARE) schemes according to a common framework of requirements. These include an increased governance regime, the requirement for Normal Pension Age to be linked to State Pension Age (with some exceptions) and a cost control mechanism to keep the ongoing costs of the schemes within defined margins. The reformed scheme will also be tax-unregistered, and this is achieved by not registering the pension scheme under Part 4 of the Finance Act 2004.

¹¹ The *O'Brien* litigation encompasses the following cases: *O'Brien v Ministry of Justice* [2013] UKSC 6; *O'Brien v Ministry of Justice* (Case C-432/17); *Miller and others v Ministry of Justice* [2019] UKSC 60.

Judicial Allowances

- 73 The Lord Chancellor's powers to determine judges' pay are set out in the legislation which creates the relevant judicial office. These provisions will be amended to include the express power to determine allowances and as there is no single piece of legislation detailing the power to determine pay, a number of amendments will be made to several pieces of legislation.

Judicial Mandatory Retirement Age

- 74 JUPRA introduced a standard MRA of 70 for the majority of judicial office holders in England and Wales, Scotland and Northern Ireland. The MRA only applied to judicial appointments made after the relevant provisions were commenced on 31 March 1995. Prior to this, judicial offices had differing MRAs or, in some cases, no MRA at all.
- 75 While Schedule 5 to JUPRA covers the majority of judicial office holders in the UK, there are a number of judicial office holders who have their MRA set in different legislation, including magistrates (lay justices) and coroners in England and Wales whose MRA is set at 70 by the Courts Act 2003 and the Coroners and Justice Act 2009 respectively.

Sitting in retirement (SIR)

- 76 There is not currently a single SIR provision by which salaried judges are appointed to fee-paid office to sit in retirement. Instead, various statutory provisions are used to give effect to the policy. These include sections 94A and 94B of the Constitutional Reform Act 2005 and section 9(1) of the Senior Courts Act 1971.
- 77 The SIR provisions in the Bill will provide a framework to create a bespoke and distinct office in which judicial office holders (whether previously salaried or fee-paid) will sit in retirement. The provisions will create a single appointing power permitting the relevant Senior Judge to authorise the appointment (with appropriate concurrence) of a judicial office holder to a distinct office, only to be used for a judicial office holder SIR.
- 78 The Bill also provides for a judicial office holder in a SIR office to be authorised to act as and be treated for all purposes as a pre-retired holder of that office, including the ability to be deployed to sit in the same courts and tribunals, subject to the relevant judicial policies.
- 79 To the extent that existing statutory provisions permit only salaried judges to sit in retirement, those provisions will be repealed.

Territorial extent and application

- 80 Clause 112 sets out the extent and application of the provisions in the Bill. The provisions of the Bill extend and apply to England and Wales, Scotland and Northern Ireland.

Legislative Consent Motions

- 81 Under the terms of the Sewel Convention, the UK Parliament will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.
- 82 In the view of the UK Government, the Bill will engage the Sewel Convention in Scotland, Wales and Northern Ireland as certain areas of judicial policy are devolved in Scotland, Wales and Northern Ireland. Judicial pensions policy is also devolved/transferred in Northern Ireland in relation to certain devolved judicial offices and falls within devolved competence of Scotland where the judicial pension scheme is not reserved to Westminster. Legislative consent will therefore be sought from all three devolved legislatures in relation to these matters.

- 83 The Bill makes provision for public service pension schemes in Scotland (for teachers, NHS workers, firefighters, police, and local government workers) where the Scottish Ministers have executive but not legislative competence.
- 84 The Bill makes provision for the firefighters' pension scheme in Wales where Welsh Ministers have executive competence, however the Senedd Cymru does not have legislative competence.
- 85 The Bill makes provision for pensions for the armed forces and members of the UK civil service in respect of Northern Ireland, as legislative competence for these pension schemes sits with the UK Parliament. The Bill also makes provision for public service pension schemes in Northern Ireland (for civil servants in the Northern Ireland civil service, teachers, NHS workers, firefighters, police and local government workers) where the Northern Ireland Assembly has legislative competence. Legislative consent will therefore be sought from the Northern Ireland Assembly in relation to these matters.
- 86 If there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for those amendments.
- 87 See the table in Annex A for a summary of the position regarding territorial extent and application.

McCloud Remedy (Judiciary)

- 88 In terms of current legislation, pension provision for Welsh and most Scottish devolved judicial office holders is provided for in the UK judicial pension schemes and the remedy provisions as described below will apply equally to them. In respect of Northern Ireland, while most office holders are members of the UK schemes, a small number of devolved judiciary were provided with a 2015 scheme under Northern Ireland legislation. The Bill includes equivalent amendments to fully implement the *McCloud* remedy to the relevant Northern Ireland legislation which provided for a 2015 reformed scheme.

Judicial Pensions (prospective remedy)

- 89 Provisions in Chapter 4 of Part 1 on judicial pensions extend to the whole of the UK. Provision restricting accrual in existing pension schemes after 31 March 2022 applies to judicial office holders across the UK and equivalent provision is also made in relation to the relevant Northern Ireland legislation. Clause 82 amends the PSPA 2013 so that devolved judicial office holders in Scotland and Northern Ireland may be added to a scheme under that Act at the request of the relevant devolved administration.

Judicial Offices

- 90 Clause 103 and Schedule 1 which make provision to raise the MRA to 75 for certain judicial offices apply UK-wide. Included are a number of judicial offices in Wales, Scotland and Northern Ireland, whose MRA is a devolved matter for Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly.
- 91 Clause 105 to 109, which make provision for the new sitting in retirement office, which both salaried and fee-paid judicial office holders can apply for upon retirement, apply UK-wide. The judicial office holders in scope of this provision (set out in Schedule 3) include judicial office holders whose terms of appointments are devolved matters for the Senedd Cymru and the Northern Ireland Assembly. Judicial office holders whose terms of appointments are a devolved matter for the Scottish Parliament are not in scope of this provision.
- 92 The judicial allowances measure extends to the whole of the UK. It will extend to judicial offices in Scotland, Northern Ireland and Wales where the Lord Chancellor has legislative

competence in relation to the determination of remuneration. The Scottish Government and the Department of Justice in Northern Ireland have also indicated that certain judicial offices in Scotland and Northern Ireland where legislative competence in relation to the determination of remuneration is devolved should also be included in this measure; in such cases the power to determine allowances will be provided to the authority which has the existing power to determine salary or fees. The judicial office holders whose remuneration is a devolved matter for Senedd Cymru are not included in the judicial allowances measure.

Commentary on provisions of Bill

Part 1: Public Service Pension Schemes

Chapter 1: Schemes other than Judicial Schemes and Local Government Schemes

Clause 1: Meaning of “remediable service”

93 This Clause identifies periods of service that will be subject to remedy to address the discrimination identified by the courts. This Clause underpins the treatment of all members with affected pensionable service, whether they are active, deferred, a pensioner member or deceased. Clause 1(3) to 1(6) set out four conditions that must be satisfied:

- a. that the service relates to a period when the discrimination arose;
- b. that the member was eligible for transitional protection or would have been eligible for transitional protection but for the discriminatory requirement in the schemes;
- c. that the member was on or before 31 March 2012 a member of a legacy scheme; and
- d. where the member has more than one period of pensionable service, that the member does not have a disqualifying break in service falling within the period between the last day of service to which the third condition relates and the first day of the service in question.

94 Clause 1(7) provides that a disqualifying break in service for the fourth condition is a period of more than five years. This reflects the rules of public service pension schemes that allow members who leave to subsequently rejoin and have their service aggregated where the gap between leaving and rejoining is 5 years or less.

95 Clause 1(10) identifies that further provision is made later in the Bill to allow certain persons to count a period of service as pensionable service where it would not otherwise have been, in particular where the second condition is not met due to a decision by the person to opt-out (see Clause 5).

Clause 2: Remediable service treated as pensionable under Chapter 1 legacy schemes

96 Clause 2(1) provides that where a person has a period of remediable service under a Chapter 1 new scheme that service is to be retrospectively treated as pensionable service under the relevant Chapter 1 legacy scheme (of which they would have been entitled to be a member in the period 1 April 2015 to 31 March 2022 but for age discrimination). The person is retrospectively treated as never having had pensionable service under the Chapter 1 new scheme. This is the core retrospective provision that ensures that a person with remediable service is returned with retrospective effect to the pension scheme in which they would have been, *prima facie*, but for the discrimination.

- 97 Clause 2(2) clarifies that where a person has separate pension entitlements in relation to different employments, they will also have separate periods of remediable service. For example, this could be someone who has been a member of both an NHS and Civil Service pension scheme simultaneously on account of having two part-time jobs and therefore essentially has two sets of “remediable service”. However, Clause 35(2) sets out that where a member has service in multiple employments or offices and that service is aggregated for pension purposes, that service should be treated as a single employment or office.
- 98 Clause 2(3) provides that where Clause 2(1) applies, it has effect for all purposes, unless the Bill explicitly provides otherwise (such as under Clause 2(4)); be that determining which pension benefits were or are payable, or determining to which pension rights members were or are entitled for the purposes of assessing whether any tax charge is due.
- 99 Clause 2(4) provides an exception to the effect of Clause 2(1); that a member or employer liability to pay contributions is unchanged where a person is treated as having been a member of a legacy scheme under Clause 2(1). This means that contributions liabilities of members or employers are not affected by the retrospective provision made by Clause 2(1). For members who had remediable service in the new scheme prior to Clause 2(1) coming into force, this exception means that employee and employer contributions liabilities remain in the new scheme; this helps to avoid complex tax implications for members and schemes that would occur if the retrospective effect of Clause 2(1) applied to contributions liabilities. Further provision is made later in the Bill (Clause 13 to 15) to correct any (notional) overpayment or underpayment of contributions the member has made compared to the amounts they would have paid, had they always been in the relevant scheme and had their contributions liabilities arisen in the relevant scheme instead.
- 100 Clause 2(5) provides that any benefits that a member has in a Chapter 1 new scheme that relate to additional voluntary contributions made by the member or to a transfer into that scheme from another pension scheme, are not affected by Clause 2(1). The Bill makes provision in respect of these matters at Clause 18 and 19.
- 101 Clause 2(6) refers to further provision that is made later in the Bill to modify the application of Clause 2(3)(b) in respect of pensioner and deceased members. The policy objective is to ensure that changes to pension entitlement are not made until the member or their beneficiaries have had the opportunity to elect to instead receive new scheme benefits in relation to the member’s remediable service.

Clause 3: Benefits already paid

- 102 This Clause relates to the treatment of benefits already paid from a new public service pension scheme to a pensioner member or in respect of a deceased member. Where the payments were in relation to remediable service, but that service is now retrospectively treated as service under a legacy scheme by virtue of Clause 2(1), any benefits paid are to be retrospectively treated as if they were paid by the Chapter 1 legacy scheme and not as if paid by the new scheme.
- 103 All members who have remediable service will receive their benefits in relation to that service from the relevant legacy scheme, even where they elect to receive benefits equivalent to those that would have been paid from the new scheme. The purpose of this approach is to avoid the need for administrative complexities related to tax, to allow for any overpayment or underpayment of benefits to be calculated, and to provide clarity as to where scheme costs fall.

Clause 4: Meaning of “the relevant Chapter 1 legacy scheme” etc

- 104 Clause 4 defines the meaning of “relevant Chapter 1 legacy scheme”. The purpose of this Clause is to ensure that members in scope of Clause 1, who will be retrospectively ‘moved

back' to a Chapter 1 legacy scheme in respect of their remediable service in accordance with Clause 2(1), are returned to the appropriate Chapter 1 legacy scheme, or section of a Chapter 1 legacy scheme. Most of the public service workforces have two or more Chapter 1 legacy schemes or have Chapter 1 legacy schemes with different sections for members depending on their joining date(s). The appropriate Chapter 1 legacy scheme, or section of a Chapter 1 legacy scheme, for an eligible member will usually be the scheme or section of which they were last a member (Clause 4(1)). Under Clause 4(2), where an individual opted-out of their Chapter 1 legacy scheme on or before the closing date (defined at Clause 1(8)) and on that date the rules of that scheme prohibited a person who opted-out from re-joining, the relevant Chapter 1 legacy scheme for that individual will be one which they would have been entitled to join on the closing date.

105 Under Clause 4(3), where an individual opted-out of their Chapter 1 new scheme after the closing date but re-joined their Chapter 1 new scheme before 1 April 2022, if the rules of the Chapter 1 legacy scheme of which they were last a member prohibited a person who opted-out from re-joining, the relevant Chapter 1 legacy scheme for that individual will be one which they would have been entitled to join at the time they re-joined their Chapter 1 new scheme. It is possible that an individual had not previously been participating in a Chapter 1 legacy scheme or that there is no Chapter 1 legacy scheme which allows members who have opted-out to re-join; in such cases, subsections (5) and (7) provide that the appropriate Chapter 1 legacy scheme or section of a scheme will be the Chapter 1 legacy scheme or section of that scheme that they would have been entitled to join on 31 March 2012 (which corresponds with the condition set out in Clause 1(5)).

Clause 5: Election for retrospective provision to apply to opted-out service

106 Where an individual chose to opt out of a Chapter 1 legacy or Chapter 1 new scheme in relation to service between 1 April 2015 and 31 March 2022, Clause 5(1) of the Bill provides that scheme regulations for the legacy scheme must make allowance for that service to be reinstated. Clause 5(2) provides that, where an election is made, the period in question (being a period or periods of service between 1 April 2015 and 31 March 2022) is treated as pensionable service for the purposes of determining a member's remediable service under Clause 1. This Clause ensures that members who would have had remediable service but for the fact that they opted-out of either a Chapter 1 legacy scheme or a Chapter 1 new scheme (for example, because they considered the Chapter 1 new scheme to be unsuitable) are able to re-join their Chapter 1 legacy scheme provided they fulfil the eligibility criteria set by scheme regulations. Once they have done so, the same provisions and processes will apply to them as to other eligible members; for example, they will be able to choose which set of benefits they wish to receive for the remedy period.

107 Clause 5(3) and 5(4) provide that scheme regulations must set a deadline for members to make an election under Clause 5(1) and provide that the deadline must be no later than one year beginning with the day on which the member is first sent their remediable service statement (or such later time as the scheme manager considers reasonable). Clause 5(3)(c) makes the member's election irrevocable.

108 Under Clause 5(5) scheme regulations may make provision pursuant to which a person must first make an application to the scheme before an election can be made, or that the application may be refused unless a condition specified in the regulations is first met, for example.

109 Examples of conditions that may be specified pursuant to Clause 5(5) are set out in Clause 5(6). These may include, for example, allowing applications only where the member can demonstrate that they opted out as a consequence of the discrimination that arose or, where an individual participated in a partnership pension account, that an application may only be

granted where they transfer to the relevant scheme those rights in their partnership pension account that are referable to contributions made in respect of opted out service and surrender any entitlement that arises in relation to those contributions made in relation to the employment (by the employer or the member). Partnership pension accounts are defined contribution occupational pension scheme accounts offered to employees of the Civil Service as an alternative to membership of one of the main public service defined benefit pension schemes. Instead of opting out of pension scheme membership entirely, members may have chosen to have a partnership pension account.

Clause 6: Immediate choice to receive new scheme benefits

- 110 This Clause requires that scheme regulations make provision for a pensioner member or the beneficiary of a deceased member, in respect of whom Chapter 1 legacy scheme benefits are payable, to make an election to receive Chapter 1 new scheme benefits in respect of their remediable service. What is a deferred choice for active and deferred members (under Clause 9) needs to be an immediate choice in relation to members who have already retired or died by the time the remedy is implemented, as entitlement to the payment of benefits in relation to remediable service will have already arisen. Pensioner members, and survivors of deceased members (or authorised representatives, where appropriate) need to be able to make a choice as to which set of benefits to receive as soon as the scheme is able to facilitate it.
- 111 Clause 6(2) defines the concept of “relevant member” for the purpose of interpreting Clause 6(1).
- 112 Under Clause 6(3), where a pensioner member has multiple employments that are pensionable separately provision must be made to allow for separate elections in respect of each employment.
- 113 Clause 6(4) states that Clause 2(1) only has effect for the purposes of determining the amount of benefit payable in relation to a member's remediable service that would otherwise have been pensionable service under a Chapter 1 new scheme if an election for new scheme benefits under Clause 6 is not made.
- 114 If a Clause 6 election is made, then Clause 2(1) has effect but not for the purposes of Clause 2(3)(b): the benefits payable in respect of any of the member's remediable service in a Chapter 1 new scheme will therefore be unchanged. Deferring the application of Clause 2(3)(b) until the member or their beneficiary has had the opportunity to determine whether they wish to elect to receive new scheme benefits in relation to the member's remediable service means that the amount of benefits payable to or in respect of a pensioner or deceased member will not change upon the coming into force of Clause 2(1). This is designed to avoid double corrections of members' pension benefits and to avoid unnecessary revisions to tax returns in cases where members who are already in receipt of their pension wish to retain their existing benefits.
- 115 Clause 6(5) provides that the effect of a section 6 election is that the benefits payable by the Chapter 1 legacy scheme in relation to their legacy scheme remediable service (i.e. the service that was originally in the legacy scheme, prior to the effect of Clause 2(1)) are new scheme benefits. The overall effect of a Clause 6 election is that all the benefits payable in respect of remediable service will be new scheme benefits.
- 116 Clause 6(7) confirms that elections under section 6 have effect in relation to the whole period of the member's remediable service in the employment or office in question that is pensionable service under the scheme. For members who may have had tapered protection, they will not be able to retain mixed service for the period of remediable service; they must choose to have remediable service either under the new scheme or under the legacy scheme for the whole period of remediable service.

Clause 7: Elections by virtue of section 6: timing and procedure

117 Clause 7(1) sets out that an election under section 6 must be made before the end of the section 6 election period (which is defined in Clause 7(2)) and is treated as taking effect immediately before the member became a pensioner member or, if the member died before becoming a pensioner, immediately before the member's death. The effect of the election is therefore retrospective, and the legislation specifies the timing of that retrospection to ensure that the member's pension rights are retrospectively treated as having arisen at the correct point in time (i.e. just before the pension benefits became payable).

118 Clause 7(2) provides that the end of the section 6 election period is one year from the date that the member is sent a remediable service statement by the scheme or such later time as the scheme manager considers reasonable in the circumstances. A remediable service statement is provided for later in the Bill. It will contain information about the benefits payable in relation to a member's remediable service if an election to receive new scheme benefits is made or not made.

119 Clause 7(3) sets out further provision that scheme regulations may make to manage immediate choice elections.

Clause 8: Power to deem election by virtue of section 6 to have been made

120 It is possible that where a pension is already in payment, the member (if they are a pensioner) or survivor or personal representative (where a member is deceased) does not engage with the process of making an immediate choice within the section 6 election period specified in Clause 7(2).

121 Clause 8 therefore provides that where no decision as to whether a section 6 election is to be made has been communicated to the scheme within the election period, scheme regulations may make provision deeming that an election has been made. This might be appropriate, for example, if the member or survivor lacks the legal capacity to make a decision. Clause 8(1) provides that scheme regulations may treat a section 6 election as having been made immediately prior to the end of the election period if certain conditions have been met. Clause 8(3) envisages that such conditions could relate to the value of benefits payable. This would, for example, allow a scheme to deem an election to be made where it is clear this would lead to a better outcome for the member.

Clause 9: Deferred choice to receive new scheme benefits

122 This Clause requires schemes to make regulations that permit an election to be made in relation to the remediable service of individuals who are active or deferred members when Clause 2(1) comes into force. Not all eligible members will be better off receiving Chapter 1 legacy scheme benefits for the remedy period. This Clause therefore allows active and deferred members to make the choice as to whether Chapter 1 legacy scheme or Chapter 1 new scheme benefits are most beneficial for them in the period immediately before their benefits are expected to be paid for the first time, when they will have greater certainty over factors such as their career path and earnings. It is therefore a 'deferred choice'.

123 Clause 9(3) provides that where an active or deferred member has multiple employments that are pensionable separately provision must be made to allow for separate elections in respect of each entitlement. For example, an active or deferred member may have different periods of employment in a workforce or across multiple workforces and may have decided to keep their pension entitlements separate (rather than transfer service from one scheme to another or to aggregate different periods pensionable under one scheme) and where that is the case, they will be able to take a decision in relation to each entitlement.

124 Clause 9(4) provides that where an election is made the member or their beneficiary is entitled to Chapter 1 new scheme benefits in relation to their remediable service (in the absence of an election they (or their beneficiary) will be entitled to Chapter 1 legacy scheme benefits in relation to their remediable service by virtue of Clause 2(1)) and the benefits are paid from the legacy scheme.

125 Clause 9(5) confirms that elections under section 9 have effect in relation to the whole period of the member's remediable service in the employment or office in question that is pensionable service under the scheme. For members who may have had tapered protection, they will not be able to retain mixed service for the period of remediable service; they must choose to receive either new scheme or legacy scheme benefits in relation to their remediable service.

Clause 10: Elections under section 9: timing and procedure

126 Clause 10(1) provides that scheme regulations under Clause 9(1) must set a deadline by which an election in relation to a member's remediable service must be made. Clause 10(2) provides that the deadline must be no earlier than one year before the day on which the member is reasonably expected to become entitled to a pension under the scheme.

127 Clause 10(3) states that an election must be made before the deadline and takes effect immediately before the member becomes a pensioner member of the scheme. The effect of the election in this case is therefore prospective, and the legislation specifies the timing of when the election comes into force to ensure that the member's pension rights prospectively arise at the correct point in time (i.e. just before the pension benefits become payable).

128 Clause 10(4) states that where an election is made on behalf of a deceased member, the election is treated as having taken effect immediately before the member's death. The effect of the election is therefore retrospective, and the legislation specifies the timing of that retrospection to ensure that the member's pension rights are retrospectively treated as having arisen at the correct point in time (i.e. just before the pension benefits became payable).

129 Clause 10(5) sets out what scheme regulations made under Clause 9(1) may in particular specify, which includes how and when an election may be revoked and who may make an election in respect of a deceased member. However, under Clause 10(6), an election cannot lapse or be revoked after any relevant benefits have become payable to or in respect of the member. Under Clause 10(7), where an election lapses or is revoked, the election is treated as never having had effect.

Clause 11: Power to deem election by virtue of section 9 to have been made

130 While it is less likely that an active or deferred member will fail to engage with the decision-making process than a pensioner member or representative of a deceased member (as they will need to communicate with the scheme in order for their pension to be put into payment when they retire), it is still possible that the member will not make a decision.

131 Clause 11 therefore provides that scheme regulations made by virtue of Clause 9(1) may make provision about cases where no decision as to whether an election is to be made is communicated to the scheme before the specified deadlines set in accordance with Clause 10(1). This might be appropriate, for example, if the member or survivor lacks the legal capacity to make a decision.

132 Clause 10(2) and 10(3) set out that provision may be made to deem an election to have been made (so the member would be entitled to new scheme benefits) and to specify conditions that are to be met if that is to be the case. Clause 10(3) envisages that such conditions could relate to the value of benefits payable. This would, for example, allow a scheme to deem an election to be made where it is clear this would lead to a better outcome for the member.

Clause 12: Pension benefits and lump sum benefits: pensioner and deceased members

- 133 This Clause sets out the treatment of overpaid and underpaid pension benefits and lump sum benefits where a pensioner member or a representative of a deceased member is entitled to pension benefits from a legacy scheme in relation to a period of remediable service. Corrections may be necessary owing to the different pension benefits and lump sum benefits that arise as a consequence of the operation of Clause 2(1) and the section 6 election process.
- 134 Clause 12(3) applies when a pensioner member or a representative of a deceased member makes an election to receive new scheme benefits, or if later, on the coming into force of Clause 2(1). If no election has been made to receive new scheme benefits, Clause 12(3) applies immediately before the end of the period during which a pensioner member or a representative of a deceased member could have made such an election (see definition of “the operative time” in Clause 12(7)). Under Clause 12(3), if the aggregate of pension benefits paid from a legacy scheme in respect of the remediable service exceeds the aggregate of pension benefits due from the legacy scheme (as a result of Clause 2(1) and 6(4) and (5)), then the beneficiary must pay the difference to the scheme. Clause 12(4) states that where a member received less pension benefits than they are now entitled to under the legacy scheme, then the scheme manager will pay the difference.
- 135 Clause 12(5) and 12(6) make equivalent provision to 12(3) and (4) in relation to any lump sum benefits already paid in respect of a member’s remediable service and any that the member is entitled to under the legacy scheme.
- 136 Where a pensioner member or the representative of a deceased member elects to receive new scheme benefits in relation to a period of remediable service (under Clause 6(1)) they may be entitled to higher or lower benefits as a result of their choice. Similarly, where a pensioner member or the representative of a deceased member decides not to make a section 6 election in relation to a period of remediable service they may be entitled to higher or lower benefits, where the remediable service includes a period that would have been pensionable under a Chapter 1 new scheme but for Clause 2(1). Clause 12(3) to 12(6) provide for any overpayment or underpayment in benefits before the choice was made and came into effect to be corrected.
- 137 The reason for treating lump sum benefits and pension benefits separately is that the payments are assessed differently for the purposes of determining whether tax is due on the payments. Pension lump sums paid to pensioner members and in relation to those who died before reaching age 75 are usually exempt from tax. The legacy pension schemes generally (but not universally) provide for an automatic lump sum to be paid, although sometimes with both an automatic lump sum and an option to convert some of the separate continuing pension to lump sum (known as “commutation”). However, the new schemes generally do not provide for any automatic lump sum, but allow a member to commute a proportion of their pension to receive a lump sum payment instead. Where a pensioner member or the representative of a deceased member becomes entitled to receive alternative benefits to those that have already been paid (i.e. makes an election to receive new scheme benefits rather than legacy scheme benefits in relation to a period of remediable service that was pensionable service under a Chapter 1 legacy scheme (under Clause 6), or do not make such an election and therefore become entitled to legacy scheme benefits rather than new scheme benefits in relation to remediable service that would, apart from Clause 2(1) have been pensionable service under a Chapter 1 new scheme) they will also need to make a decision about any lump sum payable, including whether to convert that to or from pension. Where they choose to receive a lower lump sum than that already paid, they will need to repay the difference to the scheme, but they will be able to instead choose to receive an equivalent or larger lump sum where the existing scheme provisions allow. The same choices will be available to members as

would have been available to them had they been members of the relevant scheme during their remediable service.

Clause 13: Pension contributions: pensioner and deceased members

138 Clause 13 provides for any overpayment or underpayment of member contributions made in relation to the remediable service of a pensioner or deceased member to be corrected. By virtue of Clause 2(4), contributions liabilities are unaffected by Clause 2 for any member that is retrospectively returned to the legacy scheme under that Clause. However, when compared to the contributions that the member would have paid, had they always been in their legacy scheme, there may be a notional over or underpayment. Similarly, where a member opts for new scheme benefits, they may have paid more or less in contributions than they would have had they been a member of the new scheme, leading to a notional over or underpayment of contributions.

139 Clause 13(3) and 13(4) provide that where at the operative time (see definition at Clause 13(5), in relation to remediable service, there is a difference between the amount of member contributions paid by a pensioner or deceased member and the amount of member contributions that would have been paid by that pensioner or deceased member to the relevant legacy scheme, any surplus or shortfall must be covered. In other words, Clause 13(3) provides that the scheme must pay compensation in respect of any overpaid contributions, while Clause 13(4) provides that the pensioner or a representative of a deceased member must pay to the scheme any amounts required in contributions to make up an underpayment.

140 Clause 13(5) defines the operative time. If an election under Clause 6 is made to receive new scheme benefits then the operative time is either the time the election is made, or if later, the coming into force of Clause 2(1) in relation to the Chapter 1 legacy scheme. If no election is made, the operative time is the end of the section 6 election period in relation to the pensioner or deceased member.

141 Clause 13(6) defines the term “the paid contributions amount” and includes any member contributions paid to a Chapter 1 legacy or new scheme and, where an election has been made under section 5 for opted-out service to be reinstated, any contributions paid to a partnership pension account.

142 Clause 13(7) defines the term “the adjusted contributions amount”, which is the amount of contributions that the pensioner or deceased member would have paid in relation to their remedial service had they always been a member of the relevant scheme, reflecting whether they have chosen to receive legacy or new scheme benefits in relation to that service.

143 The reason for taking this approach is to ensure that pensioner or deceased members pay the correct contributions for the benefits that they receive. In most of the public service schemes, contributions rates are the same for legacy schemes and new schemes; however there are differences in some of the schemes and, further, the definition of pensionable pay will also vary between some legacy schemes and new schemes (for example overtime and allowances are not usually pensionable in a final salary scheme, but might be in a career average scheme). Clause 16(2) makes further provision for an adjustment so that the member is placed in the correct position net of tax.

Clause 14: Pension contributions: active and deferred members (immediate correction)

144 This Clause provides for the correction of any overpayment or underpayment of member contributions made in relation to the remediable service of active and deferred members at the

time when Clause 2(1) comes into force, where pensionable service that would otherwise have been service in the new scheme is returned to the legacy scheme by virtue of Clause 2(1).

- 145 As under Clause 13, these member's contributions liabilities are unaffected by Clause 2(1) (due to Clause 2(4)), but when compared to the contributions that they would have paid had they always been a member of the legacy scheme, they may have paid more or less.
- 146 Clause 14(3) and 14(4) provide that where, pursuant to Clause 2(1), there is a difference between the amount of member contributions paid by an active or deferred member and the amount of member contributions that would have been paid by that active or deferred member had they always been in the legacy scheme, the surplus or shortfall must be covered. In other words, Clause 14(3) provides that the scheme must pay compensation for any overpaid contributions, whilst Clause 14(4) provides that the active or deferred member must pay to the scheme any amounts required to make up an underpayment.
- 147 Clause 14(5) defines the term "the paid contributions amount", which includes any member contributions paid to a Chapter 1 legacy or new scheme and any contributions paid to a partnership pension account where they have made an election under Clause 5.
- 148 Clause 14 (6) defines the term "the adjusted contributions amount", which is the amount of contributions that the active or deferred member would have paid in relation to their remediable service in the legacy scheme had they always been a member.
- 149 This Clause applies to active and deferred members when Clause 2(1) comes into force and as a result any remediable service that would, apart from Clause 2(1) had been pensionable service in a Chapter 1 new scheme is now treated as pensionable service under the relevant Chapter 1 legacy scheme. Clause 14 ensures, in combination with Clause 16, that such members put into the same position with respect to contributions that they would have been in had they always been in the legacy scheme. The contributions under the legacy scheme may differ from those that were previously paid under the new scheme and either compensation will be due from the scheme or a payment required from the member to correct the contributions position. Some members may end up opting for new scheme benefits before their benefits are paid (making use of the election in Clause 9). In this case, further provision is made later in the Bill to adjust their contributions again to reflect this (Clause 15). Clause 16(2) makes further provision for an adjustment so that the member is placed in the correct position net of tax.

Clause 15: Pension contributions: active and deferred members (deferred correction)

- 150 This Clause concerns the correction of contributions where an active or deferred member of a Chapter 1 legacy scheme elects to receive new scheme pension benefits under Clause 9.
- 151 Clause 15(3) and (4) provide that where, immediately after the end of the period during which an election for new scheme benefits may be made under Clause 9(1), the aggregate of the pension contributions paid by a member up to that point and the contributions that would have been paid to the relevant new scheme are different, the surplus or shortfall must be covered. Clause 15(3) provides that the scheme must pay compensation for any overpaid contributions and Clause 15(4) provides that the member must pay the scheme an amount to make up any underpayment.
- 152 Clause 15(5) defines the term "the paid contributions amount" and includes any member contributions paid to a Chapter 1 legacy or new scheme and any contributions paid to a partnership pension account in respect of their service where they have made an election under Clause 5.

153 Clause 15(6) provides that the paid contributions amount includes any amounts paid either by the scheme to the member or by the member to the scheme under Clause 14 (immediate correction).

154 Clause 15(7) defines the term “the adjusted contributions amount”, which is the amount of contributions that the member should have paid in relation to the new scheme benefits they have chosen to receive.

155 This Clause applies to active and deferred members who elect to receive new scheme pension benefits under Clause 9. This Clause ensures that they are put in the position with respect to contributions that they would have been, had they always paid contributions on the basis of new scheme membership, accounting for contributions already paid. Clause 16(2) makes further provision for an adjustment so that the member is placed in the correct position net of tax.

Clause 16: Powers to reduce or waive liabilities

156 Clause 16 provides that scheme regulations for a legacy scheme may make provision whereby a liability on an individual to repay overpaid benefits (Clause 12) or to pay an amount in respect of underpaid contributions (Clause 13, 14 and 15) is reduced or waived. This power is intended to allow schemes discretion where sums are owed to schemes by members as a result of corrections made under Clause 12, 13, 14 and 15. For example, where a pensioner member has been overpaid their pension benefit and reimbursing the pension scheme would cause hardship, the pension scheme could write off part of the liability. Similarly, Clause 16 provides that scheme regulations for a legacy scheme may make provision where a scheme has a liability to pay compensation to a member under Clause 13, 14 or 15, to either reduce that amount to reflect excessive tax relief or, with respect to amounts owed under Clause 14, by agreement with the member, waive it entirely.

157 Clause 16(1) allows scheme regulations to make provisions to reduce or waive a liability owed by a person to the scheme under Clause 12.

158 Clause 16(2) allows schemes to make provisions to reduce or waive a liability owed by a person to the scheme under Clause 13, 14 or 15.

159 Clause 16(3) and 16(4) envisage that scheme regulations may include provision that reduces liabilities by tax relief amounts. This reflects the fact that payments due under this Chapter may be made at a different time to when they would have been made if the member had always been entitled to the pension benefits that they choose to receive and, as a result, might have received different tax treatment. For example, where a member would have been entitled to tax relief if payments had been made in a different tax year, but has lower taxable income at the time the payment is actually made (e.g. their earnings are below the personal allowance) or if a member is no longer active, they will not be eligible for tax relief. Under this provision, scheme regulations can reflect that and reduce the liability accordingly.

160 Clause 16(5) to 16(7) envisage that schemes may reduce or waive compensation owed by the scheme to individuals under Clause 13, 14 or 15. In particular, it is intended that the compensation may be reduced to reflect tax relief amounts. The policy intent of these Clauses is to ensure that where a member is either returned to the legacy scheme under Clause 2 or makes an election to receive new scheme benefits under Clause 6 or 9, they are returned to the correct net position with respect to contributions and tax relief.

161 Clause 13, 14 and 15 correct the member’s contributions position by either allowing the scheme to pay compensation where there has been an overpayment of contributions or requiring a payment from the member to make up for underpaid contributions. These Clauses ensure that the member’s position is corrected for any excess tax relief received for contributions that were historically paid. For example, where a member has previously

overpaid contributions, they will be due compensation from the scheme. However, they will have received excessive tax relief on the higher amount. This Clause allows schemes to reduce the compensation paid to the member by the amount of the excess tax relief to ensure that the member is returned to the correct position with regards to their contributions and tax relief.

162 Clause 16(8) provides that scheme regulations may make provision to reduce or waive, with the member's agreement, any liability for the scheme to pay members compensation in relation to overpaid contributions under Clause 14. The purpose of this is to allow members to defer any correction to their contributions position until the point their benefits are paid and their choice of legacy or new scheme benefits is known, thereby avoiding the need to correct the contributions position twice where the member envisages electing to receive new scheme benefits in the future.

Clause 17: Pension credit members

163 Pension sharing orders for divorces or dissolutions of civil partnerships generally award the member's ex-spouse a percentage of the value of the pension at the time of the divorce. The value is expressed as a Cash Equivalent Transfer Value (CETV). The ex-spouse/civil partner then becomes a member of the pension scheme in their own right and is known as the pension credit member, with a pension equivalent to the credit. As a result of the remedy, it is possible that the value of the pension at the time of the divorce/dissolution would have been different had the member always been a member of the alternative scheme for the remedy period. This means that even if the percentage quoted in the pension sharing order remains the same, the actual amount credited to the pension credit member may have been different.

164 This Clause therefore enables the responsible authority for a Chapter 1 legacy scheme or a Chapter 1 new scheme (as the pension credit member may have credits in a legacy scheme, a new scheme or both depending on their particular divorce settlement) to award any additional credit due to the pension credit member as a result of the remedy. However, it does not give schemes the power to amend the pension sharing order itself.

165 This is an important part of the Government's commitment in its consultation response¹² that where the alternative CETV would have been higher, the pension credit member's benefits will be increased in proportion with the increase in CETV to reflect the additional amount.

166 Clause 17(1) permits a scheme to make regulations about the resulting pension credit (the benefit awarded by the Court to the former spouse or civil partner) and the pension debit (the equivalent deduction made to the entitlement of the member with remediable service).

167 Clause 17(4) envisages that scheme regulations may include provision to adjust the pension benefits of both parties to the Court order (the pension credit member and the pension debit member) to reflect a retrospective change in the entitlement relating to the period of remediable service under this Chapter. The scheme may make provision to adjust a pension debit (which relates to the member with remediable service) where the member elects to receive new scheme benefits. The scheme may make provision to adjust a pension credit on the assumption that an election is made or is not made. The reason for providing for scheme regulations to make an assumption is to enable the scheme to award the higher pension credit, based on the higher value of the legacy or new scheme benefits, and to reflect the fact that the pension credit may be accessed prior to the point where a pension debit member is able to make their election (for example, where the pension credit member is younger than the pension debit member).

¹² See in particular paragraph A112 of the consultation response [Public Service Pension Schemes: changes to the transitional arrangements to the 2015 schemes – Government response to consultation](#)

168 As members with remediable service that is mixed (because they had tapered protection) will not be able to retain that mixed service under the remedy, Clause 17(5) provides that scheme regulations must include provision that a pension credit may only be based on the value of legacy or new scheme benefits in relation to the remedy period and cannot be based on a combination of the two.

Clause 18: Voluntary contributions

169 Clause 18 provides that scheme regulations may make provision about any additional pension benefits or entitlement to earlier payment of benefits that members have obtained by making additional voluntary contributions during the remediable period.

170 Clause 18(2) defines voluntary contributions. Clause 18(3) allows schemes to adjust any rights gained from voluntary contributions in a legacy scheme where a member elects to receive new scheme benefits under Clause 6 (immediate choice) or Clause 9 (deferred choice). In particular, the rights can be varied so that they are of an equivalent value to rights the member would have secured under the new scheme if the voluntary contributions had been paid to that scheme (Clause 18(4)).

171 Clause 18(5) envisages that scheme regulations for a Chapter 1 new scheme may provide for any rights to additional benefits or earlier payment of benefits to be extinguished. Clause 18(6) provides that where such provision is made, scheme regulations must provide for the member to receive alternative benefits in the relevant Chapter 1 legacy scheme or compensation. This allows the voluntary contributions made by the member to be honoured. There are three permitted options: benefits of an actuarially equivalent value to the extinguished rights; benefits that are the same as the benefits that would have arisen had the voluntary contributions been made to that scheme; or compensation for the voluntary contributions made. Where compensation is provided the amount paid will be equal to the voluntary contributions paid, less any tax relief given which will place the member in the net position in which they would have been had they not made the voluntary contributions.

172 The policy is to allow members to retain the benefit of any additional voluntary contributions that they have made during their remediable service. Where a member does not wish to receive additional benefits when they move to the legacy scheme in relation to their remediable service, they will instead be entitled to compensation for the contributions that they have made. In some of the new schemes, members were able to make voluntary contributions to buy out an actuarial reduction to their pension benefits that would otherwise apply where their benefits were brought into payment before the scheme Normal Pension Age (NPA). This type of benefit is not necessarily appropriate in the corresponding legacy scheme, where normal retirement age is typically earlier. In such cases the member would receive an alternative additional benefit in the legacy scheme, but if they ultimately elected to receive new scheme benefits in relation to their remediable service the policy is that the original benefit purchased would apply (i.e. the buy-out of actuarial reduction on early retirement).

Clause 19: Transfers

173 This Clause provides that scheme regulations may make provisions about transfers in and out of the scheme. Where a member leaves a pension scheme they may be eligible to transfer their pension rights to another pension scheme. Where a member joins a public service pension scheme they may be able to transfer other pension rights into the scheme, including rights from another public service pension scheme. Clause 19(1)(a) provides for scheme regulations to make provision about the transfer out of remediable service. This will allow schemes to reflect, when calculating the transfer value, that members with remediable service are able to choose whether to receive new scheme benefits or legacy scheme benefits when calculating the transfer value.

174 Clause 19 (1)(b) to (1)(d) therefore provides for scheme regulations to make provision about transfers into the scheme in respect of rights in relation to remediable service in another public service pension scheme.

175 Clause 19(2) provides for scheme regulations to vary the benefits arising in a legacy scheme from a transfer under Clause 19(1)(b) to (e) where an election for new scheme benefits is made under Clause 6 or 9. Clause 19(3) provides that the rights may be varied so that they are of equivalent value to rights that would have been secured under another Chapter 1 scheme.

176 Public service pension schemes and some public body pension schemes participate in an arrangement known as the Public Sector Transfer Club (the Club). The Club is concerned with the portability of pension rights in the public sector and provides that a transfer between the participating schemes is carried out on the basis that the member will receive equivalent benefits in the receiving scheme (provided the transfer is made within specified time limits). Where a member transfers remediable service from a public service pension scheme into another public service pension scheme on the Club terms, the policy is that they will continue to receive a choice of whether to receive legacy scheme benefits or new scheme benefits in the receiving scheme. The scheme will therefore calculate two separate transfers: the rights arising from the transfer of rights relating to legacy scheme benefits in relation to remediable service from the exporting scheme and those relating to rights in relation to new scheme benefits in relation to remediable service. The member will then receive legacy scheme benefits or new scheme benefits in relation to the transfer in line with any election under Clause 6 or 9.

177 Clause 19(1)(e) allows schemes to make equivalent provision for other transfers into a Chapter 1 scheme made during the period between 1 April 2015 and 31 March 2022. In such cases, the transfer will not have included rights in relation to remediable service (i.e. to which the member had a choice of benefits), but this Clause will allow for scheme to provide rights, for example, in the legacy scheme rather than the new scheme where the transfer was originally received in the new scheme, or to vary the rights to reflect a member's decision under Clause 6 or 9.

Clause 20: Further powers to make provision about special cases

178 This Clause provides that scheme regulations may make further provision about a number of areas in relation to members' remediable service.

179 Clause 20(2) describes specific examples of the types of provision that scheme regulations may need to make. For example, provision for a member with mixed service (i.e. a member who had tapered protection), or who had a right under a Chapter 1 new scheme to buy-out an actuarial reduction to their pension benefits that would otherwise apply if they retired before the scheme normal retirement age, or who is partially retired. Clause 20(2)(d) provides that schemes can make appropriate reductions to benefits payable in the Chapter 1 legacy scheme where tax amounts have been settled by the new scheme under "scheme pays".

Clause 21: Power to pay compensation

180 This Clause provides for scheme managers to pay compensation in respect of any losses incurred by a member as a result of the discrimination that arose or the remedy under this Bill. Clause 21(2) allows schemes to make regulations for an employer to reimburse amounts paid out by a scheme manager under Clause 21(1).

181 Clause 21(3) defines the instances where a loss in this Clause is compensatable. A compensatable loss is one that meets any of the three conditions set out at Clause 21(4) to 21(6) and is of a description specified in Treasury directions.

182 The first condition is that the loss is attributable to, or is reasonably regarded as attributable to, a relevant breach of a non-discrimination rule. The second condition is that the loss is attributable to the application of any provision of, or made under, Chapter 1. The third condition is that the member is a relevant member and the loss is a “Part 4 tax loss” (see Clause 21(9)) that is attributable to the value of rights in respect of the remediable service under a Chapter 1 new scheme.

183 Clause 21(7) defines a relevant member and Clause 21(8) specifies that for this Clause a “loss” includes a loss of any kind.

184 Clause 21(9) defines a “Part 4 tax loss” as a loss arising as a result of the member either incurring a charge, or incurring an increased charge, under Part 4 of FA 2004 or not being entitled to a relief, or being entitled to less relief, under that Part of that Act. This ensures that members can receive compensation where HMRC’s statutory time limits do not allow for correction of the amount of tax paid.

185 Clause 21(10) sets out that a loss does not include an amount that is already payable under Chapter 1 or under any other regulations made by virtue of the Chapter. Clause 21(13) ensures that compensation in respect of losses is not paid to members who have already received compensation through an order of a court or tribunal or otherwise.

Clause 22: Indirect compensation

186 This Clause allows scheme managers to give members entitlements to additional benefits where the member may not have been able to access the compensation scheme.

187 This is to allow schemes to increase people's benefits when they retire instead of providing compensation. There may be instances where the member has paid a tax charge using “scheme pays”, where the amount of benefits they would have received is reduced at retirement. This allows those benefits to be reinstated where there is equivalent amount of compensation entitlement.

Clause 23: Interest and process

188 This Clause provides that scheme regulations may make provision about how interest is calculated and paid on amounts that are owed by a member to the scheme or by the scheme to a member, and about the process by which amounts owed are paid. This is to ensure that members who have underpaid their contributions are not placed in an advantageous position compared to their comparators in the scheme who have been paying the correct level of contributions throughout, so would not have had the benefit of the additional money over time. Similarly, interest will be paid on amounts owed to members by the scheme where they would have been received in previous periods or amounts owed to the scheme in relation to overpayments made in previous periods.

189 Clause 23(2) envisages that provision could be made about matters such as providing for amounts to be repaid by instalments, netting off amounts owed to a person against amounts owed by a person and conferring rights of appeal against a decision taken under the regulations.

Clause 24: Treasury Directions

190 This Clause details the specific powers outlined in the Bill which must be exercised in accordance with Treasury Directions. For devolved schemes in Northern Ireland, Directions will be given by the Department of Finance as defined in Clause 35. Respondents to the Government’s consultation on changes to implement a remedy for public service pensions were supportive of central direction to ensure consistency across and within schemes in the way the remedy is implemented.

191 Clause 24(4) provides that the Treasury must consult the Government Actuary before making, varying or revoking directions about the calculation and payment of interest.

Clause 25: Scheme rules that prohibit unauthorised payments

192 This Clause is designed to override any scheme rules that prevent an unauthorised payment being made where such a payment is permitted or required by this Bill, where Treasury directions so provide. For example, schemes may be required to make payments in respect of underpaid lump sum benefits by virtue of Clause 12 that could be unauthorised payments due to the passage of time between the original lump sum being paid and the further payment.

Clause 26: Remediable service statements

193 This Clause provides that legacy scheme regulations must make provision requiring the scheme manager to provide information to members with remediable service about their legacy scheme benefits and the benefits that would be available under the scheme in respect of the member's remediable service were an election under Clause 5, 6 or 9 to be made. This information will enable members to make an informed decision about whether to elect to retain legacy scheme benefits, receive new scheme benefits, or opt in to receive benefits in respect of their remediable service.

194 Clause 26(3) and 26(4) state the necessary conditions for a member of a scheme to receive such information.

195 Clause 26(5) sets out certain things which a remediable service statement must include.

196 Clause 26(6) provides that Treasury directions (as defined in Clause 35(1)) may set further requirements about remediable service statements. Treasury directions may require certain information to be included in a remediable service statement, the form it is to take, how and to whom it is to be provided, and whether it is to be included with or provided alongside a member's annual benefit statement.

197 Clause 26(7) to (10) requires remediable service statements to be provided on or before the day after the final day of the period of 18 months beginning on the day on which Clause 2(1) comes into force (or such later day as the scheme manager considers reasonable), and then annually for active members. After the initial statement, deferred members may once in each 12-month period request to receive a remediable service statement. This is consistent with the requirements placed on schemes by the Pensions Act 1995 in relation to annual benefit statements.

198 Clause 26(11) confirms that schemes may comply with their obligation to provide a remediable service statement before the coming into force of this section or any other provision of this Chapter.

Clause 27: Section 61 of the Equality Act 2010

199 This Clause disapplies section 61 of the Equality Act 2010 for the purposes of determining whether a member's remediable service is pensionable in a new or legacy scheme. The Bill provides a remedy for the discrimination that arose in public service pension schemes. In doing so, it directly determines which scheme a person is a member of in relation to their remediable service. This provision will prevent any inconsistency in interpretation or application between section 61 of the Equality Act 2010 and the provisions contained in or made under this Bill. As set out in Clause 28(1), this Clause does not apply to persons who have benefited from an immediate detriment remedy, in order to ensure the Bill does not

override or interfere with any remedy already provided under section 61 of the Equality Act, except to the extent that provisions are necessary to ensure consistent treatment.¹³

Clause 28: Application of Chapter to Immediate Detriment Cases

200 This Clause sets out how Chapter 1 applies to those who have benefited from an immediate detriment remedy. Persons in this situation have received either full or partial remedy for the discrimination identified by the Court of Appeal prior to this Bill and scheme regulations coming into force. Accordingly, the policy intention is to ensure that the remedy that those in this position have already received is respected, and appropriate alternative provision may be made by scheme regulations to address their individual circumstances in order to ensure that the discrimination is rectified. In particular, the intention is to ensure that these persons are not compensated twice, that the Bill does not override any prior court or tribunal orders, and that there is provision for scheme regulations to make provision to correct or ‘top up’ any aspects of the remedy already provided to ensure consistent and fair treatment.

201 Clause 28(1) sets out that Clause 2 to 27 do not automatically apply to those who have benefited from an immediate detriment remedy. This is to ensure that the immediate detriment remedy these people have already received is not undermined – for example by granting them a second opportunity to make an election - and that the Bill does not override any prior court or tribunal orders, or any prior agreement between the scheme manager and the persons who have benefited from an immediate detriment remedy. Clause 28(1) does not carve people that have benefited from an immediate detriment remedy out of Clause 1 of the Bill. This is so that relevant service counts as remediable service where this is necessary.

202 Clause 28(2) sets out that scheme regulations may make provision for those who have benefited from an immediate detriment remedy in order to put them, so far as possible, in the position that they would have been in if there had been no relevant breach of a non-discrimination rule in relation to their service.

203 Clause 28(3) sets out that these provisions may include provisions to apply Clause 2 to 27 of the Bill to persons who have benefited from an immediate detriment remedy, or to make equivalent provisions in scheme regulations for those in this position, either with or without modifications. The purpose of this is to allow scheme regulations to apply particular provisions of the Bill to persons who have benefited from an immediate detriment remedy to rectify the discrimination. In some cases, achieving that may require a provision that differs from the provisions in the Bill for persons with remediable service who have not benefited from an immediate detriment remedy and this Clause, together with the broader power contained in Clause 28(2), is intended to allow for that.

204 Clause 28(4) sets out that for the purposes of this chapter a “non-discrimination rule” is a rule that was included in a Chapter 1 legacy scheme as a result of (a) either section 61 of the Equality Act 2010, or (b) paragraph 2 of Schedule 1 to EEAR(NI) 2006 Employment Equality (Age) Regulations (Northern Ireland) 2006.

205 Clause 28(5) sets out that a relevant breach of that rule is one that arises from the application of “transitional protection” or “tapered protection” made under section 18 of PSPA 2013 or section 18 of PSPA(NI) 2014.

Clause 29: Persons who have “benefited from an immediate detriment remedy”

206 This Clause defines persons who have benefited from an immediate detriment remedy under section 61 of the Equality Act 2010 or paragraph 2 of Schedule 1 to the EEAR(NI) 2006 in

¹³ For Schemes in Northern Ireland paragraph 2 of Schedule 1 to Equality (Age) Regulations (NI) 2006 makes comparable provision to section 61 of EA 2010.

respect of their remediable service. Persons who meet this definition have received either full or partial remedy for the discrimination identified by the Court of Appeal prior to this Bill and scheme regulations coming into force in relation to their scheme.

207 Clause 29(2) sets out that a person is defined as having benefited from an immediate detriment remedy if they have had, as a result of a non-discrimination rule, rights under a Chapter 1 scheme determined by a court or tribunal in respect of remediable service and the scheme manager has, as a result, paid pension benefits or compensation to the member, or has taken any other step to implement the determination.

208 Clause 29(3) sets out that a person is defined as having benefited from an immediate detriment remedy if there has been an agreement between the person and the scheme manager of a Chapter 1 scheme that they have rights under the scheme in respect of remediable service and the scheme manager has, as a result, paid benefits or compensation to the member, or has taken any other step to implement the agreement.

Clause 30: Meaning of “Chapter 1 scheme” etc

209 This Clause contains the definitions of “Chapter 1 scheme”, “Chapter 1 new scheme” and “Chapter 1 legacy scheme”.

210 Clause 30(2) provides the definition of a Chapter 1 new scheme by reference to section 1 of PSPA 2013 or section 1 of PSPA(NI) 2014 and does not include a scheme for local government workers or a scheme for holders of a judicial office.

211 Clause 30(3) defines a Chapter 1 legacy scheme by reference to PSPA 2013 or PSPA(NI) 2014 (that is not a judicial or local government scheme).

Clause 31: Meaning of “new scheme benefits”

212 This Clause defines “new scheme benefits” for remediable service for this Chapter.

213 Where a member has remediable service and elects to receive new scheme benefits, they are entitled to receive benefits that are the same as those that would have been payable in relation to that service had they been a member of the new scheme. For example, where a member with remediable service retires at age 64 they would be entitled, if they elect for new scheme benefits, to receive the same benefits in relation to that service as would have been paid from the new scheme at that time (with a fair adjustment to reflect the fact they were being paid before the member’s NPA if that is higher than age 64 in the new scheme). Where a member with remediable service retires and elects for new scheme benefits, but would not have been entitled to the immediate payment of new scheme benefits at that time (for example, where they retired before the new scheme minimum pension age) but would be entitled to a deferred new scheme pension instead, then they would be entitled to a benefit equal to that deferred benefit.

214 Where benefits are paid in relation to remediable service, they are paid from the legacy scheme regardless of whether a member makes an election for new scheme benefits or not.

Clause 32: Meaning of “legacy scheme contributions” and “new scheme contributions”

215 This Clause defines legacy scheme contributions and new scheme contributions in relation to a member’s remediable service. This is relevant to Clause 13, 14 and 15, which are concerned with the correction of overpaid and underpaid contributions.

216 Clause 32(2) defines legacy scheme contributions as pension contributions payable by the member under the relevant Chapter 1 legacy scheme as if the service had, at the time it took place, been pensionable under that scheme.

217 Clause 32(3) defines new scheme contributions as pension contributions payable by the member under the relevant Chapter 1 new scheme as if the service had, at the time it took place, been pensionable under that scheme.

Clause 33: Meaning of “opted-out service”

218 This Clause defines the term “opted-out service” as referring to service in which the conditions described in Clause 1 are met but for the second condition, which would have been met had the person not opted-out of the pension scheme:

- a. that the service relates to a period when the discrimination arose;
- b. that the member was eligible for transitional protection or would have been eligible for transitional protection but for the discriminatory requirement in the schemes;
- c. that the member was on or before 31 March 2012 a member of a legacy scheme; and
- d. where the member has more than one period of pensionable service, that the member does not have a disqualifying break in service falling within the period between the last day of service to which the third condition relates and the first day of the service in question.

219 Clause 33(2) also covers partnership pension accounts, a specific civil service defined contribution scheme which members may have elected to join instead of accruing Chapter 1 scheme benefits.

Clause 34: Scheme regulations

220 The definition of “scheme regulations” is contained in this Clause. This Clause clarifies that the definition for scheme regulations is the same as it is in the PSPA 2013 and PSPA(NI) 2014, where scheme regulations made under s.1(4) of those Acts established the Chapter 1 new schemes and made related provision.

221 Clause 34(2) confirms that, where Chapter 1 of the Bill grants a power to make provision by means of “scheme regulations for a Chapter 1 legacy scheme”, that means that the power is to be exercised by the responsible authority for the Chapter 1 new scheme that is connected with the Chapter 1 legacy scheme. The responsible authority may exercise that power by amending the Chapter 1 legacy scheme in the scheme regulations. Accordingly, the policy intention is that the responsible authorities for the Chapter 1 new schemes may use scheme regulations (as defined in s.1(4) PSPA 2013 and s.1(4) PSPA(NI) 2014) to exercise the powers contained in the Bill, and may use those scheme regulations to make the necessary amendments to both the new schemes and the legacy schemes within the same statutory instrument (i.e. the scheme regulations).

222 Clause 24(3) contains the definition of “responsible authority”, which has the same meaning as in the PSPA 2013 and PSPA(NI) 2014.

Clause 35: Interpretation of Chapter

223 This Clause provides the definitions for terms found in this Chapter.

Chapter 2: Judicial Schemes

Clause 36: Meaning of “remediable service”

224 This Clause is the judicial scheme equivalent of Clause 1. It defines “remediable service” and sets out five conditions to establish a member’s eligibility for being in scope of the legislation:

- a. first, that the remedy period service takes place at a period beginning with 1 April 2015 and ending on 31 March 2022;

- b. second, that the service was pensionable service under a judicial scheme. Clause 36(4)(b) clarifies that service is “pensionable service under a judicial scheme” even where a judge opted out of the 2015 reformed scheme;
- c. third, that the member was in pensionable public service before 31 March 2012;
- d. fourth, that the member has not had a “disqualifying gap” in service (see Clause 36(9)); and
- e. fifth, that the member is under 55 on 1 April 2012. This is because “protected” members, who never left the legacy scheme because they were over 55 on 1 April 2012, are not in scope of the remedy.

225 Judges were able to opt out of the 2015 reformed scheme and instead join a partnership pension account (“PPA”) – a registered stakeholder pension scheme. As a member of the PPA, a judge holds an account with a nominated third-party provider (Prudential plc) into which the member and the “employer” pay contributions. Clause 36(8) ensures that, for those who opted for PPA, that time as a PPA member counts as “remediable service” in the same way that those who opted out of judicial pension altogether qualify for the remedy (Clause 36(4)(b)).

226 Clause 36(9) excludes those with a gap in pensionable public service of more than five years (who would otherwise be in scope) from the remedy.

227 Clause 36(10) states that the effect of section 61 Equality Act 2010 and paragraph 2 of Schedule 1 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 (non-discrimination rule) and Clause 2, 39 and 42 of this Bill (under which service may be treated as pensionable, or not pensionable) are to be disregarded for determining pensionable service under a particular scheme. This is intended to ensure that these provisions, which might otherwise have shifted people into different schemes, are disregarded for the purposes of determining which scheme a judge’s service is in.

Clause 37: Legacy scheme elections

228 This Clause sets out how a legacy scheme election is made.

229 Clause 37(1) provides that a legacy scheme election may be made if a judge has remediable service (as defined in Clause 36) and has not made a 2015 scheme election. A judge with salaried remediable service in the PPA may not make a legacy scheme election if they have not complied with the requirement in Clause 38 regarding the transfer and surrender of their PPA rights. In the case where a judge is deceased see Clause 43 for who can make the election.

230 Clause 37(4) sets out how and when a legacy scheme election is to be made and provides that such an election is irrevocable. Clause 37(5) provides that an election takes place at the end of the election period or, in the case of a judge with salaried remediable service in the PPA, after the requirement to transfer and surrender rights under Clause 38, if later.

Clause 38: Partnership pension account: requirement to transfer and surrender rights

231 Clause 38(1) sets out that Clause 38(2) applies where a judge has salaried remediable service in the PPA.

232 Clause 38(2) and 38(3) require that, before making a legacy scheme election, a PPA judge must notify the scheme of their intention to instigate and facilitate steps to (a) transfer their PPA assets and liabilities to the legacy scheme and (b) surrender any entitlement to a pension referable to those contributions (they are to be provided with full legacy scheme benefits instead, so the transfer value must be surrendered to avoid double compensation).

233 Clause 38(4) to 38(6) apply the same requirements as Clause 38(1) to 38(3) but where a person has remediable service in a fee-paid rather than salaried judicial office.

234 Clause 38(7) to 38(9) provide that PPA “assets and liabilities” are referable to the contributions made by or on behalf of the judge in respect of their service. These assets and liabilities should be transferred to the legacy scheme, but where the net value of contributions exceed the legacy scheme contribution rate, the assets and liabilities referable to the excess are to be retained in the PPA.

Clause 39: Legacy scheme elections: effect

235 Clause 39(1) to 39(5) provide that, when a person elects legacy scheme membership, any remediable service in the 2015 scheme, or remediable service where a judge opted out of a judicial pension, will be treated as pensionable service under the relevant judicial legacy scheme (either the fee-paid scheme or the appropriate salaried scheme). Consequently, any service previously in the 2015 scheme will be extinguished (although see Clause 39(7)).

236 Clause 39(6) provides that the effect of making a legacy scheme election is that individuals’ pensionable service will be treated as if it had always been in the legacy scheme for the purposes of determining pension benefits and pension contributions and (unless provided for otherwise) for all other purposes.

237 Clause 39(7) permits a person to make a legacy scheme election while being able to retain certain member rights in the 2015 scheme, such as transfers of external pension benefits or added pension.

Clause 40: Meaning of “the relevant judicial legacy salaried scheme”

238 Where a person elects legacy scheme benefits, this Clause defines the relevant salaried scheme as the scheme of which they were a member most recently before 1 April 2015. Where a judge was not a member of a scheme on that date, the relevant salaried scheme is the judicial legacy salaried scheme.

Clause 41: 2015 scheme elections

239 This Clause sets out how a 2015 scheme election is made.

240 Clause 41(1) provides that a 2015 scheme election may be made if a judge has remediable service (as defined in Clause 36) in a judicial office. Clause 41(2)(a) and 41(4) provide that a 2015 scheme election may not be made if a judge previously opted out of the 2015 scheme (since they already had the option to join the scheme). There is an exception for judges who opted out to join the PPA scheme provided part of their remediable service has been in a judicial legacy scheme.

241 Clause 41(2)(b) provides that an individual who has made a legacy scheme election cannot make a 2015 scheme election. In the case where a judge is deceased see Clause 43 for who can make the election.

242 Clause 41(3) provides for how and when the election is made. It also provides that the election takes effect at the end of the election period, and that such an election is irrevocable.

Clause 42: 2015 scheme elections: effect

243 Clause 42(1) and 42(2) provide that, where a person makes a 2015 scheme election, any remediable service in the legacy scheme (whether salaried or fee-paid) will be treated as pensionable service under the relevant 2015 scheme and as having never been under the judicial legacy scheme.

244 Clause 42(3) defines “relevant 2015 scheme”. Reformed (post 2015 reform) pensions for devolved Northern Irish judges are provided for by Northern Irish legislation (unlike the

legacy schemes where pension for these judges was provided by UK legislation), hence the need for Clause 42(3)(b).

245 Clause 42(4) explains that the effect of making a 2015 scheme election is that individuals' pensionable service will be treated as if it had always been in the 2015 scheme for the purposes of determining pension benefits and pension contributions and (unless provided for otherwise) for all other purposes.

Clause 43: Person by whom elections are to be made

246 Clause 43(1) provides that the election of scheme membership is ordinarily to be made by the judge. Where the judge is deceased, the adult survivor or (if there is none) personal representatives would make the election.

247 Clause 43(2) and 43(3) define adult survivor as a surviving spouse, civil partner or other adult entitled to a pension under the judicial scheme under which the deceased judge most recently accrued pensionable service.

Clause 44: Cases in which 2015 scheme election treated as made

248 For most members, if they do not make an election, they will retain their current rights. However, those with "tapered-protection" (referred to as "mixed service" in the Bill) with rights in both the legacy and reformed schemes, will not be able to retain this mix of rights but will need to choose legacy or reformed scheme rights for the entire remedy period. (The effect of *McCloud* is that tapered protection was discriminatory and that such discrimination was unlawful.)

249 If they do not make an election, Clause 44(2) sets out the default position: they will be considered to have made a 2015 scheme election.

250 Clause 44(3) defines "mixed service". A person has mixed service if they have pensionable service under both the legacy scheme and either the 2015 scheme or PPA (or a mix of both).

Clause 45: Benefits for children where election made

251 In some cases, there may be a conflict between the interests of potential beneficiaries because of the different entitlements under the legacy and 2015 reformed schemes.

252 In the case where an adult beneficiary and a child beneficiary reside in separate households this Clause provides that the child is entitled to receive the more favourable pension, looked at in the round, regardless of the choice made by the surviving adult.

Clause 46: Effect of elections on benefits previously paid or payable

253 Clause 46(1) to 46(4) deem that, where a person has made a legacy scheme election, any benefits received from a 2015 scheme are to be treated as having been paid on a year by year basis from their legacy scheme. Clause 46(1) and 46(2) apply to the salaried judicial legacy scheme; 46(3) and 46(4) apply to the fee-paid judicial legacy scheme.

254 Clause 46(5) to 46(7) deem that, where a person has made a 2015 scheme election, any benefits paid from their legacy scheme are to be treated as having been paid on a year by year basis from the 2015 scheme.

255 Where, as a result of this Clause, the scheme owes the member a shortfall in benefits (or vice versa where there has been an overpayment to the member), this is to be paid in line with the steps set out in Clause 48.

Clause 47: Effect of elections on contributions previously paid or payable

256 Clause 47(1) to 47(4) deem that, where a person has made a legacy scheme election, any contributions made to a 2015 scheme are to be treated as having been made on a year by year

basis to their legacy scheme. Clause 47(1) and 47(2) apply to the salaried judicial legacy scheme; Clause 47(3) and 47(4) apply to the fee-paid judicial legacy scheme.

257 Clause 47(5) to 47(7) deem that, where person has made a 2015 scheme election, any contributions made to their legacy scheme are to be treated as having been made on a year by year basis to the 2015 scheme.

258 Where, as a result of this Clause, the scheme owes the member a refund of excess contributions (or vice versa where the member has a contributions shortfall), this is to be paid in line with the steps set out in Clause 49.

Clause 48: Pension benefits and lump sum benefits

259 This Clause applies where pension and lump sum benefits have already been paid from the 'wrong' scheme (i.e. a person has elected different scheme membership after they have begun receiving their judicial pension).

260 Clause 48(2) and 48(3) apply to pension benefits: 48(2) sets out that where the amount paid by the 'wrong' scheme exceeds the amount that should have been paid by the scheme of which the person is now considered a member (as a result of their election), that person must pay the difference to the scheme; 48(3) sets out where the amount received from the 'wrong' scheme is less than would have been received, the scheme must pay the difference.

261 Clause 48(4) and 48(5) apply the same principles to lump sum benefits.

Clause 49: Pension contributions

262 This Clause sets out the treatment of pension contributions already made that, as a result of previous Clauses, are to be treated as having been made on a year by year basis to the elected scheme. The tax consequences of previous Clause (see 39(6)(c) to(d) and 42(4)(c) to (d)) and 47(2) and 47(4) are that, where those who were previously members of the 2015 scheme elect the legacy scheme, they will owe tax to HMRC.

263 The effect of Clause 49(2) is that where a judge has overpaid contributions, the scheme must refund this if the excess falls in a tax year in which HMRC can enforce Pay As You Earn (PAYE) corrections (in most cases only the tax year in which the choice is made, and four full preceding years).

264 Because judges will not need to pay underpaid tax in years that HMRC is unable to enforce the PAYE correction, the Bill provides that the scheme will not refund excess contributions for these years, i.e. the historic contributions position will be preserved (see Clause 49(3)).

265 Clause 49(4) requires the judge to pay any shortfall in contributions to the scheme.

Clause 50: Effective pension age payments

266 Under the 2015 scheme, the effective pension age (EPA) option enables contributions to be paid to secure a lower pension age than Normal Pension Age (but no lower than 65). Since the pension age in legacy schemes is 65, such contributions are of no benefit to a person electing to return to their legacy scheme.

267 The effect of this Clause is that judges who had made EPA contributions and make a legacy scheme election must receive compensation representing the value of their net contributions.

Clause 51: Transitional protection allowance

268 When the 2015 scheme was introduced, judges who satisfied certain criteria were given a one-off option to opt out of the pension scheme and instead receive an allowance known as transitional protection allowance (TPA) (representing in monetary terms the 'actual' employer contribution that would otherwise have been paid to the pension scheme).

269 This Clause requires that if a judge who received TPA wishes to make a legacy scheme election, they must repay the amount of their TPA payment less the tax they paid on the amount.

Clause 52: Power to reduce benefits in lieu of paying liabilities owed to scheme

270 This Clause provides for scheme regulations which may reduce an amount owed by the judge under this Chapter of the Bill, including by instead reducing the benefits payable to that person.

Clause 53: Powers to reduce or waive liabilities

271 Clause 53(1) provides for scheme regulations which may reduce or waive an amount owed by a person under Clause 48. This is needed where, for example, a pensioner member's benefits have been overpaid as a result of electing different scheme membership. Where repaying these overpaid amounts would cause particular difficulties or hardship for the member, scheme regulations may provide for some or all of that amount to be written off.

272 Clause 53(2) to 53(4) apply the principle to contributions owed under Clause 49, for example allowing the scheme to reduce a contribution shortfall to take account of the fact that the judge would have received tax relief on the contributions if they had actually been paid at the relevant time. This scenario will arise where tapered judges elect 2015 scheme benefits for the whole remedy period. Because they will be unable to receive tax relief on all their contributions, regulations may enable schemes to reduce the obligation to pay the contribution by the amount of tax relief lost, ensuring the judges are not left worse off as a result.

Clause 54: Pension credit members

273 This Clause refers to divorced members where a pension sharing order has been made in respect of a public service pension as part of the financial settlement. Scheme regulations may provide for the benefits payable to the potential pension credit member and the pension debit member.

274 Clause 54(4) provides a power for scheme regulations to adjust the pension credit with the aim of providing the most valuable benefits to the pension credit member, but not to the detriment of the pension debit member.

275 Clause 54(5) provides for pension debit members who may have a combination of 2015 and legacy scheme benefits. Scheme regulations must provide that pension credit members retain benefits based on either the legacy scheme or the 2015 scheme benefits but not a mix of both. This is consistent with the approach taken to mixed service generally (see Clause 44).

Clause 55: Further powers to make provision about special cases

276 This Clause provides a power for scheme regulations to make provisions designed to respond to particular individual circumstances that arise as a result of adjusting a member's service. For example, Clause 55(2)(a) permits regulations in respect of members' additional voluntary contributions; and (c) does likewise for sums that have been transferred in from another pension scheme.

Clause 56: Power to pay compensation

277 This Clause provides a power for scheme managers to pay members compensation in respect of losses incurred either as a result of the scheme having breached a non-discrimination rule (by virtue of relevant equality legislation), or by application of any provisions of (or made under) this Chapter.

278 Clause 56(3) requires compensation payments to be paid in accordance with Treasury directions.

279 Clause 56(6) clarifies that "loss" includes, in particular, tax losses.

Clause 57: Interest and process

280 This Clause provides that scheme regulations may define the criteria for interest rates to be set in certain circumstances and sets out the process for relevant interest payments to be made.

281 Clause 57(2) allows regulations enabling schemes to set instalment plans, require an application process for claiming amounts owed to a person by a scheme, provide for netting off arrangements and confer rights of appeal.

Clause 58: Treasury directions

282 This Clause details the specific powers outlined in the Bill which must be exercised in accordance with Treasury directions.

Clause 59: Scheme rules that prohibit unauthorised payments

283 Under section 164 of the Finance Act 2004, registered pension schemes may only make payments to members of the types listed in that section. Where “unauthorised” payments are made, a tax charge applies. As it is possible that some of the payments that schemes are required to make to a member under Chapter 2 of this Bill could be considered to be unauthorised and in breach of scheme rules, Clause 59(2) provides a power for the Treasury to set out in directions payments which would normally be unauthorised but, for the purposes of this Bill, schemes are permitted to make.

284 Clause 59(3) and (4) provide that a payment required in respect of a transfer from a partnership pension account under Clause 38, which would otherwise be an unauthorised payment in breach of scheme rules, may also be made.

Clause 60: Information statement

285 Clause 60(1) requires that prior to a member making an election for scheme membership, the pension scheme must prepare a statement and send it to the member.

286 According to Clause 60(2), the statement must contain a description of the benefits that would be available to the member in both the 2015 and legacy schemes, as well as other relevant information.

Clause 61: Power to delegate

287 This Clause enables the Lord Chancellor and Northern Ireland Department of Justice to delegate any of their respective functions under Chapter 2 of the Bill.

Clause 62: Section 61 of the Equality Act 2010

288 This Clause removes the effect of the non-discrimination rule in section 61 of the Equality Act and paragraph 2 of Schedule 1 to EEAR(NI) 2006 when a pension scheme determines what pensionable service a member should have.

289 Clause 62(2) provides that the non-discrimination rule ceases to have effect in relation to a person’s remediable service at the end of the election period.

Clause 63: Application of Chapter to immediate detriment cases

290 Clause 63(1) clarifies that Clause 37 to 62 do not apply to “immediate detriment” judges – these are defined at Clause 64 and include those who have already elected scheme membership in respect of their remediable service. Immediate detriment judges are not entitled to make a subsequent election of scheme membership.

291 Clause 63(2) and 63(3), however, permit scheme regulations to apply, with or without modification, any provisions of the Chapter to immediate detriment judges where it is required to return them to the position they would have been in if there had not been a breach of a non-discrimination rule.

Clause 64: Persons who have “benefited from an immediate detriment remedy”

292 This Clause describes the conditions whereby a person has “benefited from an immediate detriment remedy”, including members who have already had their remediable service adjusted by making an election or had their entitlement determined by a court or tribunal.

Clause 65: Meaning of “the election period”

293 This Clause provides that the election period should last three months, from a date to be determined by the Lord Chancellor. Provision is also made for the Lord Chancellor to extend the period for a particular person where he or she considers it is just and equitable to do so.

Clause 66: Meaning of “a judicial scheme” etc

294 This Clause defines “a judicial scheme” and “a judicial legacy scheme” by reference to the relevant judicial pension scheme legislation.

Clause 67: Meaning of “judicial office” etc

295 This Clause defines “judicial office” by reference to the relevant legislation.

Clause 68: Meaning of “the relevant authority”

296 This Clause defines the relevant authority as the Lord Chancellor or Department of Justice in Northern Ireland.

Clause 69: Meaning of “opted-out service” and “PPA opted-out service”

297 Clause 69(1) defines “opted-out service” by reference to the definition in Clause 36(4)(b). Clause 69(2) defines “PPA opted out service”.

Clause 70: Meaning of “scheme regulations”

298 This Clause defines “scheme regulations” as being scheme regulations under section 1(4) of the PSPA 2013 (or PSPA(NI) 2014). Clause 70(2) provides that these scheme regulations may amend the judicial legacy schemes and are to be exercised by the responsible authority for the judicial 2015 scheme. This provision therefore clarifies how the broad range of amendments to both the judicial legacy and 2015 schemes are to be made.

Clause 71: Interpretation of Chapter

299 This Clause defines terms used in the Chapter.

Clause 72: Modifications of Chapter in relation to fee-paid judicial offices

300 This Clause ensures that fee-paid judges (and ex-fee-paid judges) can meet the conditions for their service in a fee-paid office to be considered “remediable service”.

Chapter 3: Local Government Schemes

Clause 73: Meaning of “remediable service”

301 This Clause is the local government equivalent of Clause 1. It defines what service is in scope of being remedied through the legislation. A member has “remediable service” if certain conditions are met. Broadly, the conditions are that the member has pensionable service between 31 March 2014 (31 March 2015 LGPS Scotland and Northern Ireland) and 31 March 2022, that on 31 March 2012 the member was in pensionable service under a local government legacy scheme or other relevant public service pension scheme, and there are no disqualifying gaps (more than five years) falling within the relevant service period.

Clause 74: Power to pay benefit equivalent to final salary benefits

302 This Clause allows Local Government Pension Scheme (LGPS) regulations to be made to provide that member benefits in relation to remediable service (as defined in Clause 73) can be equivalent to final salary benefits. This is the core power that will allow LGPS regulations to be amended to remove the discriminatory provisions, by giving younger qualifying members equivalent protection to their older colleagues. In this context, a final salary benefit broadly means that a benefit has been calculated by reference to a member's pensionable earnings when a member's pensionable service ends, or when the member would have attained their Normal Pension Age applicable to the local government legacy scheme (usually 65).

Clause 75: Meaning of "local government scheme" etc

303 This Clause contains relevant definitions for the terms used in this Chapter:

- a "local government scheme" is defined as either a local government "new" scheme or a local government "legacy" scheme;
- a "local government new scheme" means a scheme for local government workers established under section 1 of PSPA 2013 or PSPA (NI) 2014 – broadly, a career average scheme; and
- a "local government legacy scheme" means an existing scheme for local government workers mentioned in Schedule 5 of PSPA 2013 or PSPA (NI) 2014 – broadly, a final salary scheme.

Chapter 4: General

Clause 76: Restriction of existing schemes

304 This Clause amends sections 18 and 31 of the PSPA 2013, and sections 18 and 32 of the Public Service Pensions Act (Northern Ireland) 2014 (PSPA(NI) 2014); it also makes consequential amendments to the Judicial Pensions and Retirement Act 1993 (JUPRA).

305 The purpose of this Clause is to close the legacy schemes to further accrual from 1 April 2022. All members of public service pension schemes must from that date accrue pension benefits in a new scheme, subject to the narrow exceptions set out in Clause 77.

306 Clause 76(2)(c) is the core operative provision and repeals sections 18(5) to 18(8) of the PSPA 2013. This Clause prospectively, with effect from 1 April 2022, removes the power for scheme regulations to make exceptions to section 18(1) of the PSPA 2013, which closed the legacy schemes to further accrual from 1 April 2015. As a consequence, and subject to the transitional and savings provisions in Clause 77, the power to provide tapered and transitional protection will no longer be available from 1 April 2022, and any exceptions that were made under these powers will no longer have effect from 1 April 2022 (this is the effect of the law when powers are repealed prospectively, and this effect is also clarified by the wording of Clause 77(1)).

307 Clause 76(2)(b) inserts a new subsection (4A) into section 18 PSPA 2013, which clarifies that the closure of the legacy schemes by section 18(1) of the PSPA 2013 does not apply and is retrospectively treated as never having applied in relation to a member's remediable service in a legacy scheme. This Clause therefore inserts an exception to the closing date in section 18(1) PSPA 2013, with retrospective effect, for all those who have remediable service which is treated as pensionable service under the legacy schemes by virtue of the provisions of this Bill. This ensures that the provisions of section 18 PSPA 2013 do not conflict with the provisions of this Bill (particularly Clause 2(1)) which retrospectively treat members' remediable service as pensionable service under the legacy schemes.

308 Clause 76(3) amends section 31(4) of the PSPA 2013 to reflect the repeal of sections 18(6) and 18(7) of that Act.

309 Clause 76(4) to 76(6) replicate the provisions in Clause 76(1) to 76(3) in respect of the PSPA(NI) 2014.

310 Consequential amendment is made to JUPRA by Clause 76(7).

Clause 77: Restriction of existing schemes: savings and transitional provision

311 This Clause makes transitional and savings provisions in respect of Clause 76, whereby scheme regulations may continue to exercise the powers contained in (repealed) sections 18(5) to 18(8) of PSPA 2013 or (repealed) sections 18(5) to 18(9) of PSPA(NI) 2014 to provide exceptions to the closure of legacy schemes from 1 April 2022 only in the narrow circumstances specified by Clause 77(2).

312 The circumstances specified by Clause 77(2) are:

- a. in connection with transitional protection, only to the extent that it existed in scheme regulations prior to 1 April 2022 and in respect of a member's service between 1 April 2015 and 31 March 2022;
- b. in connection with transfers into a public service pension scheme by a Fair Deal employee¹⁴, or by other employees accruing benefits in an unreformed public sector pension scheme. In such a case, if those employees have accrued any pensionable service on or after 1 April 2022 in a scheme broadly equivalent to a legacy scheme, they may be awarded credit in a legacy scheme; and
- c. in connection with weighted accrual. To the extent that a member's accrual rate in a legacy scheme is dependent on their length of service (regardless of the scheme in which that service is pensionable), that accrual rate should continue to be adjusted on the same basis; in such a case, further accrual will be permitted in a legacy scheme only to the extent that it derives from an increase in the relevant member's length of service.

313 Clause 77(4) to (6) replicate the provisions in Clause 77(1) to 77(3) in respect of the PSPA(NI) 2014.

Clause 78: Restriction of other schemes

314 Clause 78 closes the judicial schemes that are not listed as "existing schemes" under Schedule 5 to the PSPA 2013 and the pension scheme established for certain employees of the Secret Intelligence Service.

315 Clause 78(1) prevents members of a "relevant scheme" from accruing benefits in relation to their service after 31 March 2022. Clause 78(2) outlines the definition of "relevant scheme". These are the pension schemes established for certain employees of the Secret Intelligence Service, the NJPS, the Northern Ireland Judicial Pension Scheme 2015, and the FJPS 2017.

316 Clause 78(3) expands on the definition of benefits in relation to a person's service under Clause 78(1) to include benefits relating to the person's death in service.

¹⁴ The Fair Deal, first introduced in 1999, is a non-statutory policy setting out how pensions issues are to be dealt with when staff are compulsorily transferred from the public service employments to independent providers delivering public services. In 2012, the Government announced the Fair Deal would be reformed. Staff who are compulsorily transferred from the public service are now offered continued access to a public service pension scheme (the "New Fair Deal") rather than being offered a broadly comparable occupational pension scheme (the old "Fair Deal").

Clause 79: Amendments relating to scheme regulations

- 317 This Clause provides for amendments to the PSPA 2013 and the PSPA(NI) 2014. Clause 79(1) to 79(7) amend section 3 of the PSPA 2013 to allow scheme regulations to make consequential, supplementary, incidental or transitional provision amending any primary legislation passed before or in the same session as this Bill or secondary legislation. In conjunction with Clause 34 and 70, this allows responsible authorities for new schemes to use scheme regulations to amend both legacy schemes and new schemes, in order to make consequential, supplementary, incidental or transitional provision in relation to any provision of Part 1 of this Bill. Clause 79(10) to 79(14) make the same provision in respect of the PSPA(NI) 2014.
- 318 Clause 79(5) and 79(6) remove an exception to the requirement in section 3(5) (and contained in section 3(6)(b)) of the PSPA 2013 for Treasury consent in the making of scheme regulations by a responsible authority. The relevant exception is set out in section 3(6)(b) PSPA 2013 and relates to scheme regulations of the Welsh Ministers for fire and rescue workers. This reflects the introduction of an Exchequer grant for these pensions where employer and employee contributions are insufficient to meet the current costs of paying pensions. As a consequence, Treasury consent will now be required before the Welsh Ministers make scheme regulations relating to fire and rescue workers. The Clause also introduces a delegated power for the Treasury to make future amendments to the exceptions set out in section 3(6) PSPA 2013 through a Treasury order.
- 319 Clause 79(7) amends the PSPA 2013, section 21, to provide that the consultation requirements in relation to scheme regulations imposed by that section may be satisfied by consultation before, as well as after, the coming into force of the powers in this Bill, and the consequential amendment power inserted by this Bill into section 3(2)(c) of the PSPA 2013. The policy intention is that this will allow schemes to consult upon their scheme regulations when they are ready to do so.
- 320 Clause 79(8) amends the PSPA 2013, section 23, which sets out the procedure in relation to retrospective provision in scheme regulations. Under section 23 PSPA 2013, where a responsible authority proposes to make scheme regulations containing retrospective provision, the responsible authority must first consult the persons likely to be affected (or their representatives) with a view to reaching agreement with them (or obtain their consent where the provision appears to have significant adverse effects) and is required to lay a report before Parliament, Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly. Clause 79(8) inserts an exception to section 23 PSPA 2013 where retrospective provision is made under any provision contained in Part 1 of this Bill, or any consequential, supplementary, incidental or transitional provision under section 3(2)(c) PSPA 2013 (which is inserted by Clause 79(3)). Clause 79(9) provides a definition for the abbreviation of this Bill to be inserted into section 37 PSPA 2013. Clause 79(15) and 79(16) make equivalent provision in respect of the PSPA(NI) 2014.

Clause 80: Amendments relating to employer cost cap

- 321 For each new scheme, an employer cost cap was calculated at a preliminary valuation, which under Treasury regulations is also used as the target cost. The employer cost cap was essentially a particular way of measuring the cost of the scheme at that point. Then at the next valuation the cost of the scheme (again measured in a particular way) is assessed against that employer cost cap. If the assessed cost is within the specified margins of the employer cost cap, then no rectification action is required. However, if it is outside the margins then benefits within the new schemes and/or member contributions must be changed to bring costs back to the target cost (a process called “rectification”). Changes to benefits (and/or contributions) apply for service after a date a few years after the valuation’s effective date and aim to bring the assessed cost back to the employer cost cap from that date on. At a subsequent valuation,

the cost is assessed again and further rectifications may apply for service after a new date further in the future, and so on.

- 322 Rectifications are to be determined through a process involving Scheme Advisory Boards established under section 7(1) of PSPA 2013 or section 7(1) of the PSPA(NI) 2014. There is a default rectification method in case agreement cannot be reached through that process. If the assessed cost is above the upper margin, known as a ceiling breach, then action is taken to reduce the value of benefits that will be accrued in the reformed scheme, and/or member contributions will be increased. Alternatively, if the assessed cost is below the lower margin, known as a floor breach, then the value of benefits that will be accrued in the new scheme will be increased, and/or member contributions will be decreased.
- 323 This Clause provides that ceiling breaches above the upper margin of the employer cost cap are not rectified at the 2016 valuations (or 2017 valuations for the Local Government Pension Scheme (Scotland)) to ensure that no benefit reductions take place as a result of the conclusion of the 2016 (and 2017) valuation process. To do so, this Clause makes provision to amend section 12 of the Public Service Pensions Act 2013 (PSPA 2013) in relation to the employer cost cap. The Bill will not prevent, however, rectification of any floor breaches that occur at the 2016 valuations (or 2017 valuations for the Local Government Pension Scheme (Scotland)) so any benefit improvements that are due will be honoured.
- 324 Clause 80(2) inserts new subsections into section 12 PSPA 2013, which provide that, for cases where the cost of a scheme would otherwise go beyond the margins, Treasury directions may require that the steps agreed (or determined) to rectify a breach can only be taken after the scheme actuary has certified that, in the scheme actuary's view, the steps would, if taken, achieve the target cost for the scheme. The scheme actuary is generally the actuary that signs off the scheme's valuations.
- 325 Clause 80(3) inserts further new subsections into section 12 PSPA 2013, which remove the requirement to rectify a ceiling breach at the 2016/17 valuations of a public service pension scheme, including retrospectively, by removing the effect of Treasury regulations¹⁵ made under Clause 80(5)(a) of section 12 of the PSPA 2013. Accordingly, where the cost of a scheme goes above the ceiling, this Clause also removes the effect of Treasury regulations that specify a target cost under Clause 80(5)(b) of section 12 of the PSPA 2013 and removes the effect of Clause 80(6)(a) and 80(6)(b) of section 12 of the PSPA 2013.
- 326 Clause 80(3) also defines the "2016/2017 cost" as the cost of a scheme (and any connected scheme) at a scheme valuation with an effective date of 31 March 2017 for the Local Government Pension Scheme (Scotland) or, in any other case, 31 March 2016.
- 327 Clause 80(4) to 80(6) provide equivalent provision in respect of the PSPA(NI) 2014 and the relevant secondary legislation made under it, with necessary changes.
- 328 Clause 80(7) provides that the actuarial valuation as at 31 March 2016 carried out in 2018 under regulation 123 of the Local Government Pension Scheme Regulations (Northern Ireland) 2014 (S.R. (N.I.) 2014 No. 188) is of no effect. This Clause is needed because unlike the other public service pension schemes, the Northern Ireland Local Government Pension Scheme signed this valuation report before the Court of Appeal judgment was made and cost control valuations were paused. In line with the Government decisions taken following that judgment and for consistency with other public service pension schemes, the Northern Ireland Local Government Pension Scheme is now preparing a valuation report that will supersede

¹⁵ The Public Service Pensions (Employer Cost Cap) Regulations 2014 (S.I. 2014/575).

the report signed on 18 December 2018. This Clause clarifies that the report signed on 18 December 2018 is therefore of no effect.

Clause 81: Amendments relating to the Secret Intelligence Service etc

329 This Clause amends the PSPA 2013 to accommodate provisions related to Secret Intelligence Service pensions. Clause 81(2)(a) clarifies the closing date for legacy schemes as being 31 March 2016 and Clause 81(2)(b) defines “relevant Agency scheme”.

330 Clause 81(3) to 81(5) state the words or paragraphs to be omitted with regard to these schemes. Clause 81(6) states that any provision of subordinate legislation related to agency schemes under sections 18 or 31 of the PSPA 2013 that came into force before this Clause and could have been made under section 18 of the PSPA 2013 if the amendments under Clause 81(1) to 81(4) had been in force at that time, are to be treated as having been made under section 18 of the PSPA 2013.

Clause 82: Amendments relating to the judiciary

331 Clause 82(1) and 82(2) of Clause 82 insert a new section 25A into the PSPA 2013 which enables scheme regulations made under the PSPA 2013 for the judiciary to take into account relevant past service of a holder of a judicial office subsequently added to the scheme through an order made under paragraph 2(1) of Schedule 1 to the PSPA 2013. This means that the relevant pensionable service of such a judicial office holder can be backdated so that it may start before the date of inclusion of the judicial office in the order under Schedule 1. For example, if a judicial office is added to the definition of the judiciary (e.g. if there is a new judicial office) in 2024, but it is deemed that a holder of that office should be able to accrue pensionable benefits in the scheme for service from 2023, then scheme regulations made under section 25A of the PSPA 2013 may make provision so that pension benefits of that office holder are to be determined by reference to judicial service from 2023. The scheme regulations will also enable the collection of member contributions in relation to accrual of pension benefits for that service prior to being specified in the relevant order.

332 Clause 82(3) replaces the prohibition on including Northern Irish or Scottish devolved offices within the scope of the definition of the judiciary in the PSPA 2013 so that the Lord Chancellor or the Secretary of State for Scotland (depending on who is the appropriate minister for the purposes of paragraph 2(1) of Schedule 1 to the PSPA 2013) may specify such a devolved judicial office in the definition of the judiciary in that Act in response to a request from the Scottish Ministers or the Department of Justice.

333 Clause 82(4) and 82(5) make equivalent provision for the PSPA (NI) 2014 to that in Clause 82(1) and 82(2).

Clause 83: Amendments relating to non-scheme benefits

334 Clause 83(1) to 83(3) amend section 26 of the PSPA 2013 which allows the scheme manager or employer of a section 1 PSPA 2013 scheme to pay in respect of a person, pensions or other benefits into a scheme other than a section 1 scheme. The amendments clarify that such benefits can only be paid to persons who are members of a section 1 scheme, by virtue of section 1(2) or section 25 PSPA 2013, in addition to persons who would be such members but for the fact they are members of a stakeholder or personal pension scheme or occupational defined contributions scheme.

335 Clause 83(4) to 83(6) make equivalent provision for the PSPA (NI) 2014 to that in Clause 83(1) to 83(3).

Clause 84: Power of Treasury to make scheme for compensation

336 This Clause provides that the Treasury may make regulations to create a compensation scheme to pay compensation in relation to any compensatable losses incurred by relevant members.

337 Clause 84(2) provides that the Treasury may make provision including:

- a. appointing a body to administer the scheme;
- b. establishing a body to administer the scheme including the appointment of members, staffing, expenditure, procedures and other matters the Treasury consider appropriate;
- c. allowing the body to exercise a discretion;
- d. conferring power on the Treasury to give guidance or directions to the body administering the scheme; and
- e. any provision that could be included in regulations made by virtue of Clause 23 (interest and process) in relation to compensation payable under Clause 21 (power to pay compensation) or 57 (interest and process) in relation to compensation payable under Clause 56 (power to pay compensation).

Clause 85: Power of Department of Finance to make scheme for compensation

338 This Clause confers equivalent powers to the Department of Finance in Northern Ireland to create an equivalent scheme to the one detailed in Clause 84.

Clause 86: Power to make provision in relation to certain fee-paid judges

339 Clause 86(1) provides a power to make provision for the purpose of ensuring certain judges whom it is accepted have fee-paid service in a relevant legacy scheme from April 2015 are put in the position, so far as possible, that they would have been in had they always been treated as members of that legacy scheme. This specific group of judges (defined in Clause 86(3)) were aged over 55 on 1 April 2012, in fee-paid service on 31 March 2012 and took up salaried office between 1 April 2012 and 1 December 2012 or, in the case of members of a Northern Ireland scheme, on 31 January 2013.

340 The mechanism to deal with rectifying individual circumstances, for example, pension benefits paid, contributions liability and member options that may have been purchased in the 2015 scheme are complex. Clause 86(1) therefore provides that regulations may be made in respect of these judges. Clause 86(2) sets out provision that may be made under the power in Clause 86(1) which includes regulations that correspond with some of the powers in Chapter 2 in respect of judges with remediable service.

Clause 87: HMRC information-sharing and other functions relating to compensation etc

341 This Clause provides a new function enabling HMRC (or anyone acting on their behalf to exchange information with a relevant person for the purpose of facilitating the exercise of any “compensation function” (as defined in Clause 87(6)) or to do anything else which HMRC think necessary or expedient for that purpose. This is to facilitate the sharing of any information required to process any claims for compensation under this Bill.

342 Clause 87(2) sets out the conditions for data use by the person who receives the data and the consequences if that data discloses personal information.

343 Clause 87(3) extends the criminal offence found in section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) to contraventions of Clause

87(2)(b) in relation to identifiable personal information. Clause 87(4) and (5) clarify the relationship between this Clause and other legislation relating to disclosure of information. Clause 87(6) contains definitions of terms used in this Clause.

Clause 88: Section 91 of the Pensions Act 1995

344 Clause 88 disapplies section 91 of the Pensions Act 1995 and Article 89 of the Pensions (Northern Ireland) Order 1995. These provisions state that occupational pension entitlements to a pension or right to a future pension cannot be assigned or commuted or surrendered, and that there can also be no set-off exercised against it. Clause 88(2)(a) provides that these prohibitions do not apply to any provision in this Bill. Clause 88(2)(b) provides that the surrender of a pension entitlement or right as a condition for inclusion of opted-out service in remedy under Clause 5(5)(b), or the surrender of a pension entitlement or right to a partnership pension account under Clause 38(3) or (6), is permitted.

Clause 89: Minor amendment

345 Clause 89 makes a minor correction to section 2(7A) of JUPRA on a cross-reference within that section on ill-health retirement benefits.

Clause 90: Power to make consequential provision

346 This Clause permits amendments, repeals or revocations of primary and secondary legislation that are consequential upon the provisions contained in Part 1 of this Bill. Where such regulations affect primary legislation (as defined in Clause 90(5), to include devolved legislation), those regulations will be subject to the affirmative procedure. Any amendments to, repeals or revocations of secondary legislation are subject to the negative procedure.

Clause 91: Meaning of “member” etc

347 This Clause defines a member as being someone who is a member of any pension scheme, whether alive or deceased. An active member refers to a member who is presently accruing benefits as part of an employment or office held. A pensioner member refers to a member who is entitled to present payment of benefits from a pension scheme. A deferred member has accrued rights under the pension scheme but is neither an active member nor a pensioner member.

Clause 92: Interpretation of Part

348 This Clause provides definitions for words and phrases found in this Bill.

Part 2: Pensions and Banking (Special Provision) Act 2008 Bodies

Clause 93: Establishment of new public schemes and transfer of rights

349 Clause 93(1) allows the Treasury to make regulations to establish one or more new pension schemes to provide for pension payments and other benefits to and in respect of persons who are, or have been, members of the BBS Pension Scheme or the NRAM Pension Scheme.

350 Clause 93(2) allows the Treasury to make regulations to transfer qualifying accrued rights from the BBS Pension Scheme and the NRAM Pension Scheme to a new public scheme, without requiring any approval or consent.

351 Clause 93(3) allows regulations under Clause 93(2) to include provision for the discharge of any liabilities that are transferred under Clause 93(2). This may be used to discharge the liabilities of the trustees of the BBS Pension Scheme and the NRAM Pension Scheme.

352 Clause 93(4) and 93(5) define the qualifying accrued rights that may be transferred to a new public scheme. These include rights or entitlements to and in respect of members of BBS or NRAM pension scheme, and their survivors, to present or future benefits under the relevant scheme. This includes rights and entitlements to money purchase benefits, also known as defined contribution pensions, and pension credit rights, which are rights provided to an ex-spouse or ex-civil partner under a pension sharing order.

353 Clause 93(4) provides that qualifying accrued rights are rights that exist immediately before “the qualifying time” specified in regulations by the Treasury.

354 Clause 93(6) provides that regulations specifying or describing “the qualifying time” may make provision for transfers of qualifying accrued rights generally, or for other transfers. This means that these regulations may specify “the qualifying time” in relation to these types of transfers.

Clause 94: New public schemes: further provision

355 Clause 94(1) allows a new public scheme to provide for:

- a. the payment of pensions or benefits to or in respect of some or all persons who are, or have been, members of the BBS Pension Scheme or the NRAM Pension Scheme;
- b. the payment of money purchase benefits and/or benefits which are not money purchase benefits;
- c. increasing the amounts payable in respect of qualifying accrued rights by the new scheme;
- d. the payment or receipt of transfer values or other lump sum payments.

356 A new public scheme established under Clause 93 would not come within the definition of an occupational pension scheme in section 1(1) of the Pension Schemes Act 1993. Clause 94(2) allows for regulations to provide for a new scheme to be treated as an occupational pension scheme. Clause 94(2) also enables regulations to provide that a new public scheme to be treated as a previously contracted-out scheme. This will allow a new public scheme to make provision for qualifying accrued rights that were contracted out under the BBS Pension Scheme or the NRAM Pension Scheme. Finally, Clause 94(2) enables a new scheme to be treated as another type of occupational pension scheme, such as a public service pension scheme under section 1(1) of the Pension Schemes Act 1993. It also provides for such an enactment to apply to a new public scheme with modifications specified in the regulations.

357 Clause 94(3) provides that regulations that amend a new public scheme may have retrospective effect. This would be subject to the affirmative procedure under Clause 102. Such powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or where the Government does not want to delay the benefit of a particular change but needs time to consider the consequences and appropriate method of making the change.

358 Clause 94(4) permits regulations under Clause 94(1) to confer functions on the Treasury or another person, and for that person to exercise discretion.

359 Clause 94(5) allows the Treasury to make arrangements for a new public scheme to be administered by any person, and to delegate to any person a function exercisable by the Treasury (such as the administration of the scheme) under the new public scheme.

Clause 95: Protection against adverse treatment: transfer of rights

- 360 This Clause provides protection against the accrued rights of members of the BBS or NRAM Pension Scheme being adversely affected by the transfer of their rights to a new public scheme.
- 361 Clause 95(1) imposes an obligation on the Treasury, when making regulations under Clause 93 which transfer qualifying accrued rights to a new public scheme, to ensure that the general scheme requirement under Clause 95(2) is met. It also imposes an obligation on the Treasury where qualifying accrued rights are money purchase benefits which are not in payment, to ensure that the money purchase requirement under Clause 95(3) is met.
- 362 Clause 95(2) defines the general scheme requirement: the provision in the new public scheme in respect of qualifying accrued rights must be, in all material respects, at least as good immediately after the regulations are made, as under the BBS or NRAM Pension Scheme (as appropriate) immediately before that time.
- 363 Clause 95(3) defines the money purchase requirement: the value of a person's money purchase benefits (other than pensions in payment) under a new public scheme, immediately after the regulations are made, must be at least equivalent to the value of their qualifying accrued rights under the BBS Pension Scheme or NRAM Pension Scheme (as appropriate). Pensions in payment are not included in this clause. This is because they will not be money purchase benefits in a new public scheme, under the statutory definition of section 181 of the Pension Schemes Act 1993. Qualifying accrued rights to pensions in payment will however be protected under the general requirement.
- 364 Clause 95(4) provides that the Treasury may make regulations about the determination of the value of money purchase benefits for the purposes of Clause 95(3).
- 365 Clause 95(5) permits regulations under Clause 95(4) to make provision about the person by whom and manner by which the value of rights or entitlements are valued. It also enables these regulations to make other provisions.
- 366 Clause 95(6) makes clear that Clause 95(4) may not provide for the value of qualifying accrued rights to be determined by reference to a date more than three months before the transfer.
- 367 Clause 95(7) provides that Clause 95(1) does not require the Treasury to include any provision in a new scheme if the Treasury is of the opinion that such provision would be incompatible with an enactment.
- 368 Clause 95(8) makes clear that Clause 95(1) to 95(3) should not be read as: requiring a new scheme to take a particular form; to be established in a particular way; requiring any duty or power imposed by a new scheme to be performed in a particular way; or affecting the power of any person to amend a new scheme.

Clause 96: Protection against adverse treatment: amendments of new public schemes

- 369 Clause 96(1) provides that the Treasury may not exercise its power to make regulations to amend a new public scheme, if those amendments would or may adversely affect individuals' subsisting rights, unless the requirement for the consent of interested persons or their representatives under Clause 96(2), or the procedure requirements in Clause 96(4), have been met. In all other cases, the requirements for the consultation of interested persons or their representatives in Clause 96(3) must be met.
- 370 Clause 96(2) provides that the consent requirements will be specified or described in regulations made by the Treasury.

371 Clause 96(3) provides that the consultation requirements will be specified or described in regulations made by the Treasury.

372 Clause 96(4) provides that procedure requirements will also be specified or described in regulations made by the Treasury. It also specifies that these are not requirements for the consent or consultation of interested persons or their representatives.

373 Clause 96(5) to 96(7) provide definitions for terms used in this Clause.

Clause 97: Transfer of assets and liabilities

374 Clause 97(1) enables the Treasury, through regulations, to provide for the assets and liabilities of the BBS or NRAM pension schemes to be transferred to a nominee of the Treasury, or a company established by the Treasury for the purpose of holding the assets and liabilities pending their disposal or discharge.

375 Clause 97(2) provides that regulations may only be made under this Clause where regulations have been made under Clause 93.

376 Clause 97(3) provides that regulations made under this Clause may include provision for payments to be made into the Consolidated Fund.

Clause 98: Transfer of other pensions and benefits

377 Clause 98(1) enables the Treasury, through regulations, to provide for the transfer to the Treasury of qualifying liabilities of Bradford & Bingley plc, NRAM Limited, or UK Asset Resolution Limited.

378 Clause 98(2) provides the definition of “qualifying liability” in this section: a qualifying liability is defined as a liability to pay a person a pension or other benefit in connection with that person’s past service with Bradford & Bingley plc, Northern Rock plc or another entity, excluding liabilities arising under the BBS Pension Scheme or NRAM Pension Scheme.

379 Clause 98(3) allows the Treasury, through regulations, to provide for disapplication, or application with modifications, of relevant enactments to a qualifying liability which is an occupational pension scheme.

380 Clause 98(4) defines “relevant enactment” under Clause 98(3) as an enactment pertaining to occupational pension schemes which is identified in regulations made under Clause 98(3).

381 Clause 98(5) allows the Treasury to make regulations that provide for these arrangements that are an occupational pension scheme to be treated as a particular type of occupational pension schemes for the purposes of enactments identified in the regulations.

Clause 99: Taxation

382 Clause 99(1) allows the Treasury to make regulations to modify the way in which any relevant tax would have effect in relation to a new scheme; the members of the new scheme; survivors of those members; or a company established by the Treasury for the purpose of holding assets and liabilities that have been transferred to it from the BBS Pension Scheme or the NRAM Pension Scheme pending their disposal or discharge.

383 Clause 99(2) allows for such regulations to treat a new scheme as a registered pension scheme.

384 Clause 99(3) allows for the Treasury, by regulations, to vary the way in which any relevant tax would be applied as a consequence of regulations made under this Part of the Act, or in connection with anything done under the regulations, with regard to:

- a. the BBS Pension Scheme;
- b. the NRAM Pension Scheme;

- c. members of the BBS or NRAM pension scheme;
- d. persons who have survived a member of either of those schemes, who have an entitlement or right to benefits or future benefits in respect of that member;
- e. UK Asset Resolution Limited;
- f. persons in respect of whom there is a qualifying liability.

385 Clause 99(4) provides that regulations made under Clause 99(1) or 99(3) may include provision for:

- a. a tax provision to be disapplied or applied with modifications;
- b. anything done to have or not to have a specified consequence for the purposes of a tax provision;
- c. the withdrawal of tax relief and the charging of a relevant tax.

386 Clause 99(5) provides that regulations made under Clause 99(1) or 99(3) can have retrospective effect, provided that the regulations do not charge a relevant tax or withdraw tax relief.

387 Clause 99(6) provides definitions for terms used in this Clause.

Clause 100: Information

388 Clause 100(1) allows the Treasury, by regulations, to make provision, to require prescribed persons to disclose information prescribed in the regulations to the Treasury.

389 Clause 100(2) ensures that provisions under Clause 100(1) may only apply in respect of information which the Treasury reasonably requires for: making regulations under this Part of the Act; establishing or administering a new public scheme, including the transfer of accrued rights to the scheme; or administering arrangements under which a qualifying liability arises.

390 Clause 100(3) allows regulations under Clause 100(1) to make provision about: the time, form and manner in which the information must be given; and the imposition of a financial penalty on a person who fails to comply with a requirement under the regulations without a reasonable excuse. This includes provision for appeals to a court or tribunal.

391 Clause 100(4)(a) and (5) allow for information relating to rights or entitlements to pensions and or other benefits under the BBS Pension Scheme, or a new public scheme (so long as the rights and entitlements are for or in respect of persons who were members of the BBS Pension Scheme), and information relating to the administration of the BBS Pension Scheme or the new public scheme, to be shared between certain parties. These parties are: the Treasury; UK Asset Resolution; the trustees of the BBS Pension Scheme; or any persons administering or exercising functions under the BBS Pension Scheme or a new public scheme.

392 Clause 100(4)(b) and 100(6) allows for information relating to rights or entitlements to pensions and or other benefits under the NRAM Pension Scheme, or a new public scheme (so long as those rights and entitlements are for or in respect of persons who were members of the NRAM Pension Scheme), and information relating to and the administration of the NRAM Pension Scheme or the new public scheme, to be shared between certain parties. These parties are: the Treasury; UK Asset Resolution; the trustees of the NRAM Pension Scheme; or any persons administering or exercising functions under the NRAM Pension Scheme or a new public scheme.

393 Clause 100(7) and 100(8) ensure that the information sharing arrangements also apply to qualifying liabilities of UK Asset Resolution Limited; Bradford & Bingley plc; and NRAM Limited. These Clauses provide for:

- a. information relating to qualifying liabilities of UK Asset Resolution to be shared between UK Asset Resolution and the Treasury;
- b. information relating to qualifying liabilities of Bradford & Bingley plc to be shared between UK Asset Resolution; the Treasury; and Bradford & Bingley plc;
- c. information relating to qualifying liabilities of NRAM Limited to be shared between UK Asset Resolution; the Treasury; and NRAM Limited.

394 Clause 100(9) ensures that, except under Clause 100(10), the disclosure of information under this Clause does not breach any restriction on the disclosure of that information, including any obligation of confidence that exists in relation to that information.

395 Clause 100(10) makes clear that this Clause or regulations made under it do not make provision for the disclosure of information if that disclosure would breach data protection legislation. It also makes clear that duties or powers imposed by this Clause or the regulations must be considered when determining whether a disclosure would constitute such a breach.

Clause 101: Regulations

396 Clause 101(1) provides that the Treasury must consult the relevant trustees before making:

- a. regulations under Clause 93 which establish a new public scheme or transfer qualifying accrued rights to the new scheme; or
- b. regulations under Clause 97 which make provision for the transfer of assets and liabilities.

397 Clause 101(2) defines “the relevant trustees” as the trustees of the BBS Pension Scheme, where the regulations would affect members or survivors of members of the BBS Pension Scheme and the trustees of the NRAM Scheme, where the regulations would affect members or survivors of members of the NRAM Pension Scheme.

398 Clause 101(3) provides that regulations made under Clause 93 are subject to the affirmative procedure if:

- a. those regulations are subject to the consent requirements under section 96(1)(a) and (2); or
- b. the provisions of those regulations have retrospective effect.

399 Clause 101(4) provides that regulations under Clause 100(1) are subject to the affirmative procedure if they make provision about the amount of a financial penalty.

400 Clause 101(5) provides that a statutory instrument containing regulations under Clause 99 is subject to annulment in pursuance of a resolution of the House of Commons.

401 Clause 101(6) provides that any other regulations made under this Part of the Act are subject to the negative procedure.

Clause 102: Interpretation

402 This section provides definitions to be used in this Part of the Act.

Part 3: Judicial Offices

Clause 103: Retirement date for holders of judicial offices etc

403 Clause 103 introduces Schedule 1 which makes provision to raise the mandatory retirement age, which is the age at which judicial office holders, including judges, tribunal non-legal members, magistrates and coroners, are required to vacate office, to 75.

These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill as introduced in the House of Lords on 19 July 2021 (HL Bill 44)

Clause 104: Allowances for judicial office holders

404 Clause 104 introduces Schedule 2 which makes provision for the determination of allowances for certain judicial posts.

Clause 105: Sitting in retirement offices

405 Clause 105 creates new “sitting in retirement offices” by reference to the existing judicial offices listed in Schedule 3. Where a judicial office is listed in Schedule 3, a sitting in retirement equivalent version of the office will also be created. Clause 105(2) confirms that this new office will be given the name of the original judicial office followed by the words “(sitting in retirement)”.

406 Schedule 3 consists of six Parts. Each Part of the Schedule lists the existing judicial offices in respect of which a sitting in retirement office will be made. The Parts are separated by who has the authority to make appointments in respect of the sitting in retirement offices created by that Part.

Clause 106: Appointment to sitting in retirement offices

407 Clause 106 makes provision for the relevant eligibility criteria that must be fulfilled and steps that must be taken for appointment to a sitting in retirement office. This includes Clause 106(1) which confirms that sitting in retirement offices are subject to business need, and that the appointee must be qualified for appointment to the relevant original office. Clause 106(2) sets out which member of the senior judiciary will be responsible for appointments to each sitting in retirement office.

408 Clause 106(3) and (4) together ensure that appointees to sitting in retirement offices have previously held specific judicial offices, to be set out further in regulations by the Northern Ireland Department of Justice, the Welsh Ministers or the Lord Chancellor as appropriate. Such regulations may also prescribe additional eligibility requirements. Clause 106(11) confirms that these regulations are to be made under the negative procedure.

409 Clause 106(5) to 106(8) requires appropriate concurrence before a sitting in retirement appointment is made.

410 Clause 106(9) and 106(10) allows the Lord Chief Justice and the Lord Chief Justice of Northern Ireland respectively to delegate their powers under the Clause to a nominated judicial office holder to exercise these powers on their behalf.

Clause 107: Appointment to sitting in retirement offices: further provision

411 Clause 107 makes further provision in respect of appointment to a sitting in retirement office.

412 Clause 107(2) confirms that a person appointed to a sitting in retirement office is to be treated for all purposes as if they were still the holder of the pre-retirement office, other than in relation to the exceptions set out in Clause 107(3) (appointment, removal and tenure, oaths, remuneration, allowances and pensions). This will allow holders of sitting in retirement offices to be deployed flexibly across the courts and tribunals system in the same way as their pre-retirement counterparts. Clause 107(4) to 107(9) together specify that terms of appointment and remuneration for the sitting in retirement offices are to be set by the same person who exercises such powers in relation to the original offices, subject to the mandatory retirement age of 75 and to Clause 108 (Discipline and removal from office).

Clause 108: Discipline and removal from office

413 Clause 108 makes provision for discipline and the removal of a sitting in retirement office holder from office with the effect that, other than certain exceptions, holders of sitting in retirement offices will be subject to the same disciplinary regimes as the holders of

corresponding original offices. Clause 108(1) to 108(5) apply to sitting in retirement offices in England, Wales and Scotland (created by Parts 1, 2, 5 and 6 of Schedule 3), while Clause 101(6) and 101(7) apply to the Northern Ireland sitting in retirement offices (created by Parts 3 and 4 of Schedule 3).

414 Clause 108(1) specifies that the power of removal for relevant sitting in retirement offices is exercisable by the same person who holds such powers in relation to the equivalent original office. The only exception (in Clause 108(1)(a)) is for judges of the High Court and Court of Appeal, where the sitting in retirement officeholders may be removed by the Lord Chancellor with the agreement of the Lord Chief Justice. In accordance with Clause 108(2), removal from a sitting in retirement office is subject to the same approval requirements as are required for the corresponding original office. Clause 108(1) further provides that a person appointed to a sitting in retirement office can only be removed from office on a qualifying ground, defined by Clause 108(3) as a ground specified in the person's term of appointment or the ground of inability or misbehaviour.

415 Clause 108(4) and 108(5) together mean that, where the original office a 'judicial office' within the meaning of section 109(4) of the Constitutional Reform Act 2005, the corresponding sitting in retirement office will be subject to Chapter 3 of Part 4 of the Constitutional Reform Act 2005 (discipline) as if it were listed in Schedule 14 to that Act.

416 Clause 108(6) and 108(7) together mean that the Northern Ireland sitting in retirement offices (created under Parts 3 and 4 of Schedule 3) are subject to the provisions of section 7 of the Justice (Northern Ireland) Act 2002 (removal from listed offices). Clause 108(8) and 108(9) make interpretive provision for Clause 108.

Clause 109: Power to add new offices

417 Clause 109(1) creates the power for the 'appropriate national authority' to make regulations to add a judicial office to the list in Schedule 3, with the exception of offices for which the Scottish Parliament have legislative competence (see Clause 109(3)). Clause 109(2) defines "appropriate national authority". The effect of this definition is for the Northern Ireland Department of Justice, the Welsh Ministers or the Lord Chancellor to each be an "appropriate national authority" as appropriate by context.

418 Clause 109(4) and 109(5) together create a requirement for either the Lord Chief Justice, Senior President of Tribunals, Lord Chief Justice of Northern Ireland or the President of Welsh Tribunals to be consulted as appropriate before regulations are made under this provision.

419 Clause 109(6) confirms that regulations made under Clause 109 are subject to the affirmative procedure.

Clause 110: Consequential etc provision

420 Clause 110 brings into effect Schedule 4, which makes consequential amendments relating to sitting in retirement. Clause 110(2) allows the "appropriate national authority" to make regulations to amend Schedule 4. Clause 110(3) defines "appropriate national authority". The effect of this definition is for the Northern Ireland Department of Justice, the Welsh Ministers or the Lord Chancellor to each be an "appropriate national authority" depending on the context.

421 Clause 110(4) provides that any regulations made under Clause 110(2) may amend, repeal or revoke any provisions made by any enactment. Under Clause 110(5), regulations made under Clause 110(2) which deal with primary legislation are subject to the affirmative procedure, while Clause 110(6) specifies that any other regulations are subject to the negative procedure. Clause 110(7) makes interpretive provision.

Part 4: General

Clause 111: Regulations and directions

- 422 This Clause sets out the procedure that applies where regulations, other than those listed at Clause 111(8), are made under this Bill.
- 423 Clause 111(2) provides that scheme regulations made by the Lord Chancellor or the Treasury must be made by statutory instrument.
- 424 Clause 111(3) provides that a power or duty of a Northern Ireland department to make regulations is exercisable by statutory rule.
- 425 Clause 111(4) and (5) sets out the meaning of “affirmative procedure” and “negative procedure” in the relevant legislatures, and further procedural matters are dealt with by Clause 111(6) and (7). Clause 111(9) confirms that directions given under this Bill by the Treasury or the Department of Finance in Northern Ireland may be revoked or varied.

Clause 112: Extent

- 426 This Clause confirms that the Bill extends to England, Wales, Scotland and Northern Ireland, and amendments, repeals or revocations made by this Bill have the same extent as the provision amended, repealed or revoked.

Clause 113: Commencement

- 427 This Clause provides when and how the provisions of the Act are to come into force, including powers for certain provisions of the Act to be brought into force by commencement regulations.

Clause 114: Short title

- 428 This Clause confirms that the short title of the Bill is the Public Service Pensions and Judicial Offices Act 2021.

Schedule 1: Retirement date for holders of certain judicial offices etc

Part 1: Amendments of primary legislation

- 429 Part 1 of Schedule 1 makes a series of amendments to primary legislation which set the MRA for holders of specified judicial offices.
- 430 Paragraph 25, which amends the JUPRA, in addition to raising the MRA of those judicial offices listed in Schedule 5 to that Act from 70 to 75, also makes a number of relevant changes.
- 431 Paragraph 25(2)(b) removes the power under section 26(5)-(6) which allowed the extension of certain judges’ appointments beyond the age of 70 on an annual basis up to 75 where such extension was considered to be in the public interest.
- 432 With the new MRA of 75, judicial office holders in scope will only be able to continue exercising office after their MRA to complete a case which began before they reached this age, as provided for under section 27 JUPRA, meaning that there is no longer a requirement for extensions under section 26(5)-(6) JUPRA.
- 433 Paragraph 25(3) extends the power in section 27 JUPRA to coroners (including Chief Coroner, Deputy Chief Coroner, senior coroners, area coroners and assistant coroners) and traffic commissioners, allowing them to act beyond the MRA in exceptional circumstances to complete a part-heard case.

434 Paragraph 25(4) amends Schedule 5 JUPRA to provide clarification of certain judicial offices and to include additional judicial offices to be captured by the effect of the increase in MRA and other relevant provisions in that Act.

435 Paragraph 33 amends the Courts Act 2003 to raise the MRA of magistrates in the magistrates' courts of England and Wales from 70 to 75. In the context of magistrates, the MRA is the age at which their names are automatically entered into the supplemental list, meaning that they may no longer exercise office as magistrate. However, magistrates in the supplemental list retain the title of "justice of the peace" as recognition of their service.

436 Amendment to section 13(3) of the Courts Act 2003 ensures magistrates continue to be able to exercise office to complete a part-heard case which began before that lay justice reaches the MRA (75); however the provision under section 13(2) of that Act which allowed Bench Chairs to continue exercising office after reaching their MRA to complete their term as Bench Chair is removed. These changes bring magistrates in line with the wider judiciary.

Part 2: Transitional provision

437 Part 2 of Schedule 1 deals with transitional matters relating to the increase in the mandatory retirement age from 70 to 75.

438 Paragraph 43 sets out that the changes made in Parts 1 and 2 of this Schedule will apply to individuals appointed to the specified judicial offices both before and after these amendments come into force.

439 Paragraph 44 makes provision to allow magistrates whose names were entered in the supplemental list before the change in their MRA under paragraph 32 of this Schedule came into force and who are between 70 and 75 on commencement to apply to be reinstated for a temporary period to support business need. Paragraph 44(7) clarifies that this application process will apply to all magistrates aged between 70 and 75 at the date of commencement, regardless of the reason their names were originally entered in the supplemental list. Paragraph 44(5) makes provision to enable this temporary period to be extended where there is business need, and such extensions may occur more than once under paragraph 44(6). Paragraph 44(8) specifies that, once the temporary period specified in the reinstatement is over, the magistrate's name will be re-entered in the supplemental list.

440 Paragraph 45 makes provision to allow the Northern Ireland Judicial Appointments Commission to reappoint lay magistrates in Northern Ireland who ceased to hold office before the change in their mandatory retirement age under paragraph 25(4) came into force and who are younger than 75. Paragraph 45(2)(b) permits the Northern Ireland Department of Justice to make an order regarding eligibility for reappointment in the same way as is currently provided for initial appointments under section 4(7) of the Justice Act (Northern Ireland) 2015.

Part 3: Repeal of spent provisions etc.

441 Part 3 of Schedule 1 repeals those provisions which are no longer required as a consequence of the changes made in the other Parts of this Schedule.

Schedule 2: Remuneration of judicial office holders

442 Schedule 2 makes changes to a number of pieces of primary legislation to insert the provision to pay allowances in addition to salary or remuneration for relevant judicial office holders in England and Wales.

Schedule 3: Judicial Offices

Part 1: Lord Chief Justice as appointing authority for corresponding sitting in retirement office

443 Part 1 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Lord Chief Justice is the appointing authority.

Part 2: Senior President of Tribunals as appointing authority for corresponding sitting in retirement office

444 Part 2 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Senior President of Tribunals is the appointing authority.

Part 3: Lord Chief Justice of Northern Ireland as appointing authority for corresponding sitting in retirement office

445 Part 3 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Lord Chief Justice of Northern Ireland is the appointing authority.

Part 4: Northern Ireland Judicial Appointments Commission as appointing authority for corresponding sitting in retirement office

446 Part 4 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Northern Ireland Judicial Appointments Commission is the appointing authority.

Part 5: President of Welsh Tribunals as appointing authority for corresponding sitting in retirement office

447 Part 5 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Welsh Ministers are the appointing authority.

Part 6: Lord President of the Court of Session as appointing authority for corresponding sitting in retirement office

448 Part 6 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Lord President is the appointing authority.

Schedule 4: Consequential amendments in connection with sitting in retirement offices

Part 1: Amendments of primary legislation

449 Part 1 of Schedule 4 makes a series of consequential and related amendments to multiple existing legislative provisions to prevent contradiction between those provisions and the new provisions on sitting in retirement being made by these Clauses.

Part 2: Amendments of secondary legislation

450 Part 2 of Schedule 4 makes a consequential amendment to omit wording from the Access to Justice Act 1999 (Destination of Appeals) Order 2016.

Part 3: Repeal of spent provisions

451 Part 3 of Schedule 4 repeals spent provisions within existing primary legislation.

Commencement

- 452 Part 1 (Public service pension schemes), so far as it confers a power or is necessary to make regulations or give directions, comes into force on the day on which the Act is passed.
- 453 So far as it does not come into force on the day on which the Act is passed, Part 1, Chapter 1 (Schemes other than judicial schemes and local government schemes) (together with Clause 91 and 92 (Interpretation of Part) so far as they apply for the purposes of that Chapter) comes into force on 1 October 2023 or such earlier day as Treasury regulations (or an order of the Department of Finance in Northern Ireland) specify. This means that the retrospective remedy contained in Chapter 1 will come into force later, but in any event by 1 October 2023, to correct the position for members' historical entitlement during the remedy period. Unless commencement regulations appoint an earlier day, the retrospective remedy will come into force on 1 October 2023. This allows time to prepare the scheme regulations for each of the pension schemes that must or may be made under the provisions of Chapter 1, but where regulations are ready earlier, they will be able to come into effect sooner.
- 454 So far as it does not come into force on the day on which the Act is passed, Part 1 Chapter 2 (Judicial schemes) (together with Clause 91 and 92 (Interpretation of Part) so far as they apply for the purposes of that Chapter) comes into force on such day as the Lord Chancellor may specify by regulations.
- 455 So far as it does not come into force on the day on which the Act is passed, Part 1 Chapter 3 (Local government schemes) (together with Clause 91 and 92 (Interpretation of Part) so far as they apply for the purposes of that Chapter) comes into force as Treasury regulations specify.
- 456 So far as it does not come into force on the day on which the Act is passed, Part 1 Chapter 4 (General) (together with Clause 91 and 92 (Interpretation of Part) so far as they apply for the purposes of that Chapter) comes into force on 1 April 2022, to ensure that the legacy schemes will be closed from this date. This implements the prospective remedy with effect from 1 April 2022 and closes the remedy period.
- 457 Part 2 (Pensions and Banking (Special Provision) Act 2008 Bodies) comes into force two months from the date on which the Act is passed.
- 458 Part 3 (Judicial offices) comes into force on the day the Act is passed, other than paragraph 24(3) of Schedule 1 (which amends JUPRA with regard to completion of proceedings after retirement) and section 103 and Schedule 2 (Allowances for judicial office holders) which come into force two months from the date on which the Act is passed; and Clause 105 to 109 and Schedules 3 and 4 (Sitting in retirement offices) which come into force on such day as the Lord Chancellor may specify by regulations.
- 459 Part 4 (General) comes into force on the day the Act is passed.

Financial implications of the Bill

460 The measures in the Bill will lead to increased payments to members of public service pension schemes over the next five to six decades. The Treasury estimates that the liabilities of the unfunded¹⁶ public service pension schemes (for the NHS, teachers, armed forces, police, firefighters and civil service, but excluding the judiciary) will increase by around £17 billion as a result of the retrospective changes made by the Bill in relation to the period between 1 April 2015 and 31 March 2022. The estimate includes the public service pension schemes in Scotland and Wales, but not Northern Ireland.

461 The estimated increases in liabilities for the other public service pension schemes are:

- a. £130 million for the judiciary;
- b. £680 million for Northern Ireland pension schemes; and
- c. £1.8 billion for the Local Government Pension Scheme (England and Wales).

462 The newly designed, reformed judicial pension scheme is estimated to cost an additional £35 million per annum, compared to the cost of all judges accruing pension in the Judicial Pension Scheme 2015 from 1 April 2022 onwards.

463 Within Part 2 of the Bill, it is projected that defunding the BBS and NRAM pension schemes and the transfer of the assets and liabilities of the schemes to the Exchequer will reduce Public Sector Net Debt (PSND) by £170 million in 2023–24; the cost to the Treasury of discharging the liabilities of the new schemes is estimated at £35 million per annum from 2023–24.

Parliamentary approval for financial costs or for charges imposed

464 This section will be completed when the Bill transfers to the House of Commons.

Compatibility with the European Convention on Human Rights

465 Viscount Younger of Leckie has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

466 Chapter 1 of the Bill will allow schemes (other than judicial schemes and local government schemes) to restore eligible individuals' membership of their legacy scheme retrospectively for the remedy period. This in turn will have various consequences, most of which will have retrospective effect. Any retrospective changes made to pensionable entitlements already accrued will, prima facie, engage Article 1 Protocol 1 (protection of property) of the European Convention on Human Rights (A1P1), as it is generally accepted that pensionable benefits that have already been accrued are "possessions" within the meaning of A1P1, and this also extends to the legitimate expectation of obtaining effective enjoyment of a possession. Because

¹⁶ Most of the public service pension schemes are unfunded. There are no investments and the schemes operate on a pay-as-you-go basis. The public authorities responsible for meeting the costs of the schemes use pension contributions of employees and employers to help offset the cost of payments to current pensioners. The Local Government Pension Schemes are funded schemes, where employer and employee contributions as used to create investment assets in a pension fund, with those assets and associated returns used to pay for current and future pensions.

certain members are excluded from the remedy due to their age, Article 14 (protection from discrimination) may be engaged in conjunction with A1P1. However, this interference with the peaceful enjoyment of possessions can be justified. The Bill limits the extent of retrospective changes to the purpose of voiding membership of the new schemes, establishing rights under the existing legacy schemes for the remedy period, and requiring schemes to implement the deferred choice exercise (or an immediate choice in the case of pensioner and deceased members). Moreover, regulations made under the Bill will be subject to the provisions set out in section 21 PSPA 2013 (consultation). The retrospective changes themselves have a legitimate aim in the general interest, as they will remove the discrimination identified by the Court and allow all eligible members the choice between legacy and new scheme benefits for the remedy period. The measures also strike a fair balance between the rights of the owner of possessions and the public interest: the Bill has been designed to ensure that appropriate steps are taken to try to minimise or compensate for negative consequences for particular individuals (with compensation payable in respect of losses arising due to the retrospective remedy), in order to ensure that any interference with possessions under A1P1 and/or breach of legitimate expectations is justified and proportionate. It is also justifiable to align members' tax position to the pension position they would have been in had they not been treated as a member of the new scheme from 1 April 2015 so that their resulting tax position is consistent with their pension position following implementation of the remedy, particularly as this can be done by making payments in instalments (Clause 23(2)(a)).

467 Members who have tapered protection will be entitled to choose benefits under one scheme only for the entire remedy period; they will not be able to retain the mixed service they accrued under tapered protection. This is because allowing tapered protection to continue would in effect be perpetuating the discrimination. Any detrimental effects on members can be mitigated by the provision of compensation on a case-by-case basis, adopting a proportionate approach to the recoupment of any overpaid benefits and allowing regulations to make further provision about the benefits payable in relation to tapered protection cases.

468 In respect of the judiciary, Chapter 2 (Judicial schemes) will provide judges in scope of the remedy with a retrospective choice of benefits (either legacy or 2015 scheme) for the remedy period. As with the wider public service pension remedy, this will have various consequences, most of which will have retrospective effect. Any retrospective changes made to pensionable entitlements already accrued will, similarly, prima facie, engage A1P1 but be limited to the extent necessary to implement the remedy and put members, so far as possible, back in the position they would have been in but for the discrimination. The justifications that apply to the wider schemes apply equally to the judiciary. Because judges with full transitional protection are excluded from the remedy due to their age, Article 14 (protection from discrimination) may be engaged in conjunction with A1P1. However, these judges have always had the certainty of entitlement to legacy scheme benefits which, in most cases, will be more generous for these judges than the 2015 scheme. Further, the remedy has been designed to extend the terms offered to these protected judges to others, enabling both unprotected and taper-protected judges to be treated in the same way as protected judges. Any interference with the peaceful enjoyment of possessions can therefore be justified, as it is for a legitimate aim in the general interest and strikes a fair balance between the rights of the owner of possessions and the public interest. Members who have tapered protection will be entitled to benefits under one scheme for the entire remedy period; they cannot retain the mixed service they had accrued under tapered protection. This is the same approach as taken in the wider public service remedy and the same legal analysis and justifications apply as described in respect of the Chapter 1 provisions. Importantly, the Bill provides for mitigation of any detrimental effects on members in scope, including members who have tapered protection.

469 Clause 17 and Clause 54 make provision where an eligible member has or will in future divorce or dissolve a civil partnership. They allow a pension credit to be adjusted on the assumption that the corresponding pension debit member does, or does not, make an immediate or deferred choice, or in the case of the judiciary, a legacy or 2015 scheme election (regardless of whether they in fact do so). This affects the status of ex-spouses or ex-civil partners who have divorced, and therefore has the potential to interfere with Article 8 (right to respect for private and family life). However, the powers are designed such that schemes have flexibility to ensure interference is avoided entirely (by allowing the pension credit member to continue to receive at least the same benefits they have been receiving despite the pension debit member's choice or lack thereof) or kept to a justified and proportionate minimum (by permitting schemes to make payments to pension credit members on a discretionary basis, in the form of compensation, and to make provision in relation to benefits, in cases where tapered protection is removed) to address the retrospective consequences of the remedy, and are therefore compatible with the European Convention on Human Rights (ECHR).

470 Chapter 3 (Local government schemes) allows retrospective amendments to the Local Government Pension Scheme (LGPS) which will remove the discriminatory provisions. LGPS transitional protection was provided through an underpin. All active scheme members moved to the reformed LGPS England and Wales pension scheme on 1 April 2014 (April 2015 for LGPS Scotland and Northern Ireland), but protected members were provided with a guarantee that their pension at retirement, or at their legacy scheme Normal Pension Age if earlier, would not be any lower than it would have been in the legacy scheme. Because of this difference in transitional protection, there are separate measures in the Bill which allow the extension of the underpin. The engagement with A1P1 is proportionate and justified, as it will remove the discrimination and allow all eligible members to receive the higher of legacy or new scheme benefits for the remedy period.

471 Chapter 4 (General) of Part 1 closes the legacy schemes to all members from 31 March 2022 which potentially engages A1P1 rights. However, A1P1 does not guarantee an open-ended right to acquire further possessions such as benefits in the legacy pension schemes. Any expectation that members may have had that they would be able to continue in their legacy scheme until retirement is no longer legitimate given the Court of Appeal's decision that transitional protections were discriminatory. Moreover, when changes to pension schemes are introduced, there will always be differences in the overall pension provision for different members across the course of their careers, depending on the point at which pensionable service began. Accordingly, these provisions are considered to be compatible with A1P1.

472 With regard to waiving any ceiling breaches of the cost control mechanism that arise from the 2016 cost control valuations, this provision needs to be retrospective because the valuations will be completed before the Bill is enacted, meaning that the rectification process will be triggered before it is possible to stop the process through the Bill. Accordingly, the initial trigger will need to be stopped retrospectively. Whilst this technical measure will have an effect on members' pensions, it will be to prevent the potential reduction of member benefits. Any interference with property rights is therefore expected to be beneficial to members and is, as such, justifiable. In addition, the Bill ensures that the actuarial valuation carried out in relation to the Northern Ireland Local Government Pension Scheme is retrospectively voided, since this was completed before the pause of the cost control mechanism and needs to be reassessed consistently with other public service pension schemes.

473 The measures in Part 2 (Pensions and Banking (Special Provision) Act 2008 Bodies) have the potential to engage A1P1. However, these measures do not of themselves mandate any particular action but confer powers on the Treasury to make regulations. Compliance with

AIP1 would have to be considered by the authority exercising the power to make the regulations at the time those regulations were made. This in itself provides a safeguard against the beneficiaries of the BBS and NRAM pension schemes and other parties to the transfer being adversely affected, as the exercise of these powers will need to ensure that any interference with property rights is justifiable and a proportionate means of achieving a legitimate aim. In order to further protect the interests of the members of the schemes, the Bill requires the authority exercising the power to ensure that the provisions of the new public scheme for payment of pensions or other benefits are, in all material respects, at least as good immediately after the regulations are made as they were before that time, or in the case of Money Purchase Benefits that the value of a person's right to Money Purchase Benefits under the new scheme is at least equivalent to the value of their accrued rights prior to the transfer. This requirement will have to be met in relation to each person who has qualifying accrued rights. Furthermore, the authority exercising the power to establish a new public scheme and transfer rights is required to consult with the relevant trustees before making regulations that would transfer qualifying accrued rights to the new public scheme or which make provision for the transfer of assets or liabilities of the BBS or NRAM Pension Schemes. Further protection is provided by requiring regulations that are subject to consent requirements under the Bill or which make provisions that have retrospective effect to undergo the affirmative resolution procedure.

474 The measures in Part 3 (Judicial Offices) regarding payment of judicial allowances and mandatory retirement age of judges engage Article 6 of the ECHR (right to a fair trial). These measures which relate to the terms and conditions of appointment for judicial office holders are to be considered in the context of the important constitutional principle of judicial independence. The powers of remuneration have already existed in relation to numerous judicial offices in statute and at common law. Judicial allowances are intended to be paid temporarily and in addition to the payment made to them by way of salary which will continue to be protected by the existing salary protection mechanism. Putting the ability to make temporary allowances onto a statutory footing supports the effective functioning of the justice system by ensuring that judges may be appropriately remunerated for additional responsibilities that are likely to be temporary in nature, or to respond to a temporary recruitment and retention requirement. The existence of a mandatory retirement age promotes and preserves judicial independence by not requiring an assessment of a judge's suitability to continue in office, thus maintaining public confidence in the judiciary; it is not considered that this will be undermined by the increase to 75. It is accordingly considered these provisions are compatible with Article 6.

475 The provision on raising the mandatory retirement age of judges also engages Article 8 of the ECHR (right to respect for private and family life). Any interference with Article 8 caused by the existence of a mandatory retirement age for judicial office holders is in accordance with the law and in pursuit of one or more of the legitimate aims set out in Article 8(2) ECHR. There are strong public policy reasons for having a statutory MRA for reasons of judicial independence, as set out above. It is considered that this underlies all of the legitimate aims set out in Article 8(2) ECHR and that any interference would be a proportionate means of achieving those aims, given their importance. Article 8, together with Article 14 of the ECHR, is engaged by the transitional provision allowing reinstatement of magistrates aged between 70 and 75 on commencement; however, it is considered that the difference of treatment on the grounds of age is in pursuit of legitimate aims, and is proportionate to those aims, given the limited time for which the transitional provision will apply. It is considered that these provisions are compatible with Article 8.

Related documents

476 The following documents are relevant to the Bill and can be read at the stated locations:

Part 1

- Public Service Pensions: good pensions that last, November 2011
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last_Command_paper.pdf
- Public Service Pensions Act 2013
<https://www.legislation.gov.uk/ukpga/2013/25/contents/enacted>
- Public Service pensions Act (Northern Ireland) 2014
<https://www.legislation.gov.uk/nia/2014/2/contents>
- Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Consultation, CP 253, July 2020
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Public_Service_Pensions_Consultation.pdf
- Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Government response to consultation, CP373, February 2021
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958635/Public_Sector_Pensions_Consultation_Response.pdf
- Update on the Cost Control Element of the 2016 Valuations, July 2020
[Policy note - cost cap unpause and McCloud costs.docx \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Policy_note_-_cost_cap_unpause_and_McCloud_costs.docx)
- Update on the 2016 and 2020 Valuations, July 2021
[Update on the 2016 and 2020 Valuations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Update_on_the_2016_and_2020_Valuations_-_GOV.UK)
- Senior Salaries Review Body's Major Review of the Judicial Salary Structure 2018 (includes evidence on recruitment and retention issues for the judiciary), October 2018
<https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018>
- Consultation on a reformed judicial pension scheme, July 2020
<https://www.gov.uk/government/consultations/consultation-on-a-reformed-judicial-pension-scheme>
- Consultation on the draft regulations for the reformed judicial pension scheme, July 2021
<https://www.gov.uk/government/consultations/judicial-pension-scheme-2022-scheme-regulations>
- Consultation on the proposed response to *McCloud* (judiciary), July 2020
<https://www.gov.uk/government/consultations/consultation-on-the-proposed-response-to-mccloud>
- Local Government Pension Scheme amendments to statutory underpin written ministerial statement, May 2021
<https://questions-statements.parliament.uk/written-statements/detail/2021-05-13/hcws26>

These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill as introduced in the House of Lords on 19 July 2021 (HL Bill 44)

- MHCLG LGPS England and Wales consultation landing page, July 2020
<https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin>
- Local Government Pensions Scheme Consultation document, July 2020
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901173/Condoc - amendments to LGPS underpin - _FOR_PUBLICATION.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901173/Condoc_-_amendments_to_LGPS_underpin_-_FOR_PUBLICATION.pdf)

Part 2

- Bradford and Bingley plc Transfer of Securities and Property etc Order 2008, Article 26 and paragraph 10 of Schedule 3 to the B (S.I. 2008/2546)
<https://www.legislation.gov.uk/uksi/2008/2546/contents/made>
- BUDGET 2020 DELIVERING ON OUR PROMISES TO THE BRITISH PEOPLE, page 101, paragraph 2.283
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871799/Budget 2020 Web Accessible Complete.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871799/Budget_2020_Web_Accessible_Complete.pdf) -

Part 3

- Consultation on Judicial Mandatory Retirement Age, July 2020
<https://www.gov.uk/government/consultations/consultation-on-judicial-mandatory-retirement-age>
- Senior Salaries Review Body's Report: 2020 (contains information on leadership allowances or judges)
<https://www.gov.uk/government/publications/senior-salaries-review-body-report-2020>
- Senior Salaries Review Body's Report: 2021 (contains information on implementation of leadership allowances and impact of proposed changes to judicial pensions)
<https://www.gov.uk/government/publications/senior-salaries-review-body-report-2021>

Annex A – Territorial extent and application in the United Kingdom

477 The provisions of this Bill extend and apply to England and Wales and Scotland and Northern Ireland with the following exceptions:

Does not extend to England

- Clause 85 (Power of Department of Finance to make scheme for compensation)

Do not extend to Wales

- Clause 85 (Power of Department of Finance to make scheme for compensation)
- Clause 104 (Allowances for judicial office holders)
- Schedule 2 (Allowances payable to judicial office holders)

Does not extend to Scotland

- Clause 85 (Power of Department of Finance to make scheme for compensation)

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Part 1 - Public Service Pension Schemes - Chapter 1	Yes	Yes	No	Yes	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Chapter 2	Yes	Yes	No	Yes	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Chapter 3	Yes	Yes	No	Yes	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 76	In part	In part	No	In part	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 77	In part	In part	No	In part	No	Yes	Yes

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Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Part 1 - Public Service Pension Schemes - Clause 78	Yes	Yes	No	Yes	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 79	In part	In part	No	In part	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 80	In part	In part	No	In part	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 81	Yes	Yes	No	Yes	No	Yes	No
Part 1 - Public Service Pension Schemes - Clause 82	In part	In part	No	In part	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 83	Yes	Yes	No	Yes	No	Yes	No
Part 1 - Public Service Pension Schemes - Clause 84	Yes	Yes	No	Yes	No	Yes	No
Part 1 - Public Service Pension Schemes - Clause 85	No	No	No	No	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 86	Yes	Yes	No	Yes	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 87	Yes	Yes	No	Yes	No	Yes	No
Part 1 - Public Service Pension Schemes - Clause 88	Yes	Yes	No	Yes	No	Yes	Yes

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Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Part 1 - Public Service Pension Schemes - Clause 89	Yes	Yes	No	Yes	No	Yes	No
Part 1 - Public Service Pension Schemes - Clause 90	Yes	Yes	No	Yes	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 91	Yes	Yes	No	Yes	No	Yes	Yes
Part 1 - Public Service Pension Schemes - Clause 92	Yes	Yes	No	Yes	No	Yes	Yes
Part 2 – Pensions and Banking (Special Provision) Act 2008 Bodies	Yes	Yes	No	Yes	No	Yes	No
Part 3 - Judicial Offices - Clause 103	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Part 3 - Judicial Offices - Clause 104	Yes	No	No	Yes	Yes	Yes	Yes
Part 3 - Judicial Offices - Clause 105	Yes	Yes	Yes	Yes	No	Yes	Yes
Part 3 - Judicial Offices - Clause 106	In part	In part	Yes	In part	No	In part	Yes
Part 3 - Judicial Offices - Clause 107	Yes	Yes	Yes	Yes	No	Yes	Yes
Part 3 - Judicial Offices - Clause 108	In part	In part	Yes	In part	No	Yes	Yes
Part 3 - Judicial Offices - Clause 109	Yes	Yes	Yes	Yes	No	Yes	Yes
Part 3 - Judicial Offices - Clause 110	Yes	Yes	Yes	Yes	No	Yes	Yes
Part 3 - Judicial Offices - Schedule 1	In part	In part	Yes	In part	Yes	In part	Yes
Part 3 - Judicial Offices - Schedule 2	Yes	No	No	Yes	Yes	Yes	Yes

These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill as introduced in the House of Lords on 19 July 2021 (HL Bill 44)

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Part 3 - Judicial Offices - Schedule 3	In part	In part	Yes	In part	No	In part	Yes
Part 3 - Judicial Offices - Schedule 4	In part	In part	Yes	In part	No	In part	Yes
Part 4 - General - Clause 111	Yes	Yes	No	Yes	No	Yes	Yes
Part 4 - General - Clause 112	Yes	Yes	No	Yes	No	Yes	Yes
Part 4 - General - Clause 113	Yes	Yes	No	Yes	No	Yes	Yes
Part 4 - General - Clause 114	Yes	Yes	No	Yes	No	Yes	Yes

Subject matter and legislative competence of devolved legislatures

478 In Part 1, Chapter 1:

- Public service pensions are not devolved, with the exception of Northern Ireland. The Bill includes amendments to the relevant Northern Ireland legislation.

479 In Part 1, Chapter 2:

- In terms of current legislation, pension provision for Welsh and most Scottish devolved (and reserved) judicial office holders is provided for in the UK judicial pension schemes and the remedy provisions as described will apply equally to them. In respect of Northern Ireland, while most office holders are members of the UK schemes, a small number of devolved judiciary were provided with a 2015 scheme under Northern Ireland legislation. The Bill includes equivalent amendments to the relevant Northern Ireland legislation which provided for a 2015 reformed scheme to implement fully the *McCloud* remedy.

480 In Part 1, Chapter 3:

- The Local Government Pension Scheme is not devolved, with the exception of Northern Ireland.

481 In Part 1, Chapter 4:

- The general provisions in Chapter 4 are not devolved to Scotland or Wales with the exception of Clause 82 (amendments related to the judiciary). The relevant aspects of pension provision are devolved to Northern Ireland, but there are some provisions that relate to the functions of UK Government (either where pensions are controlled by the UK Government or relate to the functions of the UK Government in administering the remedy). Those provisions that are not devolved to Northern Ireland are Clause 81, 83, 84, 87 and 89.

These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill as introduced in the House of Lords on 19 July 2021 (HL Bill 44)

482 In Part 2:

- None of the provisions detailed in Part 2 are devolved matters.

483 In Part 3:

- The judicial allowances measure provides the power for the Lord Chancellor to determine allowances for posts reserved to the UK Government where this does not exist as well as for the Devolved Administrations in Scotland and Northern Ireland to determine allowances for judicial office holders where this power does not currently exist.
- Provisions to raise the MRA to 75 for certain judicial offices apply UK-wide. Included are a number of judicial offices in Wales, Scotland and Northern Ireland, whose MRA is a devolved matter for Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly respectively.
- Clauses 105 to 109, which make provision for the new sitting in retirement office, apply UK-wide. The judicial office holders in scope of this provision (set out in Schedule 3) include those whose terms of appointment are devolved matters for the Senedd Cymru and Northern Ireland Assembly. Judicial office holders whose terms of appointment are a devolved matter for the Scottish Parliament are not in scope of this provision.

484 In Part 4:

- These provisions relate to the regulations and directions, extent, commencement and short title. These provisions are not devolved, with the exception of Northern Ireland.

PUBLIC SERVICE PENSIONS AND JUDICIAL OFFICES BILL [HL]

EXPLANATORY NOTES

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