

PUBLIC SERVICE PENSIONS AND JUDICIAL OFFICES BILL

Supplementary Memorandum from Her Majesty's Treasury to the Delegated Powers and Regulatory Reform Committee

Introduction

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Public Service Pensions & Judicial Offices Bill (“the Bill”), which was introduced in the House of Lords on the 19 July 2021. It supplements the memorandum dated 27 July 2021 which has already been sent to the Committee.

2. This memorandum relates to Government amendments tabled in the House of Lords on 22 November 2021. It identifies and explains provisions in those amendments that confer powers to make delegated legislation or amend delegated powers already in the Bill. It explains in each case the significance of the amendments and, in relation to amendments with a more substantive effect, it explains why the power has been taken and explains the nature of, and the reason for, the procedure selected.

Chapter 1

Amendments 8, 30, 38, 39, 40, 41, 43, 44, 46, 47, 48, 50, 51: Where a member is deceased

3. Amendments in this group seek to ensure that the Bill operates as intended where a member is deceased. Clause 6 enables an election for new scheme benefits to be made on behalf of a member who is deceased at the point at which Clause 2(1) enters into force. Some of these amendments ensure that the consequences that flow from this, such as payments to the scheme or receipt of payments from the scheme, can be undertaken by another person instead of the late member. Other amendments also ensure that where a member is an active member of a scheme at the point of Clause 2(1) entering into force – and therefore would make a deferred choice election under Clause 9 – but then dies in service before making an election, the remediable service of that member can still be remedied effectively.

4. Specific amendments in this group that impact clauses in the Bill containing delegated powers are set out below. These amendments are not considered to alter significantly the nature of the delegated power originally included in these clauses, or the justification for the delegated power itself and the procedure chosen.

Clause 5 – amendment 8

5. Clause 5 is amended so that the remediable service statement referred to is that provided in respect of a member rather than that sent to a member, to allow for the possibility that the member is deceased (i.e. where a remediable service

statement cannot be sent to the member and another person receives the remediable service statement instead).

Clause 18 - amendment 30

6. Clause 18 is amended so that any amounts of compensation due to the member under Clause 18(6)(c) can be paid to the member's personal representatives if the member is deceased.

Clause 21 – amendments 38, 39, 40, and 41

7. Clause 21 is amended so that where a member has died, compensation can be paid to the member's personal representatives if they incur a compensatable loss. Amendments 42 and 43 also ensure that the provisions in Clause 21(13)(a) and (b) which prevent double compensation or reduction of amounts paid to the scheme apply also to any person who might receive compensation or be liable to pay amounts to the scheme where a member has died.

Clause 23 – amendments 43 and 44

8. Clause 23 is amended to refer to amounts payable by or to a person rather than a member, to account for the possibility that amounts may need to be paid by the scheme to someone other than the member, or by someone other than the member to the scheme, where the member has died.

Clause 24 – amendments 46, 47 and 48

9. Clause 24 is amended so that, where a member has died, the circumstances of the person to whom or by whom the amount is to be paid or the liability is owed, for example a spouse or personal representative, can be taken into account.

Clause 28 – amendments 50 and 51

10. Clause 28 is amended to reflect that where a member has died, persons other than the member may have obtained rights as a result of an immediate detriment remedy relating to the member's remediable service.

Amendments 29, 32 and 37: Technical amendments on tax consequences of remedy

11. Amendments in this group seek to clarify the tax-related consequences that arise at remedy, specifically on the netting-off of tax deductions from contributions. They also clarify the management of scheme payments for annual allowance and lifetime allowance tax charges.

12. Amendments in this group that impact clauses in the Bill that contain delegated powers are set out below. These amendments are not considered to alter significantly the nature of the delegated power originally included in these clauses, or justification for the delegated power itself and the procedure chosen.

Clause 18 – amendment 29

13. To clarify and ensure consistency throughout the Bill, amendment 29 to Clause 18 replaces the word "scheme" with "scheme manager" on Page 16, line 14. This

amendment is to clarify that a payment of compensation would, like other payments of compensation by virtue of Part 1 of the Bill, be paid by the relevant scheme manager.

Clause 20 – amendments 32 and 37

14. Amendment 37 inserts new definitions required for other amendments of this clause.
15. Amendment 32 seeks to ensure that administrative burdens are minimised for members. This amendment enables scheme regulations to make provision about any case where a member's liability to a lifetime allowance charge or an annual allowance charge is paid by the scheme administrator. This will allow a member's benefits to be varied by uplifting or reducing them to take account of amounts that the member has paid in the past or will pay in the future in respect of the lifetime allowance tax charge, or the annual allowance tax charge, via the scheme.

Amendments 9, 10, 11, 33, 35, 36, 37, 38: Clarifying the effect of current clauses

16. These amendments are to ensure that the remedy works correctly in respect of all affected members. In particular, they deal with members whose situations are complex because they have opted out, are receiving payments through an injury or compensation scheme, or are members of more than one scheme in respect of the same employment or office, and for the same period.

Clause 5 – amendments 9,10 and 11

17. The amendments to Clause 5 in this group are intended to:
 - Clarify that scheme regulations may require that, in a case in which an amount has in the past been transferred out of a partnership pension account, an election to opt back in can only be made if a payment in respect of the transfer is made to the Chapter 1 legacy scheme.
 - Clarify the reference in subsection 7 to “the relevant Chapter 1 legacy scheme” referred to in Clause 4.

Clause 20 – amendment 31

18. This amendment enables provision for special cases under Clause 20 to include provision where service may entitle a person to benefits under more than one scheme, for example, some service in the armed forces entitles a person both to early departure payments under an early departure scheme, and then when they are older to pension payments under an Armed Forces pension scheme.

Clause 20 – amendments 33, 34, 35 and 36

Power conferred on: Responsible authority for a Chapter 1 new scheme

Power exercised by: Regulations

Parliamentary Procedure: Negative Procedure (affirmative if amending primary legislation).

Context and purpose

19. Clause 20 makes provision for the responsible authority for a Chapter 1 new scheme to make provision for various types of “special case”. Clause 20 is amended in the following ways:
- a. Amendment 35 enables scheme regulations to make provision about injury and compensation schemes, in particular, by amending the relevant injury and compensation scheme. Certain workforces provide injury and compensation schemes, which pay benefits to those who are injured whilst at work or carrying out their duties. These schemes are set out in Schedule 6 to the Public Service Pensions Act 2013 (PSPA 13)¹. The payments from injury and compensation schemes usually take into account any benefits payable from a connected pension scheme. The retrospective changes to a person’s pension made by Chapter 1 of the Bill may mean that an award from a connected injury or compensation scheme was wrong in so far as it took into account pension benefits that will be changed by the Bill. The award may have been overpaid in previous years and will need to be adjusted in future, once the pension is revised. Amendment 37 ensures that responsible authorities are able to make provision in scheme regulations for the connected scheme to take account of any change to pension benefits payable to a member, attributable to the application of Chapter 1.
 - b. Amendment 36 clarifies the way in which special cases throughout Clause 20 may be dealt with in regulations, to ensure that the power may accommodate the different situations that arise.
 - c. Amendments 33 and 34 will allow provision to be made about specific situations that arise; in particular, in relation to the armed forces. Amendment 33 will allow provision to be made in relation to certain bonus payments for which a member who is, or is eligible to be, a member of a legacy pension scheme may qualify before making an election under Clause 6 or 9. This will mean that, where an election is made under either of those clauses, the proportion of any bonus paid in relation to the period of remediable service must be repaid. This particularly arises in relation to Medical and Dental Officers in the armed forces, who may have remediable service in a particular legacy scheme.
 - d. Amendment 34 will allow provision to be made in relation to former members of the armed forces in receipt of certain ill health awards. In the new Armed Forces pension schemes, certain members who discharge as a result of incapacity for armed forces service by reason of ill health are entitled to payment of a lump sum at the point of discharge; benefits for this level of incapacity were not previously payable to members of a particular reserve pension scheme. On discharge, members become deferred members of the Armed Forces pension schemes in which they have pensionable service (legacy and new), and will be able to make their

¹ It is also HMT’s understanding that in some cases, schools employ provisions by reference to those for local government workers under section 7 of the Superannuation Act 1972.

election under clause 6 or 9 as appropriate. As a result, there may be a long gap between the point at which a member is discharged from the armed forces with an entitlement to an ill-health lump sum and the point at which their retirement pension benefits become payable and they are able to elect to receive new scheme benefits. Amendments 33 and 34 are therefore intended to allow regulations for the Armed Forces pension scheme to make specific provision to deal with this circumstance, for example, to enable an immediate choice election to receive new scheme benefits to be made at the point at which an individual becomes entitled to an ill-health lump sum on the grounds of incapacity for service.

Justification for taking the power

20. The justification for taking the power in Clause 20 remains the same as that originally provided, i.e. that it is necessary to reflect the different provisions in existing scheme regulations. The amendments in relation to injury and compensation schemes are needed to ensure that appropriate provision can be made to deal with the consequences of the retrospective alteration of pension benefits by Chapter 1 Part 1 of the Bill. In addition, the issues in relation to the Armed Forces pension scheme, concerning certain bonus payments and regarding the ill-health lump sums for discharge as a result of incapacity for service, are complex and technical, and do not apply to other schemes. It is therefore appropriate that provision may be made in regulations for the Armed Forces pension scheme to deal with these specific circumstances to allow affected members to make a choice at the appropriate time.

Justification for the procedure

21. The justification for the procedure remains the same as that originally provided in relation to Clause 20, i.e. the negative resolution procedure is appropriate because regulations made under this power are limited in purpose; to ensure that schemes are able to implement the remedy effectively as regards these special cases. Furthermore, this power will be used to amend regulations which themselves have been made under the negative resolution procedure. Before making any regulations under Part 1 of the Bill, the responsible authority must consult those likely to be affected by the regulations, or their representatives (under section 21 PSPA 13). Further, to ensure that this power is applied consistently, Clause 24(1) combined with Clause 24(2)(e) requires it to be exercised in accordance with Treasury directions. Where this power is used to amend primary legislation, section 24(1)(a) of the PSPA 13 requires the affirmative procedure to be used.

Amendments 26, 27, 28, 42, 45, 49: Voluntary Contributions

22. This group of amendments seeks to ensure that the remedy operates as intended where voluntary contributions by members are concerned. Where a member has paid voluntary contributions to a scheme during any period of remediable service, Clause 18 provides the responsible authorities for new schemes with the power to make provision to deal with this in regulations. Some technical amendments are being made to Clause 18. In addition, a new clause is being added after Clause 22, to make provision for members with remediable service to be able to enter into new arrangements to pay voluntary contributions. Consequential changes as a result of

this new clause are being made to Clause 24 and Clause 26 through amendments in this group.

Clause 18 – amendments 26, 27 and 28

23. Amendments 26, 27 and 28 make the following changes to Clause 18:
- Remove the definition of voluntary contributions at subsection 2, which is replaced by a separate amendment to Clause 92, applying a definition of voluntary contributions to all of Part 1 of the Bill
 - Clarify that persons other than the member who pays the voluntary contributions, for example their spouse, may obtain rights in consequence of the contributions.
24. These amendments are not considered to alter significantly the nature of the delegated power originally included in these clauses, or justification for the delegated power itself and the procedure chosen.

After Clause 22: New Clause “Remedial arrangements to pay voluntary contributions to legacy schemes” – amendment 42

Power conferred on: Responsible authority for a Chapter 1 new scheme

Power exercised by: Regulations

Parliamentary Procedure: Negative Procedure (affirmative if amending primary legislation).

Context and purpose

25. This clause makes it possible for legacy scheme regulations to make provision to allow members with remediable service to enter into new arrangements to pay voluntary contributions. This is only intended to be made available to members who did not enter into voluntary contributions arrangements during the remedy period because of the discrimination. Members will need to show that they would have entered into the same or similar arrangements but for the unlawful discrimination. This is to ensure that members are able to receive a full remedy. The possibility of entering into new arrangements may be made available only for a limited period (being one year after a remediable service statement is provided in respect of the member, or such later time as the scheme manager considers reasonable).

Justification for taking the power

26. The rules governing the purchasing of additional benefits through voluntary contributions are set out in scheme regulations. These vary between schemes. Scheme managers will need to determine the types of arrangements that will be made available to members who did not enter into such arrangements during the remedy period because of the unlawful discrimination, and how those arrangements will be implemented prospectively. Therefore, the most effective way of ensuring that schemes are able to implement the remedy as intended in respect of voluntary contributions arrangements is by creating this power.

Justification for the procedure

27. The negative resolution procedure has been proposed here as regulations made under this power are limited in purpose, i.e. to ensure that members are returned to the position they would have been in but for the discrimination. This power is also likely only to be used for a limited time. Furthermore, this power will be used to amend regulations which themselves have been made under the negative resolution procedure. Before making any regulations under Part 1 of the Bill, the responsible authority must consult those likely to be affected by the regulations, or their representatives (under section 21 PSPA 13). It is unlikely that this power will need to be used to amend primary legislation; however, where this is the case, section 24(1)(a) of the PSPA 13 requires the affirmative procedure to be used. Finally, to ensure that this power is applied consistently, Clause 24(1) combined with new Clause 24(2)(ha), inserted by amendment 45 (explained below) requires it to be exercised in accordance with Treasury directions.

Clause 24 – amendment 45

28. Clause 24 is amended in consequence of the addition of the new Clause After Clause 22 on remedial arrangements to pay voluntary contributions to legacy schemes, to ensure that that power must be exercised in accordance with Treasury directions. This is to help ensure consistency in the application of this power across different schemes.

Clause 26 – amendment 49

29. Clause 26 is amended in consequence of the addition of the new Clause After Clause 22 on remedial arrangements to pay voluntary contributions to legacy schemes, to ensure that scheme managers are required to provide information about such arrangements (if any) to members in their remediable service statements.

30. This amendment is not considered to alter significantly the nature of the delegated power originally included in these clauses, or justification for the delegated power itself and the procedure chosen.

Chapter 2

Amendments 84, 85, 86, 87, 91, 92, 93, 98, 99: Where a member is deceased

31. Amendments in this group seek to ensure that the Bill operates as intended where a member is deceased. While Clause 56 enables the scheme to pay compensation to members as a result of the discrimination, the amendments ensure that, where a member has died, compensation can be paid to the late member's personal representatives if they incur a compensatable loss. Similar amendments are made in respect of Clauses 57, 58 and 63 so that the powers in respect of interest and payment process (Clause 57), liabilities owed to a scheme (Clause 58) and remedy provision in cases of 'immediate detriment' (Clauses 63) work as intended where a member has died.

32. The amendments are as follows:

Clause 56 – amendments 84, 85, 86 and 87

33. Clause 56 is amended to ensure that where a member has died, compensation can be paid to the member's personal representatives if they incur a compensatable loss, and reflects the possibility that someone other than the member may have received compensation or obtained a reduction in amounts they have paid to the scheme.

Clause 58 – amendments 91, 92 and 93

34. Clause 58 is amended so that, where a member has died, the circumstances of the person to whom or by whom the amount is to be paid or the liability is owed, for example a spouse or personal representative, can be taken into account.

Clause 63 – amendments 98 and 99

35. Clause 63 is amended to reflect that where a member has died, persons other than the member may have obtained rights as a result of an immediate detriment remedy relating to the member's remediable service.
36. The amendments to Clauses 56, 58 and 63 are not considered to alter significantly the nature of the delegated powers originally included in these clauses, or justification for the delegated powers and the chosen procedure.

Amendments 79 and 83: Technical amendments on tax consequences of remedy

37. Amendments in this group seek to clarify the tax consequences that may arise as a result of the remedy:

Clause 55 – amendment 79

Power conferred on: Responsible authority for a judicial scheme

Power exercised by: Regulations

Parliamentary Procedure: Affirmative (Negative if minor or wholly beneficial and do not amend primary legislation – see s.24 PSPA 13 and s.24 PSPA (NI) 14).

Context and Purpose

38. Amendment 79 generalises the power included in Clause 55(2)(g) regarding annual allowance charges paid by the member via the 'scheme pays' mechanism, so that provision may also be made in respect of a member's lifetime allowance (LTA) charge. This means that the LTA charge would be paid by the scheme administrator in the first instance and the member's benefits from the scheme would be reduced accordingly.

Justification for taking the power:

39. Rules related to 'scheme pays' are set out in scheme regulations and the approach needed to address the LTA charge will be extremely technical. Therefore, the most effective way of ensuring that the scheme is able to implement the remedy

as intended in respect of LTA charges that may arise is by ensuring that the responsible authority can make regulations to do so.

Justification for the procedure:

40. Due to the constitutional position of the judiciary, judicial pension scheme regulations, and amendments to these, are generally made using the affirmative procedure unless they are minor or wholly beneficial and do not amend primary legislation. Before making any regulations under Part 1 of the Bill, the responsible authority must consult those likely to be affected by the regulations, or their representatives (under section 21 PSPA 13). Finally, to ensure that this power is applied consistently, Clause 58(1) requires it to be exercised in accordance with Treasury directions.

Clause 55 – amendment 83

As with amendment 37, this clause inserts new definitions required for the above amendments of this clause.

Amendments 75, 76, 77, 78, 80 and 81: Clarifying the effect of current clauses

Clause 52 – amendment 75

Power conferred on: Responsible authority for a judicial scheme

Power exercised by: Regulations

Parliamentary Procedure: Affirmative (Negative if minor or wholly beneficial and do not amend primary legislation – see s.24 PSPA 13 and s.24 PSPA (NI) 14).

Context and Purpose

41. Amendment 75 ensures that where judicial scheme regulations made under Clause 52 provide for a reduction in benefits payable to a person by an amount equivalent to a liability owed by that person to the scheme, regulations may also provide that the scheme is required to reimburse the ‘employer’ (in this case, the Ministry of Justice (MoJ)). Certain judges who opted out of the judicial 2015 scheme were eligible for a transitional protection allowance which was paid in lieu of pension scheme membership. The power as drafted on introduction enabled scheme regulations to provide that a judge may opt for reduced benefits in the scheme rather than paying the full amount of the transitional protection allowance upfront. As the transitional payment allowance was paid to judges by the MoJ rather than by the scheme, this amendment clarifies the power by providing for regulations to require the scheme to repay such sums to the MoJ.

Justification for taking the power:

42. The detailed rules setting out the level of pension benefits to which members are entitled and reductions where the scheme meets certain liabilities are currently dealt with in scheme regulations. While the principal provisions of the legacy salaried judicial schemes are set out in primary legislation, they are supplemented by regulations on areas of technical detail. Therefore, a limited power to make the required technical changes to those regulations is proposed.

Justification for the procedure:

43. Due to the constitutional position of the judiciary, judicial pension scheme regulations, and amendments to these, are generally made using the affirmative procedure unless they are minor or wholly beneficial and do not amend primary legislation. Before making any regulations under Part 1 of the Bill, the responsible authority must consult those likely to be affected by the regulations, or their representatives (under section 21 PSPA 13). Finally, as set out above, to ensure that this power is applied consistently, Clause 58(1) requires it to be exercised in accordance with Treasury directions.

Clause 54 – amendments 76, 77 and 78

44. Amendments 76 to 78 clarify that the power in Clause 54 for scheme regulations to make provision about the benefits payable in respect of pension sharing orders on divorce can apply to any person who has a pension credit or debit under a legacy judicial scheme rather than specifically referring to pension credit 'members'. This is needed because currently Clause 54 uses the term 'member' whereas the legacy schemes do not use this term.

45. These amendments do not change the purpose of the clause as introduced, but provide clarification given the terms used in the legacy schemes. The justification for this power and its procedure remain as set out in the Delegated Powers Memorandum on introduction of the Bill to the House of Lords.

Clause 55 – amendments 80 and 81

46. Amendment 80 makes it explicit that where regulations provide for a refund of voluntary contributions, any rights associated with those contributions are extinguished. The amendment also provides that where the member is deceased, the scheme must pay the member's representatives the refund.

47. Amendment 81 clarifies the way in which special cases may be dealt with in regulations, for example by ensuring that the power enables existing provisions of the Bill to be disapplied or supplemented in their application to the situations set out in this Clause.

48. These amendments are not considered to alter significantly the nature of the delegated powers originally included in these clauses, or justification for the delegated powers and the chosen procedure.

Amendments 82, 88, 99, 92: Voluntary Contributions

49. This group of amendments seeks to ensure that the remedy operates in respect of members' voluntary contributions.

Clause 55 – amendment 82

50. Amendment 82 removes the definition of voluntary contributions from Clause 55. Instead, Clause 92 is amended to include the definition that will apply to the whole of Part 1 of the Bill. Neither amendment changes the delegated powers in Clause 55.

After Clause 56 – amendment 88

Power conferred on: Responsible authority for a judicial scheme

Power exercised by: Regulations

Parliamentary Procedure: Affirmative (Negative if minor or wholly beneficial and do not amend primary legislation – see s.24 PSPA 13 and s.24 PSPA (NI) 14).

Context and Purpose:

51. In line with similar amendments in Chapter 1, amendment 88 adds a new clause after Clause 56 to make provision for members with remediable service to be able to enter into new arrangements to pay voluntary contributions where they would have done so at the relevant time, if it had not been for the unlawful discrimination. This is to ensure that members are able to receive a full remedy. A consequential change as a result of this new clause is being made to Clause 58.

Justification for taking the power:

52. The detailed rules concerning voluntary contributions are currently dealt with in scheme regulations. While the principal provisions of the legacy salaried judicial schemes are set out in primary legislation, they are supplemented by regulations on areas of technical detail. Therefore, a limited power to make the required technical changes to those regulations is proposed.

Justification for the procedure:

53. Due to the constitutional position of the judiciary, judicial pension scheme regulations, and amendments to these, are generally made using the affirmative procedure unless they are minor or wholly beneficial and do not amend primary legislation. Before making any regulations under Part 1 of the Bill, the responsible authority must consult those likely to be affected by the regulations, or their representatives (under section 21 PSPA 13). Finally, as set out above, to ensure that this power is applied consistently, Clause 58(1) requires it to be exercised in accordance with Treasury directions.

Clause 57 – amendment 89

54. Clause 57 addresses situations where amounts may be payable between a member and their scheme. This clause gives the scheme the power to set interest rates, establish instalment plans, and provide for netting off arrangements. A netting off arrangement provides a simplified method of resolving payments where they are owed in both directions i.e. from the scheme to the member and vice versa. These methods provide flexibility to both the member and the scheme and ensure that members are not placed under undue financial burden.
55. Amendment 89 broadens the definition of “relevant amounts” so that interest may also be applied to payments which are required under a provision of Chapter 2 to be made to a member’s employer, in this case the MoJ, rather than just the scheme. This amendment is necessary as there will be some cases where payments are owed directly by a member to the employer rather than to the scheme.

56. This amendment is not considered to alter significantly the nature of the delegated powers originally included in these clauses, or justification for the delegated powers and the chosen procedure.

Clause 58 – amendment 90

57. Amendment 90 ensures that the power provided for in Clause 58 related to Treasury directions can be used in relation to voluntary contributions arrangements provided by amendment 88.

58. The amendment to Clause 58 ensures that the powers in respect of voluntary contributions are exercised in accordance with Treasury directions, which is consistent with other powers in the Bill.

Amendments 103, 104: Flexible approach to ‘election period’

59. Amendments in this group provide flexibility for the administration of the judicial remedy by enabling there to be more than one ‘election period’. These amendments do not alter the nature of the delegated power.

60. The amendments are as follows:

Clause 65 – amendments 103 and 104

61. Clause 65 is amended so that different election periods can be specified for different descriptions of judge.

Chapter 4

Amendments 111, 112, 113, 114, 115: Technical Amendments relating to closure of legacy schemes

62. These are technical amendments concerning the closure and creation of schemes made under PSPA 13 or PSPA NI 14. They provide details about how governance, valuation and cost cap arrangements will work where a scheme made under PSPA 13 or PSPA NI 14 is closed, and a new one established to replace it, for persons of the same description.

63. The amendments in this group that impact clauses in the Bill containing delegated powers (and/or that contain new powers) are as follows.

After Clause 79 – amendment 111

Power conferred on: Responsible authorities (in relation to scheme regulations) and the Treasury and the Department of Finance in relation to Northern Ireland (in relation to regulations made by them)

Power exercised by: Regulations

Parliamentary Procedure: Negative Procedure (in relation to scheme regulations) and Negative Commons Procedure (in relation to Treasury and Department of Finance regulations).

Context and Purpose

64. PSPA 13 and PSPA NI 14 set out how the governance and valuation framework for pension schemes set up under these Acts should operate. This new clause will ensure that these frameworks operate as intended where a pension scheme established under PSPA 13 or PSPA NI 14 is closed, and a new one is established for persons of the same description. In particular, this is needed to ensure that the governance and valuation frameworks operate effectively for the Judicial Pension Scheme 2022, which will replace the New Judicial Pension Scheme created in 2015.
65. Sections 4, 5, and 7 of PSPA 13 provide for scheme regulations to appoint a scheme manager, pension board and scheme advisory board for schemes. Where a pension scheme is closed, and a new one established, subsections (2) to (4) of the new clause will restrict the powers under s.4(1), 5(1) and 7(1) of PSPA 13 to allow existing governance frameworks to be responsible for the new, connected scheme. That is, where a scheme manager, pension board, or scheme advisory board has already been established for the scheme that is being closed, scheme regulations in relation to persons of the same description may provide for these boards to also have responsibilities for the new scheme. Subsections (9) to (11) of this clause have the equivalent effect for NI.
66. Section 11 PSPA requires scheme regulations to provide for actuarial valuations to be made for the scheme, and section 12 provides for how the cost control mechanism should operate for each scheme. Subsection (5) of this clause restricts the power under s.11(1) of PSPA 13 by removing the requirement for standalone valuations to be carried out for a scheme that is connected with another scheme that has standalone valuations. Subsection (12) has the equivalent effect for NI.
67. Subsection (6) inserts a new section 12A after s.12 of PSPA 13. New section 12A also removes the requirement for scheme regulations to provide for actuarial valuations of a restricted scheme, and which has been specified in Treasury Regulations for the purposes of this section. For such schemes, section 12A also removes the requirement for an employer cost cap to be set. These processes are unnecessary because the costs associated with connected or restricted schemes will be considered as part of the new scheme's valuation process where appropriate.
68. This amendment is not considered to alter significantly the nature of any existing delegated powers, or the justification for those delegated powers. This amendment restricts the scope of existing delegated powers in relation to schemes which have been closed to future accrual.
69. However, the amendment does include a new delegated power under new section 12A(5). This power allows the Treasury to specify in regulations that section

12A applies to a restricted scheme made under PSPA 13. The same power is conferred on Northern Ireland's Department of Finance in respect of restricted schemes made under PSPA NI 14. This power enables the Treasury or Department of Finance in certain circumstances to disapply the sections of PSPA 13 or PSPA NI 14 that require schemes to undergo the valuations process and set an employer cost cap to be used for the purpose of measuring changes in the costs of those schemes. Where a scheme is restricted and it has been specified in regulations that section 12A applies to that scheme, these will no longer be required.

Justification for taking the power

70. There is no need to undertake future valuations in respect of schemes established under PSPA 13 or PSPA NI 14 that are closed to future accrual. This is because the costs associated with closed schemes will be considered as part of the new scheme's valuation process where appropriate. Where a scheme has closed to future accrual, the Treasury or the Department of Finance needs the power to disapply the sections of PSPA 13 or PSPA NI 14 that require those unnecessary tasks to be undertaken.

Justification for the procedure

71. The procedure proposed is consistent with the existing procedures. Scheme regulations are made under the negative procedure unless required otherwise as set out in s.24 PSPA 13 and s.24 PSPA NI 14. The proposal of the negative Commons procedure in relation to new s.12A PSPA 13 and s.12A PSPA NI 14 is also consistent with existing Treasury regulations that are made in relation to the cost cap under s.12(9) PSPA 13, and existing regulations made by the Department of Finance under s.12(9) PSPA NI 14.

Clause 80 – amendments 113 and 115

72. The framework for how the cost control mechanism operates is set out in s.12 of PSPA 13. Clause 80 of this Bill as introduced amends s.12 PSPA 13 to: i) ensure that no member benefits are cut as a result of any ceiling breaches which occur once the 2016 valuation process is finalised; and ii) provides the Treasury and Department of Finance in NI with a narrow and limited power to ensure that any actions that schemes may take in future (from the 2020 valuations onwards) to bring costs back to target following a breach have been assessed by the scheme actuary to bring costs back to the target cost, as measured in accordance with Treasury directions. Further background and detail on the cost control mechanism and the effect of Clause 80 can be found in the original delegated powers memorandum (dated 27 July 2021).
73. Amendments 113 and 115 amend Clause 80 to allow the employer cost cap to be set up to a year after the completion of the new scheme's first valuation. In effect, they make it possible for the employer cost cap to be set after regulations that contain the new scheme are created. One reason this is needed is that regulations containing the new judicial pension scheme will be created before the completion of the scheme's first valuation. However, the gap between the making of a new scheme's regulations and the completion of its first valuation will present a problem for the making of any new scheme.

74. These amendments are not considered to alter significantly the nature of the delegated power originally included in this clause, or the justification for the delegated power itself.

Amendments 116 and 118: Clarifying the effect of current clauses

Clause 86 – amendment 116

Power conferred on: Responsible authority for a judicial scheme

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure (Negative if minor or wholly beneficial and does not amend primary legislation – see s.24 PSPA 13 and s.24 PSPA (NI) 14).

Context and Purpose:

75. Amendment 116 is needed so that regulations made under Clause 86 are capable of including provision about interest and payment processes in addition to the complex matters already provided for.

Justification for taking the power:

76. The issues covered by Clause 86 are complex matters which are currently dealt with in scheme regulations. For some of the salaried legacy schemes, while the principal scheme provisions are in primary legislation, they are supplemented by secondary legislation on more detailed matters. Therefore, a limited power to make the required technical changes to those regulations is proposed.

Justification for the procedure:

77. Due to the constitutional position of the judiciary, judicial pension scheme regulations, and amendments to these, are generally made using the affirmative procedure unless they are minor or wholly beneficial and do not amend primary legislation. Before making any regulations under Part 1 of the Bill, the responsible authority must consult those likely to be affected by the regulations, or their representatives (under section 21 PSPA 13).

Clause 90 – amendment 118

Power conferred on: The Treasury

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure for regulations that amend, repeal or revoke primary legislation, negative procedure in all other cases.

Context and Purpose:

78. Clause 90 provides a power for the Treasury to make regulations that are consequential upon Part 1 of the Bill. The power is intended to be used where this Bill interacts with other legislation, both primary and secondary, to ensure that any consequential matters which would otherwise prevent, limit or conflict with the changes made by the Bill can be addressed. Clause 90 is amended so that regulations using the power may make retrospective provision.

Justification for taking the power:

79. Pension provision in relation to the public service pension schemes has developed over many decades and does not on the whole envisage retrospective changes to members' entitlements being made. However, as the retrospective remedy (implemented by Chapters 1, 2 and 3 of Part 1 of the Bill) alters the legal rights of eligible members of public service pension schemes retrospectively, with effect from 1 April 2015 (or 1 April 2014 in respect of certain local government schemes), by treating them as having been in a different pension scheme to the pension scheme they were previously thought to have been in, it is necessary for this power to be able to be used in relation to times before regulations under Clause 90 are made.

Justification for the procedure:

80. This power can only be used to make consequential amendments that arise in relation to Part 1 of this Bill. These changes will be by their nature technical. In line with usual practice, it is proposed that the affirmative procedure should apply in respect of changes to primary legislation, whilst the negative procedure should apply for changes to secondary legislation.

Her Majesty's Treasury
22 November 2021