

# PUBLIC SERVICE PENSIONS AND JUDICIAL OFFICES BILL [HL]

## EXPLANATORY NOTES ON COMMONS AMENDMENTS

### What these notes do

These Explanatory Notes relate to the Commons amendments to the Public Service Pensions and Judicial Offices Bill [HL] as brought from the House of Commons on 23 February 2022 (HL Bill 118).

- These Explanatory Notes have been prepared by Her Majesty's Treasury, the Ministry of Justice and the Department for Levelling Up, Housing and Communities in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on them. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes, like the Commons amendments themselves, refer to Bill 211, the Bill as first printed for the Commons.
- These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not intended to be, a comprehensive description of the Commons amendments.
- Commons Amendments 1 to 53 and 55 to 81 were tabled in the name of the Chief Secretary to the Treasury.
- Commons Amendment 54 was tabled by The Rt. Hon. Robert Jenrick MP, and was supported by the Government.

## Table of Contents

Subject	Page of these Notes
Commons Amendments to Clause 1: Meaning of “remediable service”	4
Commons Amendment 1, 2, and 3: Eligibility criteria	4
Commons Amendment to Clause 4: Meaning of “the relevant Chapter 1 legacy scheme” etc	4
Commons Amendment 4: Commencement	4
Commons Amendment to Clause 6: Immediate choice to receive new scheme benefits	4
Commons Amendment 5: Commencement	4
Commons Amendment to Clause 10: Deferred choice to receive new scheme benefits	4
Commons Amendment 6: Commencement	4
Commons Amendments to Clause 14: Pension benefits and lump sum benefits: pensioner and deceased members	4
Commons Amendments 7 and 8: Commencement	4
Commons Amendments to Clause 15: Pension contributions: pensioner and deceased members	5
Commons Amendments 9 and 10: Commencement	5
Commons Amendments to Clause 16: Pension contributions: active and deferred members (immediate correction)	5
Commons Amendments 11, 12 and 13: Commencement	5
Commons Amendment to Clause 17: Pension contributions: active and deferred members (deferred correction)	5
Commons Amendment 14: Commencement	5
Commons Amendments to Clause 22: Further powers to make provision about special cases	5
Commons Amendments 15, 19 and 20: Surviving children	5
Commons Amendment 16: Teachers’ Pension Scheme	5
Commons Amendment 17: Partnership Pension Accounts	6
Commons Amendments 18 and 21: Redundancy	6
Commons Amendment to Clause 23: Power to pay compensation	6
Commons Amendment 22: Commencement	6
Commons Amendments to Clause 25: Remedial arrangements to pay voluntary contributions to legacy schemes	6
Commons Amendments 23 and 24: Commencement	6
Commons Amendments to Clause 27: Treasury Directions	6
Commons Amendments 25 and 26	6
Commons Amendment to Clause 30: Section 61 of the Equality Act 2010 etc	6
Commons Amendment 27: Commencement	6
Commons Amendments to Clause 38: Interpretation of Chapter	7
Commons Amendments 28 and 29: Movement of definitions	7
Commons Amendment 30: Multiple employments	7
Commons Amendments to Clause 39: Meaning of “remediable service”	7
Commons Amendments 31 and 32	7
Commons Amendments to Clause 62: Treasury Directions	7
Commons Amendments 33 and 34	7
Commons Amendment to Clause 75: Interpretation of Chapter	7
Commons Amendment 35	7

*These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill [HL] as brought from the House of Commons on 23 February 2022 (HL Bill 118)*

Commons Amendment to Clause 77: Meaning of “remediable service”	7
Commons Amendment 36	7
Commons Amendment to Clause 78: Power to pay benefits equivalent to final salary benefits	7
Commons Amendment 37	7
Commons Amendments before Clause 79	8
Commons Amendment 38: Meaning of “remediable service”	8
Commons Amendment 39: Power to pay final salary benefits	8
Commons Amendment 40: Section 78: transitional provision	9
Commons Amendment 41: Pension credit members	9
Commons Amendment 42: Further powers to make provision about special cases	9
Commons Amendment 43: Power to pay compensation	10
Commons Amendment 44: Indirect compensation	10
Commons Amendment 45: Interest and process	10
Commons Amendment 46: Treasury directions	10
Commons Amendment after Clause 79	11
Commons Amendment 47: Interpretation of Chapter	11
Commons Amendments after Clause 83: Cost control mechanism	11
Commons Amendment 48: Amendments relating to employer cost cap	11
Commons Amendment 49: Operation of employer cost cap in relation to 2016/17 valuation	13
New financial implications	13
Commons Amendments to Clause 84: Amendments relating to scheme regulations	14
Commons Amendments 50 and 51	14
Commons Amendment to Clause 86: Amendments relating to employer cost cap	14
Commons Amendment 52	14
Commons Amendments after Clause 89	14
Commons Amendment 53: Amendments relating to pension schemes for members of the Senedd	14
Commons Amendment 54: Guidance to public service pension scheme managers on investment decisions	14
Commons Amendments to Clause 90: Power of Treasury to make scheme for compensation	14
Commons Amendments 55 to 57	15
Commons Amendments to Clause 91: Power of Department of Finance to make scheme for compensation	15
Commons Amendments 58 to 60	15
Commons Amendment after Clause 95	15
Commons Amendment 61: Parliamentary procedure for judicial schemes: transitory provision	15
Commons Amendments to Clause 98: Interpretation of Part	15
Commons Amendments 62 and 64: Movement of definitions	15
Commons Amendments 63 and 67: Teachers excess service	15
Commons Amendment 65: Local government contracting-out transfers	15
Commons Amendment 66: Definition	15
Commons Amendments to Clause 104: Transfer of other pensions and benefits	15
Commons Amendments 68 and 69: Transfer of pensions and other benefits from Bradford & Bingley Limited	15
Commons Amendments to Clause 106: Information	16
Commons Amendments 70 and 71: Transfer of pensions and other benefits from Bradford & Bingley Limited	16
Commons Amendment to Clause 117: Regulations and directions	16
Commons Amendment 72	16
Commons Amendment to Clause 118: Limiting extent of clauses	16
Commons Amendment 73	16
Commons Amendments to Clause 119: Commencement	16
Commons Amendment 74: Commencement	16
Commons Amendment 75 to 77: Regulations and directions	16
Commons Amendment to Clause 120: Short title	16

*These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill [HL] as brought from the House of Commons on 23 February 2022 (HL Bill 118)*

Commons Amendment 78	16
Commons Amendments to Schedule 1: Retirement date for holders of judicial offices etc	17
Commons Amendment 79: Reflecting the new name of Welsh Tribunal	17
Commons Amendment 80: Correcting cross-reference	17
Commons Amendment to Schedule 3: Judicial offices	17
Commons Amendment 81: Reflecting the new name of Welsh Tribunal	17

## **Commons Amendments to Clause 1: Meaning of “remediable service”**

### **Commons Amendment 1, 2, and 3: Eligibility criteria**

- 1 Amendments 1 and 3 (which is consequential on amendment 2) update the second condition in clause 1(4)(c) so that it includes ‘excess teacher service’, meaning that ‘excess teacher service’ is remediable service and therefore subject to the provisions in clause 2(1). This ensures that the member’s excess service can be rolled back to the appropriate scheme.
- 2 Commons Amendment 2 would provide that a break in service for an individual does not count towards a disqualifying break in service where, during that period, the member was in a broadly comparable scheme as a result of being entitled to pension protection whilst contracted out of local government.

## **Commons Amendment to Clause 4: Meaning of “the relevant Chapter 1 legacy scheme” etc**

### **Commons Amendment 4: Commencement**

- 3 Amendment 4 updates the definition of the ‘relevant Chapter 1 legacy scheme’ for a case in which a teacher has excess teacher service and specifies that this is the Local Government Pension Scheme (LGPS). This allows the member’s excess service to be rolled back to the LGPS where the member would have been eligible to join the LGPS had they not been moved to the reformed scheme. This ensures that the member’s excess service will be rolled back to the correct scheme.

## **Commons Amendment to Clause 6: Immediate choice to receive new scheme benefits**

### **Commons Amendment 5: Commencement**

- 4 Amendment 5 removes the words “in relation to the scheme” in Clause 6. This deals with the possibility that the power in Clause 129(2) to commence Chapter 1 before 1 October 2023 may be exercised on different dates for different cohorts of member within a scheme, as well as on different dates for different schemes.

## **Commons Amendment to Clause 10: Deferred choice to receive new scheme benefits**

### **Commons Amendment 6: Commencement**

- 5 Amendment 6 removes the words “in relation to the scheme” in Clause 10. This deals with the possibility that the power in Clause 129(2) to commence Chapter 1 before 1 October 2023 may be exercised on different dates for different cohorts of member within a scheme, as well as on different dates for different schemes.

## **Commons Amendments to Clause 14: Pension benefits and lump sum benefits: pensioner and deceased members**

### **Commons Amendments 7 and 8: Commencement**

- 6 Amendments 7 and 8 remove the words “in relation to the scheme” in Clause 14. This deals with the possibility that the power in Clause 129(2) to commence Chapter 1 before 1 October 2023 may be exercised on different dates for different cohorts of member within a scheme, as

well as on different dates for different schemes.

## **Commons Amendments to Clause 15: Pension contributions: pensioner and deceased members**

### **Commons Amendments 9 and 10: Commencement**

- 7 Amendments 9 and 10 remove the words “in relation to the scheme” in Clause 15. This deals with the possibility that the power in Clause 129(2) to commence Chapter 1 before 1 October 2023 may be exercised on different dates for different cohorts of member within a scheme, as well as on different dates for different schemes.

## **Commons Amendments to Clause 16: Pension contributions: active and deferred members (immediate correction)**

### **Commons Amendments 11, 12 and 13: Commencement**

- 8 Amendments 11, 12 and 13 remove the words “in relation to the scheme” in Clause 16. This deals with the possibility that the power in Clause 129(2) to commence Chapter 1 before 1 October 2023 may be exercised on different dates for different cohorts of member within a scheme, as well as on different dates for different schemes.

## **Commons Amendment to Clause 17: Pension contributions: active and deferred members (deferred correction)**

### **Commons Amendment 14: Commencement**

- 9 Amendment 14 removes the words “in relation to the scheme” in Clause 17. This deals with the possibility that the power in Clause 129(2) to commence Chapter 1 before 1 October 2023 may be exercised on different dates for different cohorts of member within a scheme, as well as on different dates for different schemes.

## **Commons Amendments to Clause 22: Further powers to make provision about special cases**

### **Commons Amendments 15, 19 and 20: Surviving children**

- 10 Commons Amendments 15 allows scheme regulations made under Clause 22 to make provision about the benefits payable where a member dies, in respect of surviving children who do not live in the same household as a surviving adult. This will allow schemes to deliver the policy set out in the Government’s consultation and consultation response, which set out that where a member has died and a child pension is already in payment which would otherwise be impacted by a decision taken by someone outside the child’s household, that pension will be protected.
- 11 Amendments 19 and 20 define the terms “adult survivor” and “child” respectively.

### **Commons Amendment 16: Teachers’ Pension Scheme**

- 12 Amendment 16 extends the power to make provision about special cases in Clause 22 to enable provision to be made in scheme regulations about cases in which a person has remediable service as a teacher which is excess teacher service or cases in which a person has pensionable service as a teacher which takes place in the remedy period but is not remediable service (i.e. teachers who would not be eligible to join the LGPS because there was no existing relationship between the LGPS and the employer).
- 13 This amendment will allow the teachers’ pension scheme to process excess service cases using

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existing provisions of the bill, such as Clauses 14-17 to correct contributions and benefits whether the service is pensionable in the LGPS or not.

### **Commons Amendment 17: Partnership Pension Accounts**

- 14 Commons Amendment 17 allows scheme regulations made under Clause 22 to make provision for cases in which a member has a Partnership Pension Account. Clause 5 of the Bill already provides for members of the civil service, who opted to have a Partnership Pension Account, to be able to be reinstated to the appropriate legacy scheme where they wish, and meet any criteria that may be specified in scheme regulations. However, there may be cases where that is not possible, for example where the member has died. The amendment therefore provides schemes with powers to make provision to take a different approach where needed to provide a remedy in such cases.

### **Commons Amendments 18 and 21: Redundancy**

- 15 Commons Amendment 18 allows scheme regulations made under Clause 22 to make provision for cases in which a person who has remediable service is made redundant. This will ensure that schemes are able to make provision for a member to make their deferred choice to receive new scheme benefits at the time their employment ends. This approach will be needed in cases where the member's redundancy payment is calculated by reference to the pension scheme in which they have remediable service, which is the case for example in the Armed Forces.
- 16 Amendment 21 defines the term "made redundant".

### **Commons Amendment to Clause 23: Power to pay compensation**

#### **Commons Amendment 22: Commencement**

- 17 Amendment 22 removes the words "in relation to the scheme" in Clause 23. This deals with the possibility that the power in Clause 129(2) to commence Chapter 1 before 1 October 2023 may be exercised on different dates for different cohorts of member within a scheme, as well as on different dates for different schemes.

### **Commons Amendments to Clause 25: Remedial arrangements to pay voluntary contributions to legacy schemes**

#### **Commons Amendments 23 and 24: Commencement**

- 18 Amendments 23 and 24 remove the words "in relation to the scheme" in Clause 25. This deals with the possibility that the power in Clause 129(2) to commence Chapter 1 before 1 October 2023 may be exercised on different dates for different cohorts of member within a scheme, as well as on different dates for different schemes.

### **Commons Amendments to Clause 27: Treasury Directions**

#### **Commons Amendments 25 and 26**

- 19 Commons Amendments 25 and 26 would require the Department of Finance in Northern Ireland to consult the Government Actuary before issuing directions concerning the calculation and payment of interest. The change ensures consistency with directions given by the Treasury in respect of Great Britain.

### **Commons Amendment to Clause 30: Section 61 of the Equality Act 2010 etc**

#### **Commons Amendment 27: Commencement**

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- 20 Amendment 27 removes the words “in relation to the scheme” in Clause 30. This deals with the possibility that the power in Clause 129(2) to commence Chapter 1 before 1 October 2023 may be exercised on different dates for different cohorts of member within a scheme, as well as on different dates for different schemes.

## **Commons Amendments to Clause 38: Interpretation of Chapter**

### **Commons Amendments 28 and 29: Movement of definitions**

- 21 Commons Amendments 28 to 29 would remove definitions from Clause 38 so that they can be moved to Clause 98 and have effect in relation to the whole of Part 1, rather than just Chapter 1. The amendments are consequential to the introduction of several amendments relating to remedy in local government made under Chapter 3.

### **Commons Amendment 30: Multiple employments**

- 22 Commons Amendment 30 is a technical amendment to provide that Clause 38(2) regarding service in multiple employments applies only to Chapter 1. An equivalent provision relating to local government would be added under Amendment 47.

## **Commons Amendments to Clause 39: Meaning of “remediable service”**

### **Commons Amendments 31 and 32**

- 23 Commons Amendments 31 and 32 would clarify that the service referred to in Clause 39 will meet the second condition in Clause 39 even if it falls within more than one of the paragraphs contained in that condition.

## **Commons Amendments to Clause 62: Treasury Directions**

### **Commons Amendments 33 and 34**

- 24 Commons Amendments 33 and 34 to Clause 62 would ensure that the consultation requirement in subsection (4) of the Clause applies also to directions given under the Clause by the Department of Finance in Northern Ireland.

## **Commons Amendment to Clause 75: Interpretation of Chapter**

### **Commons Amendment 35**

- 25 Commons Amendment 35 would move a definition from Clause 75 to Clause 98 in order that it applies for the purposes of the whole of Part 1 of the Bill.

## **Commons Amendment to Clause 77: Meaning of “remediable service”**

### **Commons Amendment 36**

- 26 Commons Amendment 36 would delete Clause 77. See Amendment 38 for details of the new Clause which would replace Clause 77.

## **Commons Amendment to Clause 78: Power to pay benefits equivalent to final salary benefits**

### **Commons Amendment 37**

- 27 Commons Amendment 37 would delete Clause 78. See Amendment 39 for details of the new

Clause which would replace Clause 78.

## Commons Amendments before Clause 79

### Commons Amendment 38: Meaning of “remediable service”

28 Commons Amendment 38 would introduce a replacement version of Clause 77. The new version of Clause 77 would continue to define remediable service for the purposes of determining whether somebody is in scope of the legislation, and the service which is in scope, but with the following changes:

- Subsection (5) would expand the eligibility criteria to align with that provided for in Chapter 1 for other public service pension schemes. Under the revised approach, members would not have to have been in active service on 31st March 2012 to qualify for protection. Instead, members who were in pensionable service on or before 31 March 2012 would be in scope of remedy if they leave local government and return within five years, as well as meeting all other qualifying criteria.
- Subsection (3) would clarify that remediable service ends at a person’s local government legacy scheme normal pension age (normally 65), if that date is earlier than 31 March 2022, and they met the third condition under a local government legacy scheme. Alternatively, if that member did not meet the third condition under a local government legacy scheme, the remediable service would end at the earlier of their 65<sup>th</sup> birthday and 31 March 2022. This approach reflects how transitional protection works in local government currently, where transitional protection has always ended at the legacy scheme’s normal pension age. In line with the Government’s 2020 consultation proposals, the new Clause retains this approach, subject to an overall requirement that underpin protection must cease for all members by 31 March 2022.
- Subsection (8) would ensure that the remedy applies correctly to staff who were compulsorily transferred from their employer as a result of outsourcing and were entitled to pensions protection (under either the Fair Deal policy or local government protections). It is consistent with the approach being taken in respect of Chapter 1 schemes. For these members, the time they spent in a private sector broadly comparable pension scheme would not count towards a ‘disqualifying gap in service’ when assessing their eligibility for the remedy.

### Commons Amendment 39: Power to pay final salary benefits

29 Commons Amendment 39 would introduce a replacement version of Clause 78. The new version of Clause 78 would continue to allow local government scheme regulations to make provision that benefits determined by reference to a member’s remediable service are final salary benefits. This power would give responsible authorities the capacity to remove the discriminatory provisions from local government, where transitional protection was different from that provided in other schemes. All active LGPS members in England and Wales have participated in the new, career average scheme since 1 April 2014, under regulations deemed to be made under Public Service Pensions Act (PSPA) 2013 provisions, or since 1 April 2015 for the LGPS in Scotland and the LGPS in Northern Ireland. In all LGPSs, older members were entitled to an underpin calculation upon leaving service, whereby their career average pension would be compared against what they would have had in the final salary scheme, with the member receiving an addition to their career average pension if that would have been higher. This power would enable responsible authorities to make regulations that provide for younger qualifying members to have the same protection.

- 30 Changes in the new Clause would adjust the powers to make scheme regulations. Subsection (3) would permit scheme regulations to require that separate periods of pensionable service are aggregated or 'joined up' for underpin protection to apply. This reflects existing policy in the local government schemes which are locally administered, where scheme members who have multiple periods of pensionable service are generally treated separately unless they are aggregated together. Allowing scheme regulations to require aggregation will ensure that underpin protection can be provided in line with this policy. Subsections (4) and (5) expand the circumstances in which scheme regulations may permit that service transferred to the scheme can buy a final salary right in the LGPS.

#### Commons Amendment 40: Section 78: transitional provision

- 31 Commons Amendment 40 would introduce a new Clause to the Bill, which would provide for transitional provisions relating to Clause 78. In particular, this Clause would ensure that local government transitional protection provisions made under PSPA 2013 or PSPA(NI) 2014, which could have been made under Clause 78, are treated as having been made under Clause 78. This would ensure that transitional protection for all protected local government scheme members is treated as being provided for under this Bill. Subsection (2) clarifies that this would not affect the continued operation of any scheme regulations made before Clause 78 comes into force.

#### Commons Amendment 41: Pension credit members

- 32 Commons Amendment 41 would introduce a new Clause to the Bill. This Clause would provide for scheme regulations to make provision regarding pension credit members. 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.
- 33 This power would therefore enable the responsible authority for a local government new scheme to amend provisions to award any additional credit due to the pension credit member as a result of the remedy. However, it would not give schemes the power to amend the pension sharing order itself.
- 34 To ensure that this power is applied consistently with other public service pension schemes, subsections (1) and (2)(a) of Amendment 46 would require the power to be exercised in accordance with Treasury directions.

#### Commons Amendment 42: Further powers to make provision about special cases

- 35 Commons Amendment 42 would introduce a new Clause to the Bill. This Clause would provide for scheme regulations to make provision regarding two types of special case.
- 36 The first would enable scheme regulations to make provision about cases where a person has excess teacher service. Excess teacher service would be defined through Amendments 63 and 67 and refers to service that is in excess of the maximum that could be accrued under a teachers' Chapter 1 legacy scheme. Depending on the circumstances, that service may have been pensionable in a local government new scheme or in the teachers' new scheme. To ensure a consistent approach to this group, Amendment 4 would amend Clause 4 to provide that any remediable service which is excess teacher service should be pensionable in a local government new scheme, where they may be entitled to underpin protection, if applicable.

Due to the unique circumstances in which these members have become eligible for membership of the local government new scheme and the complexities that may arise from their transition to the local government scheme, this new Clause would ensure that responsible authorities are able to make specific provision in scheme regulations relating to these members.

- 37 The second would enable 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 PSPA 2013 or Schedule 6 to PSPA(NI) 2014. 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 3 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. This new Clause would ensure 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 3.

### Commons Amendment 43: Power to pay compensation

- 38 Commons Amendment 43 would introduce a new Clause to the Bill. This Clause would enable scheme regulations to make provision allowing scheme managers to pay compensation in respect of compensatable losses incurred by local government scheme members. Most compensatable losses would be for the schemes to pay, for example, where the loss is attributable to the value of pension rights payable from the scheme. Other losses would normally fall to the employer to pay, for example losses attributable to a breach of the non-discrimination rule. The power at subsection (2) of the new Clause would allow scheme regulations to make provision for a scheme employer to reimburse the scheme where it is considered that the employer rather than the pension scheme should meet the cost.

### Commons Amendment 44: Indirect compensation

- 39 Commons Amendment 44 would introduce a new Clause to the Bill. There may be instances where, for example, a member has paid a tax charge using 'scheme pays' which results in the amount of benefits they would have received being reduced at retirement. In such circumstances, this Clause would provide a power for local government new scheme regulations to make provision so that scheme managers can give members entitlements to additional benefits instead of cash compensation. These additional benefits would be paid when the member retires.

### Commons Amendment 45: Interest and process

- 40 Commons Amendment 45 would introduce a new Clause to the Bill. Where sums are owed to members, for example relating to past pension benefits, this Clause would allow regulations to be made which will set out the process for such sums to be paid. As the remedy period could span eight years, interest would be added to amounts payable by schemes.
- 41 This power would allow interest to be calculated and paid. Regulations under this section would have to be exercised in accordance with Treasury directions and, in the case of regulations that relate to the calculation and payment of interest, following consultation with the Government Actuary (under subsections (1), (2)(f) and (4) of the new Clause at Amendment 46).

### Commons Amendment 46: Treasury directions

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- 42 Commons Amendment 46 would introduce a new Clause to the Bill. This Clause would provide that the powers in relation to the matters covered in Amendments 41, 42, 43, 44 and 45 must be exercised in accordance with Treasury directions. This would ensure that, where Treasury ministers (or in relation to Northern Ireland the Department of Finance), who are responsible for policy on public service pensions, consider that a consistent approach is necessary or desirable, the Treasury, or in relation to Northern Ireland the Department of Finance (under Amendment 47), may give directions to schemes.
- 43 Subsection (2)(a) is concerned with pensions credit members. Subsection 2(b) is concerned with special cases. Subsections (2)(c), (d) and (e) are concerned with matters relating to payments made to members through direct or indirect compensation. Subsection (2)(f) relates to the power to make scheme regulations concerning interest to be calculated and paid on amounts owed to members.
- 44 The provisions in this Clause would be consistent with the approach provided for in Clause 27 in respect of Chapter 1 schemes and ensure that HM Treasury and the Department of Finance can provide for consistent approaches between schemes on similar issues.

## **Commons Amendment after Clause 79**

### **Commons Amendment 47: Interpretation of Chapter**

- 45 Commons Amendment 47 would introduce a new Clause to the Bill, providing definitions for terms found in this Chapter.

## **Commons Amendments after Clause 83: Cost control mechanism**

- 46 PSPA 2013 and PSPA NI 2014 provide for the operation of the cost control mechanism (CCM). 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 (or member contributions are reduced/increased). 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’.
- 47 Commons Amendments 48 and 49 would reproduce, with technical changes, all elements of old Clause 86 (“Amendments relating to employer cost cap”), including the provisions related to the waiving of ceiling breaches at the 2016/17 valuations, which would be reinserted by Commons Amendment 49. Commons Amendment 48 would also set the legislative framework for two of the Government’s proposed reforms to the CCM and make further minor technical changes to PSPA 2013.

### **Commons Amendment 48: Amendments relating to employer cost cap**

- 48 By amending s.12 of PSPA 2013, Commons Amendment 48 would set the legislative framework for the implementation of two of the Government’s three proposed reforms to the CCM, namely the reformed scheme only design and the economic check. Amendment 48 would confer powers on HM Treasury (or Northern Ireland’s Department of Finance) to implement the two reforms through Directions. It would also make some minor technical changes to PSPA 2013.
- 49 Subsection (2) would provide for the employer cost cap to be set within a year of the date on which a scheme’s first valuation (i.e., the valuation that includes a calculation of the employer cost cap) is completed. In effect, this would allow the employer cost cap to be set after the regulations of a new scheme are made.

- 50 Subsection (3) would clarify that “employer cost cap” in s.12 of PSPA 2013 refers to the rate set by virtue of s.12(1) PSPA 2013.
- 51 Subsection (4) would clarify that employer cost caps are set for schemes made under s.1 of PSPA 2013 and that how changes in costs are to be measured is to be in accordance with Treasury Directions.
- 52 Subsection (5)(a) and (b) would make further minor clarifications by substituting “the cap” with “the employer cost cap of the scheme” and “subsequent valuations” with “the second or any subsequent valuation”.
- 53 Subsections (5)(c) and (7) relate to the reformed scheme only design. Currently, s.12(4) PSPA 2013 provides for Treasury Directions to determine the extent to which costs or changes in the costs of any connected scheme are to be taken into account in the cost control element of a scheme’s valuation. Subsection 5(c) would make a minor amendment to s.12(4)(c) PSPA 2013, clarifying that Treasury Directions may determine whether and to what extent costs or changes in the costs of connected schemes are to be considered by the CCM. This would make it explicit that Treasury Directions may provide for the costs or changes in costs of connected schemes to be excluded from the CCM. S.12(5)(a) PSPA 2013 stipulates that Treasury regulations must require the cost of a scheme and any connected scheme to remain within the cost corridor. Subsection (7) would clarify that whether and how to take into account the costs of connected schemes would be determined by Treasury Directions made under s.12(4) PSPA 2013, which would be amended by (5)(c) as per the above.
- 54 Subsection (5)(d) would set the framework for the introduction of the economic check. It would insert a new subsection into s.12(4) PSPA 2013, stating that the data, methodologies, and assumptions used for the purposes of specifying (in Treasury Directions) the costs, or changes in costs, that are to be taken into account by the CCM are to relate to the growth in the economy, growth in earnings or the rate of inflation. This would create a new power for the Treasury to implement the economic check in Directions.
- 55 Subsection (6) would insert a new subsection to clarify that statements made prior to the date the Government Actuary’s (GA) report was delivered to the Government (27 May 2021) should no longer apply to the operation of the CCM, in order to reflect clearly in law and for the avoidance of doubt the change in policy position that the implementation of the economic check represents. This would ensure the amendment creates a power that can introduce an economic check designed in line with the GA’s recommendation and the Government’s policy intention as expressed in the Government’s consultation response and public statements made since.
- 56 Subsection (8) would clarify that in s.12(6) PSPA 2013 “the scheme” refers to a scheme under s.1 of PSPA 2013. It would also clarify that “the margins” refers to either of the margins specified under s.12(5)(a) – that is, either the upper or lower margin.
- 57 Subsection (9) would make a number of clarifications regarding the process that follows a breach of the CCM by inserting 4 new subsections into s.12 PSPA 2013. First, it would provide for Treasury Directions to specify the time at which an increase or decrease in members’ benefits or contributions should take effect. Second, it would require that steps to rectify a breach are only taken after the scheme actuary has certified those steps would achieve the target cost of the scheme. Third, it would provide that Treasury Directions may specify which costs or changes in costs are to be taken into account, or which data, methodologies and assumptions are to be used, for the purposes of determining whether any steps, if taken, would achieve the target cost of the scheme. Finally, it would clarify that “the scheme actuary” means the actuary who carried out, or is, for the time being, exercising actuarial functions in relation to, the valuation under s.11 of PSPA 2013 that suggests a breach has

occurred.

- 58 Equivalent changes would be made to PSPA NI 2014, save for the fact that the relevant powers would be conferred on Northern Ireland’s Department of Finance, not HM Treasury. Subsection (19) would also provide for the removal of “and Personnel” in subsections (3), (4), (5), (8), (9) and (10) of s.12 PSPA NI 2014.

### Commons Amendment 49: Operation of employer cost cap in relation to 2016/17 valuation

- 59 Where a breach of the CCM has occurred, rectification must take place. This involves adjusting member benefits or contributions prospectively. Rectifications are determined through a process involving Scheme Advisory Boards established under s.7(1) of PSPA 2013 or s.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 new 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.
- 60 Commons Amendment 49 would provide 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. Commons Amendment 49 would not, however, prevent the 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 would be honoured.
- 61 Subsections (1) and (2) would 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 regulations<sup>1</sup> made under s.12(5) of PSPA 2013. Accordingly, where the cost of a scheme goes above the ceiling, this Amendment would also remove the effect of Treasury regulations that specify a target cost.
- 62 Subsection (3) would clarify that, in this new Clause, “section 1 scheme” means a scheme under s.1 of PSPA 2013, “the employer cost cap”, in relation to a section 1 scheme, has the same meaning as in s.12 of PSPA 2013, and any reference to a section 1 scheme’s “2016/17 valuation” is to the scheme’s valuation under s.11 of PSPA 2013 with an effective date in 2016 or 2017.
- 63 Equivalent changes would be made to PSPA NI 2014, save for the fact the relevant powers would be conferred on Northern Ireland’s Department of Finance, not HM Treasury. Subsection (7) would also provide for the actuarial valuation that was signed on 18 December 2018 under regulation 123 of the Local Government Pension Scheme Regulations (Northern Ireland) 2014 (S.R. (N.I.) 2014 No. 188) to be of no effect.

### New financial implications

- 64 Commons Amendment 48 introduces reforms that would alter the circumstances in which there would be ceiling and floor breaches of the cost control mechanism. In relation to some schemes, these reforms would affect the level of central government expenditure. In such

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<sup>1</sup> The Public Service Pensions (Employer Cost Cap) Regulations 2014 (S.I. 2014/575).

cases, where a ceiling breach is prevented, there would be no changes to member benefits or contributions that would otherwise reduce the financial burden on employers and the Treasury (therefore keeping Treasury expenditure at a higher level than it would otherwise be). Conversely, where a floor breach is prevented, it may result in a saving for employers and the Treasury.

## **Commons Amendments to Clause 84: Amendments relating to scheme regulations**

### **Commons Amendments 50 and 51**

- 65 Commons Amendments 50 and 51 make amendments to s.8 of PSPA 2013 and s.8 of PSPA(NI) 2014 to clarify that local government new schemes remain career average revalued earnings schemes, notwithstanding the changes made through the Bill to remedy the discrimination.

## **Commons Amendment to Clause 86: Amendments relating to employer cost cap**

### **Commons Amendment 52**

- 66 Commons Amendment 52 would delete Clause 86. See paragraph 47 above.

## **Commons Amendments after Clause 89**

### **Commons Amendment 53: Amendments relating to pension schemes for members of the Senedd**

- 67 Commons Amendment 53 would amend Section 30 of the PSPA 2013 to disapply subsection (1)(e) (cost control) and (3) for new public body pension schemes for members of the Senedd. Section 30(1)(e) required a scheme for Senedd members to provide for actuarial valuations to be made of the scheme (and any statutory scheme that is connected with it) and for an employer cost cap (to be used for the purposes of measuring changes in the cost of the scheme). Section 30(3) required Treasury consent to be obtained before a new public body pension scheme for Senedd members was made or amended. The Wales Act 2017 inserted Schedule 7A to the Wales Act 2006 to provide the Welsh Government with legislative competence for pensions in relation to members of the Senedd. The changes to the PSPA 2013 ensure, in accordance with the provisions of the Wales Act 2006, that there is no interference with the devolved responsibility of the Welsh Government for Senedd pensions.

### **Commons Amendment 54: Guidance to public service pension scheme managers on investment decisions**

- 68 Commons Amendment 54 would expand the power in paragraph 12(a) of Schedule 3 to the PSPA 2013. This would allow the responsible authority of a public service pension scheme to make regulations allowing for the issue of guidance or directions to the scheme manager regarding the administration and management of the scheme, to cover investment decisions which it is not proper for the scheme manager to take in light of the UK's foreign and defence policy. In particular, the amended power would apply to the responsible authorities of the LGPS as it is the only major funded public service pension scheme, which for the LGPS in England and Wales is the Secretary of State and for the LGPS in Scotland is the Scottish Ministers.

## **Commons Amendments to Clause 90: Power of Treasury to make scheme for compensation**

*These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill [HL] as brought from the House of Commons on 23 February 2022 (HL Bill 118)*

## Commons Amendments 55 to 57

- 69 Commons Amendments 55 to 57 provide that the power for HM Treasury to make a compensation scheme can cover compensatable losses under Amendment 43 in respect of local government scheme members.

## Commons Amendments to Clause 91: Power of Department of Finance to make scheme for compensation

### Commons Amendments 58 to 60

- 70 Commons Amendments 58 to 60 provide that the power for HM Treasury to make a compensation scheme can cover compensatable losses under Amendment 43 in respect of local government scheme members.

## Commons Amendment after Clause 95

### Commons Amendment 61: Parliamentary procedure for judicial schemes: transitory provision

- 71 Commons Amendment 61 would mean that scheme regulations for the judiciary made within one month of Royal Assent will be subject to the made-affirmative procedure, rather than draft affirmative procedure. This would ensure there is enough time to make the Judicial Pensions Regulations 2022 so that they are in force from 1 April 2022, with no risk of a gap in pension arrangements for the judiciary, whilst still allowing for an appropriate level of parliamentary scrutiny.

## Commons Amendments to Clause 98: Interpretation of Part

### Commons Amendments 62 and 64: Movement of definitions

- 72 Commons Amendments 62 and 64 add definitions of “connected” and “Fair Deal scheme” to Chapter 4 of Part 1 so that the definitions have effect in relation to the whole Part.

### Commons Amendments 63 and 67: Teachers excess service

- 73 Amendments 63 and 67 define “excess teacher service”. This refers to a member’s service in employment or office as a teacher where they have pensionable service under a local government new scheme or the service relates to new scheme benefits for teachers and would otherwise have been pensionable service in the local government new scheme arrangements.

### Commons Amendment 65: Local government contracting-out transfers

- 74 Commons Amendment 65 defines the term “local government contracting-out transfer” for the purpose of its use in Chapters 1 and 3.

### Commons Amendment 66: Definition

- 75 Amendment 66 defines “teacher” for the purposes of Part 1.

## Commons Amendments to Clause 104: Transfer of other pensions and benefits

### Commons Amendments 68 and 69: Transfer of pensions and other benefits from Bradford & Bingley Limited

- 76 Commons Amendments 68 and 69 would reflect the conversion of Bradford & Bingley from a public limited company to a private limited company following the introduction of the Bill.

*These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Bill [HL] as brought from the House of Commons on 23 February 2022 (HL Bill 118)*

These amendments would allow the government to transfer qualifying liabilities from Bradford & Bingley Limited to the Treasury.

## **Commons Amendments to Clause 106: Information**

### **Commons Amendments 70 and 71: Transfer of pensions and other benefits from Bradford & Bingley Limited**

- 77 Commons Amendments 70 and 71 would reflect the conversion of Bradford & Bingley from a public limited company to a private limited company following the introduction of the Bill. These amendments would allow information relating to the qualifying liabilities of Bradford & Bingley Limited to be shared between the Treasury, UK Asset Resolution Limited and Bradford & Bingley Limited.

## **Commons Amendment to Clause 117: Regulations and directions**

### **Commons Amendment 72**

- 78 Commons Amendment 72 would clarify that the provisions in Clause 117(1) to (7) do not apply in relation to scheme regulations for a Chapter 3 scheme, where the relevant provisions on the making of scheme regulations will be those set out in the PSPA 2013 or the PSPA(NI) 2014, as applicable.

## **Commons Amendment to Clause 118: Limiting extent of clauses**

### **Commons Amendment 73**

- 79 Commons Amendment 73 would limit the extents of Parts 4 and 5 of Schedule 3 to the Bill to Northern Ireland and England and Wales respectively. This will ensure that any future amendments made to devolved offices therein will be consistently recorded in statute across the United Kingdom.

## **Commons Amendments to Clause 119: Commencement**

### **Commons Amendment 74: Commencement**

- 80 Commons Amendment 74 amends the commencement provision in Clause 119 to ensure that the powers to make subordinate legislation or give directions, to implement the prospective policy and close all legacy schemes to future accrual on 31 March 2022, come into force on the day of Royal Assent. This will ensure that the prospective remedy can be implemented on 1 April 2022 as planned.

### **Commons Amendment 75 to 77: Regulations and directions**

- 81 Commons Amendments 75 to 77 would amend the commencement provisions applicable to Chapter 3 schemes to align with those already provided for in respect of Chapter 1 schemes in Clause 119(2)(a) and (b). The amendments provide that, to the extent that Chapter 3 is not already brought into force by Clause 119(1), Chapter 3 shall come into force on 1 October 2023, or such earlier date as the Treasury or the Department of Finance in Northern Ireland may appoint.

## **Commons Amendment to Clause 120: Short title**

### **Commons Amendment 78**

- 82 Commons Amendment 78 would delete Clause 120 subsection (2). This is to remove the financial privilege amendment inserted by the House of Lords.

## **Commons Amendments to Schedule 1: Retirement date for holders of judicial offices etc**

### **Commons Amendment 79: Reflecting the new name of Welsh Tribunal**

- 83 Commons Amendment 79 would change references to the 'Special Educational Needs Tribunal for Wales' to the 'Education Tribunal for Wales'. This reflects the change to the name of the Tribunal that has taken place during the passage of this Bill.

### **Commons Amendment 80: Correcting cross-reference**

- 84 Commons Amendment 80 would ensure that the Lord Chancellor's power to reinstate retired magistrates is correctly cross-referenced at paragraph 44(6) in Part 2, Schedule 1 of the Bill.

## **Commons Amendment to Schedule 3: Judicial offices**

### **Commons Amendment 81: Reflecting the new name of Welsh Tribunal**

- 85 Commons Amendment 81 would change references to the 'Special Educational Needs Tribunal for Wales' to the 'Education Tribunal for Wales'. This reflects the change to the name of the Tribunal that has taken place during the passage of this Bill.



# **PUBLIC SERVICE PENSIONS AND JUDICIAL OFFICES BILL [HL]**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Commons amendments to the Public Service Pensions and Judicial Offices Bill [HL] as brought from the House of Commons on 23 February 2022 (HL Bill 118).

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