

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 Commons in advance of Committee stage on 27 January 2022 and in advance of Report stage on 22 February 2022. 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.
3. Clause numbers in this memorandum refer to clauses in the version of the Bill introduced in the House of Commons on 7 December 2021. Amendment numbers refer to the [House of Lords list of amendments made in the Commons](#).

Part 1

Chapter 1

Clauses 6, 10, 23 and 25 – amendments 5, 6, 22, 23 and 24

4. Amendments 5, 6, 22, 23 and 24 amend Clauses 6, 10, 23 and 25 respectively, by removing the words “in relation to the scheme”. The purpose of these amendments is to minimise any ambiguity that might be caused by these words, for example if the retrospective remedy is implemented on different dates for different cohorts of member within a scheme, rather than simply different dates for different schemes. They 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 22 – amendments 15, 16, 17, 18, 19, 20, 21

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

5. Clause 22 makes provision for the responsible authority for a Chapter 1 new scheme to make provision for various types of “special case”. Clause 22 is amended in the following ways:

- a. Amendment 15 extends the power to make provision about special cases to enable provision to be made in scheme regulations to cover a situation in which a member dies leaving surviving children who do not live in the same household as a surviving adult. This amendment delivers the commitment 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 that could otherwise be impacted by a decision taken by someone outside the child’s household, that pension will be protected. Amendments 19 and 20 provide definitions of “adult survivor” and “child” respectively.
- b. Amendment 16 extends the power to make provision about special cases to enable provision to be made in scheme regulations about teachers with excess service. Excess service occurs where a teacher who has a full-time teaching contract also has an additional part time contract or contracts. It is the additional part time contract that constitutes ‘excess service.’ Excess service is pensionable in the new teachers’ pension scheme but it is not pensionable in the legacy scheme. However, where the relevant employer has an existing relationship with the Local Government Pension Scheme (LGPS), LGPS regulations provide that the excess service is pensionable in that scheme instead. Specifically, the amendment allows provision to be made in regulations for:
 - i. cases in which a person has remediable service as a teacher which is excess teacher service, or
 - ii. 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).

These amendments will allow the teachers’ pension scheme to process excess service cases using 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.

- c. Amendment 17 extends the power to make provision about special cases to enable provision to be made in scheme regulations about where members have a partnership pension account. Clause 5 already makes

provision for such members to be reinstated in the appropriate legacy scheme if they wish. 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.

- d. Amendment 18 extends the power to make provision about special cases in which a person who has remediable service is made redundant. This ensures 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. Amendment 21 provides a definition of "made redundant".

Justification for taking the power

6. The justification for taking the power in Clause 22 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. Issues such as excess teacher service, partnership pension accounts and redundancy payments that are dependent on the member's pension scheme membership for their remediable service are also specific to particular schemes. It is therefore appropriate that provision may be made in regulations for those schemes to deal with these specific issues, to ensure affected members' positions can be corrected, and that they are able to make a choice at the appropriate time.

Justification for the procedure

7. The justification for the procedure remains the same as that originally provided in relation to Clause 22, 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.

Clause 27 – amendments 25 and 26

8. These amendments 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, which already require consultation with the Government Actuary under Clause 27.

9. The purpose of these amendments is to achieve consistency, and they 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.

Chapter 2

Clause 62 – amendments 33 and 34

10. These amendments make the equivalent changes to Clause 62 as made by amendments 25 and 26 to Clause 27.
11. The purpose of these amendments is to achieve consistency, and they 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.

Chapter 3

Amendments 39, 41, 42, 43, 44, 45, 46

12. These new Clauses are intended to supplement and amend the powers contained in Chapter 3 in respect of the local government remedy to the discrimination.
13. Separate provisions are contained in the Bill regarding local government because of differences in how transitional protections worked in local government. The addition of new Clauses is intended to ensure that a comprehensive remedy is in place for local government workers. Many of the new Clauses (41 to 46) provide local government with equivalent powers to those already provided in the Bill in respect of other public service pension schemes.

Before Clause 79 – amendment 39 (Power to pay final salary benefits)

Power conferred on: Responsible authority for a local government new scheme

Power exercised by: Regulations

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

Context and Purpose:

14. This Clause allows Local Government Pension Scheme (LGPS) 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 LGPS regulations, where transitional protection was different from that provided in other schemes. All active LGPS members have participated in the new, career average scheme since 1 April 2014, under regulations deemed to be made under PSPA 13 provisions. 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. The policy intent is that the McCloud discrimination should be removed from the LGPS schemes by giving younger relevant members equivalent underpin protection, and this power would enable responsible authorities to make regulations that provide for this protection.
15. Amendment 39 replaces Clause 78. Changes in the new Clause adjust the powers to make scheme regulations. Subsection (3) permits scheme regulations to require that separate periods of pensionable service are aggregated or 'joined up' for underpin protection to apply. This is an important principle in the LGPS, which is locally administered and where established policy is that, where scheme members have multiple periods of pensionable service, those are each 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, and that substantial administrative complications are avoided. 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. This will ensure that wider Government policy on transfers from other schemes can be fully adopted – for example, where a transfer is received from another public scheme that remains on a final salary structure, that the LGPS can accept that transfer on a final salary basis.
16. Amendments are also made to the definition of remediable service through the introduction of amendment 38, which replaces Clause 77. These amendments affect the power to make scheme regulations in Clause 78, by changing who will have remediable service, and the membership that shall count as remediable service:
 - a. Subsection (5) of the new Clause inserted by amendment 38 expands the eligibility criteria to align with that provided for in Chapter 1 for other public service pension schemes. Under the revised approach, members will 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 qualifying criteria. This change ensures that, for example, women are not disadvantaged by their increased likelihood of having breaks in employment, which may be due to childcare.

- b. Subsection (3) of the new Clause inserted by amendment 38 clarifies that remediable service ends at a person's legacy scheme normal pension age (normally 65), if that date is earlier than 31 March 2022. This approach reflects how transitional protection works in local government currently, where protection has always ended at this date. 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.
- c. Subsection (8) of the new Clause inserted by amendment 38 ensure that the remedy applies correctly to local government staff who were compulsorily transferred from their employer as a result of outsourcing and were entitled to pensions protection. 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 will not count towards a 'disqualifying gap in service' when assessing their eligibility for the remedy.

Justification for taking the power:

- 17. The majority of the rules setting out how public service pension schemes should operate are set out in secondary legislation. LGPS scheme regulations already include the detailed provisions (particularly regulation 4 of SI 2014/525 for LGPS England and Wales, regulation 4 of SSI 2014/233 for LGPS Scotland and regulation 4 of SR 2014/189 for LGPS Northern Ireland) governing underpin protection in the LGPS, and there is therefore precedent that the provisions regarding the amended underpin are also set out in scheme regulations. The most effective way of ensuring that schemes are able to implement the remedy as intended is by ensuring that responsible authorities for local government new schemes can make regulations to do so.

Justification for the procedure:

- 18. The negative resolution procedure has been proposed here as regulations made under this power are limited in purpose i.e. to ensure that schemes can provide that certain qualifying members may have final salary benefits for service up to 31 March 2022, and to provide other limited circumstances where members can be awarded final salary benefits. 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 or section 21 PSPA(NI) 2014). It is unlikely consequential amendments will need to be made to primary legislation in using this power; however, where this is the case, section 24(1)(a) of the PSPA 13 or PSPA(NI) 2014 requires the affirmative procedure to be used.

Before Clause 79 – amendment 41 (Pension credit members)

Power conferred on: Responsible authority for a local government new scheme

Power exercised by: Regulations

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

Context and Purpose:

19. 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.
20. This power therefore enables 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 does not give schemes the power to amend the pension sharing order itself.
21. Correcting pensions in respect of past events is an important part of the Government's remedy for local government. To ensure that this power is applied consistently with other public service pension schemes, subsections (1) and (2)(a) of the new Clause inserted by amendment 46 requires the power to be exercised in accordance with Treasury directions.

Justification for taking the power:

22. The majority of the rules governing the payment of benefits by schemes to members, including pension credit members and other individuals (such as members' beneficiaries or survivors), are set out in scheme regulations. The most effective way of ensuring that schemes are able to implement the remedy as intended in respect of pension credit members is by ensuring that responsible authorities for local government new schemes can make regulations to do so.

Justification for the procedure:

23. The negative resolution procedure has been proposed here as regulations made under this power are limited in purpose, i.e. to ensuring that the responsible authority for a local government new scheme can award any additional credit due to the pension credit member as a result of the remedy. 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 or section 21 PSPA(NI) 2014). It is unlikely that consequential amendments will need to be made to primary legislation in using this power; however, where this is the case, section 24(1)(a) of the PSPA 13 or

PSPA(NI) 2014 requires the affirmative procedure to be used. Finally, as set out above, to ensure that this provisions regarding pension credit members are applied consistently between public service pension schemes, subsections (1) and (2)(a) of the new Clause inserted by amendment 46 require the power to be exercised in accordance with Treasury directions.

Before Clause 79 – Amendment 42 (Further powers to make provision about special cases)

Power conferred on: Responsible authority for a local government new scheme

Power exercised by: Regulations

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

Context and Purpose:

24. This provision gives a responsible authority for a local government new scheme the power to make provision for two types of “special case”. The first enables scheme regulations to make provision about cases where a person has excess teacher service. Excess teacher service is defined in Clause 98 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 may have been pensionable in the teachers’ new scheme. To ensure a consistent approach to this group, amendment 4 amended 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 ensures that responsible authorities are able to make specific provision in scheme regulations relating to these members.

25. The second 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 PSPA 13 or Schedule 6 to PSPA(NI) 14. 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 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 3.

Justification for taking the power:

26. The power to make provision about special cases is necessary to reflect the different provisions in existing scheme regulations. For excess teacher service, specific provision may be needed to deal with the complexities of moving members from a teachers' new scheme to a local government new scheme in a manner that is fair and takes into account the unique circumstances via which this group are becoming members of a local government new scheme. 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 3 of Part 1 of the Bill. In addressing these matters, responsible authorities for local government new schemes need to have powers to address scheme specific circumstances.

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 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 or section 21 PSPA(NI) 2014). It is unlikely that consequential amendments will need to be made to primary legislation in using this power; however, where this is the case, section 24(1)(a) of the PSPA 13 or PSPA(NI) 2014 requires the affirmative procedure to be used.

Before Clause 79 – amendment 43 (Power to pay compensation)

Power conferred on: Responsible authority for local government new scheme

Power exercised by: Regulations

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

Context and Purpose:

28. The Bill provides that scheme managers may pay compensation in respect of compensatable losses incurred by members. Most compensatable losses will 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 inserted by amendment 43 allows 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.

Justification for taking the power:

29. Scheme regulations make provision about scheme employers' obligations to the schemes, for example to pay employer contributions in relation to their employees, to pay costs relating to the administration of the scheme and recovery of costs incurred because of a failure by the employer to comply with the employer's obligations under the scheme. The power at subsection (2) extends the scope of the existing powers to allow schemes to recover costs that have arisen due to the discrimination, or due to the remedy of the discrimination.

Justification for the procedure:

30. The negative resolution procedure has been proposed here as regulations made under this power are limited in purpose, i.e. to require scheme employers to reimburse the scheme for costs that arise in compensating members for losses incurred as a result of the discrimination, as a consequence of the remedy or as a result of incurring additional tax charges that would not have arisen absent the discrimination. 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 or section 21 PSPA(NI) 2014). It is unlikely that consequential amendments will need to be made to primary legislation in using this power; however, where this is the case, section 24(1)(a) of the PSPA 13 or PSPA(NI) 2014 requires the affirmative procedure to be used. Finally, as set out above, to ensure that this compensation is paid consistently between public service pension schemes, subsections (1) and (2)(c) of the new Clause introduced by amendment 46 require the power to be exercised in accordance with Treasury directions.

Before Clause 79 – Amendment 44 (Indirect compensation)

Power conferred on: Responsible authority for a local government new scheme

Power exercised by: Regulations

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

Context and Purpose:

31. 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 provides 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 will be paid when the member retires.

Justification for taking the power:

32. It is important that schemes are able to make regulations that best suit the circumstances of their members, and the existing rules of the scheme. This is because each member's circumstances are different, and the circumstances in which compensation is not accessible may be different between schemes. Accordingly, schemes need to exercise this power in different circumstances, or indeed this power may be needed by some schemes and not by others.

Justification for the procedure:

33. The negative resolution procedure has been proposed here as regulations made under this power are limited in purpose, in that they can only be used to make provision where a member has incurred a compensatable tax loss but, instead of being entitled to compensation under NC8 in respect of that loss, is entitled to additional benefits. The power therefore cannot be used by local government schemes as a general power to compensate or provide members with other additional benefits. 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 or section 21 PSPA(NI) 2014). It is unlikely that consequential amendments will need to be made to primary legislation; however, where this is the case, section 24(1)(a) of the PSPA 13 or PSPA(NI) 2014 requires the affirmative procedure to be used. Finally, as set out above, to ensure that this indirect compensation is paid consistently between public service pension schemes, subsections (1) and (2)(d) of the new clause introduced by amendment 46 require the power to be exercised in accordance with Treasury directions.

Before Clause 79 – amendment 45 (Interest and process)

Power conferred on: Responsible authority for a local government new scheme

Power exercised by: Regulations

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

Context and Purpose:

34. Where sums are owed to members, for example relating to past pension benefits, this power allows 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 will be added to amounts payable by schemes.
35. This power will allow interest to be calculated and paid. To ensure that reasonable and fair rate is used and to minimise unfairness that could arise as a result of schemes using different rates or adopting different processes, regulations under this section will 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)(e) and (4) of the new Clause introduced by amendment 46.

Justification for taking the power:

36. The rate of interest to be applied to payments by members to schemes or from schemes to members may need to be varied from time to time, for example to take account of changes to rates of inflation. In view of this, and given that the applicable interest rate is a technical matter in respect of the remedy, the rate will be set using regulations.

Justification for the procedure:

37. The negative resolution procedure has been proposed here as regulations made under this power are limited in purpose, i.e. to setting out the process by which sums are to be paid to members and to providing the rate of interest that will apply to payments occurring as a result of the remedy. 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 or section 21 PSPA(NI) 2014). It is unlikely that consequential amendments will need to be made to primary legislation in using this power; however, where this is the case, section 24(1)(a) of the PSPA 13 or PSPA(NI) 2014 requires the affirmative procedure to be used. Finally, as set out above, to ensure that interest is paid consistently between public service pension schemes, subsections (1) and (2)(e) the new Clause introduced by amendment 46 require the power to be exercised in accordance with Treasury directions.

Before Clause 79 – Amendment 46 (Treasury directions)

Power conferred on: The Treasury in relation to England, Wales and Scotland, the Department of Finance in relation to Northern Ireland

Power exercised by: Treasury Directions or Department of Finance directions

Parliamentary Procedure: N/A

Context and Purpose:

38. This Clause sets out that the powers introduced by amendments 41, 42, 43, 44, and 45 must be exercised in accordance with Treasury directions. This ensures 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 subsection (1) of the new Clause inserted by amendment 47), may give directions to schemes.
39. For example, subsection 2(b) provides that the power under the new Clause inserted by amendment 42 for local government new scheme regulations to make provision

regarding special cases must be exercised in accordance with Treasury directions, issued by either HM Treasury or the Department of Finance in Northern Ireland. This change is consistent with that provided for in Clause 27(2)(e) in respect of Chapter 1 schemes and ensures that HM Treasury and the Department of Finance can provide for consistent approaches between schemes on similar issues.

40. Subsection (2)(f) relates to the power to make scheme regulations concerning interest to be calculated and paid on amounts owed to members. The Government intends to take a consistent approach in setting interest rates across the schemes and will consult the Government Actuary in setting the rate. Subsection 2(a) is concerned with pension credit members. Whilst schemes have different provisions in respect of these members and will need scheme-specific regulations to reflect those differences, the Government wants there to be consistency in the approach taken.
41. Subsections (2)(c), (d) and (e) are concerned with matters relating to payments made to members through direct or indirect compensation. The Government wants to ensure that a consistent approach is taken overall, so that a member of one workforce is treated in the same way as a member of another workforce, for example in relation to compensation for costs incurred in relation to legitimate costs incurred in resubmitting tax self-assessment information. However, it will be for the schemes to prescribe the process for members to apply for such compensation from the scheme.

Justification for taking the power:

42. There is significant precedent for the use of Treasury and Department of Finance directions in this way and, as set out above, it allows schemes the option to make regulations that work best for them, while ensuring that if a particular outcome is desirable, it is achieved. Allowing such directions to be made by the Department of Finance in Northern Ireland in respect of the local government scheme in Northern Ireland is consistent with the approach taken in relation to other aspects of public service pensions, for example directions in relation to valuations and the employer cost cap, where it is the Department of Finance rather than the Treasury who may make such directions in relation to Northern Ireland.

Justification for the procedure:

43. Treasury directions are intended to set out to schemes how they should exercise a particular power, rather than creating a new power. As these directions are aimed at schemes as opposed to scheme members and the wider public, where it is more likely that regulations would be used, the aim will therefore be achieved by directions rather than through regulations.

Chapter 4

Clause 84 – amendments 50 and 51

44. Amendments 50 and 51 make amendments to s.8 of PSPA 2013 and s.8 of PSPA(NI) 2014 to clarify that scheme regulations made under the new Clause inserted by amendment 39 do not affect the extent to which local government new schemes are career average revalued earnings schemes.
45. These amendments are not considered to alter significantly the nature of the delegated power originally included in the new Clause inserted by amendment 39, or the justification for the delegated power itself and the procedure chosen.

After Clause 83/Clause 86 – amendments 52, 48 and 49

Power conferred on: The Treasury in relation to England, Wales and Scotland, the Department of Finance in Northern Ireland in relation to Northern Ireland

Power exercised by: Treasury Regulations and Directions or Department of Finance Regulations and Directions

Parliamentary Procedure: N/A

Context and purpose

46. The framework for how the cost control mechanism (CCM) operates is set out in s.12 of PSPA 13 and PSPA (NI) 2014. The CCM operates within all the reformed public service pension schemes i.e. schemes under s.1 of PSPA 13. Clause 86 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 finalized; 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) 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 86 can be found in the original delegated powers memorandum (dated 27 July 2021 – Clause 86 was previously referred to as clause 80 in the original memorandum to reflect an earlier version of the Bill).
47. Amendment 52 deletes Clause 86, which is replaced by two new clauses to be inserted after Clause 83 through amendments 48 and 49.
48. Amendment 48 reproduces with technical changes, the effect of subsections (2), (3), (6) and (7) of clause 86, which relate to the narrow and limited power for the Treasury and Department of Finance in NI relating to action to bring costs back to target noted above, and to setting the timescale for setting the employer cost cap.
49. Subsection (9) (7A) of amendment 48 also expands the Treasury’s powers in a narrow and limited way to allow Treasury Directions to specify in Directions the time at which any changes to member benefits or member contribution rates should take effect. An equivalent power for the Department of Finance is provided by subsection (18)(7A).

50. Amendment 48 also expands the Treasury and Department of Finance's powers in relation to two reforms to the CCM. In 2018, the Government announced that it would ask the Government Actuary (GA) to conduct a review of the mechanism. This reflected a concern that the CCM may not be operating in line with its original objectives. The Government Actuary began his review in 2020, and his final report was published in June 2021. It contained several recommendations on how to improve the mechanism. Following a full public consultation process, the Government confirmed in October 2021 that it would take forward three reforms to the mechanism in time for the next scheme valuations. All three reforms are recommendations by the Government Actuary. Amendment 48 relates to two of these reforms, the reformed scheme only design and the economic check. The third reform – increasing the size of the cost corridor from +/-2% to +/-3% will be implemented through secondary legislation.
51. **Reformed scheme only design** - currently, the CCM assesses costs of all members in the reformed schemes and active members in the legacy schemes. The reformed scheme only design means costs associated with the old legacy schemes will be excluded from the mechanism.
52. Where schemes have been established for persons of the same description, they are known as 'connected schemes'. For example, the legacy civil service scheme is connected to the reformed scheme which replaced it. Currently, s.12(4)(c) PSPA 2013 provides for Treasury Directions to set out that the CCM can assess costs of legacy and reformed schemes. Subsection (5)(c) of amendment 48 makes a minor change to s.12(4) 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 expands the Treasury's powers to make it explicit that Treasury Directions may provide for the costs or changes in costs of legacy schemes to be excluded from the CCM. Additionally, section 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) of amendment 48 clarifies that Treasury Directions determine whether and the extent to which costs associated with connected schemes are to be considered by the CCM. Again, this allows Treasury Directions to exclude the costs of legacy schemes from the CCM. Subsections (14)(c) and (16) provide equivalent provision for the Department of Finance in NI.
53. **Economic check** – the Government is introducing a symmetrical check (linked to expected long-term GDP) so that a breach of the mechanism (and therefore member benefit or contribution rate changes) would only be implemented if it would still have occurred had the impact of changes in the long-term economic assumptions been considered.
54. Section 12(4) PSPA 13 provides powers for Treasury Directions to set out which costs must be assessed by the CCM at each valuation. Subsection (5)(d) of the new Clause introduced by amendment 48 sets the framework for the introduction of the economic

check. It inserts a new subsection into s.12(4) PSPA 2013, stating that Treasury Directions can set out that the CCM can assess costs in relation to the growth in the economy, growth in earnings or the rate of inflation. This creates a new power for the Treasury to implement the economic check in Directions. Subsection (6) of amendment 48 clarifies that statements made prior to the date the GA's report was delivered to the Government 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 ensures 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. Subsection 14(d) and (15) provide equivalent powers for the Department of Finance.

55. Amendment 49 reproduces with technical changes, the effect of subsections (4), (8) and (9) of clause 86 to ensure that no member's benefits will be cut as a result of the 2016 valuations.

Justification for taking the power

56. The power provided by subsections 9 (7A) and 18(7A) will allow the Treasury and Department of Finance respectively to set out in Directions a timeframe for when any changes to member benefits or contribution rates, as part of the steps taken to bring costs back to target, should take effect. This will allow the Treasury and Department of Finance to ensure that if there are multiple schemes where such action is required, the necessary changes can be implemented from the same point across all schemes.
57. The reforms to the CCM are recommendations by the Government Actuary, designed to improve the CCM so that it operates more in line with its objectives. The reformed scheme only design will create a more stable mechanism and reduce intergenerational unfairness, because comparatively younger members' benefits or contributions will not change based on the cost of legacy schemes they had little, or no, access to. The economic check will ensure greater consistency between any benefit changes and changes in the wider economic outlook. This means there will be a higher bar for member benefit reductions or contributions increases if the country's long-term economic outlook has improved. This will equally apply to benefit increases or contributions reductions if the long-term economic outlook has worsened. The expanded powers provided by amendment 48 create the framework for the reformed scheme only design and the economic check, so that both of these reforms can be implemented in time for the next scheme valuations. This will ensure that the mechanism is operating more in line with its objectives from the next scheme valuations.

Justification for taking the procedure

58. The details around how the CCM should operate are set out in Treasury Regulations and Directions, and Regulations and Directions by the Department of Finance for devolved schemes in Northern Ireland. Therefore, it is proposed that any changes to

this procedure should also be made through Treasury or Department of Finance Regulations or Directions.

After Clause 89 – amendment 54 (Guidance to public service pension scheme managers on investment decisions)

Power conferred on: Responsible authorities for the Local Government Pension Schemes in England & Wales, and in Scotland.

Power exercised by: Regulations

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

Context and Purpose:

59. This clause amends the power in paragraph 12(a) of Schedule 3 to the Public Service Pensions Act 2013 to make regulations on the administration and management of public service pension schemes on the issuing of guidance or directions to cover investment decisions which it is not proper for scheme managers of a public service pension scheme to take in light of the UK's foreign and defence policy. The amended power would allow responsible authorities to issue such guidance or directions to scheme managers in England, Wales and Scotland. The amended power would apply to the responsible authorities of the Local Government Pension Scheme (LGPS) as it is the only major funded public service scheme, which is the Secretary of State in relation to the LGPS in England and Wales, and the Scottish Ministers in relation to the LGPS in Scotland.

Justification for taking the power:

60. The power will allow responsible authorities to issue guidance and directions to ensure that LGPS scheme managers do not make investment decisions which are contrary to UK foreign policy and in particular do not undertake boycotts, divestments or sanctions campaigns which can harm community relations and undermine UK foreign policy.
61. Guidance was previously issued to scheme managers of Local Government Pension Schemes in 2016 that they “should not pursue policies that are contrary to UK foreign policy or UK defence policy”. However, that guidance was successfully challenged by the Palestine Solidarity Campaign in a case where the Supreme Court held that the Secretary of State had exceeded his powers (*R (Palestine Solidarity Campaign Ltd) v SoS for Communities and Local Government* [2020] UKSC 16). Therefore, this amended power is intended to give the Secretary of State and the Scottish Ministers the authority to issue the relevant guidance.

Justification for the procedure:

62. This power could be used to amend regulations which themselves have been made under the negative resolution procedure. The negative resolution procedure has been proposed here as regulations made under this power are limited in purpose i.e. to

make provision about guidance on foreign and defence policy. 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 of the Public Service Pensions Act 2013). The amendments do not invoke the requirements for the affirmative procedure at section 24 of the Public Service Pensions Act 2013, as no consequential amendments will need to be made to primary legislation in using this power and the amendment will not make retrospective provision.

Clauses 90 and 91 – amendments 55 – 60

63. These amendments ensure that the powers for the Treasury (Clause 90) and the Department of Finance in Northern Ireland (Clause 91) to make compensation schemes cover compensation payable in respect of local government pension schemes.
64. 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.

After Clause 95 – amendment 61 (Parliamentary procedure for judicial schemes: transitory provision)

Power conferred on: Responsible authority for a judicial scheme

Power exercised by: Regulations

Parliamentary Procedure: Made affirmative

Context and purpose

65. This clause makes it possible for the content of the Judicial Pension Scheme (JPS) 2022 regulations to be made subject to the 'made affirmative' procedure. This ensures that the regulations can be made shortly after Royal Assent and before 1 April 2022. Parliament will have the opportunity to debate them, and they will not remain law unless approved by both Houses of Parliament within 28 days (excluded days on which Parliament is dissolved or prorogued or either House is adjourned for more than four days).

Justification for taking the power

66. The powers to establish scheme regulations for the judiciary are set out in the Public Service Pensions Act 2013 as amended by the Bill. This provision does not widen the powers to make scheme regulations; it amends the procedure by which they are made.

Justification for the procedure

67. The Bill closes all current judicial pension schemes to accrual for future service on 31 March 2022. While pensions regulations for other public servants are subject to the negative procedure unless they amend primary legislation or include certain retrospective provision, the draft affirmative procedure is generally required for scheme regulations for the judiciary. This difference in Parliamentary procedure is in recognition of the unique constitutional status of the judiciary. However, it is expected that the Bill will not obtain Royal Assent until late February or early March, which would leave insufficient time to make the JPS 2022 regulations through the draft affirmative procedure before 1 April. A delay to the scheme could mean a gap in judicial pension arrangements and would carry significant operational and legal complications.
68. This provision therefore enables scheme regulations for the judiciary made within 28 days of Royal Assent to be made using the made affirmative procedure. It avoids a gap in pension arrangements for the judiciary whilst nonetheless ensuring an appropriate level of parliamentary scrutiny for this power. The power does not apply to any other PSPA schemes and can only be used for the introduction of the JPS 2022 regulations. Any future judicial pension scheme regulations will continue to be made using the draft affirmative procedure unless they are minor or wholly beneficial and do not amend primary legislation.
69. We consider that this procedure is justifiable on a one-off basis. MoJ has carried out extensive consultation both on the principles of the new scheme and the draft JPS 22 regulations. This has demonstrated broad support for the new scheme which provides significantly improved benefits for all members of the judiciary compared to the 2015 scheme. There is agreement that the scheme should help address the recruitment and retention issues in the judiciary which are considered to be primarily due to the introduction of the 2015 scheme. While we have been clear that the introduction of the new scheme is dependent on the passage of the necessary legislation through Parliament, the expectation of the judiciary and pension scheme administrators is that the scheme will be in force on 1 April 2022.

Part 2

Clause 104 – amendments 68 and 69

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

Part 4

Clause 117 – amendment 72

71. Amendment 72 clarifies that the provisions set out 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 13 or the PSPA(NI) 2014, as applicable.
72. This amendment is 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 119 – amendments 7 to 77

73. Amendment 74 amends the commencement provision to ensure that the powers to make subordinate legislation or give directions comes into force on the day of Royal Assent. This will ensure that the subordinate legislation which will implement the prospective policy is in place by 1 April 2022 as planned.
74. Amendments 75 to 77 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.
75. 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.