**Department of Justice logo with Irish and Ulster Scots translation.**

**JUDICIAL PENSIONS: PROPOSED *McCLOUD* REGULATIONS**

**CONSULTATION PAPER ISSUED TO TARGETED CONSULTEES**

**20 January 2023**

This consultation begins on 20 January 2023

This consultation closes on 20 March 2023

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1. **EXECUTIVE SUMMARY**

1.1 The Department of Justice (DoJ) is consulting from 20 January 2023 to 20 March 2023 on the draft regulations required to implement aspects of the *McCloud* remedy. This consultation mirrors the consultation the Ministry of Justice (MoJ) published on the 16th December 2022.

1.2 In 2018 the Court of Appeal held that the 2015 reforms to the judicial pension scheme were unlawfully discriminatory on the grounds of age. Since then, the UK government has taken steps to resolve the discrimination for affected judges. In October 2020 the DoJ consulted on remedy proposals and confirmed in March 2021 that judges in scope of *McCloud* will participate in a formal options exercise. This will offer judges a choice of pension scheme membership for the relevant period, 1st April 2015 until 31st March 2022.

1.3 The framework for delivering the options exercise in set out in the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA). The Act defines the eligibility requirements for the *McCloud* remedy, provides that judges who are in scope may choose between legacy scheme membership (including JUPRA and the fee-paid equivalent FPJPS) and the 2015 Northern Ireland Judicial Pension scheme membership (NIJPS) for the relevant period, and provides the legislative basis for retrospectively treating judges as members of their chosen scheme.

1.4 The Act also confers powers to make regulations that address certain technical aspects of the remedy. As drafted, the regulations provide for the following:

* a remedy in respect of member options, such as voluntary contributions and partial retirement;
* repayment mechanisms where judges owed sums to the scheme or DoJ, including the ability to pay via deductions from lump sum and pension on retirement;
* the application of interest to amounts owed to, or by, judges, for example under or overpaid pension benefits;
* provision in respect of pension sharing orders in the case of divorce;
* a legislative basis to resolves outstanding issues for retired judges and *McCloud* claimants (referred to as ‘immediate detriment judges’); and
* a legislative basis to resolve the pension entitlement of certain fee-paid judges (referred to as ‘gap judges’).

**HOW TO RESPOND**

1.5 The consultation will run from 20 January 2023 for 8 weeks and all responses should be submitted by 20 March 2023. Chapter 10 provides a template for completion by respondents which is also available on the Department’s website. Responses can be sent by e-mail or post (see below).

For queries and responses to the consultation, please contact:

*Judicial Policy and Tribunals Branch*

*Civil Justice and Judicial Policy Division*

*Massey House*

*Stormont Estate*

*Belfast*

*BT4 3SX*

*Email: AtoJ.Consultation@justice-ni.gov.uk*

1.4 When responding, please state whether you are making a submission as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

**Additional copies and alternative formats**

1.5 An electronic copy of this document is available to view and download from the consultation section of the Department of Justice website (www.[justice-ni.gov.uk](http://www.justice-ni.gov.uk/)).

1.6 You may make copies of this document without seeking permission and if you require further printed copies, we would invite you to access the document through our website. If you do not have access to the internet and require us to provide you with further copies, please contact us with your specific request.

1.7 Copies in other formats, including Braille, large print or audio cassette may be made available on request. If it would assist you to access the document in an alternative format, or a language other than English, please let us know and we will do our best to help you.

**Freedom of information and General Data Protection Regulations**

1.8 The Department intends to publish a summary of responses on its website on completion of the consultation process. Any contact details that will identify a respondent as a private individual will be removed prior to publication.

1.9 All information will be handled in accordance with the General Data Protection Regulations (GDPR). Respondents should be aware that the Department’s obligations under the Freedom of Information Act 2000 may require that any responses, not subject to specific exemptions under the Act, be disclosed to other parties on request.

1.10 For further information about Freedom of Information and GDPR please contact the Information Commissioner’s Office at [ico.org.uk](https://ico.org.uk/).

**Complaints**

1.11 Any comments, queries or concerns about the way this exercise has been conducted should be sent to the following address:

Standards Unit

Department of Justice

Knockview Buildings

Stormont Estate

Belfast

BT4 3SL

or by e-mail to [standardsunit@justice-ni.gov.uk](mailto:Standardsunit@dojni.x.gsi.gov.uk)

**2. BACKGROUND**

**Overview of *McCloud***

2.1 In 2015 the government introduced extensive reforms to public service pension schemes to make them more affordable and sustainable. The Northern Ireland Judicial Pension Scheme (the 2015 scheme) was established by the Department of Justice (DoJ) on 1 April 2015 under the Judicial Pensions Regulations (Northern Ireland) 2015 (the 2015 Regulations). NIJPS is a tax registered career-average revalued earnings scheme that was open to specified members of the devolved tribunals judiciary (that is, judicial office-holders in Northern Ireland who are not listed in paragraph 11 of Schedule 2 to the Northern Ireland Act 1998).

2.2 The reforms included transitional protection provisions for judges who were within 10 years of retirement. Those in service on 31 March 2012 and aged 55 or over on 1 April 2012 received ‘full protection’ and remained in their legacy schemes. A form of ‘tapered protection’ (also known as ‘mixed service’) was given to judges aged between 51 and a half and 55 on 1 April 2012: they were offered the choice of joining the 2015 scheme on its introduction or remaining with the legacy scheme for a period, before ‘tapering’ to the 2015 scheme at a later date. All other judges in service on 31 March 2012 were ‘unprotected’, which meant they joined the 2015 scheme on 1 April 2015, unless they opted out of pension scheme membership.

2.3 The transitional provisions were challenged by younger judges in the case of *McCloud and Others v MoJ and Another*. In 2018, the Court of Appeal held that the transitional protections constituted unlawful direct age discrimination.

2.4 The UK government accepted that the judgement had implications for all public service pension schemes, which contained similar transitional protections, and committed to addressing the discrimination for those affected.

**Previous consultation**

2.5 In October 2020 the DoJ consulted on proposals to address the discrimination in the 2015 NIJPS. Following consultation, it was decided that judges in scope of *McCloud* should take part in a formal ‘options exercise’, where they would be offered a retrospective choice of pension scheme membership for the relevant period- this being 1 April 2015, when the discrimination began, until 31 March 2022 (known as the remedy period). From 1 April 2022, the NIJPS was closed to future accrual, and judges eligible for a judicial pension were able to join the UK wide reformed pension scheme, known as the Judicial Pension Scheme 2022.[[1]](#footnote-1)

**The Public Service Pensions and Judicial Offices Act 2022**

2.6 The Public Service Pensions and Judicial Offices Act 2022 (PSPJOA) is the legislative framework for implementing the options exercise. It provides that eligible members may make a retrospective choice of legacy scheme or NIJPS 2015 scheme membership in respect of the remedy period.

2.7 Where a judge makes a scheme election,[[2]](#footnote-2) the PSPJOA treats them as having been in that scheme for the whole remedy period. It also:

* confers powers to correct overpayments or underpayments of pension benefits and contributions as result of the remedy;
* clarifies what happens when a judge fails to make a scheme election; and
* provides that the scheme may compensate judges for losses caused by the discrimination.

**Eligibility**

2.8 To be eligible for the options exercise, a judge must have ‘remedial service’. Section 39 of the PSPJPO sets out five conditions that must be satisfied for a period of service to be ‘remediable’:

* The service must have taken place during the remedy period.
* The service must be pensionable under a judicial scheme (or would have been pensionable had the judge not opted out of the scheme).
* The judge must also have been in pensionable service on or before 31 March 2012. This condition is satisfied if the judge was a member of a non-judicial public service pension scheme on this date or was in non-judicial public service on 31 March 2012 and then took up judicial office.
* There must be no disqualifying gap in service, defined as a period of 5 years during which the judge did not have pensionable service.
* The judge must have been aged under 55 on 1 April 2012.

2.9 Where all five conditions are satisfied, judges will be entitled to take part in the options exercise. Judges may choose either legacy scheme or NIJPS 2015 scheme membership in the options exercise, or if they previously opted out of the pension scheme, they may continue to do so in respect of the remedy period. Those with ‘mixed service’ will need to choose membership of one scheme for the whole remedy period – they will not be able to retain their tapered protection and split accrual across both schemes.

**Information statements**

2.10 Before the options exercise can begin, the PSPJOA requires that judges must be provided with a bespoke ‘information statement’ describing the benefits available to them in either pension scheme. This is to ensure they can make an informed decision. Following this, they will have three months to make a scheme election.

2.11 In advance of the options exercise, judges who are in scope are being asked to confirm their data through a ‘preliminary information statement’. This is being done to ensure the data used to produce the comparison of benefits in the final information statement is as accurate as possible. All judges in scope are currently being contacted over the course of several months and being provided with details enabling them to access an online platform where they will be able to view and confirm or query their preliminary information statements.

**Effect of scheme election**

2.12 At the end of the ‘election period’, judges remediable service will be treated as having always been in their chosen scheme. This has effect for the purposes of determining:

* the benefits to which they are entitled;
* the contributions they are required to pay; and
* all other purposes(save in respect of some limited circumstances)[[3]](#footnote-3).

2.12 The PSPJOA provides for retrospective adjustments to take place where judges make a scheme election that differs from their existing scheme membership, for example where a member of the NIJPS 2015 scheme makes a legacy scheme election. In this scenario, past pension contributions would need to be adjusted to reflect the judge’s chosen scheme. This will involve deducting unpaid tax in respect of tax relief received on the NIJPS 2015 scheme contributions. This is because the legacy schemes are tax-unregistered, which means members do not receive tax relief on contributions. More information on this will be shared ahead of the options exercise.

2.13 Similarly, where pension benefits are already in payment, an adjustment may be needed to correct over or underpayments. For example, a judge who retired in the NIJPS 2015 scheme but makes a legacy scheme election may be owed a shortfall in lump sum or periodic pension payments.

**Compensation**

2.14 As a result of the discrimination, judges may have suffered financial losses. The PSPJOA[[4]](#footnote-4) provides that the scheme manager may pay compensation in respect of such losses.

**Regulation making powers within the PSPJOA**

2.15 The PSPJOA provides the power to make regulations in respect of technical aspects of the remedy. This includes:

* member options such as additional contributions and transfers into the NIJPS 2015 scheme;
* pension sharing orders in the case of divorce;
* payment mechanisms where sums are owed to the scheme or DoJ; and
* the application of interest on sums owed to, or by, the scheme.

2.16 Provision is also made in the PSPJOA to make regulations in respect of judges who are not eligible to take part in the options exercise but are nonetheless affected by *McCloud* discrimination. This includes judges who will have already received their remedy, including *McCloud* litigants[[5]](#footnote-5), as well as certain fee-paid judges known as ‘gap judges’.[[6]](#footnote-6) Both categories are discussed further below.

**Department of Finance directions**

2.17 A requirement of the PSPJOA is that scheme regulations made in respect of the McCloud remedy must be exercised in accordance with Department of Finance directions[[7]](#footnote-7). The Department of Finance directions are based on HM Treasury directions and also provide guidance on applying interest and paying compensation. The aim of this is to ensure a degree of consistency in administering the remedy across the public sector, while allowing schemes some flexibility in light of their differences and administrative processes.

**3. Details of the proposed retrospective *McCloud* regulations**

3.1 The draft regulations will be made using powers in the PSPJP and the Public Services Pensions Act (Northern Ireland) 2014. They will deliver certain technical aspects of the remedy to give effect to the choice made by each judge and will ensure that all judges can be returned to the position they would have been in but for the discrimination. As explained above, the regulations must be exercised in accordance with HM Treasury directions.

3.2 The draft regulations address the following areas:

* Liabilities and amounts owed – Part 6 makes provision for the payment of sums that may be owed to, or by, the scheme or DoJ as a result of the remedy.
* Provision around ‘special cases’ where a member has remedial service – Part 2 makes provision in respect of certain member options, such as additional contributions, transfers into or out of the NIJPS 2015 scheme, partial retirement and early retirement reduction buy-out.
* Provision where an immediate detriment remedy has been obtained – Part 3 makes provision, where necessary, in respect of those who are in the options exercise because they have already returned to legacy scheme membership, for example McCloud litigants and those who have retired before the options exercise.
* Certain fee paid judges – Part 4 makes provision, where necessary, in respect of certain fee-paid judges, also known as ‘gap judges’, who took up salaried office. These judges were treated as members of the NIJPS 2015 scheme but, because of their date of birth and appointment date, they were not eligible for NIJPS scheme membership but should have remained in the salaried legacy scheme in 2015. They are therefore not in scope of McCloud and will not participate in the options exercise. Regulations are needed to return them to the position they would have been in had they not been treated as members of the NIJPS 2015 scheme.
* Pension credit members – Part 5 makes provision for pension credit and debit members where a pension sharing order has been made in respect of a judge’s remedial service. Regulations address the benefits to which both pension credit and debit member are entitled as a result of the remedy.

**4. Liabilities and amounts owed**

4.1 As a result of the remedy, some judges may be owed an amount by the scheme, such as a refund of excess contributions or arrears of pension benefits. Likewise, judges may owe sums to the scheme, for example a shortfall in pension contributions or overpaid pension benefits.

4.2 The draft regulations provide for several flexible repayments mechanisms where judges owe sums to the pension scheme or DoJ. Judges will owe money to DOJ if they received the Transitional Protections Allowance (TPA) in lieu of joining the NIJPS 2015 scheme and wish to make a legacy scheme election in the options exercise. Section 54 of the PSPJOA provides that, in making a legacy scheme election, a TPA judge must repay the net amount of the TPA received. Since the sums could be significant, providing for a range of repayment mechanisms in the regulations ensures there is adequate flexibility for affected judges.

4.3 Provision is also made in the draft regulations for the scheme to reduce or waive a liability owed to the scheme, and to net off where amounts are owed to or by a judge.

4.4 Finally, the draft regulations provide that interest will apply to sums owed to, or by, judges.

**Amounts owed to a judicial scheme or DoJ**

4.5 Where a judge owes an amount to the scheme or DoJ, the starting point in the draft regulations is that the amount must be paid within six months of being notified of the obligation. However, the draft regulations offer judges several options to spread repayment over a longer period.

These include:

* instalments, e.g. a payment plan with fixed regular payments made directly to the scheme;
* deduction from ongoing salary or fees;
* deduction from lump sum on retirement; and
* deduction from pension benefits.

4.6 Because fee-paid judges’ fees may vary from month to month, the amount to be deducted each month from fees may be expressed as either a monetary amount or fixed percentage.

4.7 More information on each mechanism will be provided in the information statements as part of the options exercise.

4.8 Where a member leaves judicial office before paying a liability, where there is an agreement to do so through deduction from salary or fees, the draft regulations require that the remaining amount must be paid within six months of leaving office, However, provision is made to extend this period where the scheme manager considers it just and equitable to do so.

**Amounts owed to a person or to a representative of the deceased person**

4.9 While most sum owed to a judge will be paid automatically as a result of making a scheme election, the draft regulations provide that some payments may only be made to the member on the making of an application, as required by the scheme manager. This is likely to apply where, for example, a member believes they are owed compensation. Before paying the compensation, the scheme manager may require an application supported by evidence of the loss, for example, an invoice from an independent financial adviser in respect of accountancy costs caused by the discrimination. Details of any application process will be provided as part of the options exercise.

**Reduction or waiver of liability owed to a judicial scheme**

4.10 The draft regulations provide that the scheme may reduce or waive a member’s liability to repay an overpayment of pension benefits where they are satisfied that it would not be suitable to require the payment of the liability.

**Reduction of liability to pay pension contributions by tax relief amounts**

4.11 The draft regulations require the pension scheme to reduce a shortfall of pension contributions by an amount of tax relief. This will arise specifically where members make a NIJPS 2015 scheme election and consequently owe contributions, since the NIJPS 2015 scheme contribution rate is higher than the legacy schemes.

4.12 Because the NIJPS 2015 scheme is tax-registered, member contributions also receive tax relief. The draft regulations provide that, rather than requiring the member to pay the contributions only to receive tax relief, the scheme must first reduce the shortfall by the amount of tax relief the judge would have received via the PAYE system, had the contributions been made at the time. Where the amounts are equal, a full waiver of the shortfall will be required.

4.13 Where the amount of tax relief exceeds the contributions shortfall, compensation will be paid to the judge in respect of the excess.

**Interest**

4.14 The PSPJOA provides the power for regulations to apply interest to amounts owed to, or by, judges as a result of the remedy. As drafted, the regulations provide that interest must apply to relevant amounts in accordance with directions set by the Department of Finance. It is the directions which set out the relevant dates and details surrounding calculation periods.

**Netting off**

4.15 The draft regulations provide for netting off amounts that arise as a result of the remedy. The details surrounding the netting off process are set out in the Department of Finance directions.

**5.** **Provision around special cases where a member has remedial service**

5.1 The draft regulations make provision in respect of a number of technical aspects of the remedy, including:

* voluntary contributions, specifically added pension within the NIJPS 2015 scheme;
* transfers out;
* transfers in;
* early retirement reduction buy-out;
* partial retirement; and
* Scheme Pays.

**Voluntary contributions**

5.2 The NIJPS 2015 scheme allowed members to make additional contributions above their normal monthly contributions, in order to purchase additional benefits, for example, Added Pension. Since Added Pension does not exist in the legacy schemes, the draft regulations provide that members who make a legacy scheme election and who have made Added Pension contributions will be given the option of:

* receiving compensation for the net value of their contributions, i.e. the gross Added Pension rate less any PAYE tax relief[[8]](#footnote-8);or
* having the contributions ‘regularised’, i.e. preserved in the NIJPS 2015 scheme.

5.3 If a judge chooses compensation, all rights associated with the Added Pension payments would be extinguished. Where they opt for ‘regularisation’, they would remain a member of the NIJPS 2015 scheme in respect of Added Pension only, despite being back in the legacy scheme for all other purposes. This choice will be presented to judges in the options exercise. Where a judge fails to make a choice, the draft regulations will regularise the contributions in the NIJPS 2015 scheme by default.

**Transfers out**

5.4 The NIJPS 2015 scheme allows members to transfer their benefits out of the judicial scheme to another pension scheme. In cases where a judge has transferred out of the NIJPS 2015 scheme, the draft regulations provide that they are not included in the options exercise. The draft regulations also provide that the scheme must instead calculate what the cash equivalent would have been had the member transferred out of the legacy scheme, rather than the NIJPS 2015 scheme, and provide this calculation in a statement to the member.

5.5 Where this results in an excess (i.e. if the legacy scheme cash equivalent transfer value is greater than that provided under the NIJPS 2015 scheme), the legacy scheme must pay the difference.

**Transfers in**

5.6 The PSPJOA provides that making a legacy scheme election does not affect any transfers into the NIJPS 2015 scheme that judges may have made from private pension schemes[[9]](#footnote-9). This position was reached following consultation, which proposed that judges should be able to retain their transfers in the NIJPS 2015 scheme despite making a legacy scheme election. Accordingly, the draft regulations make the necessary amendments to the NIJPS 2015 scheme regulations to allow a member to retain their transfer in the NIJPS 2015 scheme notwithstanding their legacy scheme election.

**Early retirement reduction buy out (ERRBO)**

5.7 Under the NIJPS 2015 scheme, judges were able to buy out the reduction that would apply if they claimed pension before their normal retirement age. The draft regulations will provide that where a judge has purchased ERRBO in the NIJPS 2015 scheme and subsequently makes a legacy scheme election, the amount of the ERRBO should be reimbursed directly to the member. This is because it is not possible to make ERRBO payments in the legacy scheme.

5.8 The draft regulations make clear that the reimbursement takes the form of net compensation, this being the indexed gross amount paid less an amount of PAYE tax relief received on the payment.

**Partial retirement for fee-paid judges**

5.9 The draft regulations address partial retirement in two specific scenarios:

* where a member has taken partial retirement in respect of a fee-paid office in the NIJPS 2015 scheme by reducing earnings to less than 80% and makes a legacy scheme election; and
* where a member has taken partial retirement by retiring from a fee-paid office in the fee-paid legacy scheme (FPJPS) while continuing to hold judicial office and makes a NIJPS 2015 scheme election.

5.10 No provision is made in respect of salaried office since there is no provision for partial retirement in the salaried legacy scheme (JUPRA). This means that if a member has taken partial retirement in salaried office in the NIJPS 2015 scheme and subsequently makes a legacy scheme election, they will have been overpaid pension. The provisions of the PSPJOA that deal with correcting pension payments[[10]](#footnote-10) would apply to the overpayment.

5.11 The draft regulations provide that where a judge has taken partial retirement in the NIJPS 2015 scheme, and the requirements for taking partial retirement under the fee-paid legacy scheme would have been met at that time, they will retrospectively be treated as having taken partial retirement in the legacy scheme. This will occur where the member has relinquished a fee-paid office.

5.12 Similarly, where a judge exercised the partial retirement option in the fee-paid legacy scheme, and the requirements for taking partial retirement under the NIJPS 2015 scheme would have been met at that time, they will retrospectively be treated as having taken partial retirement in the NIJPS 2015 scheme. This will occur where the member has reduced their hours below 80%.

5.13 Where the partial retirement rules of the chosen scheme are not satisfied, the member would need to repay overpaid pension, as above.

**Scheme Pays**

5.14 The draft regulations also provide for retrospective Scheme Pays where a judge makes a NIJPS 2015 scheme election and as a result incurs an annual allowance tax charge in respect of a tax year within the remedy period. This allows the judge to request for the scheme to pay the charge on behalf of the judge and have a reduction to their pension on retirement.

**6. Provision where an immediate detriment remedy has been obtained**

6.1 This part of the draft regulations makes provision in respect of ‘immediate detriment’ judges. These are judges in respect of whom an immediate detriment remedy has been obtained, defined in s68 of the PSPJOA as being where either:

* a determination has been made by a court or tribunal confirming the judge has rights in the legacy scheme, for example claimants in the *McCloud* litigation; or
* the scheme manager has agreed that the judge has rights in the legacy scheme.

6.2 In both scenarios, the scheme manager must have either paid benefits or compensation in accordance with the agreement or taken steps to implement the determination or agreement, for example by altering pension records

6.3 Judges in the second group are likely to have retired or died before the options exercise takes place. The intention here is that retiring judges or families of deceased judges should not have to wait until the options exercise for a remedy but should receive correct pension benefits and lump sums as soon as practicable.

6.4 The starting point of the PSPJOA is that its provisions do not apply to immediate detriment judges[[11]](#footnote-11). This is because they will have already returned to legacy scheme membership.

6.5 However, s67 of the PSPJOA provides powers to make regulations for the purpose of putting immediate detriment judges, so far as possible, in the position they would have been in had there been no discrimination. This may involve applying relevant provisions of the PSPJOA, with or without modifications, to immediate detriment judges.

6.6 The draft regulations for immediate detriment judges broadly mirror the approach taken in the PSPJOA and other parts of these draft regulations for judges in scope of the main remedy who make a legacy scheme election. Since some payments will have already been dealt with outside the legislation, for example via a court order or settlement agreement between the member and the scheme, the draft regulations do not apply in relation to a payment that would otherwise arise under the regulations where a corresponding payment has already been made.

**Information statements**

6.7 The draft regulations require the scheme to provide immediate detriment judges with a bespoke information statement. Unlike all other judges (whose information statements are addressed in s64 of the PSPJOA), this statement does not need to describe the benefits that would be available in both the legacy scheme and NIJPS 2015 scheme, since immediate detriment judges will already be back in their legacy scheme.

**Partnership pension accounts (PPA)**

6.8 Unprotected and taper-protected judges were able to opt out of the NIJPS 2015 scheme and instead join a PPA - a registered stakeholder pension scheme. Section 41 of the PSPJOA requires PPA judges eligible to make an election to transfer their PPA assets to the judicial legacy scheme then surrender them in exchange for legacy scheme benefits. This is to prevent these judges from receiving double pension benefits (PPA and legacy scheme) in respect of the same period.

6.9 The draft regulations apply the same approach in respect of immediate detriment judges who opted out of the NIJPS 2015 scheme in favour of PPA during the remedy period. They are required to transfer and surrender their PPA assets within three months of being notified of the requirement to do so.

**Children’s benefits**

6.10 Where a judge in scope of the main remedy has died, and there is a surviving adult living separately from a dependent child, s48 of the PSPJOA provides that where the choice made in respect of the late judge’s remedial service would result in less valuable benefits in respect of the child than those available had an alternative scheme election been made, the scheme must pay the more valuable of the two. For example, where a legacy scheme election has been made in respect of the late judge, but the NIJPS 2015 scheme would have paid the child greater benefits, the benefits payable in respect of the child under the legacy scheme must be determined as if a NIJPS 2015 scheme election had been made (and vice versa).

6.11 A ‘child’ is defined as an individual who would have received benefits under either the legacy of NIJPS 2015 scheme if such a scheme election had been made.[[12]](#footnote-12)

6.12 The draft regulations make corresponding provision to s48, with modification, in order to protect children of late judges in relation to whose service an immediate detriment remedy has been obtained. This means that where an immediate detriment remedy has been obtained in relation to the remedial service of a deceased judge, and this results in the child receiving less valuable benefits than those available had a NIJPS 2015 scheme election been made, the benefits payable in respect of the legacy scheme must be determined as if a NIJPS 2015 scheme election had been made.

**Partial retirement in fee-paid service**

6.13 For fee-paid immediate detriment judges who took partial retirement under the NIJPS 2015 scheme, the draft regulations adopt the same approach as for judges in scope of the main remedy (as set out separately in these regulations). That is, the partial retirement will be retrospectively permitted provided the other conditions for taking partial retirement under the legacy fee-paid regulations are met.

6.14 Additionally, the draft regulations include provisions to correct any receipt of pension and lump sum paid to a partially retired immediate detriment judge.

**Effective pension age (EPA) contributions**

6.15 Under the NIJPS 2015 scheme, the EPA option enables contributions to be paid to secure a lower pension age than normal pension age (but no lower than 65). Since the normal pension age in the legacy schemes in 65, such contributions are of no benefit to a judge who returns to legacy scheme membership.

6.16 Section 53 of the PSPJOA applies in this case where a judge who makes a legacy scheme election has made EPA payments to the NIJPS 2015 scheme. It requires the scheme to pay the judge compensation equal to the total amount of the contributions paid, minus the PAYE tax relief received. Rights associated with the EPA payments will also be extinguished.

6.17 The draft regulations adopt the same approach for immediate detriment judges who made EPA contributions, providing that they must receive compensation (net of PAYE tax relief) in respect of their EPA contributions.

6.18 The choice of regularising these contributions will not be available since the purpose of EPA is to reduce the member’s retirement age towards 65, the age at which one can retire without actuarial reduction in the legacy scheme.

**Pension benefits and contributions**

6.19 Similar to judges in scope of the main remedy, a retrospective adjustment to pension contributions will need to be made for immediate detriment judges. In practice, this will involve deducting tax in respect of tax relief received on NIJPS 2015 scheme contributions. This is because the legacy schemes are tax-unregistered, which means contributions do not attract tax relief.

6.20 Where pension benefits are already in payment, an adjustment may be needed to correct over or under payments. Corresponding provision to the PSPJOA is made in the draft regulations to provide for this.

**7. Certain fee-paid judges – ‘gap judges’**

7.1 Section 103 of the PSPJOA makes provision in respect of certain fee-paid judges, also known as ‘gap judges’. This specific group of judges were aged 55 or over on 1st April 2012[[13]](#footnote-13), in fee-paid service on 31st Marc 2012 and took up salaried office between 1st April 2012 and 1st December 2012. Historically, due to being in fee-paid service on 31st March 2012, they were not considered to have been in office on 31st March 2012[[14]](#footnote-14) and therefore, despite their age on 1st April 2012, were not ‘fully protected’ from the 2015 pension changes. Accordingly, these judges were treated as members of the NIJPS 2015 scheme.

7.2 As a result of the *O’Brien* and *Miller* litigation, it is now clear that these judges were in office on 31st March 2012 and, therefore, should have been treated as fully protected members of the judicial legacy scheme. This means they should not have been treated as members of the NIJPS 2015 scheme and are therefore not in scope of the remedy.

7.3 The draft regulations provide the legislative basis to enable these judges to be returned to the position they would have been in had they always been recognised as full protection members of the legacy scheme.

7.4 The process of contacting affected ‘gap judges’ will begin in early 2023 to arrange for their retrospective return to JUPRA, backdated to April 2015.

7.5 As with immediate detriment judges, the draft regulations require the scheme to provide an information statement to gap judges containing the information considered relevant to their circumstances.

7.6 Provision in the draft regulations in respect of the following areas mirrors provision for immediate detriment judges: benefits for children, partial retirement, ERRBO, added pension, EPA, TPA, transfers out, transfers in and compensation.

**8. Pension credit members (PCMs)**

8.1 The PSPJOA[[15]](#footnote-15) provides powers to make regulations in respect of pension credit members (ex-spouses or ex-civil partners) and members of the judicial pension scheme, i.e. the corresponding pension debit members (PDMs) who are, or may become, subject to a pension sharing order in respect of their remediable service.

8.2 The draft regulations protect the PCM’s benefit and, with one exception, prevent them from being adversely affected by a scheme election that would otherwise lead to a reduction in their pension benefits.

8.3 Depending on when the pension sharing order in respect of remediable service was made, a PCM may have rights in the legacy scheme, the NIJPS 2015 scheme or, where a PDM has mixed service, both. The PCM’s rights will remain in their existing scheme(s) irrespective of the scheme election made in respect of the PDM.

8.4 However, the PCM will be entitled to the greater set of benefits, again irrespective of the scheme election that has been made in respect of the PDM. For example, if the PCM has rights in relation to the PDM’s remediable service in the NIJPS 2015 scheme but the value of those rights would be greater in the legacy scheme, the PCM will have their benefits in the NIJPS 2015 scheme increased (with a ‘pension credit’) to reflect the benefits they would have been entitled to under the legacy scheme. Likewise, if the value of the benefits would be less under the legacy scheme, no reduction is to be applied to PCM’s NIJPS 2015 scheme rights; rather they would continue to receive their 2015 scheme entitlement.

8.5 The same applies where the PCM’s rights are in the legacy scheme: the PCM remains in their existing legacy scheme and receives a credit in respect of any more favourable entitlement under the NIJPS 2015 scheme irrespective of any election made by the PDM. No adjustment is made to the PCM’s rights where NIJPS 2015 scheme membership would result in less favourable entitlement.

8.6 The approach outlined above is intended to ensure that a PCM should not be worse off because of a scheme election made by a PDM. There is, however, an exception to this position, where a pension sharing order is based on mixed service, i.e. the legacy and NIJPS 2015 schemes during the remedy period. The PSPJOA provides that judges may not retain mixed service during the remedy period and this approach extends to both PDMs and PCMs. The regulation making power under s57 PSPJOA in respect of PCMs therefore requires any such regulations to ensure that the PCM’s benefits are calculated as if the PDM’s remediable service were under only one scheme[[16]](#footnote-16).

8.7 Essentially, PCMs will be entitled to the value of the more generous of the two relevant schemes for the period of remediable service, again irrespective of the scheme election made by the PDM. However, in some cases this may mean a PCM is entitled to less than they would be if they were allowed to retain their mixed service – in line with the position of the corresponding PDM.

8.8 The draft regulations address various specific scenarios for PCMs and PDMs and require the pension manager to provide a statement to the PCM stating the benefits they would be entitled to in each scheme.

8.9 After the PDM has made a scheme election, the draft regulations require their rights to be adjusted to reflect the chosen scheme.

**9. Remedial voluntary contributions**

9.1 Section 60 of the PSPJOA provides the power for the judicial scheme to make regulations that allow members to make ‘remedial voluntary contributions’. Such provision is only permitted in respect of a member where the scheme manager is satisfied that it is more likely than not that, but for the discrimination, the judge would have entered into such arrangements during the period of their remedial service,

9.2 At this stage, we do not propose to provide for these arrangements in regulations. This is because judges who were making voluntary contributions alongside their legacy scheme before transferring to the NIJPS scheme were entitled to continue making such contributions after their transfer. Additionally, judges who transferred to the NIJPS 2015 scheme were given the opportunity to make Added Pension and Effective Pension Age contributions to the 2015 scheme during the remedy period regardless of the discrimination.

**10. Questionnaire**

We welcome responses to the following questions:

1. Do you have any comments on the proposals outlined in this consultation document or draft regulations?

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2. Do you have any comments on the Equality Screening, Rural Proofing Assessment or Regulatory Impact Assessment included with this consultation paper?

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| --- |

**About You**

|  |  |
| --- | --- |
| Please use this section to tell us about yourself.  **Full name** | |
| **Job title** or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.) | |
| **Date** | |
| **Organisation name** (if applicable): | |
| **Address** | |
| **Postcode** | |
| If you would like us to acknowledge receipt of your response, please tick this box | (please tick box) ☐ |
| Address to which the acknowledgement should be sent, if different from above | |

**11. NEXT STEPS**

11.1 The Department will consider the responses to this consultation and will publish its response on its website ([www.justice-ni.gov.uk](http://www.justice-ni.gov.uk)) in due course. Subject to the outcome of the consultation, the Department will then take forward the legislation required to make the Judicial Pensions (Remedial Service etc) Regulations (Northern Ireland) 2023.

**12. IMPACTS**

12.1 Section 75 of the Northern Ireland Act 1998 requires that all public authorities in Northern Ireland comply with a statutory duty to:

* have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status, or sexual orientation, gender, and those with or without a disability and those with or without dependents; and
* have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group. The Department is committed to fulfilling those obligations and proposals arising from this paper have been subjected to screening to determine impact on equality of opportunity, good relations and other statutory duties (see screening form at Appendix 3).

12.2 In addition, public authorities are also required to meet legislative obligations under the Disability Discrimination (Northern Ireland) Order 2006, particularly in the formation of public policy making.

12.3 The proposals have also been screened for rural needs impact (see Appendix 5) and a Regulatory Impact Assessment has also been completed (See Appendix 6).

12.4 The Department welcomes views on these screening documents.

**Appendix 1 – List of Consultees**

This consultation document has been sent to the following persons and organisations:

* Council of Employment Judges
* First and deputy First Minister of Northern Ireland
* Judges Council (NI)
* Judicial Pensions Committee (NI)
* Lady Chief Justice of Northern Ireland
* Northern Ireland Judicial Appointments Commission
* Office of the President of the Appeal’s Tribunal for Northern Ireland
* Office of the President of the Industrial and Fair Employment Tribunals for Northern Ireland
* The Bar Council
* The Law Society
* Tribunal Presidents Group

**Appendix 2 – Draft Judicial Pensions (Remedial Services etc) Regulations (Northern Ireland) 2023**

*Order laid before the Assembly under \*\*\*, and subject to affirmative resolution procedure of the Assembly*

DRAFT STATUTORY RULES OF NORTHERN IRELAND

**2023 No. 0000**

**PUBLIC SERVICE PENSIONS**

The Judicial Pensions (Remediable Service etc.) Regulations (Northern Ireland) 2023

*Made* *-* *-* *-* *-* *00th January 2023*

*Coming into force - - 00th February 2023*

The Department of Justice makes the following Regulations in exercise of the powers conferred by sections 1(1) and (2)(b), 2(1) (as read with paragraph 2(1) of Schedule 2), 3(1), (2)(a) (as read with paragraph 13 of Schedule 3) and (c), (3) and (4A) and 5(1) and (3)(c) of the Public Service Pensions Act (Northern Ireland) 2014(**[[17]](#footnote-17)**) (“the 2014 Act”) and sections 55(1) and (2), 56(1) to (3), 57(1), (4) and (5), 58(1), (2)(a) to (c), (e) and (f), (3) and (4), 61(1) and (2), 67(2) and (3), 74(2) and 103(1) and (2) of the Public Service Pensions and Judicial Offices Act 2022(**[[18]](#footnote-18)**) (“the PSPJOA 2022”).

In accordance with section 21 of, and paragraph 2(2) of Schedule 2 to, the 2014 Act, the Department of Justice has consulted such persons and representatives of such persons as appear to be likely to be affected by these Regulations.

In accordance with section 3(5) of the 2014 Act, the Department of Justice has obtained the consent of the Department of Finance before making these Regulations.

The Department of Justice has had regard to the matters referred to in section 5(4) of the 2014 Act.

These Regulations are made in accordance with Treasury directions(**[[19]](#footnote-19)**) made under section 62 of the PSPJOA 2022.

PART 1

Preliminary

**Citation and commencement**

— These Regulations may be cited as the Judicial Pensions (Remediable Service etc.) Regulations (Northern Ireland) 2023.

These Regulations come into force on [xxx] 2023.

**Interpretation**

 In these Regulations—

“FPJR 2017” means the Judicial Pensions (Fee-Paid Judges) Regulations 2017(**[[20]](#footnote-20)**);

“PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022;

“the 2015 Regulations” mean the Judicial Pensions Regulations (Northern Ireland) 2015(**[[21]](#footnote-21)**);

“the 2015 scheme” means the scheme established by the 2015 Regulations;

“the PSP Directions 2022” means the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (Northern Ireland) 2022;

“appropriate Minister” has the meaning given in section 30 (interpretation) of JUPRA 1993;

“appropriate person” means—

for the purposes of Part 5, R or, if R is deceased, R’s personal representatives; and

for all other purposes, P or, if P is deceased, P’s personal representatives;

“Judicial Pension Board” means the Judicial Pension Board established by regulation 6(1) of the 2015 Regulations;

“relevant service” has the meaning given in regulation [31];

“scheme actuary” has the meaning given in regulation 2 (interpretation) of the 2015 Regulations;

“scheme manager” has the meaning given in regulation 4 of the 2015 Regulations;

“transfer value payment” has the meaning given in regulation 2 of the 2015 Regulations.

Except as provided for in these Regulations, expressions used in these Regulations have the same meaning as in Chapter 2 of Part 1 of PSPJOA 2022.

**Scheme manager**

— Before exercising any discretion under these Regulations, the scheme manager must obtain a recommendation from the Judicial Pension Board.

If the scheme manager exercises any discretion under these Regulations contrary to a recommendation made by the Judicial Pension Board, the scheme manager must provide written reasons for doing so to the Judicial Pension Board and to the member to whom the discretion relates (if any).

The scheme manager and the Judicial Pension Board may agree that paragraphs (1) and (2) do not apply to specific discretions or in specific circumstances.

**Delegation**

— The scheme manager may delegate any functions under these Regulations, including this power.

The Judicial Pension Board may delegate any functions under these Regulations.

**Right of Appeal**

 The scheme manager must, in consultation with the Judicial Pension Board, establish a procedure for the consideration of appeals against decisions taken under these Regulations.

PART 2

Provision about special cases where a member has remediable service

CHAPTER 1

Application of Part

**Application of Part**

 This Part applies where—

a person (“P”) has remediable service(**[[22]](#footnote-22)**) in a judicial office(**[[23]](#footnote-23)**); and

an immediate detriment remedy(**[[24]](#footnote-24)**) has not been obtained in relation to that service.

CHAPTER 2

Member options

**Member options where a legacy scheme election is made**

 Regulations [8] to [10] apply where a legacy scheme election(**[[25]](#footnote-25)**) is made in respect of P.

**Compensation for special payments to buy out early payment reduction**

— This regulation applies where P has, during the period of remediable service, made any special payments under regulation 74(3)(a) or (c) of the 2015 Regulations.

The rights that would otherwise have been secured by the special payments are extinguished.

The scheme manager must pay to the appropriate person an amount by way of compensation equal to—

the aggregate of the special payments paid by P; less

an amount, determined in accordance with direction [23] of the PSP Directions 2022, in respect of the value of the tax relief under section 188 of FA 2004 (member contributions) to which P was entitled in respect of those payments.

The following apply in relation to a determination under direction [23(2)]—

direction [23(4) (provision of explanation)];

direction [23(5) and (6) (appeals)].

**Compensation for payments for added pension**

— This regulation applies where—

P has, during the period of remediable service, made any added pension payments under Part 2 of Schedule 1 to the 2015 Regulations; and

regulation 129(1)(b) of the 2015 Regulations does not apply in respect of those added pension payments.

Where the appropriate person makes a request for compensation in respect of the added pension payments—

the rights that would otherwise have been secured by the added pension payments are extinguished; and

the scheme manager must pay to the appropriate person an amount by way of compensation equal to—

the aggregate of the added pension payments paid by P; less

an amount, determined in accordance with direction [23] of the PSP Directions 2022, in respect of the value of the tax relief under section 188 of FA 2004 (member contributions) to which P was entitled in respect of those payments.

The following apply in relation to a determination under direction [23(2)]—

direction [23(4) (provision of explanation)];

direction [(23(5) and (6) (appeals)].

A request under paragraph (2)—

must be—

made by notice to the scheme manager;

in a form required by the scheme manager;

received by the scheme manager before the end of the election period(**[[26]](#footnote-26)**); and

is irrevocable.

**Transfers out of the 2015 scheme**

— This regulation applies where a transfer value payment has, during the period of remediable service, been made under regulation 133 of the 2015 Regulations in respect of P’s accrued rights (disregarding any provision of Chapter 2 of Part 1 of PSPJOA 2022) under the 2015 scheme.

Nothing in sections 41 to 66 of PSPJOA 2022 applies in relation to P’s remediable service.

The scheme manager must provide the appropriate person with a statement of the cash equivalent to which P would have been entitled, had—

sections 41 to 66 of PSPJOA 2022 applied in respect of P’s accrued rights on the guarantee date in relation to the period of remediable service; and

a legacy scheme election been made in respect of P.

Where—

the value of the cash equivalent in respect of the sum specified in regulation 137(3)(a) of the 2015 Regulations; is less than

the value of the cash equivalent to which P would have been entitled under paragraph (3) in respect of that sum,

the scheme manager must pay to the appropriate person an amount equal to the value of the difference.

The scheme manager is discharged from any further obligation to provide benefits in relation to the cash equivalent.

In this regulation, the “guarantee date” is the date specified in the statement of entitlement that was provided under regulation 135(1) of the 2015 Regulations in respect of the transfer value payment.

CHAPTER 3

Partial retirement

**Partial retirement notice**

— Paragraph (2) applies where—

P exercised a partial retirement option under regulation 60(2) of the 2015 Regulations in respect of any fee-paid judicial office(**[[27]](#footnote-27)**);

a legacy scheme election is made in respect of P; and

the conditions set out in regulation 27(1) of FPJR 2017 are met in respect of P.

A notice in respect of P that complies with the requirement in regulation 27(3)(a) of FPJR 2017 is treated as having been given in accordance with sub-paragraph (3)(b) of that regulation if it is received by the appropriate Minister before the end of the election period.

A notice under paragraph (2) has effect on the date referred to in regulation 61(1)(b) of the 2015 Regulations.

Paragraph (5) applies where—

P gave notice to take partial retirement under regulation 27 of FPJR 2017;

a 2015 scheme election is made, or is treated as having been made, in respect of P; and

the conditions set out in regulation 60(1) of the 2015 Regulations are met in respect of P.

A partial retirement option in respect of P is treated as having been exercised in accordance with regulation 61(1)(b) of the 2015 Regulations if a partial retirement option notice that complies with the requirements of regulation 61(1)(a) and (2) of those Regulations is received by the scheme manager before the end of the election period.

An option under paragraph (5) has effect on the date referred to in regulation 27(4) of FPJR 2017.

**Corrections for pension benefits and lump sum benefits on partial retirement**

 Where paragraph (2) or (5) of regulation [11] applies, section 51 of PSPJOA 2022 applies in relation to P as if for subsection (1) there were substituted—

(1) This section applies in relation to a member (“M”) of a judicial scheme who—

(a) at the end of the election period has remediable service in a judicial office that is pensionable service under the scheme, and

(b) during the period of remediable service has—

(i) exercised a partial retirement option under regulation 60(2) of the 2015 Regulations, or

(ii) given notice to take partial retirement under regulation 27(2) of FPJR 2017.

**[Payment of annual allowance tax charges and provision of information**

 Direction [24(2) to (7)] (payment by the scheme administrator of annual allowance tax charges and the provision of information) of the PSP Directions 2022 applies in relation to P.]

PART 3

Provision where an immediate detriment remedy has been obtained

CHAPTER 1

Application and Interpretation

**Application of Part**

— This Part applies where—

a person (“P”) has remediable service in a judicial office; and

an immediate detriment remedy has been obtained in relation to that service.

This Part does not apply in relation to any payment or transfer of assets and liabilities that would otherwise be payable or required to be made under this Part where a corresponding payment or a corresponding transfer of assets and liabilities has been made.

In this regulation—

a “corresponding payment” is a payment that has been made in accordance with a determination under section 68(2), or an agreement under section 68(3), of PSPJOA 2022 that corresponds to a payment that is payable or required to be made under this Part; and

a “corresponding transfer of assets and liabilities” is a transfer of assets and liabilities that has been made in accordance with a determination under section 68(2) of PSPJOA 2022 that corresponds to a transfer of assets and liabilities that is required to be made under this Part.

**Interpretation of Part**

— In this Part—

“adult survivor” means a surviving spouse or surviving civil partner who is entitled under the relevant judicial legacy scheme to a pension determined (to any extent) by reference to P’s remediable service;

“relevant judicial legacy scheme” means—

in the case of a determination under section 68(2), or an agreement under 68(3), of PSPJOA 2022 that P has rights under a judicial legacy salaried scheme(**[[28]](#footnote-28)**), that scheme; and

in the case of a determination under section 68(2), or an agreement under 68(3), of PSPJOA 2022 that P has rights under the judicial legacy fee-paid scheme(**[[29]](#footnote-29)**), that scheme.

For the purposes of this Part the “notification period”, in relation to a person who has obtained an immediate detriment remedy, is (subject to paragraph (3)) the period of three months beginning with the date on which the statement mentioned in regulation [30] is sent.

The relevant authority may extend the period mentioned in paragraph (2) in relation to P if the relevant authority considers it just and equitable to do so.

CHAPTER 2

Information statements

**Information statements**

— The relevant authority must, as soon as reasonably practicable—

prepare a statement in relation to P; and

send it to P or, if P is deceased, P’s personal representatives.

The statement must contain such information as the relevant authority considers relevant to P’s rights and liabilities under Chapter 2 of Part 1 of PSPJOA 2022 or these Regulations in respect of the immediate detriment remedy.

CHAPTER 3

Partnership pension account where an immediate detriment remedy has been obtained

**Partnership pension account: requirement to transfer and surrender rights**

— Paragraph (2) applies where—

P has remediable service in a salaried judicial office(**[[30]](#footnote-30)**); and

any of the remediable service is PPA opted-out service(**[[31]](#footnote-31)**).

The relevant person must, within three months beginning with the day after the end of the notification period, take the steps specified in section 41(3) of PSPJOA 2022.

Paragraph (4) applies where—

P has remediable service in a fee-paid judicial office; and

any of the remediable service is PPA opted-out service.

The relevant person must take the steps specified in section 41(6) of PSPJOA 2022.

For the purposes of this regulation “relevant person” means “P” or, if P is deceased—

the adult survivor; or

if there is no adult survivor, P’s personal representatives.

CHAPTER 4

Benefits for children where an immediate detriment remedy has been obtained

**Benefits for children**

— This regulation applies where—

P died before the immediate detriment remedy was obtained;

the immediate detriment remedy was obtained by an adult survivor of P;

P is survived by a child who is not living in the same household as the adult survivor; and

the benefits payable under the relevant judicial legacy scheme in respect of the child are, in the opinion of the scheme manager of the scheme, less valuable (looked at in the round) than those that would have been payable in respect of the child if—

an immediate detriment remedy had not been obtained in relation to P’s remediable service; and

a 2015 scheme election had been made in respect of P.

The benefits payable in respect of the child under the relevant judicial legacy scheme, so far as they are determined by reference to P’s remediable service, are such benefits as would have been payable in respect of the child, so far as they are determined by reference to P’s remediable service, if—

an immediate detriment remedy had not been obtained in relation to P’s remediable service; and

a 2015 scheme election had been made in respect of P.

In this regulation, “child” means any individual who would have received benefits in respect of P under the 2015 scheme in their capacity as a child if—

an immediate detriment remedy had not been obtained in relation to P’s remediable service; and

a 2015 scheme election had been made, or treated as made, in respect of P.

Paragraph (2) applies in relation to benefits that were payable in respect of the child before, as well as after, the immediate detriment remedy was obtained.

CHAPTER 5

Partial retirement where an immediate detriment remedy has been obtained

**Partial retirement**

— Paragraph (2) applies where—

P exercised a partial retirement option under regulation 60(2) of the 2015 Regulations in respect of any fee-paid judicial office; and

the conditions set out in regulation 27(1) of FPJR 2017 are met in respect of P.

A notice in respect of P that complies with the requirement in regulation 27(3)(a) of FPJR 2017 is treated as having been given in accordance with sub-paragraph (3)(b) of that regulation if it is received by the appropriate Minister before the end of the notification period.

A notice under paragraph (2) has effect on the date referred to in regulation 61(1)(b) of the 2015 Regulations.

**Corrections for pension benefits and lump sum benefits on partial retirement**

 Where regulation [19](2) applies, section 51 of PSPJOA 2022 applies in relation to P as if for subsection (1) there were substituted—

(1) This section applies in relation to a member (“M”) of a judicial scheme where—

(a) M has remediable service in a judicial office that is pensionable service under the scheme;

(b) an immediate detriment remedy has been obtained in relation to the remediable service; and

(c) during the period of remediable service, M exercised a partial retirement option under regulation 60(2) of the 2015 Regulations..

CHAPTER 6

Benefits and contributions previously paid or payable

**Effect of immediate detriment remedy on benefits previously paid or payable**

— Paragraph (2) applies in relation to any benefits (“the paid benefits”) that the 2015 scheme has at any time paid to a person so far as—

they are calculated by reference to P’s remediable service in a salaried judicial office; and

they are benefits that, as a result of any immediate detriment remedy that has been obtained in relation to that service, a person was not entitled to receive from the 2015 scheme.

The paid benefits are to be treated for all purposes—

as not having been paid to the person by the 2015 scheme; but

as having been paid to the person instead by the judicial legacy salaried scheme.

Paragraph (4) applies in relation to any benefits (“the paid benefits”) that the 2015 scheme has at any time paid to a person so far as—

they are calculated by reference to P’s remediable service in a fee-paid judicial office, and

they are benefits that, as a result of any immediate detriment remedy that has been obtained in relation to that service, a person was not entitled to receive from the 2015 scheme.

The paid benefits are to be treated for all purposes—

as not having been paid to the person by the 2015 scheme; but

as having been paid to the person instead by the judicial legacy fee-paid scheme.

Paragraph (6) applies where, as a result of any immediate detriment remedy that has been obtained (and after taking into account the effect of paragraphs (2) and (4))—

a judicial legacy scheme owes a person an amount in respect of benefits which are calculated by reference to P’s remediable service; or

a person owes a judicial legacy scheme an amount in respect of such benefits.

The liability is to be discharged only in accordance with regulation [23] (corrections for pension benefits and lump sum benefits).

**Effect of immediate detriment remedy on pension contributions previously paid or payable**

— Paragraph (2) applies where P has paid any pension contributions (“the paid pension contributions”) under the 2015 scheme which—

are calculated by reference to P’s remediable service in a salaried judicial office; and

as a result of any immediate detriment remedy that has been obtained in relation to that service, P was not required to pay to the 2015 scheme.

The paid contributions are to be treated for all purposes—

as not having been paid by P to the 2015 scheme; but

as having been paid by P instead to the judicial legacy salaried scheme.

Paragraph (4) applies where P has paid any pension contributions (“the paid pension contributions”) under the 2015 scheme which—

are calculated by reference to P’s remediable service in a fee-paid judicial office; and

as a result of any immediate detriment remedy that has been obtained in relation to that service, P was not required to pay to the 2015 scheme.

The paid contributions are to be treated for all purposes—

as not having been paid by P to the 2015 scheme; but

as having been paid by P instead to the judicial legacy fee-paid scheme.

Paragraph (6) applies where, as a result of any immediate detriment remedy that has been obtained (and after taking into account the effect of paragraphs (2) and (4))—

a judicial legacy scheme owes a person an amount in respect of pension contributions which are calculated by reference to P’s remediable service; or

a person owes a judicial legacy scheme an amount in respect of such contributions.

The liability is to be discharged only in accordance with regulation [24] (corrections for pension contributions).

CHAPTER 7

Corrections for benefits and contributions where an immediate detriment remedy has been obtained

**Pension benefits and lump sum benefits**

— This regulation applies where P—

P is a pensioner member in relation to the judicial office; or

P is deceased.

Where—

the aggregate of the pension benefits, if any, that (after taking into account the effect, if any, of regulation [21](2) or (4)) have been paid under a judicial legacy scheme to any person (“the beneficiary”) in respect of P’s remediable service; exceeds

the aggregate of the pension benefits to which (after taking into account the effect, if any, of any immediate detriment remedy that has been obtained in relation to P’s remediable service) the beneficiary was entitled under the scheme in respect of the service;

the beneficiary must pay the difference to the scheme.

Where—

the amount mentioned in sub-paragraph (2)(a); is less than

the amount mentioned in sub-paragraph (2)(b);

the scheme manager must pay the difference to the beneficiary.

Where—

the aggregate of the lump sum benefits, if any, that (after taking into account the effect, if any, of regulation [21](2) or (4)) have been paid under a judicial legacy scheme to any person (“the beneficiary”) in respect of P’s remediable service; exceeds

the aggregate of the lump sum benefits to which (after taking into account the effect, if any, of any immediate detriment remedy that has been obtained in relation to P’s remediable service) the beneficiary was entitled under the scheme in respect of the service;

the beneficiary must pay the difference to the scheme.

Where—

the amount mentioned in sub-paragraph (4)(a); is less than

the amount mentioned in sub-paragraph (4)(b);

the scheme manager must pay the difference to the beneficiary.

**Pension contributions**

— This regulation applies in relation to P after taking into account the effect, if any, of any immediate detriment remedy that has been obtained in respect of P’s remediable service.

Where—

the paid contributions amount for an in-scope year in respect of P’s remediable service, exceeds

the payable contributions amount for that tax year in respect of that service,

the scheme manager must (directly or indirectly) pay an amount in respect of the difference to the appropriate person.

Where—

the paid contributions amount for an out-of-scope tax year in respect of P’s remediable service, exceeds

the payable contributions amount for that tax year in respect of that service,

no amount is to be paid by the scheme manager in respect of the difference to the appropriate person.

Where—

the paid contributions amount for an in-scope or out-of-scope tax year in respect of P’s remediable service, is less than

the payable contributions amount for that tax year in respect of that service,

the appropriate person must pay pension contributions in respect of the difference to the scheme.

A reference in this regulation to “the paid contributions amount” for a tax year in respect of P’s remediable service in a judicial office is a reference to the sum of—

the aggregate of the pension contributions that (after taking into account the effect, if any, of regulation [22](2) and (4), have been paid under the scheme by P in the tax year in respect of so much of the service as was not PPA opted-out service; and

where any of the remediable service was PPA opted-out service—

the aggregate of the pension contributions and any voluntary contributions that have been paid by P under the partnership pension account in the tax year in respect of the PPA opted-out service; or

if lower, the aggregate of the pension contributions that were payable under the scheme by P for that tax year in respect of the PPA opted-out service.

A reference in this regulation to “the payable contributions amount” for a tax year in respect of P’s remediable service means the aggregate of the pension contributions that were payable under the scheme by P for that tax year in respect of the service.

For the purposes of this regulation—

a tax year is “in-scope” in relation to P if any necessary adjustment to the amount of income tax paid by P in respect of PAYE income for the tax year is capable of being enforced by HMRC under PAYE regulations; and

a tax year is “out-of-scope” in relation to P if it is not in-scope in relation to P.

A reference in this regulation to pension contributions or voluntary contributions paid by a person under a partnership pension account is a reference to the amount of the contributions paid, net of any tax relief under section 188 of FA 2004 (relief for contributions) to which the person was entitled in respect of them.

CHAPTER 8

Compensation for voluntary payments where an immediate detriment remedy has been obtained

**Compensation for special payments to buy out early payment reduction**

— This regulation applies where P has, during the period of remediable service, made any special payments under regulation 74(3)(a) or (c) of the 2015 Regulations.

The rights that would otherwise have been secured by the special payments are extinguished.

The scheme manager must pay to the appropriate person an amount by way of compensation equal to—

the aggregate of the special payments paid by P; less

an amount, determined in accordance with direction [23] of the PSP Directions 2022, in respect of the value of the tax relief under section 188 of FA 2004 (member contributions) to which P was entitled in respect of those payments.

The following apply in relation to a determination under direction [23(2)]—

direction [23(4) (provision of explanation)];

direction [23(5) and (6) (appeals)].

**Compensation for payments for added pension**

— This regulation applies where—

P has, during the period of remediable service, made any added pension payments under Part 2 of Schedule 1 to the 2015 Regulations; and

regulation 129(1)(b) of the 2015 Regulations does not apply in respect of those payments.

Where the appropriate person makes a request for compensation in respect of the added pension payments—

the rights that would otherwise have been secured by the added pension payments are extinguished; and

the scheme manager must pay to the appropriate person an amount by way of compensation equal to—

the aggregate of the added pension payments paid by P; less

an amount, determined in accordance with direction [23] of the PSP Directions 2022, in respect of the value of the tax relief under section 188 of FA 2004 (member contributions) to which P was entitled in respect of those payments.

The following apply in relation to a determination under direction [23(2)]—

direction [23(4) (provision of explanation)];

direction [23(5) and (6) (appeals)].

A request under paragraph (2)—

must be—

made by notice to the scheme manager;

in a form required by the scheme manager;

received by the scheme manager before the end of the notification period; and

is irrevocable.

**Compensation for effective pension age payments**

— This regulation applies where P has, during the period of remediable service, made any effective pension age payments under Part 3 of Schedule 1 to the 2015 Regulations.

The rights that would otherwise have been secured by the effective pension age payments are extinguished.

The scheme manager must pay to the appropriate person an amount by way of compensation equal to—

the aggregate of the effective pension age payments paid by P, less

an amount, determined in accordance with direction [23] of the PSP Directions 2022, in respect of the value of the tax relief under section 188 of FA 2004 (member contributions) to which P was entitled in respect of these payments.

The following apply in relation to a determination under direction [23(2)]—

direction [23(4) (provision of explanation)];

direction [23(5) and (6) (appeals)].

CHAPTER 9

Transitional protection allowance where an immediate detriment remedy has been obtained

**Transitional protection allowance**

— This regulation applies where P’s employer(**[[32]](#footnote-32)**) has paid P a transitional protection allowance(**[[33]](#footnote-33)**).

The appropriate person must pay to P’s employer an amount equal to—

the amount of the transitional protection allowance, less

an amount in respect of the income tax suffered by P that is attributable to the transitional protection allowance.

CHAPTER 10

Compensation for compensatable losses where an immediate detriment remedy has been obtained

**Power to pay compensation in respect of compensatable losses**

— The scheme manager for a judicial scheme may pay amounts by way of compensation in respect of compensatable losses incurred by the appropriate person.

For the purposes of this regulation a loss incurred by the appropriate person is “compensatable” if and to the extent that—

either of the conditions in paragraphs (3) and (4) are met; and

the loss is of a description that corresponds to a description that is specified in Treasury directions(**[[34]](#footnote-34)**) made under section 62(2)(e) of PSPJOA 2022 in respect of compensatable losses under section 59(3) of that Act.

The first condition is that the loss is attributable to, or is reasonably regarded as attributable to, a relevant breach of a non-discrimination rule.

The second condition is that the loss is attributable to the application of any provision of this Part.

For the purpose of this regulation a breach of a non-discrimination rule is “relevant” if section 59(10) of PSPJOA 2022 applies to it.

Paragraph (1) does not confer power to pay amounts by way of compensation in respect of compensatable losses so far as—

the appropriate person has already received amounts by way of compensation in respect of them; or

amounts that any person has paid to the scheme have been reduced by amounts in respect of them,

whether pursuant to an order of the court or otherwise.

CHAPTER 11

Unauthorised payments where an immediate detriment remedy has been obtained

**Scheme rules that prohibit unauthorised payments**

— This regulation applies where—

a payment from a judicial scheme is permitted or required to be made under this Part;

the payment, if made, would be an unauthorised payment(**[[35]](#footnote-35)**); and

a rule of the scheme prohibits the scheme from making unauthorised payments.

The payment may be made only if it falls within a description of payments that correspond to a description of payments specified for the purposes of section 63 of PSPJOA 2022 in Treasury directions(**[[36]](#footnote-36)**).

Paragraph (4) applies where—

in the course of taking the steps mentioned in regulation [17] (requirement to transfer assets held in a partnership pension account) a payment is made from a partnership pension account;

the payment, if made, would be an unauthorised payment; and

a rule of the scheme prohibits the scheme from making unauthorised payments.

The payment may be made notwithstanding the rule mentioned in paragraph (3)(c).

PART 4

Provision in relation to certain fee-paid judges

CHAPTER 1

Application and Interpretation

**Application of Part**

— This Part applies where a relevant fee-paid judge(**[[37]](#footnote-37)**) (“R”) has relevant service in a judicial office.

“Relevant service” is any continuous period of service that meets the following conditions.

The first condition is that the service in question took place in the period beginning with 1st April 2015 and ending with 31st March 2022.

The second condition is that the service is pensionable service under a judicial legacy scheme.

The third condition is that there is no disqualifying gap in service(**[[38]](#footnote-38)**) falling within the period—

beginning with the day after the most recent day in relation to which section 103(3)(c) PSPJOA 2022 applies in relation to R; and

ending with the day before the first day of the relevant service.

This Part does not apply in relation to any payment or transfer of assets and liabilities that would otherwise be payable or required to be made under this Part where a corresponding payment or a corresponding transfer of assets and liabilities has been made.

In this regulation—

a “corresponding payment” is a payment that has been made in relation to R’s relevant service that corresponds to a payment that is payable or required to be made under this Part;

a “corresponding transfer of assets and liabilities” is a transfer of assets and liabilities that has been made in relation to R’s relevant service that corresponds to a transfer of assets and liabilities that is required to be made under this Part.

**Interpretation of Part**

— In this Part, “adult survivor” means a surviving spouse or surviving civil partner who is entitled under a judicial legacy scheme to a pension determined (to any extent) by reference to R’s relevant service.

For the purposes of this Part—

R’s relevant service is “PPA opted-out relevant service” if and to the extent that R made contributions to a partnership pension account in respect of it;

the “notification period”, in relation to R, is (subject to sub-paragraph (c)) the period of three months beginning with the date on which the statement mentioned in regulation [33] is sent;

the relevant authority may extend the period mentioned in sub-paragraph (b) in relation to R if the relevant authority considers it just and equitable to do so.

CHAPTER 2

Information statements

**Information statements**

— The relevant authority must, as soon as reasonably practicable—

prepare a statement in relation to R; and

send it to R or, if R is deceased, R’s personal representatives.

The statement must contain such information as the relevant authority considers relevant to R’s rights and liabilities under these Regulations.

**Partnership pension account: requirement to transfer and surrender rights.**

— Paragraph (2) applies where—

R has relevant service in a salaried judicial office; and

any of the relevant service is PPA opted-out relevant service.

The PPA beneficiary must, within three months beginning with the day after the end of the notification period, take the steps specified in section 41(3) of PSPJOA 2022.

Paragraph (4) applies where—

R has relevant service in a fee-paid judicial office; and

any of the relevant service is PPA opted-out relevant service.

The relevant person must take the steps specified in section 41(6) of PSPJOA 2022.

In this regulation “relevant person” means “R” or, if R is deceased—

the adult survivor; or

if there is no adult survivor, R’s personal representatives.

CHAPTER 3

Benefits for children

**Benefits for children**

— This regulation applies where—

R is deceased;

R is survived by a child who is not living in the same household as an adult survivor of P; and

the benefits payable under [any] judicial legacy scheme in respect of the child are, in the opinion of the scheme manager of the scheme, less valuable (looked at in the round) than those that would have been payable in respect of the child under the 2015 scheme.

The benefits payable in respect of the child under [any] judicial legacy fee-paid scheme, so far as they are determined by reference to R’s relevant service, are such benefits as would have been payable in respect of the child, so far as they are determined by reference to R’s relevant service, if R had been a member of the 2015 scheme.

In this regulation “child” means any individual who is entitled to benefits in respect of R under a judicial legacy scheme in their capacity as a child.

CHAPTER 4

Partial retirement

**Partial retirement notice**

— Paragraph (2) applies where—

R exercised a partial retirement option under regulation 60(2) of the 2015 Regulations in respect of any fee-paid judicial office; and

the conditions set out in regulation 27(1) of FPJR 2017 are met in respect of R.

A notice in respect of R that complies with the requirement in regulation 27(3)(a) of FPJR 2017 is treated as having been given in accordance with sub-paragraph (3)(b) of that regulation if it is received by the appropriate Minister before the end of the notification period.

A notice under paragraph (2) has effect on the date referred to in regulation 61(1)(b) of the 2015 Regulations.

**Corrections for pension benefits and lump sums on partial retirement**

 Where regulation [50](2) applies, section 51 of PSPJOA 2022 applies in relation to R as if for subsection (1) there were substituted—

(1) This section applies in relation to a member (“M”) of a judicial scheme where—

(a) M has relevant service in a judicial office;

(b) the relevant service is pensionable service under the scheme, and

(c) during the period of relevant service, M exercised a partial retirement option under regulation 60(2) of the 2015 Regulations..

CHAPTER 5

Benefits and contributions

**Benefits previously paid or payable**

— Paragraph (2) applies in relation to any benefits (“the paid benefits”) that the 2015 scheme has at any time paid to a person so far as—

they are calculated by reference to R’s relevant service in a salaried judicial office; and

they are benefits that a person was not entitled to receive from the 2015 scheme.

The paid benefits are to be treated for all purposes—

as not having been paid to the person by the 2015 scheme; but

as having been paid to the person instead by the judicial legacy salaried scheme.

Paragraph (4) applies in relation to any benefits (“the paid benefits”) that the 2015 scheme has at any time paid to a person so far as—

they are calculated by reference to R’s relevant service in a fee-paid judicial office, and

they are benefits that a person was not entitled to receive from the 2015 scheme.

The paid benefits are to be treated for all purposes—

as not having been paid to the person by the 2015 scheme; but

as having been paid to the person instead by the judicial legacy fee-paid scheme.

Paragraph (6) applies where, after taking into account the effect of paragraphs (2) and (4) —

a judicial legacy scheme owes a person an amount in respect of benefits which are calculated by reference to R’s relevant service in a judicial office; or

a person owes a judicial legacy scheme an amount in respect of such benefits.

The liability is to be discharged only in accordance with regulation [40] (corrections for pension benefits and lump sum benefits).

**Pension contributions previously paid or payable**

— Paragraph (2) applies where R has paid any pension contributions (“the paid pension contributions”) under the 2015 scheme which—

are calculated by reference to R’s relevant service in a salaried judicial office; and

had R been recognised as a full protection member(**[[39]](#footnote-39)**) of a judicial legacy scheme in relation to that service, R would not have been required to pay to the 2015 scheme.

The paid contributions are to be treated for all purposes—

as not having been paid by R to the 2015 scheme; but

as having been paid by R instead to the judicial legacy salaried scheme.

Paragraph (4) applies where R has paid any pension contributions (“the paid pension contributions”) under the 2015 scheme which—

are calculated by reference to R’s relevant service in a fee-paid judicial office; and

had R been recognised as a full protection member of a judicial legacy scheme in relation to that service, R would not have been required to pay to the 2015 scheme.

The paid contributions are to be treated for all purposes—

as not having been paid by R to the 2015 scheme; but

as having been paid by R instead to the judicial legacy fee-paid scheme.

Paragraph (6) applies where, after taking into account the effect of paragraphs (2) and (4)—

a judicial legacy scheme owes a person an amount in respect of pension contributions which are calculated by reference to R’s relevant service; or

a person owes a judicial legacy scheme an amount in respect of such contributions.

The liability is to be discharged only in accordance with regulation [41] (corrections for pension contributions).

CHAPTER 6

Corrections for pension benefits and contributions

**Pension benefits and lump sum benefits**

— This regulation applies where—

R is a pensioner member in relation to a judicial office; or

R is deceased.

Where—

the aggregate of the pension benefits, if any, that (after taking into account the effect, if any, of regulation [38](2) or (4)) have been paid under a judicial legacy scheme to any person (“the beneficiary”) in respect of R’s relevant service in a judicial office; exceeds

the aggregate of the pension benefits to which the beneficiary was entitled under the scheme in respect of the service,

the beneficiary must pay the difference to the scheme.

Where—

the amount mentioned in sub-paragraph (2)(a); is less than

the amount mentioned in sub-paragraph (2)(b),

the scheme manager must pay the difference to the beneficiary.

Where—

the aggregate of the lump sum benefits, if any, that (after taking into account the effect, if any, of regulation [38](2) or (4)) have been paid under a judicial legacy scheme to any person (“the beneficiary”) in respect of R’s relevant service in a judicial office; exceeds

the aggregate of the lump sum benefits to which the beneficiary was entitled under the scheme in respect of the service,

the beneficiary must pay the difference to the scheme.

Where—

the amount mentioned in sub-paragraph (4)(a); is less than

the amount mentioned in sub-paragraph (4)(b),

the scheme manager must pay the difference to the beneficiary.

**Pension contributions**

— Where—

the paid contributions amount for an in-scope year in respect of R’s relevant service in a judicial office, exceeds

the payable contributions amount for that tax year in respect of that service,

the scheme manager must (directly or indirectly) pay an amount in respect of the difference to the appropriate person.

Where—

the paid contributions amount for an out-of-scope tax year in respect of R’s relevant service in a judicial office, exceeds

the payable contributions amount for that tax year in respect of that service,

no amount is to be paid by the scheme manager in respect of the difference to the appropriate person.

Where—

the paid contributions amount for an in-scope or out-of-scope tax year in respect of R’s relevant service in the judicial office, is less than

the payable contributions amount for that tax year in respect of that service,

the appropriate person must pay pension contributions to the scheme in respect of the difference.

A reference in this regulation to “the paid contributions amount” for a tax year in respect of R’s relevant service in a judicial office is a reference to the sum of—

the aggregate of the pension contributions that (after taking into account the effect, if any, of regulation [39](2) and (4)), have been paid under the scheme by R in the tax year in respect of so much of the service as was not PPA opted-out service; and

where any of the relevant service was PPA opted-out service—

the aggregate of the pension contributions and any voluntary contributions that have been paid by R under the partnership pension account in the tax year in respect of the PPA opted-out service; or

if lower, the aggregate of the pension contributions that were payable under the scheme by R for that tax year in respect of the PPA opted-out service.

A reference in this regulation to “the payable contributions amount” for a tax year in respect of R’s relevant service in a judicial office means the aggregate of the pension contributions that were payable under the relevant judicial legacy scheme by R for that tax year in respect of the service.

For the purposes of this regulation—

a tax year is “in-scope” in relation to R if any necessary adjustment to the amount of income tax paid by R in respect of PAYE income for the tax year is capable of being enforced by HMRC under PAYE regulations; and

a tax year is “out-of-scope” in relation to R if it is not in-scope in relation to R.

A reference in this regulation to pension contributions or voluntary contributions paid by a person under a partnership pension account is a reference to the amount of the contributions paid, net of any tax relief under section 188 of FA 2004 (relief for contributions) to which the person was entitled in respect of them.

CHAPTER 7

Compensation for voluntary payments

**Compensation for special payments to buy out early payment reduction**

— This regulation applies where R has, during the period of relevant service, made any special payments under regulation 74(3)(a) or (c) of the 2015 Regulations.

The rights that would otherwise have been secured by the special payments are extinguished.

The scheme manager must pay to the appropriate person an amount by way of compensation equal to—

the aggregate of the special payments paid by R; less

an amount, determined in accordance with direction [23] of the PSP Directions 2022, in respect of the value of the tax relief under section 188 of FA 2004 (member contributions) to which R was entitled in respect of those payments.

The following apply in relation to a determination under direction [23(2)]—

direction [23(4) (provision of explanation)];

direction [23(5) and (6) (appeals)].

**Compensation for payments for added pension**

— This regulation applies where—

R has, during the period of relevant service, made any added pension payments under Part 2 of Schedule 1 to the 2015 Regulations; and

regulation 129(1)(b) of the 2015 Regulations does not apply in respect of those payments.

Where the appropriate person makes a request for compensation in respect of the added pension payments—

the rights that would otherwise have been secured by the added pension payments are extinguished; and

the scheme manager must pay to the appropriate person an amount by way of compensation equal to—

the aggregate of the added pension payments paid by R; less

an amount, determined in accordance with direction [23] of the PSP Directions 2022, in respect of the value of the tax relief under section 188 of FA 2004 (member contributions) to which R was entitled in respect of those payments.

The following apply in relation to a determination under direction [23(2)]—

direction [23(4) (provision of explanation)];

direction [23(5) and (6) (appeals)].

A request under paragraph (2)—

must be—

made by notice to the scheme manager,

in a form required by the scheme manager,

received by the scheme manager before the end of the notification period, and

is irrevocable.

**Compensation for effective pension age payments**

— This regulation applies where R has, during the period of relevant service, made any effective pension age payments under Part 3 of Schedule 1 to the 2015 Regulations.

The rights that would otherwise have been secured by the effective pension age payments are extinguished.

The scheme manager must pay to the appropriate person an amount by way of compensation equal to—

the aggregate of the effective pension age payments paid by R; less

an amount, determined in accordance with direction [23] of the PSP Directions 2022, in respect of the value of the tax relief under section 188 of FA 2004 (member contributions) to which R was entitled in respect of these payments.

The following apply in relation to a determination under direction [23(2)]—

direction [23(4) (provision of explanation)];

direction [23(5) and (6) (appeals)].

**Transfers out of the 2015 scheme**

— This regulation applies where a transfer value payment has, during the period of relevant service, been made under regulation 133 of the 2015 Regulations in respect of R’s accrued rights under the 2015 scheme.

The scheme manager must provide the appropriate person with a statement of the cash equivalent to which R was entitled, under a judicial legacy scheme, in respect of R’s accrued rights on the guarantee date in relation to the period of relevant service.

Where—

the value of the cash equivalent in respect of the sum specified in regulation 137(3)(a) of the 2015 Regulations, is less than

the value of the cash equivalent to which R was entitled under paragraph (2) in respect of that sum,

the scheme manager must pay to the appropriate person an amount equal to the value of the difference.

The scheme manager is discharged from any obligation to provide benefits to which the cash equivalent related.

In this regulation the “guarantee date” is the date specified in the statement of entitlement that was provided under regulation 135(1) of the 2015 Regulations in respect of the transfer value payment.

CHAPTER 8

Transitional protection allowance

**Transitional protection allowance**

— This regulation applies where R’s employer has paid R a transitional protection allowance.

The appropriate person must pay to R’s employer an amount equal to—

the amount of the transitional protection allowance, less

an amount in respect of the income tax suffered by R that is attributable to the transitional protection allowance.

CHAPTER 9

Compensation for compensatable losses

**Power to pay compensation in respect of compensatable losses**

— The scheme manager for a judicial scheme may pay amounts by way of compensation in respect of compensatable losses incurred by the appropriate person.

For the purposes of this regulation a loss incurred by the appropriate person is “compensatable” if and to the extent that—

either of the conditions in paragraphs (3) and (4) are met; and

the loss is of a description that corresponds to a description specified in Treasury directions(**[[40]](#footnote-40)**) made under section 62(2)(e) of PSPJOA 2022 in respect of compensatable losses under section 59(3) of that Act.

The first condition is that the loss is attributable to, or is reasonably regarded as attributable to, the fact that R was not recognised as a full protection member of a judicial legacy scheme.

The second condition is that the loss is attributable to the application of any provision of this Part.

In this regulation, “loss” has the meaning given in section 59(6) to (8) of PSPJOA 2022.

Paragraph (1) does not confer power to pay amounts by way of compensation in respect of compensatable losses so far as—

the appropriate person has already received amounts by way of compensation in respect of them; or

amounts that any person has paid to the scheme have been reduced by amounts in respect of them;

whether pursuant to an order of the court or otherwise.

CHAPTER 10

Unauthorised payments

**Scheme rules that prohibit unauthorised payments**

— Paragraph (2) applies where—

a payment from a judicial scheme is permitted or required to be made under this Part;

the payment, if made, would be an unauthorised payment; and

a rule of the scheme prohibits the scheme from making unauthorised payments.

The payment may be made only if it falls within a description of payments that correspond to a description of payments specified for the purposes of section 63 of PSPJOA 2022 in Treasury directions(**[[41]](#footnote-41)**).

Paragraph (4) applies where—

in the course of taking the steps mentioned in regulation [34] (requirement to transfer assets held in a partnership pension account) a payment is made from a partnership pension account;

the payment, if made, would be an unauthorised payment; and

a rule of the scheme prohibits the scheme from making unauthorised payments.

The payment may be made notwithstanding the rule mentioned in paragraph (3)(c).

PART 5

Pension Credit Members

CHAPTER 1

Preliminary

**Application of Part**

— This Part applies where—

a person (“P”) has remediable service in a judicial office;

a pension sharing order is made in respect of P; and

the transfer day of the pension sharing order is in the period beginning with 1st April 2015 and ending with the day before the day on which—

the legacy scheme election or 2015 scheme election takes effect in respect of P; or

either of the conditions under section 68(2) or (3) of PSPJOA are satisfied in relation to P’s remediable service.

This Part also applies where—

a person (“P”) has relevant service in a judicial office;

a pension sharing order is made in respect of P; and

the transfer day of the pension sharing order is in the period beginning with 1 April 2015 and ending on the day before the day on which Part [4] takes effect in respect of P.

**Interpretation of Part**

— In this Part—

“amount of credited pension” has the meaning given in regulation 2 of the 2015 Regulations;

“appropriate amount” means the amount calculated under Article 26(2) (and) (3) WRP(NI)O 1999(**[[42]](#footnote-42)**) in respect of a pension sharing order;

“cash equivalent” means a value calculated by virtue of Article 27 of WRP(NI)O 1999;

“corresponding pension debit member”, in relation to a relevant pension credit member, means the person mentioned in paragraph (b) of the definition of that term;

“pension sharing order” means an order or provision by virtue of which Article 26 of WRP(NI)O 1999 applies to a relevant pension credit member and corresponding pension debit member;

“relevant benefits” means—

where P was in pensionable service on the transfer day, the benefits or future benefits to which P was entitled under a judicial scheme by virtue of P’s shareable rights in the scheme in respect of P’s service beginning on 1st April 2015 and ending on the day before the transfer day; and

otherwise, the benefits or future benefits to which P was entitled under a judicial scheme by virtue of P’s shareable rights in the scheme in respect of P’s service beginning on 1st April 2015 and ending on the last day of P’s service;

“relevant pension credit member”, in relation to a judicial scheme, means a person who has rights under the scheme—

* + 1. which are attributable (directly or indirectly) to a pension credit; and
    2. the value of which was determined (to any extent) by reference to the value of benefits payable in respect of the remediable service or relevant service in a judicial office of another person;

“relevant period” means—

* + 1. where P has remediable service and an immediate detriment remedy has not been obtained in relation to that service, the election period in relation to P; and
    2. otherwise, the notification period in relation to P;

“shareable rights” has the meaning given in Article 24(2) of WRP(NI)O 1999;

“transfer day”, in relation to a pension sharing order, means the day on which the pension sharing order takes effect;

“valuation day” has the meaning given in Article 26(7) of WRP(NI)O 1999 in respect of a pension credit member and corresponding debit member.

For the purposes of this Part, the “notification period”, in relation to P, has the meaning given—

where P has remediable service and an immediate detriment remedy has been obtained in relation to that service, in Part [3];

where P has relevant service, in Part [4].

CHAPTER 2

Provision where all remediable service was in the 2015 scheme

**Application of Chapter**

 This Chapter applies where—

a relevant pension credit member (“C”) has rights in respect of a pension credit under the 2015 scheme;

the corresponding pension debit member in relation to C (“P”) is subject to a pension debit in the 2015 scheme; and

where—

this Part applies by virtue of regulation [49](1), none of P’s remediable service is pensionable service in a judicial legacy scheme(**[[43]](#footnote-43)**) (disregarding any legacy scheme election made, or any immediate detriment remedy obtained, in relation to P’s remediable service);

this Part applies by virtue of regulation [49](2).

**Adjustments for pension credit members**

— The scheme manager must, after consultation with the scheme actuary, provide C with a statement of C’s remediable pension amount and remediable pension credit before the beginning of the relevant period.

Where—

C’s remediable pension amount exceeds the appropriate amount in respect of the pension sharing order in the 2015 scheme; and

C requests that C’s remediable pension credit is added to C’s rights under—

the 2015 scheme; or

a judicial legacy scheme (if any);

at the end of the relevant period, C becomes entitled to a remediable pension credit in accordance with the request, such credit to take effect as if it had been added to C’s rights with effect from the transfer day.

A request under paragraph (2)(a)—

must be—

made by notice to the scheme manager;

in a form required by the scheme manager; and

received by the scheme manager before the end of the relevant period; and

is irrevocable.

Where no request is made in accordance with paragraph (3), at the end of the relevant period C becomes entitled to a remediable pension credit in the 2015 scheme, such credit to take effect as if it had been added to C’s rights with effect from the transfer day.

In this regulation—

“remediable pension amount” means—

where the pension sharing order specified a percentage value to be transferred from the 2015 scheme, the specified percentage of the cash equivalent of P’s relevant benefits on the valuation day calculated as if the relevant benefits were in P’s judicial legacy scheme;

where the pension sharing order specified an amount to be transferred from the 2015 scheme, the percentage which this amount represented of the cash equivalent of P’s relevant benefits in the 2015 scheme on the valuation day disregarding any—

legacy scheme election made in respect of P;

immediate detriment remedy obtained in relation to P’s remediable service; or

where this Part applies in respect of P by virtue of the application of paragraph (b) of regulation [49], the effect of Part 2 of Schedule 2 to the 2015 Regulations in relation to P,

calculated instead as if P’s relevant benefits were in P’s judicial legacy scheme;

“remediable pension credit” means the greater of—

* + 1. zero; and

the remediable pension amount minus the appropriate amount.

**Adjustments for pension debit members where a legacy scheme election is made**

— This regulation applies where—

a legacy scheme election is made in respect of P;

an immediate detriment remedy is obtained in relation to P’s remediable service; or

this Part applies by virtue of regulation 49(2).

At the end of the relevant period, the scheme manager must adjust the value of P’s shareable rights in P’s judicial legacy scheme as the scheme manager, after consultation with the scheme actuary, considers appropriate having regard to—

the cash equivalent of P’s shareable rights in P’s judicial legacy scheme in respect of P’s remediable service or relevant service from 1st April 2015 to the day before the transfer day;

the percentage value or the amount to be transferred specified in the pension sharing order in respect of the 2015 scheme; and

the provisions of Articles 26 (creation of pension credits and debits) and 28 (reduction of benefit) of WRP(NI)O 1999.

The adjustment made under paragraph (2) has effect from the transfer day.

CHAPTER 3

Provision where all remediable service was in a judicial legacy scheme

**Application of Chapter**

 This Chapter applies where—

a relevant pension credit member (“C”) has rights in respect of a pension credit in a judicial legacy scheme;

the corresponding debit member in relation to C (“P”) is subject to a pension debit in a judicial legacy scheme; and

all of P’s remediable service beginning on 1st April 2015 and ending on the day before the transfer day is, disregarding any legacy scheme election or 2015 scheme election made or treated as made(**[[44]](#footnote-44)**) in respect of P, pensionable service in a judicial legacy scheme.

**Adjustments for pension credit members**

— The scheme manager must, after consultation with the scheme actuary and before the beginning of the relevant period, provide C with a statement of—

C’s 2015 scheme remediable pension amount; and

C’s legacy scheme remediable pension amount; and

C’s remediable pension credit.

Where the value of C’s 2015 scheme remediable pension amount exceeds the value of C’s legacy scheme remediable pension amount, both calculated on the valuation day at the end of the relevant period, C becomes entitled to a remediable pension credit, such credit to take effect as if it had been added to C’s rights in C’s judicial legacy scheme on the transfer day.

In this regulation—

“2015 scheme remediable pension amount” means—

where the pension sharing order specified a percentage value to be transferred from P’s judicial legacy scheme, the specified percentage of the cash equivalent of P’s relevant benefits on the valuation day calculated as if the relevant benefits were in the 2015 scheme;

where the pension sharing order specified an amount to be transferred from P’s judicial legacy scheme, the percentage which this amount represented of the cash equivalent of P’s relevant benefits in P’s judicial legacy scheme on the valuation day (disregarding any 2015 scheme election), calculated instead as if P’s relevant benefits were in the 2015 scheme;

“legacy scheme remediable pension amount” means—

where the pension sharing order specified a percentage value to be transferred from P’s judicial legacy scheme, the specified percentage of the cash equivalent of P’s relevant benefits on the valuation day calculated as if the relevant benefits were in P’s judicial legacy scheme;

where the pension sharing order specified an amount to be transferred from P’s judicial legacy scheme, the percentage which this amount represented of the cash equivalent of P’s relevant benefits in P’s judicial legacy scheme on the valuation day (disregarding any 2015 scheme election);

“remediable pension credit” means the greater of—

zero; and

the 2015 scheme remediable pension amount minus the legacy scheme remediable pension amount.

**Adjustments for pension debit members where a 2015 scheme election is made**

— This regulation applies where a 2015 scheme election is made, or is treated as made, in respect of P.

At the end of the relevant period, the scheme manager must adjust the value of P’s shareable rights in P’s judicial legacy scheme and 2015 scheme as the scheme manager, after consultation with the scheme actuary, considers appropriate having regard to—

the cash equivalent of P’s shareable rights in P’s judicial legacy scheme in respect of P’s service up to and including 31 March 2015;

the cash equivalent of P’s shareable rights in the 2015 scheme in respect of P’s remediable service from 1 April 2015 to the day before the transfer day;

the percentage value or the amount to be transferred specified in the pension sharing order in respect of the judicial legacy scheme; and

the provisions of Articles 26 (creation of pension credits and debits) and 28 (reduction of benefit) of WRP(NI)O 1999.

The adjustment made under paragraph (2) has effect from the transfer day.

CHAPTER 4

Provision where there is mixed service

**Application of Chapter**

 This Chapter applies where—

a relevant pension credit member (“C”) has rights in the 2015 scheme and a judicial legacy scheme; and

the corresponding debit member (“P”) has remediable service which is mixed service.

**Interpretation of Chapter**

 In this Chapter—

“mixed service” means remediable service of P in a judicial office where, disregarding any legacy scheme election or 2015 scheme election made in respect of P or immediate detriment remedy obtained in relation to the service—

some of the service on or before transfer day is pensionable service under a judicial legacy scheme; and

some of the service on or before transfer day is pensionable service under the 2015 scheme;

“relevant legacy scheme order or provision” means the order or provision by virtue of which Article 26 of WRP(NI)O 1999 applied to the relevant pension credit member and corresponding debit member in respect of a judicial legacy scheme;

“relevant 2015 scheme order or provision” means the order or provision by virtue of which Article 26 of WRP(NI)O 1999 applied to the relevant pension credit member and corresponding debit member in respect of the 2015 scheme.

**Adjustments for pension credit members where there is mixed service**

— The scheme manager must, after consultation with the scheme actuary, calculate the value of C’s—

legacy scheme remediable pension amount; and

2015 scheme remediable pension amount.

The scheme manager must, before the beginning of the relevant period, provide C with a statement of C’s—

amount of credited pension in the 2015 scheme;

rights in respect of a pension credit in any judicial legacy scheme;

higher remediable pension amount; and

remediable pension credit and remediable pension reduction.

Paragraphs (4) to (6) apply where C has a remediable pension credit that is greater than zero.

Where C requests that the remediable pension credit is added to C’s rights in the 2015 scheme or a judicial legacy scheme, at the end of the relevant period, C becomes entitled to a remediable pension credit in accordance with the request, such credit to take effect as it if had been added to C’s rights in the judicial scheme with effect from the transfer day.

A request under paragraph (4)—

must be—

made by notice to the scheme manager;

in a form required by the scheme manager; and

received by the scheme manager before the end of the relevant period; and

is irrevocable.

Where no request is made in accordance with paragraph (5), at the end of the election period C becomes entitled to a remediable pension credit in the 2015 scheme, such credit to take effect as it if had been added to C’s rights in the 2015 scheme on the transfer day.

Paragraphs (8) to (10) apply where C is subject to a remediable pension reduction that is less than zero.

Where C requests that the remediable pension reduction is deducted from C’s rights in the 2015 scheme or judicial legacy scheme, at the end of the relevant period C becomes subject to a remediable pension reduction in accordance with the request, such reduction to take effect as it if had reduced C’s rights in the judicial scheme on the transfer day.

A request under paragraph (8)—

must be—

made by notice to the scheme manager;

in a form required by the scheme manager; and

received by the scheme manager before the end of the election period; and

is irrevocable.

Where no request is made in accordance with paragraph (9), at the end of the relevant period C becomes subject to a remediable pension reduction from the 2015 scheme, such reduction to take effect as it if had reduced C’s rights in the judicial scheme on the transfer day.

In this regulation—

“2015 scheme remediable pension amount” means—

where the relevant orders or provisions specified a percentage value to be transferred, the sum of—

the specified percentage in the relevant legacy scheme order or provision of the cash equivalent of P’s pre-taper date relevant benefits on the valuation day calculated as if the pre-taper date relevant benefits were in the 2015 scheme; and

the specified percentage in the relevant 2015 scheme order or provision of the cash equivalent of P’s post-taper date relevant benefits on the valuation day, calculated as if the post-taper date relevant benefits were in the 2015 scheme;

where the pension sharing order specified an amount to be transferred, the sum of—

the percentage which the amount in the relevant legacy scheme order or provision represented of the cash equivalent of P’s pre-taper date relevant benefits in P’s judicial legacy scheme on the valuation day (disregarding any 2015 scheme election), calculated instead as if P’s pre-taper date relevant benefits were in the 2015 scheme; and

the percentage which the amount in the relevant 2015 scheme order or provision represented of the cash equivalent of P’s post-taper date relevant benefits in the 2015 scheme on the valuation day (disregarding any 2015 scheme election);

“higher remediable pension amount” means the greater of—

* + 1. the legacy scheme remediable pension amount; and

the 2015 scheme remediable pension amount;

“legacy scheme remediable pension amount” means—

* + 1. where the relevant orders or provisions specified a percentage value to be transferred, the sum of—

the specified percentage in the relevant legacy scheme order or provision of the cash equivalent of P’s pre-taper date relevant benefits on the valuation day calculated as if the pre-taper date relevant benefits were in P’s judicial legacy scheme; and

the specified percentage in the relevant 2015 scheme order or provision of the cash equivalent of P’s post-taper date relevant benefits on the valuation day, calculated as if the post-taper date relevant benefits were in P’s judicial legacy scheme;

where the pension sharing order specified an amount to be transferred, the sum of—

the percentage which the amount in the relevant legacy scheme order or provision represented of the cash equivalent of P’s pre-taper date relevant benefits in P’s judicial legacy scheme on the valuation day (disregarding any 2015 scheme election made in respect of P or immediate detriment remedy obtained in relation to P’s remediable service); and

the percentage which the amount in the relevant 2015 scheme order or provision represented of the cash equivalent of P’s post-taper date relevant benefits in the 2015 scheme on the valuation day (disregarding any legacy scheme election made in respect of P or immediate detriment remedy obtained in relation to P’s remediable service), calculated instead as if P’s post-taper date relevant benefits were in P’s judicial legacy scheme;

“pre-taper date relevant benefits” means the benefits or future benefits to which P was entitled under a judicial scheme by virtue of P’s shareable rights in the scheme in respect of P’s service beginning on 1 April 2015 and ending on the day before P’s taper date;

“post-taper date relevant benefits” means—

* + 1. where P was in pensionable service on the transfer day, the benefits or future benefits to which P was entitled under a judicial scheme by virtue of P’s shareable rights in the scheme in respect of P’s service beginning on P’s taper date and ending on the day before the transfer day;

otherwise, the benefits or future benefits to which P was entitled under a judicial scheme by virtue of P’s shareable rights in the scheme in respect of P’s service beginning on P’s taper date and ending on the last day of P’s service;

where the relevant order or provision specified an amount to be transferred, the sum of—

the percentage which the amount in the relevant legacy scheme order or provision represented of the cash equivalent of P’s pre-taper date relevant benefits in P’s judicial legacy scheme on the valuation day (disregarding any 2015 scheme election made in respect of P or immediate detriment remedy obtained in relation to P’s remediable service), calculated instead as if P’s pre-taper date relevant benefits were in the 2015 scheme; and

the percentage which the amount in the relevant 2015 scheme order or provision represented of the cash equivalent of P’s post-taper date relevant benefits in the 2015 scheme on the valuation day (disregarding any 2015 scheme election made in respect of P or immediate detriment remedy obtained in relation to P’s remediable service);

“remediable pension credit” means the greater of—

* + 1. zero; and

the higher remediable pension amount minus the remediable service appropriate amount;

“remediable pension reduction” means the lesser of—

* + 1. zero, and

the higher remediable pension amount minus the remediable service appropriate amount;

“remediable service appropriate amount” means the pension credit, calculated in accordance with Article 26(2) and (3) of WRP(NI)O 1999, for the period of remediable service;

“taper date” means (disregarding any legacy scheme election or 2015 scheme election made in respect of P or immediate detriment remedy obtained in relation to P’s remediable service) the day after the taper protection closing date for P;

“taper protection closing date” has the meaning given in paragraph 3 of Schedule 2 to the 2015 Regulations.

**Adjustments for pension debit members**

— Paragraph (2) applies where a legacy scheme election is made in respect of P.

At the end of the relevant period, the scheme manager must adjust the value of P’s shareable rights in P’s judicial legacy scheme as the scheme manager, after consultation with the scheme actuary, considers appropriate having regard to—

the cash equivalent of P’s shareable rights in P’s judicial legacy scheme in respect of P’s remediable service from 1 April 2015 to the day before the transfer day;

the percentage value to be transferred or the amount to be transferred specified in the relevant legacy scheme order or provision and the relevant 2015 scheme order or provision; and

the provisions of Articles 26 (creation of pension credits and debits) and 28 (reduction of benefit) of WRP(NI)O 1999.

Paragraph (4) applies where a 2015 scheme election is made in respect of P.

At the end of the relevant period, the scheme manager must adjust the value of P’s shareable rights in P’s judicial legacy scheme and 2015 scheme as the scheme manager, after consultation with the scheme actuary, considers appropriate having regard to—

the cash equivalent of P’s shareable rights in P’s judicial legacy scheme in respect of P’s service up to and including 31 March 2015;

the cash equivalent of P’s shareable rights in the 2015 scheme in respect of P’s remediable service from 1 April 2015 to the day before the transfer day;

the percentage value to be transferred or the amount to be transferred specified in the relevant legacy scheme order or provision and the relevant 2015 scheme order or provision; and

the provisions of Articles 26 (creation of pension credits and debits) and 28 (reduction of benefit) of WRP(NI)O 1999.

The adjustments made in paragraphs (2) and (4) have effect from the transfer day.

CHAPTER 11

Correction of pension benefits and lump sum benefits

**Correction of pension benefits and lump sum benefits where underpayment**

— This regulation applies in relation to a relevant pension credit member (“C”) who, at the end of the relevant period—

has a remediable pension credit in a judicial scheme by virtue of this Part; and

is a pensioner member(**[[45]](#footnote-45)**) of that scheme.

The scheme manager must pay to C the aggregate of the pension benefits and lump sum benefits (if any) to which C was entitled by virtue of their remediable pension credit.

**Correction of pension benefits and lump sum benefits where overpayment**

— This regulation applies in relation to a pension credit member (“C”) who, at the end of the relevant period—

is subject to a remediable pension reduction from a judicial scheme by virtue of this Part; and

is a pensioner member of that scheme.

C must pay to the scheme manager the difference between—

the aggregate of the pension benefits and lump sum benefits, if any, that have been paid under any judicial scheme to C; and

the aggregate of the pension benefits and lump sum benefits to which (after taking into account the remediable pension reduction) C was entitled under any judicial scheme.

PART 6

Liabilities and amounts owed

CHAPTER 1

Interest

**Interest**

— This regulation applies to a relevant amount(**[[46]](#footnote-46)**).

Interest must be calculated [and paid] on the relevant amount in accordance with directions [28 to 30] of the PSP Directions 2022.

Where the scheme manager makes a determination under direction [30(1)] (interest: other), the following apply in relation to that determination—

direction 30(2) (provision of explanation);

direction 30(3) and (4) (appeals).

CHAPTER 2

Reduction or waiver of liabilities owed to a judicial scheme

**Application of Chapter**

 This Chapter applies after taking into account the effect of regulation [63] (interest) in respect of an amount.

**Reduction of liability to pay pension contributions by tax relief amounts (section 56(1)(2))**

— This regulation applies where the appropriate person has a liability to pay pension contributions to the 2015 scheme under section 52(4) of PSPJOA 2022 (corrections for pension contributions in relation to a person with remediable service).

The scheme manager must reduce the liability for the appropriate person to pay the pension contributions by the tax relief amount[s(**[[47]](#footnote-47)**) in accordance with direction 22(4) to(6)] of the PSP Directions 2022.

The following apply in relation to a determination by the scheme manager under direction 22(5)—

direction 22(7) (provision of explanation);

direction 22(8) and (9) (appeals).

**Reduction or waiver of liability to repay overpaid pension benefits (section 56(2)-(3))**

— This regulation applies where a person (“Y”) owes a liability to a judicial scheme under—

regulation [12] (corrections for pension benefits and lump sum benefits on partial retirement);

regulation [23] (corrections for pension benefits and lump sums where an immediate detriment remedy has been obtained);

regulation [40] (corrections for pension benefits and lump sum benefits in relation to relevant fee-paid judges); or

regulation [62] (corrections for pension benefits and lump sum benefits where overpayment to a pension credit member).

section 51(2) or (4) of PSPJOA 2022 (corrections for pension benefits and lump sum benefits in relation to persons with remediable service).

The scheme manager may reduce or waive the liability where—

Y makes an application under paragraph (3); and

the scheme manager is satisfied that, taking account of direction [x] of the PSP Directions 2022, it would not be suitable to require the payment of the liability in part or in full by any of the methods provided in regulation [68].

An application must be—

in writing;

in a form required by the scheme manager;

accompanied by such information and documents as the scheme manager may require as evidence of Y’s circumstances; and

received by the scheme manager before the end of the period of six months beginning with the date on which Y is notified of the liability.

The scheme manager may extend the period mentioned in paragraph (3)(d) in relation to Y if the scheme manager considers it just and equitable to do so.

CHAPTER 3

Netting off

**Netting off**

— Direction [31(2) to (7) (netting off process and provision of explanation)] of the PSP Directions 2022 applies in relation to any relevant amounts owed—

to a person by the scheme manager, and

by that person to the scheme manager.

Direction [31(8) and (9) (appeals)] of the PSP Directions 2022 applies in relation to a determination by the scheme manager under direction [31(2)].

CHAPTER 4

Amounts owed to a judicial scheme or employer or to a person

**Application**

 This Chapter applies after taking into account the effect, if any, of regulations [63 to 67].

**Amounts owed to a judicial scheme**

— This regulation applies where a person (“Y”) owes an amount to the scheme manager.

Except where paragraph (3) applies, Y must pay the amount to the scheme before the end of the period of six months beginning with the day after the day on which Y is notified that the amount must be paid.

Where the scheme manager considers it reasonable in the circumstances the amount may be paid in part or in full by way of such—

instalments as may be specified in an agreement between Y and the scheme manager; or

deductions from—

where Y is in judicial office, any salary or fees payable in respect of Y’s judicial office as may be specified in an agreement between Y and the employer;

any lump sum payable in accordance with section 4 of JUPRA 1993 or regulation 25 of FPJR 2017 as may be specified in an agreement between Y and the scheme manager;

the pension entitlements mentioned in paragraph (4) as may be specified in an agreement between Y and the scheme manager

which fully reflect the amount that Y is not required to pay under paragraph (2).

The pension entitlements are—

where Y is a member of a judicial scheme, any pension to which Y is entitled under section 2 of JUPRA 1993, Part 6 of the 2015 Regulations or Parts 3 (with the exception of regulation 25) and 4 of FPJR 2017; or

where the member in relation to whose service the amount is owed is deceased, any pension to which Y is entitled under sections 5 or 6 of JUPRA 1993, Part 8 of the 2015 Regulations or Part 6 of FPJR 2017.

The deductions from the payments specified in paragraph (3)(b)(i)—

may be of fixed monetary amounts; or

may be calculated as a percentage of the salary or fees payable.

Where—

an agreement between Y and the employer specifies deductions from payments specified in paragraph (3)(b)(i); and

Y leaves judicial office before all of the specified deductions have been made;

Y must pay the outstanding amount to the scheme within a period of six months beginning with the day after the day on which Y left judicial office.

The scheme manager may extend the period mentioned in paragraph (6) if the scheme manager considers it just and equitable to do so.

For the purpose of paragraph (9) the “outstanding amount” is—

an amount equal to the amount of the specified deductions that have not been made on the date on which Y left judicial office; plus

any interest which has accrued on that amount under regulation [63].

**Amounts owed to a person’s employer**

— Paragraph (2) applies where a person (“Y”) owes an amount to a person’s employer under section 54 of PSPJOA 2022 or regulation [28] or [46] (transitional protection allowance).

Paragraphs (2) to (11) of regulation [69] apply in respect of the amount as if the reference to the “scheme” or the “scheme manager” in the following paragraphs of that regulation were to Y’s employer—

paragraph (2);

sub-paragraph (3)(a)(iv);

paragraph (7) (except sub-paragraphs (b)(ii) and (iii)); and

paragraph (10).

**Amounts owed to a person**

— This regulation applies where an amount is payable by a judicial scheme to a person (“Y”) under Chapter 2 of PSPJOA 2022 or these Regulations.

The scheme manager may require Y to make an application for payment of the amount.

Where the scheme manager requires Y to make an application the scheme manager may pay the amount on receipt of an application that meets the requirements of paragraph (4).

An application must be—

in writing;

in a form required by the scheme manager;

accompanied by such information and documents as the scheme manager may require; and

received by the scheme manager before the end of the period of three months starting with the day after the day on which Y receives notification that an application for payment of the amount must be made.

PART 7

Miscellaneous amendments

**Miscellaneous amendments**

 The Schedule contains miscellaneous amendments in consequence of PSPJOA 2022.

*Name*

Senior Officer

00 March 2023 Department of Justice

I consent to the making of these Regulations

*Name*

Senior Officer

00 March 2023 Department of Finance

SCHEDULE Regulation 71

Miscellaneous amendments

Amendments in consequence of PSPJOA 2022

**Amendments to the Judicial Pensions Regulations 2015**

1. The 2015 Regulations are amended as follows.

 In regulation 2 (interpretation)—

after the opening words insert—

“2023 Regulations” means the [Judicial Pensions (Transitional Protection Remedy etc.) Regulations] 2023;

for the definition of “active member” substitute

“active member”, in relation to this scheme, means a person who is—

(i) in pensionable service under this scheme; or

(ii) deemed to have been an active member of this scheme by virtue of regulations 38A(2) or 38B(2) or paragraphs 23A(2) or 23B(2) of Schedule 1;;

in the definition of “amount of credited pension”, for “pension credit” substitute “the sum of the pension credit and the remediable pension credit or remediable pension reduction (if any)”;

after the definition of “the 1995 Order” insert—

“PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022;;

after the definition of “registered” insert—

“relevant fee-paid judge” has the meaning given in section 103 of the PSPJOA 2022;;

after the definition of “relevant scheme” insert—

“relevant service” has the meaning given in regulation [31(2)] of the 2023 Regulations;.

 After regulation 38 (receipt of transfer value payment) insert—

**Accrued earned pension attributable to a transfer value payment where a legacy scheme election is made**

**38A.**—(1) Paragraph (2) applies where—

(a) a person “P” has remediable service in a judicial office;

(b) a transfer value payment has been received by this scheme in relation to P during the period of remediable service; and

(c) either—

(i) a legacy scheme election under section of 40 PSPJOA 2022 is made in respect of P; or

(ii) an immediate detriment remedy has been obtained in relation to the period of remediable service.

(2) P is deemed to have been an active member of this scheme for all purposes in connection with the transfer value payment.

**Accrued earned pension attributable to a transfer value payment in respect of relevant fee-paid judges**

**38B.**—(1) Paragraph (2) applies where—

(a) a relevant fee-paid judge “R” has relevant service in a judicial office; and

(b) a transfer value payment has been received by this scheme in relation to R during the period of relevant service.

(2) R is deemed to have been an active member of this scheme for all purposes in connection with the transfer value payment..

 In regulation 52(5) (establishment of pension credit member’s account)—

omit the “and” immediately after sub-paragraph (a);

at the end of (b) insert—

; and

(c) any adjustment required by Part [5] of the 2023 Regulations other than a remediable pension credit to which the pension credit member has become entitled under that Part.

 After regulation 126(1) (payment of member contributions) insert—

(1A) Member contributions that must be paid under section 52(4) of PSPJOA 2022 are to be paid in accordance with regulation [68] of the 2023 Regulations..

 In Schedule 1, after paragraph 23 insert—

CHAPTER 5

Deemed membership for added pension payments

**Added pension where a legacy scheme election is made**

**23A.**—(1) This paragraph applies where—

(a) a person “P” has remediable service in a judicial office;

(b) P has, during the period of remediable service, made any added pension payments under this Part;

(c) either—

(i) a legacy scheme election is made in respect of P under section 40 of PSPJOA 2022; or

(ii) an immediate detriment remedy has been obtained in relation to the period of remediable service; and

(d) a request has not been made in respect of P under regulations [9] or [26] of the 2023 Regulations (request for compensation in respect of added pension payments).

(2) P is deemed to have been an active member of this scheme for all purposes in connection with the added pension payments.

**Added pension in respect of relevant fee-paid judges**

**23B.**—(1) This paragraph applies where—

(a) a relevant fee-paid judge “R” has relevant service in a judicial office;

(b) R has, during the period of relevant service, made any added pension payments under this Part; and

(c) a request has not been made in respect of R under regulation [43] of the 2023 Regulations 2023 (request for compensation in respect of added pension payments).

(2) R is deemed to have been an active member of this scheme for all purposes in connection with the added pension payments..

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

**Appendix 3 – Equality Screening**



**DOJ Section 75**

**EQUALITY SCREENING FORM**

**Title of Policy: Draft regulations for the McCloud remedy- Judicial Pensions (Remedial Service etc) Regulations (Northern Ireland) 2023**

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**The Legal Background**

Under section 75 of the Northern Ireland Act 1998, the Department is required **to have due regard to the need to promote equality of opportunity:**

● between person of different religious belief, political opinion, racial group,

age, marital status or sexual orientation;

● between men and women generally;

● between persons with a disability and persons without; and,

● between persons with dependants and persons without1.

Without prejudice to the obligations set out above, the Department is also required to:

● **have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group; and**

● **meet legislative obligations under the Disability Discrimination Order.**

**Introduction**

1. This form should be read in conjunction with the Equality Commission’s revised Section 75 guidance, “Effective Section 75 Equality Assessments: Screening and Equality Assessments” which is available on the Equality Commission’s website or contained in the link below:

[www.equalityni.org/ECNI/media/ECNI/Publications/EmployersandServiceProviders/PublicAuthorities/S75Advice-ScreeningEQIA.pdf](http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/S75Advice-ScreeningEQIA.pdf)

**Section 75** statutory duties apply to **internal policies** (relating to people who work for department), as well as **external policies** (relating to those who are, or could be, served by the department).

1. The purpose of screening is to identify those policies that are likely to have an impact on equality of opportunity and/or good relations and so determine whether an Equality Impact Assessment (EQIA) is necessary. Screening should be introduced at an early stage when developing or reviewing a policy.

1A list of the main groups identified as being relevant to each of the section 75 categories is at Annex B of the document.

1. The lead role in the screening of a policy should be taken by the policy decision-maker who has the authority to make changes to that policy and should involve, in the screening process:

other relevant team members;

those who implement the policy;

staff members from other relevant work areas; and

key stakeholders.

A flowchart which outlines the screening process is provided at Annex A.

1. The first step in the screening exercise is to gather evidence to inform the screening decisions. Relevant data may be either quantitative or qualitative or both (this helps to indicate whether or not there are likely equality of opportunity and/or good relations impacts associated with a policy). Relevant information will help to clearly demonstrate the reasons for a policy being either ‘screened in’ for an equality impact assessment or ‘screened out’ from an equality impact assessment.
2. The absence of evidence does not indicate that there is no likely impact but if none is available, it may be appropriate to consider subjecting the policy to an EQIA.
3. Where data/evidence gaps exist consider engaging with the main representative groups directly, for example Disability Action, Rainbow, and NICCY to find out what you need to know. Bring stakeholders together to discuss policy or link up with other UK bodies who may have similar policies.
4. Screening provides an assessment of the likely impact, whether ‘minor’ or ‘major’, of its policy on equality of opportunity and/or good relations for the relevant categories. In some instances, screening may identify the likely impact is none.
5. Contact [EqualityandStaffSupportServices@justice-ni.gov.uk](mailto:EqualityandStaffSupportServices@justice-ni.gov.uk) at any stage of the process for support or guidance.

**Screening decisions**

1. Completion of screening should lead to one of the following three outcomes. The policy has been:
   1. ‘screened in’ for equality impact assessment;
   2. ‘screened out’ *with* mitigation or an alternative policy proposed to be adopted; or
   3. ‘screened out’ *without* mitigation or an alternative policy proposed to be adopted.

**Screening and good relations duty**

1. The Commission recommends that a policy is ‘screened in’ for equality impact assessment if the likely impact on **good relations** is ‘major’. While there is no legislative requirement to engage in an equality impact assessment in respect of good relations, this does not necessarily mean that equality impact assessments are inappropriate in this context.

**Part 1**

**Definition of Policy**

1. There have been some difficulties in defining what constitutes a policy in the context of section 75. To be on the safe side it is recommended that you consider any new initiatives, proposals, schemes or programmes as policies or changes to those already in existence. It is important to remember that even if a full EQIA has been carried out in an “overarching” policy or strategy, it will still be necessary for the policy maker to consider if further screening or an EQIA needs to be carried out in respect of those policies cascading from the overarching strategy.

**Overview of Policy Proposals**

1. The aims and objectives of the policy must be clear and terms of reference well defined. You must take into account any available data that will enable you to come to a decision on whether or not a policy may or may not have a differential impact on any of the s75 categories.

**Policy Scoping**

1. The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

**Part 1: Policy Scoping**

1. **Information about the policy**

| **Name of the Policy/ decision to be screened**  The Judicial Pensions (Remedial Service etc) Regulations (Northern Ireland) 2023 |
| --- |
|  |
| **Is this an existing, revised or a new policy / decision?** |
| This is an existing policy that derives from a Court of Appeal judgement that had implications for all public service pensions schemes that were reformed in 2015, as all contained transitional protection for older members which was contaminated with age discrimination. The draft Regulations are part of the remedy for that discrimination. |
| **What is it trying to achieve? (intended aims/outcomes)** |
| In October 2020 DoJ consulted on proposals to address the discrimination in the Northern Ireland Judicial Pension Scheme (NIJPS) identified in the *McCloud* case. The response to the consultation published in March 2021 confirmed that affected judges will participate in a formal ‘options exercise’ where they will be offered a choice of pension scheme membership for the relevant period of, 1 April 2015 until 31 March 2022. The choice is between ‘legacy scheme’ membership (JUPRA and the fee-paid equivalent FPJPS) and NIJPS membership. |
| **Are there any Section 75 categories which might be expected to benefit from the intended policy? If so, explain how.** |
| Yes. The policy addresses age discrimination which is present in the NIJPS and adversely affects younger judges. |
| **Who initiated or wrote the policy?** |
| The Department of Justice. |
| **Who owns and who implements the policy?**  The legislation required for effecting this element of the *McCloud* remedy will be made by the Department of Justice after consultation. |
|  |

1. **Implementation factors**

Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision?

If yes, are they

*Tick Box*

☐ financial

☒ legislative

☐ other, please specify \_\_\_\_\_\_\_\_\_N/A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Main stakeholders affected**

Who are the internal and external stakeholders (actual or potential) that the policy will impact upon?

*Tick Box*

☐ staff

☐ service users

☐ other public sector organisations

☐ voluntary/community/trade unions

☒ other, please specify: Judicial office holders who were previously members of the devolved Northern Ireland Judicial Pension Scheme

1. **Other policies with a bearing on this policy**

*what are they?*

| N/A |
| --- |

*who owns them?*

| N/A |
| --- |

1. **Available Evidence**

Evidence to help inform the screening process may take many forms. Set out all evidence /data (both \*qualitative and quantitative) below along with details of the different groups you have met and / or consulted with to help inform your screening assessment. Specify details for each of the Section 75 categories.

| **Section 75 Category** | **Details of evidence/information** |
| --- | --- |
| Religious belief | None. Due to the relatively small number of scheme members, who are the group directly impacted, and the resultant possibility of random factors distorting the group profile from one assessment to the next, the likelihood that empirical data collection on the current group proving representative or meaningful in terms of subsequent beneficiaries may be considered problematic. On this basis no such exercise has been attempted and the Department, therefore, does not hold any evidence or data |
| Political opinion | None - as above |
| Racial group | None - as above |
| Age | None - as above |
| Marital status | None - as above |
| Sexual orientation | None - as above |
| Men and Women generally | None - as above |
| Disability | None - as above |
| Dependants | None - as above |

\***Qualitative data** – refers to the experience of individuals related in their own terms, and based on their own experience and attitudes. Qualitative data is often used to complement quantitative data to determine why policies are successful or unsuccessful and the reasons for this.

**Quantitative data** – refers to numbers (that is quantities), typically derived from either a population in general or samples of that population. This information is often analysed either using descriptive statistics (which summarise patterns), or inferential statistics (which are used to infer from a sample about a wider population).

1. **Needs, experiences and priorities**

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories.

| **Section 75 Category** | **Details of evidence/information** |
| --- | --- |
| Religious belief | Not applicable |
| Political opinion | Not applicable |
| Racial group | Not applicable |
| Age | This policy is aimed at addressing the discrimination on the basis of age which is present in the NIJPS and affects younger judges. In 2015 the government introduced extensive reforms to public service pension schemes to make them more affordable and sustainable. The Northern Ireland Judicial Pension Scheme (NIJPS) was established by the DoJ on 1 April 2015 under the Judicial Pensions Regulations (Northern Ireland) 2015. The reforms included transtitional protection provisions for judges who were within 10 years of retirement. Those in service on 31 March 2012 and aged over 55 or over on 1 April 2012 received ‘full protection’ and remained in their legacy schemes. A form of ‘tapered protection’ was given to judges aged between 51 and a half and 55 on 1 April 2012. They were offered the choice of joining the NIJPS on its introduction or remaining in the legacy scheme for a period, before ‘tapering’ to the NIJPS at a later date. All other judges in service on 31 March 2012 were ‘unprotected’ which meant that they joined the NIJPS on 1 April 2015, unless they had opted out of pension scheme membership.  The transitional provisions were challenged by younger judges in the case of *McCloud*. In 2018, the Court of Appeal held that the transitional protections constituted unlawful direct age discrimination. The government accepted that the judgement had implications for all public service pension schemes, which contained similar transitional protections, and committed to addressing the discrimination for those affected. |
| Marital status | Scheme members who are married, in a civil partnership, or have a nominated partner, may have a particular interest in the proposed remedy options insofar as each of the schemes confers slightly different benefits in this regard. However, they are to be given a choice of scheme and will be able to choose the scheme best suited to them. |
| Sexual orientation | Not applicable |
| Men and Women generally | Not applicable |
| Disability | Not applicable |
| Dependants | Scheme members with dependents may have a particular interest in the proposed remedy options insofar as each of the schemes confers slightly different benefits in this regard. However, they are to be given a choice of scheme and will be able to choose the scheme best suited to them. |

**Part 2**

**SCREENING DECISIONS**

1. **Decision** - **In favour of none**

If the conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the decision may be to screen the policy out. If a policy is **‘screened out’** as having no relevance to equality of opportunity or good relations, give details of the reasons for the decision taken.

* **Considerations** –
* The policy has no relevance to equality of opportunity or good relations.
* The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

1. **Decision** - **In favour of a ‘major’ impact**

If the conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure (EQIA).

* **Considerations-**
* Is the policy significant in terms of its strategic importance?
* The potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex and it would be appropriate to conduct an equality impact assessment in order to better assess them;
* The potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
* Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns amongst affected individuals and representative groups, for example in respect of multiple identities;
* The policy is likely to be challenged by way of judicial review;
* The policy is significant in terms of expenditure.

1. **Decision - In favour of ‘minor’ impact**

If the conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

• measures to mitigate the adverse impact; or

• the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

* **Considerations –**
* The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
* The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
* Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
* By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

Part 2 Screening questions

| **2.1** What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? |
| --- |

| **Section 75 category** | **Details of policy impact** | **Level of impact? Minor/Major/None** |
| --- | --- | --- |
| Religious belief | **No adverse impact identified** | **None** |
| Political opinion | **No adverse impact identified** | **None** |
| Racial group | **No adverse impact identified** | **None** |
| Age | The draft regulations seek to give effect to the decision in *McCloud* by retrospectively providing a remedy for the discrimination for all affected judges in scope. The remedy will therefore address the direct age discrimination identified in McCloud. | **Minor** |
| Marital status | **No adverse impact identified** | **None** |
| Sexual orientation | **No adverse impact identified** | **None** |
| Men and Women generally | **No adverse impact identified** | **None** |
| Disability | **No adverse impact identified** | **None** |
| Dependants | **No adverse impact identified** | **None** |

| **2.2** Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories? |
| --- |

| **Section 75 category** | **If Yes, provide details** | **If No, provide reasons** |
| --- | --- | --- |
| Religious belief |  | **None –**  The draft regulations will apply to all scheme members within scope of the remedy equally. There is, therefore, no opportunity to better promote equality of opportunity. |
| Political opinion |  | **See above** |
| Racial group |  | **See above** |
| Age |  | **See above** |
| Marital status |  | **See above** |
| Sexual orientation |  | **See above** |
| Men and Women generally |  | **See above** |
| Disability |  | **See above** |
| Dependants |  | **See above** |

| **2.3.** To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group? |
| --- |

| **Good relations category** | **Details of policy impact** | **Level of impact Minor/Major/None** |
| --- | --- | --- |
| Religious belief | **Not applicable** | **None** |
| Political opinion | **Not applicable** | **None** |
| Racial group | **Not applicable** | **None** |

| **2.4.** Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group? |
| --- |

| **Good relations category** | **If Yes, provide details** | **If No, provide reasons** |
| --- | --- | --- |
| Religious belief |  | **No opportunities to promote good relations within any of the good relations categories are expected.** |
| Political opinion |  | **As above.** |
| Racial group |  | **As above.** |

**Additional Considerations**

**Multiple Identity**

1. Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities?

(*For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).*

**None apparent.**

1. Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

| **None apparent.** |
| --- |

**Part 3 Screening Decision**

**3.1**. **Screened In** - If the decision is to conduct an equality impact assessment, please provide details of the rationale and relevant evidence to support this decision.

| Not applicable. |
| --- |

**3.2**. **Screened Out** – No EQIA necessary (no impact)

If the decision is not to conduct an equality impact assessment, please provide details of the rationale and relevant evidence to support this decision.

| The draft regulations in the consultation document seek to give effect to the decision in *McCloud* by retrospectively providing a remedy for the discrimination for all affected judges in scope. |
| --- |

**3.3.** **Screened Out – Mitigating Actions** (minor impacts)

When the decision is that the likely impact is ‘minor’ and an equality impact assessment is not to be conducted, you may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations?

If so, give the **reasons** to support your decision, together with the proposed changes/amendments or alternative policy. Explain how these actions will address the inequalities.

| Not applicable. |
| --- |

**Timetabling and Prioritising**

1. Factors to be considered in timetabling and prioritising policies for equality impact assessment.
2. If the policy has been **‘screened in’** for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.
3. On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

| **Priority criterion** | **Rating (1-3)** |
| --- | --- |
| Effect on equality of opportunity and good relations | **N/A** |
| Social need | **N/A** |
| Effect on people’s daily lives | **N/A** |
| Relevance to a public authority’s functions | **N/A** |

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist in timetabling. Details of the Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

1. Is the policy affected by timetables established by other relevant public authorities?

* If yes, please provide details.

| **N/A** |
| --- |

**Part 4 Monitoring**

1. Section 75 places a requirement on the Department to have equality monitoring arrangements in place in order to assess the impact of policies and services etc. and to help identify barriers to fair participation and to better promote equal opportunity.
2. Effective monitoring will help identify any future adverse impact arising from the policy which may lead the public authority to conduct an equality impact assessment, as well as help with future planning and policy development.
3. Outline what data you will collect in the future in order to monitor the impact of this policy/ decision on equality, good relation and disability duties.

| **Equality** | N/A |
| --- | --- |
| **Good relations** | N/A |
| **Disability Duties** | N/A |

**Part 5 Formal Record of Screening Decision**

| **Title of Proposed Policy / Decision being screened**  **Draft Judicial Pensions (Remedial Service etc) Regulations (Northern Ireland) 2023** |
| --- |

**I can confirm that the proposed policy/decision has been screened for –**

| **☒** | **Equality of opportunity** |
| --- | --- |
| **☒** | **Good Relations** |
| **☒** | **Disability duties** |

**On the basis of the answer to the screening questions, I recommend that this policy /decision is –**

|  | **Screened in – necessary to conduct a full EQIA** |
| --- | --- |

|  | **Screened Out – no EQIA necessary (no impacts)** |
| --- | --- |

| ***x*** | **Screened Out – mitigating actions (minor impacts)** |
| --- | --- |

**Part 6 Approval and Authorisation**

***(Have you sent this document to the Equality Unit prior to obtaining signature?)***

| **Screened/completed by:** | **Grade** | **Date** |
| --- | --- | --- |
| **Laura Davison** | **Grade 7** | **04/01/23** |
| **Approved by (Grade 7 or above):** |  |  |
| **Andrew Dawson** | **Grade 5** | **05/01/23** |

**Quality Assurance**

**Prior to final approval** the Screening Form should be forwarded [EqualityandStaffSupportServices@justice-ni.gov.uk](mailto:EqualityandStaffSupportServices@justice-ni.gov.uk) for comment/quality assurance. Contact the branch should you require advice or have any queries prior to this stage.

Any NIPS forms should be forwarded to [Peter.Grant@justice-ni.gov.uk](mailto:Peter.Grant@justice-ni.gov.uk)

When you receive a response and there are no further considerations required, the form should be ‘signed off’ and approved by a senior manager responsible for the policy, this would normally be at least grade 7.

The completed Screening Form should be placed on the DOJ Website where it will be made easily accessible to the public and be available on request. In addition, it will be included in a quarterly listing of all screenings completed during each 3 month period and issued to consultees.

**The Screening exercise is now complete**.

Please retain a record in your branch and send a copy for information to:-

Equality and Staff Support Services (ESSS)

Room 3.4, Castle Buildings

Stormont Estate

BELFAST

BT4 3SG

Tel: 02890 522611

or e-mail to [EqualityandStaffSupportServices@justice-ni.gov.uk](mailto:EqualityandStaffSupportServices@justice-ni.gov.uk)

**ANNEX A - SCREENING FLOWCHART**

**Policy Scoping**

Consider Available Data and Evidence

**Screening Questions**

Apply screening questions

Consider multiple identities

**Screening Decision**

None/Minor/Major

**‘None’**

Screened out

**‘Minor’**

Screened

out with

mitigation

**‘Major’**

Screened in

for EQIA

**Send the form to**

[**EqualityandStaffSupportServices@justice-ni.gov.uk**](mailto:EqualityandStaffSupportServices@justice-ni.gov.uk)

**When returned arrange to be signed off by Grade 7 or above**

Concerns /queries raised i.e. evidence re: screening decision

Publish completed Screening Form on **DOJ Internet**

**EQIA**

Re-consider Screening

Future Monitoring

**ANNEX B**

**MAIN GROUPS IDENTIFIED AS RELEVANT TO THE SECTION 75 CATEGORIES**

| **Category** | **Main Groups** |
| --- | --- |
| Religious Belief | Protestants; Catholics; people of other religious belief; people of no religious belief |
| Political Opinion | Unionists generally; Nationalists generally; members/supporters of any political party |
| Racial Group | White people; Chinese; Irish Travellers; Indians; Pakistanis; Bangladeshis; Black Africans; Afro Caribbean people; people of mixed ethnic group, other groups |
| Age | For most purposes, the main categories are: children under 18; people aged between 18 and 65. However the definition of age groups will need to be sensitive to the policy under consideration. For example, for some employment policies, children under 16 could be distinguished from people of working age |
| Marital/Civil Partnership Status | Married people; unmarried people; divorced or separated people; widowed people; civil partnerships |
| Sexual Orientation | Heterosexuals; bisexual people; gay men; lesbians |
| Men and Women generally | Men (including boys); women (including girls); trans-gender and trans-sexual people |
| Persons with a disability and persons without | Persons with a physical, sensory or learning disability as defined in Schedules 1 and 2 of the Disability Discrimination Act 1995. |
| Persons with dependants and persons without | Persons with primary responsibility for the care of a child; persons with personal responsibility for the care of a person with a disability; persons with primary responsibility for a dependent elderly person. |

**Appendix 4**

**Rural Needs Impact Assessment (RNIA) Template**

**SECTION 1 - Defining the activity subject to Section 1(1) of the Rural Needs Act (NI) 2016**

| **1A. Name of Public Authority.** |
| --- |
| Department of Justice (DoJ) |

| **1B. Please provide a short title which describes the activity being undertaken by the Public Authority that is subject to Section 1(1) of the Rural Needs Act (NI) 2016.** |
| --- |
| Draft regulations to give effect to the *McCloud* remedy - The Judicial Pensions (Remedial Service etc) Regulations (Northern Ireland) 2023 |

| **1C. Please indicate which category the activity specified in Section 1B above relates to.** |
| --- |
| Developing a Policy Strategy Plan  Adopting a Policy Strategy Plan  Implementing a Policy Strategy Plan  x  Revising a Policy Strategy Plan  Designing a Public Service  Delivering a Public Service |

| **1D. Please provide the official title (if any) of the Policy, Strategy, Plan or Public Service document or initiative relating to the category indicated in Section 1C above.** |
| --- |
| A consultation on Draft regulations for the *McCloud* Remedy. |

| **1E. Please provide details of the aims and/or objectives of the Policy, Strategy, Plan or Public Service.** |
| --- |
| The draft regulations in the consultation document seek to give effect to the decision in *McCloud* by retrospectively providing a remedy for the discrimination for all affected judges in scope. |

| **1F. What definition of ‘rural’ is the Public Authority using in respect of the Policy, Strategy, Plan or Public Service?** |
| --- |
| Population Settlements of less than 5,000 (Default definition).  Other Definition (Provide details and the rationale below).  A definition of ‘rural’ is not applicable.  x |

| *Details of alternative definition of ‘rural’ used.* |
| --- |
| N/A |

| *Rationale for using alternative definition of ‘rural’.* |
| --- |
| N/A |

| *Reasons why a definition of ‘rural’ is not applicable.* |
| --- |
| N/A |

**SECTION 2 - Understanding the impact of the Policy, Strategy, Plan or Public Service**

| **2A. Is the Policy, Strategy, Plan or Public Service likely to impact on people in rural areas?** |
| --- |
| Yes No If the response is **NO** GO TO Section **2E**.  x |

| **2B. Please explain how the Policy, Strategy, Plan or Public Service is likely to impact on people in rural areas.** |
| --- |
| Not applicable |

| **2C. If the Policy, Strategy, Plan or Public Service is likely to impact on people in rural areas *differently* from people in urban areas, please explain how it is likely to impact on people in rural areas differently.** |
| --- |
| Not applicable |

| **2D. Please indicate which of the following rural policy areas the Policy, Strategy, Plan or Public Service is likely to primarily impact on** |
| --- |
| Rural Businesses Rural Tourism  Rural Housing  Jobs or Employment in Rural Areas Education or Training in Rural Areas  Broadband or Mobile Communications in Rural Areas  Transport Services or Infrastructure in Rural Areas  Health or Social Care Services in Rural Areas  Poverty in Rural Areas  Deprivation in Rural Areas  Rural Crime or Community Safety  Rural Development  Agri-Environment  Other (Please state) |

**If the response to Section 2A was YES GO TO Section 3A.**

| **2E. Please explain why the Policy, Strategy, Plan or Public Service is NOT likely to impact on people in rural areas.** |
| --- |
| The draft regulations give effect to the *McCloud* remedy and do not impact on people in rural areas. |

**SECTION 3 - Identifying the Social and Economic Needs of Persons in Rural Areas**

| **3A. Has the Public Authority taken steps to identify the social and economic needs of people in rural areas that are relevant to the Policy, Strategy, Plan or Public Service?** |
| --- |
| Yes No If the response is **NO** GO TO Section **3E**.  x |

| **3B. Please indicate which of the following methods or information sources were used by the Public Authority to identify the social and economic needs of people in rural areas.** |
| --- |
| Consultation with Rural Stakeholders Published Statistics Consultation with Other Organisations Research Papers  Surveys or Questionnaires Other Publications  Other Methods or Information Sources (include details in Question 3C below). |

| **3C. Please provide details of the methods and information sources used to identify the social and economic needs of people in rural areas including relevant dates, names of organisations, titles of publications, website references, details of surveys or consultations undertaken etc.** |
| --- |
| Not applicable |

| **3D. Please provide details of the social and economic needs of people in rural areas which have been identified by the Public Authority?** |
| --- |
| Not applicable. |

**If the response to Section 3A was YES GO TO Section 4A.**

| **3E. Please explain why no steps were taken by the Public Authority to identify the social and economic needs of people in rural areas?** |
| --- |
| The Department has not identified any differential impact on the social or economic needs of people in rural areas. |

**SECTION 4 - Considering the Social and Economic Needs of Persons in Rural Areas**

| **4A. Please provide details of the issues considered in relation to the social and economic needs of people in rural areas.** |
| --- |
| As the draft regulations would not impact in a differential way in relation to rural areas no social or economic needs were identified specific to people in rural areas. |

**SECTION 5 - Influencing the Policy, Strategy, Plan or Public Service**

| **5A. Has the development, adoption, implementation or revising of the Policy, Strategy or Plan, or the design or delivery of the Public Service, been influenced by the rural needs identified?** |
| --- |
| Yes No If the response is **NO** GO TO Section **5C**.  x |

| **5B. Please explain how the development, adoption, implementation or revising of the Policy, Strategy or Plan, or the design or delivery of the Public Service, has been influenced by the rural needs identified.** |
| --- |
| Not applicable |

**If the response to Section 5A was YES GO TO Section 6A.**

| **5C. Please explain why the development, adoption, implementation or revising of the Policy, Strategy or Plan, or the design or the delivery of the Public Service, has NOT been influenced by the rural needs identified.** |
| --- |
| No specific rural needs were identified as the proposals will not impact on rural areas in a differential way. |

**SECTION 6 - Documenting and Recording**

| **6A. Please tick below to confirm that the RNIA Template will be retained by the Public Authority and relevant information on the Section 1 activity compiled in accordance with paragraph 6.7 of the guidance.** |
| --- |
| I confirm that the RNIA Template will be retained and relevant information compiled.  x |

| **Rural Needs Impact Assessment undertaken by:** | Laura Davison |
| --- | --- |
| **Position/Grade:** | Grade 7 |
| **Division/Branch** | Judicial Policy and Tribunals |
| **Signature:** |  |
| **Date:** | 04/01/23 |
| **Rural Needs Impact Assessment approved by:** | Andrew Dawson |
| **Position/Grade:** | Grade 5 |
| **Division/Branch** | Civil Justice and Judicial Policy Division |
| **Signature:** |  |
| **Date:** | 04/01/23 |

Appendix 5 – Regulatory Impact Assessment

|  |  |
| --- | --- |
| **Title:**  **Consultation on draft regulations for the McCloud Remedy –The Judicial Pensions (Remedial Service etc) Regulations (Northern Ireland) 2023** | **Regulatory Impact Assessment (RIA)** |
| **Date: 04/01/23** |
| **Type of measure: Secondary legislation** |
| **Lead department or agency:**  **Department of Justice** | **Stage:** |
| **Source of intervention:** |
| **Other departments or agencies:**  **N/A** | **Contact details:** Laura Davison |
| Department of Justice |
| Laura.Davison@justice-ni.gov.uk |

**Summary Intervention and Options**

|  |  |
| --- | --- |
| **What is the problem under consideration? Why is government intervention necessary?** (7 lines maximum)  The draft regulations in the consultation document seek to give effect to the decision in *McCloud* by retrospectively providing a remedy for the discrimination for all affected judges in scope. | |
|  | |
| **What are the policy objectives and the intended effects?** (7 lines maximum)   |  | | --- | | The policy objective is to remedy the age discrimination in the Judicial Pension scheme that was found by the Court of Appeal in the *McCloud* case. | | |
|  | |
| **What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)** (10 lines maximum)  It is usual for the Northern Ireland Judicial Pension Scheme to maintain parity with its counterpart in England and Wales, the Judicial Pension Scheme (into which eligible members of Northern Ireland’s excepted (courts) judiciary have been placed), on the basis that it is desirable to avoid divergence between the pension arrangements for the excepted and devolved judiciary. These draft regulations reflect similar regulations that the Ministry of Justice are currently consulting upon. | |
| **Will the policy be reviewed?** | **If applicable, set review date:** Month/Year |

|  |  |  |
| --- | --- | --- |
| **Cost of Preferred (or more likely) Option** | | |
| **Total outlay cost for business** £m | **Total net cost to business per year** £m | **Annual cost for implementation by Regulator** £m |
| N/A | N/A | N/A |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Does Implementation go beyond minimum EU requirements?** | | | **YES** | **NO** |
| **Is this measure likely to impact on trade and investment?** | | | **YES** | **NO X** |
| Are any of these organisations in scope? | **Micro**  Yes  No X | **Small**  Yes  No X | **Medium**  Yes  No X | **Large**  Yes  No X |

**The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.**

Approved by: Andrew Dawson Date: 04/01/23

Summary: Analysis and Evidence Policy Option 1

Description: Amendment of Judicial Pensions Regulations (Northern Ireland) 2015

**ECONOMIC ASSESSMENT (Option** 1**)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Costs (£m)** | **Total Transitional (Policy)** | | **Average Annual (recurring)** | **Total Cost** |
|  | (constant price) | Years | (excl. transitional) (constant price) | (Present Value) |
| **Low** | **N/A Optional** |  | **N/A Optional** | **N/A Optional** |
| **High** | **N/A Optional** | **N/A Optional** | **N/A Optional** |
| **Best Estimate** | **N/A** |  |  |
| **Description and scale of key monetised costs by ‘main affected groups’** Maximum 5 lines  There are no costs to micro, small, medium or large organisations. | | | | |
| **Other key non-monetised costs by ‘main affected groups’** Maximum 5 lines  N/A | | | | |
| **Benefits (£m)** | **Total Transitional (Policy)** | | **Average Annual (recurring)** | **Total Benefit** |
|  | (constant price) | Years | (excl. transitional) (constant price) | (Present Value) |
| **Low** | **N/A Optional** |  | **N/A Optional** | **N/A Optional** |
| **High** | **N/A Optional** | **N/A Optional** | **N/A Optional** |
| **Best Estimate** | **N/A** |  |  |
| **Description and scale of key monetised benefits by ‘main affected groups’** Maximum 5 lines  N/A | | | | |
| **Other key non-monetised benefits by ‘main affected groups’** Maximum 5 lines  N/A | | | | |
| **Key Assumptions, Sensitivities, Risks** Maximum 5 lines  N/A | | | | |

**BUSINESS ASSESSMENT (Option** 1**)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Direct Impact on business (Equivalent Annual) £m** | | |  |  |
| **Costs: N/A** | **Benefits: N/A** | **Net: N/A** |  |  |

**Cross Border Issues (Option**    **)**

|  |
| --- |
| **How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland)** Maximum 3 lines  N/A |

Evidence Base

There is discretion for departments and organisations as to how to set out the evidence base. It is however desirable that the following points are covered:

* Problem under consideration;
* Rationale for intervention;
* Policy objective;
* Description of options considered (including do nothing), with reference to the evidence base to support the option selection;
* Monetised and non-monetised costs and benefits of each option (including administrative burden);
* Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach);
* Risks and assumptions;
* Direct costs and benefits to business;
* Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

**Inserting text for this section:**

**Text can be pasted from other documents as appropriate.**

The draft regulations in the consultation document seek to give effect to the decision in *McCloud* by retrospectively removing the discrimination for all affected judges in scope. These judges are entitled to have never left JUPRA/FPJPS and will be able to return to their respective legacy scheme from 1 April 2015 if they believe they have suffered less favourable treatment. The remedy will therefore address the direct age discrimination identified in McCloud. The draft regulations have no impact on micro, small, medium or large organisations and no impact on business.

1. Created by the Judicial Pensions Regulations 2022 [↑](#footnote-ref-1)
2. Where a judge has died, the legislation provides that the surviving adult or personal representative should make the scheme election. [↑](#footnote-ref-2)
3. Such as voluntary contributions or transfers into the scheme. [↑](#footnote-ref-3)
4. See s59 PSPJOA [↑](#footnote-ref-4)
5. See ss67 and 68 PSPJOA [↑](#footnote-ref-5)
6. See s103 PSPJOA [↑](#footnote-ref-6)
7. See s62 PSPJOA [↑](#footnote-ref-7)
8. Relief on member pension contributions at source via the Pay As You Earn system. [↑](#footnote-ref-8)
9. See s42(7)PSPJOA [↑](#footnote-ref-9)
10. See s51 PSPJOA [↑](#footnote-ref-10)
11. See s67 PSPJOA [↑](#footnote-ref-11)
12. See s48(3) and (6) PSPJOA [↑](#footnote-ref-12)
13. Gap judges who were aged under 55 on 1 April 2012 are in scope of McCloud and will participate in the options exercise. [↑](#footnote-ref-13)
14. This is because the judicial pension arrangements for fee-paid judges were not in place at that time, although they were subsequently introduced with retrospective effect. [↑](#footnote-ref-14)
15. See s57 PSPJOA [↑](#footnote-ref-15)
16. See s57(5) PSPJOA [↑](#footnote-ref-16)
17. () 2014 c. 2. Section 3(1) was amended by section 94(2) of the PSPJOA 2022, and section 3(2)(c) and (4A) were inserted by, respectively, section 94(3) and (4) of that Act. [↑](#footnote-ref-17)
18. () 2022 c. 7. [↑](#footnote-ref-18)
19. () See section 75 of the PSPJOA 2022 for meaning of “Treasury directions”. [↑](#footnote-ref-19)
20. () S.I. 2017/522 as amended by S.I. 2018/1413, S.I. 2018/1149, S.I. 2019/781, S.I. 2020/386 and S.I. 2021/444. [↑](#footnote-ref-20)
21. () S.R. 2015 No. 76 as amended by S.R. 2016 No. 138; S.R. 2019 No. 26; S.R. 2020 No. 10; and S.R. 2022 No. 73. [↑](#footnote-ref-21)
22. () See section 39 of the PSPJOA 2022 for the meaning of “remediable service”. [↑](#footnote-ref-22)
23. () See section 71(1) of the PSPJOA 2022 for the meaning of “judicial office”. [↑](#footnote-ref-23)
24. () See section 68 of the PSPJOA 2022 for provision about whether an “immediate detriment remedy” has been obtained. [↑](#footnote-ref-24)
25. () See section 40(1) of the PSPOJO Act for the meaning of “legacy scheme election”. [↑](#footnote-ref-25)
26. () See section 69 of PSPJOA 2022 for the meaning of “the election period”. [↑](#footnote-ref-26)
27. () See section 71(3) of PSPJOA 2022 for the meaning of “fee-paid judicial office”. [↑](#footnote-ref-27)
28. () See section 70(4) of PSPJOA 2022 for the meaning of “judicial legacy salaried scheme”. [↑](#footnote-ref-28)
29. () See section 70(5) of PSPJOA 2022 for the meaning of “judicial legacy fee-paid scheme”. [↑](#footnote-ref-29)
30. () See section 71(2) of PSPJOA 2022 for the meaning of “salaried judicial office”. [↑](#footnote-ref-30)
31. () See section 73(2) of PSPJOA 2022 for the meaning of “PPA opted-out service”. [↑](#footnote-ref-31)
32. () See section 110 of PSPJOA 2022 for the meaning of “employer”. [↑](#footnote-ref-32)
33. () See section 54(4) of PSPJOA 2022 for the meaning of “transitional protection allowance”. [↑](#footnote-ref-33)
34. () See section 87(1) of PSPJOA 2022 for the meaning of “Treasury directions”’ [↑](#footnote-ref-34)
35. () See section 63(5) of PSPJOA 2022 for the meaning of “unauthorised payment”. [↑](#footnote-ref-35)
36. () See section 75 of PSPJOA 2022 for the meaning of Treasury directions”. [↑](#footnote-ref-36)
37. () See section 103(3) of PSPJOA 2022 for the meaning of “relevant fee-paid judge”. [↑](#footnote-ref-37)
38. () See section 39(9) of PSPJOA 2022 for the meaning of “disqualifying gap in service”. [↑](#footnote-ref-38)
39. () See section 103(4) of PSPJOA 2022 for the meaning of “full protection member”. [↑](#footnote-ref-39)
40. () See section 75 of the PSPJOA 2022 for the meaning of “Treasury directions”. [↑](#footnote-ref-40)
41. () See section 75 of the PSPJOA 2022 for the meaning of “Treasury directions”. [↑](#footnote-ref-41)
42. () In accordance with section 110(1) of the PSPJOA 2022, “WRP(NI)O 1999” means the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1991/3147 (N.I. 11)). [↑](#footnote-ref-42)
43. () See section 70(3) of the PSPJOA 2022 for the meaning of “a judicial legacy scheme”. [↑](#footnote-ref-43)
44. () See section 47 of the PSPJOA 2022 for cases in which a 2015 scheme election is treated as made. [↑](#footnote-ref-44)
45. () See section 109(3) of the PSPJOA 2022 for the meaning of “pensioner member”. [↑](#footnote-ref-45)
46. () See section 61(3) for the meaning of “relevant amount”. [↑](#footnote-ref-46)
47. () See section 56(4) of the PSPJOA 2022. [↑](#footnote-ref-47)