



EXPLANATORY NOTES

Public Service Pensions Act 2013

Chapter 25

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PUBLIC SERVICE PENSIONS ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Public Service Pensions Act 2013 which received Royal Assent on 25th April 2013. They have been prepared by the Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. In 2010 the Chancellor of the Exchequer invited Lord Hutton of Furness to chair the Independent Public Service Pensions Commission (“the IPSPC”). The Commission was tasked with undertaking a fundamental structural review of public service pension provision.

4. The IPSPC published its final report¹ in 2011. The report contained recommendations to reform public service pensions to balance the interests of taxpayers, employers and members in relation to the present and future cost of pension commitments in the public service. In March 2011 the Government accepted the IPSPC’s recommendations as the basis for discussions with public service workers, trades unions and other member representative bodies.

5. In November 2011, following the discussions, the Treasury published *Public Service Pensions: good pensions that last*² which set out the Government’s preferred pension scheme design as the framework to inform further discussions. Trades unions were invited to suggest changes to the Government’s preferred scheme design to ensure it best meets the needs of each scheme’s members, within the cost ceilings set by the Government. Following the discussions, scheme-specific design alternatives to the Government’s preferred pension design were put forward.

6. Key scheme design milestones for the new public service pensions schemes were reflected in the following documents:

- The Principal Civil Service Pension Scheme Heads of Agreement, 20th December 2011
- The NHS Pension Scheme Heads of Agreement in England and Wales, 20th December 2011

¹ *Independent Public Service Pensions Commission: Final report*, 10th March 2011, http://cdn.hm-treasury.gov.uk/hutton_final_100311.pdf

² *Public Service Pensions: good pensions that last*, HM Treasury, 2nd November 2011, http://cdn.hm-treasury.gov.uk/pensions_publicservice_021111.pdf

- The Teachers' Pension Scheme Heads of Agreement in England and Wales, 20th December 2011
- The Local Government Pension Scheme Principles Document in England and Wales, 20th December 2011
- **The Firefighters' Pension Scheme in England Heads of Agreement, 9th February 2012**
- The Principal Civil Service Pension Scheme Proposed Final Agreement, 9th March 2012
- The NHS Pension Scheme Proposed Final Agreement in England and Wales, 9th March 2012
- The Teachers' Pension Scheme Proposed Final Agreement in England and Wales, 9th March 2012
- The Firefighters' Pension Scheme in England Proposed Final Agreement, 24th May 2012
- The Local Government Pension Scheme Joint Statement, 31st May 2012
- Armed Forces Pension Scheme Outline Scheme Design, 31st July 2012
- The Police Reform Design Framework in England and Wales, 4th September 2012
- The new Armed Forces Pension Scheme: Final Agreement, 16th October 2012
- Judicial Pension Reform Written Ministerial Statement, 5th February 2013

7. In the Queen's Speech on 9th May 2012, the Government announced its intention to bring forward legislation based on the proposed final agreements reached with the main unfunded pension schemes and the recommendations of the IPSPC.

SUMMARY

8. The Act sets out the new arrangements for the creation of schemes for the payment of pensions and other benefits. It provides powers to Ministers to create such schemes according to a common framework of requirements. The Act provides powers to the Treasury to set specific technical details of certain requirements. **It also gives powers to the Pensions Regulator to operate a system of independent oversight of the operation of these schemes.**

9. It is intended that the powers in the Act will supersede powers to create schemes for the payment of pensions and other benefits, including those contained in the following legislation:

- Superannuation Act 1972, for civil servants, people employed in local government service, teachers and persons engaged in health services;
- **Fire and Rescue Services Act 2004;**
- Armed Forces (Pensions and Compensation) Act 2004;
- Police Pensions Act 1976;
- Judicial Pensions Act 1981; and
- Judicial Pensions and Retirement Act 1993.

10. The Act protects the benefits already earned by members of existing public service pension schemes and allows continued membership of those schemes for certain categories of person who are closest to retirement.

TERRITORIAL EXTENT AND APPLICATION

11. **This Act extends to England and Wales, Scotland and Northern Ireland.**

12. Section 1 of the Act makes provisions for a number of Scottish schemes (for teachers, NHS workers, firefighters, police, and local government workers) where the Scottish Ministers have executive but not legislative competence.

13. Section 1 of the Act makes provision for pensions for the armed forces and senior judiciary in respect of Northern Ireland, as legislative competence for these pension schemes sits with Westminster.

14. Section 1 of the Act makes provisions for the Welsh schemes for firefighters, where the Welsh Ministers have executive but not legislative competence. The provisions in this Act also apply to new pension schemes for some Welsh public bodies and statutory office holders, for which the National Assembly for Wales has legislative competence. The Assembly also has legislative competence in relation to pension schemes for Assembly Members, Welsh Ministers and members of local authorities. New pension schemes created for these categories of public servants will be subject to the provisions in section 30.

COMMENTARY ON SECTIONS AND SCHEDULES

Establishment of new schemes

Section 1: Schemes for persons in public service

15. This section contains the main enabling power for new public service pension schemes and schemes providing other benefits, such as injury and compensation benefits, made under this Act. The schemes are to be made in regulations, which will contain detailed provisions for the payment of pensions or other benefits. These schemes are required to be made in compliance with the framework conditions set out in the rest of the Act. *Subsection (1)* enables schemes to be established which provide pensions or other benefits to the main categories of persons in public service listed in *subsection (2)*. The definition of those main categories is further set out in Schedule 1 (to which *subsection (3)* cross-refers).

16. The detail of specific pension and other benefits schemes is to be set out in regulations. These regulations are called “scheme regulations”, as set out in *subsection (4)*.

Section 2: Responsible authority for schemes

17. *Subsection (1)* enables those persons listed in Schedule 2 to make scheme regulations for the main categories of persons in public service. The person with the power to make scheme regulations for a main category of persons in public service is described in *subsection (2)* (and in the Act as a whole) as the “responsible authority” for the scheme.

Section 3: Scheme regulations

18. Section 3 contains additional provisions about how the power to make scheme regulations under the Act may be used.

19. Under *subsection (1)*, scheme regulations can make such provision as the responsible authority considers appropriate, provided it is in accordance with the requirements set out in the rest of the Act. For examples of sections which limit the type of provision that may be made, or which require provisions of a specific kind to be included, see:

- section 4, which requires schemes to have a scheme manager who is to be responsible for managing or administering the scheme;
- section 5, which requires schemes to provide for the establishment of a pension board to assist the scheme manager with certain matters;
- section 7, which requires schemes to provide for the establishment of a scheme advisory board to advise on certain matters;
- section 8, which sets constraints on the design of schemes, including requiring schemes that are defined benefits schemes to provide those benefits through a “career average revalued earnings scheme” (or “CARE” scheme) or such other description of defined benefits scheme as the Treasury may specify in regulations (but not a final salary scheme);
- section 9, which provides for the revaluation of pensionable earnings of a person in a CARE scheme in accordance with changes in prices or earnings as set out in an annual order made by the Treasury;
- section 10, which contains requirements relating to the normal pension age under schemes made under this Act; and
- sections 11 and 12, which require scheme regulations to contain a mechanism for regular valuations of the scheme and to provide for a cap on the costs to employers of public service schemes.

20. The provisions which can be made include in particular, as *subsection (2)(a)* says, any matter set out in Schedule 3. This schedule sets out a non-exhaustive list of matters which can be included in scheme regulations for public service pension schemes. If a matter is not mentioned in Schedule 3 this does not prevent it from forming part of such a scheme, provided it is within the powers given by sections 1(1) and 3(1).

21. Scheme regulations may also include consequential, supplementary, incidental or transitional provisions in relation to the scheme or any provision of the Act (see *subsection (2)(b)*).

22. *Subsection (3)(a)* allows scheme regulations to make different provision for different purposes or different cases, including different provision for different descriptions of persons. This is a common provision in regulation-making powers to ensure that they are appropriately flexible. For example, it would allow schemes to be deemed ‘connected’ (under section 4(6)) for some purposes but not for others. *Subsection (3)(b)* allows scheme regulations to include provisions that have retrospective effect (in relation to a period that precedes the regulations coming into force), subject to section 23 (which sets out procedural requirements that apply to the exercise of the power to make retrospective provision). Such powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or where the government does not want to delay the benefit of a particular change but needs time to consider the consequences and appropriate method of making the change.

23. *Subsection (3)(c)* allows scheme regulations to give persons who have functions under the regulations discretion in carrying out those functions. This permits Ministers or other scheme managers, for example, to make their own decisions within a framework set by scheme regulations.

24. *Subsection (4)* allows scheme regulations to amend primary legislation and secondary legislation for consequential purposes. Only primary legislation passed before or in the same parliamentary session as this Act can be amended. This power may be necessary where legislation is inconsistent with or requires modification as a consequence of scheme regulations or a provision of this Act. Section 24(1)(a) further requires that any amendment to primary legislation must be made by the affirmative procedure. The meaning of ‘affirmative procedure’ is given in section 38(2).

25. *Subsection (5)* provides that any scheme regulations made under powers in this Act require the Treasury’s consent, subject to the exceptions set out in *subsection (6)*. Those exceptions are:

- scheme regulations made by Scottish Ministers in respect of local government workers, fire and rescue workers and members of a police force; and
- scheme regulations made by Welsh Ministers in respect of fire and rescue workers.

This carries forward current consent arrangements for these schemes.

26. The Government intends to put in place appropriate arrangements to ensure that requirements for the Treasury’s consent under this section, or where applicable for the Treasury’s administrative approval of other spending commitments (for which see chapter 1 of *Managing Public Money* — HM Treasury, October 2007³), are exercised in a way that balances appropriate scrutiny with administrative efficiency.

Governance

Section 4: Scheme manager

27. *Subsection (1)* provides that scheme regulations must provide for a person to be responsible for managing or administering a public service pension scheme set up under the powers in the Act and any other statutory pension scheme connected with it.

28. That person is referred to in the Act as the “scheme manager” – see *subsection (2)*.

29. *Subsection (3)* provides that the scheme manager may, in particular, be the responsible authority (who, under section 2(1), is also responsible for making the scheme regulations which create the scheme). However, the regulations may provide for some other person, or a number of persons, to be responsible for managing or administering the scheme or a part of the scheme.

30. *Subsection (4)* provides that regulations for injury or compensation schemes do not have to provide for a scheme manager. Such schemes are outside of the new governance arrangements which the Act requires of public service pension schemes.

³ http://www.hm-treasury.gov.uk/d/mpm_whole.pdf

31. *Subsection (5)* allows scheme regulations to provide for more than one scheme manager in that scheme and for any other statutory scheme connected with it, and for each scheme manager to be responsible for different parts of those schemes. This allows for scheme managers in locally administered schemes to be responsible for only the part of the scheme that relates to their local, fire or police authority.

32. As an example of the different arrangements that may be made regarding scheme managers, in the centrally administered Armed Forces Pension Scheme the scheme manager is expected to continue to be the Secretary of State for Defence, who is also the responsible authority for that scheme (see Schedule 2). The scheme manager will be responsible for the new armed forces pension scheme and the existing armed forces pension schemes listed in Schedule 5 to the Act, because those schemes will be “connected” with the new scheme. The Local Government Pension Scheme in England and Wales, on the other hand, is locally-administered. The Secretary of State for Communities and Local Government will be the responsible authority for that scheme and will make its scheme regulations. The scheme managers for the 89 local authority funds will be the local administering authority in respect of those funds. The local authority, as scheme manager, will be responsible for administering the new scheme in respect of their local government workers and any other persons admitted to their part of the scheme by virtue of scheme regulations (see section 25), and any connected scheme.

33. *Subsection (6)* explains that another statutory pension scheme is connected with a public service pension scheme set up under section 1 if and to the extent that it provides for persons of the same description, unless the scheme regulations state that the schemes are not to be regarded as connected (see subsection (7)). For example, a public service pension scheme set up for the armed forces under the Act would be connected with any existing schemes for the armed forces. The effect is that the regulations must set out the person who is to be responsible for running a new pension scheme in respect of persons set out in section 1(2) and any connected predecessor schemes for those persons. This will allow the scheme manager to have administrative responsibility for all relevant existing pension schemes relating to the same service.

34. *Subsection (7)* allows for situations where an existing statutory scheme and its successor scheme are not to be managed together for some or all purposes. For example, the new civil service pension scheme is likely to make provision for persons of the same description provided for under existing public body pension schemes. However, it may be appropriate for some of those existing schemes to continue to be managed separately from the new civil service pension scheme.

35. The scheme manager has certain specific responsibilities under the Act (for example, see sections 14 and 15). Scheme managers, whether or not they are also the responsible authority, will be able to delegate aspects of their management and administration responsibilities if the scheme regulations allow (see paragraph 13 of Schedule 3).

Section 5: Pension board

36. This section requires public service pension schemes set up under section 1 to establish a pension board. The board's role is to assist the scheme manager in securing the effective and efficient governance and administration of the pension scheme and any statutory scheme connected with it.

37. The pension board will, in particular, be charged with helping the scheme manager to ensure the scheme is operated to an appropriate standard. It will have the responsibility of assisting the scheme manager in relation to the matters set out in *subsection (2)*. These matters include ensuring that schemes are administered in accordance with all relevant legislation concerning the governance and administration of public schemes and any requirements imposed on the scheme by the Pensions Regulator. The pension board will be required to discharge these functions in relation to a public service pension scheme set up under section 1 and any statutory pension scheme connected with it. This mirrors the provisions for scheme managers. For example, a pension board for a new armed forces pension scheme will also be required to assist and advise the scheme manager in respect of existing armed forces pension schemes.

38. In all cases, the scheme manager will retain ultimate responsibility for the administration and governance of the scheme. The role of the pension board is to support the scheme manager in fulfilling that responsibility and, by virtue of *subsection (2)(b)*, in securing compliance with any requirements imposed by the Pensions Regulator. It will be for the scheme regulations and the scheme manager to determine precisely how the pension board carries out its role.

39. *Subsection (3)* provides that when making scheme regulations the responsible authority must have regard to the desirability of securing the effective and efficient governance and administration of the scheme.

40. *Subsections (4) and (5)* are concerned with the balance of employer/employee representatives on the pension board and with conflicts of interest. Schemes must have an equal number of persons appointed to represent employees and employers on the board. There are also likely to be other board members representing different interests. *Subsections (4) and (5)* prevent a person from being a member of a pension board where they have another interest that could prejudice them carrying out the role.

41. Under *subsection (4)(a)*, the scheme manager (who is responsible for appointing the members of the pension board) must ensure that no conflict of interest exists at the time of appointment and while the member continues to serve. This provision would not prevent a person who is a member of the pension scheme to which the pension board relates (or a representative of members, or of employers) from being a member of the pension board. *Subsection (5)* explains that a conflict of interest means a financial or other interest which is likely to prejudice how a member carries out his or her duties (but not a financial or other interest arising merely from membership of the scheme or a connected scheme). This does not include other interests such as a mandate to represent the interests of scheme members or those of employers (which may be relevant but could not be said to be prejudicial).

42. Under subsection (4)(b), equal numbers of employer and member representatives must be appointed to the pension board. Each category is defined in subsection (6), which provides that employer representatives are persons appointed for the purpose of representing employers for the scheme and any connected scheme, while member representatives are persons appointed for the purpose of representing members of the scheme and any connected scheme. The provision does not mean that the pension board will necessarily consist only of these two groups. Schemes may appoint other persons to their board. For example, it is possible there could be representatives of the responsible authority and the scheme manager as well as independent board members.

43. *Subsection (6)* provides that employer and member representatives are persons appointed to the pension board to represent the interests of those respective parties.

44. *Subsection (7)* relates to the public service schemes that are administered by local authorities and fire and rescue authorities. It makes provision for pension boards for the pension schemes for fire and rescue workers and local government workers in England, Scotland and Wales. It allows for scheme regulations in those schemes to provide that where a local authority has appointed a committee to carry out its responsibilities to manage or administer the pension scheme, that committee may also be the pension board. The committee will then have the dual role of responsibility for administering the scheme, and responsibility for ensuring good governance and compliance with requirements imposed by the Pensions Regulator. The provisions on conflicts of interest and representation of interests will need to be satisfied for a local authority committee to be the pension board for the scheme.

45. *Subsection (9)* exempts injury and compensation schemes from the requirement to have a pension board. Such schemes are not subject to the remit of the Pensions Regulator or the legislation relating to the governance and administration of pension schemes.

Section 6: Pension board: information

46. This section aims to ensure that information about the pension board is available to scheme members and other interested parties, so that they can easily see and understand: who is a pension board member; how pension scheme members are represented on the pension board; and what the responsibilities of the pension board are.

Section 7: Scheme advisory board

47. Section 7 requires a scheme advisory board to be established in each pension scheme made under section 1 of the Act. Policy groups have previously been set up under administrative arrangements in the existing public service pension schemes, but this section requires them to be written into the scheme regulations for schemes made under the powers in the Act. The existing policy groups have been set up under administrative arrangements, but this section requires them to be written into the scheme regulations.

48. The scheme advisory board is distinct from the pension board or boards established under section 5. A pension board exists to assist in the management and administration of the scheme, whereas the scheme advisory board's role will be to advise the scheme manager on the desirability of changes to the scheme. Sections 5 and 7 ensure a clear separation of these roles.

49. *Subsection (1)* provides that the scheme regulations must establish a scheme advisory board in each scheme and provides that their role is to advise the responsible authority, at the authority's request, on the desirability of changes to the scheme. The responsible authority may therefore commission the scheme advisory board to advise on any matter in relation to the scheme that the responsible authority considers appropriate. It is open to the responsible authority to set out any commission in the scheme regulations themselves or through any other means they determine. Any commission may be framed as an open request for regular advice on a range of issues, through to a narrow requirement for advice on a specific issue. It will be for each responsible authority to determine what advice the scheme advisory board is responsible for providing.

50. *Subsection (2)* allows for the scheme regulations to provide a scheme advisory board with an additional role in the locally-administered police, fire and local government schemes. These schemes will have a number of scheme managers and pension boards. The section provides that the scheme advisory board may be given responsibility to advise them on the effective and efficient administration and management of the scheme, any connected scheme and any pension fund. It will be for the scheme regulations to determine the exact responsibilities of the scheme advisory board, if any, in these areas.

51. *Subsection (3)* requires the responsible authority, the scheme managers and pension boards to have regard to advice given to them by a scheme advisory board under subsection (1) or (2). This does not mean that they have to follow the advice of the board, but does mean they must consider the advice, and be able to justify taking a different approach.

52. *Subsections (4) and (5)* mirror the conflict of interest requirements placed on pension boards. The provision prevents persons from being a board member where they have a conflicted interest that would prevent them from undertaking the responsibilities of that position.

Design

Section 8: Types of scheme

53. Section 8 specifies the types of pension scheme that can be set up under the Act.

54. *Subsection (1)* provides that the types of scheme which may be provided for in scheme regulations include defined benefits schemes, defined contributions schemes, and schemes of any other description. The meaning of defined contributions and defined benefits schemes is set out in section 37 (general interpretation). There is therefore a broad power to create pension and benefit schemes of different designs, subject to the restrictions that the rest of the section applies to defined benefits schemes, and to the other restrictions set out in the Act.

55. *Subsection (2)* sets out that any defined benefits scheme must be either a "career average revalued earnings scheme", or another type of defined benefits scheme specified in regulations made by the Treasury.

56. *Subsection (3)* stipulates that final salary scheme designs may not be specified by Treasury regulations. They are not a permitted form of defined benefits scheme. *Subsection*

(4) sets out the meaning of “career average revalued earnings schemes” (CARE schemes) for schemes made under section 1. In this type of scheme, members build up pension in each year of active membership based on their pensionable earnings in that year. The pension accrued in that way is then revalued each year until the person leaves pensionable service. The measure of revaluation varies from scheme to scheme and will be provided for in scheme regulations, subject to the arrangements in section 9 (revaluation).

57. *Subsection (5)* sets out the procedure for Treasury regulations under this section, which are to follow the negative Commons procedure (as defined in section 38(5)).

Section 9: Revaluation

58. Section 9 deals with the procedure for revaluing the earnings of active members of pension schemes made under section 1, where those earnings (or a proportion of those earnings) are used to accrue pension benefits. It is concerned with the revaluation of the accrued pension of active members of schemes and not the uprating or indexation of pensions that are deferred or in payment (for this see the Pensions (Increase) Act 1971, and the consequential amendments in paragraphs 4 and 5 of Schedule 8 to this Act).

59. By *subsection (1)*, section 9 applies to schemes made under section 1 of the Act where scheme regulations provide for the pensions of members of those schemes to be revalued (until those members leave pensionable service of that scheme) by reference to changes in prices or earnings over a period specified in the regulations. This will apply to all CARE schemes and, it is envisaged, the vast majority of pension schemes created under the powers in the Act.

60. *Subsection (2)* provides for the Treasury to make orders which specify the percentage increase or decrease in prices or earnings for the purposes of the revaluation. It ensures that the measures of prices and earnings are used and applied on a consistent basis for revaluation across public service pension schemes.

61. *Subsection (3)* sets out that the Treasury may determine the change in prices or earnings, by reference to the general level of prices or earnings, which is to be estimated by the Treasury in a manner that it considers to be appropriate.

62. *Subsection (4)* states that an order under this section must be made annually and may make different provision for different purposes. This is to allow some flexibility to give effect to different agreements on revaluation made with representatives of members of different schemes. For example, the agreed scheme design for firefighters includes revaluation of accruals by reference to the general change in earnings, whereas the agreed scheme design for civil servants includes revaluation of accruals by reference to the general change in prices.

63. *Subsection (5)* sets out the procedure for Treasury orders under this section. In cases where the order specifies a percentage decrease (which could happen where changes in prices or earnings are negative) it is subject to the affirmative Commons procedure (as defined in section 38(4)). In all other cases, the order is subject to the negative Commons procedure (as defined in section 38(5)).

64. *Subsection (6)* disregards any gap in a person's pensionable service of up to five years for the purposes of subsection (1), so accruals are revalued during the gap as if the person were an active member. This is to allow those persons who have taken a break from pensionable service of less than five years to be treated, for pension purposes, as if they had remained in pensionable service in the scheme. It relates only to the revaluation of benefits already accrued in the scheme and does not give pensionable rights in relation to the years not served in public service.

Section 10: Pension age

65. This section provides for the normal pension age and deferred pension age of members of most public service pension schemes to be the same as their state pension age, or 65, whichever is greater.

66. *Subsection (1)* requires a scheme made under the powers in section 1 to make the normal pension age for members of that scheme the same as their state pension age, or 65, whichever is greater. The floor of age 65 is to account for the gender disparity in state pension ages at present, which is due to be equalised at 65 by 2018. "Normal pension age" is defined in *subsection (5)(a)* as the earliest age at which a member of the scheme is entitled to receive unreduced benefits upon retirement from active membership. "State pension age" is defined in *subsection (5)(c)* by reference to a person's pensionable age as set out in Schedule 4 to the Pensions Act 1995. The Government announced in its 2012 Budget that there will be an automatic review of state pension age to ensure it keeps pace with increases in longevity, with more detailed proposals put forward in the Department for Work and Pension's January 2013 White Paper, *The single-tier pension: a simple foundation for saving*.⁴

67. *Subsection (2)* excepts fire and rescue workers who are firefighters, members of police forces, and members of the armed forces from the requirement to link normal pension age to state pension age in subsection (1). It provides that their normal pension age should be 60. These groups historically have lower pension ages than other public servants in recognition of the unique characteristics of the work they do.

68. *Subsection (3)* requires a scheme made under section 1 to make the deferred pension age for members of that scheme the same as their state pension age, or 65, whichever is greater. Again, the floor of age 65 is to account for the gender disparity in state pension ages at present. "Deferred pension age" is defined in subsection (5)(b) as the earliest age at which a member of a scheme is entitled to receive unreduced benefits under the scheme after leaving active service before reaching normal pension age.

69. *Subsection (4)* requires any changes to normal or deferred pension age which occur as a result of a change in state pension age to apply to the calculation and payment of all benefits earned in a scheme to which that pension age is relevant. This includes benefits accrued in that scheme before the change in state pension age.

70. This section also applies to new schemes set up for other public bodies (see section 30(1) (new public body pension schemes)).

⁴ Cm 8528

71. The effect of this section is to require normal and deferred pension ages in schemes made under powers in the Act, or governed by provisions in it, to change in line with any change to state pension age. So, where state pension age increases by one year the relevant normal and deferred pension ages would need to increase by one year. The increase would apply to all relevant benefits earned in a scheme set up under the Act where the normal and deferred pension age have been linked to state pension age. This will mean that if the state pension age changes, an active member of a scheme set up under the power in section 1 will take their entire relevant pension entitlements in that scheme at the new normal pension age, including those earned before the change to state pension age. It will not affect pension benefits that were accrued before the scheme member transferred into the public service pension scheme set up under or governed by the Act. Those pension benefits may be taken at the normal pension age for the scheme in which they were accrued, and on the terms that apply to that scheme.

Cost Control

Section 11: Valuations

72. This section sets out that defined benefits schemes made under section 1 must be actuarially valued in accordance with Treasury directions.

73. *Subsection (1)* requires scheme regulations to provide for actuarial valuations that will cover both defined benefits pension schemes that are created by, or governed by, the Act and any connected scheme. Section 4(6) defines a connected scheme as one which covers employees who are employed in the same kind of public service as the new scheme, provided they are not excepted from this rule under scheme regulations.

74. *Subsections (2) and (3)* set out that the valuations must be carried out in accordance with Treasury directions. Those directions may specify key details on how valuations should be carried out, including:

- how and when the valuation is to be carried out;
- the time periods over which a valuation will measure a scheme's assets and liabilities;
- the data, methodology and assumptions to be used in valuations;
- the matters that must be covered by the valuations (which may relate to the outputs that must be produced);
- how valuations of new and connected schemes will be combined, where they are to be valued together; and
- the time period for implementing changes to the employer contribution rate as a result of the outputs of the valuation.

75. *Subsection (4)* requires the Treasury to consult the Government Actuary before making, revoking, or amending directions.

76. *Subsection (5)* provides that scheme regulations for other kinds of schemes, such as injury and compensation schemes, may provide for actuarial valuations of that scheme and any connected scheme. This will allow for those schemes to be valued alongside a pension scheme if this is appropriate.

Section 12: Employer cost cap

77. This section requires scheme regulations for defined benefits schemes made under section 1 to set an employer cost cap and sets out how this cap should be set, measured and operated. The section does not apply to defined contributions schemes, or injury and compensation benefit schemes, as these schemes do not require this type of cost control.

78. *Subsections (1) and (2)* require scheme regulations to set a rate, known as the employer cost cap, which is to be used for measuring the costs of a scheme made under section 1 and, subject to Treasury directions made under this section, those of any connected schemes as defined in section 4(6).

79. *Subsection (3)* provides that the cap is to be set in accordance with Treasury directions.

80. *Subsection (4)* gives non-exhaustive examples of what those Treasury directions may cover. They may, in particular, specify how the first valuation under section 11 will be taken into account when setting the cap, and how costs or changes in costs at subsequent valuations are to be taken into account when measuring the costs of the scheme against the employer cost cap (the comparison that will be made at subsequent valuations).

81. The directions may also specify to what extent the costs of connected or other schemes are to be taken into account when setting the employer cost cap.

82. *Subsection (5)* requires the Treasury to make regulations to determine how the cap will operate. Treasury regulations will:

- set margins either side of the cost cap; and
- specify the target cost (within those margins) that the scheme should take action to return costs to if the costs of the scheme go beyond those margins.

83. *Subsection (6)* makes provision for scheme regulations to specify the processes to be followed to reach agreement on the action to be taken if the cost of the scheme arising from a second or subsequent valuation does not fall within the margins set out in Treasury regulations. A default action may also be specified if there is no agreement.

84. *Subsection (7)* provides that the action taken to bring the scheme costs within the margins may include an increase or decrease in members' benefits or contributions. It is not envisaged that such action will affect any pension already built up in the scheme.

85. *Subsection (8)* allows Treasury regulations to make consequential and supplementary provision. It also allows regulations to make different provision for different schemes with regard to the way the employer cost cap is set, measured and operated.

86. *Subsection (9)* provides that Treasury regulations under this section are subject to the negative Commons procedure (as defined in section 38(5)).

Section 13: Employer contributions in funded schemes

87. Section 13 provides for the setting of the rate of employer contributions in defined benefits schemes with a pension fund, most notably the funded Local Government Pension Scheme. The section requires an actuarial valuation of the pension fund to inform the setting of the employer contribution rate. The valuation of the pension fund is separate from and in addition to the valuation of the whole scheme under section 11. Section 13 provides for an independent review of the valuation and employer contribution rates to check that they are appropriate and requires remedial action to be taken where that review identifies a problem.

88. *Subsection (1)* provides that the pension schemes to which the section applies are defined benefits schemes set up under the Act which have a pension fund. These will be the Local Government Pension Scheme in England and Wales, the Local Government Pension Scheme in Scotland and any other funded defined benefits schemes established under section 1 in the future.

89. *Subsection (2)* requires the scheme regulations of a funded scheme made under section 1 to set the employer contribution rates so that they meet two specified objectives. These objectives are to ensure that the rates of employer contributions are set at a level that is sufficient to ensure the solvency of the pension fund and the long-term cost-efficiency of the part of the scheme to which that fund relates. The valuation will take into account the current and anticipated liabilities of the scheme; the effect of these objectives is to ensure that those liabilities are provided for in a prudent manner.

90. The terms “long-term cost-efficiency” and “solvency” are not defined in the Act. Long-term cost-efficiency implies that the rate must not be set at a level that gives rise to additional costs. For example, deferring costs to the future would be likely to result in those costs being greater overall than if they were provided for at the time. Solvency means that the rate should be set at such a level as to ensure that the scheme’s liabilities can be met as they arise.

91. *Subsection (3)* provides that scheme regulations must require the pension fund to be subject to actuarial valuation. Provisions in the scheme regulations will require the scheme actuary to set the employer contribution rate for the employers who contribute to the pension fund. There are 89 pension funds in the Local Government Pension Scheme in England and Wales and 11 pension funds in the Local Government Pension Scheme in Scotland. Each pension fund will undertake a separate actuarial valuation and will set its own employer contribution rate or rates for the employers who participate in that fund.

92. *Subsections (4), (5), and (7)* require an appropriately qualified person to be appointed by the responsible authority to review the actuarial valuation and employer contributions rates and publish the findings of that review. The review will consider whether the valuation is in compliance with the scheme regulations, whether it is consistent with other valuations under the scheme, and whether the employer contributions rates were set as required by *subsection (2)*.

93. The purpose of the review is to provide an independent verification of the assessment of the scheme’s assets and liabilities and to confirm whether appropriate employer

contributions will be paid to meet those liabilities. The independent person's report must be published (subsection (5)).

94. *Subsection (6)(a)* provides that where the review identifies a problem with the valuation or the employer contribution rates the independent person may recommend how these can be corrected. Regardless of whether or not the review recommends actions, the scheme manager of the scheme is required by *subsection (6)(b)* to take steps to remedy any problem identified by the review. The scheme manager is also required to set out publicly what actions have been taken and why.

95. Where there has been an adverse review, *subsection (6)(c)* provides that the responsible authority may require the scheme manager to report on progress in taking remedial steps. The responsible authority may also direct the scheme manager to take such steps as he or she considers are needed to correct the problem. These powers are expected to be used as a last resort; for example, where the scheme manager is not (in the opinion of the responsible authority) taking appropriate remedial steps, or is delaying doing so.

96. For the local government pension schemes, the scheme manager will be the relevant local authority that is an administering authority for that scheme. In England and Wales, the responsible authority for the local government scheme is the Secretary of State; and for the local government scheme in Scotland it is the Scottish Ministers.

Administration

Section 14: Information about benefits

97. Section 14 provides for scheme regulations to require scheme managers (for defined benefit schemes under section 1) to provide active pension scheme members with benefit information statements in accordance with the requirements of this section.

98. *Subsection (2)* sets out the matters that must be included in benefit information statements. Such statements would need to include details of the pension benefits that the person had earned in the scheme and any other information specified in a Treasury direction.

99. *Subsections (2)(b), (3) and (6)* provide for Treasury directions to specify requirements as to the information to be included, how that information is presented, and how that information is to be provided. The purpose of these directions is to ensure members of all pension schemes are provided with clear and comprehensive information to enable them to understand their pension benefits.

100. *Subsections (4) and (5)* set out when such statements must be provided.

101. Under section 17 of and Schedule 4 to the Act the Pensions Regulator has a role in overseeing the provision of benefit information statements. Benefit information statements are listed under paragraph 14 of Schedule 4 as a matter on which the Regulator must issue a code of practice. Additionally, they are also matters on which the Regulator can take enforcement action should schemes fail to comply with their duties.

102. This section also applies to new schemes set up for other public bodies (see section 30(1) (new public body pension schemes)).

Section 15: Information about schemes

103. Section 15 is concerned with the collection and publication of information about schemes under section 1 of the Act. It allows the Treasury to direct schemes to publish information or to provide information to the Treasury, and to specify how and when that information is to be published or produced.

104. The purpose of this section is to improve the transparency of public service pension schemes. It is intended to be used to ensure that information is publicly available to allow comparisons to be made across schemes on: their financial position; costs to members and other taxpayers; their assets and liabilities (including how those are managed); membership demographics; and administration and governance standards. It is intended to allow for matters such as the format, methodology and data to be included in published information to be set centrally and applied consistently across all of the public service schemes governed by the Act. This is intended to ensure that information is produced to common standards and timing, which will make it easier to compare public service pension scheme information and for members and taxpayers to hold schemes to account.

105. Responsible authorities will continue to be able to publish information independently. This section is also intended to allow the Treasury to collect centrally all of the information it requires to carry out its functions under the Act; for example, the setting of valuations methodologies under section 11.

106. *Subsection (1)* allows the Treasury to direct scheme managers or a responsible authority to publish information themselves or to provide it to the Treasury. Information provided to the Treasury may be collated and published centrally.

107. *Subsection (2)* explains that the information referred to in subsection (1) relates to information about the scheme itself and other statutory schemes that are connected with it.

108. *Subsection (3)* gives example of the types of information which schemes may be directed to publish or provide. It includes, for example, scheme accounts and information about scheme membership.

109. *Subsection (4)* provides that a Treasury direction may specify how and when information is to be published or provided.

110. *Subsection (5)* stipulates that a Treasury direction cannot require schemes to publish or provide information that could not otherwise be lawfully provided. This protection means that schemes cannot be required to publish or provide information in breach of data protection obligations or the laws which govern the confidentiality of an individual's tax and social security affairs.

Section 16: Records

111. Section 16 allows the Secretary of State to make regulations requiring scheme managers of pension schemes made under section 1 (and any connected schemes) to keep specified records. This will include, for example, information about contributions due to the scheme. The regulations may also cover new public body schemes (and any connected schemes) by virtue of the application of section 16 to such schemes by section 30.

112. Regulations under this section are subject to the negative procedure (for which see section 38(3)).

Section 17: Regulatory oversight

113. Section 17 makes provision about the regulatory responsibility of the Pensions Regulator, established under Part 1 of the Pensions Act 2004, in relation to the governance and administration of public service schemes made under the Act, connected schemes and other public service pension schemes (including, for example, certain existing public service schemes listed in Schedule 5 and new public body schemes created after April 2015).

114. *Subsection (1)* introduces Schedule 4, which amends the 2004 Act to extend the Pensions Regulator's role in respect of those schemes.

115. *Subsection (2)* provides a power for the Secretary of State by order to make provision consequential on the amendments set out in Schedule 4 and to make further or connected provision for the regulation of public service pension schemes within the meaning of the Pensions Act 2004.

116. *Subsection (3)* provides that the power at subsection (2) includes a power to amend primary legislation (including this Act).

117. *Subsection (4)* allows for an order under this section to make different provision for different purposes, enabling the correct level of regulatory oversight to be applied in each individual circumstance, if required.

118. *Subsection (5)* provides that where such an order makes amendments to primary legislation, it will be subject to the affirmative procedure. In other cases, such orders will be subject to the negative procedure. 'Affirmative procedure' and 'negative procedure' are defined in section 38.

Transitional

Section 18: Restriction of existing pension schemes

119. Section 18 provides that benefits may not be provided under existing pension schemes in relation to service after the closing date for the scheme. Its effect is to bring to an end further accrual of pension benefits in existing schemes, except where transitional arrangements have been agreed to allow those who are closest to retirement to continue to accrue benefits under the scheme. The transitional arrangements for each scheme vary within the parameters set centrally by Government.

120. *Subsection (1)* prohibits the provision of benefits under an existing scheme for service after the closing date for that scheme, as provided by subsection (4). Subsection (1) does not require the scheme to be wound up, and will not crystallise the liabilities in that scheme.

121. *Subsection (2)* specifies that "existing schemes" for the purposes of the Act are those listed in Schedule 5.

122. *Subsection (3)* provides that the above restriction does not apply to defined contribution schemes or to the benefits specifically excepted by Schedule 5, which are injury and compensation benefits.

123. *Subsection (4)* sets out that the closing date mentioned in subsection (1) is 31st March 2015 or, in the case of the Local Government Pension Scheme in England and Wales, 31st March 2014. The local government schemes plan to bring regulations for reformed schemes into force one year earlier than the other major public service schemes.

124. *Subsection (5)* permits scheme regulations to provide exceptions to subsection (1) for:

- persons who were, or were eligible to be, members of an existing scheme immediately before 1st April 2012; and
- for other persons who ceased to be, or to be eligible to be, members of existing schemes before that date.

This provision is permissive, but not mandatory; schemes may decide not to adopt transitional arrangements if they wish. It is anticipated that schemes will, in practice, all provide the transitional protections that have been agreed in consultations prior to the Act.

125. Such exceptions may, by *subsection (6)*, be framed in particular by reference to a person reaching normal pension age under their existing scheme, or another age, or to the satisfaction of another condition before a particular date. These exceptions are to permit the various transitional arrangements that have been agreed as part of developing reformed public service pension schemes, and to enable delivery of the new Fair Deal policy (to which section 29 and Schedule 9 are also relevant).

126. *Subsection (7)* allows for additional transitional provisions for those who do not fall within the categories that scheme regulations provide under subsection (6). These provisions may extend qualified transitional arrangements for up to a further four years. This subsection allows the impact of reformed schemes to be moderated for those who fall just outside of the main categories for which transitional protection has been agreed. This is typically people who are between 10 and 14 years from retirement in their existing schemes. These ‘tapering’ provisions have also been agreed following extensive discussions, and are designed to afford protection to those scheme members who do not benefit from full exemption under transitional agreements. For example, in the NHS pension scheme, members who are between 10 and 13.5 years of their normal pension age will have limited protection with linear tapering, so the further they are from reaching normal pension age before a particular date, the less transitional protection they receive.

127. *Subsection (8)* allows the arrangements under subsections (5) and (7) to be provided by amending existing schemes through scheme regulations.

128. *Subsection (9)* clarifies that death in service benefits are included within the reference to “benefits” in subsection (1).

Section 19: Closure of existing injury and compensation schemes

129. Section 19 deals with existing injury and compensation schemes. *Subsection (1)* permits scheme regulations to provide for the closure or restriction of existing schemes that provide for the payment of benefits relating to compensation for loss of office and for injury benefits, as listed in Schedule 6. The Act does not set a date or require a date to be set for the closure of these injury and compensation schemes.

130. The schemes listed in Schedule 6 relate to employment in the armed forces, civil service, fire service, judiciary, local government, NHS, the police and teaching. These injury benefit and compensation schemes are for the most part separate from the pension schemes for those workforces and their membership is not restricted to persons who are members of those pension schemes.

131. Section 1 of the Act provides powers for schemes to be made in relation to those workforces in the future (see section 1 and paragraph 2 of Schedule 3); replacement schemes can be set up in the event that the powers in subsection (1) are used.

132. *Subsection (3)* provides for schemes to make exceptions to subsection (1). This power could be used to allow for transitional provisions for current members.

133. *Subsection (4)* provides that closure or restriction may be achieved by amending the existing schemes using scheme regulations made under the Act.

Section 20: Final salary link

134. This section introduces Schedule 7, which sets out the final salary link that applies to past service in those final salary schemes restricted under section 18.

Procedure for scheme regulations

Section 21: Consultation

135. Section 21 obliges the responsible authority to consult those likely to be affected before making or changing scheme regulations. The current procedures for making changes to current public service pension schemes vary from scheme to scheme. The section provides a standard requirement for those responsible for making schemes to consult before doing so.

136. *Subsection (1)* requires the responsible authority to consult the persons (or their representatives) who it considers are likely to be affected by the proposed change before any change is made.

137. *Subsection (2)* requires the responsible authority to publish a list of those people and organisations that the authority anticipates would normally be consulted as part of the obligation under subsection (1). This list must be kept up to date.

138. The purpose of the list is to make the consultation process more transparent by providing an indication of the organisations and people with whom consultations within a particular scheme are likely to be conducted.

139. *Subsection (3)* allows any consultation that took place before the commencement of this section to satisfy the requirements of subsection (1). It is a permissive rather than mandatory provision. It means that schemes do not need to wait until this section is brought into force before they consult on making scheme regulations, because a consultation carried out before the section comes into force will satisfy its requirements (provided it is compliant in all other respects).

Section 22: Procedure for protected elements

140. The Chief Secretary to the Treasury said in a statement to the House of Commons on 20th December 2011 that the reforms legislated for under this Act are designed to last for at least 25 years. He announced his intention to include provisions in primary legislation that will ensure a high hurdle is set for future governments to change the design of the schemes. The enhanced consultation and report procedure for changes to protected elements of a scheme for a period of 25 years are the Government's way of giving effect to that commitment.

141. *Subsection (1)* sets out that the process in subsections (2) to (4) is to be followed in the event that the responsible authority wishes to make changes to the new public service pension schemes that impact on certain elements (the "protected elements") which have been identified for enhanced protection. Those elements are protected from modification until 31st March 2040 (the "protected period") unless the process is followed. "Protected elements" and "protected period" are defined in *subsection (5)*.

142. *Subsections (2) to (4)* set out the two parts of the required process. Where a change is proposed to the protected elements during the protected period, the responsible authority must consult those who appear likely to be affected with a view to reaching agreement with them and must lay a report before the appropriate legislature (defined in subsection (5)). The requirement to consult with a view to reaching agreement is a higher standard than applies under section 21.

143. The responsible authority proposing the change must consult those who appear likely to be affected, either directly or through their representatives (subsection (3)).

144. Subsection (4) provides that the report to the appropriate legislature must say why a modification to a protected element is proposed within the protected period, having regard to the general desirability of not making such changes in that period.

145. *Subsection (6)* creates an exception for changes to the protected elements that are caused by the operation of the employer cost cap under section 12 (see section 12(6), which envisages consultation resulting in an agreement to implement such changes, unless agreement cannot be reached and a default change is applied). *Subsection (7)* provides that where section 22 applies, there is no requirement to consult under section 21 (this is to prevent duplication of the requirement to consult set out in that section).

Section 23: Procedure for retrospective provision

146. Section 23 provides a procedure to be followed when retrospective provisions are included within scheme regulations proposed by the relevant authority.

147. *Subsection (1)* provides that where such retrospective provisions appear to the responsible authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the authority must first obtain the consent of those who appear likely to be affected, either directly or through their representatives (*subsection (3)*).

148. *Subsection (2)* provides that where the retrospective provisions appear to the responsible authority to have significant adverse effects in any way not covered by subsection (1) in relation to the members of the scheme (for example, a serious adverse effect on injury benefits as opposed to pension benefits), the authority must first consult those who appear likely to be affected, either directly or through their representatives, with a view to reaching agreement.

149. *Subsection (4)* requires that where subsection (1) or (2) applies the responsible authority must lay a report before the appropriate legislature (as defined in section 22(5)).

150. *Subsection (5)* provides that where this section applies, there is no requirement to consult under section 21 (this is to prevent duplication of the requirement to consult). The requirement for consent and to consult with a view to reaching agreement is a higher standard than applies under section 21.

Section 24: Other procedure

151. Section 24 sets out the legislative procedures which apply to the making of scheme regulations. A higher level of parliamentary scrutiny is required in each case if scheme regulations are used to amend primary legislation or to make retrospective amendments that appear to the responsible authority to have significant adverse effects in relation to members of schemes.

152. *Subsection (1)* provides that scheme regulations are subject to the affirmative procedure (see section 38(2)) if they amend primary legislation; make retrospective provision that may adversely affect members of schemes to a significant extent; or are scheme regulations relating to the judiciary (unless the pension board for the judiciary scheme has stated that it considers the regulations to be minor or beneficial).

153. *Subsection (2)* provides that in all other cases scheme regulations are subject to the negative procedure (see section 38(3)).

154. *Subsection (3)* provides that when scheme regulations subject to the negative procedure are combined with regulations subject to the affirmative procedure, the combined regulations are subject to the affirmative procedure.

New schemes: supplementary

Section 25: Extension of schemes

155. This section allows schemes made under section 1 to be extended to persons who are not in the main categories of persons in public service specified there. This is similar to the process where public servants who are not civil servants are admitted to the Principal Civil Service Pension Scheme by inclusion within Schedule 1 of the Superannuation Act 1972.

However, this section is designed to provide a more streamlined and transparent process that can be widely applied across all public service workers.

156. *Subsection (1)* enables scheme regulations to make provision for pension and other benefits to public service workers who fall within one of the core descriptions of public service workers set out in section 1 and Schedule 1, but for whom the responsible authority for that scheme could not otherwise make a scheme. This is to enable schemes to extend access, if appropriate, to other core public service workers.

157. *Subsection (2)* allows scheme regulations to deem persons to fall within a given description of persons in public service where they do not fall within that description. This enables scheme regulations to extend the scheme to persons of any description including those within the core description of public service workers, other public service workers and other workers generally.

158. *Subsection (3)* permits scheme regulations to specify persons who, though not specified in section 1(2), may potentially be covered by a scheme made under section 1. This is to enable scheme regulations to make provision for pension and other benefits to public service and other workers who do not fall within the core descriptions of public service workers. They are potentially covered by a scheme because the further step set out in *subsection (5)* is needed to make the scheme actually relate to some or all of these persons.

159. *Subsection (4)* gives discretion to the responsible authority to specify under subsection (3) any persons not in the core description of public service workers whom it considers appropriate.

160. *Subsection (5)* allows the responsible authority to determine which of the persons who have been specified in scheme regulations under subsection (3) are to be covered by the scheme. This gives the responsible authority the ability to admit some or all of a class of specified persons.

161. The eligibility of those who are not in the core description of public service workers to join a scheme under this section is, therefore, a two-stage process. First, the persons whom the scheme may cover must be specified in the scheme regulations (that is likely to be done by a generic description). Then, the responsible authority must determine which of those persons are permitted to be members of the scheme. As subsection (5) says, the determination may cover some or all of the specified group.

162. *Subsection (7)* notes that *subsection (6)*, which applies the terms of the scheme to all workers to whom it is extended by a determination under subsection (5), is subject to any special provisions in the scheme regulations and to a direction made by the responsible authority under subsection (8) for such persons.

163. *Subsection (8)* allows for the scheme regulations to provide the responsible authority with powers to make a direction administratively modifying the application of the scheme to persons admitted to the scheme under subsection (2) or (3). The use of such directions must be in accordance with the objectives set out in paragraphs (a) to (c) of subsection (8). This mirrors current procedure in some public service schemes and enables them to extend

membership while retaining the flexibility necessary to adapt that extension to any special circumstances.

164. *Subsection (9)* requires the responsible authority to publish a list of the persons for whom a determination has been made under subsection (5). The list provides a comprehensive and up to date record of the non-public service membership of the relevant scheme. This list must be kept up to date.

165. *Subsection (10)* allows determinations under subsection (5) to have retrospective effect. This means that the eligibility of persons to join the scheme can be backdated so that it takes effect from a date before the date of the determination. For example, if it is decided in 2016 that a group of persons may enter a scheme, but the scheme regulations are updated later in 2017, it will be possible to admit them with effect from 2016 when the decision was made. Section 1 of the Superannuation Act 1972 contains a similar power to allow the membership of the Principal Civil Service Pension Scheme to be extended with retrospective effect, which is used in similar circumstances.

166. *Subsection (11)* provides the responsible authority the ability to delegate its powers under subsections (5) to (9) to scheme managers in the locally-administered schemes under Section 1. This delegation will be subject to any conditions imposed by the responsible authority.

167. Between them, section 1(2) and section 25 determine the scope of schemes made under this part. Section 25 is expected to be used more by so-called “mixed” public service schemes, which have traditionally included members from a wide range of employers (such as the civil service and the local government scheme). It is less likely to be used by schemes that draw their membership from a narrower range of employers or occupations such as the police or teachers’ schemes.

168. Examples of people who would not be captured by section 1(2), but who have historically been able to join public service pension schemes, include: employees of employers with Admitted Body Status (under The Local Government Pension Scheme (Administration) Regulations 2008) who can join the LGPS; and groups that have been granted Direction Status (under the Superannuation (Miscellaneous Provisions) Act 1967) who can enter the NHS pension scheme.

Section 26: Non-scheme benefits

169. This section allows scheme managers and employers to make payments towards the provision of pensions and other benefits that are not delivered through a scheme made under section 1 for persons who could have access to such schemes (specifically, both the class of persons described under section 1(2) and persons to whom a scheme has been extended under section 25). This will enable employers to contribute to private occupational pension schemes where: members of public service schemes wish to take out or retain private occupational pensions in addition to (or instead of) being members of public service schemes (such as the Civil Service Partnership Scheme).

170. *Subsection (2)* makes the use of powers in section 26 subject to any provisions contained in the scheme regulations. This would allow each scheme to limit or modify how the power to make payments outside the scheme for pensions or other benefits may be used.

Section 27: Consequential and minor amendments

171. This section introduces Schedule 8, which contains consequential and minor amendments to primary legislation that are required because of the provisions in the Act. These include amendments to existing scheme legislation, as well as provisions in wider pension legislation to allow the Act to operate properly.

Existing schemes: supplementary

Section 28: Existing local government schemes

172. Section 28 provides for certain regulations made under section 7 of the Superannuation Act 1972 which relate to persons in England and Wales to have effect as if they were scheme regulations made under section 1 of the Act. This section will only apply to regulations under which benefits are provided to or in respect of service on or after 1st April 2014. It will only apply to regulations that provide for pension benefits in respect of service on or after that date. The section provides that such regulations have effect as if they were scheme regulations for local government workers to the extent that they could have been made under the Act.

173. It is intended that reforms to the Local Government Pension Scheme in England and Wales, which are made under section 7 of the 1972 Act, will be brought into force one year earlier than the other major public service schemes. As they are funded schemes, this will enable the Department of Communities and Local Government to bring forward savings from reform earlier so that they will be available for other purposes. By allowing these regulations to have effect as if made under section 1, these schemes will be able to introduce reforms on their chosen timetable while still being able to take advantage of the full powers of the Act and the protections included in it.

Section 29: Existing schemes for civil servants: extension of access

174. This section introduces Schedule 9, which amends the Superannuation Act 1972 to extend access to schemes made under section 1 of that Act.

Public body pension schemes

Section 30: New public body pension schemes

175. There are a number of defined benefits pension schemes for those in public service aside from the main schemes for civil servants, local government workers, NHS, teachers, police, fire and rescue services, the armed forces, and the judiciary. Many of these are pension schemes run for the staff and office holders of non-departmental public bodies, non-ministerial departments, arms length bodies and similar bodies and offices ('public bodies').

176. The Government's policy is to reduce the number of different pension schemes that operate across the public service. It is anticipated that most of these pension schemes will be reformed by moving the staff and office holders into one of the new schemes established under section 1 of the Act. However, where that is not possible or appropriate public bodies may be allowed to reform their current schemes or to set up new bespoke pension schemes along reformed lines. This section deals with the latter situation.

177. This section imposes constraints on the design of new pension schemes that may be created under the power in section 31(7) for those bodies and offices whose pension schemes are closed for future accrual by section 31(2) and whose members cannot join one of the schemes established under section 1. It also governs the design of pension schemes that are set up in the future or established under future legislation for public bodies (unless future legislation makes specific, different provision).

178. *Subsection (1)* identifies the provisions of the Act which apply to new public body pension schemes. These provisions ensure that such schemes contain the same core design, cost control and governance features of the schemes established under section 1.

179. Subject to that, the rules of such schemes can make such provision as the public authority establishing the scheme considers appropriate, because section 3(1) is applied to them by this subsection.

180. *Subsection (3)* requires the Treasury to consent to the establishment of a new public body pension scheme after this section is commenced, or the subsequent variation of the rules of such a scheme.

181. *Subsection (5)* sets out the meaning of ‘public body pension scheme’ and ‘new public body pension scheme’. See also the definition of “public authority” in section 37.

Section 31: Restriction of certain existing public body pension schemes

182. Many public authorities have the power to make pension schemes for their employees and office-holders. These include schemes for employees and office holders of non-departmental public bodies, non-ministerial departments, arms length bodies and similar bodies and offices (public bodies).

183. Section 31 requires the authority responsible for a body listed in Schedule 10 to close the pension schemes of those bodies to future accrual. Where possible, it is intended that pensions for the body’s employees in future will be provided through one of the reformed, unfunded public service pension schemes, the likely default being the civil servants’ pension scheme.

184. In exceptional cases public authorities will be permitted to establish new schemes of their own. For example, where there are special considerations that make it inappropriate for their employees to join one of the major unfunded schemes. In such cases, a new scheme may be set up but must include the core standards of the reformed unfunded schemes as set out by section 30.

185. *Subsection (1)* provides that the section applies to a pension scheme which relates to members or staff of a body, or the holder of an office, listed in Schedule 10.

186. *Subsection (2)* places a duty on the public authority which is responsible for such a scheme to close the scheme for future service after a date determined by the authority. The precise date in each case will be a matter for discussion and consultation, but it is anticipated that all schemes covered by this subsection will have closed to future service by 5th April 2018.

187. *Subsection (3)* sets out that subsection (2) does not apply to defined contributions schemes or injury and compensation schemes. The obligation to secure that no further benefits are accrued beyond the date set will only apply to defined benefits schemes.

188. *Subsection (4)* allows pension schemes which are required to be closed under subsection (2) to continue to provide benefits by way of exception for certain members who are eligible for transitional protection. Where transitional protection is offered, it is expected to be offered on the same basis and timing as transitional protection in the schemes that are closed to future accruals under section 18. This will mean that the transitional protection is expected to be based upon a starting date of 1st April 2012, rather than any later date, despite the later progress of reform to public body pension schemes. Subsections (6) and (7) of section 18 apply to transitional arrangements in the public body schemes closed to future accruals.

189. *Subsection (5)* allows for the obligation to prevent future accrual of rights in public body defined benefit schemes, and exceptions to that, to be achieved by amending the existing public body defined benefit schemes.

190. *Subsection (6)* explicitly sets out that subsection (2) also applies to death in service benefits.

191. *Subsection (7)* allows the public authorities responsible for existing public body schemes to establish new pension schemes for staff or office-holders where it is not possible for those persons to become members of one of the major schemes established under section 1. Section 30 provides details of the types of scheme that may be established in such cases. It is expected that most of these persons will, in practice, join one of the major schemes. This would provide consistency of treatment to all public service staff and offers the potential for savings on administration.

192. *Subsection (8)* prevents a public authority which closes a scheme in accordance with subsection (2) from exercising any existing statutory function or other power so as to establish a new defined benefits scheme. Its purpose is to ensure that replacement schemes will only be made using the power in subsection (7).

193. *Subsection (9)* provides that where an existing public body scheme was established by trust deed, subsections (2) and (4) supersede any conflicting provision of the deed or of the law relating to trusts.

194. *Subsection (10)* allows the Treasury by order to add public bodies and offices to Schedule 10, and to remove public bodies and offices from Schedule 10 (excluding devolved bodies or offices, as defined by section 37).

195. *Subsection (11)* provides that a Treasury order under subsection (10) may also make consequential and supplementary provision, including amendments to legislation.

196. *Subsection (12)* provides that Treasury orders under subsection (10) are subject to the negative procedure (as defined in section 38(3)).

197. *Subsection (13)* allows subsection (1) to be used to close to future accrual schemes made before or after section 31 comes into force.

198. *Subsection (14)* indicates that the provisions of Schedule 7, which provides for a “final salary link”, apply for the benefit of members of public body schemes closed under this section.

Section 32: Existing public body pension schemes: pension age

199. This section allows an existing public body pension scheme to reform itself by including a provision that the normal pension age and deferred pension age of members of those schemes is to be the same as their state pension age (*subsection (1)(a)*). The link may only apply to benefits accrued under the scheme after the provision to establish that link took effect.

200. *Subsection (1)(b)* allows any changes to normal or deferred pension age that occur as a result of a change in state pension age to apply to the calculation and payment of all benefits earned in a scheme; including, as set out in *subsection (2)*, benefits accrued after the creation of the link but before the relevant change in state pension age.

201. The effect of this section is to allow existing public body pension schemes (which are not mandated to reform by their inclusion in Schedule 10) to include a provision to link normal and deferred pension ages, so they change in line with any change to state pension age. If state pension age increases by one year, the normal and deferred pension ages would automatically increase by one year, and the increase would apply to all benefits earned in the scheme from the point at which the link to state pension age was created.

Parliamentary and other pension schemes

Section 33: Great offices of state

202. Section 33 and Schedule 11 amend the pension arrangements for future incumbents of certain great offices of state, which are the offices of Prime Minister, Lord Chancellor and the Speaker of the House of Commons.

203. The effect of these provisions is that the current special pension arrangements that apply to the great offices of state will cease to apply in relation to future office holders. Instead, pension and severance payments will be provided to and in respect of these office holders on the same basis as ministers and certain other office holders listed in paragraph 16(2) of Schedule 6 to the Constitutional Reform and Governance Act 2010.

204. Section 33 introduces Schedule 11 which contains amendments to existing legislation, which are required to give effect to the changes to the pension arrangements for the great offices of state.

Section 34: Parliamentary and other pension schemes: pension age

205. Section 34 has the effect that where a scheme under paragraph 12 (MPs’ pension scheme) or 16 (Ministerial pension scheme) of Schedule 6 to the Constitutional Reform and Governance Act 2010 links the normal pension age under the scheme to state pension age, the scheme can provide for a change in the normal pension age in consequence of the link to apply to benefits that have accrued as well as other benefits under the scheme. The

application is restricted to benefits that have accrued after the addition of the link to the scheme and does not apply to benefits accrued under current pension arrangements.

206. The section inserts new paragraph 29A into Part 2 of Schedule 6 to the Constitutional Reform and Governance Act 2010 which specifies the provisions that can be included in schemes made under that Schedule. The new paragraph means that, if it is decided (following the consultation requirements set out in Schedule 6 to the Constitutional Reform and Governance Act 2010) that the normal pension age of a scheme under paragraph 12 or 16 of the Schedule should be the same as state pension age, the scheme can also provide for benefits that have accrued under the scheme after the insertion of the link to be subject to later changes in state pension age.

207. The new paragraph makes it clear that paragraph 19 of Schedule 6 to the Constitutional Reform and Governance Act 2010, which gives special protection to accrued rights under the schemes, does not apply in relation to any such provision.

Section 35: Members of the European Parliament

208. This section inserts new subsections (3B) and (3C) into section 4 of the European Parliament (Pay and Pensions) Act 1979 (which allows for the creation of pension schemes in respect of Representatives to the European Parliament). The new subsections mean that if the scheme in future links the normal pension age under the scheme to state pension age, the scheme can provide for benefits that have accrued under the scheme to be subject to the link. The application is restricted to benefits that have accrued after the addition of the link to the scheme and does not therefore apply to benefits accrued under current pension arrangements.

209. The section also inserts new subsection (3D) into section 4 of the European Parliament (Pay and Pensions) Act 1979. This ensures that the MEPs' scheme can continue to contain provisions that are in the scheme for MPs. In particular it ensures that scheme managers may continue, once power to make new schemes passes to IPSA, to make small (under £5,000) payments from the Consolidated Fund to the beneficiaries of deceased members before probate. Commencement of paragraph 38 of Schedule 6 to the Constitutional Reform and Governance Act 2010 would otherwise remove this power.

210. There are currently only 6 active members of the pension scheme made under the European Parliament (Pay and Pensions) Act 1979. Article 25 of the Statute for Members of the European Parliament (European Parliament Decision 2005/684/EC Euratom) provided that existing representatives would be able to opt for the "national system applicable hitherto in respect of the salary, transitional allowance and pensions for the entire duration of their membership of the European parliament." The active members of the scheme are those who exercised this option. The pension scheme is closed to new members.

General

Section 36: Defence Fire and Rescue Service and Ministry of Defence Police: review

211. Section 36 requires the Secretary of State to carry out a review of how the provisions of section 10 are likely to affect members of the Ministry of Defence Police and the Defence Fire and Rescue Service.

212. *Subsection (1)* provides that the Secretary of State must carry out a review of the likely effect of section 10 on members of the Ministry of Defence Police and the Defence Fire and Rescue Service (the latter being defined in *subsection (3)*). These workforces come within the definition of “civil servants” and so will be affected by the link to state pension age in section 10(1). This review must be carried out within six months of the commencement of section 10.

213. *Subsection (2)* sets out three elements that must be covered in the review. They are the likely effect of section 10 on the health and well-being of members of these workforces, the likely effect of section 10 on their ability to continue to meet Ministry of Defence operational requirements, and the extent to which they are likely to take early retirement in consequence of the section 10 provisions (and on the consequences of early retirement to early retirees and the taxpayer).

Section 38: Regulations, orders and directions

214. *Subsection (1)* provides that scheme regulations made by the Lord Chancellor, Minister for the Civil Service, the Secretary of State, the Treasury and the Welsh Ministers must be made by statutory instrument.

215. The section also sets out the meaning of “affirmative procedure”, “negative procedure”, “affirmative Commons procedure” and “negative Commons procedure” in the relevant legislatures.

216. *Subsection (7)* provides that Treasury directions made under the Act may be varied or revoked.

Final

Section 40: Extent

217. This Act extends to England and Wales, Scotland and Northern Ireland. However, where the Act amends or repeals a legislative provision in another Act, the amendment or repeal has the same extent as the provision it amends or repeals.

Section 41: Commencement

218. This section provides when and how the provisions of the Act are to come into force.

219. The provisions listed in *subsection (1)* come into force automatically on the day the Act is enacted. They include the provisions to extend access to the existing Principal Civil Service Pension Scheme in section 29 and Schedule 9; the provisions to reform the pension arrangements of the great offices of state in section 33 and Schedule 11; and the general provisions in sections 36 to 41.

220. By *subsection (2)*, the remaining provisions are to be brought into force on such day or days as appointed by the Treasury in an order. By *subsection (3)* such an order may appoint different days for different purposes, and may make provisions with transitional, transitory or saving effect.

Schedule 1: Persons in public service: definitions

221. Schedule 1 contains definitions of the persons in public service listed in section 1(2) for whom schemes may be made under section 1.

Schedule 2: Responsible authorities

222. This schedule lists the Ministers who may exercise the power under section 1 to make scheme regulations for the main categories of persons in public service set out in that section.

Schedule 3: Scope of scheme regulations: supplementary matters

223. This schedule contains a list of the type of provision that may, in particular, be included in scheme regulations made under section 1. It is not an exhaustive list, but an indication of what can be included in scheme regulations.

224. Paragraph 1 allows for scheme regulations to set out details of the persons who are eligible for membership of the scheme and the conditions that apply to eligibility. Scheme regulations may relate to a narrower class than those who could be covered by the scheme (for example where some of those workers belong to other public service schemes).

225. Paragraph 2 provides a non-exhaustive list of some of the benefits for employees that may be written into regulations, including: pensions; benefits payable on death (including death in service); and compensation payments for death, injury or redundancy.

226. Paragraph 3 provides a non-exhaustive list of some of the types of people to whom benefits can be paid under the regulations of the scheme. These include: active, deferred and pensioner members; pension credit members; and their surviving spouses, civil partners and dependants.

227. Paragraph 4 allows for regulations to set out conditions for making payments to members.

228. Paragraph 5 allows for regulations to set out the circumstances in which benefits can be assigned to other persons and any restrictions on such assignment.

229. Paragraph 6 allows for regulations to set out how and when benefits can be forfeited or suspended.

230. Paragraph 7 allows for regulations to set out how schemes may recover any benefits that have been overpaid.

231. Paragraph 8 allows for scheme regulations to exclude double recovery of compensation or damages, including by modifying rights to compensation or damages where two sources of compensation or damages would otherwise be available for the same matter.

232. Paragraph 9 allows for regulations to set out provisions for the making of contributions by employers and employees, including contribution rates. Interest may be charged on the late payment of contributions, whether by employees or employers.

233. Paragraph 10 allows for regulations to set out how transfers of accrued pension “pots” will work and also any lump sum payments that can be made, in order to enable pension benefits to be transferred into, out of, or between schemes.

234. Paragraph 11 allows for regulations for schemes which are funded to detail how such funds will be administered and managed, including: their investment arrangements and strategy; provisions for trustees and training; and how funds will be wound up.

235. Paragraph 12 provides a non-exhaustive list of the provisions that may be included in regulations that relate to the administration and management of the scheme. The scheme manager in centrally-run schemes will be the responsible authority. In the context of locally-administered schemes such as the Local Government Pension Scheme, the scheme manager will be the administering authority, and the responsible authority may give directions or guidance to the scheme manager. Administrators may also provide or publish information.

236. Paragraph 13 allows for scheme regulations to provide for the functions of the scheme manager or responsible authority to be delegated, and for further delegation of such functions.

237. Paragraph 14 allows for scheme regulations to provide for employers to make payments to the scheme manager. This includes contributions to the administrative cost of the scheme and additional payments where a failure by the employer to comply with obligations under the scheme has increased those administrative costs. Interest can also be provided for under this paragraph.

238. Paragraph 15 allows for regulations to set out the steps to be taken by schemes for resolving disputes and appeals. Schemes may provide for questions of law that have to be decided by the responsible authority to be determined instead by a court of law.

Schedule 4: Regulatory oversight

239. Schedule 4 contains amendments to the Pensions Act 2004 (“the 2004 Act”), in relation to the regulatory responsibility of the Pensions Regulator for public service pension schemes.

240. Paragraph 2 amends section 11 of the 2004 Act to require the Pensions Regulator to include in its annual report information on the exercise of the Regulator’s functions in relation to public service pension schemes. This requirement will mean that the Regulator will have to provide information publicly about how it is carrying out the new role introduced by this Act.

241. Paragraph 3 amends section 13 of the 2004 Act:

- to allow the Pensions Regulator to issue an improvement notice by reference to a code of practice issued under new section 90A (see below); and
- to ensure that certain provisions in this Act fall within the definition of “pensions legislation” so that improvement notices can be issued if they are breached.

242. Paragraph 4 inserts new section 14A to allow the Pensions Regulator to appoint an appropriately skilled person to help a pension board carry out its functions. The pension board will be responsible for assisting the scheme manager in the administration and governance of the scheme. If the board is having difficulty in appropriately performing that role, expert help may be necessary. The pension board must have regard to the advice of the appropriately skilled person, and the skilled person's costs are to be met by the scheme manager.

243. Paragraph 5 amends section 17 to provide that the Pensions Regulator may intervene and help to recover unpaid contributions that are owed to a public service pension scheme by an employer under that scheme.

244. Paragraphs 6, 8 and 9 make consequential amendments to sections 70, 71 and 73, inserting references to pension board members to reflect the new public service pension scheme pension board structure.

245. Paragraph 7 inserts a new section 70A requiring the scheme manager of a public service pension scheme to notify the Pensions Regulator of an employer's failure to pay pensions contributions on time if that failure is likely to be something that the Pensions Regulator would consider to be materially significant to the Regulator in the exercise of its functions (for example, in considering whether the employer is fulfilling its obligations and being satisfied that the scheme is being managed properly). Failure to report can lead to a civil penalty.

246. Paragraph 10 adds record keeping (as required by section 16 of the Act) to the list of provisions in section 73 of the 2004 Act, in respect of which the Pensions Regulator may enter premises to investigate compliance.

247. Paragraph 11 amends section 89 of the 2004 Act, requiring the Regulator to notify the scheme manager before making a report under that section in respect of a public service pension scheme. This requirement will mean that the scheme manager is aware that the Regulator intends to issue a report about the scheme and can choose to take remedial action in advance if they wish. The scheme manager cannot prevent the Regulator from issuing a report. Paragraph 12 inserts new section 89A requiring the Regulator to report concerns to the scheme manager where the Regulator has reasonable grounds to suspect or believe that a member of the pension board has misappropriated any assets of the scheme, or has a conflict of interest in relation to the investment of assets in the scheme. Under the Act the Pensions Regulator does not have a formal role in relation to funding or investment for the funded schemes. However, in the course of undertaking oversight of administration and governance of the schemes it is possible that the Regulator may be made aware of inappropriate behaviour by a member of the pension board in relation to the scheme assets or investments. As the scheme manager is responsible for setting up and appointing the pension board, it is appropriate that any concerns are directed to the scheme manager to address. Privilege attaches to any such report, unless it is shown that it is maliciously motivated. The section also makes clear that a conflict of interest in relation to investment of assets does not arise merely from any person being a member of the relevant scheme.

248. Paragraph 14 inserts new section 90A, allowing and, in certain cases, requiring the Pensions Regulator to issue codes of practice for public service schemes. A list of matters that codes must cover is set out at new section 90A(2). The requirement to issue codes of practice is at the core of the Pensions Regulator's new role in relation to public service schemes. To help ensure schemes meet good standards of administration and governance, those involved in administering them need to know what standards they should be aiming to achieve. This section is similar to section 90 of the 2004 Act and replicates the provisions of that section regarding: revision of codes of practice; effect of failing to observe codes of practice; admissibility in evidence; the scope of codes of practice; and the procedures relating to them. The paragraph also contains a power for the Secretary of State to prescribe other matters which must be covered by codes if in the future it is considered necessary to do so.

249. Paragraph 19 amends the 2004 Act by inserting a new section 248A, which places a requirement on members of the pension board to have knowledge and understanding about the scheme and the law relating to pensions and any other prescribed matters. As the pension board is responsible for assisting the scheme manager in the administration of the scheme, it is appropriate that those individuals carrying out this role should have appropriate knowledge about the scheme they are helping to run. This provision is similar to section 247 of the 2004 Act which places requirements on trustees to have knowledge and understanding about the scheme which they are running and the law relating to pensions more generally.

250. Paragraph 21 amends the 2004 Act by inserting a new section 249B into that Act to place a requirement on the scheme manager of a public service pension scheme to have an adequate system of internal controls.

Schedule 5: Existing pension schemes

251. Schedule 5 contains a list of powers that are used to make schemes, the provision of benefits under which is restricted by section 18 in relation to service after the closing date set by that section. The restrictions on existing schemes do not apply to the provision of injury and compensation benefits, or in certain circumstances to holders of devolved judicial office, and these are excepted from the scope of the restriction where relevant.

252. Paragraphs 1 to 29 list powers to make existing schemes, and any applicable exceptions, in respect of;

- civil servants at paragraph 1;
- the judiciary at paragraphs 2 to 15;
- local government workers at paragraphs 16 and 17;
- teachers at paragraph 18;
- health service workers at paragraph 19;
- fire and rescue workers at paragraphs 20 and 21;
- members of police forces at paragraphs 22 and 23; and
- the armed forces at paragraphs 24 to 29.

253. The meaning of the terms “compensation benefits” and “injury benefits” is set out in section 37. For the purposes of paragraph 29, the Schedule makes it clear that “compensation benefits” includes benefits by way of payments for resettlement or retraining.

Schedule 6: Existing injury and compensation schemes

254. Schedule 6 lists powers to make existing injury or compensation schemes. Section 19 permits scheme regulations to close such schemes at a future date, subject to any exceptions provided for by the scheme regulations.

255. Paragraphs 1 to 18 list the powers under which existing injury and compensation schemes are made. This covers:

- civil servants at paragraph 1;
- the judiciary at paragraphs 2 to 4;
- local government workers at paragraph 5;
- teachers at paragraph 6;
- health service workers at paragraph 7;
- fire and rescue workers at paragraph 8;
- members of police forces at paragraphs 9 and 10;
- the armed forces at paragraphs 11 to 17; and
- compensation schemes for loss of office at paragraph 18.

256. The meaning of the terms “compensation benefits” and “injury benefits” is set out in section 37. For the purposes of paragraph 16, the Schedule makes it clear that “compensation benefits” includes benefits by way of payments for resettlement or retraining.

Schedule 7: Final salary link

257. Final salary scheme pension benefits accumulated up until the date that existing schemes close by virtue of either section 18(1) or section 31(2) are to be calculated by reference to the member’s final salary at the point they retire or otherwise leave pensionable service in a new scheme (not the point at which their final salary scheme was closed). This final salary link applies to all past service in final salary schemes prior to the closing date.

258. Paragraph 1 deals with a person who remains in an old scheme for their past service and becomes a member of a new scheme under section 1 or a new public body pension scheme. If their service in the old scheme and in the new scheme is continuous then, in determining the person’s final salary for the purposes of the old scheme, their service in the old scheme is to be regarded as having ended when their service in the new scheme ends, and their pensionable earnings from their new scheme service are to be regarded as derived from the old scheme service. By sub-paragraph (2), scheme regulations made under this Act may set out a distinct definition of earnings for the purposes of the final salary link. However, in doing so, the amount of earnings in the new scheme which are to be taken as pensionable earnings for the purposes of the final salary link cannot be materially less than the earnings that would have been the person’s pensionable earnings had service in the new scheme been old scheme service (sub-paragraph (3)).

259. Paragraph 2 makes the same provision in the case of a person who moves to a different public service pension scheme (such as a move from the NHS Pension Scheme into the Local Government Pension Scheme) when the old scheme is closed, and whose benefits under their original old scheme are transferred to their new employer’s old scheme. By sub-paragraph (2), scheme regulations made under this Act may set out a distinct definition of pensionable earnings for the purposes of the final salary link. However, in doing so, the

amount of earnings in the new scheme which are to be taken as pensionable earnings for the purposes of the final salary link cannot be materially less than the earnings that would have been the person's pensionable earnings had service in the new scheme been deemed transfer scheme service (sub-paragraph (3)). Sub-paragraph (4) provides that in paragraph 2 a transfer of rights from one old scheme to another includes the making of a transfer payment in respect of such rights.

260. The different existing schemes determine final salary in different ways. However, taking the Classic section of the Principal Civil Service Pension Scheme ("PCSPS") as an example, "pensionable earnings" essentially means the highest of the last three years of reckonable service (to determine what someone's final salary is in PCSPS Classic it is necessary to consider the level of their salary during the last three years of their reckonable service). This is why paragraph 1 provides that in determining the person's final salary for the purposes of the old scheme, the old scheme service is to be regarded as having ended when the new scheme service ends, and such earnings derived from the new scheme (as the scheme regulations may specify) are to be regarded as derived from the old scheme service. Paragraph 2 makes similar provision in respect of determining a person's final salary for the purposes of the transfer scheme.

261. The service which is treated as pensionable for the purposes of the old scheme may include service transferred into the old scheme (including service in the private sector transferred into the old scheme under the Fair Deal). Such service will count as "old scheme service" within the meaning of paragraphs 1 and 2. These paragraphs deliver the final salary link for those who transfer service into the old scheme under the Fair Deal.

262. Paragraph 3 sets out what is meant by continuous service in paragraphs 1 and 2. Any period when the person was in pensionable service in another public service or new public body scheme, and any gap in pensionable service that does not exceed five years in length, is to be disregarded, and in such circumstances service is to be considered continuous.

263. Paragraph 4 makes it clear that if the person had periods of service with two or more different new schemes under section 1 or a new public body pension scheme, pensionable service with the last of those schemes is to be taken into account when calculating the member's final salary under paragraphs 1 or 2.

264. Paragraph 5 allows scheme regulations to provide that a pension that is in payment under an existing public service or public body pension scheme cannot be recalculated by reference to Schedule 7 following a subsequent period of public service employment. Sub-paragraph (2) would allow such provision to be made by amending the relevant existing scheme.

265. This Schedule sets the minimum level of final salary link that applies to all the schemes closed under section 18(1) or section 31(2). However, it is not exhaustive and scheme regulations can (subject to the consent requirements in section 3) make provision for the final salary link to apply in additional circumstances, as long as this is not inconsistent with what is said in the Schedule.

Schedule 8: Consequential and minor amendments

266. Schedule 8 contains minor and consequential amendments to primary legislation.

267. Many of the amendments in this Schedule annotate powers to make pension or other benefit schemes, where applicable, to note that they are subject to the restrictions placed on the use of those powers by sections 18 and 19 (restrictions on benefits provided under existing schemes). They are not commented on further in these notes.

Paragraphs 4 and 5: *Pensions (Increase) Act 1971*

268. Paragraph 4 amends the Pensions (Increase) Act 1971 to clarify how the uprating provisions in that Act operate on public service pensions that are either protected by the final salary link in Schedule 7 or are career average schemes to which the restrictions in sections 18(1) or 31(2) apply.

269. Paragraph 5 adds pensions made under the Act to the list of official pensions in Schedule 2 of the Pensions (Increase) Act 1971. The effect is to provide for the annual uprating of deferred pensions and pensions in payment under the mechanism which that Act provides.

Paragraph 13: *House of Commons (Administration) Act 1978*

270. This paragraph contains an amendment to allow members of the House of Commons Staff Pension Scheme to join the civil service pension scheme.

Paragraph 15: *Local Government and Housing Act 1989*

271. This paragraph amends the Local Government and Housing Act 1989 to provide that where the scheme manager is a committee of the local administering authority, and that committee is also the pension board, members of the board will all be entitled to vote in proceedings of the committee.

Paragraphs 18 to 20: *Pension Schemes Act 1993*

272. These paragraphs amend the Pension Schemes Act 1993, in respect of schemes made under section 1, to allow a deferred pension age that is linked to state pension age (see section 10) to be greater than 65.

Paragraph 21: *Merchant Shipping Act 1995*

273. This paragraph makes a consequential amendment to allow a transfer of pension rights already accrued under the pension schemes run by the three General Lighthouse Authorities. The amendment enables this by allowing payments to be made out of the General Lighthouse Fund which can include a bulk transfer of pension rights.

Paragraph 26: *Human Rights Act 1998*

274. This paragraph makes a consequential amendment to enable UK judges of the European Court of Human Rights to continue membership of a pension scheme established under the Act when they are appointed to the European Court.

Paragraph 29: *Constitutional Reform Act 2005*

275. This paragraph relates to the Lord Chancellor's function in making a scheme for members of the judiciary under section 1 of the Act. It makes this a protected function which cannot be removed from the Lord Chancellor via machinery of government changes (as the Lord Chancellor has the lead responsibility in government for maintaining the constitutional position of the judiciary).

Paragraph 30: *Parliament (Joint Departments) Act 2007*

276. This paragraph contains an amendment to allow members of the House of Commons Staff Pension Scheme to join the civil service pension scheme.

Paragraph 31: *Legal Aid, Sentencing and Punishment of Offenders Act 2012*

277. This paragraph enables active and deferred members of the Legal Services Commission who transfer into the Principal Civil Service Pension Scheme on 1 April 2013 and were within 10 and 13.5 years of their pension age on 1 April 2012 to be eligible for the transitional protection available to other staff in the receiving scheme by virtue of section 18 (5) and (7).

Schedule 9: Existing schemes for civil servants: extension of access

278. Schedule 9 amends the Superannuation Act 1972 to extend access to the schemes under that Act which provide for superannuation benefits for civil servants.

279. Currently, admission to the Principal Civil Service Pension Scheme (PCSPS) and other schemes made under section 1 of the Superannuation Act 1972 is restricted to those in employment in the civil service or those in an employment or office listed in Schedule 1 to that Act. Restrictive criteria apply to adding employments or offices to Schedule 1 to the 1972 Act. Members of the PCSPS who are compulsorily transferred out of the civil service to an independent provider of public services are therefore not able to retain membership (instead the current Government Fair Deal policy applies, requiring the new employer to provide a broadly comparable pension and advantageous bulk transfer terms).

280. The current Fair Deal policy is due to be amended to allow people under the above circumstances to retain access to their public service pension before the new schemes are introduced. Due to the restrictions on access to the PCSPS, the new Fair Deal policy could not apply without a change to the primary legislation. Schedule 9 aims to make this change to allow access to people who are not currently entitled to access under the 1972 Act. The Schedule will come into force on Royal Assent, to ensure that the new Fair Deal policy can be implemented in relation to the PCSPS with immediate effect. Any delay may mean that staff who are being moved out of the civil service could miss the opportunity to remain in their current pension arrangements and may affect the Government's ability to deliver improvements to public service delivery.

281. New subsection (4A) for section 1 of the 1972 Act provides that the section will also apply to persons serving in an employment or office specified under new section 1A of the 1972 Act.

282. Paragraph 3 inserts new section 1A which gives the Minister for the Civil Service the power to specify employments and offices for the purposes of the new section 1(4A) of the 1972 Act.

283. New section 1A(1) provides that the Minister may specify in a list the employments and offices which will qualify persons for admission to a scheme by virtue of new section 1(4A). An employment or office may be specified only if subsection (2), (3) or (4) of section 1A is satisfied.

284. Subsection (2) applies where staff are transferred to a new employer after these provisions come into force, and so would otherwise cease to be entitled to membership of the PCSPS. If persons serving in that office or employment would have been eligible to be members of the scheme on the point of transfer, the Minister can specify the office or employment for the purposes of new section 1(4A); the staff will then be entitled to retain access to the scheme.

285. Subsection (3) applies where staff were transferred to a new employer before the provisions come into force and have ceased to be members, or to be entitled to membership, of the PCSPS. If persons serving in that office or employment would have been eligible to be members of the scheme before the transfer then the Minister can specify the employment or office for the purposes of section 1(4A); the staff will then be entitled to regain access to the scheme.

286. Subsection (4) allows the Minister to specify an employment or an office in particular cases where he determines that it is appropriate to do so and the employment or office comes within a description set out in regulations. The general principle is that access under these provisions is for individuals who were entitled to access to the PCSPS at the point when they are moved to a new employer. The intention is that subsection (4) will only be used in exceptional cases as circumscribed by the descriptions in the regulations and the determination of the Minister.

287. Subsection (5) will allow access to be granted by virtue of subsection (4) with retrospective effect. This provision will allow the scheme to deal with historic anomalies.

288. Subsection (6) requires the list of employments and offices which qualify persons for access to the PCSPS (and any amendments to the list) to be published. Regulations made by the Minister for the Civil Service under subsection (7) will set out the information that the published list must contain. It is intended that this will include: details of the employments and offices specified; the name of the employers; the dates from which access through this route is granted; and the circumstances that must exist for access to continue.

289. Those who gain access to the PCSPS through this route will move into the new schemes once they are established under the Act and the closing date as set out in section 18 has passed (as for other members, except for those who are protected by transitional provisions). In the new schemes, access will be extended where required under the procedure in section 25.

Schedule 10: Public bodies whose pension schemes must be restricted

290. Section 31 provides that those public authorities which have made a defined benefits pension scheme in respect of staff of a body or the holder of an office that is listed in Schedule 10 must not provide benefits in relation to future service after a date determined by the authority.

291. Schedule 10 lists the public authorities (non-departmental public bodies, arms length bodies and similar bodies and offices) that must close their defined benefits schemes to future accruals. Members of those schemes will either join one of the reformed public service schemes set up under section 1 or a new scheme established under section 31(7).

Schedule 11: Prime Minister, Lord Chancellor and Common Speaker

292. Paragraph 1 amends the Constitutional Reform and Governance Act 2010:

- (a) to remove the current exclusions that apply in respect of payment from the Parliamentary Contributory Pension Fund⁵ under the MPs' and Ministerial pension schemes to holders of the great offices of state (paragraph 1(2) and (3)(b));
- (b) to allow the holders of the great offices of state to become members of the Ministerial pension scheme (paragraph 1(3)(a)).

293. Paragraph 2 amends section 4 of the Ministerial and other Pensions and Salaries Act 1991, to enable severance payments under this section to be paid to the holders of the great offices of state.

294. Paragraph 3 amends the Ministerial and other Salaries Act 1975 to regularise the salary level of future Lord Chancellors in line with the salary of a Secretary of State. This will ensure that the pension entitlements of future Lord Chancellors under the Parliamentary Contributory Pension Fund are based on the appropriate salary level.

295. Paragraphs 4 to 6 close the existing arrangements that govern pensions for and in respect of the great offices of state.

296. Paragraph 8(1) makes clear that the changes being made relate to the pension provision of future holders of the great offices of state and do not remove the entitlement of those who have held this office (or their dependants) prior to the commencement of these provisions. This means that the entitlement of current and former Prime Ministers, Lord Chancellors and Commons Speakers to benefits is unchanged.

297. Paragraph 8(2) allows for any person appointed as Lord Chancellor between 4th September 2012 and the day on which section 33 comes into force to build up benefits in the Parliamentary Contributory Pension Fund once they cease to hold that office. This will allow Lord Chancellors who have signed a waiver (setting aside their entitlements to the current generous pension arrangements for Lord Chancellors) to participate in a tax-registered pension scheme for the remainder of their Parliamentary career, rather than in the special arrangements under the Consolidated Fund.

298. These changes will have financial implications. Currently, the pension entitlements of the great offices of state are met through the Consolidated Fund and those benefits already earned under the current arrangements will continue to be paid from the Consolidated Fund to current and former holders of great offices of state. This includes those holders of the great offices of state who have chosen to sign a waiver to their entitlements and receive benefits comparable with those provided under the Ministerial Pension Scheme. In future the employing departments of holders of the great offices of state will pay employer contributions from departmental resources and the holders of the great offices will also pay member contributions as set out in the Ministerial Pension Scheme rules.

⁵ This is the pension fund that pays out pensions to MPs, Ministers and other office holders in Parliament.

HANSARD REFERENCES

299. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
<i>House of Commons</i>		
Introduction	13 September 2012	Vol. 550 Col. 455
Second Reading	29 October 2012	Vol. 552 Cols. 53-132
Committee	6 November 2012	House of Commons Public Bill Committee on the Public Service Pensions Bill 2012-13
	8 November 2012	
	13 November 2012	
	20 November 2012	
	22 November 2012	
Report and Third Reading	4 December 2012	Vol. 554 Cols. 735-830
<i>House of Lords</i>		
Introduction	5 December 2012	Vol. 741 Col. 665
Second Reading	19 December 2012	Vol. 741 Cols. 1555-1558
Committee	9 January 2013	Vol. 742 Cols. 172-197
	15 January 2013	Vol. 742 Cols. 596-663
	21 January 2013	Vol. 742 Cols. 942-960
Report	12 February 2013	Vol. 743 Cols. 567-586
Third Reading	26 February 2013	Vol. 743 Cols. 961-967
		Vol. 561 Cols. 645-685
Commons Consideration of Lords Amendments	22 April 2013	Vol. 561 Cols. 645-685
Lords Consideration of Commons Reasons	23 April 2013	Vol. 744 Cols. 1355-1362
Commons Consideration of Lords Message and Amendment	24 April 2013	Vol. 561 Cols. 905-912
Lords Consideration of Commons Amendment in lieu	24 April 2013	Vol. 744 Cols. 1476-1479
Royal Assent	25 April 2013	Vol. 744 Col. 1564 (Lords) Vol. 561 Col. 1068 (Commons)

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