Title: Public Service Pensions and Judicial Offices Bill, Assessment of Impacts **Departments or agencies:** 1. **Lead department –** Her Majesty's Treasury (HMT) 2. **Other departments –** Ministry of Justice (MoJ) and Department for Levelling Up, Housing and Communities (DLUHC)	Assessment of Impacts **Date:** December 2021 **Type of regulation:** Domestic **Date measures come into force:** April 2022 **Contact for enquiries**: Louise.Tompkins@hmtreasury.gov.uk
Cost of Preferred (or more likely) Option: Normal ongoing cost for businesses	**Equivalent Annual Net Direct Cost to Business per year** *(EANDCB in 2020 prices)***:** No direct cost to businesses

What is the problem under consideration? Why is government intervention necessary?

When reforms to the main public service pension schemes were introduced in 2015[1] the government agreed, following discussions with trade unions, to allow certain members closest to retirement age to stay in their legacy schemes for an additional period (or provide a legacy scheme underpin for Local Government pensions). This was challenged in the Courts and, in order to address the discrimination identified, government intervention is required. Accordingly, the Bill will allow all eligible members to have a choice between legacy and reformed scheme benefits from 2015 to 2022 (or to benefit from the extension of the Local Government underpin). Eligible members of the main public service pension schemes other than the judiciary and Local Government will make a choice at retirement (a "deferred choice") which was supported by the majority of respondents to the Treasury's consultation in 2020.[2] The judiciary will be offered an "immediate choice" as most respondents to the Ministry of Justice's consultation supported having the ability to make an earlier decision.

From the point of introduction in 2015, those reforms, along with the switch from Retail Prices Index (RPI) to Consumer Prices Index (CPI) for pension uprating and increase in employee contributions, were estimated to save over £400 billion over the following 50 years. To maintain the reforms and ensure equal treatment going forwards, all members will accrue pension in reformed schemes for service from 1 April 2022 onwards.[3]

The Bill also aims to tackle the recruitment and retention issues that have emerged in the judiciary by introducing a reformed judicial pension scheme. The Senior Salaries Review Body (SSRB) identified the 2015 pension changes as a major cause of such problems and highlighted strong evidence of recruitment difficulties in the High Court and above, as well as growing issues at the Circuit and Upper Tribunal benches. This was underlined by the fact that the first ever unfilled vacancy in the High Court occurred in the 2014 to 2015 recruitment exercise. Owing to the judges' unique circumstances of appointment,

[1] 2014 for the Local Government Pension Scheme (LGPS) in England and Wales.

[2] Between 19 August and 18 November of 2020, the Department of Finance (NI) consulted on options to address the unlawful discrimination which had occurred in the schemes since 2015 and to remove it for the future. The remedy proposals set out in the consultation were identical to those contained in the comparable consultation by the Treasury for schemes in Britain. The "Deferred Choice Underpin" was supported by the majority of respondents to this consultation in 2020.

[3] Although the Bill will allow for two specific exceptions where legacy schemes can continue to provide benefits in relation to service after this date – (a) transfers in from non-closed schemes, and (b) schemes that have weighted accrual.

including that many take significant pay reductions to join the judiciary and are barred from re-entering private practice, the judicial pension scheme is crucial in attracting the best legal minds to the bench. Therefore, members of the judiciary will be transferred into a reformed pension scheme in April 2022. The reformed scheme will be unregistered for tax purposes, like the current legacy arrangements applying to the majority of the judiciary, making it significantly more attractive for prospective applicants compared to the tax registered 2015 scheme which does not provide an adequate incentive for barristers and solicitors to leave private practice and join the bench. This should help to ensure that the government can recruit and retain sufficient judges which is vital to the effective running of the legal system.

The government is also increasing the mandatory retirement age (MRA) for judicial office holders from 70 to 75 to reflect the improvements to life expectancy since the current MRA was set over 25 years ago, and to tackle recruitment and retention issues. The frequency and volume of judicial recruitment has increased in recent years, and it is expected that sustained levels of recruitment will be required. Yet, there are constraints on the pool from which judges are drawn, and since 2016 there have been shortfalls in some recruitment exercises, particularly for the High Court, Circuit and District benches. These measures are important to help to retain valuable judicial expertise for longer whilst increasing the attractiveness of judicial office to a greater number of potential candidates from diverse backgrounds, ensuring that our world class judiciary can continue to meet the demands of the justice system.

Government intervention is also required to protect judicial independence. The measures in this Bill provide the power to set allowances on firmer legal footing, thereby enabling greater pay flexibility and providing options to recognise judicial office holders taking on temporary additional responsibilities where needed for the effective administration of justice.

What are the policy objectives and the intended effects?

The policy objectives of the measures in the Bill are:

1. Deliver changes to public service pension schemes to ensure access to high quality defined benefit schemes on a fair and equal basis – providing certainty for members, fairness for the taxpayer, and long-term sustainability.
2. Address the discrimination identified by the Courts when public service pensions were reformed, by allowing eligible members to make a choice between legacy and reformed scheme benefits from 2015 to 2022.
3. Improve the terms for judicial resourcing to support the effective functioning of our world class judiciary, to meet the demands of the future by raising the MRA for judicial office holders from 70 to 75, and reforming their pension arrangements to tackle recruitment and retention issues (including through new provisions for judges to sit in retirement), ensuring the judiciary can continue to meet the demands of the justice system in the future.

Establish one or more new central government pension schemes for pension liabilities resting with UK Asset Resolution (UKAR), the holding company established in 2010 to wind down the government's remaining stake in Bradford & Bingley (B&B) and Northern Rock. This will create a more efficient structure for the government to meet its liabilities towards these pensions than the current arrangements, and will provide a secure, long-term solution for members' pensions as the government seeks to wind up UKAR.

The intended effects of the core measures in the Bill which implement the response to the *McCloud* judgment across public service pension schemes are to:

i) enable retrospective changes to be made to benefit entitlements to implement the deferred choice underpin (DCU) across most of the main public service pension schemes
ii) provide for compensation to be payable in respect of financial losses (and non-financial losses, if necessary) arising due to the retrospective remedy in relation to tax and non-tax matters
iii) close most of the main legacy schemes to future accrual, meaning all active non-judicial members of those schemes will be accruing in the 2015 reformed schemes from 1 April 2022; this also closes the 'remedy window'
iv) waive any ceiling breaches of the cost control mechanism that arise from the 2016 cost control valuations
v) enable DLUHC Ministers to make retrospective changes to local government pensions regulations to remove the discriminatory provisions from the Local Government Pension Scheme for England and Wales, with commensurate provision for Local Government pensions under Devolved Administrations
vi) enable retrospective changes to be made to benefit entitlements for the judicial pension schemes shortly after the remedy period has closed to implement the 'options exercise' choice mechanism
vii) close the legacy judicial pension schemes to future accrual to enable all active members to move into a newly designed, reformed scheme from 1 April 2022

The intended effects of the additional MoJ measures included in the Bill to tackle the problem of recruitment and retention issues in the judiciary are to:

i) raise the MRA of judicial office holders (judges, non-legal members of tribunals, coroners and magistrates) from 70 to 75
ii) provide for the return to the active list (effectively, reinstatement without a full application process) of recently retired magistrates who are over the age of 70 but younger than the new MRA of 75
iii) provide for a new judicial office to which former salaried and fee-paid judges can be appointed without a selection exercise to 'sit in retirement', which will both remedy discrimination between fee-paid and salaried judges and improve the judiciary's powers for flexible deployment of judges
iv) enable the Lord Chancellor to determine an allowance for all judicial office holders whom the Lord Chancellor has the power to determine pay, and devolved posts in Scotland and Northern Ireland

As well as the above measures, the intended effect of the additional measures incorporated into the Bill is to establish one or more new pension schemes to replace the Bradford & Bingley Staff (BBS) and NRAM pension schemes. These pension schemes currently reside under UKAR, the government-owned holding company established in 2010 to hold the closed mortgage books of B&B and Northern Rock plc, two banks which were nationalised as a result of the 2007 to 2008 financial crisis. The government recently returned the last of these assets, as well as the B&B and NRAM (formerly Northern Rock) legal entities, to the private sector. UKAR remains responsible for a number of legacy liabilities, the largest being the pension schemes.

Establishing new schemes and government funding the schemes directly will be more efficient than the current arrangements, and will also allow UKAR to be wound up sooner than otherwise possible (generating further savings for the Exchequer). The NRAM and BBS schemes will be defunded and closed. The Bill also confers powers on the Treasury to make regulations to transfer related, relevant pension liabilities which are not included in the formal BBS and NRAM schemes to the Treasury. This will allow for the transfer from UKAR to the Treasury of a small number of pensions which are paid directly.

Further description of the impacts of the measures included in this Bill are included in Chapter 2.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option

1. **Option 1 – Do nothing (alternative option):**
   The main alternative policy option considered was a "do nothing" scenario. We have explored how this would be detrimental to the government for the measures in the Bill below:

   i) **Measures related to the *McCloud* Judgment**
   A "do nothing" scenario for the measures related to the *McCloud* judgment is not considered a viable option. Without implementing any of the measures in the Bill relating to the *McCloud* judgment, the unlawful discrimination identified by the courts would be perpetuated. This would mean that access to public service pension schemes would not be provided on a fair and equal basis.

   In relation to the remedy period, simply extending the transitional arrangements to all eligible members - effectively placing them all back in their legacy schemes - could make many members worse off. These changes ensure members can keep or choose benefits in the reformed schemes if they wish.

   In relation to the decision to close legacy schemes to future accrual, this will mean that all active members will be in reformed schemes from 1 April 2022 on a fair and equal basis. Failure to close the legacy schemes would mean that for service over the same period, older members would accrue benefits in the legacy schemes, whereas younger members would accrue benefits in the reformed schemes, creating an unfair and uneven situation where differential treatment would persist.

   In relation to the decision to waive any ceiling breaches following the completion of the cost control element of the 2016 valuations, this will mean that no schemes will be forced to reduce member benefits if ceiling breaches occur.

   ii) **MRA and related measures**

A “do nothing” approach would lead to no change to the current MRA of 70 as set out in Judicial Pensions and Retirement Act 1993 (JUPRA), the Courts Act 2003 and the Coroners and Justice Act 2009, nor would there be any provision to extend the option of sitting in retirement (SIR) to relevant fee-paid judges. This would not meet our objectives of improving judicial supply by enabling the retention of existing judicial office holders and increasing the attractiveness of judicial office nor would it reflect the significant change in life expectancy in the UK since the MRA was set at 70.

In relation to SIR, not making a change would fail to address the current differential treatment whereby only salaried judges are able to apply to sit in retirement, and would also fail to enable greater flexibility in the deployment of judges to meet the immediate demands of the courts and tribunals in exceptional circumstances.

iii) Measures related to the reformed judicial pensions scheme

A “do nothing” scenario for the measures related to judicial pension reform would require all members of the judiciary to be moved into the 2015 scheme, the New Judicial Pension Scheme (NJPS), once the *McCloud* remedy window has closed in 2022. The SSRB stated that the NJPS was the principal cause for the shortfalls and early retirements that have occurred within the judiciary over recent years. Transferring all members of the judiciary into this scheme would allow these issues to continue and subsequently pose a threat to the effective running of the legal system if the government were unable to recruit and retain the right number of judges. This is therefore not a viable option because it would not address the policy objective of addressing the recruitment and retention issues within the judiciary.

iv) Part 2 measures

The “do nothing” option would mean that UKAR would remain liable for sponsoring the pension schemes, extending the timetable for a final wind-down potentially by 30 to 40 years and resulting in additional costs for the Exchequer. It would also mean that the Exchequer does not benefit from the cash release resulting from the defunding of the pension schemes for several decades. Maintaining the current arrangements of funding the pension schemes through gilts would also be less efficient for the Exchequer than defunding the schemes and funding new schemes directly.

2. Option 2 – Implement primary legislation to allow for delegated powers in the Bill (preferred option):

The preferred option is to implement all of the measures within the Bill. This is because this will allow public service workers to have access to high quality defined benefit schemes on a fair and equal basis providing certainty for members, providing fairness for the taxpayer, and long-term sustainability. In addition, measures in the Bill will also improve the terms for judicial resourcing to meet the demands of the future and establish new pension schemes for the beneficiaries of the BBS and NRAM pension schemes.

A description and scale of the key monetised and non-monetised costs

The main monetarised costs of the Bill are:

- The government currently estimates that removing unlawful discrimination back to 2015 will cost on average around £2.5 billion for each year of the remedy period in additional future pension payments to members of those schemes in scope of HM Treasury's consultation. This equates to approximately £17 billion for the remedy period. This reflects the expected cost of members receiving benefits from whichever scheme provides the highest value to them for the remedy period. Responsible authorities will, alongside their regulations, assess the impacts of the core public service pensions measures on a scheme-by-scheme basis.
- This £17 billion figure reflects the schemes covered by HM Treasury's consultation in July 2020. These schemes are all of the unfunded schemes which include the NHS, Teachers, Civil Service, Firefighters, Armed Forces and Police pension schemes with the exception of Judges. These schemes generally include the devolved administrations but not Northern Ireland. The costs for the whole remedy period of those schemes excluded from the above unfunded schemes are:
  i) the Judges pension scheme remedy is estimated to cost £130 million for the remedy period
  ii) the Northern Ireland (including Local Government) pension schemes remedy is estimated to cost £680 million for the remedy period, and
  iii) the Local Government Pension Scheme (England and Wales) remedy is estimated to cost approximately £1.8 billion for the remedy period
- These costs are provided to give a broad indication of the financial impact, and are in addition to the costs already arising from members receiving benefits from the scheme they are currently in.
- There is also the cost of the compensation scheme and refunding tax when members are moving back to the legacy scheme. Unprotected members, defined as those who were not part of transitional protection arrangements, may have overpaid their annual allowance and/or lifetime allowance tax charge during the remedy period. To ensure that members are compensated for this, HMRC are creating an automated process to provide validation of pension scheme member data and calculations from complicated tax and pension datasets. Given the uncertainty around the precise number of individuals in this cohort, the government does not have robust estimates of the cost of this compensation at this stage.
- The costs of removing the discrimination will feed into future employer contribution rates once the 2020 scheme valuations are completed. This measure of the costs will be based on the data and assumptions used in the 2020 valuations and is therefore likely to differ from the costs above. It is only one of many factors that could impact employer contribution rates in the next valuations.
- In order to deliver these changes, the government will contract out the implementation of the measures in the Bill to pension scheme administrators (private sector). Therefore, the *McCloud* related measures in the Bill will require departments to procure the administration of the required changes. The cost of administering these changes may be estimated at a departmental level.
- The newly designed, reformed judicial pension scheme is estimated to cost an additional £35 million per annum, compared to the cost of all judges accruing pension in NJPS 2015 from 1 April 2022 onwards.

- The measures under Part 2 of the Bill are expected to reduce PSND by c.£227m in 2023-24 resulting from the defunding of the existing BBS and NRAM pension schemes.

The main non-monetarised costs of the Bill are:

- The cost of time and energy by members engaging in the process of making a decision on what benefits they would like. This may lead to a decrease in private time for individuals as this time will be occupied by engaging with the process of deciding which benefits are better for them. This process may include using online calculators to identify what type of benefit is better, which may take time to use for some members. However, to mitigate this;
  i) bespoke comms have been provided by schemes to support their members. These have included, but are not limited to, intranet news items, a newly introduced intranet pension remedy presence featuring articles and FAQs, webinars, and the creation of new email shared mailboxes solely for remedy enquiries, and
  ii) a detailed communication strategy is in place, with 'inform, educate and enable' as its fundamental principles, and
  iii) the decision made by the judiciary will be supported by a bespoke 'options pack' comparing the benefits available in each scheme
- Some members may experience a psychological cost due to the lack of understanding of how the measures in the Bill will affect them. Given that these measures legislate for changes that have previously been consulted on, it is reasonable to expect the majority of affected members to be aware of these changes. However, where this may cause uncertainty for members this should be addressed with further comms to members on a scheme-by-scheme basis.
- The measure to increase the MRA from 70 to 75 may have a small negative impact on the diversity growth across judicial office holders (JOHs). Anticipated future improvements in the proportion of women would decrease by an estimated 1.2% to 2.8% per annum for the paid judiciary and by 1.3% to 1.5% for magistrates, while improvements in racial diversity would decrease for the paid judiciary by 0.3 to 0.6% and for magistrates by 0.8% to 1% every year. This effect would vary depending on which JOHs opt to take advantage of the new MRA.
- Members of the BBS and NRAM pension schemes may experience a minor level of inconvenience as a result of the transfer to the new arrangements (for example, if the administrator for the new UKAR pension scheme is different to the administrator for the current schemes, this could result in contact details changing).

A description and scale of key monetised and non-monetised benefits

The main monetarised benefits to the government of the Bill are:

- The 2011 to 2015 reforms to public service pensions are estimated to save over £400 billion across the 50 years following their introduction. The cost of providing additional pension benefits during the remedy period (April 2015 to 31 March 2022) for the main unfunded pension schemes (excluding the judiciary) is estimated to be £17 billion (excluding administration costs). This is around 4% of the savings from the 2011 to 2015 reforms.

- Raising the MRA from 70 to 75 could save the MOJ an estimated £37 million to £97 million in pension liabilities under the current schemes, though the actual impacts may vary depending on judicial retirement patterns. Impacts on the proposed Reformed Scheme would be cost neutral given its proposed features. Operational partners (the Judicial Appointments Commission, the Judicial Office, HM Courts and Tribunal Service and the Judicial College) could make hypothetical annual savings of £4 million to £7 million if increased retention leads to lower recruitment, onboarding and induction training costs.
- For the sitting in retirement provision, it is not expected that there will be significant direct monetised benefits for the affected groups.
- The measures under Part 2 of this Bill are expected to reduce Public Sector Net Debt (PSND) by c.£227million in 2023-24, resulting from the defunding of the B&B and NRAM pension schemes. Some savings would also be made by allowing UKAR to be wound down sooner, as a result of removing long-dated liabilities from UKAR's balance sheet. Directly funding the pension schemes will also be more efficient than the current arrangements.

The main non-monetarised benefits of the Bill are:

- Provide public service workers who were discriminated against with greater certainty of their benefit entitlements.
- Ensure public service pensions continue to reward public servants for their dedicated service, whilst being fairer – especially for lower earners – and more affordable to the taxpayer.
- Support recruitment and retention in the judiciary and ensure the judiciary can continue to meet the demands of the justice system, by providing a newly designed, reformed judicial pension scheme, increasing the judicial mandatory retirement age and making changes to sitting in retirement.
- With an MRA of 75, the number of judges and non-legal members in post could be around 400 higher than if the MRA were to remain at 70 (the equivalent of 5% of the judicial complement at the time the modelling was run). For magistrates, this figure was 2,000 (the equivalent of 15% of the magistrates complement).
- By allowing the reinstatement of recently retired magistrates on the basis of business need, the government and wider society would benefit from a reduced risk of a shortage of magistrates by retaining experienced magistrates when required.
- The main benefit of introducing the SIR provision is to remedy existing Part- time Workers Regulations 2000 (PTWR) discrimination by providing for appointment powers and new sitting in retirement offices for fee-paid judges with a relevant salaried judge under PTWR. The same powers for salaried judges will replace the existing piecemeal legislative provisions by which salaried judges currently sit in retirement.
- Introducing a power to put allowances for judicial office holders on a firmer legal footing will enable greater pay flexibility and provide options to recognise judicial office holders taking on temporary additional responsibilities where needed for the effective administration of justice.
- Legislating to create new schemes for the beneficiaries of the BBS and NRAM pension schemes will provide members with the certainty that their pensions will be paid as planned as the government seeks to wind up UKAR.

The “do nothing” policy option considered would have a negative fiscal impact on the Exchequer, increasing public sector net debt (PSND). The option of implementing all of the measures captured by the Bill is therefore the preferred option. These monetarised benefits will allow PSND to be minimised and the non-monetarised benefits will ensure public service workers are rewarded for their dedicated service whilst making them fairer – especially for lower earners.

Assessment of the wider impacts

a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**
No, the core measures in the Bill will apply to membership of public service pension schemes and other activities within the public sector. It ensures public service pensions are fairer for all public servants and more affordable for the taxpayer. This will correct the discrimination identified by the courts and ensure all members are treated equally by providing for pensionable service to be in reformed schemes from April 2022. The judicial measures in the Bill will support recruitment and retention.

b) **Disproportionate burdens on small businesses**
No, small businesses are defined in the better regulation framework guidance[4] as those employing between 10 and 49 full-time equivalent (FTE) employees. These changes should have little or no incremental implications for small businesses. This is because pension administrators for public service pension schemes are usually responsible for a very large number of members and so require considerable numbers of employees to carry out the tasks required of such an administrator. These tasks include keeping records, collecting contributions, paying benefits to members and reporting breaches where required. Therefore, none of the pension administrators for public service pension schemes are expected to be defined as small businesses under the better regulation framework, and therefore no impact is expected on this particular group from delivering the measures in the Bill.

c) **Significant gross effects despite small net impacts**
No, as per the above analysis there should be limited gross and net effects given the unique circumstances of the measures captured by the Bill.

d) **Significant wider social, environmental, financial or economic impacts**
No, the Bill will correct the discrimination identified by the courts. The effects of the measures in the Bill on those with protected characteristics have been summarised in the Equality Impact Assessment which has been published alongside this document, which concludes that the measures do not create any unjustified differential impacts on those with protected characteristics.
The measures in scope of the Bill do not have any unintended impact on the environment either.

The Bill will have financial and economic impacts on the Exchequer, these are a result of meeting the policy objectives of this Bill and are summarised under the sections above on monetised costs and benefits. To meet the policy objectives, the government does not envisage significant wider financial

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872342/better-regulation-guidance.pdf

or economic impacts other than those explored throughout this assessment, which are either cost or benefits to the Exchequer or impacts outside of the scope of regulatory provision.

e) Significant novel or contentious elements

No, little controversy is expected on the intent to remedy and equalise treatment of all members. A few elements of measures in the Bill may be controversial with unions, opposition and scheme managers; however, these are required to ensure the Bill meets its main policy objective of ensuring equal treatment for all members within each of the main public service pension schemes.

The key novel or contentious element of this Bill are the powers for retrospective changes to benefit entitlements. Retrospective changes are sometimes seen to be controversial with stakeholders because they argue the removal of accrued pension rights without consent is unlawful. However, these retrospective changes are required for affected members, for example to remove previous discrimination, write off existing overpayments of benefits, or to allow for continued payment of higher amounts in cases where to do otherwise would lead to hardship even though the reduction would be in response to removing discrimination. The Bill also does not allow existing tapered protection members (i.e. members who were between 10 and 13.5[5] years of normal pension age who could stay in their legacy scheme for an additional period after 2015 before being moved to their reformed scheme) to maintain a mix of legacy and reformed scheme pension rights in relation to service between 1 April 2015 and 31 March 2022, because such an approach would perpetuate discrimination on the grounds of age. However, the Bill provides for the mitigation of any detrimental effects on such members.

Given the key area of controversy above, a consultation was run between 16 July and 11 October 2020 to allow stakeholders to input their views on these measures. The subsequent policy set out in the consultation response, and now being legislated for through the Bill, took these stakeholder views into consideration. More detail of the responses for the core measures of this Bill can be found in the government's consultation response published on 4 February 2021.[6]

The measures under Part 2 of the Bill were agreed with the Trustees of the NRAM and B&B schemes. Following agreement from the Trustees, scheme members were notified of the government's policy intentions prior to the government announcing its intended approach in the 2020 Budget.

Contents:

[5] In the police and firefighters' legacy pension schemes, tapered protection was for those between 10 and 14 years of Normal Pension age.
[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958635/Public_Sector_Pensions_Consultation_Response.pdf

Introduction

1.1 When public service pension reforms were introduced in 2015 the government agreed, following discussions with trade unions, to allow those closest to retirement to stay in their legacy schemes for an additional period. Following a challenge in the Courts which found this to be directly discriminatory on the grounds of age (and indirectly discriminatory on the grounds of sex and race), all eligible members will be able to choose between legacy and reformed scheme benefits from 2015 to 2022 (or to benefit from an extension of the Local Government pension scheme underpin), so that they can elect the option most beneficial for them. Following a public consultation, the majority of members will be able to make this choice at retirement. Judicial scheme members will make an immediate choice once provisions are in force.

1.2 The Public Service Pensions and Judicial Offices Bill (henceforth, the Bill) provides the legislative framework for correcting the discrimination identified in the 2015 public service pension reforms. It provides a range of powers and duties to implement the remedy. The Bill also includes wider measures, including on judicial pay, judicial Mandatory Retirement Age (MRA) and the creation of new pension schemes for the members of the Bradford & Bingley Staff (BBS) and NRAM pension schemes, which currently reside under UK Asset Resolution (UKAR).

1.3 All of the substantive pension measures apply UK wide, although Northern Ireland has primary legislative competence in this area (except for the armed forces, certain members of the Northern Irish judiciary and UK civil service for whom provision is by way of UK-wide schemes). Accordingly, the Bill makes changes to the Public Service Pensions Act (Northern Ireland) 2014 which will mirror the amendments to UK legislation. The judicial MRA and related measures apply to judicial office holders across the UK. Some elements however do not include judicial office holders whose terms of appointments are a devolved matter for the Scottish Parliament. Judicial allowance measures apply to all judicial offices across the UK (for whom the Lord Chancellor has the power to decide renumeration), including Northern Ireland and Scotland.

1.4 This document serves as an assessment of impacts to support consideration of the Bill, the purpose of which is twofold:

- summarise the main powers in the Bill, and
- describe the anticipated main impacts of these measures (costs and benefits) and affected groups

1.5 The document is therefore structured as follows:

- **Chapter 1** summarises the purpose of the Public Service Pensions and Judicial Offices Bill and its main powers, and
- **Chapter 2** discusses each of the main policy themes in further detail, describing the main anticipated impacts of these measures

Chapter 1: The Public Service Pensions and Judicial Offices Bill

The purpose of the Bill

2.1 This Bill recommits to the objectives underpinning the 2015 reforms: greater fairness between lower and higher earners, fairness to the taxpayer, future sustainability and affordability. These objectives are just as important today as they were then. Measures in the Bill deliver changes to public service pensions which continue to put fairness at the heart of future pensions provision, and to provide members with greater certainty of their benefit entitlements.

2.2 This Bill will:

- deliver changes to public service pension schemes to ensure access to high quality defined benefit schemes on a fair and equal basis - providing certainty for members, fairness for the taxpayer, and long-term sustainability
- improve the terms for judicial resourcing to support the effective functioning of our justice system, and to meet the demands of the future, and
- confer the necessary powers on the Treasury to establish new public pension schemes for the beneficiaries of the BBS and NRAM pension schemes.

2.3 Public service pensions are some of the most generous and fair pension schemes available in the UK, ensuring those who dedicate their working lives to public service are rewarded appropriately in retirement. These workers provide vital services that everyone counts on, particularly as the UK faces down the coronavirus pandemic. The Bill ensures that these pensions remain among the very best available whilst being affordable and sustainable into the future.

2.4 The UK justice system is known across the world for its excellence, objectivity and impartiality. This is due, in no small part, to the exceptional expertise of the courts and tribunal judges, our coroners, and our valued magistrates. This Bill brings forward bespoke measures required to support them including providing for a newly designed, reformed career average judicial pension scheme, increasing the mandatory retirement age of judicial office holders to 75, extending the option of sitting in retirement to the fee-paid judiciary and creating a new 'sitting in retirement' office which will allow policies to cater appropriately for sitting in retirement, and putting judicial allowances on a firmer legal footing. Taken together, the measures in the Bill mark a significant step change to ensure that the government can continue to support the world class judiciary, for which the government are so rightly renowned, to meet the demands of the future.

Background

McCloud judgment

2.5 In April 2015 most of the main public service pension schemes were reformed; the cost of the legacy schemes had significantly increased over the previous decades, with most of those costs falling to the taxpayer. To protect against unsustainable increases in costs, the indexation of pensions in payment and deferment had been changed to CPI and employee contribution rates had been increased in the unfunded schemes.[7] In addition, in 2015 (or 2014 for the Local Government Pension Scheme in England and Wales) reformed schemes were introduced with

[7] Most of the public service pension schemes are unfunded. There are no investments and the schemes operate on a pay-as-you-go basis. The public authorities responsible for meeting the costs of the schemes use pension contributions of employees and employers to help offset the cost of payments to current pensioners. The Local Government Pension Schemes are funded schemes, where employer and employee contributions as used to create investment assets in a pension fund, with those assets and associated returns used to pay for current and future pensions.

career average revalued earnings design and increased Normal Pension Ages, alongside the introduction of a cost control mechanism. They were also progressive, providing greater benefits to some lower paid workers.

2.6 As part of the 2015 reforms for the main unfunded schemes, those closest to retirement age were allowed to stay in their legacy schemes for an additional period. This transitional protection was provided following discussions with member representatives and was intended to protect and give certainty to people who were close to retirement. However, in December 2018 the Court of Appeal found that this part of the reforms unlawfully discriminated against younger members of the judicial and firefighters' pension schemes, as transitional protection was only offered to older scheme members.[8]

2.7 In July 2019 the government confirmed that it accepted the Court's judgment had implications for the other public service schemes that had similar transitional arrangements.[9]

2.8 The declarations made by the employment tribunals further to the Court of Appeal decision relied on section 61 of the Equality Act 2010 (known as 'the non-discrimination rule') as the legal basis for treating the claimants as having satisfied the relevant provisions of the pension scheme regulations that contain transitional protection, notwithstanding that those claimants were younger than the provisions purported to allow. The retrospective nature of the remedy declared by the tribunals requires the retrospective approach being taken in the Bill.

2.9 Between 16 July and 11 October 2020, the government consulted on two options (an immediate choice exercise or a deferred choice underpin (DCU)) to remedy the discrimination.[10] MoJ and DLUHC[11] published separate consultations which both covered similar aspects to the HMT consultation, but because of the particular features of their schemes, the judiciary and the Local Government Pension Scheme have different remedy models to resolve the discrimination.

2.10 Following consultation, the government is proceeding with the DCU for the unfunded, non-judicial schemes, which enables members to make a choice as to whether to take legacy or reformed scheme benefits for the remedy period when their pension benefits become payable.[12] The Bill provides for effective implementation of this remedy.

2.11 The reformed schemes themselves were not found to be discriminatory, and the government wants to ensure that all members are treated equally in respect of the scheme design available to them after the discrimination has been addressed.

2.12 Therefore, all public servants who continue in service from 1 April 2022 onwards will do so as members of their respective reformed scheme. Legacy schemes will be closed in relation to

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[8] *Lord Chancellor and another v McCloud and others, Secretary of State for the Home Department v Sargeant and others* [2018] EWCA Civ 2844.

[9] https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725

[10] This covered the following schemes: NHS in England and Wales, NHS Scotland, Teachers in England and Wales, Teachers in Scotland, Firefighters in England, Firefighters in Wales, Firefighters in Scotland, Police in England and Wales, Police in Scotland, UK Armed Forces, Civil Service in Great Britain, and the Civil Service (Others) scheme. Changes to the judicial pension schemes, the Local Government Pension Scheme in England and Wales, and the equivalent scheme in Scotland, as well as the public service pension schemes in Northern Ireland have been consulted on separately.

[11] The consultation was undertaken by DLUHC's predecessor Department, the Ministry of Housing, Communities and Local Government (MHCLG), which for consistency is referred to by its current name, DLUHC, throughout this document.

[12] Those who have already retired, and the survivors of deceased members, will be given a choice as soon as practicable.

service after 31 March 2022,[13] closing the remedy period, for which members in scope have a choice of benefits.

2.13 Additionally, alongside the response to the consultation, the government also provided an update on the cost control element of the 2016 valuations process. In this update, the government set out that the cost control mechanism, which had been paused as a result of uncertainty caused by the litigation, would be restarted. The update also made clear that the costs associated with the increased value of schemes to members as a result of the *McCloud* remedy will be taken into account in the completion of the process, as these are 'member costs'.

2.14 While the valuation process is not yet complete, early estimates indicate that some ceiling breaches are likely, which would usually result in a reduction to member benefits. The government has decided that there should not be reductions to member benefits as a result of completing this process for the 2016 valuations, and the Bill includes measures to waive the impact of any such ceiling breaches.

Judicial pensions *McCloud* judgment

2.15 The judiciary will be offered an 'immediate choice' via an options exercise. This will allow judges to consider their own career and pay progression, before making their decision on scheme membership for the remedy period. While most judges are better off returning to the legacy schemes, some may find they are better off choosing 2015 reformed scheme membership. Subject to Parliamentary timetables and approval, MoJ anticipate the options exercise taking place in autumn 2022, after the introduction of a new judicial pension scheme in April 2022 (see paragraphs 2.25 to 2.27).

Local Government *McCloud* judgment

2.16 The Local Government Pension Scheme (England and Wales) (LGPS) was considered to be affected by the *McCloud* judgment too, but differences in how transitional protection worked in the LGPS meant the scheme was not in scope of the HMT consultation. Instead, DLUHC consulted separately, between 16 July and 8 October 2020.[14]

2.17 LGPS transitional protection was provided through an underpin. All active scheme members moved to the reformed LGPS England and Wales pension scheme in April 2014,[15] but protected members were provided with a guarantee that their pension at retirement would not be any lower than it would have been in the legacy final salary scheme. Because of these differences in transitional protection, there are separate measures in the Bill allowing LGPS responsible authorities to remove the discrimination from the LGPS. This will be achieved by extending the underpin of the scheme and by ending underpin protection for all members from 31 March 2022.

2.18 From 1 April 2022, all active members will accrue benefits in the reformed LGPS scheme, without an underpin.

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[13] There are two narrow exceptions to this – (a) for New Fair Deal transfers and (b) for weighted accrual provisions.

[14] The devolved administrations also consulted separately regarding the LGPS in Scotland and Northern Ireland.

[15] April 2015 for LGPS Scotland and Northern Ireland.

Judicial Allowances

2.19 The Lord Chancellor has the power to determine allowances for some, but not all, of the judicial offices for which he has the responsibility for remuneration. The judicial allowances measure will provide the ability to pay allowances to judicial office holders (JOHs) where this does not already exist.

2.20 As judicial salaries are protected by statute from being reduced, the provision of allowances enables greater pay flexibility and provides options to support judicial recruitment and to recognise JOHs who take on temporary additional responsibilities to ensure the effective administration of justice.

Judicial Mandatory Retirement Age

2.21 Having a mandatory retirement age (MRA) is a requirement of judicial office which helps to preserve public confidence in the health and capacity of the judiciary while protecting judicial independence by alleviating the need for individual assessments of capability. Since the MRA was set at 70 for the majority of JOHs over 25 years ago, the structure and operation of courts and tribunals have developed, alongside the demands placed upon them, while average life expectancy in the UK has increased significantly, with a greater number of people now working until later in life.

2.22 The government consulted last year on proposals to increase the MRA. Following careful consideration of over one thousand responses, the government decided to raise the MRA to 75 to help ensure the judiciary can continue to meet the demands of the courts and tribunals by retaining valuable judicial expertise for longer and attracting a greater number of potential candidates from diverse backgrounds.

2.23 In addition, to further support the resourcing of magistrates' courts, the Bill will include a transitional provision to allow magistrates between the age of 70 and 75 on commencement of the new MRA to apply to return to the bench, subject to business needs. Coroners will also be permitted to sit beyond 75 in order to complete an ongoing case.

2.24 Consistent with the overall objective of ensuring the effective operation of the courts and tribunals, the Bill will also make provision in relation to sitting in retirement. This currently allows salaried judges to retire, be appointed to fee-paid office without a Judicial Appointments Commission process and accrue judicial pension benefit in the fee-paid office whilst drawing their pension benefit from their pre-retirement salaried office. While salaried judges can apply to sit in retirement, this option is not equally available to fee-paid judges under current legislation. Measures in the Bill will extend sitting in retirement to fee-paid JOHs that have a relevant salaried JOH. It is hoped that, in time, the changes to judicial pension and the higher MRA will lead to improvements in recruitment and retention of JOHs that will reduce the business need for judges to sit in retirement. However, drawing upon our retired JOHs remains an important flexibility to help the judiciary meet immediate demands where there may be temporary shortages. Extending powers for judges to be appointed to sit in retirement to a wider range of judicial offices, including relevant fee-paid offices, is designed to enhance this flexibility.

Judicial Pensions

2.25 The introduction of the 2015 pension reforms was particularly detrimental to many judges, as membership of the New Judicial Pension Scheme (NJPS) was significantly less financially beneficial compared to the legacy pension schemes. A significant reason for this was primarily because NJPS is a tax-registered scheme, meaning members are subject to annual and lifetime allowance limits on the tax-relieved benefits accrued within the scheme. In 2018, the Senior Salaries Review Body (SSRB) published its Major Review of the Judicial Salary Structure which highlighted escalating recruitment and retention problems at all levels of the judiciary. It concluded that these problems were caused principally by the 2015 pension reforms and subsequent changes to pension tax thresholds.

2.26 There are several reasons closely related to the judiciary's unique constitutional role that mean pensions tax issues are particularly relevant to judicial pension schemes and are impacting recruitment. For example, salaried judges are not able to work in private practice after taking up office and they are also appointed on the understanding that they will not return to private practice once they have retired. Their options for supplementing their earnings are therefore limited. Furthermore, judges tend to enter the judicial pension arrangements later in life than high earners in other public service schemes who have generally moved through the career grades.

2.27 Responding to the SSRB's review in June 2019, the government introduced a temporary Recruitment and Retention Allowance for certain judges who were eligible to join NJPS and made a commitment to develop a pensions-based solution for the whole judiciary, which would address the recruitment and retention problems identified by the SSRB. In July 2020, the government published a consultation setting out its plan to introduce a reformed judicial pension scheme that would be in line with the main principles of the 2015 reforms but also retain some key elements of the legacy schemes. For this reason, the scheme contains many features of the 2015 schemes, such as being designed so that benefits are based on career average earnings rather than final salary and the normal pension age is linked to State Pension age. Crucially, to address the recruitment and retention issues, the reformed scheme will be unregistered for tax purposes, like the legacy schemes. The government's response to the consultation confirmed that this scheme will be implemented, as outlined in the consultation, in April 2022.

UK Asset Resolution

2.28 This Bill includes measures to take the necessary powers to establish one or more new, public service pension schemes for the beneficiaries of the BBS and NRAM pension schemes, which are currently sponsored by UK Asset Resolution (UKAR). The existing schemes will then be wound up, with the assets and liabilities of the schemes transferred to the Treasury.

2.29 UKAR was established in 2010 as the 100% government-owned holding company for the closed mortgage books of NRAM (formerly part of Northern Rock) and Bradford & Bingley (B&B), two banks that were taken into temporary public ownership in 2008 as part of the then government's interventions to protect financial stability during the financial crisis.

2.30 Both B&B and Northern Rock had defined benefits pension schemes in place for their employees prior to their nationalisation. At the point of nationalisation, these schemes were closed to new members. The schemes then resided under UKAR, and formerly its subsidiaries (B&B and NRAM).

2.31 On 29 October 2021, the government completed a sale returning B&B, NRAM and their remaining assets to private ownership. However, through UKAR, the government has retained the pension schemes, as it was determined that obtaining a sale of B&B and NRAM which achieved value for money would be unlikely if the purchaser was required to take on the pension schemes.

2.32 The government now intends to wind up UKAR. The government is therefore seeking an alternative long-term solution to provide a secure, long-term solution for the pensions, providing members with the reassurance that their pensions will continue to be paid. To achieve this, the government intends to legislate to create one or more new, central government pension schemes, and transfer the members of the BBS and NRAM pension schemes to this new scheme. The NRAM and BBS schemes will then be defunded and closed. The Bill also takes powers to transfer additional relevant pensions outside the BBS and NRAM schemes to central government.

2.33 This will create a more efficient structure for the government to meet its liabilities towards these pensions than sponsoring the schemes through UKAR. It will also generate savings through removing long-dated liabilities from UKAR's balance sheet, and free up public resource by transferring the assets of the existing schemes to government.

2.34 This is a similar approach to that taken with regard to certain parts of the Royal Mail pension scheme as part of Royal Mail's privatisation in 2013.

Approach taken for this Assessment of Impacts

2.35 The delegated powers of this Bill have been reviewed, and consideration given to whether the measures are classified as regulatory provisions as per the guidance set out in the Better Regulation Framework.[16] As the framework sets out, an impact assessment (IA) should be prepared for all significant regulatory provisions[17] as a standard of good policy making.

2.36 These proposals are spending measures rather than regulation since they primarily affect public spending and the public service workforce. This has been discussed with the Better Regulation Executive.

2.37 In determining the approach to producing this assessment of impacts for the Bill, we have also made reference to the Regulatory Policy Committee's (RPC) guidance on the assessment and

[16] 'Better Regulation Framework', page 6 – https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872342/better-regulation-guidance.pdf

[17] According to the Better Regulation Framework, a "regulatory provision", in relation to a business activity, means a statutory provision which – (a) imposes or amends requirements, restrictions or conditions, or sets or amends standards or gives or amends guidance, in relation to the activity, or (b) relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which relate to the activity. The framework sets out further detail and exemptions.

scoring of primary and secondary legislation.[18] The Bill falls out of these bounds and so an assessment of impacts has been produced, in line with the guidance.

2.38 This assessment of impacts sets out, at a descriptive level, the anticipated impacts of the provisions within the Bill. We do not intend to produce any IAs for scrutiny by the RPC, because public service pension schemes are excluded from the Better Regulation Framework definition of regulatory provision, and are therefore these measures are out of scope. However, proportionate analysis has been developed for these measures, in line with best practice, as detailed in Chapter 2.

Equalities

2.39 The government has considered the impacts of the measures that will apply across all of the main public service pension schemes. Analysis has previously been undertaken by HM Treasury, Ministry of Justice (MoJ), Department for Levelling Up, Housing and Communities (DLUHC) to inform the measures relevant to those departments as set out in the Bill.

2.40 Updated analysis for all Bill measures will be made available alongside introduction of the Bill. Consideration of impacts on those with protected characteristics will continue to take place as the reforms move from policy development through to implementation, via the delegated powers in this Bill.

2.41 The Department of Finance (DoF) in Northern Ireland has taken forward its own statutory IA where necessary and the extension of scope to devolved schemes is subject to the agreement of the NI Assembly where an LCM is being sought.

[18] https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019

Chapter 2: Measures included in the Bill and anticipated impacts

Public Service Pensions Bill 2013, Impact Assessment

3.1 A briefer impact assessment that considered the impact on the Exchequer and in turn the impact on UK taxpayers was accepted in 2012 for the previous Public Service Pensions Bill.[19] This too was based on the position that the measures in the PSPB 2013 were public spending measures rather than regulation.

3.2 As then, segmented data on the minority of public service pension scheme employers who are classified to the private sector is not readily available. The majority of these are closely connected with the public sector which means they get most or all of their funding from the public sector.

3.3 The system changes necessary to provide detailed segmented information on private sector employers would take several years to design and implement. Additionally, to implement at a time when schemes' administration is stretched because it is focussing on the design and delivery of the *McCloud* remedy would not be feasible.

3.4 Such systems changes would also be expensive for UK taxpayers because:

- they would add to employers' costs through the general increase in schemes' administration charges and through the changes that private sector employers would need to make to their own systems to provide information to public service pension scheme administrators
- this could also not take priority over the implementation of the *McCloud* remedy, as that would mean not delivering the remedy, or a delay to the delivery of the remedy already required by the courts, and
- treating public sector remuneration changes, for example as required by the courts or as negotiated with representative bodies, as being subject to regulatory impact assessments would raise major new legal and policy issues, including the prospect of conflict between legal requirements

3.5 Therefore, the previous IA focussed on the 2011 to 2015 reforms to the main public service pension schemes which included:

- increasing employee contribution rates for unfunded schemes, so costs are shared more fairly between members and employers and taxpayers in general, and changing the measure by which pensions in payment and deferment are indexed from RPI to CPI
- switching from final salary to career average design to provide fairer pensions for all members – especially lower earners, and

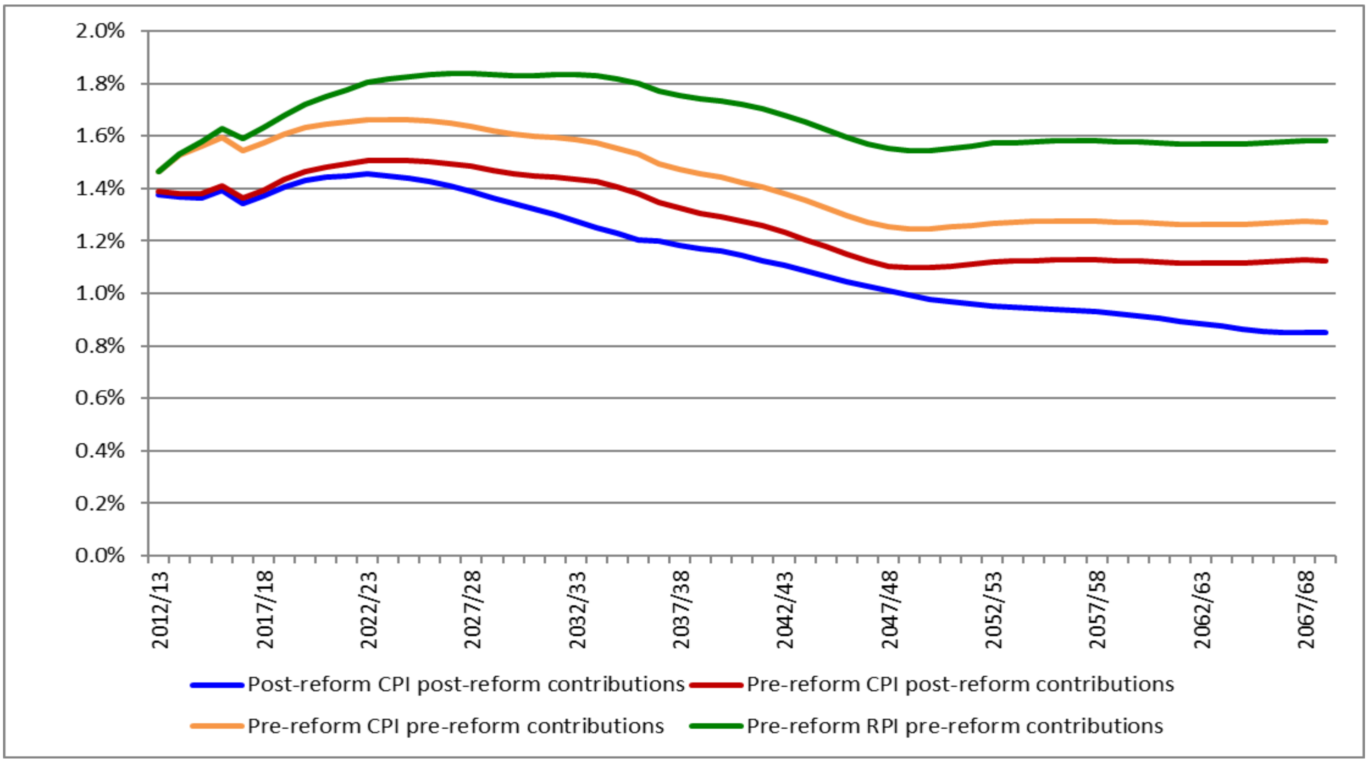
[19] https://www.parliament.uk/globalassets/documents/impact-assessments/IA12-023.pdf

- linking Normal Pension Ages (NPAs) to the state pension age to tackle the rise in life expectancy (as assessed in the previous IA)

Taken together, these changes were forecast to save c.£400 billion over 50 years.

3.6 The reforms were a result of extensive work carried out by the Independent Public Service Pensions Commission during 2010 to 2011 and long periods of consultation and discussions with unions both about general and scheme-specific issues.

Chart 1: Forecast impact of public service pension scheme reforms on percentage of GDP spent on public service pensions.



Source: Based on OBR assumptions for the Fiscal Sustainability Report (FSR) 2017

3.7 Chart 1 demonstrates the effect of each of the changes in isolation, for example, pre or post the reform to pension designs, change from RPI to CPI and pre or post contribution reform:

- the **green line** is pre-reforms, pre-contribution reform and still using RPI to uprate pensions annually which is the highest cost and therefore highest percentage of GDP
- the **yellow line** is still pre-reforms, and pre-contribution reform but has changed from RPI to CPI which has brought the cost down considerably
- the **red line** is pre-reforms but post-contribution reform and has also changed to CPI which brings the cost down even further, and
- finally, the **blue line**, which are the current pension arrangements, so post-reforms, post-contribution reforms and using CPI which shows the lowest cost and therefore the biggest savings

Each line in Chart 1 shows how each change brought the cost of public service pensions down, making them more affordable.

3.8 The rationale from the Public Service Pensions Bill 2013 impact assessment for producing a briefer IA supports our rationale for completing this Assessment of Impacts.

Public Service Pensions and Judicial Offices Bill 2021, Assessment of Impacts

3.9 This chapter builds on the analysis on pages 1 to 10 above. It provides more detail on why none of the measures in the Bill have a regulatory provision on business. This section also identifies any further costs or benefits relevant to any of the measures in the Bill. This is explored by grouping the measures into five sections:

- Public Service Pension reform (*McCloud*) measures
- Reformed Judicial Pension Scheme measures
- Judicial Mandatory Retirement Age (MRA) measures
- Judicial allowance measures, and
- UK Asset Resolution (UKAR) measures

Public Service Pension reform (*McCloud*) measures

3.10 The public service pension reform measures have been analysed to identify the main impacts and affected groups, alongside a brief description of the delegated powers for these measures.

3.11 None of the public service pension reform measures in the Bill will have a regulatory impact on businesses. This is because the core measures of the Bill will limit the scope strictly to public service pensions, although the measures may have an impact on:

- administrators as certain pension schemes are administered by private companies, and
- private sector employers that participate in public service pension schemes

3.12 The cost of administering these changes will be estimated at a departmental level. Any increase in costs to the private sector would be as a result of fulfilling government procured contracts, and not as a result of any imposed regulatory change.

3.13 Additionally, because there is significant private sector participation in public service pension schemes, some private sector employers will be affected by any changes to employer pension contributions. The remedy will affect such contributions via scheme valuations and the cost control mechanism. Again, this is an indirect consequence of the measures in the Bill, and not a direct cost or regulatory obligation.

3.14 The main costs identified with these measures are that the *McCloud* and *Sargeant* judgments are expected to increase pensions liabilities for the main, unfunded pension schemes (excluding the judiciary) by an additional £17 billion in pension liabilities over the next 4 to 5 decades. This £17 billion figure reflects the cost of remedy for the schemes covered by HMT's consultation in July 2020, which are the NHS, Teachers, Civil Service, Armed Forces, Firefighters and Police pension schemes with the exception of Judges. These schemes generally include the devolved administrations but not Northern Ireland. The costs for the whole remedy period of those schemes excluded from the above unfunded schemes are:

- the Judges pension scheme remedy is estimated to cost £130 million for the remedy period
- the Northern Ireland (including Local Government) pension schemes remedy is estimated to cost £680 million for the remedy period, and
- the Local Government Pension Scheme (England and Wales) remedy is estimated to cost about £1.8 billion for the remedy period

3.15 However, the main overall benefits of the public service pension reform measures taken together greatly outweigh the costs above. This is because the cost identified for the public service pension remedy measures, equates to around 4% of the overall savings from the 2011 to 2015 reforms. These overall benefits are:

- the 2011 to 2015 reforms to public service pensions were estimated to save over £400 billion across the 50 years following their introduction
- the remedy provides public service workers who were discriminated against with greater certainty of their benefit entitlements, as they will make their choice either at retirement or as soon as possible if they have already taken pensions in payment, and
- ensure public service pensions continue to reward public servants for their dedicated service, whilst being fairer – especially for lower earners – and more affordable for taxpayers in general

3.16 From the above benefits and costs for the measures relating to public service pension reforms, the benefits of implementing the measures in the Bill are far greater than a “do nothing” policy option as they ensure access to high quality defined benefit schemes on a fair and equal basis - providing greater certainty for members, fairness for the taxpayer, and long-term sustainability.

3.17 The indirect costs on the private sector are explored in 3.11 to 3.13.

3.18 The Bill also includes measures to waive the impact of any ceiling breaches following the completion of the cost control element of the 2016 valuations. This means no members will have their benefits reduced as a result of the 2016 valuations. There is no direct impact expected on the private sector as a result of these measures.

Reformed Judicial Pension Scheme measures

3.19 The measures in this Bill to reform the judicial pension scheme aim to resolve the recruitment and retention issues faced within the judiciary, highlighted by the Senior Salaries Review Body’s Major Review in 2018, and ensure the effective running of the justice system.

3.20 None of the measures relating to reforming the judicial pension scheme in the Bill will have a regulatory impact on businesses. This is because these measures will require the government to fund the judicial pension administrator to deliver the required changes, resulting in a cost to the government, and a net gain to the pension administrator. Although the administrator would see an increase in costs, this is a result of fulfilling government procured contracts, and not as a result of any imposed regulatory change from these measures.

3.21 The main costs identified with these measures are currently estimated to result in a long-term employer contribution cost of £141 million per annum (or 37.2% of pay based on current judicial payroll of £380 million per annum). This amounts to an increase of around £35 million per annum compared to the cost of all judges accruing benefits in NJPS.

3.22 However, there are numerous benefits that reforming the judicial pension scheme will bring:

- supporting the effective operation of the justice system by addressing the recruitment and retention issues that we face within the judiciary
- increased attractiveness of judicial office, ensuring that the best legal minds apply to join the bench, maintaining the judiciary's world-renowned reputation, and
- ensuring that we are able to maintain the judiciary's reputation so that the UK can continue to attract foreign litigation, which benefits the wider economy and the legal services sector as a whole

3.23 In summary, no regulatory impact is intended for any measure in the Bill relating to the reformed judicial pension scheme. The government provides funding to the pension administrator to deliver the required changes for the judicial pension reforms, resulting in a cost to the government and a net gain to pension administrators. Although administrators would see an increase in costs, this is a result of fulfilling government procured contracts, and not as a result of any imposed regulatory change.

Judicial Mandatory Retirement Age (MRA) measures

3.24 The MRA measures in this Bill are designed to support recruitment and retention in the judiciary and ensure our judiciary can continue to meet the demands of the justice system by increasing the judicial MRA and making consequential changes.

3.25 MoJ undertook an impact assessment for the main measure to raise the MRA of JOHs to 75,[20] as part of its consultation on this matter.

3.26 This assessment identified that there were no monetised costs for 'main affected groups' identified. Consequently, there was no cost impact to private companies identified.

3.27 The assessment also did not identify any non-monetised impacts for private companies or any monetised benefits for private businesses.

3.28 This impact assessment identified numerous benefits. Increasing the MRA helps address ongoing issues of recruitment and retention within the judiciary and will allow judicial expertise to be retained for longer. Analysis of retirement trends suggest that with an MRA of 75, the number of judges and non-legal members in post could be around 400 higher than if the MRA had remained at 70 (the equivalent of 5% of the judicial complement at the time the modelling was run). For

[20] https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age/supporting_documents/mraimpactassessment.pdf

magistrates, this figure was 2,000 (the equivalent of 15% of the magistrates complement). Increasing the MRA will also benefit individual judges, magistrates and coroners in deciding when to retire and may also give them more time to progress to more senior roles.

3.29 Raising the MRA to 75 has the potential to result in savings in respect of pension liabilities. Under the current schemes, increasing the MRA from 70 to 75 could result in a £37 million to £97 million saving in pension liabilities (depending on judicial recruitment patterns). These savings could though be returned to members via an increase in benefits as almost all judges would benefit from an increased pension value if they chose to stay longer, apart from those who have reached the JUPRA service cap or built up pension pots approaching the lifetime tax allowance.

3.30 The change in MRA will be cost-neutral for the proposed Reformed Judicial Pension scheme given its proposed features.

3.31 It will also be cost neutral for the pension schemes to which coroners belong (Local Government Pension Schemes) due to late retirement uplifts.

3.32 Potential savings in judicial recruitment, onboarding and induction training were also identified, though these are conditional on increased retention. These savings will benefit the Judicial Appointments Commission, the Judicial Office, HM Courts and Tribunals Service and the Judicial College. An increase to the MRA from 70 to 75 is expected to result in a total average annual saving for recruitment, onboarding and induction costs for both the paid judiciary and the magistracy of between £4 million to £7 million per year.

3.33 Related to the change to the MRA is the measure to implement new provisions for sitting in retirement. Due to multiple variables which cannot be quantified at this stage, it is not possible to accurately assess the likely costs of this measure. Variables include the specific business needs which are still to be determined by the subsequent non-statutory policy and the likely uptake from eligible JOHs which may be influenced by the actual retention of JOHs arising from the higher MRA. However, it is anticipated that costs resulting from judges sitting in retirement will be administrative only; that is, related to consideration and approval of requests to sit in retirement and for the operation of the relevant pensions' provisions. There will not be an increased cost to the operation of the courts and tribunals as approvals for judges to sit in retirement and subsequent sitting day bookings will be subject to business need and existing operational budgets.

3.34 The key benefits of the sitting in retirement measure will be remedying existing discrimination against fee-paid judges and retaining flexibility to meet business need through judges sitting in retirement, ensuring the effective administration of justice.

3.35 In summary, no business impact is expected because the changes being made as part of the MRA provisions (including the transitional reinstatement provision for magistrates and sitting in retirement) relate wholly to the judiciary. Whilst pensions administration is mostly carried out by the private sector and will be impacted by some of the provisions, this impact arises not through the regulation but as a result of fulfilling government procured contracts.

Judicial allowance measures

3.36 There are inconsistencies within current legislation meaning that the Lord Chancellor has a statutory power to determine the provision of an allowance to some, but not all, JOHs. The judicial allowance measures set out in this Bill will provide the statutory basis for the Lord Chancellor to determine allowances, where appropriate, in addition to salaries and expenses, for all posts for which the Lord Chancellor is responsible for remuneration. In addition, similar measures will also be introduced for devolved posts in Scotland and Northern Ireland.

3.37 The government does not expect any impact on business from these measures.

UK Asset Resolution measures

3.38 The benefits of the UKAR measures in this Bill are:

- providing a secure, long-term solution for the pension benefits of the members of the BBS and NRAM pension schemes;
- creating a more efficient structure for the government to meet its pension liabilities towards the beneficiaries;
- allowing UKAR to be wound up approximately 30 to 40 years sooner than possible if it were to retain sponsorship of the schemes, and
- freeing up public resource resulting from transferring the assets and liabilities of the BBS and NRAM pension schemes to the Exchequer (resulting in a c.£227.3m reduction in PSND in 2023-24);

Government has borne the costs of these pensions since B&B and Northern Rock were nationalised in 2008, so there are no new costs to the government from these measures. Government is not assuming any new liabilities as a result of the action it is taking.

3.39 The fiscal benefit of the UKAR measures is a reduction in public sector net debt by c.£227.3m in 2023-2024. This will be delivered through sales of the schemes' assets. After the members are transferred to the new scheme, the government will be directly liable to make the pension payments (starting at a cost of c.£35min 2024-2025). However, payment of the pensions is a liability that the government already bears through its ownership of UKAR.

3.40 UKAR have retained other liabilities following the return of B&B and NRAM to private ownership, but these liabilities are significantly shorter dated than UKAR's pension liabilities. Relieving UKAR of its pension liabilities will allow the government to wind it up sooner, generating additional savings for the government as this will remove the cost of meeting reporting and governance requirements.

3.41 No regulatory requirements for private firms are set to arise from the UKAR measures in this Bill. The pensions will be administered by a private firm, but the current schemes are also administered by a private firm. Therefore, the Bill does not create any new regulatory requirements, so the new administrator will only have to comply with existing requirements.