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17 August 2023

LGPS (NI) Consultation
Department for Communities
Local Government & Housing Regulation Division
Level 4
Causeway Exchange
1-7 Bedford Street
Town Parks
Belfast, BT2 7EG

Dear Sir/Madam,

Response to the Consultation on the McCloud Remedy in the Local Government Pension Scheme (Northern Ireland)

I am responding to the above consultation on behalf of the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC), which is the public body responsible for administering the Local Government Pension Scheme for Northern Ireland (LGPS (NI)). While I understand the need for a five-week consultation so that Regulations can be made by 1 October 2023, this consultation proposes fundamentally changing the underpin and its scope and is a significant shift in policy from the 2020 consultation. The regulations relating to the underpin have increased from two pages of Regulations to 23 pages.

This late consultation means that essential programming and software changes will not be in place for 1 October. Usually, these changes take at least six to nine months from the date Regulations are made. It is of concern that after having spent a year collecting and inputting data for 36,000 members based on the first consultation, this extended scope and proposed changes will require significant additional work to collect data on hours worked, service breaks and other public service pension scheme service, validate and input this information before being able to calculate underpin benefits.

Question 1 – Do you agree with the rules about aggregation and underpin protection that we are proposing?

The proposed changes in the rules on aggregation are a significant shift from that proposed in the 2020 consultation. There is now no requirement to aggregate for the underpin to apply, providing there has not been a disqualifying break. This proposal complicates the administration of the scheme and brings a further 14,002 member records within scope of the McCloud Remedy. NILGOSC will need to collect data on hours and service breaks for these members. At present, for a member with multiple records, there is nothing recorded on each record to reflect the service on another record. This additional internal administrative exercise will be required to ensure that the underpin works correctly. In addition, software programming is likely to be required to ensure that this 'McCloud Remedy qualifying service' is only included for eligibility purposes.

We understand that the driver behind this change is to ensure that all public service pension schemes treat multiple member records in a similar way for the purposes of the McCloud Remedy. NILGOSC agrees with the reasoning set out in the 2020 consultation in relation to aggregation requirements. This consultation recognised that the approach now being proposed would be *'extremely administratively complex and potentially lead to an increased likelihood of errors being made. It is likely that the administrative complexities would continue for many years (as some members' underpin dates may not take place for 30 or 40 years)'*.

The proposed non-aggregated approach will be complicated to administer and it is suggested that the Department provides worked examples that illustrate how to implement the underpin where a member has multiple underpin dates across unaggregated records and then illustrate how these are administered if the member chooses to aggregate. Within the LGPS (NI) members make a positive choice to aggregate and it will be important that they understand the impact of aggregation may have on any McCloud underpins that may apply to their records.

Q2 – Do you agree with our proposals in this section regarding Club transfers?

The new rules propose that members will not have to transfer previous public service pension service on or before 31 March 2012 in any other UK public service pension scheme into the LGPS (NI) to qualify for underpin protections, assuming they did not have a five-year disqualifying gap. We understand the intention of this change is to ensure that all public service pension schemes are taking the same approach.

There are enormous challenges in collecting this information with an increased risk of simply not being able either to gather or validate this properly – on a practical level it seems an impossible administrative exercise. Some groups of members may be particularly difficult to contact for previous pension service information e.g. deceased members or pensioners.

NILGOSC does not normally hold this information, nor does it currently have software that can use this data for McCloud underpin purposes. The exercise is vast and NILGOSC estimates that it would need to contact in the region of 87,810 members to query if they had other pre-April 2012 public service pension membership.

That incoming information will need validated with the other public service pension schemes, recorded on the member's record (will require programming) and a final check if it exists before paying benefits or transferring out membership. It is not clear where the responsibility lies to gather this information. For example, what if NILGOSC writes to a member and they do not respond? It would be helpful if there were Regulations that required members to notify NILGOSC of such service within 6 months of the date the amending Regulations came into force. Then hours and service breaks are only collected from employers for those members for who a potential underpin applies.

There is no central database of UK public service pension scheme membership and it would ease the administration if such a database existed. This new requirement places an extra additional administration burden on all public service pension schemes to collect the information and respond to validation requests from other schemes.

It is unclear if any other types of public service pension service are not eligible e.g. a period for which a refund has already been paid by that other scheme or a period where the member has already transferred the service elsewhere. Guidance is required on this point.

Any LGPS (NI) employers who joined the Scheme after 31 March 2015 will have assumed to date that they had no one eligible for the underpin other than they had aggregated membership. Under the proposed regulations this would no longer be the case and data and pensions history will have to be gathered for each member.

Question 3 – Do you agree with our proposal to extend underpin protection to the period after flexible retirement, if it is in the underpin period?

Yes, as it brings parity across all protected members.

Question 4 – Do you agree with our proposal for multiple final underpin dates if a member takes ‘partial’ flexible retirement?

Yes, it seems fair to have an underpin at the first flexible retirement, if within the underpin period, and at subsequent flexible retirements. However, this is complicated and becomes more so where there are several partial flexible retirements. It will be essential to have comprehensive statutory guidance that illustrates through worked examples how these cases should be treated and partial underpins applied. This will also involve recalculating 685 flexible retirements where the member may now be eligible for an underpin for the period from April 2015.

In addition, the pensions software does not allow for multiple underpin periods to be held. This is extremely complicated and likely to be extremely confusing for members.

Question 5 – Do you agree with our proposed method for calculating a CEV for a member with underpin protection?

A CEV for divorce is provided by NILGOSC to the Court and we agree that it should include underpin figures if these apply.

Question 6 – Do you agree with our proposal to remove pension debits from the calculation of provisional assumed benefits and underpin amount?

Yes.

Question 7 – Do you have any comments on the Government’s approach to compensation?

As compensation will be treated as liabilities for funding valuations and exit valuations there will need to be software programming to allow these compensation figures to be held. Statutory guidance will be required on the application of the compensation provisions.

Question 8 – Do you have any comments on the Government’s approach to interest?

Paragraph 3.7.2 refers to an exchange of letters between HM Treasury and the Government Actuary’s Department. I think this should refer to the exchange of letters between the Department of Finance in Northern Ireland and the Government Actuary’s Department. The table in Annex C of the consultation refers to interest being calculated according to section 17(1) of the Judgments Act 1838. This section of the Judgments Act does not apply in Northern Ireland. The draft regulations, however, refer to interest being calculated in accordance with direction ‘38’ of the PSP Directions 2023. I believe this should refer to direction ‘28’. The rate of interest is fixed by Order 42, rule 9(2) of the Rules of Court of Judicature. The basis of calculating interest (fixed at 8% per annum) and using a mid-point date as the relevant date is based on the approach used in Tribunals, rather than that usually applied under the LGPS (NI) Regulations. In the circumstances of the McCloud Remedy this seems reasonable.

Question 9 – Do you have any comments on the proposed minor amendments in Part 4 of the draft Regulations?

No.

Question 10 – Do you have any comments on the draft Regulations?

Please see the table in Appendix 1 for comments on the draft Regulations.

Q11 – Do you have any comments on our screening analysis for equality impact?

No

Q12 – Are you aware of additional data sets that would help us assess the impacts of the LGPS (NI) McCloud remedy on the LGPS (NI) membership?

No

Yours sincerely,

David Murphy

Chief Executive and Secretary

Appendix 1 - Comments on the draft regulations

Table 1: Comments on the draft regulations

Draft LGPS (NI) Regulations	Regulations being amended	Comment
1 (2) (c)	n/a	There is an extra '18' in this sentence.
2(4)	Inserting 4A into the Transitional Regulations	<p>Similar to comments made by the Local Government Authority to the DLUHC consultation it would appear that the new definition of the eligibility to the underpin could imply that it applies to all service falling in the remedial period even if it is not remediable. Ideally remediable service would be defined within the LGPS (NI) regulations.</p> <p>Separately, 4A(2)(b)(i) and (ii) refer to remediable service transferred into the Scheme. The definition of remediable service (section 77) applies only to pensionable service under a local government new scheme. Either such service is already covered by (2)(a) or the definition of remediable service needs to be different for (2)(b)(i) and (ii).</p>
2(4)	Inserting 4B into the Transitional Regulations	Does the final underpin amount that is added to a pension account under 4B3 receive revaluation? This also applies under 4C5.
2(4)	Inserting 4G into the Transitional Regulations	4A(2) makes clear an eligible member is a person who fulfills criteria i.e. no need to aggregate. 4G states "An eligible member's underpin date, in relation to a pension account " etc. 4G(a) is therefore unclear as to whether it means the last day in relation to the member being active in any record in the Scheme or whether it means active in relation to the membership relating to that pension account.

Draft LGPS (NI) Regulations	Regulations being amended	Comment
2(4)	Inserting 4H into the Transitional Regulations	Similar issue to above. The final underpin date is in relation to a pension account. It is not clear from the wording if e.g. a flexible retirement in respect of one membership creates a final underpin date in respect of another membership. This could likely be resolved by inserting e.g. “the earliest of the following dates which occur <u>in respect of that pension account...</u> ”. It is unclear what legislative intent is.
2(4)	Inserting 4I 1a(i) (bb) into the Transitional Regulations	This insertion covers adjustments under regulation 39 but does not state what happens where a member had adjustments due to protections under regulation 20(7) in the Benefits Regulations i.e. those who were aged 45 or over before 1 April 2009 and had enhancements under the 2002 regulations.
2(4)	Inserting 4I (1)(d)	This has the same issue identified above in relation to Regulation 4A. Remediable service is defined by s77 of the Act. That relates to Local Government new scheme pensionable service – not service in another scheme.
2(4)	Inserting 4I(6)	Refers to a member absent due to trade dispute or with permission paying reduced contributions under Regulation 12. Should this include Regulation 16A?
2(4)	Inserting 4I(8)	Transfer in of remediable service. Same issue as identified before re s77.
2(4)	Inserting 4H (1) (f) into the Transitional Regulations	35 (1)(a) relates to trivial commutation and 35 (1) (c) relates to de minimis payments. I suggest the words ‘trivial commutation’ are deleted and the word ‘commutation’ is inserted before ‘lump sum’.

Draft LGPS (NI) Regulations	Regulations being amended	Comment
2(4)	Inserting 4J(1)(b)(iii)	<p>Comparison of ill-health enhancements is done on “like for like basis”. The test under the 09 Regulations was different for Tier 1 is whether the member has a “reasonable prospect” of gainful employment. Under the 14 Regulations it is whether the member is “likely to become capable” of gainful employment. Essentially this moved from 99% proof in the 09 Scheme to 50.1% proof in the 14 Regs. Not comparing like with like.</p> <p>This changes from the existing underpin, where it states that the comparison is between the enhancement in the 14 Regs with the enhancement which would have been added to the member's total under Reg 20 had it applied. It arguably currently requires the test to be reapplied.</p>
2(4)	Inserting 4J(1)(d) And 4J(6)	Same issue re transfers of “remediable service” and s77.
2(4)	Inserting 4M (2) into the Transitional Regulations	Clarification is needed on which account a survivor guarantee amount is added to in the cases of partial flexible retirement.

Draft LGPS (NI) Regulations	Regulations being amended	Comment
2(4)	Inserting 4M (4a) into the Transitional Regulations	<p>Further clarification is needed on the survivor's guarantee amount calculation as we do not understand it.</p> <p>A) Provisional assumed benefits + 1/49 APP as at date of death. If reduced hours due to condition that caused death, then ignore reduction due to that. If date of death isn't underpin date, then adjustment as if deferred benefit.</p> <p>B) Provisional underpin amount + R20(2) Benefits Regs if ill –health ie give Tier 1 ill-health boost up to 31 March 22. Add pension increase act relating to period from final pay period through to date of death. (day stops being an active member?) If reduction in hours due to condition that caused death, then ignore it.</p> <p>Survivor guarantee amount is B minus A.</p> <p>Survivor pension is increased by survivor guarantee + X(survivor guarantee). X is in the table at 4M(8)</p> <p>Issues: 4M(7) should require IRMP.</p>
2(4)	Inserting 4N into the Transitional Regulations	<p>Further clarification is needed regarding the calculation of a deferred guarantee amount for a deferred member who died after becoming deferred. The proposed calculations for deferred assumed benefits and deferred underpin appear to be using two different end dates.</p>

Draft LGPS (NI) Regulations	Regulations being amended	Comment
2(4)	Inserting 4O into the Transitional Regulations	<p>(1) this refers to not having a continuous break in active membership. It is suggested that this wording is changed to reflect that in the PSPOJO Act 2022 (Reg 77) where the definition of remedial service refers to a 'disqualifying break'.</p> <p>(6) Currently states "has attained on the first day of their membership..." Should presumably be "<u>on or prior to</u>"</p> <p>(8) Same definition issue as (1) above.</p> <p>Paragraphs (9) and (10) appear to result in worse treatment for individuals than is the case under the current underpin. Under the current underpin, any increase is added to the pension account at the underpin date. If they reached age 65, it is added on that date. No policy reason is expressed for this – this difference in treatment requires to be justified.</p>
2(4)	Inserting 4P into the transitional regulations	<p>This refers to CETV's for divorce calculations being calculated in line with actuarial guidance. The Department will need to commission updated actuarial guidance to cover how the underpin applies for CETV's and pension share orders.</p>
2(4)	Inserting 4Q into the transitional regulations	<p>(1) Currently reads "The Committee may... (a) not pay an amount under s82...". The rest of the Regulation suggests this should be a discretion to the Committee rather than a prohibition on paying an amount under s82. If intended to be a discretion perhaps "The Committee may <u>in its</u> discretion" etc</p> <p>This regulation covers the payment of indirect compensation and paying additional benefits to a member. It states that NILGOSC must obtain advice from an actuary before determining what additional benefits to pay a member. Is the intention that NILGOSC obtains guidance from its actuary or is the Department intending to provide statutory guidance from the Government Actuary's Department (GAD). NILGOSC will already have the factors for calculating a pension debit and these have already been provided by GAD.</p>

Draft LGPS (NI) Regulations	Regulations being amended	Comment
2(4)	Inserting 4R	For NILGOSC to create form and manner of application for compensation – should it be an amendment to R80(2) and then utilise the existing Stage 1 and Stage 2?
2(4)	Inserting 4S into the transitional regulations	This refers to payment of compensation or additional benefits from ‘the pension fund concerned’. I assume this means the LGPS (NI) Fund and, if so, it would be preferable to state that.
2(5)	Amending regulation 9 (transfers) of the Transitional Regulations	<p>“remediable service” - same issue as previously. Does it mean remediable service in a different Scheme, if so – different definitions apply. At 5(a) and (b)</p> <p>This amendment refers to there being ‘no continuous break in active membership of a public service pension scheme of more than five years...’. Should this refer to the disqualifying gap in service as that is the term already being used under the PSPJO Act 2022 (Regulation 77)? Please see comments in relation to 4(0) above.</p> <p>Paragraph 5(b) – this refers to treating transferred remediable service as a pension to which regulation 4A to 4T applies. Does this mean that the basis of the original transfer has changed?</p>
3(4)	Amending 41 (4) (a) of the 2014 Regulations	This amending regulation appears to exclude any final guarantee amount from the calculation of a survivor’s pension but then adds the same amount back as a new survivor guarantee amount. Is that the intention?
3(5)	Amending 44(3)(a), 44(4)(a), 45(3)(a), 45 (4)(a) of the 2014 Regulations	This amending regulation appears to exclude any final guarantee amount from the calculation of children’s pensions but then adds the same amount back as a new survivor pension guarantee amount. Is that the intention?

Draft LGPS (NI) Regulations	Regulations being amended	Comment
4		<p>This regulation sets out the categories of members who will need retrospective recalculation of their benefits. It is noted that, other than they have died, the member must have remedial service on 1 October 2023. This also applies to members who have transferred out.</p> <p>In the cases where a final guarantee amount should have been paid the draft regulations state that this should be paid 'without undue delay'. There is no definition of undue delay and in many of these cases further data and information will need to be gathered as the 'old underpin' did not apply to them. This wording may give members an expectation that payments will be made more quickly that will be possible. It would be preferable that this wording is removed.</p>
5(5) and 5(6)		<p>This regulation refers to members who retired or died before 1 October 2023. It is not clear why Category A or B final guarantee amounts are to be paid in accordance with regulation 92 but Category C final guarantee amounts are to be paid to the deceased member's personal representatives.</p> <p>Are arrears included in this payment as the regulation only refers to the final guarantee amount?</p> <p>Also paragraph (6) refers to making the payment 'without under delay' but paragraph (5) does not. These should be consistent and preferably omitting the wording.</p>
6		<p>I suggest the heading on this section is amended to read: 'Deferred and Pension Credit death grants in respect of members who died before 1st October 2023'.</p> <p>What happens in circumstances where an active member is also a deferred or pensioner member or both and there is no deferred death grant payable as only the higher death grant was paid under Regulation 40(5)? Is the intention that all potential death grants must be recalculated to include the underpin and only then the highest death grant is paid?</p>

Draft LGPS (NI) Regulations	Regulations being amended	Comment
6(4)		The word 'regulation' needs inserted in front of '46'.
6(5)		<p>Again a reference to making a payment 'without undue delay'.</p> <p>This also states that who the recipients of the death grant must be and the proportions to be paid. What happens if one of the original recipients has died?</p>
7(1)(b)		<p>These regulations all refer to the 'person'. It would be clearer if it said to the 'deceased member'.</p> <p>It is unclear why the wording in this section only refers to calculating the death grant but not calculating and paying the death grant as per for deferred members under 6(1)(b). I suggest the wording in both regulations should be the same apart from the regulatory reference.</p>
7(3)		This also states that who the recipients of the death grant must be and the proportions to be paid. What happens if one of the original recipients has died?
8 (1)		<p>This regulation refers to recalculation of a survivors' pension where the member is deceased and the survivor's pension was paid before 1 October 2023. It needs to make clear that the member must have died before 1 October 2023 and it would be better if it did not state that it has to be paid before 1 October 2023 as frequently there are delays processing a survivor's pension and the date of death and date of payment may differ by quite a time period.</p> <p>Perhaps this is intentional?</p>

Draft LGPS (NI) Regulations	Regulations being amended	Comment
8 (2), (3) and (4)		These regulations all refer to the 'person'. It would be clearer if it said to the 'deceased member'.
9		The heading of this section refers to a transfer out of the fund, however the content refers to a transfer into the fund. I suggest the heading needs amended to 'Members who took a transfer into the fund before 1 st October 2023'.
9(2)		The reference to 1ZB should be to 9(1ZB).
10(1)(c)		The wording in this regulation may need revised to allow for the length of time it takes for a bulk transfer to be completed. A bulk transfer may apply and although the transfer date will be before 1 October 2023 but the payment may not be made until much later than 1 October 2023.
11(3)		<p>This regulation states that a trivial commutation payment should be recalculated in accordance with actuarial guidance issued by the Department. Is NILGOSC supposed to use the actuarial guidance that applied at the date of the original payment or current actuarial guidance and factors?</p> <p>Should this state 'where the person is entitled to either a final guarantee amount or a notional survivor guarantee amount....' Otherwise, the payment should be recalculated in every instance.</p> <p>What happens if the recalculated trivial commutation payment figures exceeds the HMRC limits? Does the payment then become unauthorised? Does the Finance Act need amended to allow these to be paid as authorised payments?</p>

Draft LGPS (NI) Regulations	Regulations being amended	Comment
12(5)		The award of a pension share by a Court will either stipulate an amount or a percentage. If it is a specified amount, then it is highly likely that no change would be made to the pension credit.
12		This regulation that covers divorce or dissolution only covers recalculating the CETV and adjusting the pension credit. It does not cover the options available to the pension credit member to transfer out or trivially commute. It also does not cover what happens if the pension credit member has died. We suggest that additional regulations should be included to cover these scenarios.
13		Again there are references to performing calculations 'without undue delay'. See comments at '4' above.
14(4)(a)		Interest payments on the statutory underpin. This regulation states that interest should be paid to the person concerned but (2)(b) relates to deceased members.