



Department for
Communities
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An Roinn
Pobal

Department for
Commonities

Limited consultation on draft The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2024

McCloud Remedy and Annual Benefit Statements

1. Purpose of the consultation

Scope and timeframe

- 1.1. This short 2-week consultation covers proposals by the Department for Communities to amend the legislation governing the Local Government Pension Scheme (Northern Ireland) (“LGPS (NI)”) to disapply the relevant legislative provisions which would require details of the McCloud Remedy to be included in Annual Benefit Statements (ABSs) for 2023/24 and potentially 2024/25. One further minor technical amendment is also included.
- 1.2. Section 21(1) of the Public Service Pensions Act (NI) 2014 requires the Department to consult such persons (or representatives of such persons) as appear to the Department likely to be affected.
- 1.3. The closing date for submitting responses is **2 August 2024**.
- 1.4. The Department will consider and respond to comments it receives during this consultation.
- 1.5. Responses are invited to this consultation about any aspect set out in this paper.

2. Detail

- 2.1. In April 2015, a series of changes were made to the LGPS (NI) to reform the scheme's benefits structure. These changes were implemented as part of a wider project across the United Kingdom to reform public service pensions.
- 2.2. Each of the reformed schemes included transitional protection elements which meant that those within ten years of retirement as at 2012 would not be affected by the changes. Transitional protection to protected LGPS (NI) members was provided by means of an underpin, meaning that on retirement they would get the better of the benefits under the two schemes.
- 2.3. In 2018, following a Court of Appeal judgment (the McCloud Judgment) which ruled that the transitional protection element of the 2015 public service pension reforms constituted unlawful age discrimination in the Firefighters' and Judges' schemes, the UK Government indicated that the discrimination would be addressed in all relevant schemes regardless of whether members had lodged a legal claim.
- 2.4. The Department made legislation to introduce the UK Government's Remedy to the McCloud age discrimination for the LGPS (NI) last year through the Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2023 (the 2023 Regulations). The 2023 Regulations

implement the McCloud Remedy in the LGPS (NI) by extending the underpin to younger members to remove the unlawful discrimination found in the McCloud Judgment. The changes to the LGPS (NI) Regulations came into operation on 1 October 2023 and the scheme manager, the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) is now undertaking detailed work to implement the LGPS (NI) McCloud Remedy¹.

3. Annual Benefit Statements – Flexibility

- 3.1. An annual benefit statement (ABS) provides an estimate of the pension benefits a member has built up in the LGPS (NI) as at 31 March in the current year. It may also provide a projection of the pension that the member could have if that member continues to work until normal pension age (this is linked to state pension age in the LGPS (NI)).

- 3.2. Currently, under regulation 99 of the Local Government Pension Scheme Regulations (Northern Ireland) 2014 (the 2014 Regulations)², the scheme manager, NILGOSC, must issue an ABS for all active, deferred and pension credit members within 5 months of the end of the scheme year to which it relates (i.e. by 31 August each year). The legislation currently provides that each ABS must include the McCloud Remedy for 2023/24 onwards.

¹ In this section, 'the LGPS McCloud remedy' means the changes made to the LGPS Regulations under Chapter 3 of Part 1 of the Public Service Pensions and Judicial Pensions Acts 2022 and through the 2023 Regulations

² SR 2014 No.188

- 3.3. There are significant steps needed to accurately update members' records arising from the implementation of the McCloud Remedy, including the collection and testing of data from 169 employers, updates needed to systems and amendments to individual records. All of these steps would need to be undertaken before ABSs could reflect a member's underpin rights.
- 3.4. Despite NILGOSC's best efforts in taking forward the complex and detailed work to implement the McCloud Remedy, it has acknowledged that it is unable to include the McCloud Remedy in the ABSs this year (2023/24 statements) and there is a strong possibility that all the Remedy work may not be completed by March 2025 in time for the 2024/25 statements.
- 3.5. To ensure that changes to ABSs do not detract from work on other aspects of the McCloud Remedy it is proposed that the requirement to include an underpin estimate in the 2023/24 statements, and possibly the 2024/25 statements, should be set aside. This will require subordinate legislation.
- 3.6. Where a scheme manager is unable to comply with regulations, they have a duty to report a breach of the regulations to the Pensions Regulator. Unless, a regulatory change is made, it is likely that NILGOSC will have to report such a breach because it is unable to include the McCloud

Remedy in the ABSs this year (2023/24 statements) and potentially next year (2024/25 statements).

- 3.7. The Department for Communities is therefore conducting this short consultation on a proposal to disapply the relevant legislative provisions which require details of the McCloud Remedy to be included in Annual Benefit Statements (ABSs) for 2023/24 and potentially 2024/25. The Department for Levelling up, Housing and Communities, is also consulting on similar proposals for the LGPS (England and Wales).
- 3.8. The Department would propose that the relevant legislative provisions in both the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022) and the 2023 Regulations should be disapplied for the purposes of preparing ABSs for the scheme year 2023/24.
- 3.9. Under paragraphs (2) and (3) of draft regulation 2, no account would need to be taken of the LGPS (NI) McCloud Remedy in ABSs issued for the 2023/24 scheme year (ending on 31st March 2024)³. If made, this change would mean that the potential value of the statutory underpin⁴ would not need to be reflected in ABSs until the 2024/25 statements are issued. Under regulation 99(3) of the 2014 Regulations, these statements must be issued within five months of the end of the year (and therefore must be issued by 31st August 2025). It is proposed that this provision

³ Although by virtue of paragraph (4)(a) and (5), a scheme manager would be able to choose to take into account the LGPS McCloud remedy, if they wish to.

⁴ Under the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (NI) 2014.

should have retrospective effect to 1 October 2023, meaning that it will apply in respect of ABSs that have issued between that date and the date of this proposed amendment coming into operation.

- 3.10. In addition, we are consulting on whether further flexibility may be appropriate in certain cases. The draft Regulations propose that for 2024/25 ABSs, the scheme manager may determine that the relevant legislative provisions in both the PSPJOA 2022 and the 2023 Regulations are disapplied for the purposes of preparing ABSs for that scheme year for a member or group of members of the LGPS (NI). Paragraphs (4)(b) and (6) of draft regulation 2 would give the scheme manager the discretion to determine not to take into account the LGPS (NI) McCloud Remedy for a further year, where they consider that it would be reasonable in all the circumstances, by determining that the relevant legislative provisions in both the PSPJOA 2022 and the 2023 Regulations are disapplied for the purposes of preparing ABSs for that scheme year for a member or group of members of the LGPS (NI). This flexibility is similar to that which applies in respect of remediable service statements that will be issued to members of other unfunded public service pension schemes who are in scope of the McCloud Remedy⁵.

⁵ [Section 29\(10\)\(b\) of the Public Service Pensions and Judicial Offices Act 2022](#)

- 3.11. Where such a determination is made, that would mean ABSs for affected members for the 2024/25 scheme year would not need to take into account the LGPS (NI) McCloud Remedy, however, this would be required for the 2025/26 scheme year onwards. Where the scheme manager makes such a determination, affected members will need to be notified of this in their 2024/25 ABSs.
- 3.12. One factor that would need to be considered regarding this additional flexibility is whether this could be used too broadly, which could delay the application of the Remedy to members affected by the McCloud case. One option could be for the Department to consider issuing guidance on the circumstances as to when it may or may not be appropriate for the scheme manager to make a determination under Regulation 2(4)(b) and **we are grateful for consultees' views on this issue.**

Minor technical amendment

- 3.13. The draft Regulations (regulations 3 and 4) also include a minor technical amendment to the LGPS (NI) Regulations to correct an earlier drafting error – this will amend a paragraph number in Regulation 108 of the 2014 Regulations.
- 3.14. **Question 1 – Do you have any comments on the Draft Regulations?**

3.15. **Question 2 – In what circumstances do you consider it might be appropriate for NILGOSC to make a determination that the LGPS (NI) McCloud Remedy should not to be taken into account in a member’s or class of members’ 2024/25 ABS(s)?**

4. Human Rights

4.1. The Department considers that the proposals set out in the draft Regulations are compatible with the Human Rights Act 1998.

5. Equality

5.1. The Department considers that the draft Regulations do not contain proposals which create a significant adverse impact on the categories of person in section 75 of the Northern Ireland Act 1998.

5.2. The Department conducted a screening analysis for equality impact and this is published alongside this consultation.

6. Regulatory Impact Assessment

6.1. The Department considers that the proposed amendments will not have a direct impact on businesses, charities, social economy enterprises or the voluntary sector.

7. Rural Proofing

- 7.1. The Department considers that the proposed amendments in the draft Regulations will not have any differential impact on people living in rural areas.

8. Freedom of information – confidentiality of responses

- 8.1. The information you send us may need to be shared with colleagues within the Department for Communities in Northern Ireland (“the Department”).
- 8.2. To find out more about the general principles of Freedom of Information and how it is applied within the Department, please read Annex A and, if you have any further questions, please contact Information Management Branch (IMB).
- 8.3. Email foi@communities-ni.gsi.gov.uk
- 8.4. IMB cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

9. Alternative Format

- 9.1. Should you require a copy of this document in an alternative format, it is available on request in large print, disc, Braille, or audio cassette. It may also be available in minority languages for those not proficient in English.

10. Consultation responses

- 10.1. Please email your consultation response to:
lgpdconsultations@communities-ni.gov.uk
- 10.2. The Department will acknowledge your response.
- 10.3. The following persons will be able to answer your queries in relation to the consultation.
William Dobbin – William.dobbin@communities-ni.gov.uk
Christine Quirke – Christine.quirke@communities-ni.gov.uk
- 10.4. A list of consultees is available at Annex B.
- 10.5. The Department will consider the responses received and issue a synopsis of those responses and the Departmental response to consultees.
- 10.6. In line with good practice and sustainable development this document is published electronically.

The Freedom of Information Act 2000 – confidentiality of consultations

1. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have a responsibility to decide whether any information provided by you in response to this consultation including information about your identity, should be made public or be treated as confidential.
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that-
 - the Department should only accept information from third parties in confidence if it is necessary to obtain that information

in connection with the exercise of any of the Department's functions and it would not otherwise be provided,

- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature,
 - acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at www.informationcommissioner.gov.uk).

List of Consultees

1. Northern Ireland Local Government Officers' Superannuation Committee
2. The Local Government Pension Scheme (Northern Ireland) Advisory Board