



Department for
Communities

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Department fur
Commonities

www.communities-ni.gov.uk

The Local Government Pension Scheme (Northern Ireland)

Consultation on draft statutory guidance on
the implementation of the McCloud Remedy

Scope of the consultation

TOPIC OF THIS CONSULTATION

This consultation seeks views on draft statutory guidance for the implementation of the McCloud remedy to the Local Government Pension Scheme in Northern Ireland (LGPS (NI)). In 2020/21 and 2023 we consulted on proposals to remove unlawful discrimination found by the courts in the ‘McCloud’ case. We are now seeking further views on draft statutory guidance to implement the McCloud remedy in the LGPS (NI). The draft statutory guidance is published alongside this consultation document.

SCOPE OF THIS CONSULTATION

The Department for Communities (DfC) is consulting on draft statutory guidance for the implementation of the McCloud remedy in the LGPS (NI).

GEOGRAPHICAL SCOPE

These proposals relate to the LGPS in Northern Ireland only.

Basic Information

This consultation seeks comments on the draft statutory guidance to implement the McCloud Remedy in the LGPS (NI) and is particularly aimed at the LGPS (NI) scheme manager, scheme

members, scheme employers and their representatives.

Any change to the LGPS (NI) is likely to be of interest to other consultees as well, such as professional advisers and local taxpayers. We welcome views on the proposals from all interested parties.

BODY/BODIES RESPONSIBLE FOR CONSULTATION

This consultation is being undertaken by the Local Government & Housing Regulation Division in the Department for Communities.

DURATION

This consultation will be open for 8 weeks (+2 weeks for Christmas break) from **11 December 2024 to 19 February 2025**.

ENQUIRIES

For any enquiries about this consultation, please email the Department at:

lgpdconsultations@communities-ni.gov.uk or write to:

**LGPS (NI) Consultation,
Department for Communities
Local Government & Housing Regulation
Division,
Level 8, Causeway Exchange,
1-7 Bedford Street, Town Parks,
Belfast, BT1 7EG**

Please use email if possible.

HOW TO RESPOND

EMAIL

You can email your responses to:

lgpdconsultations@communities-ni.gov.uk

or post to:

**LGPS (NI) Consultation,
Department for Communities
Local Government & Housing Regulation
Division,
Level 8,
Causeway Exchange,
1-7 Bedford Street,
Town Parks,
Belfast,
BT1 7EG**

When you reply it would be very useful if you could confirm whether you are replying as an individual or submitting an official response on behalf of an organisation.

If you are replying on behalf of an organisation, please include:

- your name,
- your position (if applicable),
- the name of your organisation,

- an address (including postcode),

- an email address.

CONSULTATION RESPONSE:

We will consider the responses received and publish an outcome report on the Departmental website.

In line with good practice and sustainable development, this document has been published electronically.

ACCESSIBILITY:

A range of alternative formats are available upon request from this Department.

Please email the Department at:

lgpdconsultations@communities-ni.gov.uk

Or write to:

**LGPS (NI) Consultation,
Department for Communities
Local Government & Housing Regulation
Division,
Level 8,
Causeway Exchange,
1-7 Bedford Street,
Town Parks,
Belfast, BT1 7EG**

How we consult

CONSULTATION PRINCIPLES

The consultation is being conducted in line with the Fresh Start Agreement (Appendix F6 – Eight Steps to Good Practice in Public Consultation - Engagement). These eight steps give clear guidance to Northern Ireland departments on conducting consultations.

FEEDBACK ON THE CONSULTATION PROCESS

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you consider that the consultation does not adhere to the values expressed in the Eight Steps to Good Practice in Public Consultation - Engagement or that the process could be improved, please address them to:

**LGPS (NI) Feedback on the Consultation Process,
Department for Communities
Local Government & Housing Regulation
Division,
Level 8,
Causeway Exchange,
1-7 Bedford Street,
Town Parks,
Belfast, BT1 7EG**

Email: lgpdconsultations@communities-ni.gov.uk

Please title your correspondence as “Feedback on the Consultation Process”.

Privacy, Confidentiality and Access to Consultation Responses

For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity may be published. We will remove names, email addresses and telephone numbers from these responses; but apart from this we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice.

Your response, and all other responses to this consultation, may be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however, all disclosures will be in line with the requirements of the Data Protection Act 2018 and the General Data Protection Regulations (EU) 2016/679.

If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered should the Department receive a request for the information under the FOIA or EIR.

DfC is the data controller in respect of any personal data that you provide and DfC’s privacy notice, which gives details of your rights in respect of the handling of your personal data, can be found at: <https://www.communities-ni.gov.uk/dfc-privacy-notice>.

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1. Purpose of the consultation – scope and timeframe

- 1.1 This consultation seeks views on draft statutory guidance to implement the McCloud remedy in the Local Government Pension Scheme (Northern Ireland) (“LGPS (NI)”).
- 1.2 The McCloud remedy introduced changes to the LGPS (NI) statutory underpin protection to remove unlawful discrimination found by the courts in relation to public service pension scheme ‘transitional protection’ arrangements. Specifically, it removed the condition that required a member to have been within ten years of their normal pension age (NPA) on 1 April 2012 to be eligible for underpin protection. We are now proposing to issue draft statutory guidance to the scheme manager, the Northern Ireland Local Government Officers’ Superannuation Committee (NILGOSC). Its purpose is to assist NILGOSC in their task of implementing the McCloud remedy in the LGPS (NI) by ensuring the revised underpin works effectively and consistently for all qualifying members.
- 1.3 The Department plans to finalise and issue this draft statutory guidance to NILGOSC under regulation 2(3A) of the LGPS Regulations 2014 (“the 2014 Regulations”), however under Regulation 2(3B), before preparing or revising guidance, the Department must consult such persons as appear appropriate to it.
- 1.4 The closing date for submitting responses is **19 February 2025**.
- 1.5 The Department will consider and respond to comments it receives during this consultation.
- 1.6 Responses are invited to this consultation about any aspect set out in this paper.

2. Introduction

2.1 In recent years, the Government has been taking steps to address the McCloud case in public service pension schemes. In that case, the Court of Appeal found¹ that transitional protections the Government had given older members of public service pension schemes when schemes were reformed in 2014 and 2015 had unlawfully discriminated against younger members on grounds of age.

2.2 Rulings of the Court of Appeal in England and Wales are not directly binding here. However, the devolved public service schemes in Northern Ireland incorporate the same transitional protection arrangements as the schemes in Great Britain. Legal advice confirms the implications of the Appeal Court decision are such that all schemes must be treated as affected by the “McCloud judgment” and so require to be remedied.

2.3 The Public Service Pensions and Judicial Offices Act 2022² (the 2022 Act)

provides the framework within which the McCloud case will be addressed.

2.4 In the LGPS (NI) we addressed the McCloud discrimination by extending ‘underpin’ protection to the younger members of the scheme whom the courts found had been treated unlawfully. In the LGPS (NI), the underpin has been the means through which transitional protection was provided to older members.

2.5 All LGPS (NI) members were moved to the reformed, career average scheme in April 2015, but for protected members, the pension payable was underpinned against what they would have built up in the legacy final salary scheme. At a member’s final salary normal pension age (usually 65) or at their date of leaving, if earlier, the scheme manager, NILGOSC, will compare their career average pension against their final salary pension, and award them an addition, if the final salary pension would have been higher.

¹ [Lord Chancellor -v-McCloud & others \(judiciary.uk\)](https://www.judiciary.uk/decisions/court-of-appeal/lord-lindsay-jc-in-the-mccloud-case/)

² [Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2022/24/section-1)

- 2.6 In the ‘McCloud’ court case (which related to the judicial and firefighters’ pension schemes in Great Britain), the Court of Appeal found that the transitional protection arrangements in those schemes directly discriminated against younger members in those schemes and this could not be objectively justified.
- 2.7 In 2023, the Department made regulations to address the McCloud age discrimination in the LGPS (NI) by extending underpin protection to the younger members who did not qualify originally due to their age. The regulations followed detailed work in the intervening years to consider how the difference in treatment should be rectified fairly, broad consultation with affected stakeholders and work to obtain the necessary legislative powers.
- 2.8 This draft statutory guidance builds on that work and sets out the Department’s views on a number of issues related to the McCloud remedy in the LGPS (NI).
- 2.9 We propose that the draft statutory guidance would cover the following topics:
- (a) Overall approach to McCloud remedy – setting out the Department’s views on how the McCloud remedy should be approached in a number of key areas, including:
 - (i) Governance
 - (ii) Data collection and verification
 - (iii) Identifying members in scope
 - (iv) Qualifying scenarios
 - (v) Case prioritisation
 - (b) Technical matters – outlining technical issues where the Government wishes to provide certainty on how the remedy should be approached, including:
 - (i) Transfers – Issues regarding retrospection
 - (ii) Multiple sets of underpin figures
 - (iii) Unpaid additional pension contributions
 - (iv) Deaths of beneficiaries before payments made
- 2.10 Compensation – providing an overview of the legal framework for McCloud compensation, the conditions that must be met for direct or indirect compensation to be possible and

examples of where compensation may be payable in an LGPS (NI) context.

3. Next Steps

- 3.1 Following consideration of comments received to this consultation, the Department will finalise the draft statutory consultation and issue it to the scheme manager, NILGOSC, under regulation 2(3A) of the Local Government Pension Scheme Regulations (NI) 2014.

4. The draft statutory guidance

- 4.1 The draft statutory guidance is published alongside this consultation document.
- 4.2 The draft statutory guidance is issued following the detailed work carried out by the McCloud guidance working group chaired by the then Department for Levelling up, Housing and Communities. Representatives from the Department for Communities and NILGOSC were members of this working group.
- 4.3 We are seeking consultees' comments on the content of the guidance generally, but in particular on the following points:

- (a) Whether you agree with the approaches proposed?**
- (b) Whether the guidance is clear and contains sufficient information on each topic?**
- (c) Whether there are any other topics that should be covered in the guidance?**

5. Equality

- 5.1 The Department considers that the draft statutory guidance does not contain proposals which create a significant adverse impact on the categories of person identified in section 75 of the Northern Ireland Act 1998. The remedy is specifically designed to address current age discrimination. A copy of the screening analysis conducted for earlier consultations on proposals to introduce the McCloud remedy to the LGPS (NI) is available at- [Consultation on the proposed changes to the transitional arrangements in the 2015 Local Government Pension Scheme in Northern Ireland | Department for Communities \(communities-ni.gov.uk\)](https://www.communities-ni.gov.uk/consultation-on-the-proposed-changes-to-the-transitional-arrangements-in-the-2015-local-government-pension-scheme-in-northern-ireland)
- 5.2 Also, for our consultation in 2020/21, the Government Actuary's Department (GAD) carried out an analysis of the likely effect of the proposed remedy on the current LGPS (NI) membership specifically in relation to age and

gender. This is available to view at the link above. As the proposals in this consultation are supplementary to our earlier proposals, it is considered that these proposals do not change the outcome of our earlier screening analysis for equality.

6. Human Rights

- 6.1 The Department considers that the draft statutory guidance is compatible with the Human Rights Act 1998.

7. Regulatory Impact Assessment

- 7.1 The Department considers that the draft statutory guidance will not have a direct impact on businesses, charities, social economy enterprises or the voluntary sector.

8. Rural Proofing

- 8.1 The Department considers that the draft statutory guidance will not have any differential impact on people living in rural areas.

9. Freedom of information – confidentiality of responses

- 9.1 The information you send us may need to be shared to colleagues within the

Department for Communities in Northern Ireland (“the Department”).

- 9.2 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).

Email foi@communities-ni.gsi.gov.uk

- 9.3 IMB cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

10. Consultation responses

- 10.1 Please email your consultation response to:

lgpdconsultations@communities-ni.gov.uk

- 10.2 Postal address-

**Local Government and Housing
Regulation Division
Level 8
Causeway Exchange
1-7 Bedford Street
Town parks**

BELFAST
BT1 7EG

10.3 Please ensure your response reaches the Department by **19 February 2025**.

10.4 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were ascertained. The Department will acknowledge your response.

10.5 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

10.6 The Department will consider the responses received and publish a synopsis of those responses and the Departmental response on the Departmental website.

10.7 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).

<u>List of Consultees</u>	<u>Annex B</u>
1.	All Members of the Northern Ireland Legislative Assembly
2.	All Northern Ireland political parties and MPs
3.	All Northern Ireland District Councils
4.	The Chief Executive of the Education Authority
5.	The Chief Executive of the Northern Ireland Housing Executive
6.	The Chief Executive of Translink
7.	Employing Authorities contributing to the LGPS (NI)
8.	Northern Ireland Local Government Association
9.	National Association of Councillors (Northern Ireland Region)
10.	Northern Ireland Local Government Officers' Superannuation Committee
11.	Northern Ireland Committee of the Irish Congress of Trade Unions
12.	Northern Ireland Public Service Alliance
13.	Unite
14.	GMB
15.	Unison
16.	Various representative groups and bodies
17.	Equality Commission for Northern Ireland
18.	SOLACE NI (the Irish Branch of the Society of Local Authority Chief Executives and Senior Managers (UK)).
19.	The LGPS (NI) Scheme Advisory Board.

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