

Northern Ireland Civil Service

Injury Benefits Scheme

Consultation on Proposed Changes

7 June 2021

1. Introduction

- 1.1. This consultation sets out the Department of Finance's proposals to improve the efficacy of the Northern Ireland Civil Service, (NICS) Injury Benefits Scheme (NI), referred to as "the Scheme" to make it more sustainable in the longer term and address the recommendations set out in the Northern Ireland Audit Office (NIAO) Report: '[Injury on Duty schemes for Officers in the Police Service of Northern Ireland and the Northern Ireland Prison Service](#)', published on 10 March 2020. The NICS Scheme includes Prison Grade staff in addition to NICS employees so any changes to the Scheme will apply to both groups.
- 1.2. The NIAO Report concluded that schemes providing payments to former police and prison officers who sustained injuries whilst on duty are not fit for purpose and substantial changes are needed to make the schemes sustainable. The NIAO Report highlighted the soaring costs over the preceding five years, criticised the absence of time limits within which an application must be made and queried the justification for the lump sum element of an award. Furthermore the NIAO Report pointed out that payment of injury awards is not always equitable as someone of pension age with an injury award could earn more than another officer with a retirement pension and they also intimated that reviews should be instigated to review the claimant's prognosis as new treatments can and do become available.
- 1.3. Prior to the publication of the NIAO Report, Civil Service Pensions, the area within the Department of Finance responsible for administering the Scheme, had already begun some work in recognition that the Scheme needed to change in order to ensure the Scheme continued to be viable and affordable for new and existing claimants. Following the publication of the NIAO Report, a joint Steering Group was established with Police and Civil Service and two separate sub-groups for each scheme commissioned full reviews of the Schemes.
- 1.4. The review of the NICS Scheme was undertaken in two phases; the first consisted on minor technical changes which was completed in August 2020 and the second phase is the subject of this consultation.
- 1.5. Under Phase 2 of the review, eight key changes to the Scheme are proposed. The details and rationale for these are set out in this consultation document.

2. Background to the Civil Service Injury Benefits Scheme

2.1. Provisions for Civil Servants who sustained an injury attributable to the nature of their duty can be traced back to Section 1 of the Superannuation Act 1887 but may even pre-date this. Numerous Injury Warrants were framed under the Superannuation Act 1887 and subsequent Superannuation Acts and Orders to enact the award of gratuities and allowances to those who qualified. The final Injury Warrant (Northern Ireland) 1969 came into operation on 1 July 1969 and was amended from 20th September 1971 to provide “for allowances and gratuities to be reduced by the value of any industrial injury benefit, industrial disablement benefit or sickness benefit to which the injured person may be entitled to under the National Insurance Acts”. At that time the gratuities and allowances were payable to qualifying officers who were injured;

- by the violence of a prisoner, a person undergoing detention or an inmate;
- as the result of an explosion, or as a direct result of employment in connection with dangerous substances, in a Government establishment in which explosives are used, manufactured or stored;
- as the result of an explosion in a Government establishment in which explosives are used, manufactured or stored;
- on duties in connection with explosives who are injured as a direct result of such employment; and,
- while engaged on duties in underground workings in connection with mining or quarrying operations.

2.2. New Injury Benefits provisions were subsequently made under Article 3 of Superannuation (Northern Ireland) Order 1972 and sat under Section 11 of the Principal Civil Service Pension Scheme (Northern Ireland) until 1 October 2002 when the provisions were removed to sit separately as the “Civil Service Injury Benefits Scheme (Northern Ireland) 2003” (effective from 1 October 2002). The change made to sit the scheme separately from 2002 did not alter the qualifying conditions for an injury benefit award nor the benefits structure, however the qualifying criteria changed from ‘solely’ to ‘wholly or mainly’ attributable in 2005 for injuries occurring on or after 1 December 2005.

2.3. The current Injury Benefits Scheme can be split into 2 main areas as below.

Temporary Injury Awards

2.4. Temporary Injury Awards are payable to ‘in service’ members who have moved to reduced pay because of a qualifying Injury. Temporary Injury Awards are calculated by Human Resources and paid through employer payroll / HRConnect.

Permanent Injury Awards

2.5. Permanent Injury Awards are ‘post retirement’ benefits payable to those who have demonstrated earnings impairment due to the qualifying injury. Applications are assessment by Occupational Health Service and awards are determined, calculated and paid by Civil Service Pensions.

2.6. From 1 April 2006, all benefits payable under the Scheme are recharged to Departments or employers.

3. Recent Developments

- 3.1. Prior to 2020, the rules of the Injury Benefits Scheme 2003 had last been amended in 2005 when the qualifying conditions were changed to the effect that, from 1 December 2005, the injury or disease qualified if it is wholly or mainly attributable to the nature of the person's duty. These conditions replaced solely attributable. This meant that where a person suffers an injury or contracts a disease in the course of their official duty which is mainly but not wholly attributable to the nature of their duty, the benefits payable under the Scheme will be reduced. In addition, those who leave employment in the NICS, having suffered a qualifying injury, except those who resigned when disciplinary charges were pending against them or are dismissed for disciplinary reasons, can receive an injury benefit from their last day of service rather than at pension age.
- 3.2. The amendments made in 2020 were as a result of Phase 1 of the Scheme review and consisted of minor technical changes to the rules around partnership pension accounts and social security benefits which are offset against claims (in particular Employment Support Allowance). The 2020 amendments were made and laid in the Assembly on 11 August 2020 and came into operation on 12th August 2020.

4. Need for Change

- 4.1. The Department recognises that the need remains to provide an appropriate level of support to staff who have suffered injuries in the course of performing their duties. However, the current Scheme cannot be sustained in its present form.
- 4.2. The Scheme was designed to provide a "top-up" to bring income up to a guaranteed level for employees who suffered a work-related injury and as a result of this also suffered a loss of earnings. An Injury Benefit Award is paid when a qualifying injury impairs earning capacity. Injury Benefit is not compensation for the loss of any mental or physical faculties, or for pain and suffering.
- 4.3. Having its origins within the Principal Civil Service Pension Scheme, the current Injury Benefit rules follow a similar scheme design with awards of a lump sum and monthly payment for life. The provision of a lump sum no longer features in reformed pension schemes but the Injury Benefit Scheme rules were never updated to reflect this.
- 4.4. The Department considers that the Scheme should be a stand-alone scheme with no references to or interdependencies on the NICS Pension Schemes. The Injury Benefits Scheme rules need to be updated to reflect the current nature of injuries being claimed for and to introduce control measures such as planned reviews or reassessments so an award is no longer automatically paid for life.
- 4.5. In the early years the scheme catered mainly for a range of physical injuries arising from a work-related accident or incident causing injuries such as musculoskeletal damage or loss of limbs etc. however in more recent years, one of the most common injuries for which an award has been claimed has been Post-Traumatic Stress Disorder (PTSD). This change in the nature of injuries was not anticipated or catered for in the original scheme design or eligibility criteria. Consequently difficulties can arise in determining a specific date of injury where, rather than occurring in a single traumatic event, the "injury" can involve a culmination of

events or take considerable time for an illness to manifest. This is especially prevalent in cases around mental health such as PTSD and can result in symptoms developing much later and claims being submitted many years after the initial causal effect.

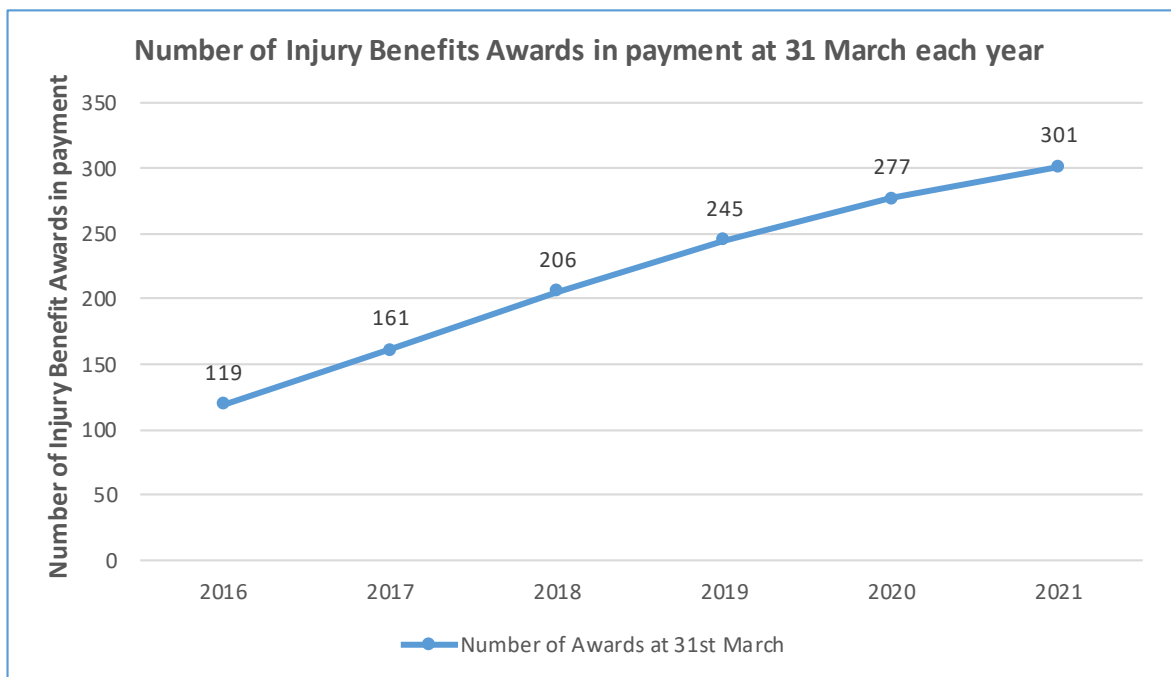
- 4.6. The Injury Benefits Scheme as it currently stands does not have any provision to limit the period for retrospective claims so an individual award could potentially be back-dated for decades, involve substantial arrears and have a significant impact on departmental allocations and spend. To mitigate against this, a time limit should be set within which an application must be made.
- 4.7. With Injury Benefit Awards currently being paid for life and the potential for awards to be back-dated for many years, the scheme is no longer fair or affordable. Annual costs are increasing year on year and liabilities for future payments of Injury Awards for existing awards are also increasing steeply.
- 4.8. The Department of Justice Injury Benefits liabilities for the NICS Injury Benefits Scheme, the vast majority of which were for Prison Grade staff, have increased from £41.07 million as at 31 March 2018 to £52.82 million as at 31 March 2019 to £76.56 million as at 31 March 2020.
- 4.9. Total cash spend on Injury Awards across **all NICS employers** during 2020-21 was £3.876 million with 301 NICS Injury Awards in payment as at 31 March 2021. The following table provides a breakdown of Injury Benefits Awards by Employer. It should be noted that *Departments' names reflect the name of the employing Department when the claim was made by the applicant – these have been grouped to ensure that individuals cannot be identified.

DEPARTMENT*	Injury Benefits	Injury Lump Sums	No. of Employees
DAERA (inc. Industrials)	£114,913	£5,451	14
DE, DEL, DETI & Invest NI	£57,068		8
DoF & DoH	£56,619		5
DSD (SSA, CSA)	£107,865		15
Dfi (DVA, DRD)	£53,449	£19,761	7
NI Prison Service	£2,899,272	£392,024	231
DoJ & PSNI (inc. direct recruits)	£104,797		15
Other employers	£42,010	£23,225	6
SUB-TOTALS	£3,435,993	£440,461	301
<i>2020/2021 Total Cash Spend:</i>	<i>£3,876,454</i>		

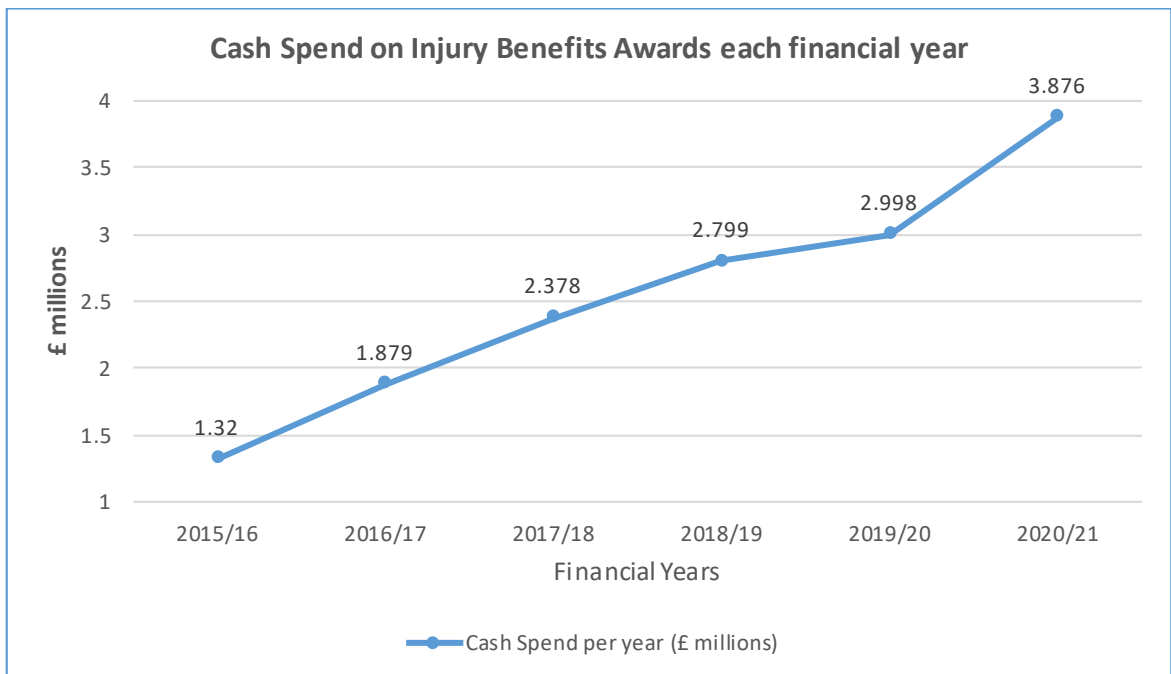
- 4.10. The change proposals listed within this consultation document seek to address the recommendations set out in the NIAO Report: 'Injury on Duty schemes for Officers in the Police Service of Northern Ireland and the Northern Ireland Prison Service',

published on 10 March 2020 and provide a controlled, sustainable and affordable Injury Benefits Scheme for future claimants.

- 4.11. The proposals set out also have drawn on the experience of staff from Civil Service Pensions in administering cases and dealing with the concerns expressed by members and stakeholders over, for example, the time taken to process cases.
- 4.12. The following charts demonstrate the steady rise in the number of awards and increasing costs for current and consequential future obligations of the Injury Benefits Scheme.
- 4.13. Chart showing increase in number of Injury Benefit Awards in payment as at 31 March each year from 2016 to 2021;



- 4.14. Chart showing cash spend on Injury Benefits Awards each financial year from 2015/16 to 2020/21.



5. Change Proposals

- 5.1. The following table lists the eight key change proposals considered essential to the future sustainability of the Injury Benefits Scheme. The Department is now seeking views on each of these eight specific changes through this consultation. These changes will apply as appropriate to both Permanent and Temporary Injury Awards, albeit most are relevant solely to Permanent Injury Awards.

No.	Issues and Change Proposals
1.	<p><u>REMOVE THE LINK WITH THE PENSION SCHEMES</u></p> <p>The Department considers that this will bring many benefits to the membership. There is no rationale for the Injury Benefits Scheme to remain linked to Pension Schemes and in fact you do not need to be a member of the pension schemes to qualify for an Injury Benefit. A concern expressed by members is the time taken to process awards. Removing this link will simplify the administration process. It will also make calculations easier and quicker to do as they will be based on basic pay rather than pensionable earnings as defined in each scheme.</p> <p>The Scheme rules as they currently stand do not legislate for the <i>nuvos</i> (2007) arrangement or <i>alpha</i> (2015) scheme. Having a standalone Injury Benefits Scheme will remove the necessity to make an amendment everytime there is a change to Pension Scheme legislation.</p> <p><u>Question:</u> Should the Injury Benefit Scheme be amended to remove any link to the Pension Schemes and therefore stand alone as a separate scheme?</p>
2.	<p><u>DEFINE "INJURY" AND "INJURY ON DUTY"</u></p> <p>The Department considers that clarity is needed around key terms in the existing rules. There is ambiguity around qualifying injuries and in particular rule 1.3a which states; "References in rule 1.3 to "duty" include activities reasonably incidental to the duty". This rule is vague and open to varying interpretations of its intended meaning. Through experience from past cases, decisions have been challenged by both members and The Pensions Ombudsman because of this ambiguity. For example, perception cases where there is a disagreement between the applicant and their line manager or an injury occurs away from the normal workplace and there appears to be no causal link, however it can be construed that the current rules do not preclude these types of "injuries".</p> <p><u>Question:</u> Should further clarity be provided around definitions of "injury" and "on duty" for example; "Injury on duty" will be confined to mean an injury sustained <u>as a direct result of</u> and <u>caused by</u> the employed position?</p>

No.	Issues and Change Proposals
3.	<p><u>ELIGIBILITY FOR THOSE WHO HAVE LEFT</u></p> <p>The Department considers that if an individual has already left the NICS with normal or full retirement benefits, they cannot make a claim for injury benefit, as there is no injury-related loss of earnings experienced in these circumstances. Full pension should be the most that claimants would reasonably have expected to leave with. Injury Benefits should be considered for applicants who leave with reduced benefits within set timeframes from date of leaving (as per point 4 below).</p> <p><u>Question:</u> Should there be a liability under the Injury Benefit Scheme if the individual has already left the NICS with full pension benefits under normal retirement? How would any potential loss of earnings be calculated?</p>
4.	<p><u>TIME LIMITS FOR RETROSPECTIVE CLAIMS</u></p> <p>The Department accepts that time limits must be introduced for retrospective claims and that the status quo of no time restrictions cannot continue. Retrospective claims and backdating cause substantial arrears payments with no control mechanism in place. The NIAO highlighted this aspect of the scheme so a change must be made. Cash spend on Injury Awards across all NICS employers during 2015-16 was £1.32 million and has since almost trebled to £3.876 million for 2020-21. The trend shows cash spend increasing year on year and it is unsustainable. The main contributing factor for the high spend is the retrospective element as there are currently no limits on backdating claims. Other benefit awards have imposed time limits ranging from only paying from the date of receipt of the application up to a permitted maximum of 3 months retrospection regardless of the category of injury or how long it took for the injury to manifest or be diagnosed.</p> <p><u>Questions:</u> When should Injury Benefit claims be accepted and paid from? For example;</p> <p>4(a) From date application is received?</p> <p>4(b) From date of (or date of diagnosis of) eligible injury providing application is received within 3 months of this date?</p> <p>4(c) Should receipt of applications be time bound after leaving NICS employment, i.e. within 3 months of date of leaving?</p> <p>4(d) Please suggest reasonable alternative timeframes and justification.</p>

No.	Issues and Change Proposals
5.	<p><u>LUMP SUM PAYMENT</u></p> <p>The Department considers that the lump sum element as currently paid is no longer in keeping with the aim of the scheme. At inception, the Scheme rules were modelled on the classic pension arrangement and mirrored the classic benefits of a lump sum and monthly pension. The Scheme makes awards only in respect of loss of earning capacity and is designed to bring the beneficiary's income from specified sources up to a guaranteed level. If a lump sum is paid in addition to a monthly top-up amount, this brings the income above this level.</p> <p><u>Question:</u> Should the lump sum element be removed in every case?</p>
6.	<p><u>OFF-SETTING</u></p> <p>The Department considers that there is a need to explore the issue of off-setting for claimants of this benefit. The current Injury Benefits Scheme can off-set any payments from Public Funds and compensation payments that provide for loss of earnings in relation to the qualifying injury. There may be issues when claimants have income from other sources such as re-employment. Injury Benefit top-ups are designed to keep income at a guaranteed level.</p> <p><u>Questions:</u></p> <p>6(a) Are there any areas of income from Public Funds which should be disregarded for off-setting purposes?</p> <p>6(b) Should other sources of income, e.g. earnings from re-employment be off-set?</p>
7.	<p><u>REVIEW MECHANISM</u></p> <p>The Department considers that this is necessary to address not only new claims but also existing claims as at present there is no review mechanism for Injury Benefits that can be instigated by Civil Service Pensions. Other health-related benefits or schemes have review mechanisms in place. Recipients of Injury Benefit Awards may experience an improvement in their condition or income which could impact on their Injury Benefit Award.</p> <p><u>Question:</u> Should a periodical review mechanism be introduced in accordance with appropriate timescales, for example at intervals not exceeding 5 years or at any time the Scheme Manager directs for existing and new awards?</p>

No.	Issues and Change Proposals
8.	<p><u>DURATION OF AWARDS</u></p> <p>The Department considers that the payment of an injury benefit award for life, which is the current practice, is unsustainable. Payments are made to surviving adults and dependants when an employee dies as result of a qualifying injury. These are also currently paid for life. “For life” awards are not always equitable as someone at pension age with an injury award could earn more than someone with a retirement pension. Injury Benefits are designed to top-up earnings where there is a loss of earnings capacity due to a work-related injury. There is no normal expectation to earn a salary in the employment market past State Pension Age.</p> <p><u>Question:</u> Do you agree that it would be fair and reasonable to end all injury benefit awards at State Pension Age at the latest, including ending payments to surviving adults and dependants from the date the claimant would have reached State Pension Age?</p>

6. Conclusion

- 6.1. The change proposals outlined above along with continued provision of support services for staff to promote good health and well-being should help control the escalating costs of the Scheme and ensure it remains in place for staff to avail of in the years to come.
- 6.2. The Department acknowledges the work done to increase awareness of the impacts of unmanaged or escalating stress and its effect on mental health, and that employers and Human Resources provide wide and varied support services including one-to-one counselling, health and well-being seminars and information on techniques for coping with and managing stress levels. The Centre for Applied Learning (CAL) also run a range of courses around mental health issues and interventions. Prison Service in particular currently offer a range of courses and events for their officers which promote positive physical and mental well-being as well as introducing additional safety measures in an effort to reduce assaults on staff and the level of injuries sustained. The commitment to improving employees’ health and well-being across the NICS and associated organisations should translate to a reducing number of Injury Benefit Awards going forward.

7. Equality and Other Screening

- 7.1. The Department conducted an Equality Screening Exercise and a Rural Needs Impact Assessment for the change proposals outlined above. The introduction of these changes will have a minor differential impact to some of the Section 75 groups but the proposals have been screened out due to mitigating actions. The Department does not believe that the proposals will impact people living in rural areas any differently to those people in urban areas. Both assessments are published on the Civil Service Pensions Website alongside this consultation paper.

8. Next Steps

8.1. This consultation opens on 7th June 2021 and will close at noon on 10th September 2021.

8.2. All comments and views are welcomed and should be submitted to the following e-mail address; PensionsPolicyCSP@finance-ni.gov.uk or alternatively posted to;

Injury Benefits Scheme Consultation
CSP Policy, Legislation & Communications Branch
Department of Finance
Waterside House
75 Duke Street
Derry/Londonderry
BT47 6FP

8.3. When this consultation closes, the Department will consider all replies received and publish its response which will give final details of the approach to be adopted.

8.4. In due course and in line with requirements, the Department will conduct a further consultation on the legislative changes to give effect to the scheme modifications.

8.5. The Department will consider requests to produce this document in other languages or in alternative formats – Braille, audio, large print or as a PDF document. If you require the document in these or other formats please contact CSP using the details above, or telephone 028 7131 9000.

9. Confidentiality of Replies to the Consultation

9.1. The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, namely the Civil Service Pensions (Northern Ireland) in the Department of Finance in this case. This includes information provided in response to a consultation. Civil Service Pensions (Northern Ireland) cannot automatically consider information supplied to it in response to a consultation to be confidential. However, it does have a responsibility to decide whether any information provided by you in response to a consultation, including information about your identity, should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response. However, please be aware that confidentiality cannot be guaranteed, except in very particular circumstances. Civil Service Pensions (Northern Ireland) will process your personal data in accordance with the Data Protection Act 1998, should you respond in an individual capacity. This means that your personal information will not be disclosed to third parties should you request confidentiality. You should be aware that Civil Service Pensions (Northern Ireland) will publish a synopsis of responses to the consultation.