




Department for  
**Communities**

An Roinn  
**Pobal**

Department for  
**Communities**

[www.communities-ni.gov.uk](http://www.communities-ni.gov.uk)



# Consultation on the McCloud Remedy in the Local Government Pension Scheme (Northern Ireland) –

Supplementary Issues and Draft Regulations

# Scope of the Consultation

## Topic of this Consultation

This consultation seeks views on changes to the Local Government Pension Scheme in Northern Ireland (LGPS (NI)). In 2020/21 we consulted on proposals to remove unlawful discrimination found by the courts in the ‘McCloud’ case. We are now seeking further views on issues relating to the McCloud remedy. We are also seeking views on draft scheme regulations which would implement the remedy. The draft Regulations are published alongside this consultation document.

## Scope of this Consultation

The Department for Communities (DfC) is consulting on changes to the regulations governing the LGPS (NI).

## Geographical Scope

These proposals relate to the LGPS in Northern Ireland only. Separate consultation arrangements are being undertaken in England & Wales and Scotland in relation to the issues addressed in this consultation as they affect those regions.

# Basic Information

This consultation outlines details of proposed changes to the benefits of the LGPS (NI) and is particularly aimed at the LGPS (NI) administering authority, 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 5 weeks from 27 July 2023 to 1 September 2023.

## Enquiries

For any enquiries about this consultation, please email the Department at: [lgpdconsultations@communities-ni.gov.uk](mailto:lgpdconsultations@communities-ni.gov.uk) or write to:

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

Please use email if possible.

## How to Respond

### Email

You can email your responses to:

[lgpdconsultations@communities-ni.gov.uk](mailto:lgpdconsultations@communities-ni.gov.uk)

### Or post to:

LGPS (NI) Consultation  
Department for Communities  
Local Government & Housing Regulation  
Division, Level 4  
Causeway Exchange  
1-7 Bedford Street  
Town Parks  
Belfast, BT2 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](mailto:lgpdconsultations@communities-ni.gov.uk)

### Or write to:

LGPS (NI) Consultation  
Department for Communities  
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# 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 4  
Causeway Exchange  
1-7 Bedford Street  
Town Parks  
Belfast, BT2 7EG

Email:

[lgpdconsultations@communities-ni.gov.uk](mailto: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>.

# Contents

<b>Purpose of the consultation – scope and timeframe</b>	<b>6</b>
<b>Introduction</b>	<b>7</b>
<b>Detailed Proposals</b>	<b>10</b>
Aggregation	10
Club Transfers into the LGPS (NI)	12
Flexible retirement	13
Divorce	15
Compensation	17
Interest	19
Minor amendments	19
<b>Draft Regulations</b>	<b>20</b>
<b>Human Rights</b>	<b>20</b>
<b>Equality</b>	<b>21</b>
<b>Regulatory Impact Assessment</b>	<b>22</b>
<b>Rural Proofing</b>	<b>22</b>
<b>Freedom of information – confidentiality of responses</b>	<b>22</b>
<b>Consultation responses</b>	<b>23</b>
<b>Annex A</b>   The Freedom of Information Act 2000 – confidentiality of consultations	24
<b>Annex B</b>   List of Consultees	25
<b>Annex C</b>   Interest payable on different types of payment	26
<b>Annex D</b>   Glossary	27

# 1. Purpose of the consultation – scope and timeframe

- 1.1 This consultation covers proposals by the Department for Communities to amend the legislation governing the Local Government Pension Scheme (Northern Ireland) (“LGPS (NI)”).
- 1.2 It outlines proposed 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, we propose to remove 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. In removing the discrimination, we are proposing a number of supplementary changes to ensure the revised underpin works effectively and consistently for all qualifying members.
- 1.3 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.
- 1.4 The closing date for submitting responses is 1 September 2023.
- 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 found<sup>1</sup> 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 2022<sup>2</sup> (the 2022 Act) provides the framework within which the McCloud case will be addressed.
- 2.4 In the LGPS (NI) we are addressing 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 administrator, the Northern Ireland Local Government Officers’ Superannuation Committee (“the Committee”), would compare their career average pension against their final salary pension, and award them an addition, if the final salary pension would have been higher.

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<sup>1</sup> Lord Chancellor -v-McCloud & others (judiciary.uk)

<sup>2</sup> Public Service Pensions and Judicial Offices Act 2022 (legislation.gov.uk)

2.6 The extension of the underpin was the Department’s preferred option for addressing the difference in treatment in the LGPS (NI) when we consulted on this matter in 2020/21<sup>3</sup>. This is similar to the approach taken for the LGPS in England and Wales. In 2021, the Minister for Levelling up, Housing and Communities made a written ministerial statement<sup>4</sup> which was laid before Parliament confirming this is how the McCloud Remedy would be taken forward in the LGPS (England & Wales). We will publish our full response to the 2020/21 consultation shortly. An overview of the McCloud Remedy is published alongside this consultation document.

2.7 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.

2.8 In this consultation we seek views on specific issues regarding the remedy and welcome responses from across the LGPS (NI) community on these issues.

Some points are issues we covered in our 2020/21 consultation, where we want to obtain further views before making final decisions (for example, aggregation and flexible retirement). Others are issues for the LGPS (NI) that we have not previously consulted on (for example, compensation and interest).

2.9 The policy matters we are seeking general views on are:

- Aggregation – Determining the rules applicable to decide whether a member with multiple LGPS (NI) memberships has underpin protection in some or all of these.
- Club transfers – Determining the rules applicable to decide whether a member with previous membership of another public service pension scheme has underpin protection in respect of their LGPS (NI) membership.
- Flexible retirement – How the underpin should work in respect of flexible retirement, particularly for cases of ‘partial’ flexible retirement, where a member does not take all their accrued benefits.
- Divorce – How the scheme’s divorce and underpin calculations interact.

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3 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))

4 Written statements - Written questions, answers and statements - UK Parliament



2.10 The technical matters we are seeking implementation comments on are:

- Compensation – The circumstances where a member may become entitled to compensation where they have suffered a loss relating to the McCloud case.
- Interest – The interest terms that will apply where payments are made later than they would have been the case due to the McCloud discrimination.

2.11 The draft Regulations are published alongside this consultation for consultees' consideration and feedback.

2.12 Under the powers contained in the 2022 Act, the Department of Finance has published the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (NI) 2023<sup>5</sup>, referred to as the NI PSP Directions in this consultation document. Part 4 of these Directions covers the LGPS (NI) and is issued under the powers in s.85 of the 2022 Act. The Directions provide a framework within which some aspects of the McCloud Remedy in the LGPS (NI) must be followed and the proposals in this consultation document should be read with that in mind.

## Next Steps

2.13 Following consideration of comments received to this consultation, the Department will finalise the Regulations and bring them into operation on 1st October 2023.

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<sup>5</sup> Directions made under The Public Service Pensions and Judicial Offices Act 2022 | Department of Finance (finance-ni.gov.uk)

## 3. Detailed Proposals

3.1 This section discusses the parts of the McCloud Remedy we are seeking views on in this consultation.

### 3.2 Aggregation

3.2.1 The LGPS (NI) regulations provide for separate pension accounts to be joined up in certain circumstances, a process known as aggregation. Aggregation is an important part of the scheme rules. Where a member re-joins the scheme and does not choose to aggregate previous service, that service is generally preserved and payable on the basis it accrued (for example, using the final salary at the time the member left active service in that record, if it is all final salary service). Where a member chooses to aggregate, their records are combined and payable as one. Aggregation therefore helps to ensure that the LGPS (NI) can operate efficiently with, generally, the rules that applied at date of leaving applying to each record.

3.2.2 Under the current rules governing the underpin, a member could have active service in one LGPS (NI) record on 31st March 2012 and be protected in another subsequent period of membership, even if they are not aggregated. We are proposing not to have an aggregation requirement for determining whether members qualify for underpin protection.

3.2.3 However, where a member who qualifies for underpin protection leaves and re-joins the LGPS (NI) or holds concurrent posts and LGPS (NI) membership ends in one post, we propose that we will require aggregation for their underpin figures to be re-calculated when they next have an underpin date, under the scheme rules.

3.2.4 The basic rules on aggregation and underpin protection that we are proposing are set out below but readers should be aware of the following key concepts:

- Underpin period – For qualifying members, this is the period during which a member will build up underpin protection. It covers active membership in the period from 1st April 2015 to the earlier of 31st March 2022 and a member’s final salary pension age (usually 65).
- Underpin date – The date on which a member’s pension benefits in the underpin period are compared, to give an initial assessment of whether the career average or final salary benefits are better. The underpin date is the earlier of the date a member leaves active membership of the LGPS (NI), or the date of their final salary normal pension age (usually 65).

- Final underpin date – The date on which a final assessment of the underpin takes place, based on the calculations undertaken at a member’s most recent underpin date. The final calculations will vary depending on the way a member is taking their benefits from the scheme. The final underpin date is usually the date the pension is taken from the scheme (for example, by retiring on age grounds, ill-health grounds or by transferring to another scheme).

### 3.2.5 Our proposed rules on aggregation for underpin protection are:

- (a) Where a member was in active service in the LGPS (NI) on or before 31st March 2012, and they do not have a disqualifying gap<sup>6</sup>, they will have underpin protection on their LGPS (NI) service in the underpin period<sup>7</sup>. This will be the case even if the service in the underpin period is in a different LGPS (NI) membership, unaggregated from the membership they were in on or before 31st March 2012.
- (b) Where a member who has built up underpin rights in a record, leaves and re-joins or has an active concurrent membership, the following will apply:

- (i) If they keep separate benefits, the provisional figures calculated on the underpin date remain ‘attached’ to the old pension account. If the new pension account started before 1st April 2022 and there has not been a disqualifying gap, the member will have a further underpin date for the service built up in that pension account.
- (ii) If they aggregate their benefits but have a disqualifying gap (for example because they would prefer to have a single pension in payment, rather than two) they will lose underpin protection on the service accrued in the underpin period in their old pension account. If the new pension account started before the end of their underpin period (the earlier of 31st March 2022 and their final salary normal pension age), then no underpin protection will accrue in respect of the new service (as there has been a disqualifying gap). The member will not have another underpin date in the future.
- (iii) If they aggregate without a disqualifying gap then, generally, the provisional figures calculated on the underpin date are ‘wiped out’. New provisional figures based on the combined membership will be calculated on the member’s next underpin date.
- (iv) The previous underpin figures will not be ‘wiped out’ and will remain applicable where either of the following applies:

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<sup>6</sup> A continuous break in active membership of a public service pension scheme of more than 5 years.

<sup>7</sup> Service between 1 April 2015 and 31 March 2022, or to the member’s final salary normal pension age (usually 65) if earlier.

- the member re-joins the LGPS (NI) after their final salary normal pension age (usually 65), or
- the member holds multiple active pension accounts concurrently and membership ends in one or more of them after their final salary normal pension age.

3.2.6 We intend that it will be possible under the regulations for a member to have multiple sets of provisional underpin figures attached to the same pension account. For example, there will be two sets of provisional underpin figures attached to a pension account if a protected member:

- has two separate sets of deferred benefits that include membership built up in the underpin period that are later aggregated with a new pension account that starts when the member is over their final salary normal pension age, or
- remained an active member after taking flexible retirement before the end of the remedy period.

3.2.7 Whichever approach is taken on aggregation will raise complex issues and will be challenging administratively. On balance, we consider the approach we outline here to be the best way forward overall, but we welcome comments on how central guidance could support local implementation.

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

### 3.3 Club Transfers into the LGPS (NI)

3.3.1 The Public Sector Transfer Club allows individuals to transfer benefits from one public sector pension scheme to another without a reduction in the value of their accrued pension rights. Members of other public service pension schemes will have built up benefits protected by the remedy that they wish to transfer to the LGPS (NI), as LGPS (NI) members may wish to transfer their benefits to other parts of the public sector.

3.3.2 Some LGPS (NI) members who had previous public service pension scheme membership in the underpin period will have made their Club transfer decision before the McCloud case had reached its conclusion or before the Department had set out details of the proposed remedy. For those who were not originally old enough to have underpin protection, they would not have considered the underpin in making their transfer decision and may have made a different decision on the basis of the remedy we are now implementing. The current underpin regulations require that a member must have transferred previous public service pension scheme membership into the LGPS (NI) to qualify for underpin protection on service built up in the LGPS (NI), if the previous membership included active service on or before 31st March 2012 but the LGPS (NI) service did not.

3.3.3 After consideration of this, we are now proposing that members will not need to have transferred their previous service in another public service pension scheme into the LGPS (NI) to qualify for underpin protection in the LGPS (NI). Instead, if an LGPS (NI) member had membership of another public service pension scheme on or before 31st March 2012 and did not have a disqualifying gap, they would have underpin protection on their LGPS (NI) service in the underpin period (even if the previous service was not transferred to the LGPS (NI)). This would resolve the issue we describe above, and it also would align the LGPS (NI's) approach with that being adopted by other public service pension schemes.

3.3.4 This approach would create administrative complexities, as it will require LGPS administrators to know if their members had membership of other public service pension schemes in the period on or before 31st March 2012. In a few cases, it may be possible to find this out from the information provided when the member joined the LGPS (NI), however, this may not be the case for all members. We welcome comments from respondents on the administrative challenges of this change.

**Question 2 – Do you agree with our proposals in this section regarding Club transfers?**

## 3.4 Flexible retirement

3.4.1 From age 55, a member who reduces their working hours or moves to a lower graded post may take flexible retirement, if their employer agrees. Flexible retirement allows the member to ease into retirement by taking some or all of the pension they have built up, while remaining in employment. The day before the reduced pay or hours post starts will be a protected member's underpin date, unless they are already over their final salary normal pension age.

3.4.2 In our consultation in 2020/21 we included a proposal for underpin protection to stop when a member took flexible retirement after 31 March 2015, even if this was before the end of the underpin period. In this consultation we are now proposing to change our policy on flexible retirement and underpin protection to ensure the remedy applies equally across all protected members. A protected member will have a second underpin date if they:

- took flexible retirement between 1st April 2015 and 31st March 2022, and
- continued to build up pension in the underpin period after their flexible retirement and before they reached their final salary scheme normal pension age.

3.4.3 Generally, the member's second underpin date will be their last day of active membership, or the day before they reach their final salary normal pension age<sup>8</sup>. A second set of provisional figures will be calculated, based on membership between the first flexible retirement date and the second underpin date.

3.4.4 We also considered 'partial' flexible retirement in the 2020/21 consultation. A member may choose not to take all of their benefits built up after 31st March 2015 when they take flexible retirement. We proposed that a member would get a proportion of any increase to their benefits as a result of the underpin (a final guarantee amount). That proportion would match the proportion of the member's benefits built up after 31st March 2015 that they are taking. The remainder would be payable when the member takes the remainder of their benefits.

3.4.5 For cases of partial flexible retirement, we are proposing not to introduce a final salary link for the purposes of the underpin calculation, in relation to service accrued before the flexible retirement. Introducing a final salary link would make it less likely for a member who has moved to a lower graded post to receive a final guarantee amount when they take the remainder of their benefits after flexible retirement.

Where a member has further underpin service after their flexible retirement, there will be a final salary link on that further service.

3.4.6 The proposed approach for protected members who take partial flexible retirement will be:

- (a) Provisional underpin amount and assumed benefits are worked out on the underpin date – this will be the day before the member reaches their final salary scheme normal pension age or the day before the reduction in hours or grade.
- (b) Final underpin amount and assumed benefits are calculated on the final underpin date – the day before the reduction in hours or grade. These are based on the provisional figures calculated under sub-paragraph 3.4.6(a) adjusted for inflation and any actuarial adjustment for early or late retirement. If the final underpin amount is higher, the difference is the final guarantee amount.
- (c) A proportion of the final guarantee amount is added to the flexible retirement pension account. The proportion should equal the proportion of benefits built up after 31st March 2015 that the member chooses to take.

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<sup>8</sup> There is no limit to the number of times a member can flexibly retire, so it is possible they could flexibly retire again, which would also give rise to a second underpin date.

(d) The member will have another final underpin date when they take the remainder of their benefits (or take flexible retirement again). The provisional figures calculated under subparagraph 3.4.6(a) are used to calculate a second final underpin amount and assumed benefits. If the final underpin amount is higher, the difference is the second final guarantee amount.

(e) A proportion of the second final guarantee amount is added to the retirement pension account (or flexible retirement pension account). The proportion should equal the proportion of benefits built up between 1st April 2015 and the original flexible retirement date that the member is taking.

3.4.7 We recognise that the approach to underpin protection for members who take flexible retirement is complex. Members may have both:

- multiple underpin dates for the same pension account if the first flexible retirement occurred before 1st April 2022, and
- multiple final underpin dates in respect of the same benefits if the member takes partial flexible retirement.

3.4.8 We consider that this approach will deliver consistent protection to members who take flexible retirement and those that do not.

3.4.9 Members who take flexible retirement from 1st April 2022 (or after their final salary normal pension age) will not have multiple underpin dates, because they will not build up any remediable service after their flexible retirement.

**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?**

**Question 4 - Do you agree with our proposal for multiple final underpin dates if a member takes 'partial' flexible retirement?**

### 3.5 Divorce

3.5.1 The current regulations and the 2020/21 consultation did not fully address how underpin calculations and divorce (or dissolution of a civil partnership) calculations will interact.

3.5.2 There are potentially two stages in the process when a member gets divorced or their civil partnership is dissolved. At the first stage, the Committee provides the current cash equivalent value (CEV) of the member's LGPS (NI) benefits to the court. The value of the LGPS (NI) benefits may be offset against other assets or the court could award the former spouse or civil partner a share of the member's pension. This is usually achieved by issuing a pension sharing order – the second stage of the process.

3.5.3 A valuation of benefits in relation to divorce or dissolution proceedings or a pension sharing order will not constitute a member's underpin date nor final underpin date. If the member has already had an underpin date or final underpin date, any calculations in connection with matrimonial proceedings will not change those dates.

3.5.4 Actuarial guidance issued by the Department sets out how calculations related to divorce and dissolutions are performed in the LGPS (NI). This includes guidance on:

- Pension sharing following divorce;
- Pension debits; and
- Pension credits.

3.5.5 This guidance will be updated to reflect the McCloud remedy in due course. We believe that most of the changes needed to ensure the underpin is correctly addressed in divorce calculations will be delivered by changing the actuarial guidance. We therefore do not propose to make significant changes to the LGPS (NI) regulations to set out how the underpin should be reflected in divorce calculations (see draft regulation 4P). Draft regulation 12 of Part 3 outlines how the retrospective effect of our remedy would impact past divorce calculations.

3.5.6 We propose that the guidance be updated to deliver the following results when a CEV is calculated for a member in scope of McCloud remedy in relation to matrimonial proceedings:

- **Pensioner member** - The CEV of their LGPS (NI) rights would be based on their pension in payment. That pension will include any final guarantee amount that the member is receiving. If the court does issue a pension sharing order, the final guarantee amount could be shared (depending on what the order provides).
- **Deferred member or an active member who is over their final salary normal pension age** - These members will have already had an underpin date. The CEV will be worked out in the same way as a non-Club transfer value is calculated<sup>9</sup>. The member's underpin protection will therefore be reflected in the CEV. The member's final underpin calculations will take place as usual when they have their final underpin date under the normal rules of the scheme.
- **Active member who is under their final salary normal pension age** - These members will not have had an underpin date. The CEV will be calculated as if the calculation date was the member's last day of service. Provisional assumed benefits and underpin amount will be worked out solely for the purpose of calculating the CEV.

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<sup>9</sup> See the transfer out section of the Overview of the McCloud Remedy published alongside this consultation.



The member's underpin calculations will take place as usual when they have their underpin date and final underpin date under the normal rules of the scheme.

3.5.7 We are also proposing a minor technical adjustment to how pension debits<sup>10</sup> are reflected in underpin calculations, to avoid the potential for a member having negative assumed benefits or a negative underpin amount, which could be difficult to explain. The change will not have a material impact on members' final underpin calculations.

3.5.8 The current regulations provide for any pension debit to be removed from the pension figures when working out a member's assumed benefits and underpin amount. For some members, this may result in one or both of these figures being negative. This could happen if the member has benefits that are excluded from the calculation of the assumed benefits and underpin amount, but that have been shared as a result of a pension sharing order. Such benefits could include additional pension purchased or awarded or certain transfers into the 2015 Scheme.

3.5.9 We therefore propose to remove pension debits from the calculation of provisional assumed benefits and underpin amounts. We believe this will mean:

- no change in the level of any final guarantee amount because the change will not affect the difference between the assumed benefits and the underpin amount;
- no negative assumed benefits or underpin amount and the associated challenges of explaining them to scheme members.

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

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

## 3.6 Compensation

3.6.1 Under the 2022 Act, LGPS administering authorities may pay compensation to or in respect of an LGPS member in certain circumstances. Compensation may take one of two forms:

- direct – where the compensation is a cash payment, and
- indirect – where the compensation is an additional benefit under the scheme.

3.6.2 In the LGPS (NI), the Northern Ireland Local Government Officers' Superannuation Committee is the administering authority, or indeed it can also be referred to as the scheme manager. In this consultation document and the draft Regulations it is referred to as "the Committee".

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<sup>10</sup> The amount a member's pension is reduced by to reflect that a court has awarded their ex-spouse a pension credit.

3.6.3 The NI PSP Directions build on the 2022 Act, specifying the circumstances in which either type of compensation can be paid. Directions 33 to 34 cover direct compensation, whilst directions 35 and 36 cover indirect compensation. Broadly, compensation may be paid where members have suffered:

- direct financial loss as a result of the identified discrimination or the application of the remedy<sup>11</sup>, or
- a ‘specified Part 4 tax loss’, covering circumstances where a member may have overpaid annual allowance or lifetime allowance charges as a result of the identified discrimination or the application of the remedy.

3.6.4 Our draft Regulations include the following provisions regarding compensation:

- Draft regulation 4Q (Payment of indirect compensation) – Gives the Committee a power to award members additional benefits where the qualifying criteria for indirect compensation are met. Under this, the Committee would have to obtain advice from an actuary before determining what additional benefits to pay.
- Draft regulation 4R (Applications for compensation) – Provides that direct or indirect compensation may only be payable in respect of a member where an application has been made to the Committee. Also, it details what must be included in such an application.

3.6.5 As s. 82 of the 2022 Act already gives administering authorities (referred to as ‘scheme managers’ in the Act) powers to pay direct compensation, the draft regulations do not restate the powers applicable for this type of compensation.

3.6.6 The draft Regulations also provide that where direct or indirect compensation has been paid, they would be liabilities for the purposes of funding valuations (Regulation 68 of the 2014 Regulations) and exit valuations (regulation 70 of the 2014 Regulations).

3.6.7 The Department recognises that as the decision-making power regarding compensation is at the Committee’s level, there may be a need for Departmental guidance in determining how to approach this part of the remedy. There is also the potential for inconsistency in how this matter is approached between different administering authorities across the LGPS in the UK. Whilst there is a detailed legislative framework within which compensation applications must be approached, in liaison with the Department for Levelling up, Housing and Communities we will be considering the issue of compensation in the guidance to build on the legislative requirements.

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

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<sup>11</sup> Indirect compensation (additional scheme benefits) may not be awarded for this type of loss.

### 3.7 Interest

3.7.1 The retrospective nature of our remedy to the McCloud discrimination will mean payments will be made by LGPS (NI) administering authority to or in respect of some LGPS (NI) members later than would have been the case if the discrimination had not occurred. Applying appropriate interest on such payments is therefore important to ensure that members receive benefits of an equivalent value to those they would have originally received.

3.7.2 A standard approach will apply across the public sector in relation to interest for McCloud remedy and directions issued by HM Treasury set out a framework which local government scheme regulations must implement. An exchange of letters between HM Treasury and the Government Actuary's Department has been published outlining the basis of the Government's decisions on interest<sup>12</sup>. Draft regulation 4T and regulation 14 of part 3 contain details of the interest terms that will apply where additional payments are due in respect of members as a result of the LGPS (NI) McCloud remedy, building on directions 37 to 40 of the NI PSP Directions. Where interest is payable under these provisions, the table in Annex C describes what interest rates should apply and for what period.

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

### 3.8 Minor amendments

3.8.1 Part 4 of the draft Regulations contains some minor amendments which are unrelated to the McCloud Remedy. These are in respect of the following –

- (a) draft regulation 15 of the draft Regulations amends regulation 12 (application of abatement policy in individual cases) in the LGPS (Amendment and Transitional Provisions) Regulations (NI) 2009 (SR 2009 No. 34) to ensure the continuity of the abatement provisions;
- (b) Draft regulation 16 amends regulation 3 (membership before 1 April 2015) in the Transitional Regulations to correct a cross reference, ensuring the continuity of the abatement provisions.
- (c) Draft regulations 17 and 18 make minor amendments to correct 2 drafting errors in the LGPS (Amendment) Regulations (NI) 2023 (SR 2023 No. 83) which changed the revaluation date in the LGPS (NI) from 1 April to 6 April.

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<sup>12</sup> Public Service Pensions and Judicial Offices Act 2022: Treasury Directions - GOV.UK ([www.gov.uk](http://www.gov.uk))

## 4. Draft Regulations

- 4.1 Draft Regulations to implement the LGPS (NI) McCloud remedy are published alongside this document. The draft Regulations cover the main remedy as described in the overview of the McCloud Remedy published alongside this consultation, as well as other matters described in this document.
- 4.2 The draft Regulations include, at Part 3, a section describing how the remedy will have effect retrospectively in respect of those situations where members have already taken their benefits from the scheme (through a pension or in another way). Whilst we have made retrospective provision on other matters in the past without a similar section, Part 3 has been included for these regulations to provide additional clarity given that retrospection is such a major feature of the changes we are making.
- 4.3 Part 4 of the draft Regulations contain proposed minor amendments which are described at paragraph 3.8 above.
- 4.4 The draft Regulations are provided as an indicative draft only and may be subject to further changes as a result of internal review. We welcome general comments on how effectively the regulations would implement the extension of the underpin, as well as specific suggestions for changes that would be beneficial.

## 5. Human Rights

- 5.1 The Department considers that the proposed amendments in the draft Regulations are compatible with the Human Rights Act 1998.

## 6. Equality

6.1 The Department considers that the draft Regulations do 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 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 \(communities-ni.gov.uk\)](#)

6.2 Also, 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.

It is also considered that the proposed minor amendments in Part 4 of the draft Regulations will not alter that outcome.

6.3 When we consulted on the McCloud remedy in the LGPS (NI) in the 2020/21 consultation, we sought views from consultees on whether other data sets were available to help us assess the impacts of our proposals on the scheme's membership. At the time, no suggestions were put forward but, reflecting the time that has since passed, question 11 below seeks further suggestions.

**Question 11 - Do you have any comments on our screening analysis for equality impact<sup>13</sup>?**

**Question 12 – 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?**

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<sup>13</sup> These supplementary proposals in this consultation, have not altered the recommendation in the screening analysis. It will be reviewed following this consultation.

## 7. Regulatory Impact Assessment

- 7.1 The Department considers that the proposed amendments in the draft Regulations 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 proposed amendments in the draft Regulations 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](mailto: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**

or send to:

**Postal address-**

Local Government and Housing  
Regulation Division  
Level 4  
Causeway Exchange  
1-7 Bedford Street  
Town parks  
Belfast  
BT2 7EG

[Please use email , if possible].

10.2 Please ensure your response reaches the Department by 1 September 2023.

10.3 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.

10.4 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**

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

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](http://www.informationcommissioner.gov.uk)).



## Annex B

# List of Consultees

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)).

## Interest payable on different types of payment

Type of payment	Interest applicable	Period applicable for
Retrospective addition to a member or survivor's pension in payment	Calculated as simple interest accruing on a day for day basis at a rate fixed, for the time being, by section 17(1) of the Judgments Act 1838 (see direction 38(4))	From the mid-point date to the date of payment of the addition (where the mid-point date is the day which falls half-way through the period beginning on the date when pension benefits were first underpaid and ending on the date of payment)
Retrospective addition to a lump sum (including pension commencement lump sum, death grant and trivial commutation payment)  Retrospective addition to a transfer out of the scheme	Calculated as simple interest accruing on a day for day basis at a rate fixed, for the time being, by section 17(1) of the Judgments Act 1838 (see direction 38(4))	From the date the original payment was made to the date of payment of the addition
Direct compensation for direct financial loss	Calculated as simple interest accruing on a day for day basis at a rate fixed, for the time being, by section 17(1) of the Judgments Act 1838 (see direction 38(4))	From the date direct financial loss arose to the date of payment
Direct compensation for a Part 4 tax loss	Calculated in accordance with the provisions of the Taxes (Interest Rate) Regulations 1989 as if that amount were overpaid tax	From the date the loss arose to the date of payment
Indirect compensation	Rate applicable determined by reference to the additional benefit awarded – for example, if additional pension is awarded, the rate of interest for pensions would apply	Period applicable determined by reference to the type of additional benefit awarded – for example, if additional pension is awarded, the period applicable for pensions would apply

# Glossary

Term	Definition
2014 Regulations	The Local Government Pension Scheme Regulations (NI) 2014 (SR 2014 No. 188)
Active member	An active member means a person who is in an employment with a Local Government Pension Scheme (LGPS) employing authority, and (a) paying contributions to the Scheme; (b) treated as paying contributions to the Scheme; or (c) absent from that employment for one of the reasons mentioned in regulation 13 (contributions during absence from work) of the LGPS Regulations (NI) 2014 and entitled to pay contributions to the Scheme
Aggregation	Aggregation is the process of joining earlier benefits in the scheme from an earlier period of membership (or the cessation of a concurrent employment) with an active member's new (or, in the case of a concurrent employment, ongoing) pension account.
Annual allowance	Annual Allowance is the amount by which the value of a member's pension benefits may increase in a year without that member having to pay a tax charge imposed by HMRC.
Break in service	A break in service is an interval between two periods of active membership of the LGPS (NI). If this interval is longer than 5 continuous years, it becomes a disqualifying break in service.
Concurrent employment	If a member has two or more contracts of employment within the LGPS (NI) the member may have more than one pension building up at the same time while the member does a variety of jobs.
Deferred member	A person is a deferred member of the Scheme, in relation to an employment, if- (a) the person has qualifying service for a period of at least two years; (b) the person is no longer an active member of the Scheme in relation to that employment; (c) the person has not started to receive any pension under the Scheme in relation to that employment; and (d) the person has not reached the age of 75.
Disqualifying gap	This is a continuous break of more than five years in active membership of a public service pension scheme.

Term	Definition
Flexible retirement	From age 55, a member may reduce their hours or move to a less senior position, provided the member has met the 2 years vesting period in the scheme and the member's employer agrees, the member can take some or all of their accrued pension benefits.
NILGOSC	The acronym for the LGPS (NI) scheme manager. Their full name is the Northern Ireland Local Government Officers' Superannuation Committee. Also referred to as "the Committee" in this document and the draft Regulations.
Normal pension age (NPA)	Normal pension age for members of LGPS (NI) 2015 will be the same as the member's state pension age or age 65, whichever is later. As the state pension age increases so will each member's normal pension age meaning that a member could be older than 65 when they reach their normal pension age.
Pensioner member	A person is a pensioner member of the Scheme if they are in receipt of a benefit from the Scheme from one of the following categories of scheme membership- (a) was an active member of the Scheme; (b) was a deferred member of the Scheme; or (c) was a pension credit member of the Scheme.
Public Sector Transfer Club	The Public Sector Transfer Club, more usually known as the Club, is a group of some 120 salary related occupational pension schemes, not all of whom are based in the public sector. The Club offers those who move between Club schemes the opportunity to transfer pension benefits on special terms. In general, when a member transfers pension benefits between Club schemes, the member will receive a broadly equivalent service credit in the new scheme, regardless of any increase in salary on moving.
Qualifying member	The members who would be in scope of the revised underpin, both the group originally protected and those who would newly gain underpin protection under our proposals.
The Committee	NILGOSC – the Northern Ireland Local Government Officers' Superannuation Committee.
Trivial commutation	Trivial Commutation is an option where members can take a taxable lump sum from the LGPS (NI) in lieu of a small pension. The total capital value of the pension must be less than £30k, in order to qualify for trivial commutation.

Available in alternative formats.

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