



Police Pensions (Remediable Service) (Amendment) Regulations (Northern Ireland) 2024

Consultation Response and Way Forward Document

Department of Justice
Safer Communities Directorate
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1. Introduction

- 1.1 This document is the post-consultation report for the consultation on the Police Pension (Remediable Service) (Amendment) Regulations (Northern Ireland) 2024, published on 19 March 2024 and which closed to responses on 16 May 2024.
- 1.2 The report contains:-- :
- the background to the consultation
 - a summary of the consultation responses
 - the government response to the specific questions asked and matters raised by respondents, and
 - next steps.

Legislative background

- 1.3 The [Public Service Pensions Act \(Northern Ireland\) 2014](#) (“2014 Act”) provides the legislative basis for pension scheme regulations to be made. The powers to make these amendments are contained in the [Public Service Pensions and Judicial Offices Act 2022](#).
- 1.4 Under section 21 of the 2014 Act, the consultation sought the [views of representatives](#) of such persons as appear to the Department of Justice likely to be affected by these Regulations. This is to ensure that these regulations and policies are based upon an understanding of how such amendments may impact members of the police pension scheme.
- 1.5 On the 4 March 2024, the Minister of Justice granted permission to consult on the proposed regulatory amendments. Subsequently, the consultation document was also brought before the Justice Committee on the 14 March 2024.
- 1.6 The Department welcomed input from policing stakeholders and interested parties to ensure that the final regulations and policies are based on a level of understanding as

to how these amendments affect members of the police pension scheme. The Department received 4 consultation responses which included contributions from:

- i. Police Federation for Northern Ireland
- ii. Northern Ireland Policing Board
- iii. Police Service of Northern Ireland
- iv. Superintendents' Association of Northern Ireland
- v. Chief Police Officers' Staff Association
- vi. Northern Ireland Retired Police Officers Association
- vii. Northern Ireland Police Pensions Scheme Advisory Board.

Purpose of the consultation

1.7 The purpose of the consultation was to seek key stakeholder views on the Police Pensions (Remediable Service) (Amendment) Regulations (NI) 2024 which aim to-

- A** Provide for a contingent decision in respect of transfers in from non-club organisations during the remedy period (1 April 2015 to 31 March 2022) for legacy scheme¹ members, subject to certain conditions.
- B** Include a clause that instructs the Scheme Manager to determine the remediable value of the ill-health benefits in the alternative scheme.
- C** To pre-empt commentary from the Examiner of Statutory Rules, by the correction of typographical references within the legislation following the original drafting, by applying the minor corrections identified in the [Joint Committee of Statutory Instrument Forty Nineth Report](#) for the equivalent England and Wales Police (Remediable Service) Regulations which is also relevant to the equivalent police pension regulations in Northern Ireland.

¹ Legacy schemes include “the 1988 scheme” constituted [by S.R 1988 No.374](#) and “the 2006 scheme constituted by [S.R 2009 No.76](#).”

2. Executive summary

2.1 The Police Pensions (Remediable Service) (Amendment) Regulations (Northern Ireland) 2024 will correct minor drafting errors and omissions within the [Police Pensions \(Remediable Service\) Regulations \(Northern Ireland\) 2023 \(S.R.23 No.122\)](#) (2023 NI Regulations).

Summary of amendments

2.2 These Regulations will ensure that in Northern Ireland, the Police Pensions Scheme Manager and Pension Administrator may also effectively deliver on the McCloud Remedy, so that police officers may be placed into the position they would have been had the discrimination not occurred and include the following provisions :-

- ❖ A clause relating to a contingent decision on the provision for transfers in from non-club organisations during the remedy period for legacy scheme members, was omitted in error during the drafting of the Police Pension (Remediable Service) Regulations 2023. Provided a member can provide evidence that they would have chosen to transfer in service from a non club organisation, during the Remedy, but decided against it, due to being transferred into the reformed scheme. This may now be considered as a contingent decision, subject to certain conditions set within the legislation. The draft regulations intend to rectify this position for scheme members and the Scheme Manager (Northern Ireland Policing Board).
- ❖ The proposed amendments include a provision for an instruction for the Scheme Manager to determine the remediable value of the ill-health benefits in the alternative scheme. While the Department is aware that the Scheme Manager is currently applying this to effectively deliver the McCloud Remedy for members, the inclusion of this amendment is to provide appropriate legislative support to do so. Similar provisions apply in the GB police pension schemes.
- ❖ Correction of typographical references within the legislation following the original drafting and minor corrections as identified in the [Joint Committee of Statutory Instrument Forty Ninth Report](#) in the Home Office regulations, which also applied in the 2023 NI Regulations. Following a reconciliation exercise a minor number of typographical

errors were also further identified. These proposed amendments will align with the Home Office amendments and will improve the delivery of McCloud Remedy.

3. Department's response to the Consultation

3.1 The consultation paper was published on the DoJ Website and NI Direct Citizenspace platform and ran from 19 March 2024 and closed to responses on 16 May 2024. Responses were invited via the NI Direct Citizenspace platform and targeted stakeholders were sent this link.

3.2 A total of 4 responses to the consultation paper were received from both employer and employee representative organisations. No responses were received from private individuals or individual members of the police pension scheme.

3.3 Respondents were asked to consider three questions and indicate if they felt the Department's proposed amendments to the policy area accomplished what they aimed to achieve.

A. Non Club Transfers

3.4 Question A Do you agree with the Department's proposed approach to permit non club transfers, as a contingent decision, provided certain conditions are met?

Summary of respondent's commentary

3.4.1 The Scheme Advisory Board (SABNI) acknowledged the drafting omission for a provision relating to a contingent decision for non-club transfers for Police Pension Schemes and agree with the Department's intention to correct this position for Northern Ireland scheme members.

3.4.2 Northern Ireland Policing Board as Scheme Manager accepts the oversight and 'welcomes and supports the Department's proposed amendment' to rectify this for members and align with the equivalent UK schemes.

3.4.3. Police Service Northern Ireland agree that the approach proposed is appropriate to determine a genuine contingent decision.

3.4.4 Police Federation of Northern Ireland (PFNI) have indicated we would prefer there is a formal appeal mechanism in the application process where a single point of contact is effectively the sole decision maker. PFNI are aware this option is not incorporated in comparable regulations in Great Britain.

Department of Justice (DoJ) Response

3.4.5 The omission to include Non-Club Transfers relate to circumstances unique to the UK Police Pension schemes that do not occur in other public service schemes, and so were not captured in the exemplar regulations that were produced to apply to multiple public service schemes. These circumstances also apply to a very limited cohort of members.

3.4.6 Under the Public Service Pension and Judicial Offices Act 2022, eligible scheme members are permitted to seek correction for decisions under the scheme that might have been made differently had the member been in the alternative scheme at the time.

3.4.7 Provided a member can provide evidence that they would have chosen to transfer in service from a non-club organisation, during the Remedy period, but decided against it, due to being transferred into the reformed scheme. This may now be considered as a contingent decision, subject to certain conditions set out on the legislation. The proposed regulations intend to rectify this position for members and scheme managers in the police scheme.

3.4.8 SABNI, PSNI and PFNI accept the omission related to this cohort and support to its inclusion to help support these members that may have been impacted, to return them to a more favorable position.

3.4.9 In responding, the PFNI raised the concern over the absence of a regulatory appeal mechanism for a contingent decision. Following a Police Pension Scheme Advisory Board meeting on the 14 May 2024, the Policing Board as Scheme Manager confirmed to the PFNI that contingent decision appeals are subject to the Internal Dispute Resolution process.

3.4.10 The Department is satisfied that this amendment is supportive of the overall policy intent of the McCloud Remedy, by ensuring that the member is informed about their choice of benefits, according to legislative requirements.

B III Health Remediable Value

3.5 Question 2 Do you agree with the Department's proposed approach to include this provision to support the Scheme Manager's effective delivery of the McCloud Remedy.

Summary of respondent's commentary

3.5.1 SABNI members agree that the Department's intention to include the remediable ill health benefits value in the alternative scheme as a legislative provision will assist to improve the scheme manager's operational processes.

3.5.2 PFNI commented that regulations provide for the necessary "legislative underpin for the determination process currently being applied."

3.5.3 NIPB welcomes the regulatory support that this amendment affords to implement the ongoing delivery of the Retrospective Remedy.

3.5.4 Police Service Northern Ireland (PSNI) suggested clarification for the definition of "the alternative scheme".

Department of Justice (DoJ) Response

3.5.5 The Department is aware that the Scheme Manager is continuing to provide an remediable value for ill health benefits, as part of the reassessment process. It's the Department's view that its inclusion, provides protection of the member and supports the work of the Scheme Manager.

3.5.6 All respondents were supportive of the Department intention to provide regulatory support for the Scheme Manager as they continue to apply McCloud Remedy to the Ill Health benefits reassessment cases.

3.5.7 The term of the 'alternative scheme' is defined in the existing regulations at 18(2) [The Police Pensions \(Remediable Service\) Regulations \(Northern Ireland\) 2023](#).

3.5.8 The Department is satisfied that this amendment is supportive of the overall policy intent to ensure that the member is informed about their choice of benefits, in accordance with legislative requirements.

Technical changes

3.6 Question 3 -Do you agree with the Department's proposal to make a number of technical amendments to the Police Pensions (Remediable Service) Regulations (NI) 2023 in order to improve the effective delivery of the McCloud Remedy established by those Regulations?

Summary of respondent's commentary

3.6.1 Collectively SABNI members accepts the need for the technical amendments identified by both Department and the Joint Committee of Statutory Instruments.

3.6.2 NIRPOA were of the view 'that this should be at no cost to the members particularly those medically discharged'.

3.6.3 NIPB and PFNI highlighted the importance for alignment of regulations with the equivalent UK Police Pension Schemes.

3.6.4 PSNI agree that the draft regulations provide a pragmatic approach, which will assist in the delivery of the McCloud Remedy.

Department of Justice (DoJ) Response

3.6.5 [The Joint Committee for Statutory Instruments \(JCSI\) published its Forty-Ninth Report of Session 2022-2023](#) on the 27 October 2023 which drew special attention to the Police Pensions (Remediable Service) Regulations 2023 (S.I. 2023/831) which applies to police schemes in England and Wales. This Statutory Rule will correct the position within the equivalent police regulations in Northern Ireland. It is noted that the error identified, may also apply to other public sector scheme regulations across the United Kingdom.

3.6.6 Following a reconciliation exercise, a minor number of typological errors were further identified by the Department. These proposed amendments will align with the Home Office amendments and will maintain interoperability within the Police Pension Schemes.

3.6.7 The Department is satisfied that these amendments are supportive of the overall policy intent and will have a positive impact for pension members by improving the delivery of the McCloud Remedy.

4. Impact Exercises

Equality

4.1 [Section 75 of the Northern Ireland Act \(1998\) \(equality\)](#) places statutory duties aim to encourage public authorities to address inequalities and demonstrate measurable positive impact on the lives of people experiencing inequalities. Its effective implementation should improve the quality of life for all of the people of Northern Ireland.

4.2 Section 75 requires public authorities to have due regard for the need to promote equality of opportunity between:-

- persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- men and women generally
- persons with a disability and persons without
- persons with dependants and persons without

4.3 The Department has carried out an Equality Impact Assessment ('EQIA') screening exercise when considering the drafting of these regulations. The purpose of this screening was to identify those policies that are likely to have an impact on equality of opportunity and/or good relations and so determine whether an EQIA was necessary. Officials also took into account the policy decision made in March 2023 when introducing the Police Pensions (Remediable Service) Regulations (Northern Ireland) 2023.

4.4 In particular the screening concluded that the draft regulations proposed will have an affirmative impact as members will now have the opportunity to transfer pensionable service from non-club organisations into their respective legacy schemes as a contingent decision, provided certain conditions are met. The impact is positive and not detrimental, by placing the members back into the position had the discrimination not occurred. On the basis of this conclusion a full EQIA was screened out and [published](#) alongside the consultation document on 19 March 2024.

Data Protection

4.5 The Department have carried out a Data Protection Impact Assessment ('DPIA') screening when considering the drafting of these regulations. As these draft regulations do not require the Department to process individual's personal information a full DPIA has been screened out.

Rural Communities

4.6 The Department give consideration to a Rural Needs Impact Assessment as part of the implementation of these proposed regulations. It identified that there would be no significant adverse or differential impact on people living in rural communities compared with those in an urban setting and was published alongside the consultation document.

5. Conclusion and next steps

5.1 The regulations set out the detail of the Department's proposals to make amendment to the Police Pension (Remediable Service) Regulations (Northern Ireland) 2023 in order to:-

- ❖ Provide for a contingent decision in respect of transfers in from non-club organisations during the remedy period (1 April 2015 to 31 March 2022) for police legacy scheme members, subject to certain conditions.

- ❖ Include a clause that instructs the Scheme Manager to determine the remediable value of the ill-health benefits in the alternative scheme.

- ❖ Pre-empt commentary from the Examiner of Statutory Rules by the correction of typographical references within the legislation as identified following the original drafting and by applying the minor corrections as identified in the [Joint Committee of Statutory Instrument Forty Nineth Report](#) for the equivalent England and Wales Police (Remediable Service) Regulations.

5.2 Having considered the responses to this consultation, DoJ has received approval on 16 May 2024 from the Department of Finance under section 3(5) of the 2014 Act to the making of these Regulations.

5.3 Upon analysis of the consultation responses and subject to the Minister's agreement, the Department will seek to bring forward the proposed Regulations in June 2024, subject to both Ministerial, and Justice Committee approval.

ANNEX A Glossary of terms

Term	Meaning
Member	An individual who joined the police pension scheme and is earning benefits under the Scheme (active member), has a deferred pension under the Scheme (deferred member), or is receiving a pension from the Scheme (pensioner member). In some cases this may also include pension credit members of the scheme.
McCloud Judgment	In the McCloud judgment, the Court of Appeal ruled that the government's decision to separate pension benefits by age was unlawful age discrimination.
McCloud Remedy	The removal of the discrimination caused by the transitional protections, and placing the member into the position they would have been had the discrimination not occurred.
Police Legacy Scheme	A police legacy scheme is a closed pension scheme and includes the 1988 scheme constituted by the Royal Ulster Constabulary Pension Regulations 1988 or the 2006 scheme constituted by the Police Pension (Northern Ireland) Regulations 2009.
Police Pension Scheme 2006	The Pension Scheme for police officers, introduced in 2006 and closed to new entrants on 31 March 2015.

Police Pension Scheme 2015

The Pension Scheme for police officers who join the force from 1 April 2015, Since 1 April 2022 it is the only pension scheme available to Police Officers.

RUC Pension Scheme 1988

The Pension Scheme for police officers, originally introduced in 1972 and closed to new entrants on 6 April 2006.

Scheme Manager

The Scheme Manager is responsible for managing and administering the police pension schemes. Whilst authority may be delegated to administrators, overall responsibility remains with the Scheme Manager.