



DOE

Department of
the Environment
www.doeni.gov.uk

**Draft Local Government
Pension Scheme (Nursery Assistants)
(Amendment) Regulations
(Northern Ireland) 2016**

Consultation Document

January 2016

Draft Local Government Pension Scheme (Nursery Assistants) (Amendment) Regulations (Northern Ireland) 2016

**This Consultation Document seeks views on the Department's
proposals for the Local Government Pension Scheme
(Nursery Assistants) (Amendment) Regulations (Northern
Ireland) 2016.**

Comments should be sent by 11 March 2016 to:

**Local Government Policy Division
Department of the Environment
Level 4
Causeway Exchange
Townparks
1-7 Bedford Street
Belfast, BT1 7EG**

E-mail: LGPDConsultations@doeni.gov.uk

The following persons will be able to answer queries in relation to
this consultation.

| Name | E-mail | Telephone |
|----------------|--|------------------|
| Patrick Smith | patrick.smith@doeni.gov.uk | 028 90823358 |
| William Dobbin | william.dobbin@doeni.gov.uk | 028 90823360 |

Crown Copyright 2016

This material may be freely reproduced except for sale or advertising purposes

| Contents | Page |
|--|-------------|
| Purpose of Consultation Document | 2 |
| Background | 2 |
| Human Rights | 4 |
| Equality | 4 |
| Regulatory Impact Assessment | 4 |
| Rural Proofing | 5 |
| Alternative Format | 5 |
| Consultation | 5 |
| Annex A – The Freedom of Information Act 2000 – confidentiality of consultations | 7 |
| Annex B – Draft Local Government Pension Scheme (Nursery Assistants) (Amendment) Regulations (Northern Ireland) 2016 | 9 |
| Annex C – List of Consultees | 16 |

Purpose of the Consultation Document

1. The Department of the Environment is seeking comments on the draft Local Government Pension Scheme (Nursery Assistants) (Amendment) Regulations (Northern Ireland) 2016 (the 2016 Regulations).
2. The 2016 Regulations would amend the Local Government Pension Scheme (Northern Ireland) (LGPS (NI)) to give effect to a collective agreement by the employers/employee negotiating machinery for the Education and Library Boards (ELBs). This collective agreement followed the last in a series of job evaluations for various job categories across the five former ELBs.

Background

3. The Education Authority became operational from 1 April 2015, taking over the roles and responsibilities of the 5 former Education and Library Boards (ELBs). The Education Authority is an employing authority in the LGPS (NI).
4. On 27 March 2015 the employer/employee negotiating machinery for the Education and Library Boards (the Joint Negotiating Council (JNC)) reached a collective agreement to implement the outcome of a job evaluation for nursery assistants.
5. A key component of the collective agreement was a “buy-out” of nursery assistants’ historic terms and conditions of service with a change in their conditioned hours of full-time employment from

32.5 hours to 36 hours. Nursery assistants who sign up to the agreement will receive a one-off non-pensionable compensation payment from the Education Authority depending on the length of service.

6. As part of the collective agreement, the Education Authority has given an assurance that no nursery assistants will lose out on their pension as a result of the implementation of the job evaluation. The Department of the Environment has agreed to the request from the Education Authority to amend the LGPS (NI) Regulations to ensure that previously accrued pension is protected for individuals in this group who sign up to this agreement.
7. To give effect to this pension protection arrangement, the 2016 Regulations make amendments to the calculation of pension benefits in the Local Government Pension Scheme Regulations (Northern Ireland) 2002, the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009, the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 and the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations 2014.
8. The 2016 Regulations set out a two stage final pension calculation for nursery assistants. The final pension calculation will use-
 - i. a divisor of 32.5 hours for membership of the scheme from 1 January 1995 to 27 March 2015 (the date of the collective agreement); and

- ii. the number of contractual hours worked for membership after 27 March 2015.
9. The Department would welcome views on the 2016 Regulations which are attached at Annex B of this consultation document.

Human Rights

10. The Department believes that the proposals set out in the 2016 Regulations are compatible with the Human Rights Act 1998.

Equality

11. The Department has screened out the proposed amendments in the 2016 Regulations and considers that they will have no adverse impact on the categories of person in section 75 of the Northern Ireland Act 1998.

Regulatory Impact Assessment

12. The Department has carried out a preliminary regulatory impact assessment and considers that the proposed amendments will not have a direct or indirect impact on businesses, charities, social economy enterprises or the voluntary sector.

Rural Proofing

13. The Department considers that the proposed amendments in the 2016 Regulations will not have any differential impact on people living in rural areas.

Alternative Format

14. Should you require a copy of this document in an alternative format, it can be made available on request in large print, disc, Braille and audiocassette. The Department's text phone number has also been included below to assist the hearing impaired. It may also be made available in minority languages for those who are not proficient in English.

Consultation

15. Comments should be sent by 11 March 2016 to the following address or by e-mail to LGPDConsultations@doeni.gov.uk.

Local Government Policy Division
Level 4
Causeway Exchange
1-7 Bedford Street
Townparks

BELFAST
BT2 7EG

16. The following persons will be able to answer queries in relation to the consultation.

Patrick Smith - Tel: 028 90823358
patrick.smith@doeni.gov.uk

William Dobbin - Tel: 028 90823360
william.dobbin@doeni.gov.uk

Textphone Number - Tel: 028 90540642

17. This Consultation Document is being circulated to persons and bodies listed in Annex C and is also available to view at-

<https://www.doeni.gov.uk/consultations/>

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 the 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; and
 - 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: <http://www.informationcommissioner.gov.uk>).

DRAFT STATUTORY RULES OF NORTHERN
IRELAND

2016 No.

LOCAL GOVERNMENT

The Local Government Pension Scheme (Nursery Assistants) (Amendment)
Regulations (Northern Ireland) 2016

Made - - - - - ***

Coming into operation-21 days after being made

The Department of the Environment, with the consent of the Department of Finance and Personnel, makes these Regulations in exercise of the powers conferred by sections 1 and 3 of, and Schedule 3 to, the Public Service Pensions Act (Northern Ireland) 2014^(a).

In accordance with section 21 of that Act, the Department has consulted with such persons or representatives of such persons as appears to the Department likely to be affected by these Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as The Local Government Pension Scheme (Nursery Assistants) (Amendment) Regulations (Northern Ireland) 2016 and shall come into operation on (21 days after being made).

(2) In these Regulations—

“the 2002 Regulations” means the Local Government Pension Scheme Regulations (Northern Ireland) 2002^(b);

^(a) 2014 c. 2 (N.I.).

^(b) S.R. 2002 No. 352 as amended by S.R. 2002 No. 353, S.R. 2004 No. 139, S.R. 2005 No. 206, S.R. 2005 No. 274, S.R. 2006 No. 6, S.R. 2006 No. 112, S.R. 2007 No. 152, S.R. 2007 No. 448, S.R. 2007 No. 479, S.R. 2009 No. 34, S.R. 2010 No. 164 and S.R. 2014 No. 189.

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009^(a);

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009^(b); and

“the 2014 Transitional Regulations” means The Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2014^(c).

Retrospection

2. The amendments in—

- (a) regulations 3 to 10 shall have effect from 27th March 2015; and
- (b) regulations 11 to 13 shall have effect from 1st April 2015.

Amendment of the 2002 Regulations

3.—(1) Regulations 4 to 6 have effect in relation to the 2002 Regulations to the extent that the 2002 Regulations continue in operation by virtue of the 2014 Transitional Regulations.

(2) The 2002 Regulations shall be amended in accordance with regulations 4 to 6.

4. In regulation 10 (length of period of membership: calculation of benefit)—

(a) in paragraph (4) for “paragraphs (4A) and (4B)” substitute “paragraphs (4A), (4B) and (4C)”;

(b) after paragraph (4B) insert—

“(4C) In the case of the Agreement No. 2 qualifying member, the denominator is—

(a) for the calculation of any benefits for the period between 1st January 1995 and 27th March 2015, 32.5 hours; and

(b) for the calculation of any benefits for the period thereafter, the number of contractual hours of that employment if it were on a whole-time basis.”; and

(c) in paragraph (6) after the definition of “the Agreement” insert—

^(a) S.R. 2009 No. 33 as amended by S.R. 2010 No.164, S.R. 2010 No. 410, S.R. 2011 No. 117, S.R. 2012 No. 183 and S.R. 2013 No.71.

^(b) S.R. 2009 No. 32 as amended by S.R. 2010 No. 164, S.I. 2010/234, S.R. 2010 No. 410, S.R. 2011 No. 117, S.R. 2012 No. 85, S.R. 2012 No. 183, S.R. 2013 No. 71 and S.R. 2014 No. 189.

^(c) S.R. 2014 No.189 as amended by S.R. 2015 No. 162 and S.R. 2016 No. XX.

““the Agreement No. 2” means the Collective Agreement for the Joint Negotiating Council of the Education and Library Boards reached on 27th March 2015;

“the Agreement No. 2 qualifying member” means a member who was party to the Agreement No. 2;”.

5. After regulation 19(14) (calculations), insert—

“(15) In the case of the Agreement No. 2 qualifying member, paragraphs (10) to (13) apply as if for each reference to “30th November 2007” there was substituted “27th March 2015””.

6. For regulation 22(3) (final pay) substitute—

“(3) For part-time employment—

(a) in the case of a qualifying member subject to regulation 19(10) to (13);

(b) in the case of a newly qualifying member subject to regulation 19(10) to (14); and

(c) in the case of the Agreement No. 2 qualifying member subject to regulation 19(10) to 19(13) and 19(15);

the final pay is the pay which would have been paid for a single comparable whole-time employment.”.

Amendment of the Benefits Regulations

7.—(1) Regulation 8 has effect in relation to the Benefits Regulations to the extent that the Benefits Regulations continue in operation by virtue of the 2014 Transitional Regulations.

(2) The Benefits Regulations shall be amended in accordance with regulation 8.

8. In regulation 8 (final pay: general) of the Benefits Regulations—

(a) for paragraph (3) substitute—

“(3) For part-time employment—

(a) in the case of a qualifying member subject to regulation 19(10) to (13) of the 2002 Regulations;

(b) in the case of a newly qualifying member subject to regulation 19(10) to (14) of the 2002 Regulations; and

(c) in the case of the Agreement No. 2 qualifying member subject to regulation 19(10) to 19(13) and 19(15) of the 2002 Regulations;

the final pay is the pay which would have been paid for a single comparable whole-time employment.”; and

(b) after paragraph (4) insert—

“(5) In this Regulation—

“qualifying member” means a member who was party to the agreement;
“newly qualifying member” means a member who is employed as a classroom assistant by a voluntary grammar school or a grant maintained integrated school within the meaning of the Education Reform (Northern Ireland) Order 1989;

“the Agreement” means the Collective Agreement for the Joint Negotiating Council of the Education and Library Boards dated 30th November 2007;

“the Agreement No. 2” means the Collective Agreement for the Joint Negotiating Council of the Education and Library Boards reached on 27th March 2015; and

“the Agreement No. 2 qualifying member” means a member who was party to the Agreement No. 2.”.

Amendment of the Administration Regulations

9.—(1) Regulation 10 has effect in relation to the Administration Regulations to the extent that the Administration Regulations continue in operation by virtue of the 2014 Transitional Regulations.

(2) The Administration Regulations shall be amended in accordance with regulation 10.

10. In regulation 11 (periods of membership) of the Administration Regulations—

(a) in paragraph (6)—

(i) at the end of sub-paragraph (a) delete “and”;

(ii) at the end of sub-paragraph (b) insert “and”; and

(iii) after sub-paragraph (b), insert—

“(c) Agreement No.2 qualifying member between 1st January 1995 and 27th March 2015.”

(b) in paragraph (7) after the definition of “the Agreement”, insert—

““the Agreement No. 2” means the Collective Agreement for the Joint Negotiating Council of the Education and Library Boards reached on 27th March 2015;

“the Agreement No. 2 qualifying member” means a member who was party to the Agreement No. 2;”.

Amendment of the 2014 Transitional Regulations

11. The 2014 Transitional Regulations shall be amended in accordance with regulations 12 and 13.

12. After regulation 3(14) (membership before 1st April 2015), insert—

“(15) Where final pay is to be calculated for any qualifying members or newly qualifying members or the Agreement No. 2 qualifying member, in accordance with regulation 8(3) (final pay: general) of the Benefits Regulations, that calculation is completed as if regulations 10 (length of period of membership: calculation of benefit), 19 (calculations) and 22 (final pay) of the 2002 Regulations continue to have effect.

(16) In this Regulation—

“qualifying member” means a member who was party to the agreement;

“newly qualifying member” means a member who is employed as a classroom assistant by a voluntary grammar school or a grant maintained integrated school within the meaning of the Education Reform (Northern Ireland) Order 1989;

“the Agreement” means the Collective Agreement for the Joint Negotiating Council of the Education and Library Boards dated 30th November 2007;

“the Agreement No. 2” means the Collective Agreement for the Joint Negotiating Council of the Education and Library Boards reached on 27th March 2015; and

“the Agreement No. 2 qualifying member” means a member who was party to the Agreement No. 2.”;

13. In Schedule 2 (revocation of regulations)—

(a) for the revocation of “The Benefits Regulations” substitute—

“The Benefits Regulations are revoked except for the provisions listed below—

Regulation 8 (final pay: general) as amended by regulation 7 of the Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2012^(a) and regulations 7 and 8 (amendment of the Benefits Regulations) of the Local Government Pension Scheme (Nursery Assistants) (Amendment) Regulations (Northern Ireland) 2016^(b).”;

(b) for “Regulation 11”, the last entry at the end of the list of regulations excepted from revocation of “The Administration Regulations”, substitute—

^(a) S.R. 2012 No. 183.

^(b) S.R. 2016 No. XX.

“Regulation 11 (periods of membership) as amended by regulation 18 of the Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2012^(a) and regulations 9 and 10 (amendment of the Administration Regulations) of the Local Government Pension Scheme (Nursery Assistants) (Amendment) Regulations (Northern Ireland) 2016;”.

Sealed with the Official Seal of the Department of the Environment on ***

Name

A senior officer of the Department of the Environment

The Department of Finance and Personnel consents to these Regulations
Sealed with the Official Seal of the Department of Finance and Personnel on

Name

A senior officer of the Department of Finance and Personnel

^(a) S.R. 2012 No. 183.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend-

The Local Government Pension Scheme Regulations (Northern Ireland) 2002 (“the 2002 Regulations”);

The Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 (“the Administration Regulations”);

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 (“the Benefits Regulations”); and

The Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2014 (“the 2014 Transitional Regulations”).

These Regulations will come into operation on (21 days after being made). Section 3(3)(b) of the Public Service Pensions Act (Northern Ireland) 2014 provides that scheme regulations may make retrospective provision and Regulation 2 outlines the terms of the retrospective nature of these Regulations.

These Regulations will protect nursery assistants’ pensions by changing the denominator of the fraction used to calculate their pension entitlement from a whole-time equivalent of 32.5 hours per week to 36 hours per week. Nursery assistants employed by the Education and Library Boards who accrued pension rights on the basis of a whole-time equivalent of 32.5 hours per week during the period from 1 January 1995 to 27 March 2015 (inclusive) will have those rights protected. Thereafter their pension rights will be accrued on the basis of the whole-time equivalent of 36 hours per week.

List of Consultees

All the Members of the Northern Ireland Legislative Assembly
All Northern Ireland political parties, MPs and MEPs
All Northern Ireland District Councils
The Chief Executive of the Education Authority
The Chief Executive, Northern Ireland Housing Executive
The Chief Executive, Translink
Employing Authorities contributing to the Local Government Pension Scheme
Northern Ireland Local Government Association
National Association of Councillors (Northern Ireland Region)
Northern Ireland Local Government Officers' Superannuation Committee
Northern Ireland Committee of the Irish Congress of Trade Unions
Northern Ireland Public Service Alliance
Unite
GMB
Unison
Various Representative Bodies and Interest Groups
Equality Commission for Northern Ireland