

Northern Ireland Teachers' Pension Scheme: proposed changes to scheme regulations.

Consultation

Launch date 20 December 2021

Respond by 13 February 2022

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Introduction

The Northern Ireland Teachers' Pension Scheme (NITPS) provides pension and other benefits to teachers in Northern Ireland. There is a final salary scheme with two sections, with normal pension ages of 60 and 65 (depending on when the member joined), and a career average scheme. It is the career average scheme that all new members join.

As well as an annual pension payable from when a member reaches their scheme pension age, there are other provisions such as ill-health pension, death benefits including payment of a death grant in respect of those who die whilst they are still teaching and ongoing survivor pensions regardless of when the member dies, and various scheme flexibilities which allow members to accrue more pension, convert some pension entitlement to a lump sum, retire before normal pension age etc.

If an individual is employed by a participating employer in a predominantly teaching role (and roles akin to teaching such as lecturing), and is between the ages of 16-75, they are likely to be eligible for enrolment into the NITPS.

The scheme covers a range of establishments in the education sector which includes schools, and further education colleges. Independent schools do not automatically participate in the NITPS, but they are eligible to apply to join.

The NITPS is funded by a combination of member and employer contributions.

The Department of Education (the Department) is consulting on draft statutory regulations, referred to in this document as the draft regulations, which would amend some rules of the NITPS.

Who this is for?

This consultation focuses on the NITPS, which provides a pension for participating teachers and other eligible staff working in the education sector in Northern Ireland.

The Department has a published list of organisations that it would expect to consult with on proposed scheme changes and those on the list will be contacted. The list includes member representatives, NITPS employers and other sector bodies.

Issue date

The consultation was issued on 20 December 2021.

Enquiries

For enquiries related to the consultation you can contact the team:

By telephone: 028 7132 1295

By e-mail: pensionspolicy@education-ni.gov.uk

By writing to: Department of Education
Teachers' Pensions Policy Team
Waterside House
75 Duke Street
Londonderry
BT47 6FP

Copies of the consultation document can be downloaded from the DE website at www.education-ni.gov.uk, or requested via the contact details above, from 20 December 2021. Copies of the consultation document can be made available in other formats on request.

Background and context

When new public service pension schemes were introduced in 2015, transitional protection arrangements allowed older workers to continue building pension in the existing final salary schemes whilst younger workers were moved into new career average schemes. Following a successful legal challenge in the McCloud case, the Court of Appeal found that this difference in treatment in the transitional arrangements amounted to age discrimination. The Government introduced a Bill into Parliament to implement changes to remedy the age discrimination that was identified.

[The Public Service Pensions and Judicial Offices Bill](#) (the Bill) was introduced in the House of Lords on 19 July 2021. Subject to Parliamentary approval, this puts in place a legal framework which requires relevant departments to make amendments to pension scheme regulations to facilitate implementation of the required remedy to the discrimination, as directed by the Bill. A [Legislative Consent Motion](#), approved by the NI Assembly on 1 November 2021, endorsed the extension to Northern Ireland of provisions within the Bill to implement the remedy solution for age discrimination in the affected NI public service pension schemes, including NITPS.

The remedy has two parts. First, to move all remaining active members of the legacy schemes into the new schemes on 1 April 2022, which ensures equal treatment moving forward. Second, to remove the effect of transitional protection by offering eligible members a choice over the set of benefits (legacy scheme or new scheme) they wish to receive for any remediable service during the remedy period of 1 April 2015 (when the discrimination arose) to 31 March 2022 (following which all members would be in the new scheme therefore ensuring equal treatment on an ongoing basis). Eligible members for the second phase of the remedy are essentially those who were members of the legacy scheme on or before 31 March 2012 (when the reforms were announced) and continued to be in pensionable service at some point during the remedy period without having a disqualifying break in service. More detailed information concerning the scheme reforms and McCloud judgment is provided in subsequent sections of this document.

The Department is consulting on draft regulations making changes to the NITPS rules which are necessary as a result of provisions in the Bill to implement the first phase of the McCloud remedy. The draft Teachers' Pension Scheme (Amendment) Regulations (Northern Ireland) 2022 (see separate attachment) propose amendments to scheme regulations consequential to the Bill's provisions which will close both sections of the legacy scheme, to further accrual on 31 March 2022. Remaining active members of the legacy scheme will move into the reformed 2015 scheme on 1 April 2022, as required by the Bill.

Members transferring to the new scheme retain a salary link to the legacy scheme, so that their accrued final salary scheme benefits are calculated using their pensionable pay at retirement rather than the point of transfer.

The transfer to the new scheme will happen automatically on 1 April 2022 and requires no action by members. The scheme administrator will write to those members involved to notify them of the change of scheme.

The draft regulations are being consulted on at the same time as the Bill goes through Parliament. This is to ensure that, upon becoming an Act of Parliament, the necessary scheme rule changes can be enacted for 1 April 2022.

Implementation of the second phase of the remedy will require further changes to NITPS regulations. The Department will consult separately on these changes in 2022.

Consultation questions

The Department welcomes comments and views on the proposals set out in this document and the draft regulations.

Respondents are asked to consider;

Q.1 - Are there any scenarios where a full protection member who would transition to the reformed scheme on 1 April 2022 could have entitlement to ill-health pension in the legacy scheme, if their application was instead approved on 31 March 2022?

Q.2 - Do the draft amendments achieve the policy aims as described in the consultation document?

Q.3 – Are any other amendments to scheme regulations required to achieve the stated policy aims?

Q.4 - Are there any further considerations and evidence that you think the Department should take into account when assessing any equality issues arising as a result of these proposed amendments?

Q.5 - Are there any other comments regarding the draft amendments?

We would like to hear your views on our proposed amendments.

How to Respond

To help us analyse the responses please submit your response by contacting DE:

By e-mail: pensionspolicy@education-ni.gov.uk

By writing to: Department of Education
Teachers' Pensions Policy Team
Waterside House
75 Duke Street
Londonderry
BT47 6FP

Deadline

The consultation closes on the 13 February 2022.

The McCloud case

Public service reforms and the Court of Appeal judgment

In 2010 the Chancellor of the Exchequer invited Lord Hutton of Furness to chair the Independent Public Service Pensions Commission (IPSPC). The IPSPC was tasked with undertaking a fundamental structural review of public service pension provision.

The IPSPC published its [final report](#) in 2011, setting out recommendations to reform public service pensions to better balance the interests of taxpayers, employers and members. The Government accepted the IPSPC's recommendations as the basis for discussions with public service workers, trades unions and other representative bodies.

In November 2011 the Government published a [Command Paper](#) setting out the Government's framework for reform of the public service schemes. Further discussions were undertaken with each of the workforces to develop scheme design proposals.

In April 2015 new schemes (the reformed schemes) were introduced for each of the main workforces – teachers, the NHS, firefighters, police, judiciary, civil service and local government workers. The reforms were implemented by regulations made under the [Public Service Pensions Act \(Northern Ireland\) 2014](#) (the PSP Act 2013).

As part of the reforms, those within 10 years of their scheme normal pension age remained in the old (legacy) pension schemes. This transitional protection was not a recommendation of the IPSPC but was agreed following discussions with member representatives.

In December 2018 the Court of Appeal found in *Lord Chancellor and Secretary of State for Justice v McCloud, the Secretary of State for the Home Department v Sargeant* [\[2018\] EWCA Civ 2844](#) (the McCloud judgment) that transitional protection unlawfully discriminated against younger members of the judicial and firefighters' pension schemes, and also gave rise to indirect sex and race discrimination. On 27 June 2019 the Supreme Court denied the Government permission to appeal the Court of Appeal's judgment.

On 15 July 2019 the Chief Secretary to the Treasury made a [written ministerial statement](#) setting out that the Government considered that the Court of Appeal's judgment had implications for all of the public service pension schemes and planned to come forward with proposals to remedy the discrimination across all schemes.

The remedy

On 19 August 2020, the Department of Finance (DoF) published a [Consultation](#) on two proposed options for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age and proposed that legacy schemes would be closed to all members on 31 March 2022.

DoF proposed that members should be given a choice of which scheme benefits they wish to receive during the period from when the new schemes were introduced to the date that the legacy schemes are to be closed. Amongst other issues, the consultation sought views on whether the choice should be made immediately (once the necessary legislative changes were made) or deferred until the point that a member's pension benefits become payable.

On 25 February 2021, DoF published its [response](#), confirming that the legacy schemes would close on 31 March 2022 and that affected members would be given a choice of which pension benefits they wish to receive when those benefits are paid. This choice of pension benefits when the pension becomes payable is referred to as a Deferred Choice Underpin (DCU).

In the [Queen's Speech](#) on 11 May 2021 the Government announced its intention to bring forward the legislation to implement retrospective changes to remedy the discrimination that arose and to ensure equal treatment for all members within each of the main public service pension schemes by moving all members into the new schemes on 1 April 2022.

The [Public Service Pensions and Judicial Offices Bill](#) was introduced in the House of Lords on 19 July 2021. The Bill puts in place a framework to address the discrimination identified by the Court of Appeal, both retrospectively and prospectively, as well as the consequential effects of that remedy. Departments are required to make new pension scheme regulations to implement the remedy.

Changing scheme rules to implement the remedy

The Bill is currently going through Parliament. The Department has identified that upon Royal Assent, two sets of scheme regulations are needed to give effect to the requirements of the Bill. Regulations will amend scheme rules to implement the remedy and provide authority for the changes to be applied administratively.

The two sets are:

1. Amendments to facilitate the closure of the legacy Northern Ireland Teachers' Pension Scheme (the two final salary sections) to end further accrual on 31 March 2022 and move all active members into the new scheme on 1 April 2022.
2. New provisions that enable the scheme to:
 - Implement the DCU and offer eligible members a choice over the set of benefits (legacy scheme or new scheme) they wish to receive in respect of remediable service during the remedy period of 1 April 2015 to 31 March 2022 when pension benefits become payable.
 - Correct any overpayment or underpayment of pension benefits or member contributions already paid in relation to a member because of their choice.
 - Facilitate the payment of appropriate compensation to address financial loss arising from the discrimination or operation of the remedy, e.g. overpaid tax.

This consultation relates to the first set of regulations.

The second set of regulations are being developed and will be consulted on separately.

Draft regulations

Scheme rules for the Northern Ireland Teachers' Pension Scheme

The NITPS is effectively made up of two schemes with a total of three sections. The legacy scheme is made up of two sections, with normal pension ages of 60 or 65 and pays pension benefits according to the final salary of the member. The rules of the legacy scheme are set out in the Teachers' Superannuation Regulations (Northern Ireland) 1998 (SR 1998/333).

The new scheme is a career average scheme with a normal pension age equal to State Pension Age or 65 (whichever is higher). The rules of the new scheme are set out in the Teachers' Pension Scheme Regulations (Northern Ireland) 2014 (SR 2014/310).

Schedule 3 to the 2014 regulations provides the transitional arrangements for members of the new scheme who have pension rights accrued in the legacy scheme. Schedule 3 also contains the transitional protections that allowed older members near to normal pension age to remain in the legacy scheme beyond 31 March 2015 which, in respect of similar provisions in the judicial and firefighters' pension schemes, the Court of Appeal found discriminated against younger members.

Explanation of the draft regulations

This section explains how the draft regulations amend existing scheme rules and deliver the requirement, under the Public Service Pensions and Judicial Offices Bill, to prevent any further accrual in the legacy scheme from 1 April 2022.

As Schedule 3 to the 2014 regulations already provides transitional arrangements for members of the legacy scheme moving to the new scheme (unprotected members and tapered protection members), only a small number of amendments are required to implement this first phase of the McCloud remedy for full protection members.

Draft regulation 2 (2) (a), 2 (2) (b) and 2 (2) (c)

Schedule 3 to the 2014 regulations sets out a number of definitions that apply to this part of the 2014 regulations.

Draft regulation 2 (2) (a) inserts a definition of "final salary benefits" that applies to draft regulation 2 (6) and 2 (7).

Draft regulation 2 (2) (b) inserts a definition of “transition date” for a full protection member who has taken a retirement pension under the legacy scheme.

Draft regulation 2 (2) (c) inserts a new definition of “transition date” for a full protection member who has not taken a retirement pension under the legacy scheme. This effectively provides a full protection member of the legacy scheme with a date of transition to the new scheme of 1 April 2022.

Draft regulation 2 (3)

Paragraph 5 of Schedule 3 to the 2014 regulations provides for continuity of service for transition members unless they have a gap in service of more than 5 years beginning on or before their legacy scheme closing date and the day on which they join the new scheme.

Draft regulation 2 (3) inserts a definition of the legacy scheme closing date, being 31 March 2022, for full protection members.

Draft regulation 2 (4)

Part 2 of Schedule 3 of the 2014 regulations covers exceptions to the transitional arrangements for full protection members.

Paragraph 6 (2) is amended so that a full protection member would cease to be a full protection member on 31 March 2022, if they have not already ceased to be a full protection member as a result of no longer being in pensionable service in the legacy scheme.

Draft regulation 2 (5) and 2 (6)

The Bill provides an exception to the prevention of further accrual in the legacy scheme, this being the transfer of service from a scheme which is not a new scheme (under section 1 of the PSP Act (Northern Ireland) 2014). This provides for transfers of past service from other unreformed public service schemes, or from non-reformed schemes under Public Sector Transfer Club terms (or their equivalent), to be credited in legacy schemes in respect of service after 31 March 2022.

Draft regulation 2 (5), with draft regulation 2 (2) (a), amends paragraph 22 of Part 5 (receipt of club transfer values) of Schedule 3 to the 2014 regulations to allow transfer of final salary service into the legacy scheme for periods of service after 1 April 2022, where it involves transfers from certain unreformed schemes.

Draft regulation 2 (6) makes a similar amendment to paragraph 24 of Part 6 (bulk transfer payments for accepted members).

A member who is able to transfer legacy scheme service, which was accrued after 1 April 2022 into the NITPS, would accrue any future service in the new scheme.

Draft regulation 2 (7)

Part 7 of Schedule 3 to the 2014 regulations covers the payment of benefits to transition members. Paragraph 26 (3) is amended to simplify the regulation regarding an election to pay contributions for Additional Pension in the legacy scheme as the existing distinction will no longer be needed after 1 April 2022.

Additional Pension is a scheme flexibility that is available in both the legacy and new sections of the NITPS, in which active members can purchase further annual pension in multiples of £250.

The policy position is that members can continue to make payments for Additional Pension after they move to the new scheme on 1 April 2022 in respect of an election for Additional Pension that was made on or before 31 March 2022. This is because members are not accruing any further legacy scheme pension after 31 March 2022, they are simply finishing their payments. This approach is consistent with other members who have made Additional Pension elections before transitioning to the new scheme. No new election can be made for Additional Pension in the legacy scheme from 1 April 2022.

There are a range of flexibilities in the new scheme that are available to members, including Additional Pension (for those members who have not reached the NPA of the new scheme). Further information on flexibilities will be provided by the scheme administrator and can also be viewed in [NITPS Factsheet 6 – increasing your pension](#).

Additional Voluntary Contributions (AVCs) are another flexibility for teachers, however AVCs are separate to the NITPS and are therefore unaffected by this issue. As such no change to regulations in respect of AVCs is necessary.

Amendments to Schedule 3 not deemed to be necessary

As Schedule 3 to the 2014 regulations already provides for members transitioning from the legacy scheme to the new scheme, extensive amendments to regulations are not needed. For the avoidance of doubt, the following paragraphs set out the intended policy in a number of key areas.

Ill-health applications

Members who move to the new scheme and subsequently become subject to ill-health retirement from 1 April 2022 onwards will be assessed, and receive ill-health benefits, in accordance with the ill-health arrangements under the reformed new scheme provisions.

There may be cases that are in the process of being considered for ill-health retirement on the date that all active members would begin to accrue benefits in the new scheme - i.e. the ill-health process begins on or before 31 March 2022 and does not conclude until 1 April 2022 or later.

For any ill-health cases that straddle 1 April 2022, the intended policy is that if the application is approved, members would receive an award paid from the new scheme, which is no less generous than if the award had been determined on 31 March 2022 under legacy scheme rules. This would mean that such members receive a new scheme ill-health pension calculated at the date they actually retire, but that if a legacy scheme ill-health pension calculated as at 31 March 2022 would have been higher, the new scheme pension must be increased by the difference between the two.

Paragraph 33 of Schedule 3 to the 2014 regulations already provides for a transition member to receive an ill-health pension if they have applied before their transition date and the application is successfully determined.

The Department does not believe that there would be entitlement to ill-health pension in the legacy scheme for a full protection member who transitions to the reformed scheme on 1 April 2022. That is because there is no entitlement to ill-health pension if the member has reached the scheme NPA and full protection members are those who will have reached their NPA by 31 March 2022. Under Regulation E4 (4) of Part E to the 1998 regulations, the entitlement date for ill-health pension in the legacy scheme cannot be before the member ceases to be in pensionable employment, excluded employment, on non-pensionable sick leave, on non-pensionable family leave or on a career break.

As a full protection member only transitions to the new scheme where they have pensionable service after their transition date (1 April 2022) there are not thought to be any full protection members affected who would be eligible to an ill-health pension in the legacy scheme. They could however be eligible to an ill-health pension in the new scheme, due to the higher NPA of that scheme, and regulations already provide that an undecided application made prior to transition is to be considered against the new scheme criteria.

Respondents are asked to comment if they have identified scenarios where a full protection member who transitions to the new scheme on 1 April 2022 could have entitlement to ill-health pension in the legacy scheme, if their application was instead approved on 31 March 2022. The Department will also further consider whether there is any need to amend scheme regulations to achieve this policy intent.

Payment of pension benefits

Part 7 of Schedule 3 to the 2014 regulations provides for the payment of benefits to transition members. All service accrued by a member in the legacy scheme prior to their transition to the new scheme is protected and would not be affected by the transition.

Under paragraph 27 of Schedule 3, the final salary link is maintained, so that the salary used for the purposes of calculating legacy scheme benefits is based on the member's continuing service in the new scheme, rather than their salary on their transition date.

NITPS contribution rate

The same NITPS member contribution structure applies to the new and legacy schemes. Full protection members who transition to the new scheme on 1 April 2022 would therefore see no change to their contribution rate, other than if the member also has a change in their pensionable earnings that moves them into another tier.

Multiple contracts

Final salary scheme members with multiple teaching employments cannot accrue more than 365 days service in a year. Any service over 365 days will not be pensionable in the NITPS, nor will any contributions be payable in respect of that additional service.

The above restriction does not apply to the new scheme arrangements and service over 365 days remains pensionable in the new NITPS.

Other relevant provisions

Part 8 of Schedule 3 to the 2014 regulations provides for the following elections and arrangements to continue to apply for a member who transitions from the legacy scheme to the new scheme without any further action being required by the member:

- An election for an employment not to be pensionable (opt-out)

- Period of qualifying service for retirement benefits carries over
- Nomination of a death grant recipient
- Nomination of a surviving nominated beneficiary
- Repayment of balance of contributions
- Residential emoluments
- Election to pay contributions by a person serving in a reserve force
- Commutation of small pensions

Respondents are asked to consider;

Q.1 - Are there any scenarios where a full protection member who will transition to the new scheme on 1 April 2022 could have entitlement to ill-health pension in the legacy scheme, if their application was instead approved on 31 March 2022?

Q.2 - Do the draft amendments achieve the policy aims as described in the consultation document?

Q.3 – Are any other amendments to scheme regulations required to achieve the stated policy aims?

Equality Impact Assessment

HM Treasury has published a [policy impact assessment](#) and an [equality impact assessment](#), which consider the impact of the proposed Bill powers and requirements. The scope of assessments by the department therefore focuses on the impact of the proposed changes to scheme rules necessary to deliver the Bill requirements.

Equality Impact Screening

Department of Finance

The Department of Finance (DoF) carried out an equality impact screening on proposed options for dealing with the discrimination identified by the McCloud judgment, those options were published for consultation.

The screening concluded that the transitional protection policy proposals would address the unlawful inequality identified in the McCloud judgement since 2015, by providing affected members with appropriate options to have their pension entitlements in the remedy period calculated as if the discrimination had not occurred. The screening identified that some younger members could benefit from the option to have their pension entitlements in the remedy period calculated under the terms of the legacy schemes. Alternatively, some older members could benefit from the option of having their entitlements in the remedy period calculated under the reformed schemes.

The screening also noted that the Northern Ireland public service workforce, which includes the DE workforce, contains a proportionately greater female representation, although this varies across departments and employment types. As a consequence the transitional protection policy revision may apply to more females, but this was an incidental effect of its purpose.

DoF's assessment concluded that the revision of policy proposals provided a positive policy outcome in the targeted area without any adverse differential effects on gender groups and that these age-based effects are minor, incidental to the imperative to remove unlawful age-based discrimination and do not constitute an adverse differential impact on any of the Section 75 groups.

Department of Education

Section 75 of the Northern Ireland Act 1998 requires the Department of Education, in carrying out its functions, powers and duties, to have due regard to the need to promote equality of opportunity: between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without.

The Department's Equality Screening initial conclusion has determined that these proposed changes do not differentially impact on any of the Section 75 groups.

Respondents are asked to consider;

- Q.1 - Are you aware of Section 75 data/information that should be considered when assessing the potential impacts of the proposed changes on the Teachers' Pension Scheme membership?
- Q.2 - Are there other comments or observations on the Section 75 equality duties and the proposed changes that you would wish to make?

The equality screening analysis will be reviewed based on responses received during the consultation.

Policy impact assessment

HM Treasury's impact assessment for the Bill explains that by implementing the measures, the government's intention is to avoid any uncertainty which might otherwise result from relying simply upon any automatic effect equality legislation may have, or from leaving it to courts or tribunals to make orders in respect of individual cases. The Bill ensures that the provisions apply to all in scope members equally, whether they received full protection or not or were claimants and non-claimants.

The core measures in the Bill mean all public service workers eligible for a pension would accrue benefits from 1 April 2022 under their respective new schemes. Therefore, from this point, there will be a single pension scheme for all active members in each workforce group, thereby ensuring equal treatment.

None of the public service pension reform measures in the Bill, or the consequential amendments to schemes regulations proposed in this consultation, have a regulatory impact on businesses. This is because the core measures of the Bill limit the scope strictly to public service pensions, although the measures may have an impact on:

- administrators as certain pension schemes are administered by private companies
- private sector employers that participate in public service pension schemes

Any increase in costs to the private sector would be because of fulfilling government procured contracts and not because of any imposed regulatory change.

Respondents are asked to consider;

Q.1 - Do you think there are any other benefits, costs or wider impacts of these proposed amendments that have not been mentioned yet?

Next Steps

After the consultation has closed on 13 February 2022, responses will be fully considered before changes to NITPS regulations are finalised. Implementation is subject to the passage of the Bill although it is planned to lay regulations in March 2022, to come into force on 1 April 2022.

Subject to the outcome of the consultation, the NITPS scheme administrator will contact all active members of the legacy scheme in due course. No action needs to be taken; membership would move automatically from the legacy scheme to the new scheme as has already been the case for all other NITPS members who also have service in the legacy scheme.

Further information on this issue can be found on this [Transitional Protection Section of the NI Teachers' Pensions website](#).

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