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**Synopsis of Responses and Departmental
Response to the consultation on draft
The Local Government Pension Scheme
(Amendment) Regulations (Northern Ireland) 2022**



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Background to Consultation

1. The Department for Communities (DfC) is the responsible authority for the Local Government Pension Scheme (Northern Ireland) (LGPS (NI)) under the Public Service Pensions Act (Northern Ireland) 2014 (2014 c.2).
2. The LGPS (NI) is a funded pension scheme administered by the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC), a non-departmental public body established in April 1950 to operate a pension scheme for district councils and other admitted bodies in Northern Ireland. The LGPS (NI) is funded by contributions from employers (who have been designated as employing authorities or admitted to the scheme) and their employees. The LGPS (NI) is provided for in a number of statutory rules (as amended), referred to as the LGPS (NI) Regulations.
3. It is DfC's responsibility to update the legislative framework for the LGPS (NI), taking account of developments in broader public sector pension policy.
4. DfC carried out a public consultation from 8 October 2021 to 17 December 2021 on proposed amendments to the LGPS (NI) Regulations ("the draft Regulations").
5. The draft Regulations are made under the powers contained in the Public Service Pensions Act (Northern Ireland) 2014. Section 3(3)(b) of that Act provides that scheme regulations may make retrospective provision. Section 23 of the Act further provides for a procedure to be followed where retrospective provisions are included which appear to the responsible authority to have significant adverse effects in respect of the pensionable pay to or in respect of members of the scheme. In the draft Regulations, the regulations listed in regulation 1(2) are retrospective. The retrospective provisions contained in the draft Regulations do not appear to the Department to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, or members of previous schemes. Accordingly, the procedures set out in section 23 of that Act are not applicable in relation to the draft Regulations.

6. DfC received a total of 13 responses. The breakdown was as follows.

NUMBER	CATEGORY
5	Employing Authorities
2	Representative Bodies
4	Councils
1	Scheme administrator
1	National Human Rights Institute

7. Based on the comments received, all of the respondents supported the proposed changes in the draft Regulations. A breakdown of the responses is given below.

Summary of the proposed amendments

8. The proposed amendments cover both the changes required due to an Employment Tribunal ruling in relation to survivor benefits, and a number of technical amendments and minor policy updates.

Survivor Benefits

9. Following the Walker v Innospec Supreme Court judgment, the Westminster government decided that surviving male same-sex and female same-sex spouses and civil partners of public service pension scheme members should generally receive benefits equivalent to those received by widows of opposite sex marriages.
 10. A case brought in the Employment Tribunal against the Secretary of State for Education in England and Wales highlighted that these changes may lead to direct sexual orientation discrimination within the Teachers' Pension Scheme, where male survivors of female scheme members remain entitled to a lower survivor benefit than a comparable same-sex survivor.
 11. The Westminster government concluded that changes were required to the Teachers' Pension Scheme to address the discrimination. They also stated that this difference in treatment would need to be remedied in those other public service pension schemes where the husband or male civil partner of a female scheme member is in similar circumstances.
 12. The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (NI) Regulations 2019, which were introduced through Westminster, implemented the Walker amendments. They equalised same-sex survivors, either spouses or civil partners, with widows of opposite-sex marriages but made survivor benefits of male survivors of opposite-sex civil partnerships the same as for widowers of opposite-sex marriages. These amendments were only introduced from 13 January 2020, unlike in the LGPS (England and Wales) where these amendments were made retrospective to 2005 for civil partnerships and 2014 for single-sex marriage, when each became legal.
 13. Following the Goodwin ruling, we now need to equalise benefits for male survivors of opposite-sex marriages or civil partnerships. As, in Northern Ireland, the Walker amendments were only introduced from 13 January 2020, we have the choice of making the Goodwin amendments retrospective to the same date or of making both the Goodwin and Walker amendments retrospective to 2005.
 14. It is proposed that the policy intent of ensuring equality of treatment regardless of gender or sexual orientation is best implemented through making both amendments retrospective to 5 December 2005.
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Other amendments

15. In addition to the changes needed to take account of the Walker judgment and the Goodwin ruling, it is proposed that the draft Regulations should include amendments to make a number of drafting improvements that clarify the original policy intent and introduce a number of minor policy changes. These proposed amendments cover the following areas:
- a. Introduction of a power for the Department to issue statutory guidance on the operation of the Scheme’s regulations; this mirrors an equivalent power taken by the Secretary of State in England and Wales following a number of successful legal challenges and aims to deliver greater standardisation of approach in particular in relation to the consistent interpretation of regulations (regulation 3);
 - b. 30 day rule (regulation 16A of the Local Government Pension Scheme Regulations (NI) 2014 (“the 2014 Regulations”)); it is proposed that the rule regarding automatically continuing contributions during “absences with permissions” of less than 30 days should be amended. The current regulation states that where an absence is more than 30 days the regulation applies in respect of the first 30 days only. This has created issues with extended maternity leave as employers are unable to pick up on the need to change the contribution situation at the 30 day point. It is proposed to amend this so the automatic continuance of contributions only applies to absences of less than 30 days. For longer absences the member can arrange to make up the contribution gap on their return though Additional Pension Contributions (regulation 4);
 - c. Removal of limit of 50% of pensionable pay for Additional Voluntary Contributions (AVC) contributions; this is considered to be unnecessary in addition to current tax related limits on pension contributions (regulation 5(a));
 - d. Special lump sum death benefit charges; changes to the Finance Act 2004 (Taxation of Pensions Act 2014, s 3, Sch 2, Pt 2, para 17(3); Finance (No 2) Act 2015, s 21(2)) mean that these charges can now apply where the member died before the age of 75; the wording needs to be adjusted to reflect this (regulation 5(b));
 - e. There is currently a requirement that refunds to members are made within 5 years of their leaving service. This is amended to allow the Committee the discretion to pay refunds after this, if they consider this is justified (regulation 6);

- f. Multiple events within the same accounting period; this amendment clarifies how revaluation adjustments are to be handled in the instance where a member ceases to be an active member, becomes a deferred member and a pensioner member all within the same Scheme year (regulation 7);
- g. Death grants; previously these had only been paid if a member died before the age of 75 as, under the Finance Act 2004, such payments where the member was over 75 at death were unauthorised. This was changed by the Finance Act 2011, Schedule 16, Para 33(3)(a). This change, in conjunction with a rising normal retirement age and the removal of mandatory retirement ages mean that this limit should be removed. Pensions are paid from age 75 even if the member is still working, therefore, it is proposed to extend death grants to all over 75s on the same basis as pensioners i.e. 10 times the annual pension earned minus any payments already received. It is also proposed to make this retrospective to the start of the 2015 scheme (regulations 8, 9 and 23);
- h. Exit certificates; this amendment allows the administering authority, the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) to issue an interim exit certificate subject to Departmental approval and conditions. This is useful in circumstances where the exit has happened rapidly, e.g. insolvency and the financial situation is uncertain (regulation 10);
- i. Internal dispute resolution procedure; it is proposed that the time period for decisions should be extended from 2 to 4 months. The need for medical examinations, reports, etc. often make a two month deadline impossible to meet leading to multiple breach reports. The Pensions (NI) Order 1995 states that these decisions must be within a reasonable time period; the Pensions Regulator expects them to be made within four calendar months, therefore, we would propose adopting a similar period in the LGPS (NI) Regulations (regulation 11);
- j. Forfeiture; at present forfeiture can only occur where a member has committed an offence in connection with their employment for which they have been convicted and because of which the member left that employment. The nature of employment-related offences means that they are often not uncovered until after the perpetrator has left their employment for other reasons. It is therefore proposed to remove the requirement for the member to have left their employment due to the offence (regulation 12);
- k. Definitions; some minor amendments are made to definitions in Schedule 1 (interpretation) to the Local Government Pension Scheme Regulations (NI) 2014 ("the 2014 Regulations") in order to ensure clarity (regulation 13);

Comments received in support of the proposed amendments

16. Employing authorities expressed general support for the proposed amendments in the draft Regulations.
 17. Employing authorities' comments are summarised below.
 - a. An employing authority endorsed the Scheme administrator's response.
 - b. Another employing authority reviewed the consultation document and proposed no changes.
 - c. A third employing authority generally welcomed the proposed changes however it noted that the power to issue statutory guidance should not cover investment policy.
 - d. A fourth employing authority supported the recommendations in the consultation document.
 - e. A fifth employing authority was in favour of equality of treatment for members and more generally had no objection to the proposed changes. It was also in favour of the removal of the 50% limit for AVCs, assuming there was no cost to employers.
 18. Two representative bodies confirmed that they had no concerns about the proposed changes. Each of the representative body's comments are summarised below.
 - a. A representative body indicated that it supported the proposed amendments and policy changes put forward by the Department because they will be beneficial to its pension scheme members and for relatives of serving councillors over the age of 75 years due to the lifting of the death grant cap. The same representative body also broadly supported the response and comments to the consultation that have been put forward by the pension provider, the Scheme administrator.
 - b. Another representative body also supported the consultation response submitted by the Scheme administrator.
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19. Councils were generally supportive of the proposed changes. Councils comments are summarised below.

a. A council:

- i. accepted the amendments to the Regulations would bring the pension scheme into line with recent legal judgments and agreed with the policy intent of ensuring equality of treatment regardless of gender and sexual orientation;
- ii. endorsed the consultation response from the Scheme administrator; and
- iii. however, the council also indicated that they would like to see the associated approximate costs of each amendment especially regarding the date of application of the main changes. The council would therefore welcome further information in this regard.

b. Two councils:

- i. agreed that the changes proposed to the scheme will ensure equality of treatment regardless of gender or sexual orientation through the equalisation of survivor benefits and supported the retrospective application of these amendments to 2005;
- ii. agreed to the “Other Amendments” proposed in Section 4 of the consultation document; and
- iii. however, both councils also asked that any financial impact on the employer should be considered by the Department.

c. A fourth council:

- i. generally welcomed the proposed amendments to the 30 day rule, the removal of the 50% limit on AVC contributions and forfeiture.
- ii. considered that there should be some limit retained when making the proposed changes to the right to return of contributions; and
- iii. considered that when extending death grants to over 75’s, a sliding scale over ten years should be introduced at the same time to ensure the Scheme does not become unaffordable.

20. The Scheme administrator made a number of comments and suggested drafting changes to the draft Regulations to clarify wording. These comments did not affect the policy intent of the proposed amendments. The Scheme administrator's response is available to view on its website.

21. The National Human Rights Institute:

- i. welcomed the attempt to address the gender and sexual orientation discrimination highlighted by the Goodwin and Walker cases;
- ii. observed that there is a sound basis to apply these amendments retrospectively i.e., from 5 December 2005 because that is when civil partnerships were implemented. That is the date from which there has been discrimination, so it should follow that the remedy goes back to that date;
- iii. considered that the amendments to the Regulations, once enacted, will result in compliance with Article 14 ECHR and should therefore be implemented with expediency;
- iv. advised further that those members and recipients of survivor pensions, who will benefit, should be identified and contacted. Moreover, for the remainder of potential beneficiaries the institute advised that a public awareness campaign should be commenced to alert them to the rule change and give details of how to apply;
- v. noted that the increase to the survivor pension might have an impact upon members who purchased increased survivor benefits for their spouse or civil partner, by additional voluntary contributions. Those people, should be entitled to a refund of any additional contributions paid; and
- vi. Finally, the institute was concerned at the potential for delay. A primary aim of the amendments is to alleviate the financial burden on a surviving spouse or partner. That being the case, the Department should consider early interim payments for claimants who have a pressing financial need.

Other comments received in response to the consultation

22. Reservations were received from two councils regarding the cost of the proposed amendments ultimately falling to employers and one suggested some changes to the proposed amendments.
23. The Scheme administrator expressed some reservations about the extent of the proposed new discretion which enables the Department to issue statutory guidance.

Departmental Response

24. The Department welcomes the comments from respondents to the proposed amendments to the LGPS (NI) Regulations. All respondents were supportive of the proposed changes.
25. In response to reservations received in relation to the cost of the amendments, the Department notes:
- a. that the LGPS (NI) has a cost control mechanism in place, which assesses the cost of certain elements of the scheme. If the assessed cost has decreased/increased by more than a certain percentage of pensionable pay compared to their original level then member benefits are increased/reduced to bring the assessed costs back to the original level; and
 - b. that the Scheme administrator has reviewed the membership of the scheme for members who are likely to be affected by the Goodwin Ruling and has determined that a future remedy, regardless of its retrospective scope, is likely to be immaterial at a fund level. As proposed in the consultation this amendment will have retrospective effect from 5 December 2005.
26. In response to the suggested changes to the proposed amendments, the Department notes:
- a. that a time limit of 5 years in respect of the refund of contributions is retained when introducing a new discretion to enable the refund of contributions beyond the 5 year limit where the administrator considers it is justified to do so; and
 - b. that a sliding scale over ten years when extending death grants to over 75's, is included in the current proposal because a member over 75 will be entitled to 10 times their annual pension earned minus any payments already received as a lump sum upon death. It is also proposed to make this retrospective to the start of the 2015 scheme (regulations 8, 9 and 23).

27. In response to the reservations raised in relation to the new discretion to enable the Department to issue statutory guidance, the Department notes that the aim of the discretion to enable the Department to issue statutory guidance is to deliver greater standardisation of approach when interpreting and implementing the LGPS (NI) Regulations.
28. The Department will make these Regulations as soon as possible.



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