



DfC

Department
for Communities

www.communities-ni.gov.uk

The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2019

Consultation Document

This consultation document seeks views on proposed amendments to the Local Government Pension Scheme (Northern Ireland).

Comments should be sent by 30 September 2019 to:

**Department for Communities
Local Government and Housing Regulation Division
Level 4, Causeway Exchange
1-7 Bedford Street
Town Parks
Belfast, BT2 7EG**

or email: LGPDConsultations@communities-ni.gov.uk

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1. Purpose of the consultation – scope and timeframe

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| 1.1 | This consultation covers proposals to amend the legislation governing the Local Government Pension Scheme (Northern Ireland) (“LGPS (NI)”). | (or representatives of such persons) as appear to the Department likely to be affected. |
| 1.2 | The proposed amendments cover both the changes required by a Supreme Court judgment in relation to survivor benefits, and a number of technical amendments and minor policy updates. | 1.4 The closing date for submitting responses is 30 September 2019 . |
| 1.3 | Section 21(1) of the Public Service Pensions Act (NI) 2014 requires the Department to consult such persons | 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. Background

- 2.1 The LGPS (NI) is a defined benefits scheme under the Public Service Pensions Act (NI) 2014. It is also a funded scheme. The 2014 Act introduced pension reforms across public sector pension schemes to address the impact of long term scheme costs for taxpayers and employers.
- 2.2 It is the responsibility of the Department to update the legislative framework for the LGPS (NI) taking account of developments in public sector pension policy.

3. Survivor Benefits

- 3.1 The Supreme Court handed down a judgment on 8 February 2017 in relation to a decision not to award the Applicant a survivor's pension under the LGPS (NI) Regulations (Northern Ireland) 2009 ("the 2009 Regulations") upon the death of her cohabiting partner.
- 3.2 The Supreme Court concluded unanimously that the imposition of the nomination requirement in the 2009 Regulations had given rise to an unjustified difference in treatment of the Appellant as a surviving cohabiting partner and that she was entitled to receive a survivor's pension under the LGPS (NI).
- 3.3 The Department has identified the changes to legislation to give effect to the Supreme Court judgment and to remove the nomination requirement in existing LGPS (NI) Regulations for cohabiting partners to be entitled to a survivor's pension. These changes will be retrospective to allow for a review of previous cases as necessary.

3.4 The remaining criteria for a cohabiting partner's retrospective eligibility for survivor benefits will be:

- “(a) the person has fulfilled the condition in paragraph (b) for a continuous period of at least two years on the date the member died; and
- (b) the condition is that—
 - (i) the member and the person are able to marry, or form a civil partnership with, each other;
 - (ii) the member and the person are living together as if they were a married couple or as if they were civil partners;
 - (iii) neither the member or the person is living with a third person as if they were a married couple or as if they were civil partners; and
 - (iv) either the person is financially dependent on the member, or the member and the person are financially interdependent;”.

This meets the requirements of the court judgment.

3.5 Moving forward, from the time these regulations come into force, it is proposed to make a further amendment to these qualifying criteria to remove the two year period for 7 (b)(i) i.e. the ability to marry or form a civil partnership. It is proposed that this change should only apply going forward as it is not covered by the court order. **The other criteria would remain the same.** It would remain necessary for a member to be free to marry or form a civil partnership at the time of their death as, if they remain legally tied to another person, that person has the survivor rights. The purpose of this amendment is to ensure the fulfilment of the policy intent i.e. that where a member dies, those financially dependent on them at the time of their death should have access to financial support in proportion to the member's pension entitlement.

4. Other amendments

4.1 The proposed amendments in Part 2 of the draft Regulations make a number of drafting improvements that clarify the original policy intent and introduce a number of minor policy changes. These amendments cover the following areas-

- each member may now access their pension from age 55, subject to an actuarial reduction for early payment, should that member decide to do so (see regulations 43,47,92(b) and 92(e));
- the removal of the 2 year limit within which a death grant has to be paid – this reflects the repeal of legislation which stated that a payment had to be made within 2 years to be considered an authorised payment. This had previously meant that, in cases which could not be resolved within the 2 year limit, NILGOSC had to make the payment to the member’s personal representatives, something which had significant tax implications. The proposed amendment means that NILGOSC can take the necessary time to ensure that the payment goes directly to the intended recipient (see regulations 46,48, 50-52,55,56,63, 68,69 and 70);
- clarification of the definition of a pension credit member (see regulation 58);
- clarification of the contributions that members and employers make during absences from work (see regulation 60);
- clarification that, where a member is absent on reserve forces service leave, it is the Ministry of Defence who pays the employer contribution (see regulation 61(a));
- deletion of an incorrect reference to actuarial guidance (see regulation 61(c));
- removing the gender link from the factors used for Additional Pension contributions (see regulation 62);
- clarification that a non-consolidated non-pensionable payment made to a member resulting from the settlement of an annual pay award is excluded from pensionable pay (see regulation 64);
- permitting employers to adopt a revised reference figure for the calculation of assumed pensionable pay where it would otherwise be unfair (see regulation 65);
- clarification that a member must receive their pension from age

- 75 even if they remain in local government employment (see regulation 66(a));
- clarification that only active membership relating to that employment, in relation to a post being made redundant, is allowed to be considered in the calculation of early access to pension as part of a redundancy payment (see regulation 66(b));
- clarification that where a pension in payment is split through a pension sharing order, the person who is provided with the pension credit will not be able to take a tax-free lump sum from the benefit rights that are acquired. This reflects new tax legislation and is on the basis that when the member's ex-spouse or former civil partner's benefits first came into payment, that ex-spouse or former civil partner will have taken (or had the opportunity to take) a tax-free lump sum in respect of the benefits, so it would not be appropriate to allow a lump sum to be taken free of income tax from the pension credit rights. This applies regardless of whether a lump sum was actually taken by the pension debit member (see regulation 67);
- ensuring that the calculation of survivor benefits for partners and children of pensioner members includes any tier 1 or tier 2 ill-health enhancement (see regulation 71);
- correcting references which apply in respect of lifetime allowance statements (see regulation 72);
- providing for an amendment of the rates and adjustments certificate between valuations where there is material improvement in the employer's circumstances (see regulation 73);
- clarification that it is the employing authority's responsibility to determine which of the employee's emoluments are remuneration on which contributions are payable (see regulation 74);
- accommodating the faster exchange of information between the Committee and employing authorities (see regulation 75);
- clarification of the recipients to whom payments may be made under the scheme when a person dies (see regulation 76);
- making provision for the Scheme to comply with its membership obligations to the Public Sector Transfer Club (see regulation 78-81);
- amending the definition of "partner" (see regulation 81(b));
- inserting references to a grant maintained integrated school to ensure that this category of school

may be an admission body of the LGPS (NI). A new sub-paragraph will be inserted to ensure that an admission agreement may take effect on a day before it is executed (see regulations 36,38,40,45,54 and 82(a));

- removing a reference to a repealed provision regarding expense and allowances payable to the Committee (see regulation 83);
- clarification that the normal pension age in relation to deferred benefits in respect of membership that ceased before 1 October 2006, is age 65 (see regulation 85);
- clarification that a person who has been a deferred member accruing final salary benefits under previous LGPS (NI) Regulations, who then becomes an active member of the reformed LGPS (NI) without a disqualifying break in membership, may continue to accrue final salary benefits under the statutory underpin arrangements, if notification is given to the administering authority within a certain period of time (see regulation 86);
- ensuring that members of other public service pension schemes who are entitled to transitional protection under those schemes and who are continuing to accrue final salary

benefits can obtain final salary benefits within the LGPS (NI) if they transfer those benefits in and can benefit from the statutory underpin (see regulation 87);

- introducing a 12 month time limit (which may be extended at the discretion of the administering authority) if a former member of the Earlier Schemes takes up active membership of the Scheme and wishes to aggregate the benefits (see regulation 88);
- clarification that the term “contributions” includes additional contributions (see regulation 89);
- altering the administration of AVC benefits in regulation 19 (additional voluntary contributions) of the 2014 Regulations, so that the date the AVC arrangement was established is disregarded (see regulation 90);
- enabling the administering authority to offer members, at its discretion, the voluntary scheme pays facility where the value of the member’s accrued benefits exceeds the annual allowance (see regulation 91); and
- removing the requirement for employer consent for members aged between 55 and 60 to draw benefits under the 85 year rule (see regulation 92).

5. Human Rights

- 5.1. The Department believes that the proposals set out 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 to change policy in a substantive way, therefore, no adverse impact on the categories of person in section 75 of the Northern Ireland Act 1998 are identified.

7. Regulatory Impact Assessment

- 7.1. The Department considers that the proposed amendments will not have a direct impact on businesses, charities, social economy enterprises or the voluntary sector.

8. Regulatory Impact Assessment

- 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 passed to colleagues within the Department for Communities in Northern Ireland (“the Department”).

questions, please contact Information Management Branch (IMB).

Email foi@communities-ni.gsi.gov.uk

- 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

- 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. Alternative Format

- 10.1. 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 audio cassette. 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 not proficient in English.

11. Consultation responses

11.1. Please email your consultation response to: **lgpd@communities-ni.gov.uk**

11.2. Postal address-

**Local Government and Housing
Regulation Directorate
Level 4
Causeway Exchange
1-7 Bedford Street
Townparks
BELFAST
BT2 7EG**

11.3. Please ensure your response reaches the Department by **30 September 2019**.

11.4. 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 assembled. The Department will acknowledge your response.

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

Siobhan McKelvey - Tel: 028 9082 3409
Siobhan.mckelvey@communities-ni.gov.uk

William Dobbin – Tel: 028 9082 3360
William.dobbin@communities-ni.gov.uk

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

11.7 In line with good practice and sustainable development this document has been published electronically.

12. How we consult - Consultation principles

12.1. This 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.

Annex A: Assessment Criteria

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).

LIST OF CONSULTEES

1. All Members of the Northern Ireland Legislative Assembly
 2. All Northern Ireland political parties, MPs and MEPs
 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)).
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Available in alternative formats.

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