

Proposed changes to HSC Pension Schemes Regulations

Published 6 December 2021

Contents

- [1. Introduction](#)
- [2. The McCloud remedy](#)
- [3. The draft Regulations](#)
- [4. Impact assessments](#)
- [5. Conclusion, how to respond and next steps](#)

1. Introduction

The UK government has laid proposed primary legislation, the [Public Service Pensions and Judicial Offices Bill](#) before Parliament to implement changes in public service pension schemes to remedy the discrimination identified by the McCloud judgment. When new public service schemes were introduced in 2015, a transitional protection had allowed older workers to continue building pension in the legacy schemes whilst younger workers were moved into the new schemes (see paragraph 2.1 below for further background information). The provisions of the Bill are extended to Northern Ireland by means of a Legislative Consent Motion.

The Bill was introduced into the House of Lords on 19 July 2021. Subject to Parliamentary approval, this puts in place a legal framework which requires departments to make amendments to pension scheme regulations to facilitate implementation of the remedy as directed by the Bill.

The remedy has 2 parts:

1. 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 irrespective of age.
2. 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 pensionable service during the period 1 April 2015 to 31 March 2022.

This is the period during which the transitional protection existed which, in respect of similar provisions in other public service pension schemes, was found to be discriminatory by the Court of Appeal.

The department is consulting on a draft Statutory Rule (SR) making changes to HSC Pension Schemes Regulations necessary to implement the first part of the McCloud remedy. The draft Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 propose consequential amendments to scheme rules necessary to ensure the smooth closure of the legacy 1995 and/or 2008 HSC Pension Scheme to future accrual and move all active members into the new 2015 HSC Pension Scheme from 1 April 2022 as required by the Bill.

Members transferring to the 2015 HSC Pension Scheme will retain a final salary link, so that their 1995 and/or 2008 HSC Pension Scheme benefits are calculated using pensionable pay at retirement rather than the point of transfer. The transfer will happen automatically and requires no action by members. The scheme administrator, the HSC Business Services Organisation, will write to members notifying the change of scheme.

The draft regulations are being consulted on at the same time as the Bill goes through the UK 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 part of the remedy also requires changes to scheme regulations. A further set of draft regulations is under development and will be consulted on separately in 2022.

2. The McCloud remedy

2.1 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's final report [Independent Public Service Pensions Commission: final report by Lord Hutton](#) was published in 2011, setting out recommendations to reform public service pensions to better balance the interests of taxpayers, employers and members. The UK 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 UK government published a command paper [Public service pensions: good pensions that last](#) setting out the government's framework for reform of the public service schemes. Further discussions were undertaken with each of the workforces, including devolved employers, to develop scheme design proposals. On 8 March 2012 the Northern Ireland Executive agreed to commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State Pension Age to be adopted for general use in the devolved public service pension schemes, to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent schemes in Great Britain and not to adopt different approaches for Northern Ireland.

In April 2015 (April 2014 in the case of the Local Government Pension Scheme in England and Wales) new schemes were introduced for each of the main workforces – local government, teachers, the NHS, the armed forces, firefighters, police, judiciary and civil service. The reforms were implemented in NI by regulations made under the [Public Service Pensions Act \(Northern Ireland\) 2014](#) (the PSPNI Act 2014’).

As part of the 2015 reforms, those within 10 years of retirement remained in their legacy pension schemes. This transitional protection was not a recommendation of the IPSPC but was agreed following discussions with member representatives on a UK wide basis.

In December 2018 the Court of Appeal found in Lord Chancellor and Secretary of State for Justice versus McCloud, The Secretary of State for the Home Department versus Sargeant [\[2018\] EWCA Civ 2844](#) (the McCloud judgment) that the 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’s written ministerial statement](#) set 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 the schemes. Legal advice confirms the identical transitional measures introduced for equivalent devolved schemes must be similarly remedied.

2.2 The remedy

On 19 August 2020, [the Department of Finance consulted on 2 proposed options](#) for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age and proposed that the legacy schemes would be closed to all members on 31 March 2022.

It is normal practice in discrimination cases to remedy unequal treatment by reverting to the most beneficial option. However, the reforms that were introduced in 2015 were progressive and were in part intended to even out the value of pensions between some of the highest and lowest earners, resulting in some, particularly lower and middle earners, being better off in the reformed new schemes. Simply extending the transitional protection to all affected members would address the discrimination identified by the court but would also mean that some members would be placed in a worse position.

Instead, the consultation proposed that members should be given a choice of which scheme benefits they wish to receive during the period from when the reformed new schemes were introduced to the date that the legacy schemes are to be closed. Views were sought 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.

In February 2021, the Department of Finance' response was published 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 response to their consultation the Department of Finance explained that it preferred this approach as it would provide members with greater certainty about their decision and avoid the need for them to make assumptions about matters such as their future career and retirement age, which would increase the risk of members, particularly younger members, making decisions that may not be in their best interest. The response confirmed that affected members who are already in receipt of pension benefits will be given a choice as soon as possible after necessary changes to the schemes are implemented via legislation, or earlier if possible.

In the [Queen's Speech on 11 May 2021](#) the UK government announced its intention to bring forward legislation to implement retrospective changes to remedy the discrimination that arose when transitional protection was afforded to older public service workers when new public service schemes were introduced in 2014 to 2015, 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 into the House of Lords on 19 July 2021. The provisions of the Bill are extended to Northern Ireland by means of a Legislative Consent Motion.

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.

2.3 Changing scheme rules to implement the remedy

The rules of the HSC Pension Schemes are set out in regulations, which are a form of secondary legislation. Those rules can be amended or replaced by new regulations drawn up in accordance with the powers under, and requirements of, the Public Service Pensions Act (Northern Ireland) 2014 and, where relevant, the Superannuation (Northern Ireland) Order 1972.

The Bill is currently going through Parliament. The department has identified that upon Royal Assent, 2 sets of scheme regulations are necessary to give effect to the requirements of the Bill. These regulations will make changes to scheme rules to implement the remedy and provide authority for the administrator to apply the changes.

The 2 sets are:

1. Consequential amendments to:

- facilitate the closure of the legacy 1995 and/or 2008 HSC Pension Scheme to future accrual from 1 April 2022 and movement of all active members into the 2015 HSC Pension Scheme from that date. Members who move to the 2015 HSC Pension Scheme retain a final salary link, so that their legacy 1995 and/or 2008 HSC Pension Scheme benefits are calculated using pensionable pay at retirement rather than the point of transfer
 - update existing rules that make provision for the treatment and payment of legacy scheme benefits during or following a period of membership of the 2015 scheme
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 when pension benefits become payable for any pensionable service during the remedy period 1 April 2015 to 31 March 2022
 - 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, for example overpaid tax

This consultation presents the first set of draft scheme regulations. The draft regulations are being consulted on at the same time as the Bill progresses through Parliament. This is to ensure that upon Royal Assent the necessary scheme rule changes can be enacted for 1 April 2022 when the legacy public service pension schemes will be closed to future accrual.

The second set of draft scheme regulations is under development and will be consulted on separately in due course. HM Treasury, in consultation with the Department of Finance for devolved schemes, is publishing a set of policy notes that describe the scope and intention of provisions that public service schemes are expected to put in place. The Bill requires schemes to fully implement the DCU by no later than October 2023. The department expects to consult on the second set of regulations much earlier than that point, to give the scheme administrator certainty over the detailed rules for implementation.

3. The draft Regulations

3.1 Scheme rules for the HSC Pension Schemes

There are 2 HSC Pension Schemes:

- the new 2015 HSC Pension Scheme (the ‘new scheme’)
- the older legacy HSC Pension Scheme (the ‘legacy scheme’), which is divided into the 1995 Section and the 2008 Section

Accordingly, there are 3 sets of regulations under which entitlement to pension and other benefits may be calculated:

- the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (as amended) (SR 1995 No.95) (the ‘1995 Regulations’)
- the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 (as amended) (SR 2008 No.256) (the ‘2008 Regulations’)
- The Health and Social Care Pension Scheme Regulations (Northern Ireland) 2015 (as amended) (SR 2015 No.120) (the ‘2015 Regulations’)

In this consultation document, the ‘legacy scheme regulations’ means the 1995 Regulations and the 2008 Regulations and the ‘new scheme regulations’ means the 2015 Regulations.

The Health and Social Care Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015 (SR 2015 No.122) (the ‘Transitional Regulations’) put in place transitional arrangements for members of the new scheme who have pension rights accrued in the legacy scheme. These regulations make provision for the treatment and payment of legacy scheme benefits during or following a period of membership of the new scheme. They also include the transitional protections that permitted older members near to normal pension age to remain in the legacy scheme beyond its closure which, in respect of similar provisions in the judicial and firefighters’ pension schemes, the Court of Appeal found discriminated against younger members.

The HSC Pension Schemes Regulations have been amended over time to implement changes and clarifications to rules.

3.2 Explanatory notes for the draft amending regulations

The department presents for consultation the draft Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022. This section explains how the draft regulations amend existing scheme rules and deliver the Bill requirements. For completeness this section will also explain where no amendment is required because existing rules already do not contravene the Bill requirements.

Question

Do you agree that the proposed amendments deliver the policy objective and requirements set by the Bill?

3.2.1 Closure of the legacy scheme

The Public Service Pensions Act (Northern Ireland) 2014 (‘PSP Act 2014’) and, where relevant, the Superannuation (Northern Ireland) Order 1972 provide the wider legal framework within which the HSC Pension Schemes must operate. From 1 April 2015, section 18 (Restriction of existing pension schemes) of the PSP Act 2014 prevented accrual of benefits in the legacy scheme for service after 31 March 2015.

Exceptions to this closure of the legacy scheme were permitted by section 18(5) to (7) of the PSP Act 2014. These exceptions allowed certain members to remain in the legacy scheme after 31 March 2015. For members who transferred to the new

scheme from that date, section 20 of, and Schedule 7 to, the PSP Act 2014 ensured that a final salary link would apply to legacy scheme benefits so that these would be calculated using pensionable pay at retirement.

Clause 76 (restriction of existing schemes) of the Public Service Pensions and Judicial Offices Bill amends section 18 of the PSP Act 2014 so that all further accrual in the legacy scheme is prevented from 1 April 2022, subject to limited savings provisions, and the powers under which most exceptions were made are also removed from that date (see paragraph 3.2.4 Transitional Regulation 26 (bulk transfers) and Transfers under Public Sector Transfer Arrangements in relation to exceptions that may be made to permit transfers of service after that date into the legacy scheme).

This means that from 1 April 2022 all accrual for eligible members must be in the new scheme.

Regulations 1 to 4

Regulations 1 to 4 of the draft Statutory Rule (S.R.) ensure that HSC Schemes Regulations reflect the requirements of amended section 18 of the PSP Act 2014 by:

- preventing further accrual in the legacy scheme after 31 March 2022
- allowing all eligible HSC staff and practitioners to join the new scheme from 1 April 2022.

Regulation 1

Regulation 1 provides for the amending regulations to come into operation in Northern Ireland on 1 April 2022.

Regulation 2

Regulation 2 amends the 1995 Regulations by inserting new paragraphs (A1) and (A2) at the beginning of regulation 8 (restriction on further participation in this Section of the scheme). New paragraph (A1) makes it clear on the face of the 1995 Regulations that a person is prohibited from contributing to or accruing superannuable service in the 1995 Section of the legacy scheme from 1 April 2022. New paragraph (A2) makes it clear that the remaining paragraphs of regulation 8 are limited so that they apply only in respect of service up to and including 31 March 2022. This includes the paragraphs which contain the transitional protections introduced into the 1995 Regulations from 1 April 2015 which, in respect of similar provisions in other public service pension schemes, were found to be discriminatory by the Court of Appeal.

Regulation 3

Regulation 3 amends Part 2 (benefits for officers) and Part 3 (benefits for practitioners) of the 2008 Regulations. New paragraphs (A1) and (A2) are inserted at the beginning of regulations 22 and 154 (restrictions on eligibility: general). New paragraph (A1) of regulation 22 makes it clear on the face of the 2008 Regulations that an officer is not eligible to be an active member of the 2008 Section of the

legacy scheme in HSC employment from 1 April 2022. Likewise, new paragraph (A1) of regulation 154 makes it clear that a practitioner is not eligible to be an active member of the 2008 Section of the legacy scheme from 1 April 2022. New paragraph (A2) of each of regulations 22 and 154 makes it clear that the remaining paragraphs of those regulations apply only in respect of service up to and including 31 March 2022. This includes the paragraphs which contain the transitional protections introduced into the 2008 Regulations on 1 April 2015 which, in respect of similar provisions in other public service pension schemes, were found to be discriminatory by the Court of Appeal.

3.2.2 Eligibility to join the new HSC scheme

Regulation 4

Regulation 4 amends regulation 19 (restrictions on membership) of the new scheme regulations. This amendment ensures that members of the legacy scheme (other than pensioners) whose accrual of pensionable service will cease in that scheme on 31 March 2022 will become eligible to join the new scheme from 1 April 2022. The restriction is maintained for members of the legacy scheme who are no longer required to pay contributions in that scheme because their position is not changed by the prospective remedy.

Regulation 19(d) of the new scheme regulations allows legacy scheme pensioners to join the new scheme if they are eligible to do so under the provisions of Schedule 1 (eligibility of pensioners) to the Transitional Regulations.

Schedule 1 to the Transitional Regulations is amended by regulation 5(10) of the draft S.R. so that re-employed pensioners of the legacy scheme no longer eligible to accrue benefits in the legacy scheme from 1 April 2022 will be eligible to join the new scheme from that date.

In respect of the 1995 Section, tier 1 ill-health pensioners who are in pensionable employment on 31 March 2022 or who would have been eligible for membership of the 1995 Section on that date if they had been in HSC employment, will be eligible to join the new scheme from 1 April 2022 (new Group 7 pensioners inserted by regulation 5(10)(a)). In addition, members who chose to forego a redundancy pension in respect of an employment that ran concurrently with an employment in which they were made redundant, are also eligible to join the new scheme from 1 April 2022 (new Group 8 pensioners also inserted by regulation 5(10)(a)).

In respect of the 2008 Section, all pensioners (other than tier 2 ill-health pensioners) who are active in the 2008 Section on 31 March 2022 or who would have been eligible for membership of the 2008 Section on that date if they had been in HSC employment, will be eligible to join the new scheme from 1 April 2022 (new Group 6 pensioners inserted by regulation 5(10)(b)(ii)).

Tier 2 ill-health pensioners are not eligible to join either the legacy scheme or the new scheme until their tier 2 pension has permanently reduced to a tier 1 pension. This happens on the first anniversary of their return to HSC employment. 1995 Section tier 2 ill-health pensioners must also be under age 50 on that anniversary to

be eligible to pension further HSC work. No specific provision needs to be made in this respect for 1995 Section pensioners because of the age profile of members moving across on 1 April 2022 in line with the prospective remedy (the youngest 1995 Section member will be aged 55 years).

2008 Section tier 2 ill-health pensioners whose first anniversary falls on or after 1 April 2022 will be eligible to join the new scheme from the day after their anniversary (new Group 7 pensioners also inserted by regulation 5(10)(b)(ii)).

Amending Regulation 5(10)(b)(i) makes a correction to a cross-reference in existing 2008 Section pensioner Group 4 (in the entry for Group 4 in the table in paragraph 2 of Schedule 1 to the Transitional Regulations). The reference to regulation 113(5)(b) of the 2008 Regulations is replaced with a cross-reference to regulation 112(5)(b) of those regulations.

3.2.3 Transitional arrangements for members joining the new scheme from 1 April 2022

The PSP Act 2014 provisions at Schedule 7 (final salary link) which provides for qualifying members to have legacy scheme benefits calculated using pay at retirement will apply automatically to legacy scheme members moving to the new scheme from 1 April 2022. In addition, the majority of the transitional regulations put in place on 1 April 2015 to further support the movement of members whose benefits in the legacy scheme and new scheme are linked in this way will also apply automatically to members moving to the new scheme from 1 April 2022.

The Transitional Regulations serve a number of purposes, for example, they ensure that:

- certain options and elections made by members under the legacy scheme regulations continue to apply under the new scheme regulations
- relevant provisions that apply in the legacy scheme continue to apply by virtue of equivalent provisions in the new scheme regulations 2015 equivalent
- legacy scheme service counts for certain purposes in the new scheme
- pensionable pay and benefits for officers and practitioners are determined correctly where benefits are due from both the legacy scheme and the new scheme

The following paragraphs provide a detailed explanation of the existing individual transitional regulations that will apply to members moving to the new scheme on 1 April 2022 and include a description of any amendments to those regulations made by the draft S.R. to accommodate those members. (See especially the explanations below for transitional regulations 27 and 28. The substantial amendment of those regulations will provide revised transitional arrangements for the treatment of applications for ill-health retirement made by legacy members where those applications are received by the Department before 1 April 2022. See also further changes made by the draft S.R. as described at the explanations for transitional regulations 11, 12, 18, 25, 35 and 38.)

3.2.4 Continuity of legacy scheme options, membership status and qualifying service

Transitional regulation 4 (carry forward of old scheme opt-out)

Transitional regulation 4 allows persons who have opted out of membership in the legacy scheme or opted out of automatic enrolment under the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 to remain opted out on becoming eligible to join the new scheme without having to complete another set of opt-out forms.

Transitional regulation 5 (nominations, notices and declarations)

Transitional regulation 5 provides for member elections and nominations accepted during membership in the legacy scheme in respect of who is to receive any lump sums payable on the death of a member to remain effective under the new scheme regulations. It further provides that revocations of such notices apply to both sets of benefits and, equally, the making of a new nomination or declaration also applies to both sets of benefits.

Transitional regulation 6 (active member status preservation)

Transitional regulation 6 provides for members to be treated as being active in the legacy scheme whilst they are active in the new scheme. This ensures that service in the legacy scheme and service in the new scheme are treated as being continuous.

Transitional regulation 7 (qualifying service)

Transitional regulation 7 ensures that entitlement to benefits is assessed consistently across both the legacy scheme and new scheme. Hence, transitional regulation 7 provides that:

- for the purpose of determining eligibility to claim benefits, the member's service under the legacy scheme terminates when the member's service under the new scheme terminates
- members don't become deferred or preserved members of the legacy scheme unless they become deferred members of the new scheme
- a member who has served 2 years' qualifying service becomes a deferred or preserved member of the legacy scheme on opting out of membership in the new scheme and where a member re-enters new scheme service they stop being deferred or preserved members of the legacy scheme
- the member's qualifying service is the total amount across both the legacy scheme and new scheme

Transitional regulation 8 (members on authorised unpaid leave)

Transitional regulation 8 makes provision for members on a leave of absence from the legacy scheme when they become eligible to join the new scheme. It provides for the leave of absence to become a leave of absence under the equivalent regulations (regulation 21) in the new scheme regulations and for the period during which

contributions have been paid under legacy scheme regulations to be taken into account when determining how long the member may continue to pay contributions.

Transitional regulation 9 (casual staff and locums not working on eligibility date)

Casual staff and locums who are on a break in employment may continue to accrue qualifying service for a period of 3 months. Transitional regulation 9 covers circumstances where a member is on such a break when they become eligible to join the new scheme so that they are allowed to accrue qualifying service across both the legacy scheme and new scheme for an aggregate period of 3 months.

Transitional regulations 11 (contribution rate setting: Groups A to C) and 12 (contribution rate setting: Group D) as amended by regulation 5(2) and (3) in the draft S.R.

The contribution rates for certain members that are set at the beginning of a scheme year are based on a member's pensionable pay or certified earnings from previous scheme years. Transitional regulations 11 and 12 provide some continuity in this respect for members who will join the new scheme from 1 April 2022.

Transitional regulation 11 applies to members in groups A to C in regulation 27(1) of the new scheme regulations (members other than practitioners or non-GP providers). The amendments made to the scheme year references in regulation 11 by amending regulation 5(2) ensure that for the scheme year commencing on 1 April 2022, the member's contribution rate can be set by reference to the member's pensionable earnings in the legacy scheme during the scheme year 1 April 2021 to 31 March 2022 if that would have been the case had the member remained in the legacy scheme.

Transitional regulation 12 applies to practitioners and non-GP providers. Where such a member's contribution rate is to be set by reference to that member's most recently certified or final pensionable earnings, the amendment made to this transitional regulation by amending regulation 5(3) ensures that those earnings can be derived from the member's service in the legacy scheme.

Transitional regulation 14 (determination of pensionable pay, final pensionable pay and reckonable pay)

Transitional regulation 14 provides that for any purpose of the legacy scheme (including benefit calculations) the member's pensionable pay and final years pensionable pay (1995 Section) and reckonable pay (2008 Section) are determined by reference to the relevant legacy scheme regulations.

Transitional regulation 15 (no refund on contributions in cases of inordinate pay)

Regulation 3(10) of the 1995 Regulations provides that the amount of an officer member's final year's superannuable pay can be restricted where the Department determines it is inordinate in the context of final salary benefits. Paragraph (12) of regulation 3 then provides for a refund of contributions to be paid to the member and the employer in respect of the restricted amount of pensionable pay. However, because officer members will be accruing career average benefits in the new

scheme in respect of the full (unrestricted) contributions paid, no refund should be due and transitional regulation 15 achieves this objective.

Transitional regulation 16 (cessation of final salary link on payment of benefits)

Transitional regulation 16 prevents an officer member's legacy scheme pension benefits being recalculated where the member has claimed benefits that have been calculated using a final salary link and then subsequently re-enters pensionable public service. It severs the final salary link in respect of service for which a pension has been paid.

Transitional regulation 17 (final salary link: mental health officers)

Transitional regulation 17 provides a supplemental final salary link in respect of 1995 Section officer members who have mental health officers (MHO) service in the 1995 Section and whose pensionable service in the new scheme would have qualified them for MHO status had it accrued in the 1995 Section. This means that the final pensionable pay used to calculate 1995 Section benefits in respect of former MHOs may be derived from service in the 2015 Scheme that would have been MHO service in the 1995 Section had the member remained in that Section.

Transitional regulation 18 (uprating of old scheme practitioner earnings) as amended by regulation 5(4) in the draft SI

Transitional regulation 18 prevents increases being applied to practitioner pensions twice – once under the Pensions (Increase) Act (Northern Ireland) 1971 and once under legacy HSC Pension Scheme Regulations. The amendment made to this regulation by regulation 5(4) ensures that regulation 18 applies appropriately to members of the legacy scheme joining from 1 April 2015 and from 1 April 2022 for the duration of membership of the new scheme. It also includes an exception to this regarding the purchase of additional service (paragraphs (2) and (3)) inserted by regulation 5(4)(d).

Transitional regulations 19 (flexibility earnings credit: calculation), 20 (flexibility earnings credit: uprating) and 21 (flexibility earnings credit: adjustment of pension payable)

Transitional regulation 19 provide for members who have at any point built-up existing career average practitioner benefits in the legacy scheme to have those benefits protected on final retirement using arrangements equivalent to the final salary link for other scheme members. These arrangements, as explained below, will also apply to relevant practitioner members joining the new scheme from 1 April 2022 in line with the prospective remedy.

Legacy scheme members with both career average practitioner benefits and final salary non-practitioner benefits ('mixed service') have those benefits considered under special 'GP flexibility' rules (paragraphs 9 and 11 of Schedule 2 to the 1995 Regulations and Part 4 of the 2008 Regulations). The legacy scheme flexibility rules aim to provide total mixed service benefits that, broadly, will be at least as good as the benefits the members could expect if they had been subject to the non-practitioner final salary arrangement throughout.

In particular, the flexibility arrangements recognise that before a practitioner can begin work in general practice, they will normally spend several years in the final salary section of the scheme, undergoing training as an employed 'hospital' doctor. This earlier hospital service normally terminates quite early in a practitioner's career and, without the benefit of the flexibility rules, would be revalued by pensions increase rather than pay factors up to the date of retirement, even though pensionable service in the scheme remains unbroken.

Normally, the practical effect of the legacy scheme flexibility rules for mixed service is to increase the value of the non-practitioner benefits. To reflect this increased value, the Transitional Regulations provided for the calculation of a 'flexibility earnings credit' to be calculated for the non-practitioner service (transitional regulation 19), and uprated according to the length of time to final retirement (transitional regulation 20). The Department will take into account the advice of the Scheme Actuary in setting a cost-neutral annual uprating factor that the Department believes will fairly represent the average increase in non-practitioner benefits due to existing legacy scheme GP flexibility rules.

The initial 'flexibility earnings credit' will be calculated by applying the current 1995 Section or 2008 Section GP flexibility rules to the 'mixed service' up to the date of joining the new scheme. This process tests whether total mixed service benefits are better when:

- non-practitioner service is left unchanged, for calculation of a non-practitioner benefit or
- non-practitioner service is treated as if it were practitioner service

The practitioner element of the best combined benefits emerging from the above test will then be subtracted from total benefits to produce a 'flexibility earnings credit' representing the non-practitioner benefits. Provided that there is no break in HSC pensionable service exceeding 5 years, this flexibility earnings credit will then be uprated between the date of joining the new scheme and the date of final retirement, using the factor referred to above. Where there is a break in HSC pensionable service exceeding 5 years, the uprating will be until the last day before the first such break.

The member will, when retirement benefits are put into payment, receive the better of:

- a total benefit including a non-practitioner element calculated using the uprated flexibility earnings credit or
- a total benefit including a non-practitioner element calculated using the member's non-practitioner service up to the date of transfer to new scheme and their final salary at the date of retirement

Transitional regulation 22 (existing additional service and unreduced lump sum contracts)

Members of the 1995 Section can, in certain circumstances, purchase additional service by making regular additional voluntary contributions (AVCs) usually set as a percentage of pensionable pay. Members can also purchase an unreduced

retirement lump sum via this method where this had been reduced to provide cover for a partner pension. Purchases are generally made until a chosen birthday of either 60 or 65 years.

Transitional regulation 22 provides for the continuation of such contracts on joining the new scheme unless there has been a break of 12 months or more between leaving the legacy scheme and joining the new scheme.

Additional voluntary contributions (AVCs) of this type continue to be payable after joining the new scheme until the earliest of the member's chosen birthday, the day before a 12-month break starts, the day before a member stops paying contributions and retirement from the new scheme. Pay in the new scheme is treated as pay in the legacy scheme for the purposes of determining the amount of AVCs due.

Transitional regulation 23 (existing additional pension contracts)

Transitional regulation 23 provides for such purchases to continue on joining the new scheme. Members of the legacy scheme can pay regular AVCs to purchase an amount of additional pension. Whilst 2008 Section members moving across from 1 April 2022 will have completed their purchases (the youngest will be 65 years old and AVC purchases must end no later than that age), 1995 Section members may still be paying AVCs to purchase additional pension and regulation 23 will allow those purchases to continue after joining the new scheme.

Members will not be permitted to make new arrangements to purchase additional service, unreduced lump sums or additional pension under legacy scheme provisions after 31 March 2022.

Transitional regulation 24 (additional contributions: ill-health)

In the legacy scheme members who have been paying periodical contributions for added years or additional pension for at least 12 months after exercising the option are entitled to the full credit of pension or additional service if they retire on ill-health grounds before completing their contract. Transitional regulation 24 ensures that this credit is given if the member retires on the grounds of ill-health under the provisions of the new scheme. This regulation will also apply to legacy 1995 Section members moving across to the new scheme from 1 April 2022 who have not yet completed their contracts (members under the age of 60 when they retire on ill-health grounds).

Transitional regulation 25 (decoupling of benefits derived from additional contributions) as amended by regulation 5(5) in the draft S.R.

Transitional regulation 25 provides for 1995 Section members only to elect to take benefits derived from AVC contracts (additional service or additional pension) at their chosen date or birthday without having to retire. Amendments made to this regulation by amending regulation 5(5) ensure that this option is also available to 1995 Section members joining the new scheme on 1 April 2022.

The amendments provide the following additional arrangements for members who join the new scheme after their chosen date or birthday has passed or less than 6 months before that date.

In those circumstances:

- the scheme administrator must provide all the option information to the member no later than 3 months after the member joins the new scheme
- the member must then take up the option within 3 months of the notification from the scheme administrator
- the payable date for the benefits derived from AVCs will be (as now) the member's chosen date or birthday or, if later, the date the member joins the new scheme

Transitional regulation 26 (acceptance of bulk transfers)

Bulk pension transfers are generally made when a group of workers are transferred from an external employer into the HSC. A bulk transfer is a special arrangement whereby enhanced transfer terms apply where members transfer their pension benefits to the new employer's scheme and receive benefits of equivalent value to those in their former scheme. Transitional regulation 26 allows part of a bulk transfer made in respect of a member of the new scheme to be accepted by the 1995 Section or 2008 Section if that payment relates to final salary benefits in a previous scheme and the special terms agreed for the transfer require it to be paid into one of those Sections.

In certain circumstances, members joining the new scheme who qualify for a bulk transfer payment as described above may have accrued benefits in a previous final salary scheme in respect of service in that scheme after 31 March 2022. Clause 77 (restriction of existing schemes: savings and transitional provisions) of the Public Service Pensions and Judicial Offices Bill, at subsection (2)(b), makes an exception in this respect so that such service from a former scheme (that is not a scheme under section 1 of the Public Service Pensions Act 2013 or the PSP Act 2014) may still be accepted into the relevant Section of the legacy scheme.

Transfers under the public sector transfer arrangements ('the Club')

The exception made by clause 77(2)(b) of the Bill will also apply to members joining the new scheme who are able to transfer final salary service that occurred on or after 1 April 2022 via the Club transfer arrangements.

Transitional regulation 27 (ill-health benefits: continuity of existing applications) as amended by regulation 5(6) in the draft S.R.

Transitional regulation 27 provides for the treatment of applications for ill-health pensions made by legacy scheme members that are received by the Department on or before 31 March 2022.

Current provision at regulation 27 allows the date a legacy scheme member would otherwise join the new scheme to be delayed until their ill-health pension application has been decided or, where it is not decided in the member's favour, until the member withdraws the application or all appeal routes have been exhausted. This provision was permitted by exceptions in the PSP Act 2014 (see paragraph 3.2.1) that allowed certain members to remain in the legacy scheme after the date they were due to join the new scheme (between 1 April 2015 and 31 March 2022). The

powers under which those exceptions were made are removed from the PSP Act 2014 by the Bill from 1 April 2022. This means that all legacy scheme members, including any members who have submitted an application for a legacy scheme ill-health pension in accordance with the current regulation 27, will join the new scheme on that date.

The amendments made by regulation 5(6) in the draft S.R. to transitional regulation 27 provide new arrangements that will apply to the way legacy scheme ill-health pension applications received by the Department before 1 April 2022 are considered and the benefits that will become payable if an application is agreed. These new arrangements are described in detail below.

Eligibility for the revised transitional arrangements provided for under regulation 27 (amendments made by draft regulation 5(6)(a) to (d) to paragraphs (1) to (6) of regulation 27)

Amended regulation 27 will apply to legacy scheme members who will move to the new scheme on 1 April 2022 but whose application for an ill-health pension ('an application') was received by the Department before that date. For this purpose, an application means a Form AW33 (or another form the Department has accepted) together with any supporting medical evidence. The provisions of amended regulation 27 will continue to apply until the end of the 'application period'. This period ends when the member either withdraws their application or all appeal routes (dispute resolution arrangements, complaints to the Pensions Ombudsman and proceedings before a court or tribunal) have been exhausted.

This means that the new arrangements will apply to all members of the legacy scheme whose application was received before 1 April 2022 where the member is due to join the new scheme on that date. This includes any member who was due to join the new scheme on a date earlier than 1 April 2022 but whose joining date has been delayed under the provisions of current regulation 27.

Consideration of applications and ill-health benefits

There are 2 tiers of ill-health pension available in both the legacy scheme and the new scheme. The qualifying criteria for each tier and the benefits payable are set out in full in regulation 89 of the new scheme regulations (read together with transitional regulation 28 where the member has benefits in both the new scheme and the legacy scheme), regulation 13A of the 1995 Regulations and regulations 52 and 182 of the 2008 Regulations. The criteria and benefits are summarised below:

- tier 1 criteria: the member is incapable of efficiently discharging their HSC duties until normal pension age because of ill-health
- tier 1 benefits: early payment of benefits earned to date of retirement without any reduction for early payment
- tier 2 criteria: the member is incapable of engaging in regular employment of like duration to their HSC duties until normal pension age (NPA) because of ill-health
- tier 2 benefits: tier 1 benefits plus extra pension based on two-thirds of the member's prospective service to NPA where retirement is from the legacy

scheme and half the extra pension the member would have earned if they had worked until NPA where retirement is from the new scheme

NPA is 60 years in the 1995 Section, 65 years in the 2008 Section and state pension age in the new scheme (a member who is 55 years of age on 1 April 2022 has a state pension age of 67 years).

The different NPA in the legacy sections compared to the new scheme and the differences in the extra pension provided in respect of tier 2 pensions make it difficult to predict the outcome for legacy scheme members who would, without the new arrangement, be assessed solely against the new scheme ill-health pension criteria on moving to the new scheme on 1 April 2022. For some members, that assessment may mean that they would fail to meet any of the new scheme ill-health qualifying criteria when they may have met the legacy scheme criteria where capability to work in that scheme is assessed to a NPA that, for some, is 7 years earlier. For other members who, for example, may meet the tier 2 criteria in the new scheme, the benefits payable will be higher than they would have been under legacy scheme regulations. For members who meet the tier 1 criteria in the new scheme but may have met the tier 2 criteria in the legacy scheme, the outcome may depend on the member's proximity to NPA.

In circumstances where an application for an ill-health pension was received before the member joined the new scheme on 1 April 2022 but a pension did not become payable before that date, the main objective of the revised transitional arrangement is to ensure that legacy members and their dependants are not placed in a less beneficial position than they would have been had the outcome of their application been determined under legacy scheme criteria and their retirement on ill-health grounds taken place on 31 March 2022. New paragraphs (7) to (21) of regulation 27 inserted by paragraph (6)(e) implement the new arrangements and are described in detail below.

Consideration of applications (new paragraphs (7)(a), (8) and (9) of regulation 27)

These new paragraphs provide for the member's application to be considered against both the legacy scheme and the new scheme ill-health qualifying criteria.

Members who do not meet the new scheme ill-health criteria but do meet the legacy scheme ill-health criteria (new paragraphs (7)(b), (10)(a) and (b), (13) to (15), and (17) to (20)(b)(ii) of regulation 27)

If the member does not meet either the tier 1 or tier 2 ill-health criteria in the new scheme but does meet either of those criteria as set out in the 1995 Regulations or 2008 Regulations (whichever are relevant), the member will be entitled to an equivalent tier 1 or tier 2 ill-health pension and lump sum from the new scheme under transitional regulation 27. Those benefits will be calculated in exactly the same way as they would have been had the member qualified for such a pension and retired from the relevant section of the legacy scheme on 31 March 2022. The pension will also attract increases under the Pensions (Increase) Act (Northern Ireland) 1971 in the same way, generally attracting increases from 1 April 2022. On the payment of the pension, the member's rights under the legacy scheme are extinguished.

The member's entitlement to an equivalent tier 1 or tier 2 ill-health pension is treated as entitlement to a tier 1 or tier 2 ill-health pension (as applicable) under regulation 89 of the new scheme regulations.

Benefits due to qualifying adult and child survivors following the member's death will also be paid from the new scheme and will be equal to the survivor benefits that would have been paid from the legacy scheme had the member died whilst receiving the tier 1 or tier 2 ill-health pension described above.

Members who meet the legacy scheme ill-health criteria and the new scheme ill-health criteria (new paragraphs (7)(b), (10)(c) to (12), (16) and (20)(b)(iii) of regulation 27)

If a member meets one or both of the tier 1 and tier 2 ill-health criteria in the relevant Section of the legacy scheme and also meets one or both of those criteria in the new scheme, a 'pension comparison calculation' will be required. The pension comparison calculation will compare the annual rate of ill-health pension due from the new scheme under transitional regulation 28 on retirement from that scheme with the annual rate of ill-health pension that would have been due from the legacy scheme if the member had qualified for such a pension and retired on 31 March 2022 (as described above).

The ill-health pension due from the new scheme under transitional regulation 28 is equal to the aggregate of:

- the annual rate of tier 1 pension that is payable under the new scheme plus
- the annual rate of pension equivalent to the member's pension in the legacy scheme calculated using the member's final salary linked pensionable pay up to 31 March 2022

If the pension is payable at tier 2 level, the resulting aggregate pension is increased by the tier 2 additional amount as determined by regulation 89 of the new scheme regulations.

For the purpose of ensuring the comparison calculation is undertaken on a 'like for like' basis, any mandatory lump sum equivalent to that due from the legacy scheme either on retirement from the new scheme under regulation 28 or at 31 March 2022 is converted into legacy pension on a 12 to 1 basis. This is the rate for converting pension into lump sum in both the legacy and the new scheme.

If, as a result of the comparison calculation, the legacy scheme pension is higher than the new scheme pension, the new scheme pension provided for under transitional regulation 28 will be increased by the difference. The increase is applied after the calculation of a tier 2 addition (if any) that is to be included in the member's pension. (See below the explanation for transitional regulation 28 in respect of the survivor benefits due on the death of a member whose ill-health benefits have been increased in this way.)

If the increase paid from the new scheme is the difference between the equivalent of the member's legacy ill-health pension at tier 2 level and a new scheme ill-health

pension at tier 1 level, the member's entitlement is treated as entitlement to tier 2 ill-health pension under regulation 89 of the new scheme regulations.

If, as a result of the comparison calculation, the new scheme pension is higher, new scheme benefits provided for under transitional regulation 28 will be paid to the member and the member's dependants.

Transitional regulation 28 (ill-health: members below old scheme normal pension age) as amended by regulation 5(7) in the draft S.R. and transitional regulation 29 (ill-health: members above old scheme normal pension age)

Active members of the new scheme with benefits in the legacy scheme who successfully apply for ill-health retirement will have their ill-health pension paid via the new scheme only rather than there being a pension payable under both schemes. This is because the member is active in the new scheme at the time the ill-health retirement application is made. The pension will, however, be based on the value of both legacy and new scheme service.

Transitional regulation 28 establishes that where an ill-health pension becomes payable under the new scheme, an ill-health pension and lump sum from the legacy scheme does not become payable separately. Paragraphs (3) and (4) set out how the annual rate of ill-health pension payable is identified. This is the aggregate of the annual rates of tier 1 pension that is payable under the new scheme and would have been payable under the legacy scheme, plus an amount of pension in respect of any mandatory pension commencement lump that a member would have received under the legacy scheme. If the pension is payable at tier 2 level, then the resulting annual rate of pension is increased by the tier 2 addition amount as determined by regulation 89 of the new scheme regulations.

New paragraphs (6A) to (6C) of regulation 28, inserted by amending regulation 5(7) provide for the survivor pensions due on the death of a member who is receiving a pension under regulation 28. Those paragraphs ensure that any survivor pensions paid from the new scheme in respect of the value of legacy scheme benefits are paid at the correct equivalent rate. New paragraphs (6B) and (6C) ensure that any survivor benefits due following the death of a member whose ill-health pension has been increased under paragraph (16) of regulation 27, take account of that increase.

Paragraph (7) of regulation 28 provides that the legacy scheme conditions and rules relating to ill-health pensions apply to the amount of pension payable under the new scheme which represents the amount that would have been payable under the legacy scheme. If a transfer payment is made to another scheme in respect of legacy scheme benefits then paragraph (5) requires the scheme manager to reduce the ill-health pension by an amount equivalent to the value of the pension that is represented by the transfer payment. In essence, the value of the legacy scheme benefits is withdrawn from the pension in payment.

Where a member in receipt of an ill-health pension reaches normal pension age for the legacy scheme benefits, regulation 29 provides that the portion of ill-health pension relating to those legacy scheme benefits ceases to be payable and a normal

retirement pension is payable under the legacy scheme instead. The annual rate of that pension is reduced to account for any:

- pension commencement lump sum paid to the member when the ill-health pension became payable
- pension paid in equivalence to a mandatory lump sum
- transfer payment made to another scheme before the member reached the legacy scheme normal pension age

This is because the member has already received the value of those benefits.

Transitional regulation 30 (age retirement of mental health officers, nurses, physiotherapists, midwives and health visitors)

Certain nurses and mental health officers (known as 'special classes') in the 1995 Section of the legacy scheme retain the right to early retirement between ages 55 and 60 if qualifying criteria are met at the point of retirement. These special rights were discontinued for new members joining after 1 April 1995. The purpose of transitional regulation 30 is to allow former special class members joining the new scheme to claim their benefits in the 1995 Section on leaving new scheme service between ages 55 and 60 if the relevant qualifying criteria are met on leaving the new scheme.

Transitional regulation 31 (partial retirement)

Partial retirement is available for members over minimum pension age (55 years) in the 2008 Section and the new scheme. Transitional regulation 31 sets out what will happen when a member with 2008 Section benefits and new scheme benefits elects to draw down a percentage of their pension.

An election under the partial retirement regulations in the new scheme regulations is treated as having effect as an election under the equivalent provisions in the 2008 Regulations. The member must draw down all legacy service before becoming entitled to draw down new scheme benefits.

At each election, both the legacy and new scheme regulations require the member to take at least 20% of their pension (before commutation of any pension to lump sum) and leave behind benefits for at least 20% of their service in the Scheme when they take partial retirement benefits. The member's pensionable service and benefits across both schemes are aggregated for this purpose.

Transitional regulation 32 (redundancy retirement)

Transitional regulation 32 provides that where a member, other than a member with special class rights, is granted retirement on the grounds of redundancy under the new scheme then the member's legacy scheme benefits also become payable on redundancy grounds. If any periods of service are excluded from new scheme redundancy benefits (for periods of ongoing concurrent employments or practitioner service) that service will also be excluded from legacy scheme benefits.

Transitional regulation 33 (premature retirement: special classes)

Transitional regulation 33 covers circumstances where a 1995 Section member becomes entitled to a premature retirement pension for new scheme service and, at the same time, qualifies for early payment of their 1995 Section benefits because they are a special class member. Such members will have a combination retirement of premature retirement benefits in respect of new scheme service plus special class age retirement benefits for 1995 Section service.

Transitional regulation 34 (interests of efficiency of the service)

Transitional regulation 34 provides that where a member, other than a member with special class rights, is granted retirement in the interest of the efficiency of the service (IES) under the new scheme then the member's legacy scheme benefits also become payable on IES grounds. As a result, the employer is required under the relevant legacy scheme regulations to pay an additional contribution to the scheme manager in respect of early payment of those benefits.

Transitional regulation 35 (variations to lump sums for 1995 and 2008 pensioners joining new scheme) as amended by regulation 5(8) in the draft S.R.

Re-employed pensioners are entitled to an adjusted lump sum on death in service to take account of the fact that their benefits are in payment. Transitional regulation 35 provides for such a lump sum on death in service to be paid to the beneficiaries of relevant legacy scheme pensioners who die whilst active members of the new scheme. The lump sum on death is calculated on the same basis as for new scheme pensioners who also die whilst active in that scheme.

The amendment to transitional regulation 35(1) by regulation 5(8) of the draft S.R. adds new Group 7 1995 Section pensioners and new Groups 6 and 7 2008 Section pensioners (see paragraph 3.2.2 above for further information about the new groups) to those groups already covered by that transitional regulation.

Transitional regulation 36 (abatement)

Transitional regulation 36 makes provision for pensioners who are receiving a pension on IES grounds in respect of service in the legacy scheme and the new scheme. Such pensioners will be assessed for abatement on return to HSC employment before normal pension age. Where relevant abatement rules apply across both schemes, this transitional regulation provides for both pensions to be taken into account for the purposes of deciding whether post-retirement income is sufficient for abatement to apply. If it is, a pro-rata reduction is applied to each pension using the same methodology as would apply if a member was in receipt of more than one pension which fell to be abated under either the legacy scheme regulations or the new scheme regulations.

Transitional regulation 37 (abatement: special classes)

Transitional regulation 37 covers circumstances in which transitional regulation 33 applies. This is where a former member of the 1995 Section special classes retires between ages 55 and 60. The member's new scheme employment and membership

are terminated on IES grounds and the member also becomes entitled to an age pension for 1995 Section service. On re-employment in the HSC before age 60, both pensions will be assessed for abatement. However, a different abatement formula applies to a 1995 Section special class age pension compared to a new scheme IES pension. Transitional regulation 37 provides a formulaic approach for ensuring that the correct reduction is made in respect of both pensions.

Transitional regulation 38 (death in service) as amended by regulation 5(9) in the draft S.R.

Transitional regulation 38 ensures that in relation to a member who dies whilst in active service in the new scheme (or within 12 months of leaving that scheme), the correct entitlement under the new scheme regulations is applied and appropriate account is taken of the deceased member's service in the legacy scheme.

The table within that regulation sets out the legacy scheme entitlement in column 1 and the revised entitlement to a combination of legacy scheme and new scheme benefits that replaces that entitlement in column 2.

Regulation 5(9) in the S.R. makes a minor correction to transitional regulation 38. That regulation referred incorrectly to 'transitional members' in 2 places. In both instances 'transitional' is corrected to 'transition'.

Transfer of deferred legacy 1995 Section benefits to the new scheme

Members with deferred benefits in the legacy scheme may transfer the value of those benefits into the new scheme on a cash equivalent basis if their final salary link is lost following a break in service of 5 or more years between leaving the legacy scheme and joining the new scheme. To be eligible, members must also be under legacy scheme normal pension age (60 or 65). Since most members who will become eligible to join the new scheme for the first time from 1 April 2022 in line with the prospective remedy will be past legacy scheme normal pension age, this option will only become newly available to members of the 1995 Section special classes who initially qualified for full protection but have since had a relevant break in service before returning to the new scheme under age 60.

For such members, the opportunity to transfer deferred benefits is exercisable once only on the first instance that the new scheme member becomes eligible to do so. Once accepted, the resulting transfer payment is applied to the member's active account in the new scheme as an earnings credit. It is treated in the same way as any other cash equivalent transfer payment received into the new scheme.

Where eligible members do not take up the transfer option, deferred 1995 Section benefits may be claimed at normal pension age without the member having to leave HSC employment.

The transfer option is provided for under regulation 59A (member's right to transfer a preserved pension to the 2015 Scheme) of the 1995 Regulations and regulation 144 (transfer from 1995 Section or 2008 Section) of the new scheme regulations. The option to take a 1995 Section deferred benefit without leaving HSC employment is provided for under regulation 49 (preserved pension) of the 1995 Regulations.

4. Impact assessments

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.

4.1 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 in August 2020.

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 HSC 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 Health

Section 75 of the Northern Ireland Act 1998 requires the Department of Health, 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.

However, the Department would like to take this opportunity to ask stakeholders the following questions in relation to equality:-

- Are you aware of additional data that would help assess the potential impacts of the proposed changes on the HSC Pension Scheme membership?
- Are there other comments or observations on equalities impacts you would wish to make?

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

4.2 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.

Question

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

5. Conclusion, how to respond and next steps

The changes to HSC Pension Schemes Regulations proposed in this consultation are necessary to facilitate implementation of the requirements of the Public Service Pensions and Judicial Offices Bill. Subject to passage of the Bill through Parliament and taking account of feedback from this consultation, the department expects to lay finalised regulations before Parliament in time for the provisions to come into force on 1 April 2022.

The scheme administrator will write to all members who are affected by these changes. There is no action that members need to take in advance.

5.1 How to respond

Comments on the proposals and draft legislation can be submitted:

By email to:

modernisation@health-ni.gov.uk

By post:

HSC Pensions Policy Team
Department of Health
Waterside House
75 Duke Street
Londonderry
BT47 6 FP

Due to the Covid 19 situation please use email if possible as mail will only be monitored periodically

The consultation will close at 17:00 on 31 January 2022.

5.2 Confidentiality of information

For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice.

Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the UK Information the Department receives, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000

(FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004(EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (UK GDPR) (EU) 2016/679.

If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR