



Department of
Health

An Roinn Sláinte

Mánnystrie O Poustie

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HSC Pension Scheme

*Consultation on draft Health and Social
Care Pension Schemes (Amendment)
Regulations (Northern Ireland) 2022*

Department of Health

Response Document

1. Introduction

- 1.1. The Department of Health (the Department) published for consultation a draft Statutory Rule titled: The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022. The rule proposed amendments to the Regulations which set out the rules for the HSC Pension Scheme.
- 1.2. 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 judgement](#). The provisions of the Bill are extended to Northern Ireland by means of a Legislative Consent Motion.
- 1.3. The draft regulations will facilitate the closure of the 1995/2008 HSC Pension Scheme (the 'legacy scheme') to future accrual from 1 April 2022 and movement of all active members into the 2015 HSC Pension Scheme (the 'new scheme') from that date.
- 1.4. Whilst the 2015 HSC Pension Scheme is a career average scheme, the 'final salary link' is also protected. This means that all the accrual in a final salary legacy scheme will be calculated in relation to a member's final salary when they retire or otherwise leave the scheme, regardless of how many years' service was spent in the new scheme, and not their salary at the point when they left the legacy scheme.
- 1.5. The draft regulations were consulted on as the Bill is going through Parliament. This is to ensure that, upon the Bill becoming an Act of Parliament, the necessary scheme regulation changes can be made 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.
- 1.6. This document sets out the Department's response to comments received and should be read in conjunction with the [consultation document](#) .

2. Consultation Process

- 2.1. The proposals and draft regulations were subject to consultation which began on 6 December 2021 and ended on 31 January 2022. A document describing the proposals and draft regulations was published on the Department's website.

2.2. HSC Pension Scheme members, HSC Employers, Trade Unions and other interested parties were formally notified of the consultation.

2.3. As part of governance arrangements for the HSC Pension Scheme, the consultation document was also provided to members of the HSC Pension Scheme Advisory Board (SAB) and the HSC Pension Scheme Pension Board. The SAB is a statutory board, comprising HSC Trade Union and employer representatives that advises the Department on merits of making changes to the scheme.

2.4. The Department welcomed any comments or views on the proposals and draft regulations.

2.5. The Department received a total of 6 responses to the consultation as follows:-

- 3 Scheme Members
- Financial Advisor
- British Medical Association (BMA)
- Northern Ireland Public Service Alliance (NIPSA)

2.6. The individual respondees enquired about how the remedy applies in individual circumstances. They were directed to the scheme administrator for further information and guidance and advised that there will be a second set of draft scheme regulations which will be consulted on later in 2022 dealing with many of the queries raised.

3. The Draft Regulations

Question

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

3.1. The [Public Service Pensions and Judicial Offices Bill](#) makes provision regarding public service pension schemes to remedy the unlawful discrimination identified by the McCloud judgment, that arose from the transitional arrangements implemented when the new public service pension schemes were introduced. The Bill requires schemes to make changes to their secondary legislation to implement the McCloud remedy.

3.2. This consultation proposed the closure of the legacy 1995/2008 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. This means that from 1 April 2022 all accrual for eligible members must be in the new scheme.

Consultation Findings

- 3.3. The BMA stated they did not agree with the principle of closing the Legacy Schemes however, agreed the proposed amendments were consistent with the intended policy objective to remedy the identified discrimination against younger members. They were however concerned that in seeking to address the discrimination caused to younger members, there may now be a disadvantage for older members and female members.
- 3.4. The BMA did agree that the proposed amendments appear to be consistent with the intended policy objectives and the requirements set by the Bill to remedy the discrimination against younger members.
- 3.5. NIPSA expressed concerns about the balance of risk between older and younger members and also raised concerns (outside the scope of this consultation) relating to the review of the cost cap mechanism. They also referenced ongoing legal action by TUS in E&W in relation to both McCloud and the cost cap.

Response

- 3.6. The Department wants to ensure that all members are treated equally in respect of the scheme design available to them after the discrimination has been addressed. These proposals achieve this, but if some members were able to remain in legacy schemes while others were not, that key objective would not be met.
- 3.7. Having considered the consultation responses, the Department confirms the closure of the legacy 1995/2008 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.
- 3.8. Whilst the 2015 HSC Pension Scheme is a career average scheme, the 'final salary link' is also protected. This means that all the accrual in a final salary legacy scheme will be calculated in relation to a member's final salary when they retire or otherwise leave the scheme, regardless of how many years' service was spent in the new scheme, and not their salary at the point when they left the legacy scheme.
- 3.9. Affected members will be given a choice of which pension benefits they wish to receive for the remedy period when those benefits are paid. This choice of pension benefits when the pension becomes payable is referred to as a deferred choice underpin (DCU).

4. Impact Assessments

Questions

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?

- 4.1. HM Treasury 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.
- 4.2. The Department of Finance (DoF) carried out an equality impact screening on proposed options for dealing with the discrimination identified by the McCloud judgment.
- 4.3. An Equality Screening/Impact Assessment (EQIA) for these regulations was carried out by the Department, and this has been published on the Departments website.

Consultation Findings

- 4.4. The BMA commented that female members in particular (specifically those working less than full time) or those with a disability (who may be more likely to work less than full time) would be placed at a significant disadvantage as a result of the changes proposed.
- 4.5. The BMA reiterated that they felt the closing of the legacy schemes has a detrimental and disadvantageous impact on older members.
- 4.6. The BMA believe that no member should be disadvantaged by this situation and again reiterated their position that all members should have been able to remain in their Legacy Scheme.

Response

- 4.7. The core measures in the [Public Service Pensions and Judicial Offices Bill](#) mean from 1 April 2022 there will be a single pension scheme for all active members, ensuring equal treatment.

- 4.8. The equality impact screening, carried out by the Department of Finance (DoF), on proposed options for dealing with the discrimination identified by the McCloud judgment concluded that this revision of the transitional protection policy would address the unlawful inequality identified in the McCloud judgment by providing affected members with appropriate options to have their pension entitlements in the remedy period calculated as if the discrimination had not occurred.
- 4.9. Closing the legacy scheme to future pension accrual applies to all legacy scheme members regardless of sex. From 1 April 2022 all HSC Pension Scheme members, who remain in pensionable service, will only be eligible to do so as a member of the 2015 HSC Pension Scheme. Moving from a final salary legacy scheme to a career average new scheme for future accrual flattens out the added benefit of late career pay progression for higher earners who are more likely to be male. However, in doing so the aim is to ensure equal treatment of all active members for future service.
- 4.10. All accrued service in the legacy scheme will be protected and payable in full according to relevant scheme rules, including where special class rights apply to that service.
- 4.11. Some younger members could benefit from the option to have their pension entitlements in the remedy period calculated under the terms of the legacy scheme and some older members could benefit from the option of having their entitlements in the remedy period calculated under the reformed schemes.
- 4.12. The Department is aware the transitional protection policy revision may apply to more females, due to a proportionally greater female representation across the workforce, however this was an incidental effect of its purpose.

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

Consultation findings

- 4.13. The BMA raised a concern in relation to the potential for unfair treatment towards those who have made an ill health retirement application before 31 March 2022 but who do not receive the initial outcome until after 1 April 2022. The BMA said, "it is crucial that no member should be disadvantaged by the differences between the legacy schemes and the new scheme as to ill health retirement".
- 4.14. The BMA noted that the proposed regulations do put in place arrangements for outstanding applications by legacy scheme members to be paid in accordance with the legacy Scheme but commented that they do not

address whether applicants who are declined post 1 April 2022 will then be permitted reassessment under their legacy scheme (which the BMA believe they should).

4.15. In addition, the BMA contend that those members who have been accepted for ill-health retirement under the new Scheme should also be able to choose under which scheme they should receive their benefit.

4.16. The BMA commented on transitional provisions relating to the payment of benefits derived from additional voluntary contributions (AVCs) in the 1995 Section. The BMA queried the fairness of the notification proposals in situations where the date a member joins the new scheme is later than their chosen date or birthday. The BMA argued that in such a situation, the timeframes in which the Scheme should notify the member should be consistent.

Response

4.17. In relation to ill-health retirement arrangements the intention of these regulations is to ensure that where an application for an ill-health pension was received from a legacy scheme member before the member joined the new scheme on 1 April 2022 but a pension did not become payable before that date, the member and their dependents are not placed in a less beneficial position than they would have been had the outcome of their application been determined under the legacy scheme Regulations and the member's retirement on health-grounds taken place on 31 March 2022.

4.18. With regard to the BMA's concern that this ill-health retirement arrangement should be a provision for all members who made an ill health retirement application before 31 March 2022; provisions for members who moved to the new schemes before 1 April 2022, made an application before 31 March 2022 and have new scheme service on 1 April 2022 will be included in part 2 of the remedy.

4.19. The Department welcomes the suggestion from BMA that the time limit for 1995 Section members to make an election to claim AVC benefits should be extended from the three months proposed and brought into line with the current timeframe for member decisions in relation to claiming their AVC benefits generally. Current timeframes, which cater for members who join the new scheme some considerable time before reaching their chosen age or birthday, require the scheme administrator to notify the member of this option six months before that age or birthday. The member must then make an election no later than one month before that age or birthday, giving the member five months to make an election. The proposal for the additional

process to cater for members who have passed or are fast approaching that age or birthday when joining the new scheme, requires the scheme administrator to notify the member of the option within three months of their joining date. The member must make an election within three months of that notification.

Three months was considered a suitably long period of time for members to take action in these circumstances. However, a longer period causes no administrative difficulty. We will therefore amend the draft regulations accordingly to align the time available for the member to make their decision with the time provided in the existing process. This means that the member must take up the option within five months of the option information being provided. If the member takes up the option, the payable date for the benefits derived from 1995 Section AVCs will be (as now) the member's chosen date or birthday or the date the member joins the 2015 Scheme if later.

5. Conclusion and next steps

- 5.1. The Department is grateful for the responses received to this consultation. The amending regulations make changes to Statutory Rules to facilitate implementation of the first part of the McCloud remedy as required by the Bill and are an important step towards ending the discrimination identified by the Court of Appeal in 2018.
- 5.2. Work is underway to assess the changes required to HSC Pension Scheme regulations to implement part two of the McCloud remedy. Those changes will be presented in a separate public consultation later this year.
- 5.3. Once the Bill has received Royal Assent, the amending regulations will be laid before the Assembly and come into force on 1 April 2022.