

EXPLANATORY MEMORANDUM TO

The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2024

SR 2024 No. 159

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the Public Service Pensions Act (Northern Ireland) 2014 (“the 2014 Act”) (c. 2 (NI)), and the Public Service Pensions and Judicial Offices Act 2022 (“the 2022 Act”) (c. 7). It is subject to the negative resolution procedure. The Department of Finance has consented to the making of these Regulations.
- 1.3. Section 3(3)(b) of the 2014 Act provides that scheme regulations may make retrospective provision. These Regulations are retrospective in effect. The retrospective provisions contained in these Regulations do not appear to the Department to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, or members of previous schemes. Accordingly, the procedures set out in section 23 of the 2014 Act are not applicable in relation to these Regulations.

2. Purpose

- 2.1. The purpose of these regulations is to amend the Local Government Pension Scheme (Northern Ireland) (“LGPS (NI)”) to remove the requirement to include details of the McCloud Remedy in Annual Benefit Statements for 2023/24 and potentially 2024/25.
- 2.2. The Regulations do so by modifying certain statutory provisions contained in or made under the Public Service Pensions and Judicial Offices Act 2022 (c. 7), which made changes to the transitional protections for certain persons who were members of previous versions of the LGPS (NI) to address unlawful age discrimination of the sort identified in the case of *McCloud v Lord Chancellor* [2018] EWCA Civ 2844 (“the McCloud Remedy”).
- 2.3. The differences between the original regulations (the position before this set of amendment Regulations came into operation) and the new regulations (the position after this set of amendment Regulations came into operation) are summarised in the following paragraphs.
- 2.4. Regulation 2 makes provision about the McCloud Remedy in the context of the annual benefit statements (“ABSs”) that the Committee is required to issue to their active and deferred members every year under regulation 99 of the Local Government Pension Scheme (NI) Regulations 2014 (“the 2014 Regulations”) (SR 2014 No. 188).
- 2.5. Regulation 2(2) and (3) provides that, where this regulation applies, provisions of the 2022 Act and the Local Government Pension Scheme (Amendment No. 2) Regulations (NI) 2023 (“the 2023 Regulations”) (SR 2023 No. 149) are disapplied for the purposes of preparing ABSs for the Scheme year 2023/24,

meaning that the Committee would not be required to include information about the McCloud Remedy in those ABSs. This provision has retrospective effect to the 1 October 2023, meaning that it will apply in respect of any ABSs that have issued between that date and these Regulations coming into operation.

- 2.6. Regulation 2(4)(a) and (5) enables the Committee to determine that this should not apply in respect of a member or class of members. Regulation 2(4)(b) and (6) also allows the Committee to determine that this regulation should be extended, in respect of a member or class of members, to ABSs for the Scheme year 2024/25.

Why is it being changed?

- 2.7. An annual benefit statement (ABS) provides an estimate of the pension benefits a member has built up in the LGPS (NI) as at 31 March in the current year. It may also provide a projection of the pension that the member could have if that member continues to work until normal pension age (this is linked to state pension age in the LGPS (NI)).
- 2.8. Currently, under regulation 99 of the 2014 Regulations the scheme manager, the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC), must issue an ABS for all active, deferred and pension credit members within 5 months of the end of the scheme year to which it relates (i.e. by 31 August each year). The legislation currently provides that each ABS must include the McCloud Remedy for 2023/24 onwards.
- 2.9. There are significant steps needed to accurately update members' records arising from the implementation of the McCloud Remedy, including the collection and testing of data from 169 employers, updates needed to systems and amendments to individual records. All of these steps would need to be undertaken before ABSs could reflect a member's underpin rights. Despite the Scheme Manager's best efforts in taking forward the complex and detailed work to implement the McCloud Remedy, it has acknowledged that it is unable to include the McCloud Remedy in the ABSs this year (2023/24 statements) and there is a strong possibility that all the Remedy work may not be completed by March 2025 in time for the 2024/25 statements.
- 2.10. The requirement to include an underpin estimate in the 2023/24 statements, and possibly the 2024/25 statements, is therefore being set aside.
- 2.11. The Regulations also include a minor technical amendment to the Local Government Pension Scheme Regulations (Northern Ireland) 2014 to correct an earlier drafting error by correcting a paragraph number in Regulation 108 of those Regulations. This is achieved by making amendments to:
- The 2014 Regulations (S.R. 2014 No. 188); and
 - The 2023 Regulations (S.R. 2023 No. 149).

3. Consultation

- 3.1. As required by section 21 of the 2014 Act, the Department has consulted with such persons or representatives of such persons as appeared to the Department to be appropriate. A targeted consultation was carried out with the LGPS (NI) Scheme

Advisory Board and with the Scheme manager, NILGOSC. The Scheme Advisory Board, which is responsible for providing advice to the Minister for Communities on making changes to Scheme Regulations, includes 4 members representative of LGPS (NI) employers, 4 members representative of employees, nominated by the Northern Ireland Committee of the Irish Congress of Trade Unions and 2 advisors from NILGOSC. Two responses were received and these were generally supportive of the proposals.

4. Equality Impact

4.1. The Department has given consideration to compliance with section 75 of the Northern Ireland Act 1998 and has conducted a screening analysis to identify any significant discriminatory or negative differential impact on any particular section 75 group. The screening analysis concluded that a full equality impact assessment is not required as no adverse impacts have been identified.

5. Regulatory Impact

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

6. Financial Implications

6.1. No Executive expenditure required.

7. 21-day rule

7.1. The 21 day rule is the convention by which a Statutory Rule should be made and laid before the Assembly at least 21 days before coming into operation.

7.2. The Department regrets that on this occasion it has not been possible to observe this rule because the regulatory amendment to set aside the requirement to include details of the McCloud Remedy in ABSs for 2023/24 and potentially 2024/25 must come into operation by 31st August 2024 otherwise the Scheme manager, NILGOSC would be required to report a breach of the regulations to the Pensions Regulator. Unfortunately, this has meant that it has not been possible to make these Regulations 21 days before coming into operation.