

NI Teachers' Pension Scheme: Transitional Protection Regulations

Outcome of Consultation

6 September 2023

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Introduction

1. The NI Teachers' Pension Scheme (NITPS) provides pensions and other benefits to teachers in Northern Ireland. There is a legacy final salary scheme with two sections, with normal pension ages of 60 and 65 (depending on when the member joined), and a reformed career average scheme with a normal pension age equal to State Pension Age or 65 (whichever is higher).
2. The legacy scheme closed to further accrual by any members on 31 March 2022. All active members of the NITPS are now in the reformed scheme and it is this scheme that all new members join.
3. The Department of Education (the Department) published for consultation draft regulations proposing changes to the NITPS rules to implement the second phase of the McCloud remedy as required by the Public Service and Judicial Offices Act 2022.
4. The draft regulations were subject to a consultation which began on 21 April 2023 and ended on 16 June 2023. A document describing the purpose and effect of the proposed regulations was published on the [Department's website](#) alongside the proposed regulations and an Equality and Human Rights (EQHR) screening document, with responses invited by email or post.
5. Scheme members and stakeholders were notified of the consultation. The proposals were discussed with the NI Teachers' Pension Scheme Advisory Board (NITPSAB). This is a statutory board, comprising member and employer representatives whose purpose is to provide advice to the Department of Education on the desirability of potential changes to the NITPS rules.
6. Respondents were invited to submit comments and views on the draft regulations and whether the stated policy aims would be achieved.
7. This document summarises the response to the consultation and sets out the changes the Department now intends to implement.

Background to the McCloud remedy and consultation proposal

8. When new public service pension schemes were introduced in 2015, transitional protection arrangements allowed older members to continue accruing pension in the existing legacy (final salary) schemes whilst younger members were moved into reformed (career average) schemes.
9. Following a successful legal challenge in the [McCloud](#) case, the Court of Appeal found that this difference in treatment in the transitional arrangements amounted to age discrimination. The Government brought forward legislation in the form of the Public Service Pensions and Judicial Offices Act 2022 (the Act). This legislation provides the affected public service pension schemes with the powers to implement the remedy to the identified discrimination which was confirmed in the Department of Finance (DoF) [consultation response](#) published in February 2021.
10. The remedy consists of two parts. The first part ensures equal treatment of all members from the end of the remedy period by moving all remaining active members of the legacy scheme to the reformed scheme on 1 April 2022.
11. The second part of the remedy is to remove the difference in treatment that was caused by the transitional protection provisions by rolling back reformed scheme service accrued during the remedy period to the legacy scheme and providing eligible members with a choice of benefits that they wish to receive for their service during this time - those that would have been accrued in the legacy scheme or the equivalent of those that would have been accrued in the reformed scheme.
12. The remedy period is from 1 April 2015 to 31 March 2022, as this is the period in which those affected members were treated differently due to their age.
13. Members who are eligible for the remedy are those who were members of the legacy scheme on or before 31 March 2012 (when the reforms were announced) and continued to be in pensionable service at some point during the remedy period without having had a disqualifying break in service.

14. The Department consulted on draft regulations making changes to the NITPS rules which are necessary to implement the second part of the remedy. The regulations contain consequential and procedural provisions as required by the Act. Following the consultation, the regulations will be finalised and laid.
15. Regulations will come into operation on 1 October 2023 in accordance with the requirements of the Act.

Summary of responses received and the Department's response

16. A total of twelve responses were received.
17. The Department has considered all responses and notes that the majority of respondents agree that the regulations meet the policy aims as described in the consultation document.
18. Most of the comments and queries from respondents centred on the complexity of the regulations, the timings and deadlines for decision making and the proposed approach to scheme flexibilities. The Department's response to the issues raised is covered in the sections below.
19. Analysis of the equality related comments are contained in the equality section on pages 31-32.
20. Five responses were received from individuals.
21. Seven responses were received from organisations which represent workers and employers in the education sector. These organisations are:
 - Association of School and College Leaders (ASCL)
 - Irish National Teachers' Organisation (INTO)
 - National Association of Head Teachers (NAHT)
 - National Association of Schoolmasters and Union of Women Teachers (NASUWT)
 - National Education Union (NEU)
 - South Eastern Regional College (SERC)
 - Ulster Teachers' Union (UTU)

Main findings from the consultation

22. Respondents commented on the complexity of the subject and, consequently, the regulations. The Department acknowledges that this is a complex area and

will continue to provide information and resources to affected members and stakeholders via the NITPS website and direct communications.

23. The majority of respondents agreed that, overall, the draft regulations achieve the policy aims as described in the consultation document.
24. Additional provisions have been included in the final regulations to ensure the policy as described in the consultation will be delivered. Further information on these amendments is provided in paragraphs 136-143.

NITPS retrospective regulations

25. The regulations which were subject to consultation are to deliver the second part of the McCloud remedy, which must be implemented by 1 October 2023 in accordance with the provisions of the Act. They provide the powers needed to allow eligible members of the NITPS to be given a choice of benefits (legacy or reformed scheme) in relation to their remediable service. The regulations also provide for those members to be issued with a Remediable Service Statement, which will provide them with the information that they need to make an informed choice about their remedy period benefits.
26. The Department has included provisions to manage the consequential effects of rollback of reformed scheme service to the legacy scheme that happens with effect from 1 October 2023 and member choices on issues such as scheme flexibilities, transfers and orders made during divorce/dissolution proceedings that arose during the remedy period. The Department has also included provision to manage special cases such as ill-health retirement assessments and the protection of child pensions in payment.
27. Additionally, where the remedy results in any amounts being owed to and/or by the scheme, provisions have been made as to how these are to be recovered from, or paid to, the member.
28. This response document addresses the following policy areas that respondents have commented upon: -
 - Deferred Choice/Immediate Choice and Remediable Service Statements
 - Opted-out service elections
 - Scheme flexibilities
 - Transfers
 - Ill-health retirement
 - Liabilities and payment
 - Miscellaneous
 - Equality

Deferred Choice/Immediate Choice & Remediable Service Statements

Background and consultation proposal

29. The consultation explained that with effect from 1 October 2023 any reformed scheme service of eligible members that was accrued during the remedy period will be moved to their legacy scheme. This is known as 'rollback' and is provided for in section 2(1) of the Act.
30. Following rollback all affected members will be deemed to have accrued benefits during the remedy period in the legacy scheme, however, it is recognised that reformed scheme benefits may be more beneficial for some members. Therefore, all affected members are to be given a choice of benefits (legacy or equivalent reformed scheme) for their remedy period service.
31. Members who are active or deferred on 1 October 2023 and have not taken any retirement benefits from the NITPS are Deferred Choice (DC) members. These members will be provided with their choice when they apply for retirement benefits. Should the member die before making a DC or before a DC has been implemented, the choice will be provided to an eligible decision maker. The regulations include provision about who the eligible decision maker is in a range of scenarios.
32. Members who have taken retirement benefits before 1 October 2023 are Immediate Choice (IC) members and will be provided with their choice as soon as practicable after 1 October 2023. Where the member has died, the IC will be provided to an eligible decision maker.
33. The Act provides that the scheme manager is to issue a Remediable Service Statement (RSS) to all eligible members within 18 months of 1 October 2023. An RSS can be issued on a later date if the scheme manager deems this to be reasonable. The RSS will include details of remedy period benefits calculated as legacy scheme and alternatively as reformed scheme benefits, to allow members to make an informed choice.

34. Active DC members must subsequently receive an RSS annually. For Deferred members, a subsequent RSS can be requested each year.
35. When DC members apply for retirement benefits, they will receive an RSS which includes their final benefit calculations. They will have 12 months from the RSS being issued to confirm their Deferred Choice decision over the benefits they wish to take. A member may subsequently revoke their decision and make a different choice at any point before an application for retirement benefits has been processed.
36. If a DC member fails to communicate a decision before the end of the election period, no retirement benefits will become payable. The retirement process is instigated by the member, and they are required to provide all necessary information before the application can be implemented.
37. Should a DC member die following issue of the RSS, the eligible decision-maker will be contacted and asked to make a DC decision. They will be provided with an updated RSS and will have 12 months from the date that the RSS is issued to them to confirm their choice. If a choice is not confirmed before the end of the election period, the regulations allow the scheme to 'deem' an election for reformed scheme benefits where the scheme calculates that there would be a higher monetary value.
38. The draft regulations also make provision for the payment of death benefits and lump sums when a DC member dies after 1 October 2023 but before their DC decision has been communicated to the scheme. These benefits will be calculated under both the legacy scheme and reformed scheme rules and the lower of those amounts would be paid pending a decision by the decision maker. This is to prevent the possibility of an overpayment being created. If needed, an adjustment to payments would subsequently be made in accordance with the decision-maker's choice.
39. IC members will be provided with an RSS within 18 months of 1 October 2023 and will then have 12 months from the date of issue to confirm their decision. Should an IC member fail to communicate their choice before the end of the election period the draft regulations allow the scheme manager to deem an

election for reformed scheme benefits if that would have a higher monetary value.

Consultation findings

40. Respondents commented that the two choices available to members when they make their election may unfairly affect tapered protection members as they may potentially see a reduction in the pension benefits compared to the position before rollback. This is because the choice the member receives is for all of their remediable service to be in the legacy scheme or the reformed scheme – it cannot be a combination of the two.

41. The following responses were received in relation to the RSS:

- The 18-month window in which the scheme manager should issue RSSs is too long and should be shortened.
- An annual RSS should be provided to all affected members.
- Deferred members should automatically receive an annual RSS as they believe few deferred members are likely to make a written request.
- The RSS should include an option for active and deferred members to pay contributions for opted-out service from their accrued pension when it comes into payment.

Department's response

42. Members who have already retired or who retire before the regulations are implemented on 1 October 2023 will make an immediate decision and, where relevant, their pension payments will be adjusted in accordance with their choice. While exact timelines cannot be given for the completion of this process, the Department will endeavour to implement the changes as soon as possible once an IC decision has been communicated to the scheme. The process of retrospectively adjusting benefits is complex due to the number of factors which will affect the choice(s) to be presented to the members involved.

This is why the Act specifies an 18-month period to provide members with an RSS.

43. All affected members regardless of whether they received full, partial or no protection when the reformed scheme was introduced must be treated in the same way. Any reformed scheme service accrued during the remedy period must be rolled back to their legacy scheme and the member will be given a choice of benefits for the remedy period.
44. Allowing tapered protection members to retain a mix of legacy and reformed scheme benefits for the remedy period would continue the identified discrimination as this would result in some members retaining transitional protection on the basis of their age. This position is prohibited by the Act.
45. All adjustments to benefits will be clearly communicated in the RSS and any resulting under or overpayment will be visible to the member before they make their choice. Should the effect of the member's choice be an overpayment of benefits (or underpayment of member contributions) the member will be required to re-pay the outstanding amount to the scheme. If this cannot be repaid as a lump sum the Department will consider a payment plan.
46. The regulations also include provision for amounts owed to the scheme to be waived in certain circumstances. This power may only be used on a case-by-case basis and in accordance with [DoF Directions](#). In the unlikely event that both options provided to an IC tapered protection member would result in benefits lower than those arising from their mixed service and an overpayment of benefits is unavoidable, this may be a scenario where the scheme could consider waiving the overpayment of benefits paid up to that point.
47. All members affected by the McCloud remedy will be provided with an RSS as soon as is practically possible from 1 October 2023 in the 18-month period specified in the Act.
48. Active members of the scheme will receive an RSS combined with their Annual Benefit Statement (ABS) on an annual basis. Those with a Teachers' Pension

Online Portal account will be able to access this information at any time.
Deferred members of the scheme can request an RSS once per year.

49. Active and deferred members who apply for retirement benefits will be issued with a final RSS that will display a pre-2015 legacy scheme calculation, the benefits calculated for the remedy period under both legacy and reformed scheme rules, and a post April-2022 reformed scheme calculation (where applicable).
50. The approach providing deferred members with an RSS upon request is specified within the Act rather than the scheme regulations consulted on.
51. The RSS will detail how members will be able to repay any overpaid benefits or underpaid contributions. The options available to the member are to pay a lump sum or make payment by instalments. Any outstanding amounts will be recovered through a reduction of pension benefit payments. HMRC recycling rules may apply which restrict the proportion of a pension lump sum payment that can be used to further increase pension benefits, or an unauthorised payment charge being levied. Full information on payment options will be provided to members.

Opted-out service elections

Background and consultation proposal

52. The consultation outlined that the regulations include provisions that could allow opted-out remediable service to be reinstated.
53. In order for the scheme manager to consider reinstatement of service, the member will need to complete an opted-out service application within 12 months of s2(1) of the Act coming into force on 1 October 2023. The member must also provide evidence to show that they opted-out of the scheme because of the discrimination.
54. The decision to opt-out must also have been communicated to the scheme on or after 10 March 2012. This was date on which the government set out its final position on the reformed scheme design and transitional protections. Whilst a decision to opt-out of the scheme may pre-date 1 April 2015, only service during the remedy period can be reinstated under these provisions.
55. Applications will be considered by the Department and, where the claim is accepted, an RSS will be issued to the member. The RSS will detail the contributions owed by the member for the opted-out service and the options available to pay those contributions. The member will then have 12 months to confirm that they want to have their opted-out service reinstated and they would then be treated in the same way as other eligible members.
56. If the member's application is rejected they can submit an appeal via the existing [Internal Dispute Resolution Procedures \(IDRP\)](#).

Consultation findings

57. Respondents asked for further clarity on the evidence members will be required to provide and whether that requirement is reasonable given most members will not have kept an evidence trail of their decision to opt out of the scheme.

58. Respondents also believe that a clear communication strategy is required to ensure all those that are eligible for opted-out service elections are aware of the provision.
59. Respondents raised concerns that only members who opted out on or after 10 March 2012 can have their service reinstated given that the public service pensions dispute was at its height in 2011 and so members might have opted out earlier than March 2012.
60. Respondents also believe that it is unfair that members could have opted-out from 10 March 2012 due to the discrimination but service from 10 March 2012 to 31 March 2015 cannot be reinstated under that provision.

Department's response

61. All applications to reinstate opted-out service will be considered on a case-by-case basis. If a member submits an application to have their opted-out service reinstated and they can demonstrate that the reason they opted out was because of the discrimination, then the application will be accepted. The Department cannot be prescriptive about what can and cannot be considered as suitable evidence as there may be a wide range of circumstances linked to the pension reforms that led to members opting out of the scheme. The Department assures respondents that all forms of evidence will be appropriately considered.
62. The Department will provide affected members and employers with relevant information, and this includes the process and timescales to reinstate opted-out service.
63. The Department does not believe it is likely that a member could have suffered from the effects of the identified discrimination in relation to transitional protection where they opted out of the scheme before 10 March 2012. This is because the Government had not confirmed its policy before this date and the actual difference in treatment only began from 1 April 2015. If a member could demonstrate that they were affected by the discrimination in such circumstances, although they would be prevented from having their service

between 1 April 2015 to 31 March 2022 reinstated, they could submit a claim through the Contingent Decision process.

64. The remedy period is specified in the Act and therefore the NITPS cannot reinstate opted-out periods of service before 31 March 2015 via the provisions of the Act. As above, a member could make a claim under the Contingent Decision process in respect of any opted-out service between 10 March 2012 and 31 March 2015 if they can demonstrate that it related to the discrimination.
65. As all members of the NITPS are in the reformed scheme as of 1 April 2022, there cannot be any service from this date which could have been affected by the identified discrimination.

Scheme flexibilities

Background and consultation proposal

66. Scheme flexibilities purchased during the remedy period will be affected when reformed service is rolled back. Members that paid voluntary contributions to purchase reformed scheme flexibilities during the remedy period will need to decide how they would like those flexibilities to be managed as they cannot simply be moved across to the legacy scheme.
67. Active and deferred members who have purchased reformed scheme flexibilities during the remedy period will be presented with three options to manage their flexibilities at rollback:
- (a.) Maintain their flexibility election: keeping the payments within the scheme which will be reconstructed as legacy scheme Additional Pension (AP); or
 - (b.) Cancel the flexibility election and receive an immediate compensation payment for the contributions paid; or
 - (c.) Cancel the flexibility election (as in option b) but agree for the scheme to hold the compensation until the time of making their Deferred Choice.
68. Retired members who have purchased reformed scheme flexibilities during the remedy period will be provided with options (a) and (b).
69. The proposed regulations also made provision for eligible members with remediable service to apply to retrospectively purchase legacy scheme AP for the remedy period. The member must be active, deferred or retired (this provision does not extend to deceased members) and will need to satisfy the Department that they would have entered an arrangement to purchase legacy scheme AP if they had been in that scheme at the time. The purchase must be completed within 12 months of rollback and regulations require members to submit an application within 6 months of 1 October 2023 to allow sufficient time for the Department to consider the application and to complete payment arrangements. This timescale can be extended at the Department's discretion.

70. Reformed scheme regulations allow members of that scheme to make an election for Buy-Out of the actuarial reduction between age 65 and 68, that applies to pension benefits if the member retires before reaching their scheme Normal Pension Age (NPA).
71. A member has 6 months from entering the reformed scheme to elect for this option. The impact of rollback is that effectively these members have not entered the reformed scheme until 1 April 2022. Under the existing rules on Buy-Out elections, the applicable window would therefore be from 1 April 2022 to 30 September 2022.
72. As rollback provisions in the Act and scheme specific regulations will not come into force until 1 October 2023, the window for affected members will have closed before members have had the opportunity to make a Buy-Out election. The draft regulations therefore make provision to create a new Buy-Out election window for eligible members to allow 6 months from 1 October 2023 for an application. This measure ensures equal treatment with protected members who had access to the Buy-Out window when they entered the reformed scheme on 1 April 2022.

Consultation findings

73. Respondents raised concerns about the requirement for evidence to demonstrate that they would have purchased legacy scheme APB had it not been for the discrimination as it may be difficult to evidence.
74. Respondents emphasised the need for a clear communications strategy to aid member understanding of the scheme flexibilities policy which members might struggle to understand.
75. Respondents stated that cases where a member purchased an AVC rather than a NITPS flexibility, because they wished to take their pension savings at a lower pension age, are an example of a Contingent Decision case.

Department's response

76. Affected members will be able to retrospectively elect legacy scheme flexibilities for the remedy period if they can evidence that they would have purchased them at the time. Anyone who purchased reformed scheme flexibilities during the remedy period will have the option for their additional benefits to be reconstructed into legacy scheme AP of an equivalent value. Alternatively, they can choose for the payments to be refunded as compensation and the election removed.
77. As with opted-out service elections, if members were unable to purchase scheme flexibilities and they demonstrate that it was because of the discrimination, the Department will consider this under the Contingent Decisions process. If further evidence is required to support their application, this will be requested from the member. All applications will be dealt with on a case-by-case basis where the circumstances of that member will be considered.
78. The Department acknowledges the complexity of elements of the remedy for members and a communication strategy has been developed. The options and actions that members may need to take at each phase of the remedy will be clearly set out in the RSS and other forms that all affected members will receive. Information will be made available on the [NITPS section of the Department of Education website](#).
79. Additional Voluntary Contributions (AVCs) are another way that a member can increase their benefits. Contributions build up an additional pension that is held and managed separately from the member's Teachers' Pension. AVCs are outside of the scope of the remedy because they are not held by a public service pension scheme. However, that members may have purchased an AVC because of the discrimination, could potentially be considered under the Contingent Decision process. The Department will consider any claim in relation to the discrimination on a case-by-case basis and taking account of the circumstances of the member.

Ill-health retirement

Background and consultation proposal

80. Where an affected active or deferred member has applied for ill-health retirement after 1 April 2015 and that application was rejected before 1 October 2023, the regulations make provision for the scheme to reassess the member against the ill-health criteria of the alternative scheme. If a member satisfies the alternative scheme criteria following reassessment, they will be notified that they can make an immediate ill-health retirement election. The notice will detail the ill-health retirement benefits available to the member, the process by which the member can elect to take ill-health retirement benefits and the effects of making an election. The member would have three months to make this election.
81. Where a member who became a deferred member of the scheme on or before 1 April 2022 makes an out of service ill-health retirement application after 1 April 2022, and the application is finally determined from 1 October 2023 onwards, the member must be assessed against the ill-health criteria of both the legacy and reformed schemes. This is because the member's service ended during their remediable service, and they had no pensionable service in the new scheme on or after 1 April 2022. Therefore, in line with their DC, the member may be entitled to a choice of legacy scheme ill-health benefits or reformed scheme ill-health benefits, depending on whether they meet the criteria of one or both schemes.
82. Some members may have applied for ill-health retirement before 1 April 2022, but their application may not have been finally determined until after this date, for example because they were rejected under the rules of one scheme but are being reassessed against the ill-health criteria of the alternative scheme. If the member continued in pensionable employment after 1 April 2022, they will have transitioned to the reformed scheme before their application has been finally determined – under existing rules they would only be eligible for ill-health retirement from the reformed scheme. In such cases the member's application will be tested against the ill-health criteria of both schemes.

83. Where the member meets the criteria of both schemes, they will receive benefits paid from the reformed scheme and the scheme will complete a calculation to determine how much the member would have been paid under the legacy scheme, calculated as of 31 March 2022. If legacy scheme benefits would have been higher, the reformed scheme benefits will be uplifted to that amount.
84. Where the member only satisfies the legacy scheme ill-health criteria, they will receive ill-health retirement benefits payable from the reformed scheme calculated at the same rate as they would have been paid from the legacy scheme, as of 31 March 2022 (the last date for which legacy scheme benefits could be accrued).
85. If the member were to only satisfy the reformed scheme ill-health criteria, the existing rules and processes will apply.
86. IC members who retired under ill-health provisions during the remedy period will be reassessed against the criteria of the alternative scheme. The outcome of the reassessment and ill-health retirement benefits available will be presented to the member in their RSS – their existing ill-health benefits and alternative scheme ill-health benefits if applicable. The reassessment is only concerned with eligibility in the alternative scheme and whether that would result in a higher level of ill-health benefits, it does not review eligibility for the current award and therefore reassessment would not result in existing ill-health benefits ceasing to be paid. For tapered protection members who were awarded ill-health retirement from the reformed scheme, please note the information in paragraphs 45-47 regarding mixed service.
87. There may also be IC members who were rejected for ill-health retirement who then took an alternative form of retirement benefits, e.g. Early Retirement. These members will also be assessed against the ill-health criteria in the alternative scheme and the outcome of this (including any ill-health benefits the member may be entitled to) will be displayed in the member's RSS. Any necessary adjustment would be backdated to the applicable ill-health retirement date.

Consultation findings

88. Respondents are of the view that the Department should assess how many members may be eligible for ill-health retirement under the remedy provisions and should communicate this figure to schools in the event that there are a significant number of individuals suddenly eligible for ill-health retirement as part of the remedy.
89. Respondents raised concerns about three months potentially being too short a period for a member to consider and accept ill-health retirement given the potential impact of their illness.

Department's response

90. There may be a small cohort of members who are still teaching who will be affected by the ill-health reassessments. By the very nature of these cases, the Department does not believe there are likely to be many examples of a teacher still being able to work when they have met the ill-health criteria for some time. The Department will monitor the reassessment data and, if considered appropriate to do so, include any relevant information in communications to employers.
91. The three-month deadline for members to accept ill-health retirement will apply to active members being reassessed under the alternative scheme and found to be eligible for ill-health retirement. As the scheme will have been in correspondence ahead of reassessment, these members will have had a longer period than three months to consider this matter and whether they want to take ill-health retirement. This is to ensure that members who have applied for ill-health retirement and have been assessed as not being fit to work retire on these grounds in a reasonable timescale. The Department believes it would not be consistent with existing rules to allow an open-ended period in which a member could take ill-health retirement based on an application submitted before 1 April 2022.

92. Members already in receipt of ill-health retirement will be provided with an RSS within 18 months of 1 October 2023. The RSS will detail any choices the member has to make including whether they could be entitled to ill-health retirement benefits under the alternative scheme, if higher. These members would have 12 months from the issue of the RSS to confirm their decision.

Liabilities and payment

Background and consultation proposal

93. As a result of the application of the remedy and certain decisions that may be taken by a member at rollback or when they make their DC/IC decision, adjustments to monies paid to and/or from the scheme may be required. There may have been overpayment or underpayment of NITPS contributions, or overpayment or underpayment of NITPS benefits.
94. The consultation outlined that where such adjustments are required, these amounts will be adjusted by relevant tax amounts and interest will be applied in line with DoF Directions. These adjustments will be 'netted off' to produce a final value.
95. Any amount owed to or from a member will be clearly displayed in the member's RSS, with details of how these amounts were calculated and the amount of interest that is applicable. The RSS will also detail how and when amounts owed to the member or scheme should be paid.
96. The consultation outlined that DC members who have a choice at rollback to receive compensation for overpaid contributions or reformed scheme flexibilities will have the option to waive that compensation until they make their DC at retirement. This would allow a member to still receive the amount of a reformed scheme flexibility taken out during the remedy period if they believe that they are likely to choose reformed scheme benefits at retirement.
97. The scheme has powers in line with the Act and DoF Directions to pay compensation in some circumstances where a member can demonstrate that a financial loss has arisen as a direct result of the identified discrimination or application of the remedy. Members will be able to make an application for compensation and the NITPS section of the Department's website will be updated with details of this process.

Consultation findings

98. Respondents commented that any overpayment of benefits, underpayment of contributions or underpayment of tax that arise due to the remedy should be waived. Also, that members should not have to pay back any overpayment which has occurred due to the remedy implementation because the remedy is required as a result of a mistake in the way that scheme reforms were introduced in 2015.
99. Respondents accept that member contributions need to be paid in respect of missing service being reinstated, but they do not believe that members should have to pay interest on these contributions. They also requested that the scheme gives consideration to waiving any monies owed by tapered protection members where both options (having remedy period service as all legacy scheme or all reformed scheme) could be of lower value than the current pension in payment.
100. Respondents commented that the cost of seeking independent financial advice for members with complex financial arrangements should be compensated by the scheme, the need for a clear process to apply for compensation for such costs with a clear criterion for assessing claims, and the compensation process be as straightforward as possible so it is easy for members to navigate.

Department's response

101. The calculation of interest and the rates to use is provided for in Chapter 4 of [DoF Directions](#). The Directions apply across all the affected NI public service pension schemes to ensure consistent treatment. The NITPS must comply with those Directions.
102. There are several reasons why interest must be applied to payments, although principally there is a requirement to reflect the position that the member would have been in as closely as possible. Generally, where amounts are owed to a member the rate of interest is higher than the interest rate applied to amounts owed to the scheme.

103. Further information about the HM Treasury rationale for applying interest can be found at <https://www.gov.uk/government/publications/public-service-pensions-and-judicial-offices-act-2022-treasury-directions>.
104. All members making an IC or DC decision will be made aware of any adjustments that will arise as a result of their options. Members will then be able to choose to make any outstanding payments as a lump sum or, if they are unable to, the scheme administrator will arrange for the payments to be made by instalments.
105. Pension tax rules for NITPS members are not determined by the Department, they are set by HMRC and apply to all pension schemes. The remedy should provide members with the benefits they would have received were it not for the identified discrimination – this is inclusive of tax. To ignore tax adjustments would not provide members with the benefits they would have had and would create new differences in treatment that could not be justified.
106. HMRC is in the process of updating tax regulations to support the implementation of the remedy for the affected public service pension schemes and has been consulting separately.
107. NITPS members will receive information regarding tax related issues, both on the Department's website and within their RSS.
108. The cost to members of seeking independent financial advice in relation to their retirement options may be compensable under DoF Directions – this might be where the member has complex financial arrangements, and they can demonstrate that their choices in relation to remediable service were not straightforward and independent financial advice was therefore needed. Such compensation claims will be considered on a case-by-case basis and details of the process will be published on the NITPS section of the Department's website.

Miscellaneous

Consultation findings

109. Respondents asked how the remedy will work for members who have taken phased retirement, and commented on the complexity of phased retirement cases and requested that detailed information and advice is made available to assist members in this position.
110. Respondents queried the impact of the remedy in relation to child's pension where there is continuing entitlement due to incapacity.
111. Respondents queried if provision will be introduced for the transfer of private pension into the NITPS following early retirement.
112. Respondents commented that abatement rules should not be applied to the remedy.
113. Respondents asked that the contingent decision claims process is subject to full consultation with the NI Teachers' Pension Scheme Advisory Board (NITPSAB).
114. Some respondents stated that members should be allowed to remain in the legacy scheme that they joined, until their retirement.
115. Some respondents expressed views on matters outside the scope of this consultation process, including on the overarching Government policy around the 2015 pension reforms.

Department's response

116. Members who have already taken phased retirement before 1 October 2023 will be treated as IC members and presented with their choices in their RSS. Members who take phased retirement after 1 October 2023 will be DC members and their calculations and remedy period options will be presented in their RSS when they choose to retire. The Department is of the view that the draft regulations provide adequate provisions around phased retirements, and

information on phased retirement and the remedy will be made available on the Department's website.

117. Children's pension may be payable to age 23 if they remain in full-time education or training, or longer if they are incapacitated and continue to be so. The regulations make provision for the protection of the amount of pension in payment to an eligible child of a deceased member. Paragraphs 255-257 of the [NITPS Transitional Protection Regulations](#) Consultation sets out those protections.

118. In respect of transfers, the remedy involves remediable service in public service pension schemes. Whilst not within the scope of this consultation, as a general rule common to all public service pension schemes, a transfer of pension benefits from a registered pension scheme, such as a private pension provider, cannot be accepted if retirement benefits have become payable in either the sending or receiving scheme.

119. The Department acknowledges the view that abatement rules should not be applied to the implementation of the remedy. To ensure consistent treatment for all members, including those without remediable service, existing abatement rules will need to continue to apply.

120. Regarding the development of the NITPS remedy, including the contingent decision process, the Department will continue to discuss relevant aspects of the approach to the remedy in future NITPSAB meetings and welcomes feedback and discussion with NITPSAB members.

121. The Government consulted on the proposals to address the discrimination arising from transitional protection. Part of that consultation was to remedy the discrimination moving forward by closing the public service pension legacy schemes ensuring that all members would accrue service in the new reformed schemes from 1 April 2022. The Act made provision requiring schemes to close legacy schemes to all further accrual on 31 March 2022. This was a requirement placed upon schemes including NITPS in 2022. The NITPS legacy scheme closed to further accrual in accordance with the Act.

122. In respect of the views expressed on matters outside the scope of this consultation process, including on the overarching Government policy around the 2015 pension reforms, the Department notes those comments.

Equality

Background

123. The Department has conducted an Equality and Human Rights policy screening exercise in relation to the scheme rules needed to deliver the second part of the McCloud remedy. The data available on NITPS membership relates to a member's age and sex, as the scheme administrator only collects data that is needed for the administration of the scheme, in line with General Data Protection Regulations (GDPR).
124. Data is limited for the protected characteristics outside of age and sex, but the Department will continue to consider the impact of potential changes on all protected characteristics as far as possible based on the information available.
125. The Department has concluded that any disproportionate adverse impact on eligible members is unlikely and that the reforms represent a proportionate means of achieving the legitimate aim of removing the direct age and indirect sex and race/ethnicity discrimination that has been identified.

Consultation findings

126. Respondents emphasised the importance for the Department to continue to monitor potential inequality as they believe that unintended consequences could emerge upon implementation.
127. Respondents raised concerns that there is a lack of appropriate scheme-specific data to effectively analyse the impact of the remedy across all protected characteristics and some member representatives have asked the Department to review its data collection approach.
128. Respondents stated that younger members of the scheme are bearing the costs of the remedy as a result of the NITPS cost sharing mechanism and the decision by HM Treasury to treat the remedy costs as a member cost in the scheme valuations.

Department's response

129. The Department is committed to ensuring the remedy rectifies the identified age discrimination whilst considering its effect and ensuring equality is achieved throughout the approach.
130. The Department believes that its approach to providing all affected members with a choice of benefits for the remedy period should ensure that no member is disadvantaged.
131. The Department does give due consideration to the information that is routinely collected when deciding policy. It would not be proportionate to go outside of that, however, and ask members for further, intrusive, information given what the Department sees as a low likelihood of unjustified disadvantage or inequality of opportunity, in relation to other characteristics, that these policies might reasonably address.
132. The cost sharing mechanism is set by HM Treasury and is outside of the scope of this consultation.

Department's overall response

133. The Department appreciates the work that respondents have put into considering and commenting on the issues involved. The Department has looked closely at all of the comments raised and considers that the draft regulations should now form the basis of the final regulations, subject to some minor amendments to the drafting which do not affect any of the policies described in the consultation.

Changes and additions to the draft amendments

134. Some minor amendments have been made to the final version of the regulations. This is to ensure that the regulations provide for the policy that has been developed. The amendments do not alter the proposed policy approaches outlined in the consultation document. The purpose and detail of the additional regulations are detailed below.

135. Provision has been included in the regulations allowing the scheme to pay legacy scheme benefits for the remedy period to members who apply for retirement benefits on or after 1 October 2023 if for any reason an RSS could not be issued prior to the intended retirement date. The Department notes that other public service pension schemes have included this contingency in their scheme regulations and believes it is appropriate to include in the NITPS regulations in case of unforeseen circumstances.

136. Legacy scheme benefits would be paid to the member in this scenario as a result of the rollback of any reformed scheme service to the legacy scheme. The benefits that would be put into payment would include core benefits only and any benefits arising from scheme flexibilities would be included in benefit calculations included in the member's DC options when available.

137. When the member receives their RSS, it will display their DC options and they would have 12 months to confirm their decision. Were the member to make an election for reformed scheme benefits, any necessary corrections to benefits would be displayed in the member's RSS and over or underpayments would be addressed.

Regulation 12

138. Provision has been included in the regulations clarifying that the calculation method for higher value benefits will continue to be the Benefit Crystallisation Event (BCE) value which is based on the Lifetime Allowance figure. This provision has been included following the Government's decision to abolish the Lifetime Allowance.

Regulations 10 and 15

139. Provision has been included in the regulations to ensure that there are no adverse tax consequences for retired members who opt to reconstruct any reformed scheme flexibilities to legacy scheme AP.

Regulation 35

140. A provision on transfers has been included to ensure that where a member is paid compensation for any credit owed there are no adverse tax consequences.

Regulation 46

141. Provision has been included in the regulations for where the deadline has passed for a member to make a Mandatory Scheme Pays election before they have been advised of any changes to their annual allowance position which may result in tax charges. The scheme will therefore accept a voluntary Scheme Pays election.

Regulation 67

Next steps

142. Subject to the changes described in the section above, the draft regulations will now form the basis of the final regulations. Regulations will be laid in September 2023 and come into force on 1 October 2023.

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