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To: Chief Executives
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Circular 13/2023

23 October 2023

At: All Employing Authorities

Dear Colleagues,

The Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2023 – McCloud Remedy

The Department for Communities made the above Regulations on 28 September 2023 and they are operational from 1 October 2023. This Circular briefly describes the amendments and invites employers to a remote seminar on the changes.

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Background

When public service pension schemes were reformed in 2015 older members were protected from the changes. In 2018, the Courts ruled that younger members of the Judges' and Firefighters' pension schemes had been discriminated against as the changes did not apply to them. The Government then confirmed that changes would be made to all main public service pension schemes, including the Local Government Pension Scheme in Northern Ireland (LGPS (NI)), to remove this discrimination. These changes are known as the McCloud Remedy. The rules of the LGPS (NI) changed on 1 October 2023.

In the LGPS (NI) when a protected member retires, their pension in the career average pension scheme built up over the underpin period is compared with the pension that they would have built up in the final salary scheme, had it continued. If the final salary pension would have been higher, their pension was increased. This is known as the 'statutory underpin'. The underpin period is from 1 April 2015 to 31 March 2022.

Since 1 October 2023, eligible younger members are also protected by the underpin. This does not apply to all members.

Who do underpin protections apply to?

Members will have underpin protections in the LGPS (NI) if they meet all the following conditions:

- they were paying into the LGPS (NI) at any time between 1 April 2015 and 31 March 2022
- they were paying into the LGPS (NI) or another public service pension scheme before 1 April 2012
- they do not have a disqualifying break
- they were under their final salary normal retirement age, usually age 65, at any time between 1 April 2015 and 31 March 2022.

A disqualifying break is a continuous period of more than five years where they were not paying into either the LGPS (NI) or any other public service pension scheme.

A public service pension scheme is one that covers civil servants, the judiciary, the armed forces, local government workers, teachers, health service workers, fire and rescue workers, members of the police forces or members of a new public body pension scheme.

Underpin protection only applies to pensions built up from 1 April 2015 to 31 March 2022. This period is shorter if the member left the Scheme or reached their final salary normal retirement age, usually age 65, before 31 March 2022. There is no underpin protection on any pension benefits built up after 31 March 2022; these are career average pensions only.

A member does not have underpin protections if they:

- left the Scheme before 1 April 2015 and did not become active in the Scheme again, or
- reached their final salary normal retirement age, usually age 65, before 31 March 2015.

Do members need to do anything?

Most members do not need to do anything as NILGOSC can identify which members have underpin protection based on their LGPS (NI) pension records. Members do not need to combine their pension records for the underpin to apply.

If any members have membership in another public service pension scheme before 1 April 2012 then NILGOSC may need to ask them for details of this. We will issue a Member Newsletter before Christmas 2023 with a request for this information and details of how to send it to us.

Will members' pensions increase?

Most members are unlikely to see an increase in their pension because they have built up a higher pension in the career average scheme than they would have in the final salary scheme.

A pension does not increase because of the underpin until the member finally takes it at retirement. At that time, any reductions for early payment or increases for late payment will be included when the comparison between their final salary pension and career average pension for the underpin period is made.

Information for members

NILGOSC's website has been updated with new pages on the McCloud Remedy. There is also a McCloud Frequently Asked Questions section that deals with various aspects of the underpin and its effect in different scenarios.

<https://nilgosc.org.uk/employers/administering-the-scheme/the-mccloud-remedy/>

<https://nilgosc.org.uk/employers/administering-the-scheme/the-mccloud-remedy/mccloud-remedy-frequently-asked-questions/>

A newsletter will be issued to all members before Christmas 2023 with a request for information on other public service pension scheme membership before 1 April 2012.

From 1 October retirement quotations provided by NILGOSC will have included underpin calculations.

What information is needed from employers?

Hours and Breaks in Service - due to the increased scope of the McCloud Remedy that has resulted in a further 14,000 members becoming eligible, NILGOSC will need to collect further details on hours and breaks in service for these members who have post-1 April 2015 membership and pre-1 April 2012 membership and have not combined their memberships.

At a later date, once members have confirmed any pre-1 April 2012 membership that we did not know about, we will need to collect details on hours and breaks in service for these 'newly' in scope members.

In the next few weeks, we will be forwarding further spreadsheets to employers listing the information that is required for the period from 1 April 2015 to 31 March 2022 (the underpin period).

Action for employers: If you have not already done so, please advise contact details for these spreadsheets by 15 November 2023 by emailing

datacollection@nilgosc.org.uk .

Age 65 Final Salary Pay - The revised underpin is calculated at age 65 and then adjusted with early or late retirement reductions if the person works past their 65th birthday. At age 65

NILGOSC will need to calculate both the members' potential final salary pension and CARE pension for the underpin period to allow a comparison to be undertaken. We therefore need to collect final salary pay details when a member reaches age 65 i.e. their final salary pay for the previous 365 days up to their 65th birthday or best of last three years, if applicable. More information on the calculation of final salary pay is in Appendix 1. NILGOSC is currently developing a calculator to help employers with this additional requirement. Once NILGOSC's software has been amended, any employers using i-Connect will receive the request for age 65 pays on an ongoing basis via i-Connect.

Employers who are not currently using i-Connect will be sent a spreadsheet listing the staff for whom age 65 final salary pay details are required. This exercise will be both retrospective to gather age 65 pay details for the 3,500 members who have already reached age 65 and then a regular request going forward as active contributing members reach their 65th birthday.

Action for employers: Please advise contact details for these 'age 65 final salary pay requests' by emailing datacollection@nilgosc.org.uk by 30 November 2023.

How long is it likely to take to apply the remedy to members' pensions?

NILGOSC has over 50,000 member records to review so it will take some time to review all the cases. For most members, the pension that they have built up in the career average scheme will be higher, so no increase is due. It is anticipated that eligible pensioner and survivor pensions will be prioritised for review.

Seminar on the McCloud Remedy – 10 November 2023, 10am

Friday 10 November at 10am

This Microsoft Teams meeting will cover NILGOSC's understanding of the McCloud Remedy Regulations and the further data collection requirements from employers.

To join, please register by clicking on the date and time above, or via our website:

<https://nilgosc.org.uk/employers/training-events/>. The calendar invite is issued automatically as soon as you have registered. If you don't receive it please check you have used the correct email address. If you have used the correct email address and you still have not

received your calendar invite, please check your IT settings have not filtered the invitation email to your junk/spam mailbox. If you are still having difficulties please email seminars@nilgosc.org.uk.

If you have any questions regarding the content of this Circular, please contact either myself or any member of the Pensions Development team.

Yours sincerely,

Zena Kee

Head of Pensions Policy

Appendix 1 – Age 65 Final Pay

Final Salary Pay (Regulation 4(1) and (2) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009), as amended.

An employee's final salary pensionable pay is the total of:

- All the salary, wages, fluctuating emoluments and other payments paid to him for his own use in his employment; and
- Any other payment or benefit specified in his contract of employment as being a pensionable emolument.

Final salary pensionable pay does **not** include:

- Payments for non-contractual overtime
- Any travelling or subsistence or other allowance paid in respect of expenses incurred in relation to that employment
- Any payment in consideration of loss of holidays
- Any payment in lieu of notice to terminate his contract of employment
- Any payment as an inducement not to terminate his employment
- Any payment to buy out an existing term or condition of employment
- Any amount treated as the money value to the employee of the provision of a motor vehicle or amount paid in lieu of such a provision
- Any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees.

No sum may be taken into account in calculating pay unless income tax liability has been determined on it.

The final pay period used is:

- the year ending with the day on which the person reaches age 65 or
- Either of the two immediately preceding years ending with a day that is the anniversary of the day he reached age 65, if this results in a higher figure.

If the member has had a forced reduction in pay or grade he may choose in writing to have his final pay calculated as the average of his annual pensionable pay in any three consecutive years of his choice ending with 31 March in the period of 10 years ending with the date of his 65th birthday.

If the member has been entitled to fluctuating emoluments the amount included in his final pensionable pay is the average of fluctuating emoluments paid for the three consecutive years ending with his age 65th birthday. An employer may consent to the average of any emoluments paid for three consecutive years ending 31st March within the period of 10 years ending with his 65th birthday being used instead. Pension contributions must have been paid on fluctuating emoluments if they are to be included.