

<b>Report on</b>	NILGOSC Consultation on Proposed Amendments to Local Government Pension Scheme for Northern Ireland (LGPS (NI))
<b>Date of Meeting</b>	Thursday, 5 <sup>th</sup> September 2019
<b>Reporting Officer</b>	Director of Finance
<b>Contact Officer</b>	Director of Finance

<b>Is this report restricted for confidential business?</b>	Yes	
If 'Yes', confirm below the exempt information category relied upon	No	X

<b>1.0</b>	<b>Purpose of Report</b>
1.1	To provide Members with an update in relation to NILGOSC Circular 06/2019 issued on 19 July 2019 and to recommend a response to the NILGOSC consultation in relation to proposed amendments to the Local Government Pension Scheme Northern Ireland (LGPS (NI)), which was requested in Circular 06/2019.
<b>2.0</b>	<b>Background</b>
2.1	<p>The Northern Ireland Local Government Officers' Superannuation Committee is a statutory body established by the Local Government (Superannuation) Act (Northern Ireland) 1950 to: -</p> <ul style="list-style-type: none"> <li>• Administer a pension scheme for local authorities and admitted bodies</li> <li>• Manage and maintain a fund out of which the benefits of the scheme are met.</li> </ul>
2.2	The Management Committee is appointed by the Department for Communities, which makes statutory regulations setting out the constitution and powers of the Committee and the rules governing the pension scheme and the management of the Fund.
2.3	With effect from 1 April 2015, the governing regulations are the Local Government Pension Scheme Regulations (Northern Ireland) 2014, the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2014, the Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 and the Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000, as amended.
2.4	Paragraph 2 of Schedule 2 of the Public Service Pensions Act (Northern Ireland) 2014 states that Scheme regulations for local government workers may be made by the Department of the Environment (now Department for

2.5	<p>Communities (DfC)). Section 21(1) of this Act requires the DfC to consult such persons (or representatives of such persons) as appear to the authority as likely to be affected by them before making such regulations.</p> <p>Circular 06/2019 is intended to facilitate the DfC's duty to consult on the proposed changes to the LGPS (NI).</p>
<b>3.0</b>	<b>Main Report</b>
3.1	<p>Circular 06/2019 is concerned with notifying district councils (as employing authorities participating in the LGPS (NI)) of the:</p> <ol style="list-style-type: none"> <li>1. Consultation on proposed amendments to the LGPS (NI), which is seeking responses by 30 September 2019;</li> <li>2. Implementation of forthcoming changes in early retirement strain cost factors previously notified in Circular 04/2019; and</li> <li>3. Forthcoming advertisement seeking applications for NILGOSC Committee member positions</li> </ol>
3.2	Consultation:
3.2.1	<p>The DfC is proposing to amend the LGPS (NI) by making regulations to amend the Local Government Pension Scheme Regulations (Northern Ireland) 2014. It is proposed that these amendments will be effected by the currently draft Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2019 (the 2019 Regulations), which are attached to this report.</p>
3.2.2	The main proposals are as follows:
3.2.2.1	<p>(i) Part 1 of the 2019 Regulations – concerned with removing the requirement for a nomination form to qualify for a survivor pension.</p> <p>This amendment is proposed as a consequence of the Supreme Court's decision of 8 February 2017 to overturn the NILGOSC decision in relation to Denise Brewster's claim on her deceased partner's pension.</p> <p>The NILGOSC decision was based on regulations introduced in April 2009 which provide for a surviving cohabiting partner to become eligible for payment of a survivor's pension. In order to qualify, the cohabiting partner must meet the following criteria:</p> <ol style="list-style-type: none"> <li>1) At least 2 years cohabitation up to the date of the partner's death; and</li> <li>2) A nomination form completed in favour of the surviving cohabiting partner. If a nomination form was not</li> </ol>

	<p>completed, the claim would fail as there was no trustee discretion to allow for payment in such a case</p> <p>Although Ms Brewster satisfied the first requirement, failure to comply with the latter requirement of completing the form nominating her to be a beneficiary, resulted in her claim being refused.</p> <p>The Court, by unanimous decision, held the requirement for a nomination form to be completed should be removed from pension schemes. Further, a refusal to pay out was unlawful and incompatible with Article 14 of the European Convention of Human Rights.</p> <p>A further consequence of this decision is that NILGOSC will be required to visit past decisions as many cohabitants could have been refused payment of a survivor's pension between 2008 and 2014 by not completing a nomination form.</p>
3.2.2.2	<p>(ii) Part 2 of the 2019 Regulations – concerned with making what the DfC refer to on its website as “a number of minor policy amendments, technical amendments and drafting improvements for the Local Government Pension Scheme (NI)”. In relation to “drafting improvements”, the DfC, in its consultation document state “The proposed amendments in Part 2 of the draft Regulations make a number of drafting improvements that clarify the original policy intent and introduce a number of minor policy changes”. The officers’ comments in relation to same are detailed in paragraphs 3.2.2.2.1 to 3.2.2.2.13 inclusive below.</p>
3.2.2.2.1	<p>Regulations 35 to 40 (together with a number of subsequent Regulations) inclusive generally deal with amending the extant regulations to widen the types of schools which can be included in the list of bodies eligible to be admitted to the NILGOSC Scheme, for example, they provide for the inclusion of grant maintained integrated schools. These proposed amendments appear to be irrelevant to Council and are not referenced in the DfC’s consultation document.</p>
3.2.2.2.2	<p>Regulation 41(a) amends Regulation D11(2)(c) of the Local Government Pension Scheme Regulations (Northern Ireland) 2000 to remove employing authorities’ involvement in determining (with the agreement of the Committee) on compassionate grounds that deferred pension benefits are payable any date after a former local government employee has attained the age of 50 years. This amendment, while relevant to district councils, may or may not be something that Council wishes to comment on. On the one hand prudent fund management would seem to be best achieved by delegating all such authority to the Management. However, Council may feel that it wishes to continue to have an input into</p>

3.2.2.2.3	<p>such decisions concerning its former employees. <b>Members' opinion is sought in relation to this point.</b></p>
3.2.2.2.4	<p>Regulations 41 and 42 also do not appear to be referenced in the DfC's consultation document.</p>
3.2.2.2.5	<p>Regulation 41(c) effectively amends Regulation D11(4)(a) to allow former council employees aged 60 and above to elect to that portion of their preserved benefits at any time. The wording of the extant regulations requires former council employees to make this election within 3 months of becoming 60. This amendment appears reasonable and not worthy of particular comment.</p>
3.2.2.2.6	<p>Regulation 42 only applies where a former local government employee, aged 60 and above, has made the necessary election to receive the relevant deferred pension benefits earlier than their Normal Retirement Date, which could be post age 65. This regulation removes the defined statutory reductions of pension and pension lump sum that are generally applicable to such amounts when drawn early. The removal of the specified adjustments and replacement with a reference to guidance issued by the Government Actuary is a positive development in that the officers understand that this will enable the DfC to ensure that the reductions continue to be relevant and, where necessary, non-discriminatory between men and women generally. However, Council may wish to comment on the fact that all necessary transparency will now only be preserved if relevant Government Actuary advice is appropriately communicated to participating bodies on a timely basis. <b>Members' opinion is sought in relation to this point.</b></p>
3.2.2.2.7	<p>Regulation 43 is interesting in that it suggests that it is amending a regulation that is clearly incorrectly referenced. Although the officers have asked NILGOSC to confirm what the regulation referred to should be, the amendment is relatively innocuous from a council perspective. It is in fact referring to "pension credit members" who are spouses/partners of Scheme members who have been subject to a Court imposed pension sharing order. As such, the Scheme beneficiary was not previously a Scheme member, and the fact that the amendment makes any payment of benefits pre the pension credit member attaining age 55 subject to actuarial adjustment, will serve to maintain parity with benefits payable to Scheme members who have not been subject to a pension sharing order. This amendment is included, albeit somewhat opaquely, within the first bullet point within paragraph 4.1 of the Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2019 Consultation Document, which is attached.</p> <p>The remaining amendments appear, given the time available to review the various pieces of relevant legislation, appear to be</p>

	<p>'broadly' summarised in pages 7 to 9 inclusive of the Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2019 Consultation Document and or Circular 06/2019, both of which are attached. However, it is the officers' view that even this 'plain English' summary may be incomprehensible, at least in parts to Members. To this end, it may be useful to note that, except as noted in this report, the officers, on reading both pages 7 to 9 inclusive and Circular 06/2019, have found the summary to be understandable and uncontroversial in relation to their understanding of the various pieces of relevant legislation and their assessment of Council's interest in the LGPS (NI).</p>
3.2.2.2.8	<p>Of the bullet points detailed in pages 7 to 9 inclusive, the officers would draw Member's attention to the last two bullet points on page 9. These deal with the introduction of a discretionary voluntary scheme pays facility (penultimate bullet point) and the removal of the requirement for employer consent for Scheme members aged between 55 and 60 to draw benefits under the 85-year rule (last bullet point).</p>
3.2.2.2.9	<p>Neither of these issues are controversial in the sense that the first one is concerned with the settlement of Scheme member's tax liabilities (to be recouped from the member by deduction from pension paid) and the second seeks to guarantee Scheme protections to a limited number of employees who satisfy the 'Rule of 85' by virtue of their age and length of service.</p>
3.2.2.2.10	<p>However, although uncontroversial, the amendment in relation to the removal of consent, if subsequently enacted, will require Council to amend its discretionary policies in relation to early termination of employment, etc. The officers suggest that Members recommend to Council that it directs this matter to the Human Resources department with the instruction to amend the relevant policies as required if and when the draft 2019 Regulations become operative.</p>
3.2.2.2.11	<p>NILGOSC is currently operating a voluntary scheme pays arrangement under cover of two letters of support from the DfC which need to be regulated by way of legislation in due course.</p>
3.2.2.2.12	<p>The officers also note the proposed reintroduction of the 30-day rule that requires employee and employer contributions to be paid for the first 30 days of a period of absence with permission. This will replace using Additional Pension Contracts (APCs) for the first 30 days absence with permission e.g. career breaks, breaks in service, unpaid leave etc. currently allowed by Regulation 18 of The Local Government Pension Scheme Regulations (Northern Ireland) 2014 (the Primary Regulations). For short term absences, i.e. up to 30 days, this should guarantee that the Scheme member takes steps to protect their future pension entitlement. However,</p>

	<p>the officers are unclear if the amendment will prevent Scheme members absent with permission for in excess of 30 days seeking to use APCs for the period in excess of 30 days and, if not, whether Council continues to be obliged under Regulation 17 of the Primary Regulations to meet 2/3 of the cost of the APC.</p>
3.2.2.2.13	<p>In summary, in relation to the consultation aspect of Circular 06/2019, the officers recommend that:</p> <ol style="list-style-type: none"> <li>1. Members consider the two matters on which their opinion is sought at paragraphs 3.2.2.2.2 and 3.2.2.2.5 above, together with the proposed draft response to the consultation (attached);</li> <li>2. Subject to the amendment, if necessary, of the draft letter to reflect their comments requested at 1 above, the Committee recommends that Council adopt the proposed draft response to the consultation and authorise the officers to submit it to the DfC by the stated deadline of 30 September; and</li> <li>3. Committee recommends that Council direct the Human Resources department to be alert to the potential future need to amend the Council's policy discretions in relation to early termination of employment, etc.</li> </ol>
3.3	Implementation of early retirement strain cost factors
3.3.1	NILGOSC Circular 04/2019 issued on 29 May 2019 notified employing authorities of the introduction of revised strain costs factors from 1 July 2019. Circular 06/2016 merely reminds employing authorities that the relevant factors have now been implemented.
3.4	Notice of forthcoming advertisement of NILGOSC Committee member positions
3.4.1	Self-explanatory – positions will be advertised at the end of August.
<b>4.0</b>	<b>Other Considerations</b>
<b>4.1</b>	<b>Financial, Human Resources &amp; Risk Implications</b>
	Financial: N/A
	Human: N/A
	Risk Management: N/A

<b>4.2</b>	<b>Screening &amp; Impact Assessments</b>
	Equality & Good Relations Implications: N/A
	Rural Needs Implications: N/A
<b>5.0</b>	<b>Recommendation(s)</b>
5.1	<p>That:</p> <ol style="list-style-type: none"> <li>1. Members consider the two matters on which their opinion is sought at paragraphs 3.2.2.2.2 and 3.2.2.2.5 above, together with the proposed draft response to the consultation (attached);</li> <li>2. Subject to the amendment, if necessary, of the draft letter to reflect comments requested at 1 above, Committee recommends that Council adopt the proposed draft response to the consultation and authorise the officers to submit it to the DfC by the stated deadline of 30 September; and</li> <li>3. Committee recommends that Council direct the Human Resources department to be alert to the potential future need to amend the Council's policy discretions in relation to early termination of employment, etc.</li> </ol>
<b>6.0</b>	<b>Documents Attached &amp; References</b>
6.1	NILGOSC Circular 06/2019 "The Local Government Pension Scheme for Northern Ireland (NI) dated 19 <sup>th</sup> July 2019
6.2	The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2019 Consultation Document
6.3	Draft Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2019
6.4	Draft response to NILGOSC consultation