

## Annex D – Consultation Response Form

### The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2020

#### RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

Organisation Name

North East Scotland Pension Fund

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Suttie

Forename

Mairi

#### 2. Postal Address

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#### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

*Please tick as appropriate*

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

## Comments

### Question 1

**Do you agree with our proposal to remove the discrimination found in the McCloud and Sargeant cases by extending the statutory underpin to younger scheme members?**

Yes, to an extent. See answers to subsequent questions for explanation.

### Question 2

**Do you agree that the underpin period should end in March 2022?**

Yes, otherwise it could go on indefinitely which wasn't the intention of the pension reforms changing to career average schemes.

### Question 3

**Do you agree that the revised regulations should apply retrospectively to 1st April 2015?**

They should apply from at least 1 April 2015, otherwise more inconsistencies will be created. However, there may be potential for members who joined between 1 April 2012 and 31 March 2015 to challenge the regulations in the future. Should the amendments apply to all members who joined from 1 April 2012 onwards and who were active in the CARE scheme? We don't believe it is realistic to expect members who joined from 2012 to have been engaged enough to know the scheme was going to change and what impact it would have for them. It is important any possible future challenges are avoided, so we don't have to repeat this process.

### Question 4

**Do the draft regulations implement the revised underpin which we describe in this paper?**

Yes, overall they implement the revised underpin as described, although please see Question 6 for specific comments on the regulations.

### Question 5

**Do the draft regulations provide for a framework of protection which would work effectively for members, employers and administrators?**

They do provide a framework of protection for the members, by addressing the discrimination (subject to our response to question 3). However, due to the publicity generated from other public sector scheme challenges, there is potential that members may have a high expectation for these amendments, when it is unlikely many will actually have the new underpin apply. The short timescale will also detrimentally affect members as business as usual work won't be able to get done while implementing the new regulations.

The timescale of April 2021 is far too tight for scheme employers and administrators to be able to communicate and implement the regulations effectively. For administrators to be able to implement this effectively, software providers need to have enough time to provide a workable solution so that thousands of manual calculations aren't required. The work involved in order to implement these regulations is excessive in comparison to the number of members who will benefit.

There needs to be clear and consistent guidance for employers and administrators on how to implement and how to prioritise work, including business as usual. This needs to be provided from SAB or SPPA well in advance of the regulations being in force, which is unachievable in the proposed timescale.

### Question 6

Do you have other comments on technical matters related to the draft regulations?

<b>Amendment of the LGPS (Scotland) Regulations 2018</b>		
Draft Reg No.	Reg to be Amended	Comment/Suggestion
3	84	Propose Regulation 3 is removed so it won't be a requirement to provide underpin info in ABS  If not removed: <ul style="list-style-type: none"> <li>Inserted paragraph (5) refers to the 2008 Scheme, but this should be the 2009 Scheme.</li> <li>The closing quotation marks at the end of the inserted paragraph (6) should actually be at the end of the inserted paragraph (10).</li> <li>Paragraphs (8), (9) and (10) are indented too far right.</li> </ul>
<b>Amendment of the LGPS (Transitional Provisions &amp; Savings) (Scotland) Regulations 2014</b>		
Draft Reg No.	Reg to be Amended	Suggestion
6	4	There are multiple references to "the 2014 Regulations" in this regulation. Should we take the opportunity to update it to say "the 2018 Regulations"?
6 (b)	4(1)(b)	Spacing/lines are muddled. I think this should be set out as:  (b) for paragraph (1)(b) substitute- "(b) is or has been an active member of the 2015 Scheme; and"
6 (c)	4(1)(c)	Spacing/lines are muddled. I think this should be set out as:  (c) in paragraph (1)(c) substitute "; and" with ".";
6 (e)	4	Inserted paragraph (1B)(a) refers to Regs 16 and 17. These are for Contributions during reserve forces service leave and trade dispute absence respectively. Should this actually refer to Regs 13 (Re-employed and rejoining deferred members) and 14 (and Concurrent employments) instead?
6 (h)	4	<ul style="list-style-type: none"> <li>There is already a paragraph (2)(c). Reword as "for paragraph (2)(c) substitute-"</li> <li>Reg 29(6) is for voluntary retirement before NPA, so don't see why that Reg is being singled out. Should it be 29(7) for flexible retirement, or 29(8) for redundancy?</li> </ul>
6 (i)	4	<ul style="list-style-type: none"> <li>Needs brackets i.e. should be "after paragraph (2) insert-" instead of "after paragraph 2 insert-"</li> <li>In the inserted paragraph (2A), also add "or (2)(c)" at the end. Unless there is a reason it shouldn't be included?</li> </ul>
6 (n)	4	The paragraph amending paragraph (5)(b) seems to have been missed from the lettered list. It is for a new paragraph, so should really be under list point (o) and subsequent points will need to be re-lettered
6 (s)	4	<ul style="list-style-type: none"> <li>Agree with the wording for new paragraph (6A), however I'd expect it to be added as (6B) and for (6A) to cover the active ill-health retirement. This would mirror inserted paragraphs (5A) and (5B) which are added to cover IH and DiS for the provisional assumed benefits. I would expect we'd need the equivalent to confirm IH enhancement should be included in the provisional underpin amount. Or is it not needed because the IH enhancement should be calculated using the 2009 Regs enhancements?</li> <li>Inserted paragraph (7)(a) refers to "29(10), 29(5) or 29(6) of the 2018 Regulations". These cover early, late and normal retirement respectively. Should 29(14) also be referenced (payment from deferred) to cover all voluntary</li> </ul>

		<p>retirements?</p> <ul style="list-style-type: none"> <li>• Inserted paragraph (7)(b) refers to “29(7) of the 2018 Regulations”. This covers flexible retirement. Should 29(4) and 29(8) also be referenced (payment at 75 and redundancy/efficiency) to cover all other non-voluntary payments?</li> <li>• Inserted paragraph (7)(f) confirms the underpin crystallisation date for deaths. For all retirements, the underpin crystallisation date is from date of payment, not retirement. To be consistent I would expect it to be the day after date of death i.e. the date any survivor benefits are payable</li> <li>• Inserted paragraph (10) refers to “30(6) of the 2018 Regulations” and “29(6)”. There is no regulation 30(6) and as this refers to flexible retirement, I think both references should be to 29(7).</li> </ul>
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**Question 7**

**Do you agree that members should not have to have an immediate entitlement to a pension at the date they leave the scheme for underpin protection to apply?**

Yes. It will be easier to administer if the check is done on leaving, then it can be ensured all required info is in place, rather than potentially having to request information from employers years after someone has left. It also makes sense to have it calculated so it is there if required for transfers out and aggregation. However, communication with members will be key to ensure they understand the underpin on leaving isn't guaranteed and may not apply at crystallisation.

**Question 8**

**Are there any other comments regarding the proposed underpin qualifying criteria you would like to make?**

Only reiterating the previously mentioned comments in Q3, whether the amendments should apply to all members who joined from 1 April 2012 onwards and who were active in the CARE scheme, to avoid any future member challenges.

**Question 9**

**Do you agree that for underpin protection to apply, members should meet the underpin qualifying criteria in a single scheme membership?**

Yes, otherwise it is far too administratively complex. Also, this is consistent with everything in the Regs being post specific e.g. contribution rate, accrual rate etc.

**Question 10**

**Do you agree with our proposal that certain active and deferred members should have an additional 12 month period to decide to aggregate previous LGPS benefits as a consequence of the proposed changes?**

Only if absolutely necessary. While the Regs weren't clear, it appears it wasn't the intention for the underpin to apply across unaggregated employments. Considering scheme administrators weren't aware of this, it is unlikely members were.

Practically it would be fraught with problems as to how we identify the members, how to communicate the member options in a clear way and the 12 month timescale is too tight on top of all the other amendments and business as usual. While this timescale is too tight, it is recognised that a time limit does need to be put upon it to tie in with normal aggregation rules. It wouldn't be practical to allow members a final chance to decide whether to aggregate before leaving, as that doesn't tie in with current aggregation rules, and would allow members to benefit from hindsight or could possibly cost employers more by members simply choosing to aggregate as they are getting other benefits paid on ill-health or redundancy. A longer timescale would therefore be a better option or being able to give 12 months from the time information is sent to the member as a deadline, rather than a set date.

**Question 11**

**Do you consider that the proposals outlined in paragraphs 50 to 52 would have ‘significant adverse effects’ in relation to the pension payable to or in respect of affected members? (as described in section 23 of the Public Service Pensions Act 2013, ‘Achieving a fair and consistent underpin’)**

Not if an additional 12 month period is being proposed. However, it could also be argued that any adverse effects wouldn’t be ‘significant’ anyway, based on the number of members who will benefit from the underpin and the amount of underpin that may be applied.

### **Question 12**

**Do you have any comments on the proposed amendments described in paragraphs 56 to 58?**

No

### **Question 13**

**Do you agree with the two-stage underpin process proposed?**

Yes in principle, but will need to be careful how we advise members of the underpin at the initial underpin date i.e. that it’s not guaranteed and may not be applied at crystallisation. There is a real potential for members to misunderstand.

### **Question 14**

**Do you have any comments regarding the proposed approaches outlined above?**

The only comment is how complicated various scenarios, such as ill-health and transfers, are becoming due to the various layers of regulations and considering the underpin will impact such a small number of members. Clear and concise guidance will be needed on how to implement all the different proposals for various scenarios, as well as what to do if no contact is available e.g. in death cases. Transfers are becoming especially complicated and it is unclear how much members will understand when given the different options available to them.

### **Question 15**

**Do you consider there to be any notable omissions in our proposals on the changes to the underpin?**

Clear in-depth guidance is required for all changes and should be available as a priority to allow software providers to refer to when amending systems and to allow administrators to get procedures in place.

Clarification will be needed on how the following will work:

- Transfers Out – What should be done where a transfer out has already been paid and the new scheme is not willing to accept a balancing payment. What happens if the administrators of the receiving scheme charge an administration fee in excess of the additional CETV? How to manage payments following rectification of interfunds
- Whether Divorce CETV calculations will need to be revisited
- Members with a pension debit following divorce
- Scheme Pays Offsets
- Recalculation of a pension which produced Strain on Fund costs – will the employer be required to pay the additional cost arising as a result of underpin applying?
- Trivial Commutation – how will this work as all benefits should have been extinguished & commutation period will have finished. What should be done if benefits would’ve exceeded the trivial commutation limit with revised underpin included.
- Employer waiving reductions under 2015 scheme, that wouldn’t have been allowed under the 2009 scheme – should the reductions be waived in calculating the final underpin amount as well to give a true comparison?
- The order of applying PI and reductions/increases

### **Question 16**

**Do you agree that annual benefit statements should include information about a member’s underpin protection?**

Definitely not for active members under 2009 Scheme NPA. It will be useful to provide general information and an explanation of the underpin, but there isn't a need to provide the figures. In order to keep members interested and engaged in the ABS it is important the information is clear and concise. Giving information about something that may not apply when they leave or take payment seems contradictory to this. It will lead to a lot more questions, especially if a provisional guarantee amount is shown on the ABS, but doesn't apply when a member leaves. Even though we call it provisional, a lot of members will take it as entitlement. We don't show figures for members with a Certificate of Protection, as that is dealt with on leaving, so this falls into the same situation.

Similarly for other scenarios (over 2009 scheme NPA, deferred members) while there may be a provisional guarantee amount present, we don't know if it'll actually be applied until the benefits are crystallised, so are we just giving the member a false expectation if they are included?

### **Question 17**

**Do you have any comments regarding how the underpin should be presented on annual benefit statements?**

If it must be presented, it should be under an explanation of the underpin, making it clear that the amount is only applicable based on the figures in this statement and may not apply when payment is taken. Standard wording should be used across the Scottish funds.

We have been moving to simplify these as much as possible, so adding a provisional figure will just open us up to more confusion and questions from members.

### **Question 18**

**Do you have any comments on the potential issue identified in paragraph 109?**

No

### **Question 19**

**Do the proposals contained in this consultation adequately address the discrimination found in the McCloud and Sargeant cases?**

Don't believe this is a question for administrators to answer. Whilst the mechanics of the proposals do appear to address the McCloud and Sargeant cases we are not legal experts so cannot confirm if there is further discrimination (directly or indirectly) in the proposed remedy.

### **Question 20**

**Do you agree with our equalities impact assessment?**

Don't believe we are in a position to comment on this.

### **Question 21**

**Are you aware of additional data sets that would help assess the potential impacts of the proposed changes on the LGPS membership, in particular for the protected characteristics not covered by the GAD analysis (age and sex)?**

Don't believe we are in a position to comment on this.

### **Question 22**

**Are there other comments or observations on equalities impacts you would wish to make?**

No

### **Question 23**

**What principles should be adopted to help members understand the implications of the proposals outlined in this paper?**

It needs to be ensured all administrators are delivering the same message, clearly and concisely.

Communication materials need to be provided for administrators to use (and issue to employers/members) well in advance of the implementation timescale, whether from LGA, SPPA or SAB.

Materials should include up to date FAQs, sample responses to employers, a means where LGPS funds can continually ask questions and benefit from updated information, guidance and examples. It is critical that this information is kept up to date and evolves as new issues arise.

We have serious concerns as to whether members are going to engage and understand communications provided.

#### **Question 24**

**Do you have any comments to make on the administrative impacts of the proposals outlined in this paper?**

This is going to have a major impact on resources to get all the required information. A worry is that, after a huge amount of information is required to be collated and processed, will there actually be many members who benefit from the revised underpin? NESPF have only had a handful of cases since 2015 of the statutory underpin applying, so can't envisage the revised underpin applying to many.

Administration resources are low across the funds anyway, so this will put a major strain on work and, as already mentioned, will impact all members due to business as usual suffering. Outsourcing to private companies is a potential, but costly option, that will need to be considered due to lack of resource.

Guidance should be provided by SPPA/SAB in relation to reasonable timescales for the various stages of the project including:

- encouraging employers to provide data as soon as is reasonably practical and no later than a defined date. It should be noted that a deadline of or around 31st March is not helpful due to year end pressures for both employers and pension funds
- provision of updated software from the software suppliers
- expected final dates for all funds to have reviewed and rectified benefits back to 2015.

The timescale given, of implementation from April 2021, is just not workable.

#### **Question 25**

**What principles should be adopted in determining how to prioritise cases?**

After dealing with cases coming into payment on an ongoing basis, pensions in payment should be prioritised first, followed by deaths and transfers.

#### **Question 26**

**Are there material ways in which the proposals could be simplified to ease the impacts on employers, software systems and scheme administrators?**

Clear guidance (perhaps statutory) clarifying how cases should be dealt with where data is not available from employers and how this can be reasonably ascertained, would assist with the administrative burden.

Furthermore nationally agreed tolerances that identify minimum thresholds before retrospective changes/updates are made (again balancing cost and benefit of updates) could simplify the proposals, introducing efficiencies for funds and employers.

A minimum threshold amount before changes/updates are made should be considered, for those members that don't request a recalculation. This could avoid large administrative costs for very small member benefits.

#### **Question 27**

**What issues should be covered in administrative guidance issued by the Scheme Advisory Board, in**

**particular regarding the potential additional data requirements that would apply to employers?**

Technical, detailed guidance on each of the scenarios that will need to be revisited and how to apply for each scenario going forward, including those items listed in our Q15 response, while also providing examples.

Guidance on what to do for cases that employers can't provide the required information.

Clear guidance for employers on what data is required going forward and why.

**Question 28****On what matters should there be a consistent approach to implementation of the changes proposed?**

- Communication wording for members and employers
- Prioritisation of cases
- What to do for cases that employers can't provide the required information
- What to do when there is no next of kin to contact, for survivor benefits or if the original recipient has now died

**Question 29****Do you have any comments regarding the potential costs of McCloud remedy?**

The estimated impact of the remedy was calculated for all employers and included in the 2020 actuarial results. Our FSS and termination policies will ensure that an estimate of any costs associated with the remedy are included in the exit assessment for an outgoing employer.

The administrative burden is a significant one and therefore the costs relating to administration could be significant. Short-term costs for Funds will be material, including system upgrades and functionality, additional resources, external advisor support and communication activities. The costs for employers may also be significant in terms of their own resources and changes to and extracting data from payroll systems.

If additional resource cannot be secured, then the prospect of having to outsource part or all of the remedy will be an expensive option that many Funds will have no option but to consider.

Our software supplier has declared that development effort will be comparable with the introduction of career average schemes in 2014/2015 and the development costs across all public-sector schemes are expected to run into millions of pounds.

In the longer term, there is likely to be additional costs due to ongoing system functionality and the increased complexity of the regulations.