



**PUBLIC SERVICE PENSIONS SCHEMES: CHANGES
TO THE TRANSITIONAL ARRANGEMENTS TO THE
2015 SCHEMES**

INTO Response

November 2020

INTRODUCTION

The Irish National Teachers' Organisation (INTO) is the largest teachers' union in Ireland with over 7,000 members currently in the North of Ireland. The INTO has members in nursery, primary, post-primary and special schools, including teachers at all stages of their career, from student teachers through to principals, and across all sectors of education in the North.

The INTO, represents the five teacher unions in the Northern Ireland Teachers' Council (NITC) through NIC ICTU, on the Collective Consultative Working Group.

Summary

INTO welcomes the opportunity to respond to this consultation. Overall INTO favours the Deferred Choice Underpin (DCU) as this offers the potential for members to examine the differences between the two schemes at the point of retirement when it is most relevant to them. The DCU also ensures members will have access to the pertinent information from DE in relation to service/amount accrued in each scheme and time to access to independent Financial advice which will be crucial at this stage. Independent Financial advice would simply not be available for all 130,000 public sector workers in the immediate choice.

There are many factors to be taken into account by members when making this choice and clear accurate information on all aspects of the choices available are critical.

It is obvious that there will be administrative costs arising from the proposed changes whether in the Deferred or Immediate choice options. There may also be costs arising from the choice the member makes. INTO is adamant that no costs should apply to members or the NITPS as a result of remedying the mistake the Government made in introducing a scheme which has been found to be discriminatory.

INTO does not respond to questions in a consultation as a general rule and on this occasion will only reply to the questions it deems relevant to INTO members.

Question 1: Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 149 of the Equality Act 2010? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

INTO is of the view that these proposals will have a significant impact on younger members of the scheme who joined after 1 April 2012, as they are not deemed to be 'in scope' of this consultation. These younger members will not have access to final salary scheme benefits for the 2015-2022 period but will have expected improvements in the career average scheme taken from them.

Having gone through the 2016 valuation process in the NI Teachers' Pension Scheme, this would have led to an estimated improvement to the scheme accrual rate from 1/57 to 1/47.1, which should have been introduced from April 2019. These improvements were put on hold by the Government due to the then ongoing McCloud/Sargeant cases.

The Government's position is that any associated cost for the McCloud remedy will be considered as a 'member cost' under the cost control mechanism, a position which is currently the subject of litigation. INTO totally refutes the Government's view that members should have to pay for the Government's proven unlawful age discrimination. This is especially so for young members who joined the NI Teachers' Pension Scheme after 1 April 2012 and are not deemed eligible for the remedy, but will find the cost included in the cost sharing mechanism, which may or may not mean that the scheduled improvement in the accrual rate is cancelled. This is potentially a further indirect act of age discrimination given that it likely impacts younger teachers. The only way to mitigate this impact is for the Government to bear the cost of its own unlawful actions.

Question 3: Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

The consultation makes the assumption that 'many members can be better off in the reformed schemes' but does not present the evidence for this. Pensions are very much an individual matter, based on age, length of service, levels of pay, etc, which vary significantly from member to member. The examples given for teachers in the consultation are based on future salary increases of 1 or 2% above inflation. Until a few months ago teachers were involved in a long running industrial dispute over pay and workload. Despite a pay increase being agreed in April 2020 teachers' pay in the North is still significantly below inflation, even with inflation being unusually low, the August 2020 CPI figure published recently shows inflation at 0.2 per cent.

The same choice should be applied to Tapered members as all the other members of the NITPS, which is to make one decision for the remedy period of 2015-2022. It is potentially possible that some tapered members would be better off receiving one type of benefit for the period 2015 to point of transfer into their new scheme and another for point of transfer to new scheme to April 2022. However, this would be giving these tapered members a choice not available to other members.

Question 4: Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

INTO does not accept the proposal that '*Any member who did not respond would be deemed to have chosen to accrue benefits in their existing scheme.*' There may be very valid reasons why a member does not respond within the suggested 12-month timeframe and to remove their choice is not acceptable. In addition, INTO has serious doubts that the Government/DE will be able to trace all

affected members, especially deferred members within the proposed timescale if at all. What this question does not take into account is that with 130,000 public sector members in the North the availability of independent financial advice for each member during this timescale is totally unrealistic. What it does is highlight the weakness of the immediate choice approach.

Question 5: Please set out any comments on the proposals set out above for an immediate choice exercise.

Whilst Immediate Choice underpin (ICU) could be deemed to resolve uncertainty for scheme members, for scheme administrators and the government moving forward INTO does not believe it would be in the best interests of members. The only 'certainty' here for teachers is that many members could end up having chosen the wrong option.

The impact of the link between SPA and NPA in the CARE scheme, the automatic lump sum in the final salary scheme of three times the pension and member contribution rates are all important considerations which need to be taken into account in deciding which scheme to choose for the remedy period. All this is in addition to members' individual circumstances and age, pay, length of service, etc as referred to above.

To facilitate this option Government would need to provide free vouchers for all public sector scheme members, 130,000 of them for independent financial advice and ensure these could all be redeemed appropriately with certified financial advisors within the suggested 12-month timeframe.

The experience of INTO over many years has been that pensions are not a matter of significant importance to most teachers until they are thinking of retiring. Therefore, the ICU could prove to be very difficult to communicate effectively to members with the resulting 'default' position as detailed above which INTO is opposed to.

Any possible implications in relation to tax arising from the choice a member makes as suggested in paragraph 2.41 would need to be very clearly explained to members before they make their choice.

Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin.

For reasons set out above, the Deferred Choice Underpin (DCU) is the preferred option as it enables members to consider in full the implications of the choice they are going to make at their time of retirement, the time it is most relevant to them.

The importance of the Annual Benefit Statement (ABS) cannot be overstated at this point. Details of benefits in both schemes must be clearly explained in the ABS so that members have a clear picture of the benefits they are accruing and can see how these potentially change as they age, their service increases, and if they are promoted, etc. As their pensions become ever more complicated online tools and calculators will need to be developed and available to members to assist them in trying to understand the benefits they will receive on retirement. The information contained within the ABS will also enable members to avail of independent financial advice to assist them in making their choice between the final salary (legacy) and CARE schemes.

The DCU is particularly appropriate for younger members of the scheme who may have 20 – 30+ years left in the scheme before they can retire. It would not be appropriate to ask them, or even a financial advisor, to estimate which scheme would be better in 20/30 years' time for them, with all the uncertainties and unknowns ahead, when there is an alternative of waiting until retirement when a decision can be taken based on actual entitlement.

The issues relating to potential tax implications and/or Annual Allowances as detailed in paragraphs 2.46 – 2.49 will need to be clearly addressed going forward with specific details and calculators for explaining the potential impacts.

Question 7: Please set out any comments on the administrative impacts of both options.

It is clear that both options have administrative challenges. In the DCU option there is the administrative impact for scheme administrators in carrying two sets of different scheme benefit design alongside each other for over 30 years.

With the ICU option there is an administrative impact of contacting 130,000 of public sector workers to ask them to make a very important decision in a very short timeframe. This would be a difficult enough task if it merely involved active scheme members, but it will also involve contacting deferred members (who may be difficult to trace), club transfer members, etc.

What is critically important in both options is that there should be no cost to the schemes of the increased administration required. The government imposed these changes in 2015 which have been found to be discriminatory scheme members nor employers should bear the cost of the changes now required. The Government must bear the full cost of any administrative impacts of both options.

The suggestion in paragraph 2.57 that *'The costs of removing the discrimination will feed into future employer contribution rates once the 2020 scheme valuations are completed.'* Is totally opposed by INTO. Any increase to the employer contribution rate could have future cost implications for the scheme which is completely unacceptable. This is the Government's mistake and they must pay for it. It is also important to note that all teachers and other public sector workers are taxpayers and it is not a cost they should bear in that manner either.

Question 10: Please set out any comments on our proposed method of revisiting past cases.

All past retirements during the remedy period will have to be revisited, giving those members equal choice in deciding whether to receive a pension from their legacy final salary scheme or the CARE scheme introduced in 2015 for the period from April 2015 to their retirement date.

The major complication which could arise is members revisiting automatic lump sum or lump sum commutation decisions. Members retiring from the NPA 60 scheme will have received an automatic tax-free lump sum of 3 times the pension. Members retiring under the final salary NPA 65 scheme or with some career accrual will have made a lump sum conversion decision which may have to be revisited.

This could involve possible arrears situations and overpayment situations. The fact that it is the member who is making the choice has the potential to minimise overpayment situations. However, INTO is of the view that the Government should write off any overpayments arising from transitional protection discrimination, and any arrears.

Question 13: Please set out any comments on our proposed treatment of annual benefit statements.

Clear and accurate ABSs are critical to informing members of their potential benefits. In England the TPS provides updated information to members on a monthly basis. INTO would urge that a similar system for NITPS is introduced in the North sooner rather than later.

According to teachers' unions in England the Teachers' Pension Scheme there has been a leader among public sector pensions in providing online information to members through its 'MyPensionOnline' system. They state that the benefit statement information there can be easily updated to account for a deferred choice approach. This approach should be easily replicated for teachers in the North.

Question 14: Please set out any comments on our proposed treatment of cases involving ill-health retirement.

This is a very complex area, while it is an unlikely scenario, it is possible that members refused an ill health pension in one scheme could be eligible for an ill health pension in the other scheme. For example, a member in the CARE scheme was denied an ill health pension because of the inability to prove an inability to return to work until the (higher) normal pension age. Alternatively, a member who received an ill health pension with a higher-level award in the final salary scheme may have been better off if they had been in the career average scheme due to enhancement in respect of potential lost service to a higher NPA. The Government needs to work with individual schemes to offer eligible members a choice of final salary or career average benefits.

Question 15: Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.

This is a very sensitive area and needs to be treated accordingly. Where beneficiaries of a deceased member are entitled to an improvement in pension benefits, schemes should make good that benefit. The decision on which benefit structure to choose should lie with the beneficiaries or the member's estate, with details of the different benefit structures being provided by the NITPS.

Question 16: Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.

Whilst this is likely to be a rare occurrence, particularly with the low opt-out rates in NITPS, any such occurrence should be dealt with by schemes on a case-by-case basis, making sure the member is aware that the full combined contributions will have to be repaid to re-establish the pension rights. However, INTO does not believe that interest should be paid where it is established that a member would have acted differently but for the Government's unlawful discrimination. In addition, if in reverting

to the legacy scheme members would be due a refund of contributions then no cost or detriment should apply in these cases. As we have stated with regards to other costs members should not have to pay for the discriminatory actions of government in respect to this either.

Question 19: Please set out any comments on our proposed treatment of divorce cases.

The INTO accepts that where an earmarking or attachment order is in place, any choice will have to be exercised by the scheme member as to which scheme, they choose for the remedy period.

Question 20: Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

As previously stated, scheme members should not be charged interest on amounts owed to schemes. Any costs which arise from the Government's unlawful age discrimination, should be met by the Government. They should pay for their own mistake.

Question 21: Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

Interest should be paid on amounts owed to members by schemes. Members should not suffer a detriment due to a mistake made by the Government. If the Government is allowed to avoid the payment of interest it is effectively a reward for their own unlawful actions.

Question 22: If interest is applied, should existing scheme interest rates be used (where they exist), or would a single, consistent rate across schemes be more appropriate?

To answer this question more information is required, what are the interest rates across schemes and what would the proposed single consistent rate be. However, the preference would be for the higher of the existing scheme interest rate or a single consistent rate across all schemes to apply.

Question 23: Please set out any comments on our proposed treatment of abatement.

The INTO welcomes the commitment in paragraph A68 that where deferred choice or immediate choice results in a retrospective increase to a pension abatement would either not apply or would not be increased retrospectively.

Question 24: Please set out any comments on the interaction of the proposals in this consultation with the tax system.

The consultation document highlights the possibility of potential significant tax implications for some members of public sector pension schemes. It is crucial that

more clarity is provide with sufficient information for members in relation the potential tax implications of the choice they might make.

The INTO welcomes the plan to compensate members for the difference in the annual allowance charge if career average benefits are chosen.