EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) (NO. 3) REGULATIONS 2023

2023 No. 972

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to amend the Local Government Pension Scheme (LGPS) to address the discrimination found in McCloud v Lord Chancellor [2018] EWCA Civ 2844[1]. In that case, the Court of Appeal found that protections provided to older members of public service pension schemes when the schemes were reformed in 2014 and 2015 unlawfully discriminated against younger members on grounds of age. In July 2019[2], the government accepted that the judgment impacted all schemes that provided similar protections and has since been working on implementing a remedy. Powers to address the discrimination were obtained through the Public Service Pensions and Judicial Offices Act 2022.

2.2 The instrument amends the LGPS regulations so that 'the statutory underpin', the mechanism through which older LGPS members closest to retirement were protected, is extended to the scheme members who were discriminated against (i.e. those who were too young to receive protection under the original rules). The instrument also makes a number of related changes to the underpin to ensure it works effectively and in line with the government's policy intent.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Part 3 of the instrument makes, among other amendments, retrospective provision, as a consequence of the fact the instrument is seeking to address discrimination that has existed since 1st April 2014. We explain more fully why we are making retrospective provision, and the effects of that, in paragraphs 6.7, 7.7, 7.14 and, particularly, 7.23.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

---

[1] https://www.judiciary.uk/wp-content/uploads/2018/12/lord-chancellor-v-mcloud-and-ors-judgment.pdf
[2] https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Public Service Pensions Act 2013 ("the 2013 Act") enables the Secretary of State to make regulations creating pension schemes for, amongst others, local government workers.

6.2 In England and Wales, such a scheme is created by the Local Government Pension Scheme Regulations 2013 ("the 2013 Regulations"). The 2013 Regulations were made exercising powers in the Superannuation Act 1972, but section 28 of the 2013 Act provides for them to have effect as if they were scheme regulations made under section 1 of the 2013 Act. The scheme created by the 2013 Regulations was effective from 1st April 2014 (known as the "2014 Scheme").

6.3 The 2014 Scheme is a funded scheme administered by 86 administering authorities specified in Part 1 of Schedule 3 to those regulations.

6.4 The LGPS has been the occupational pension scheme for local government workers for decades, with various sets of regulations providing for the rules of the scheme over the years. Prior to 1st April 2014, a scheme known as the 2008 Scheme was in force, having had effect since 1st April 2008.

6.5 Ahead of the 2014 Scheme reforms, the government made the Local Government Pension Scheme (Transitional Provisions, Savings and Amendments) Regulations 2014 ("the 2014 Regulations"). The 2014 Regulations contain transitional provisions in relation to members who were LGPS members before the 2014 Scheme became effective on 1st April 2014. Principally, they set out how any pension built up under the LGPS prior to reform should be treated after 1st April 2014.

6.6 Until this instrument comes into force, regulation 4 of the 2014 Regulations contains the rules regarding statutory underpin protection. Under regulation 4, where the statutory underpin applied, members would be entitled to the better of their 2008 Scheme and 2014 Scheme benefits for their membership between 1st April 2014 and their 2008 Scheme normal pension age[3] (usually 65). Principally, members who were active in the LGPS on 31st March 2012 and were ten years or less from their 2008 Scheme normal pension age (usually 65) on 1st April 2012 were in scope of the statutory underpin, meaning that, in most cases, a member had to be at least 55 in April 2012 to qualify. More information on the background to the statutory underpin is contained in paragraphs 7.1 to 7.4.

6.7 Following the McCloud judgment and the government's acceptance that the discrimination found by the Court of Appeal applied to all public service pension schemes (see paragraph 7.5), the government took steps to obtain legislative powers to retrospectively address the discrimination. After detailed consideration and consultation, the government introduced a Bill into Parliament in the summer of 2021, and in March 2022, the Public Service Pensions and Judicial Offices Act 2022 ("the

[3] The normal pension age is the age a member can retire without their pension being reduced or increased for early or late retirement. In the legislation governing the 2008 Scheme, the normal pension age was called the 'normal retirement age'. However, the term used under the 2013 and 2022 Acts is normal pension age so, for consistency, in this document we use the phrase normal pension age for both the 2008 and 2014 Schemes.

2022 Act") received Royal Assent, providing the framework within which the McCloud case will be addressed.

6.8 In respect of the LGPS, Chapter 3 of Part 1 of the 2022 Act gives powers to the responsible authorities of local government schemes to make regulations addressing the discrimination. In relation to the LGPS in England and Wales, the Department for Levelling up, Housing and Communities is the responsible authority. These powers, as well as powers in the 2013 Act, have been used to make this instrument.

6.9 In particular, Chapter 3 of Part 1 of the 2022 Act provides that scheme regulations may be made to allow 'remediable service' to be payable on a final salary basis. As the 2013 Act already gives the government the power to pay benefits on a career average basis, the new power under the 2022 Act gives the government the ability to extend the statutory underpin to the LGPS members affected by the discrimination in the McCloud case, as the statutory underpin gives members 'the best of both' types of scheme. For more information on how the underpin works, see paragraphs 7.9 to 7.11.

6.10 Since the 2022 Act received Royal Assent, HM Treasury have published the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 ("the PSP Directions")[4]. Part 4 of the PSP Directions cover the LGPS, with the relevant provisions having been issued under the powers in section 85 of the 2022 Act. This section sets out certain matters where the LGPS remedy must be exercised in accordance with Treasury directions.

7. Policy background

What is being done and why?

7.1 In 2010, Lord Hutton of Furness was invited to chair the Independent Public Service Pensions Commission. The Independent Public Service Pensions Commission was tasked with undertaking a fundamental structural review of public service pension provision. Following the review[5], the government accepted the majority of Lord Hutton's recommendations and took steps to reform public service pension schemes. This led to reformed public service pension schemes being introduced by 1st April 2015 for workers in local government, teachers, the NHS, the armed forces, firefighters, the police, the judiciary and the civil service.

7.2 A major part of the reforms was a change in the way pensions would be calculated. Previously, schemes operated on a 'final salary' basis, with pensions based on members' pay at or near to the end of the time in the pension scheme. Under the reformed schemes, pensions would be calculated on a fairer 'career average' basis, with total pensions based on an average of members' pay over their time in the pension scheme. Final salary pension schemes favour high-fliers and others who receive large pay increases in the final years of their career.

7.3 As part of the reforms and following negotiations with trade unions, the government agreed that those within 10 years of their normal pension age as at 31st March 2012

[4] https://www.gov.uk/government/publications/public-service-pensions-and-judicial-offices-act-2022-treasury-directions. A hard copy is available on request to His Majesty's Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

[5] https://www.gov.uk/government/publications/independent-public-service-pensions-commission-final-report-by-lord-hutton

should 'see no change in when they can retire, nor any decrease in the amount of pension they receive at their current Normal Pension Age'[6].

7.4 In the LGPS, this transitional protection was implemented through the 'statutory underpin'. All LGPS members were moved to the career average 2014 Scheme on 1st April 2014, but for protected members, the pension payable was underpinned against what they would have built up in the final salary 2008 Scheme for the period up to their 2008 Scheme normal pension age (usually 65). If their pension would have been higher in the 2008 Scheme, they would be awarded an addition.

7.5 Soon after the reformed career average pension schemes came into force legal challenges were brought against the transitional protections for older members in the judicial and firefighters' pension schemes ('McCloud v Lord Chancellor'[7] and 'Sargeant v Secretary of State for the Home Office'[8] respectively) on various grounds including that the transitional protections provided to older members constituted unjustified direct age discrimination. The Court of Appeal ruled in December 2018 that transitional protection gave rise to unlawful age discrimination against younger members. Permission to appeal to the Supreme Court was refused in June 2019 and in a Written Ministerial Statement made on 15 July 2019[9] the government accepted that the judgment had implications for all schemes which provided transitional protections under the 2013 Act to older members. This included the LGPS in England and Wales.

7.6 Since then, the government have been working to address the discrimination. In the LGPS, we are doing this by extending the statutory underpin to the younger members who were unlawfully discriminated against.

7.7 In addition to the extension of the statutory underpin, the instrument covers a number of related matters which fall broadly into two main categories:

- Provisions necessary to ensure that the underpin works consistently, fairly and effectively for different types of member. In some cases, changes have been necessary to address gaps in the original underpin rules contained in regulation 4 of the 2014 Regulations.
- Provisions that are needed to reflect the retrospective nature of the remedy and the fact these changes are being made as a result of unlawful discrimination – for example, compensation and interest terms.

7.8 The differences between the original regulations and the new regulations are summarised in the following paragraphs.

Explanations

What did any law do before the changes to be made by this instrument?

7.9 Regulation 4 of the 2014 Regulations gave statutory underpin protection to older members of the LGPS, in line with the government's commitment to provide

[6] Foreword, Page 3, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last._Command_paper.pdf. A hard copy is available on request to His Majesty's Treasury, 1 Horse Guards Road, London, SW1A 2HQ.
[7] A2/2018/0635
[8] A2/2018/0636, A2/2018/0505 & A2/2018/0647
[9] https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725. A hard copy is available on request to Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.

transitional protection to those nearing retirement. Under regulation 4(1), statutory underpin protection applied to those who met the following criteria:

- they were active members of the LGPS on 31st March 2012,
- they were within ten years of their 2008 Scheme normal pension age (usually 65) on 1st April 2012,
- they had membership of the 2014 Scheme, and
- they did not have a continuous break in active membership of a public service pension scheme of more than five years after 31st March 2012.

7.10 Where underpin protection applied, regulation 4(4) required that a member's local administrator would undertake a comparison of their final salary 2008 Scheme and career average 2014 Scheme benefits. Where the 2008 Scheme benefits were calculated to be higher than the 2014 Scheme benefits, an addition would be made to the member's pension. For the purposes of the underpin calculations, a member's 2014 Scheme benefits are called their 'assumed benefits' (as calculated under regulation 4(5)) and their 2008 Scheme benefits are called their 'underpin amount' (as calculated under regulation 4(6).

7.11 The underpin comparison would take place on a member's underpin date. Under regulation 4(2), the underpin date was the earlier of the date the member attained their 2008 Scheme normal pension age (usually 65) and the date they left active membership of the scheme.

Why is it being changed?

7.12 Principally, we are amending the 2014 Regulations to remove the age-related element of the underpin qualifying criteria. This will address the unlawful discrimination found in the McCloud case.

7.13 Additionally, following detailed consideration of the current underpin provisions as we have worked on our response to the McCloud case, we are making a number of related changes to how the underpin works currently, with the aim of ensuring underpin protection works more fairly, consistently and effectively. We note the following points in particular:

- Currently, regulation 4 of the 2014 Regulations requires that a member was in active service on 31st March 2012 specifically to qualify for underpin protection. This potentially disadvantages members who were on career breaks on that date, who are statistically more likely to be women[10]. We are therefore making it so that underpin protection can apply to anyone who was in the LGPS on or before 31st March 2012, so long as they do not have a subsequent continuous gap in membership of a public service pension scheme of more than five years.
- Under the existing provisions, a member who moves to the LGPS from another public service pension scheme will only qualify for underpin protection on the service they build up in the LGPS if they transfer the previous membership into the LGPS. In line with cross-government policy, we are amending the regulations so that there is no requirement to transfer in

[10] Paragraphs 4.29 to 4.35 of the Public Service Pensions and Judicial Offices Act 2022: Equalities Impact Assessment, https://www.legislation.gov.uk/ukpga/2022/7/pdfs/ukpgaod_20220007_en_001.pdf. A hard copy is available on request to Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.

previous public service pension scheme membership to qualify for underpin protection. Instead, if a member was in another public service pension scheme on or before 31st March 2012, moves to the LGPS and meets the other qualifying criteria, they will have underpin protection for the protected period (referred to as the underpin period), whether they transfer the previous membership to the LGPS or not.

- Regulation 4 provides that the underpin comparison takes place on a member's underpin date, which is defined as being the earlier of the date a member reaches their 2008 Scheme normal pension age and the date they leave active membership of the scheme with an immediate entitlement to benefits. There are a number of practical issues with this, which we are seeking to address:
    - The current underpin date definition does not provide what should happen if a member dies before either of the two events occurring. We clarify in the instrument that an underpin comparison should be undertaken after a member's death and be considered in the calculation of survivor benefits.
    - As the current underpin date definition requires that a member has an immediate entitlement to benefits when they leave active membership of the scheme, it requires that a member must be at least 55 (the earliest age a member can elect to immediately receive their pension) to get underpin protection. We are changing this so that the underpin works for members who leave with only a deferred entitlement to benefits (i.e. they are younger than 55).
    - The current underpin date definition does not take into account the effect 'actuarial adjustments' might have on the comparison of benefits. In the LGPS, where a member takes their pension at an age other than their normal pension age (this is usually 65 in the 2008 Scheme and state pension age in the 2014 Scheme), actuarial adjustments may apply. Actuarial adjustments are reductions (if a member retires before their normal pension age) or enhancements (if a member retires after their normal pension age) which are applied to a person's pension to reflect that they will be receiving the pension for a longer time or a shorter time, whichever is applicable. The adjustments are intended to ensure the member receives the same value pension overall, regardless of when they take it for the first time. Currently, the underpin comparison takes place on a member's underpin date. However, this could be many years before they take their pension, and therefore before the quantum of actuarial adjustment is known. We are therefore introducing a new set of calculations which take place at a member's 'final underpin date' when we can be sure the underpin calculations give the correct outcome for each member. The final underpin date usually takes place when the date of benefit crystallisation and type of benefits the member takes from the scheme is confirmed. Undertaking a final comparison on this date, and tailoring the calculations to the way in which a member is taking their benefits, allows us to meet the policy intent that a member receives the higher of their 2008 Scheme and 2014 Scheme pensions for the underpin period.

- Regulation 4 does not explicitly clarify what should apply in relation to a number of situations, including how the underpin should be taken into account in the calculation of survivor benefits (pensions that are payable to qualifying partners and eligible children after a member dies), how the underpin calculation should work if a member leaves the LGPS but then rejoins, and how the underpin calculation should work if a member takes flexible retirement (where a member remains in work but takes some or all of their accrued pension). Our instrument seeks to address these and other similar gaps.

7.14 We are also making changes to reflect that the instrument arises from a discrimination remedy which is retrospective:

- Retrospection – Some LGPS members affected by the remedy will have already retired from the scheme or otherwise taken their benefits. In the instrument, we include specific provisions which set out how the calculations should work retrospectively to ensure that the member is not detrimentally impacted by the fact that the calculations are taking place after their original benefit calculation.
- Interest – As retrospection is a core part of remedy, the PSP Directions (see paragraph 6.10) set out a cross-government approach to the interest terms that must apply where payments of different types are paid late. As required by the 2022 Act, our instrument implements the policy set out in the PSP Directions.
- Compensation – The 2022 Act sets out the circumstances where compensation relating to the discrimination or the remedy is permitted. The Act's provisions are built on in the PSP Directions, which contain more detail on the circumstances where compensation may be payable. As required by the 2022 Act, our instrument implements the policy set out in the PSP Directions.

What will it now do?

7.15 The instrument implements the McCloud remedy and incorporates the changes identified in paragraphs 7.13 and 7.14. It is broken down into the following parts.

7.16 **Part 1 (General Provision)** – Contains general provisions relating to the regulations, including the coming into force date of the instrument, 1st October 2023.

7.17 **Part 2 (Amendments relating to the statutory underpin)** – The part of the instrument which makes the principal changes, setting out the substantive changes we are making to how the underpin works. Amongst the changes being made, regulation 2 replaces the current regulation 4 of the 2014 Regulations, with effect from 1st October 2023, by 22 new regulations (regulations 4A to 4V).

7.18 In general, the provisions apply in relation to 'eligible members' over the 'underpin period' (regulation 4A). Eligible members are those LGPS members who are entitled to underpin protection, being those who have remediable service under the 2022 Act or have transferred remediable service into the 2014 Scheme from another public service pension scheme. The underpin period is the period statutory underpin protection applies for – the period when the 'best of both' of the 2008 and 2014 Schemes applies. It runs from 1st April 2014 and ends with the earlier of 31st March 2022, and the date when the eligible member attains their 2008 Scheme normal pension age (usually 65).

7.19 The underpin is assessed in two stages for each eligible member. The underpin date (regulation 4G) is the date that the 2008 and 2014 Scheme pensions are valued for the purposes of the underpin comparison. The calculations undertaken at the underpin date are the provisional assumed benefits (regulation 4I), which is the value of the eligible member's 2014 Scheme benefits, and the provisional underpin amount (regulation 4J), which is the value of the eligible member's 2008 Scheme benefits.

7.20 To ensure that the underpin works effectively for members of different types, the underpin comparison does not take place until a member's final underpin date (regulation 4H). This is the date a member retires or they otherwise take their benefits from the scheme. At the final underpin date, a member's provisional assumed benefits and provisional underpin amount are updated, respectively, to give the final assumed benefits (regulation 4K) and the final underpin amount (regulation 4L). The calculation of 'final' values at this point is necessary to ensure that the underpin comparison gives the correct outcome on which of the 2008 and 2014 Schemes' benefits are higher at the point final benefit calculations are taking place. Where the final underpin amount is higher than the final assumed benefits on the final underpin date that is referred to as a final guarantee amount.

7.21 What happens at the final underpin date varies according to the way the pension is taken, and is provided for in regulations 4B to 4F. Regulation 4B covers normal, redundancy and ill-health retirements. It provides that where there is a final guarantee amount at an eligible member's final underpin date, this should be added to the member's pension account. Regulation 4C covers flexible retirement. Regulation 4D covers trivial commutation and lump sum payments. Regulation 4E covers members who transferout to another scheme. Regulation 4F covers members who leave with only an entitlement to a refund from the scheme.

7.22 Part 2 also covers the following matters:

- Regulations 4M and 4N set out how the underpin should work where an eligible member received a temporary, ill-health pension (known as a 'tier 3' pension) which either ceases or is uplifted to a permanent 'Tier 2' pension.
- Regulations 4O and 4P set out how the underpin should apply to the calculations of survivor benefits and death grants following the death of an eligible member.
- Regulation 4Q covers situations where a member has multiple pension accounts, which arise from pension built up either concurrently or consecutively.
- Regulations 4S to 4V of the 2014 Regulations cover the circumstances where compensation may be payable, and set out the interest terms for indirect compensation.
- A number of consequential technical amendments to the 2013 Regulations that are necessary to ensure the underpin works effectively are made through regulation 3.

7.23 **Part 3 (Provision for certain classes of person, including retrospective provision)** – This part sets out how the provisions in Part 2 should apply to eligible members where events relating to their underpin protection will have already taken place before the instrument comes into force (i.e. in the period between 1 April 2014 and 30 September 2023). These provisions are intended to ensure that an eligible member should see no detriment from the fact that these calculations are retrospective, and that they get the full benefit of the remedy contained in Part 2. Regulation 14 outlines the interest terms that should be applied to different payments arising under Part 3, in line with the relevant provisions of the PSP Directions.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The amendments made by these Regulations are to address a specific matter where there is an urgent need for prompt regulation changes and it is not considered appropriate to consolidate the 2013 or 2014 Regulations at this time.

10. Consultation outcomes

10.1 The Department has undertaken two formal consultations on the McCloud remedy in respect of the LGPS in England and Wales:

- The first commenced on 16th July 2020 and closed on 8th October 2020[11].
- The second commenced on 30th May 2023 and closed on 30th June 2023[12].

10.2 In the 2020 consultation we set out our core proposals for addressing the discrimination, upon which the approach in the instrument is based. We sought views on extending the underpin to the younger members who were unlawfully discriminated against, as well as changes to improve how the underpin worked. We proposed that members who were active in the scheme on 31st March 2012 and who had accrued benefits under the 2014 Scheme without a disqualifying break in service (five or more years) would get underpin protection. We also sought views on an early draft of scheme regulations to implement the remedy.

10.3 96 responses were received, from a variety of stakeholders, including administrators, trade unions, employers and service providers. A significant majority agreed with our core proposals, on the basis it was necessary to remove the unlawful discrimination from the scheme and extension of the underpin seemed the fairest way of doing that. However, many responses, particularly those from administrators, expressed concerns with the administrative complexity that the remedy entailed and noted the impacts it would have on local administration for a number of years. Most respondents also supported the approaches we set out in relation to how the underpin would work in specific situations, however, there were some reservations over our proposed approaches regarding multiple employments, and flexible retirement.

10.4 In April 2023, after continued work on the detailed operation of the remedy in the intervening years, we published our response[13] to the 2020 consultation. This confirmed that the government would be rectifying the McCloud discrimination by extending the underpin to affected members. We noted the concerns about

[11] https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin. Hard copies of all of the consultations and responses referred to in this section are available on request to Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.
[12] https://www.gov.uk/government/consultations/mccloud-remedy-in-the-lgps-supplementary-issues-and-scheme-regulations
[13] https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin/outcome/amendments-to-the-local-government-pension-scheme-statutory-underpin-government-response

administrative complexity and set out that we were grateful for the work being undertaken, but that some of the complexity was unavoidable in order to ensure the discrimination could be fully rectified. We also confirmed we would be consulting again in order to consider some issues associated with the remedy – including on multiple employments and flexible retirement following concerns expressed during the consultation. Our government response sets out more fully the points raised and the government's responses.

10.5 In the 2023 consultation, we sought views on a number of isolated issues, as well as on an updated version of the draft regulations to implement the remedy. The issues where we sought views fell into two main areas – areas where we had reconsidered our plans since the original 2020 consultation (including how to deal with multiple employments and flexible retirement) and areas where the government had not consulted in 2020 due to policy not being sufficiently developed at the time (for example, compensation and interest terms).

10.6 27 responses were received, mostly from scheme administrators. This is significantly fewer than the 2020 consultation received, which we believe reflects the technical nature of the matters covered in the 2023 consultation.

10.7 Consultation responses were largely supportive of the specific proposals in the consultation. However, respondents again expressed their frustration with the complexity of the McCloud remedy, and there were a number of requests for statutory guidance to support administrators in delivering the remedy. We also received a number of helpful comments on the draft regulations, which have been considered in finalising the instrument. On all the substantive policy issues, we have decided to proceed on the basis of our 2023 consultation proposals and our government response[14] sets out more detailed responses to consultees' views. It confirms that we intend to set up and meet with a guidance working group to consider what central guidance, statutory or otherwise, may be helpful for the implementation of the remedy.

10.8 It should be noted that, in the course of our work on this project, the government has identified a small number of isolated areas where further regulation changes will be needed in relation to the McCloud remedy and we intend to consult with representative bodies on these changes before making further amendments.

11. Guidance

11.1 Some guidance has already been provided to administering authorities by the Scheme Advisory Board to help with their preparations for the remedy.

11.2 Over the course of this project, a number of possible topics for guidance have been identified and we intend to set up a guidance working group with stakeholders to consider what statutory guidance may be helpful in achieving a consistent approach to remedy across the LGPS. Where topics for statutory guidance are identified, we intend to undertake a technical consultation on draft guidance with selected stakeholders representing those affected.

[14] https://www.gov.uk/government/consultations/mccloud-remedy-in-the-lgps-supplementary-issues-and-scheme-regulations

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There will be a number of impacts on the public sector of the McCloud remedy, as set out more fully in the impact assessment[15] published alongside the 2022 Act.

12.3 In relation to the LGPS in England and Wales Analysis undertaken by the Government Actuary's Department for the Department suggests that around 1.2 million LGPS members will qualify for underpin protection after the changes made by the instrument come into effect. The majority of these will be members who have received underpin protection for the first time due to the McCloud remedy.

12.4 Retrospective benefit changes for such a large number of members will have significant administrative impacts for the 86 LGPS administering authorities. The government has encouraged administering authorities to have sufficient resourcing plans to enable administrators to be able to efficiently tackle the requirements of remedy, which will apply in addition to the business-as-usual activities of running the scheme.

12.5 The additional benefit costs arising due to the remedy have been estimated by the Government Actuary's Department as £1.8bn over the coming decades, although the actual costs that will arise are sensitive to the rates of increases of public sector pay and the Consumer Prices Index (CPI).

12.6 The LGPS is a locally administered, funded scheme with local funding valuations taking place every three years to determine employer contribution rates. Employer contribution rates are, in most cases, determined on an individual employer basis, and take into account a number of factors, some related to the individual employer (such as membership demographics) and some related to the fund more broadly (such as the performance of fund investments since the previous valuation). As a result of this backdrop, it is not possible to say how the changes would impact employer contribution rates at future valuations. However, any fund or employer wishing to understand the potential impacts in more detail should speak to their fund actuary.

12.7 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sectors is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 These Regulations do not include a statutory review clause. The Department will review the effectiveness of these regulations through its continuing engagement with the sector and its work with the LGPS scheme advisory board. The Scheme Advisory Board is a statutory board with a function, under regulation 110 of the 2013 Regulations, to provide advice to the Secretary of State on the desirability of making changes to the scheme.

[15] https://www.legislation.gov.uk/ukpga/2022/7/pdfs/ukpgaod_20220007_en.pdf. A hard copy is available on request to Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.

15. Contact

15.1 Con Hargrave at the Department of Levelling Up, Housing and Communities (con.hargrave@levellingup.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Suzanne Clarke, Deputy Director for Local Government Finance, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lee Rowley MP, Parliamentary Under Secretary of State (Local Government and Building Safety) at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.