POLICY NOTE

THE LOCAL GOVERNMENT PENSION SCHEME (REMEDIABLE SERVICE) (SCOTLAND) REGULATIONS 2023

SSI 2023/240

The above instrument was made in exercise of the powers conferred by sections 1(1) and (2)(c), 3 and 8(1)(a) and (2)(a), and paragraph 3(b) of schedule 2 and schedule 3 of, the Public Service Pensions Act 2013 and sections 78, 80(1), 81(1), 83(1), 84(1) and 129(1) of the Public Service Pensions and Judicial Offices Act 2022.

In accordance with section 21(1) of the Public Service Pensions Act 2013, the Scottish Ministers have consulted such persons or the representatives of such persons as appeared to the Scottish Ministers likely to be affected by these Regulations.

The instrument implements the final reforms to the Local Government Pension Scheme in Scotland in respect of the PSPJOA 2022.

These Regulations amend the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 and the principal Scottish Local Government Pension Scheme Regulations 2018 ("the LGPS regulations") This instrument provides the necessary regulations to remove the unlawful discrimination identified by the Court of Appeal, which was found to be inherent in the transitional protections provided to older members during the pension reforms required by the Public Service Pensions Act 2013 *the 2013 Act). This case is widely known as the 'McCloud judgment.'
After detailed consideration and consultation, the UK Government introduced a Bill into Parliament in the summer of 2021 and in March 2022, The Public Service Pensions and Judicial Offices Act (PSPJOA 2022) received Royal Assent. The Act provides the framework within which the McCloud judgment was to be addressed, by 1 October 2023.

Policy Objectives

Occupational pensions policy is reserved to the UK Government, with HM Treasury the department responsible for public service pension policy. The 2013 Act introduced reforms to public service pension schemes including those in devolved nations.

The aim of the reforms was to implement the recommendations of the Independent Public Service Pensions Commission: Final Report, to make public service pensions, which due to increased workforce longevity had increasingly been paid for by taxpayers, more affordable and sustainable.

New pension schemes were introduced in Scotland from 1 April 2015, characterised through a higher normal pension age (NPA) for all scheme members, the calculation of benefits on a career average revalued earnings (CARE) basis rather than a final salary basis, and the introduction of a cost control mechanism.

All Local Government Pension Scheme (Scotland) members were moved to the reformed CARE scheme on 1st April 2015. As part of the reforms, transitional protections were given to active members of the existing scheme on 31 March 2012 who were within 10 years of their normal retirement age at 1 April 2012. This protection provided that the pension payable in respect of their service from 1 April 2015 was underpinned against what they would have built up had they remained in the legacy final salary scheme. At a member's final salary normal pension age (usually 65) or at their date of leaving, if earlier, the administering authority would compare their career average pension against their final salary pension. If the equivalent final salary pension was deemed to be higher, the individual would receive the benefit of this underpin. and would be awarded an underpin amount to reflect that the higher pension.

Following the McCloud judgment, which identified that younger members had been subject to unlawful age discrimination in the scheme reforms, the UK Government introduced the PSPJOA 2022 requiring responsible authorities to bring forward legislation to remedy the discrimination. The extension of the underpin to all members active at 31 March 2012 was the Scottish Minister's preferred option for addressing the difference in treatment in the LGPS, and the Scottish Public Pension Agency (SPPA) consulted on this approach in 2020. Most respondents also agreed with this approach, considering that the proposals satisfactorily remove the unlawful in the transitional protection arrangements.

Specifically, in extending the underpin, the policy intention is to remove the condition that required a member to have been within ten years of their normal pension age on 1st April 2012 to be eligible for underpin protection.

To ensure the discrimination is removed in full, a number of supplementary changes are also being introduced, consistent with the requirement of the PSPJOA 2022. These changes will ensure the revised underpin works effectively and consistently for all members. These changes are technical in nature and explained in more detail in the explanatory note accompanying the instrument.

Consultation

To comply with the requirements of Section 21 of the 2013 Act, the SPPA conducted a 12 week technical consultation between 31 July 2020 and 23 October 2020.

The consultation received 25 responses and changes were made to the draft Regulations as a result of comments provided by Stakeholders. Given the read across all public service pension schemes and in particular the equivalent scheme for local government in England and Wales, proposals were adapted to ensure consistency and to reflect changes to other subordinate legislation required to deliver the requirements of the PSPJOA 2022. These changes were the subject of a further short technical consultation between 26 June 2023 and 31 July 2023. The consultation received one further response and changes have been made to address stakeholder comments. A summary of the consultation responses will be made available on the LGPS section of the Scottish Public Pensions Agency (SPPA): website in due course.

Impact Assessments

These Regulations have no new impact on business or the voluntary sector.

Financial Effects

These Regulations have had no new Business and Regulatory Impact Assessment (BRIA) conducted upon on them as the financial effects of these regulations remain unchanged. Scottish Ministers confirm that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. The Scottish Local Government Pension Scheme is a funded pension scheme, meaning contributions and assets are invested to meet future liabilities. The changes introduced by this instrument will be factored into the triennial scheme valuations undertaken by the 11 administering authorities that determine employer contribution rates.

Equality Impact Assessment

An Equality Impact Assessment[1] was conducted for these Regulations by the Government Actuary's Department on behalf of Scottish Ministers. The summary of the aims and desired outcome of the policy is to: a) equalise the underpin protection to all members of the Local Government Pension Scheme, and b) ensure there are no members negatively impacted by these regulatory changes.

The assessment found that the policy changes will not disproportionally benefit or harm the protected groups within the Scottish Local Government workforce and will equalise the terms on which all scheme members are offered underpin protection.

Scottish Public Pensions Agency
An Agency of the Scottish Government

August 2023

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[1] https://pensions.gov.scot/local-government/scheme-governance-and-legislation/consultations