

Local Government Pension Scheme 2020/05

Who should read:

- Secretary General, Convention of Scottish Local Authorities
- Chief Executive, Scottish Local Authorities
- Chief Executive, Water Authorities
- Principal Reporter, Scottish Children's Reporter
- Administration Chief Executive, Scottish Environment Protection
- Agency Director General, Strathclyde Passenger Transport
- Executive Clerk, Strathclyde Passenger Transport Authority
- Chief Executive/Director, VisitScotland
- Scheme members and representatives
- The Scottish Local Government Pension Scheme Advisory Board

Action:

This circular should be brought to the attention of Pension Managers, Superannuation Sections and LGPS Employer Payroll Departments.

You may also wish to draw it to the attention of the Directors of Finance and Administration

Subject:

Scottish Government Consultation – addressing discrimination in the local government pension scheme – update on employer cost cap

Date:

30 July 2020

The purpose of this circular is to inform scheme members and employers of the SPPA consultation on proposals to address the age discrimination in scheme reforms in 2015, and to provide an update on the cost control mechanism

Background

1. Occupational pension policy, including public service pensions, is reserved to UK Government, although Scottish Ministers have executively devolved competence to make regulations for five Scottish schemes. The Public Service Pensions Act 2013 introduced new career average schemes, and all active members moved into the new schemes. As a result of the negotiations for the new scheme and in agreement with trade unions, 'transitional provisions' were introduced for members who were within 10 years of normal retirement age in 2012. These members were protected by an 'underpin' calculation which compares benefits from the 2009 and 2015 schemes and provides the better of the two. This provision currently applies until 2022.

2. The transitional provisions of the Judges' and Firefighters' schemes were challenged through Employment Tribunal and in December 2018. The Court of Appeal found in a joint hearing on McCloud (judiciary) and Sargeant (firefighters) that the transitional protections included in the reforms in 2015 discriminated against younger members on grounds of age. The UK Government sought leave to appeal the decision, which was refused and in July 2019 the Chief Secretary to the Treasury issued a written ministerial statement accepting the decision and explained that the decision had implications for all public service pension schemes, including the local government schemes, although no claims have been lodged in respect to the transitional protection included in those schemes.

Consultation

3. On the 16 July, the UK Government began a 12 week public consultation on proposals to retrospectively address the discrimination found in the Local Government Pension Scheme. The SPPA on behalf of Scottish Ministers now propose a similar remedy designed to offer the same 'underpin' to all scheme members who joined the 2015 scheme to the end of a "remedy period". Stakeholders are being asked a number of questions, including whether respondents agree with our proposal to remove the discrimination by extending the statutory underpin to younger scheme members and whether the revised regulations should apply retrospectively to 1 April 2015.

Application – actuarial adjustments

4. Under the current regulations, when a protected member leaves the scheme, the underpin calculation as currently interpreted does not take into account the impact of early or late retirement factors. This may mean the calculation does not correctly identify the scheme from which the member would receive the higher benefits. This situation arises because of differences in normal pension ages in the 2009 and 2015 Schemes. We therefore propose that the revised underpin should be clarified to ensure that, when a member takes their benefits from the scheme, the underpin check is done *after* the application of any early/late retirement factors. This would be consistent with the original policy intention.

5. Given the intention to make these changes retrospective effect to 1 April 2015, some members will already be in receipt of pensions which will need to be re-calculated. In some cases members who should have benefitted from the underpin as originally intended may be detrimentally affected by being in receipt of lower benefits from the scheme, or in some cases there will be survivor benefits in payment in respect of those members. It is our view that administrators should review these cases as a priority and ensure that any retrospective increase in a member's pension arising from the underpin, is taken into account for relevant survivor benefits.

6. The SPPA will engage with stakeholders through the LGPS Scheme Advisory Board over the course of the consultation. In addition, administering authorities may wish to assess the immediate administrative implications of the contents of the consultation and to identify members who may currently be affected by the discrimination. Further information will be provided in due course.

Employer cost cap

7. In a separate written [ministerial statement](#), the Chief Secretary to the Treasury provided an update on the cost control mechanism in public service schemes which was paused whilst the financial implications of the Court of Appeal judgment were assessed. This is called the employer cost cap, which measures the costs of benefits accruing in a valuation period. Where costs are deemed to breach a 2% corridor either side of the target cost of the scheme, steps should be taken to address that breach. The cost cap element of scheme valuations will now resume. This has particular implications for the Scottish LGPS with funds currently undertaking triennial valuations, and SPPA will engage with funds to explore and support the management of arising issues.

Should you have any enquiries about this circular, or require further information, please contact Kimberly.linge@gov.scot or Roddy.MacLeod@gov.scot

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30 July 2020