
Regulation Update Scotland 2019

1. Draft Regulations - The Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2019

The technical consultation on the Draft Regulations closed on Monday 11 March 2019. These amendments extend the flexibility to take an 'Uncrystallised Funds Pension Lump Sum' (UFPLS) from a member's AVC provider to members of previous schemes.

These regulations also correct a number of referencing errors and ensure that the provisions in the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 continue to have effect in the 2018 scheme.

Consultation responses, including those from the LGA have been reviewed and resulting changes will be included in the discussion with the Scottish Government Legal Directorate (SGLD) before they are deemed ready for laying. It is expected that these regulations will come into force at the end of June 2019.

2. Regulations - The Local Government Pension Scheme (Scotland) Pensions Amendment (Increased Pension Entitlement) Regulations 2019

In 2008/2009 GMP-related overpayments across the public service schemes were identified and Scottish Ministers chose to allow the pension in payment to remain unadjusted for affected pensioners in the Police, Firefighter and Local Government Pension schemes.

These regulations provide for a new scheme award known as an Increased Pension Entitlement (IPE) which reflects the GMP-related overpayment. These regulations are currently with SGLD for review and will come into force later in 2019.

Government Actuary's Department (GAD)

3. 2017 Employer Cost Cap valuation and litigation update

3.1 The Public Service Pensions Act 2013 requires all public service pension schemes to undergo regular valuations, in addition to the regular fund valuations undertaken by LGPS fund actuaries. At the October meeting of the LGPSAB, GAD presented demographic assumption which have been agreed.

3.2 As members are aware, public service pension schemes were reformed in 2015, with the existing final salary schemes closing. The UK Government (and Scottish Ministers) chose to allow certain exceptions which were designed to protect those closest to retirement from the impact of those reforms. As you will be aware,

the Court of Appeal handed down judgment in the cases of McCloud and Sargeant on 20 December 2018: these age-related transitional arrangements were held to be discriminatory. It is anticipated that other public service pension schemes across the UK may be affected by this decision, including LGPS Scotland, notwithstanding that the nature of the comparable transitional arrangements implemented for local government pension schemes [statutory underpin] was slightly different from those adopted for the unfunded schemes.

3.3 The judgment therefore has implications for post-reform members' benefits, and the UK Government is seeking permission to appeal to the Supreme Court. Meantime, the substantial impact of the judgment is such that it is impossible to assess with certainty the value of current public service pension arrangements. On 30 January 2019 HM Treasury therefore announced in a Written Ministerial Statement that the UK Government intends to pause the 'cost cap' mechanism under the current round of scheme valuations, pending the final outcome of the appeal.

3.4 As noted in the Ministerial Statement, if the UK Government is successful in its appeal, the cost cap process will resume. If unsuccessful, steps will need to be taken to compensate members who have been unfairly disadvantaged in the post-reform schemes. Accordingly, the nature, and the timescale for implementation, of changes to the provisions of LGPS Scotland flowing from the actuarial valuation of the scheme for cost cap purposes being undertaken by the Government Actuary's Department (GAD) is not currently clear. We understand that changes which were scheduled to come into force this April in the England & Wales LGPS have been put on hold.

3.5 We are liaising closely with HM Treasury and MHCLG on this matter. Meanwhile, GAD is progressing its valuation calculations only to the extent necessary at this stage, pending greater clarity on the legal position and the UK Government's consequent policy intent.

4. Actuarial guidance

GAD has provided the revised non-club factors following the adjustment to the discount rate in Budget October 2018 and subsequent factor review. These were issued on Monday 18 March. GAD are still working on the last remaining factors which will be provided shortly, once the accompanying guidance has been finalised and reviewed.

5. LGPS SAB (Scotland) Structural Review

The consultation responses from Employers and Employees bodies are available to view on; <https://lgpsab.scot/consultation-responses/>

The Scottish Scheme Advisory Board have advised that the resulting report will be made available in April 2019.

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