Scottish Public Pensions Agency
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Local Government Pension Scheme Stakeholders

1 November 2021

Dear Colleagues

THE LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND)

1. The purpose of this consultation is to seek the views of stakeholders about draft changes to The Local Government Pension Scheme (Scotland).

2. The regulations amend The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 ("the 2014 regulations"), to clarify the intention in respect of the rules allowing deferred members of earlier schemes, who meet certain conditions, to elect for early payment of their benefits between age 55 and 60 without needing their former employer's consent. The regulations also allow pension credit members who were awarded the credit under the Earlier Schemes to be able to elect to receive their benefits early at a reduced rate on or after age 55 (rather than on or after age 60)

3. The regulations also clarify how to carry out the calculation of the protection known as 'the underpin'. This was put in place to ensure that members get a pension at least equal to that which they would have received in the scheme had it not changed on 1 April 2015. The current calculation of the 'underpin' does not first take the actuarial increase/reduction into consideration when considering the better of the two benefit options for the member on retirement.

4. The regulations also amend the calculation of survivor partner pensions so that surviving civil partners, survivors of married same-sex couples and male survivors of female married members are placed in a similar position to female survivors of male married members.

5. The regulations also amend The Local Government Pension Scheme (Scotland) Regulations 2018, to provide further flexibilities for fund authorities in dealing with employers and allow for amendments to an employer's contribution rate in between valuations. The changes mirror those provided by The Department for Levelling Up, Housing and Communities (DLUHC) (formerly The Ministry of Housing, Communities and Local Government) for England and Wales in 2020. They are provided as a result of the consultation earlier this year and recommendations from the Scottish Local Government Pension Scheme Advisory Board.

6. The cost cap figure is also amended from 15.5% to 15.2% in the Scottish LGPS regulations, after the Government Actuary's Department (GAD) identified an error in their original calculation. In order for GAD to finalise the result of the 2017 valuation, the cost cap figure is amended, with retrospective effect, to 1 April 2015.

Background – Early payment of pension at age 55

7. The Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 amended the 2014 Regulations providing that deferred members who left before 1 April 2015 can elect to receive payment of their benefits on or after age 55 without their former employer's consent. The amendments in 2019 took effect from 1 June 2018, however since making the regulations in 2019, we have been made aware that the amendments have not fully delivered the policy intent.

8. The draft amendment regulations therefore include amendments to the 2014 Regulations to make it clear that to elect to receive payment under the new route, the member must no longer be in the employment from which the benefits arose. If the member elects under the new route, the benefits become payable immediately and the requisite benefit rules under the Local Government Superannuation (Scotland) Regulations 1987 and under the Local Government Pension Scheme (Scotland) Regulations 1998 apply where the member left before 1 April 2009. The requisite benefit rules limit the amount by which the benefits can be reduced for early payment.

9. If the member is aged between 55 and 60, qualifies for 'rule of 85 protection', and meets the rule of 85 before their 60th birthday, for the purposes of calculating the reductions for early payment, the member will instead be treated as meeting the rule of 85 on their 60th birthday. Where the member elects under the new route, the former employer will not have any discretionary powers to reduce or eliminate the reduction for early payment. Scottish Ministers are of the view that where employers wish to reduce or eliminate reductions, the member's election can instead be made under the existing routes under the earlier regulations.

10. The provisions to elect to receive payment of their benefits on or after age 55 also apply to credit members, awarded the credit under the Local Government Pension Scheme (Scotland) Regulations 1998 or under the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008. The amendments will take effect from 1 June 2018.

Background – the Underpin

11. When the scheme changed on 1 April 2015, an additional protection was put in place for members within 10 years of their normal retirement age on 1 April 2012. This was to ensure that they would get a pension at least equal to that which they would have received in the scheme, had it not changed on 1 April 2015. This protection is known as 'the underpin'.

12. As a result of an appeal to Scottish Ministers, we are making changes to clarify the calculation of 'the underpin', which should take the actuarial increase/reduction into consideration, when comparing the two benefit options for the member on retirement.

13. Some members who have left the scheme are not receiving the correct level of pension benefits and it is expected that the amendments will enable administrators to recalculate affected pensions, after the regulatory powers are put in place.

Background – Survivor benefits - Walker & Goodwin Judgements

14. In SPPA Circular 2020/04, we brought the attention of fund authorities to two legal cases: Walker v Innospec and an employment tribunal case (Mrs Goodwin v Department for Education). In the circular, in response to the cases, we said that we planned to amend the regulations to provide equal survivor benefits for same-sex couples (whether married or in civil partnerships) to that provided for widows. We also said that we planned to amend the regulations to extend that entitlement to male survivors of female members. The draft amendment regulations amend the 2014 Regulations accordingly. The amendments will take effect for deaths that occurred on or after 5 December 2005 (in line with the introduction of civil partnerships).

15. The draft amendment regulations also amend the 2014 Regulations in respect of whether relevant additional membership (such as additional membership purchased by a member) is included in survivor benefit calculations.

16. Also, it is Scottish Ministers' intention that where a member died after 31 March 2015 leaving behind a cohabiting partner who qualifies for survivor benefits, the survivor benefits should be based on all their membership (not just membership after 5 April 1988) if the cohabiting partnership was entered into before the member left active membership of the scheme, putting such survivors in the same position as other types of survivor. We understand that 2014 Regulations do not deliver this intention. We are therefore also amending these regulations to deliver the policy intent. The amendment will have effect for deaths that occurred on or after 1 April 2015.

17. This change will apply for deaths in respect of female members which occurred from 5 December 2005, which is the date that same-sex civil partnerships were introduced. In common with other public sector schemes, the amendments are being backdated to the dates that civil partnerships and same-sex marriages were introduced, respectively 5 December 2005 and 16 December 2014.

Background – Further flexibilities for Fund Authorities

18. Many LGPS Funds have employers who will struggle to meet their obligations in the scheme. SPPA asked fund authorities if changes that the DLUHC made to the 2013 Scheme in The Local Government Pension Scheme (Amendment) (No 2) Regulations 2020 in England & Wales would be helpful in addressing cessation issues in Scotland. The provisions provide further clarity and scope to address cessation liabilities when managing employer exits.

19. Most respondents agreed that adopting these regulations would provide further discretion to determine the best outcomes for employers, whilst protecting the fund. These Regulations enable fund authorities and a scheme employer to agree to defer exit payments in a 'deferred debt' agreement. They provide the option for fund authorities to allow employers to spread exit payments over a period determined by the fund authority.

20. These regulations also allow a fund authority to obtain a revision of the rates and adjustments certificate and revise an employer's contribution rate in between valuations, where it appears that the amount of the employer liabilities has changed significantly or there has been a significant change in the ability of the scheme employer to meet their obligations since the last valuation, or where the employer has requested a review of their employer contributions and have undertaken to meet the costs of that review.

Background – Cost Cap

21. The LGPS Scotland actuarial valuation which was originally carried out for the purposes of setting the cost cap had an effective date of 31 March 2014; those valuation calculations were based on updated standard mortality tables ('the S2 tables'), which had been published shortly before the calculations were undertaken. Upon revisiting the cost cap calculation, GAD identified that these calculations had not incorporated mortality improvements in relation to the S2 tables in line with the assumptions set out in the 2014 valuation report. This had the effect of overstating the original cost cap by 0.3%, which should have been set at 15.2%. These amendments correct that error with effect from 1 April 2015.

22. When this amendment comes into force, the cost control element of the 2017 actuarial valuation will be completed, based on the cost cap of 15.2% and on the amending directions published by HM Treasury on 7 October 2021, which take into account the McCloud remedy.

Consultation

23. You can respond to this consultation by completing the Consultation Response Form attached at Annex A which can be submitted electronically to SPPAPolicy@gov.scot or by post to the following address:

Local Government Pensions Consultation
SPPA Policy
7 Tweedside Park
Tweedbank
Galashiels
TD1 3TE

The consultation will close on 7 January 2022 and we ask that anyone wishing to respond does so by then.

Completed information

24. The completed Respondent Information Form and any comments you wish to make should be returned, by 7 January 2022, to Kimberly Linge, Policy Manager, Scottish Public Pension Agency, 7 Tweedside Park, Tweedbank, Galashiels TD1 3TE, email: Kimberly.linge@gov.scot

25. Copies of the proposals and Respondent Information form can be accessed on the Local Government Scheme Governance and Legislation area of the SPPA website. Your responses and completed Respondent Information form can be sent electronically to SPPAPolicy@gov.scot. If you would prefer to have a set of these consultation documents and draft regulations sent to you in hard copy, please contact SPPAPolicy@gov.scot to request a set.

Yours faithfully

Kimberly Linge
Policy Manager, LGPS