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Consultation: Draft Local Government Pension Scheme (Remediable Service) (Amendment) (Scotland) Regulations 2024

Thank you for seeking views on the consultation on the draft Local Government Pension Scheme (Remediable Service) (Amendment) (Scotland) Regulations 2024 ('the Amendment Regulations').

I respond on behalf of the Local Government Association (LGA) and the Local Government Pension Committee (LGPC) in respect of the Local Government Pension Scheme (LGPS).

The LGA is a politically led, cross-party membership organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. 315 councils in England including district, county, metropolitan, unitary, London boroughs and the City of London are members of the LGA. There are 22 Welsh unitary authorities in membership via the Welsh Local Government Association (WLGA). The LGPC is a committee of councillors constituted by the LGA, the WLGA and the Convention of Scottish Local Authorities (COSLA). The LGPC considers policy and technical matters affecting the Local Government Pension Scheme (LGPS).

I hope the content is helpful. Please do not hesitate to contact me if you have any questions about this response.

Yours faithfully

Lorraine Bennett

Lorraine Bennett
Principal Pensions Adviser

Comments on draft regulations

Amendment Regulation 1(2)

“These Regulations have effect from [] other than for the purpose of this regulation and regulation 6 which have effect from 1 October 2023.”

Amendment regulations 3 to 5 amend the underpin rules in the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014. Amendment regulations 8 to 13 also amend the rules on revisiting past cases for McCloud in Part 3 of the LGPS (Remediable Service) (Scotland) Regulations 2023. Though not entirely clear from Amendment Regulation 1(2), these amendments should also have effect from 1 October 2023 (in line with when the original rules took effect).

Amendment Regulation 3

The regulation substitutes regulation 4C(11) in the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

“(11) Where the eligible member's final assumed benefits, calculated in accordance with paragraph (10), are exceeded by their final underpin amount—

- (a) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(a) to (e), the pension account is to be increased on the day after that date by an amount equal to the difference,
- (b) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(f), regulation 4D(2) applies,
- (c) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(g) or (h), regulation 4E(2) applies,
- (d) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(i), regulation 4F(2) applies.”

- Add “to which that date relates” immediately after “pension account” in paragraph 11(a). This will clarify which pension account the increase will be added to.
- As the member has a pension in payment for the original flexible retirement, we do not believe that the member can qualify for a refund or an individual transfer out on the next occurring final underpin date. Therefore, delete references to regulation 4H(1)(g) in paragraph (11)(c) and delete paragraph (11)(d).
- Paragraph 11(a) does not correctly cover cases where the member takes partial flexible retirement on the next occurring final underpin date. We assume that it is not intended for the whole difference to be added to the pension account.

Amendment Regulation 6

We understand that the intention is to replicate the equivalent provisions in LGPS (England and Wales) set out in regulation 2 of [the LGPS \(Information\) Regulations 2024](#).

Regulation 2 of those regulations removes the requirement for administering authorities in England and Wales to include estimated underpin information in the 2023/24 annual benefit statements. It also gives such administering authorities discretionary power to exclude underpin information for certain members or classes of member for the 2024/25 statements.

Amendment Regulation 6 appears to be based on an early version of regulation 2. The final version of regulation 2 is significantly different. The main differences are that the final version:

- gives administering authorities discretion to include estimated underpin information in statements for 2023/24 for certain members or classes of member
- gives authorities discretion to exclude estimated underpin information in the statements for 2024/25 for certain members or classes of member
- removes the requirement to have recalculated pension credits for McCloud before sending the statements to such members for 2023/24 and 2024/25
- makes further minor technical amendments.

We recommend that Amendment Regulation 6 is instead based on the final version of regulation 2 of [the LGPS \(Information\) Regulations 2024](#).

Assuming regulation 6 is amended to give discretion to exclude estimated underpin information in statements for 2024/25, we think it would be helpful for the Scottish Government to provide guidance on when it may, or may not be, appropriate to use the discretion. As examples (not exhaustive), we think it would be appropriate to use it for members:

- who have transferred/aggregated service from a different public service pension scheme/LGPS authority and further information about that service is needed to perform the underpin calculation
- who have a pension sharing debit that needs to be recalculated – the Scottish Government has not yet confirmed the policy in this area

- whose eligibility checks are not complete.

If such guidance is provided, it would need to be provided urgently to give authorities sufficient time to consider it before the deadline for 2024/25 statements (31 August 2025).

Amendment Regulation 10

The regulation amends regulation 7(1)(b) of the LGPS (Remediable Service) (Scotland) Regulations 2023:

“This regulation applies to a person in category A, B or C –

- (a) who died before 1 October 2023; and
- (b) in respect of whom a death grant was calculated under regulation 44 of the 2018 Regulations before that date and paid, whether or not under that regulation.

Where the pensioner member died before 1 October 2023, but the administering authority calculated the death grant on or after then, we assume the intention is for regulation 7 to capture these. Otherwise, it is unclear what provision could be relied on to apply the new underpin rules to the death grant calculation. If we have understood the intention correctly, “before that date” in regulation 7(1)(b) should be revoked. This would then align the position with deferred members who died before 1 October 2023 where the death grant calculation was done on or after then (see regulation 6(1)(b) of the LGPS (Remediable Service) (Scotland) Regulations 2023).

Other comments

Club transfer interest issue

Paragraph 65 of the McCloud implementation statutory guidance says:

The Scottish Public Pensions Agency is aware that there is an error in regulation 14 of the 2023 Regulations regarding the interest due for retrospective adjustments to Club transfers. The regulation requires interest to be paid on all top-up transfer payments (other than bulk transfers). For top-up Club transfer payments to chapter 1, judicial and other LGPS schemes, this conflicts with paragraph 4.41 of the Club Memorandum, which says not to pay interest. Scottish Ministers will amend the LGPS regulations to align with the Club memorandum.

As you are amending regulation 14, you should take the opportunity to also correct this error. Any correction should take effect from 1 October 2023.