Pensions.policy@hmrc.gov.uk

15 March 2022

Dear Sir or Madam

Response to consultation: The Registered Pension Schemes (Miscellaneous Amendments) Regulations 2022

I write in response to your consultation on the draft Registered Pension Schemes (Miscellaneous Amendments) Regulations 2022.

I respond on behalf of the Local Government Association (LGA) and the Local Government Pensions 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. 328 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 LGPS in England & Wales, a scheme which has approximately 6.2 million members. Of those 6.2 million members, approximately 4.4 million are active and deferred members.

LGA's view on this technical consultation is set out on the following pages.

I hope the content is helpful; if you have any questions, please do not hesitate to contact me.

Yours faithfully

Lorraine Bennett

Lorraine Bennett
LGPC | Committee Secretary

Technical response

Policy aim

We understand that one of the policy aims for this change is to deal with the tax anomalies that were identified as part of finalising the remedy for the age discrimination found in public service pension reforms. This is clearly stated in your Policy paper on scheme pays reporting, published last October.

However, because the starting point in applying these regulations appears to be an employer becoming aware that information they previously provided for annual allowance purposes is insufficient, we cannot see how it will apply to McCloud remedy recalculations.

The starting point for the McCloud remedy regulations will be a change in the Scheme regulations, not a change in the information provided by the employer. We expect the LGPS McCloud remedy regulations to take effect from 1 October 2023 and be backdated to 1 April 2014 in England and Wales and 1 April 2015 in Scotland. LGPS administering authorities have been requesting and collecting data from employers in preparation for the McCloud remedy for several years. Implementing the McCloud remedy is not dependent on amended information from employers. It is dependent on scheme regulations being enacted to provide for it.

The Department for Levelling Up, Housing and Communities (DLUHC) has not yet responded to its consultation on the McCloud remedy for the LGPS. However, the consultation document proposes that the underpin will only be given consideration for annual allowance at the 'underpin crystallisation date'. Working on this basis, LGPS administering authorities will need to revisit annual allowance calculations as part of the McCloud remedy calculations when the person becomes entitled to the underpin amount.

As these regulations appear to have moved away from dealing with the McCloud tax anomalies, do you intend to issue separate rules that specifically cover McCloud annual allowance recalculations?

Look back period

We are not clear how sections 34 and 36 of the Taxes Management Act (TMA) 1970 interact with the extension to the mandatory scheme pays deadlines.

Section 34 of the TMA 1970 places a restriction on HMRC to reclaim unpaid taxes beyond four years after the end of the year the assessment is made. This can be extended to six years under section 36 if the loss of income tax is brought about carelessly by the person.

New section 237BA introduces an extension to the mandatory scheme pays time limit for election where the employer has informed the scheme administrators of a change due to insufficient information provided previously. The time limit for member election for mandatory scheme pays is extended to the end of the period of six years beginning with the tax year in question.

The consultation does not reference any corresponding changes to the TMA 1970 to support this extension. Therefore, if we recalculate an individual's benefits going back six years and find that there is now an annual allowance charge due for each of those past six years, is the individual actually liable to pay any outstanding tax for years five and six?

Mandatory scheme pays conditions

Section 273B(6) of the Finance Act 2004 provides that an individual cannot give a mandatory scheme pays election where they are entitled to all their benefits under the pension scheme. Should this also be amended to make this change meaningful?

It is very common for a member to take all their benefits under the pension scheme at the same time. However, these members would be prevented from making or amending a mandatory scheme pays election where an employer initially provided insufficient information.

Interaction with the Finance Act 2022

It is our understanding that the changes introduced by section nine of the Finance Act 2022 complement the draft regulations and that section 237BA of the Finance Act 2004 extends the mandatory scheme pays deadline, subject to the conditions in section 237BA(3).

Are we right to assume that section 237BA(3)(b) is referring to these regulations when it refers to the scheme being 'required to give the individual the information by regulations under section 251'?