

**EXPLANATORY MEMORANDUM TO**  
**THE LOCAL GOVERNMENT PENSION SCHEME (INFORMATION)**  
**REGULATIONS 2024**

**2024 No. 880**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry for Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Declaration**

- 2.1 Jim McMahon OBE MP, Minister of State at the Ministry for Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Michelle Warbis, Deputy Director for Local Tax and Pensions at the Ministry for Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Will King at the Ministry for Housing, Communities and Local Government email: [william.king@communities.gov.uk](mailto:william.king@communities.gov.uk) can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 This instrument removes the requirement for Local Government Pension Scheme (“LGPS”) administering authorities to include estimated calculations relating to the McCloud remedy (see paragraph 5.1) in members’ annual benefit statements (“ABSs”) for the 2023/24 scheme year (though it still allows administering authorities to do so if they wish). It also gives administering authorities the ability to determine that the McCloud remedy should not be reflected in ABSs for the 2024/25 scheme year.

*Where does the legislation extend to, and apply?*

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

## **5. Policy Context**

### *What is being done and why?*

- 5.1 Since 2019, the government has been working to address the findings of the Court of Appeal in *McCloud v Lord Chancellor* [2018] EWCA Civ 2844, which found that transitional protections given to older members of public service pension schemes when the schemes were reformed in 2014 and 2015 had unlawfully discriminated against younger members on the grounds of age (“the McCloud remedy”). In September 2023, the department made the Local Government Pension Scheme (Amendment) (No. 3) Regulations 2023 (“the 2023 Regulations”) to implement the McCloud remedy and address the discrimination in the LGPS for England and Wales.
- 5.2 The McCloud remedy retrospectively changed the affected members’ pension rights when it was introduced on 1<sup>st</sup> October 2023. Given the number of people involved estimated at 1.2m, and the complexity of changes that were made, it will take a number of years for this to be fully reflected on members’ pension records.
- 5.3 Every year, LGPS administering authorities are required to provide members with an ABS that sets out a summary of the benefits they have built up in the scheme. This would include any benefits payable to members as a result of the McCloud remedy. As it will not be possible for most administrators to reflect the McCloud remedy in the ABSs for 2023 to 2024, this legislation removes the requirement for them to do so in order to provide time for administrators to make the necessary calculations and update members’ pension records accordingly. However, it does permit administrators to include this information where they are able to do so.

### *What was the previous policy, how is this different?*

- 5.4 As noted above, the legislation previously would have required administering authorities to include the McCloud remedy calculations in members’ ABSs. This legislation removes the requirement for McCloud calculations to be included for 2023 to 2024 ABSs.

## **6. Legislative and Legal Context**

### *How has the law changed?*

- 6.1 The Public Service Pensions Act 2013 (“the 2013 Act”) enables the Secretary of State to make regulations creating pension schemes for, amongst others, local government workers.
- 6.2 In England and Wales, such a scheme is created by the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”). The 2013 Regulations were made exercising powers in the Superannuation Act 1972, but section 28 of the 2013 Act provides for them to have effect as if they were scheme regulations made under section 1 of the 2013 Act. The scheme created by the 2013 Regulations was effective from 1st April 2014 (known as the “2014 Scheme”).
- 6.3 The 2014 Scheme is a funded scheme administered by 86 administering authorities specified in Part 1 of Schedule 3 to those regulations.
- 6.4 The LGPS has been the occupational pension scheme for local government workers for decades, with various sets of regulations providing for the rules of the scheme over the years. Prior to 1st April 2014, a scheme known as the 2008 Scheme was in force, having had effect since 1st April 2008.

- 6.5 Ahead of the 2014 Scheme reforms, the government made the Local Government Pension Scheme (Transitional Provisions, Savings and Amendments) Regulations 2014 (“the 2014 Regulations”). The 2014 Regulations contain transitional provisions in relation to members who were LGPS members before the 2014 Scheme became effective on 1st April 2014. Principally, they set out how any pension built up under the LGPS prior to reform should be treated after 1st April 2014. They also contained the rules regarding statutory underpin protection, under which certain members would be entitled to the better of their 2008 Scheme and 2014 Scheme benefits for certain periods of membership (which was the provision originally found to be discriminatory in the McCloud judgment).
- 6.6 Following the McCloud judgment and the government’s acceptance that the discrimination found by the Court of Appeal applied to all public service pension schemes, the government passed the Public Service Pensions and Judicial Offices Act 2022 (“the 2022 Act”) to obtain legislative powers to retrospectively address the discrimination. In particular, Chapter 3 of Part 1 of the 2022 Act provided that scheme regulations may be made to allow ‘remediable service’ to be payable on a final salary basis. As the 2013 Act already gave the government the power to pay benefits on a career average basis, the new power under the 2022 Act gave the government the ability to extend the statutory underpin to the LGPS members affected by the discrimination in the McCloud case (as the statutory underpin gives members ‘the best of both’ types of schemes).
- 6.7 In 2023 the government used these powers to make the 2023 Regulations, which amended the 2013 and 2014 Regulations to extend the statutory underpin to those members who had also been in post on or before the relevant date but who had not previously been eligible for it because of their age. These amendments came into force on 1<sup>st</sup> October 2023, but the 2023 Regulations provided for them to have retrospective effect to 1<sup>st</sup> April 2014 in appropriate cases.
- 6.8 The 2022 Act also contained power for scheme regulations to modify (including to disapply) Chapter 3 of Part 1 in its application to persons of a specified description. These Regulations are made using that power and disapply both Chapter 3 of Part 1 of the 2022 Act and the 2023 Regulations (including the changes made by the 2023 Regulations to the 2013 and 2014 Regulations) for the purposes of the requirement to prepare ABSs under regulation 89 of the 2013 Regulations for the scheme year 2023-24. The effect of this is that administering authorities would not need to include calculations or estimates relating to the McCloud remedy in ABSs for 2023-24.
- 6.9 This disapplication will have effect retrospectively to 1<sup>st</sup> October 2023 (i.e. to the point at which the 2023 Regulations first came into force) in order to ensure that authorities will not at any point have been required to include the McCloud remedy calculations in those statements, because the legislation requires that they must be issued by 31<sup>st</sup> August 2024 and therefore some authorities may already have issued them before these Regulations have been made. Where an administering authority has already issued ABSs for 2023-24 and has been able to include McCloud remedy calculations in them, these Regulations allow the authority to determine that the disapplication does not apply (in order to ensure that those authorities will still be compliant with the legislation). Where an administering authority does not think that it will be in a position to include McCloud remedy calculations in the ABSs for 2024-25 (which must be issued by 31<sup>st</sup> August 2025), then these Regulations also allow them to extend the disapplication for a further year if the authority considers that it is reasonable to do so in all the circumstances of that case.

### *Why was this approach taken to change the law?*

- 6.10 This approach was taken in light of the relevant deadlines for issuing the ABSs for 2023-24 and the practical difficulties that authorities would have faced in including information about the McCloud remedy calculations in those ABSs. It ensures that no administering authorities are penalised for the approach taken in 2023-24, and that those administering authorities who require more time to fully implement the McCloud remedy can continue to rely on the disapplication in 2024-25 if this is necessary.

## **7. Consultation**

### *Summary of consultation outcome and methodology*

- 7.1 The 2020 consultation on the McCloud discrimination in the LGPS considered how the underpin protections should be reflected in ABSs<sup>1</sup>. The Government response to the consultation noted that there would be significant steps needed to accurately update members records, including the collection, and testing of data from employers, the system updates, and amendments to individual records in order to reflect a member's underpin rights<sup>2</sup>. To ensure that changes to the ABS did not detract from work on other aspects of the McCloud remedy where the value of past and immediate payments to members may be affected, the response indicated that the inclusion of an underpin estimate within a member's total pension on their ABS would not be required until the ABSs for the 2024/2025 scheme year were issued.
- 7.2 A limited technical consultation seeking views from members of the Local Government Pension Scheme Advisory Board, the scheme board secretariat and the local government pensions committee secretariat was launched in June 2024. The consultation tested the draft regulations to implement these proposals. A limited consultation was conducted due to the specific and limited interest of the policy to Local Government Pension Scheme stakeholders, the deadline by which the proposals would need to be implemented, and the fact that the consultation took place during the pre-election period.
- 7.3 As this was a technical consultation we did not seek (or receive) views from consultees on whether they supported or opposed these changes (though overall the responses did not indicate a negative response to the proposals). Instead, responses focussed on the practicalities of the changes and the draft regulations that were attached. Minor amendments were made to the draft regulations as a result of the consultation responses. The government has responded to those consulted but given the nature of the consultation does not plan to publish a separate response.

## **8. Applicable Guidance**

- 8.1 Flexible retirement calculations guidance will be issued alongside the regulations for flexible retirement. The guidance will replace the previous guidance dated 28 April 2016, and has been updated to include additional calculations where an underpin is applicable to a member. The guidance will be available following the laying of the regulations via the LGA. The government has not issued any guidance alongside the

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<sup>1</sup> [https://assets.publishing.service.gov.uk/media/5f1027e93a6f400386826402/Condoc\\_-\\_amendments\\_to\\_LGPS\\_underpin\\_-\\_FOR\\_PUBLICATION.pdf](https://assets.publishing.service.gov.uk/media/5f1027e93a6f400386826402/Condoc_-_amendments_to_LGPS_underpin_-_FOR_PUBLICATION.pdf) Page 28, paragraph 66.

<sup>2</sup> <https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin/outcome/amendments-to-the-local-government-pension-scheme-statutory-underpin-government-response#chapter-4--implementation-and-impacts> Paragraph 114

regulations but will consider if specific guidance on ABSs and/or on the power to extend the disapplication's to 2024/2025 is needed.

## **Part Two: Impact and the Better Regulation Framework**

### **9. Impact Assessment**

9.1 A full Impact Assessment has not been prepared for this instrument as no significant impact on the private or voluntary sectors is foreseen.

#### *Impact on businesses, charities, and voluntary bodies*

9.2 There is no, or no significant, impact on business, charities, or voluntary bodies because the legislation does not incur any cost.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is specifically on Local Government Pension Scheme administering authorities, and their requirements to produce ABSs. Since this is a removal of a requirement, there is no additional cost foreseen.

### **10. Monitoring and review**

#### *What is the approach to monitoring and reviewing this legislation?*

10.1 The approach to monitoring this legislation is that the Department will review the effectiveness of these regulations through its continuing engagement with the sector and its work with the Local Government Pension Scheme advisory board. The Scheme Advisory Board is a statutory board with a function, under regulation 110 of the 2013 Regulations, to provide advice to the Secretary of State on the desirability of making changes to the scheme.

10.2 The instrument does not include a statutory review clause as section 28(1) of the Small Business, Enterprise and Employment Act 2015 does not apply.

## **Part Three: Statements and Matters of Particular Interest to Parliament**

### **11. Matters of special interest to Parliament**

11.1 As explained in paragraph 6.9, whilst these Regulations come into force on 23 September 2024, they have retrospective effect to 1<sup>st</sup> October 2023 in order to ensure that they are effective in respect of all ABSs issued for the scheme year 2023-24 (as these must be issued by 31<sup>st</sup> August 2024). The government has given administering authorities notice of its intention to disapply the requirement to include the McCloud remedy calculations in those ABSs through the 2020 consultation and limited technical consultation (see paragraphs 7.1 to 7.3). If any administering authorities had included McCloud remedy calculations in some ABSs they have the power to determine that these Regulations do not apply in those cases, so no administering authorities will be disadvantaged by that retrospection. Section 3(3)(b) of the 2013 Act provides the power for these Regulations to contain retrospective provision, and section 23(6) of that Act provides that as these Regulations are made under Part 1 of the 2022 Act the enhanced consultation procedures do not apply.

### **12. European Convention on Human Rights**

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

### **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).