

Local Government, Housing and Planning Committee

16th Meeting, 2021 (Session 6)

Tuesday 24 May 2022

SSI cover note for: SSI 2022/153: The Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2022

SSI 2022/153

Title of Instrument: SSI 2022/153: The Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2022

Type of Instrument: Negative

Laid Date: 3 May 2022

Circulated to Members: 5 May 2022

Meeting Date: 24 May 2022

Minister to attend meeting: Yes

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 6 June 2022

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.
2. An electronic copy of the instrument is available at: <https://www.legislation.gov.uk/ssi/2022/153/contents/made>
3. Copies of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

Purpose

4. These Regulations amend the principal Scottish Local Government Pension Scheme Regulations ("the LGPS regulations") in order to provide deferred members, who left scheme employment before 1 April 2015, with the right to receive early payment of their pension (reduced by relevant GAD factors) on or after age 55, without needing their previous employer's consent. This also extends to 'credit members', as a result of a 'pension-sharing' agreement, as a result of divorce proceedings.
5. The Regulations also—
 - update the current survivor benefits in the LGPS regulations, to address the differences in surviving partner pensions between civil partners, survivors of married same sex couples and male survivors of female married members, in response to recent Supreme Court rulings;
 - amend the 'cost cap' figure specified in the LGPS regulations from 15.5% to 15.2% (with retrospective effect from 1 April 2015), after the Government Actuary's Department (GAD) identified an error in their original calculation;
 - provide additional resources to Fund Authorities when dealing with employer exits from the LGPS.
6. The Policy Note further explains that—

"Charities with members in the LGPS, are closing due to restrictions in the Local Government Pension Scheme Regulations. This issue has been a problem for some time. As a result of Ministerial intervention, a working group of the Scheme Advisory Board has recommended these changes, which will enable charities, and other employers, to pay off their debts over a longer period of time and therefore continue to support the people of Scotland, during and beyond the pandemic."

Delegated Powers and Law Reform Committee consideration

7. At its meeting on 17 May 2022, the Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure for Negative Instruments

8. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.
9. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Committee Clerks,
Local Government, Housing and Planning Committee**

Annexe A

Scottish Government Explanatory Note

These Regulations amend the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 (“the 2014 Regulations”), the Local Government Pension Scheme (Scotland) Regulations 2018 (“the 2018 Regulations”) and the Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019 (“the 2019 Regulations”).

Regulation 3 makes various amendments to the 2014 Regulations in relation to provision for early retirement.

Regulation 4 amends the 2014 Regulations in relation to the calculation of survivor pensions payable under the earlier regulations. Principally, for deaths on or after 5 December 2005, the amendments place surviving civil partners, survivors of married

same-sex couples and male survivors of female married members in a similar position to female survivors of male married members.

Regulation 5 amends the 85 year rule in the 2014 Regulations to incorporate elections made under regulation 3(13) and elections made under the regulations for the Earlier Schemes.

Regulations 6 to 13 amend the 2018 Regulations, principally to provide additional resources to Fund Authorities when dealing with employers exits from the Local Government Pension Scheme.

Regulations 14 and 15 amend the 2019 Regulations to correct a minor drafting error.

As per purpose above and including:

Scottish Government Policy Note

The above instrument was made in exercise of the powers conferred by sections 1 and 12 of the Public Services Pensions Act 2013 (“the 2013 Act”). The instrument is subject to negative procedure.

Purpose of the instrument: These Regulations amend the principal Scottish Local Government Pension Scheme Regulations (“the LGPS regulations”) in order to provide deferred members, who left scheme employment before 1 April 2015, with the right to receive early payment of their pension (reduced by relevant GAD factors) on or after age 55, without needing their previous employer’s consent. This also extends to ‘credit members’, as a result of a ‘pension-sharing’ agreement, as a result of divorce proceedings. They also update the current survivor benefits in the LGPS regulations, to address the differences in surviving partner pensions between civil partners, survivors of married same sex couples and male survivors of female married members, in response to recent Supreme Court rulings. Additionally, they amend the ‘cost cap’ figure specified in the LGPS regulations from 15.5% to 15.2%, 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 from 1 April 2015. These provisions will also provide additional resources to Fund Authorities when dealing with employer exits from the LGPS. Charities with members in the LGPS, are closing due to restrictions in the Local Government Pension Scheme Regulations. This issue has been a problem for some time. As a result of Ministerial intervention, a working group of the Scheme Advisory Board has recommended these changes, which will enable charities, and other employers, to pay off their debts over a longer period of time and therefore continue to support the people of Scotland, during and beyond the pandemic.

Policy Objectives

These Regulations deliver improvements to the management of the scheme, taking into account the application of the principal 2018 Regulations where areas for clarification have been sought or a change in approach has been requested.

Consultation

To comply with the requirements of Section 21 of the 2013 Act, the Scottish Public Pensions Agency conducted a 12 week technical consultation between 1st November 2021 and 21 January 2022. The consultation received 14 responses and changes were made to the draft Regulations as a result of comments provided by Stakeholders.

Impact Assessments

These Regulations have no new impact on business or the voluntary sector. They provide additional resources to Fund Authorities when dealing with employers leaving the fund. It is intended that employers will be supported to meet their debts to the scheme, to further safeguard the benefits for members of the LGPS.

Financial Effects

These Regulations have had no new Business and Regulatory Impact Assessment (BRIA) carried out upon on them as the financial aspects of these regulations remain unchanged. Scottish Ministers confirm that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Equality Impact Assessment

An Equality Impact Assessment was carried out for the principal Scottish Local Government Pension Scheme Regulations (“the LGPS regulations”) 2014 and these Amendments ensure that widowers are treated the same as same sex marriage and co-habiting partners for survivor benefits.