Local Government, Housing and Planning Committee

9th Meeting, 2024 (Session 6)

Tuesday 12 March 2024

SSI cover note for: Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024

Title of Instrument: Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024

Type of Instrument: Negative

Laid Date: 8 February 2024

Circulated to Members: 15 February 2024

Meeting Date: 12 March 2024

Minister to attend meeting: No

Motion for annulment lodged: No

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

Reporting deadline: 25 March 2024

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/2024/37/contents/made

3. Copies of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A.**

Purpose

4. The purpose of the Regulations is to amend the principal Scottish Local Government Pension Scheme Regulations 2018 ("the LGPS regulations"), in order to change the annual revaluation for 2015 CARE pension increases from 1 April to 6 April each year.

5. The Policy Note explains that "changing the date on which Career Average pensions are revalued from 1 April to 6 April is designed to bring the revaluation of the CARE benefits into line with the Pension Input Period (PIP) used for Annual Allowance tax calculations."

6. The Policy Note further explains that "this is to mitigate against the impact of high inflation on LGPS revaluation and consequent tax liabilities arising as a result."

Delegated Powers and Law Reform Committee consideration

7. At its meeting on 27 February 2024.[1] the DPLR Committee considered the instrument and agreed not to draw it to the attention of the relevant lead committee.

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 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.

Clerks,
Local Government, Housing and Planning Committee

Annexe A

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[1] https://digitalpublications.parliament.scot/Committees/Report/DPLR/2024/2/27/2989c05a-04dd-4a03-abcb-bb24d72b5238#Annex-A

Scottish Government Explanatory Note

The Local Government Pension Scheme (Scotland) Regulations 2014 ("the 2014 Regulations") established the Local Government Pension Scheme (Scotland) ("the Scheme") as a career average revalued earnings scheme in accordance with section 8(2)(a) of the Public Service Pensions Act 2013 ("the Act"). The Local Government Pension Scheme (Scotland) Regulations 2018 ("the 2018 Regulations") consolidated with certain amendments the 2014 Regulations.

According to section 8(4) of the Act, a person's pensionable earnings under a career average revalued earnings scheme must be revalued each year until the person leaves pensionable service, based upon the revaluation adjustment for the relevant period specified in a Treasury order made under section 9(2) of the Act.

These Regulations amend the provisions of the 2018 Regulations in relation to the process of making revaluation adjustments which currently require the revaluation adjustment to be made at the beginning of the Scheme year, meaning that on 1 April each year, members' pensions are revalued to take account of the impact of inflation over the previous scheme year (1 April to 31 March). Currently, tax liabilities may arise because the timing of the Scheme revaluation process on 1 April is not aligned with HMRC's process for assessing the annual allowance tax charge under the Finance Act 2004.

The overall effect of the changes made by these Regulations to the 2018 Regulations is that the revaluation adjustment is made on 6 April each year, so that the Scheme revaluation is brought into alignment with the HMRC process for assessing the annual allowance tax charge. These Regulations will have no effect on the amount of Scheme benefits to which members are entitled.

Regulation 3 of these Regulations amends regulations 23 to 27 of the 2018 Regulations in relation to active members, and members who change status within a Scheme year, (by becoming deferred members of the Scheme, or by taking full or flexible retirement).

The amendments specify that the revaluation adjustment made to the member's pension account must take place on the 'revaluation date'. This change means that the inflation figure used for the revaluation adjustment in the tax year commencing 6 April is the same as the inflation figure used for any tax calculation specified by HMRC for annual allowance purposes, under the Finance Act 2004.

Regulation 3 of these Regulations also makes consequential changes to the 2018 Regulations, to ensure that the correct figures are used in the calculation of the opening balance for each Scheme year, and to ensure that (depending upon the date within a Scheme year that the member changes status), the opening balance for their deferred, retired or flexible retirement pension account correctly reflects the relevant revaluation adjustment.

Finally, the amendments to regulations 24, 25 and 27 of the 2018 Regulations made by regulation 3 of these Regulations clarify that in the event an index rate adjustment in accordance with the Pensions (Increase) Act 1971 is required to be made on the revaluation date, such index adjustment should be made after the revaluation adjustment.

Regulation 4 of these Regulations amends regulations 39 and 40 of the 2018 Regulations (in relation to survivor benefits for the partners and children of active members), and makes consequential changes to reflect the fact that the revaluation adjustment is now to take place at the new ‘revaluation date’. The purpose of these changes is to ensure that, notwithstanding the change in the revaluation date, there is no change to the amount of Scheme benefits to which survivors are entitled.

Regulation 4 ensures firstly that if the person died within the period 1 to 5 April within a Scheme year (ahead of the revaluation date) the survivors of the deceased member receive the correct amount in the year the survivor members account is opened, based upon the pension that the deceased member would have been entitled to receive. Secondly, the amendments ensure that for all deceased active members, the adjustment to the survivor members account at the end of the Scheme year in which the survivor member’s account was opened is adjusted to reflect the correct figures from the start of the next Scheme year, taking account of the change to the revaluation date. Finally, the amendments to regulations 39 and 40 of the 2018 Regulations made by regulation 4 of these Regulations clarify that in the event an index rate adjustment in accordance with the Pensions (Increase) Act 1971 is required to be made on the revaluation date, such index adjustment should be made after the revaluation adjustment.

Regulation 5 of these Regulations amends regulation 41 of the 2018 Regulations in relation to death grants relating to deceased deferred and pension credit members. The purpose of these changes is to ensure that, notwithstanding the change in the revaluation date, there is no change to the amount of Scheme benefits to which survivors are entitled. The changes ensure that for deferred members, where the person died within the period 1 to 5 April within a Scheme year (ahead of the revaluation date), the death grant reflects the correct pension entitlement, factoring in the relevant revaluation adjustment.

Regulation 6 of these Regulations amends regulations 42 and 43 of the 2018 Regulations in relation to survivor benefits for partners and children of deceased deferred members and similarly to regulation 4, makes consequential changes to reflect the fact that the revaluation adjustment is now to take place at the new ‘revaluation date’. The purpose of these changes is to ensure that, notwithstanding the change in the revaluation date, there is no change to the amount of Scheme benefits to which survivors are entitled. Regulation 6 ensures firstly that if the person left service and died all within the same period 1 to 5 April within a Scheme year (ahead of the revaluation date), or secondly if the person left service, and subsequently died within the period 1 to 5 April in a following Scheme year the survivors receive the correct adjusted amount. Finally, the amendments to regulations 42 and 43 of the 2018 Regulations made by regulation 6 of these Regulations clarify that in the event an index rate adjustment in accordance with the Pensions (Increase) Act 1971 is required to be made on the revaluation date, such index adjustment should be made after the revaluation adjustment.

Regulation 7 of these Regulations amends regulation 44 of the 2018 Regulations in relation to death grants relating to deceased pensioner members, and regulations 45 and 46 of the 2018 regulations relating to survivor benefits in relation to such a member. The changes to regulation 44 of the 2018 Regulations ensure that where the pensioner member died within the period 1 to 5 April within a Scheme year (ahead of the revaluation date), any death grant payable reflects the correct pension entitlement, factoring in the relevant revaluation adjustment. The purpose of these changes is to ensure that, notwithstanding the change in the revaluation date, there is no change to the amount of Scheme benefits to which survivors are entitled. The changes to regulations 45 and 46 of the 2018 Regulations in relation to survivor benefits for partners and children of deceased pensioner members make consequential changes to reflect the fact that the revaluation adjustment is now to take place at the new ‘revaluation date’, similarly to the changes made by Regulation 6 of these Regulations. Finally, the amendments to regulations 45 and 46 of the 2018 Regulations made by regulation 7 of these Regulations clarify that in the event an index rate adjustment in accordance with the Pensions (Increase) Act 1971 is required to be made on the revaluation date, such index adjustment should be made after the revaluation adjustment.

Regulation 8 of these Regulations makes technical amendments to the provisions of regulations 60 and 61 of the 2018 Regulations relating to actuarial valuation of pension funds.

Regulation 9 of these Regulations amends the definition of “revaluation adjustment” at Schedule 1 of the 2018 Regulations, and inserts a new definition of “revaluation date”, so that the revaluation date is fixed as 6 April which aligns with the start of the tax year, rather than taking place at the end of a tax year.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, public or voluntary sector is foreseen.

Policy Note

Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024

The above instrument was made in exercise of the powers conferred by sections 1, 2 and 3 and Schedule 2 of the Public Services Pensions Act 2013. The instrument is subject to negative procedure.

Purpose of the instrument.

These Regulations amend the principal Scottish Local Government Pension Scheme Regulations 2018 (“the LGPS regulations”), in order to change the annual revaluation for 2015 CARE pension increases from 1 April to 6 April each year. Changing the date on which Career Average pensions are revalued from 1 April to 6 April is designed to bring the revaluation of the CARE benefits into line with the Pension Input Period (PIP) used for Annual Allowance tax calculations. For tax years from 2023/24 onwards, the LGPS CARE revaluation will be aligned with the index rate adjustment when calculating how much pension has accrued over the year for annual allowance purposes. These regulations also amend regulation 60-61 of the LGPS Regulations, to clarify how these regulations are intended to work in practice.

Policy Objectives

These provisions amend the Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141) by changing the Local Government Pension Scheme for Scotland (LGPS) annual revaluation date from 1 April to 6 April. This is to mitigate against the impact of high inflation on LGPS revaluation and consequent tax liabilities arising as a result.

These tax liabilities would arise because the timing of LGPS revaluation on 1 April is not aligned with HMRC’s process for assessing the annual allowance tax charge.

The proposed change will bring it into alignment. For this reason, the change to the revaluation date is retrospective, backdated to 31 March 2023.

The changes to Regulation 60-61 reflect concerns from stakeholders who believe the wording does not reflect the necessary actions for Fund Authorities/Actuaries. We have made small changes to these regulations to clarify the policy intent.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

Consultation

A short technical consultation was carried out commencing on Tuesday 14 March

and ending on Monday 27 March with a view to making the necessary changes before CARE revaluation was needed. The UK Government had already consulted on these changes. There were five responses all in agreement with the proposed changes.

Impact Assessments

These Regulations have no new impact on business or the voluntary sector.

Financial Effects

These Regulations have had no new Business and Regulatory Impact Assessment (BRIA) conducted 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

From an equality perspective, the tax liabilities were much higher in 2023, due to the unusually high Pensions Increase announced in September 2022 and would have a greater effect on older members who have long service in the LGPS.

SPPA considers that the proposed changes indirectly engage with age. LGPS 2019 valuation data indicates that older members still in employment have higher average pensionable pay than younger members.

CPI in September 2022 was 10.1% and this is markedly higher than a CPI of 3.1% in September 2021. As a result, members would have significantly higher total growth in pension for tax purposes (PIA).

Without the proposed changes these members are more likely to be subject to a high tax charge, even though revaluation is primarily used to ensure that accrued pensions of active members keep pace with changes in prices.

Scottish Public Pensions Agency

An Agency of the Scottish Government January 2024