EXECUTIVE NOTE

THE LOCAL GOVERNMENT PENSION SCHEME AMENDMENT (INCREASED PENSION ENTITLEMENT) (SCOTLAND) REGULATIONS 2009

SSI/2009/186

The above instrument is made in exercise of the powers conferred by sections 7 and 12 of, and Schedule 3 to, the Superannuation Act 1972. Functions under that Act as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative resolution procedure. The amendments include retrospective effect which is permitted by section 12 of the Act. The instrument applies only to Scotland.

The instrument makes amendments to The Local Government Pension Scheme (Scotland) Regulations 1998 which provide for the Local Government Pension Scheme for members in post before 1 April 2009.

Policy Objectives

A small minority of pensioners who worked in the public sector which includes local government have been getting a larger than expected increase in their pensions year on year. This is because of the way that some annual pension increases have been calculated. This issue affects all public sector schemes and not just those in Scotland.

The annual pension increase for occupational pensions is adjusted to reflect a person's entitlement to a Guaranteed Minimum Pension (GMP). A GMP is the minimum pension which an occupational pension scheme must provide where the scheme contracted out of the State Earnings Related Pension Scheme from 1978. All public service schemes are contracted out. People who were members of a contracted out pension scheme between 1978 and 1997 may have a GMP element within their occupational pension. It is a notional benefit which is only paid if the occupational pension is less than the guarantee element and is not a separate benefit to be paid in addition to their occupational pension.

Public service pensions have been increased each year in line with the Retail Prices Index (RPI). The occupational scheme pays the increase on the whole pension, including the GMP element, until pensioners begin to receive their state pension. Thereafter the GMP element is shared between the scheme and the Department for Work and Pensions (DWP)

The Pensions (Increase) Act 1971 together with annual Pensions Increase Review Orders provide for the annual increase that can be applied to public sector pensions. In addition the Act also details any reductions that should be made from the increase being applied by the occupational pension scheme administrator. Where a pensioner has a GMP any annual pensions increase due on a GMP accrued during the period up to 1988 should not be made by the pension scheme administrator. In addition the pension scheme administrator should only increase the first 3% on any annual pension increase for GMP entitlement accrued after 1988. The pensions increase due in these cases is paid by the DWP with the individuals State pension.

A proportion of public service pensioners did not have a GMP entitlement shown on their pension record and as a consequence the correct reduction for GMP was not made which meant they have received an element of increase twice: once with their occupational scheme and again with their State pension. The result of this is that they have been overpaid.

Although this has affected public sector pensions on a UK wide basis Scottish Ministers have chosen to take a different approach to dealing with the overpayment going forwards from April 2009. Scottish Ministers have chosen to preserve the affected pensioner's income by converting the overpayment being paid from 6 April 2009 into a new Increased Pension Entitlement (IPE) payable from that date. This option has been applied to those schemes where the Scottish Ministers have the necessary devolved power to introduce this change which they do have for the Local Government Pension Scheme.

The instrument ensures that affected pensioners will not see a reduction in pensionable income and also provides the necessary authority for the overpayments paid up to 5 April 2009. These overpayments in line with all the other UK public sector schemes will be written off and the affected pensioners will not be required to repay any of the overpayments.

The amendments made to the Local Government Pension Scheme (Scotland) Regulations 1998 introduce the IPE and outline how it is calculated. The IPE will be payable for life but with the exception of the short term pension payable to a qualifying surviving dependant will not be included in any other dependants benefits. The principle for the IPE is that it ensures that the member does not see a reduction in their pensionable income as a result of a GMP-related overpayment.

Sensitivity

The Regulations may be seen as contentious because it has not been possible to apply the Scottish Ministers' preferred solution to affected Scottish NHS and Teachers pensioners. This is because to make similar legislative changes to those schemes would require the consent of HM Treasury. HM Treasury refused to provide its consent as the Westminster Government have chosen to correct affected pensions going forward from 6 April 2009. Similar consent is not required for changes to the Police, Firefighters' and Local Government Pension schemes in Scotland. As a result the level of public interest in the introduction of these amendments is anticipated to be high particularly for those affected pensioners in the Scottish NHS and Teachers schemes who have seen their pensions reduced from 6 April 2009.

This instrument includes part retrospective effect to allow for the GMP related payments that will have accrued from 12 November 1979 to 5 April 2009

Consultation

In accordance with section 8(4) of the Superannuation Act 1972, this instrument was sent in draft to Local Government stakeholders for consultation. It has also been the subject of consultation with other Government departments, and other interested parties.

Financial implications

Similar changes are being introduced to the Police and Firefighters' pensions schemes. The final number of cases affected and the total overpayments involved for all three schemes are still to be finalised by the local authorities concerned. However it is estimated, based on a comparison of known similar cases in the Scottish NHS and Teachers pension schemes, that at this stage approximately 3.5% of pensioners could be affected. On that basis it is estimated that the additional costs to the three pensions schemes could be in the region of £3m over 5 years and £6m over 10 years. The overall costs of introducing the IPE will be reflected in scheme valuations that cover these periods.

Regulatory Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no adverse impact on business, charities or voluntary bodies.

Scottish Public Pensions Agency
May 2009