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Police Pension Scheme Stakeholders

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Dear Colleagues

## **Draft regulations - The Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2019**

### **Content**

1. The purpose of this letter is to seek the views of police stakeholders on draft amendments to the:

- Police Pension Scheme (Scotland) Regulations 2015 (“the 2015 scheme”)
- Police Pensions (Scotland) Regulations 2007 (“the 2006 scheme”)
- Police Pension Scheme 1987 (“the 1987 scheme”)
- Police (Injury Benefit) (Scotland) Regulations 2007
- Police Pensions (Additional Voluntary Contributions) Regulations 1991 (“the AVC regulations”).

The amendments cover the following key areas:

### **Police Pension Scheme (Scotland) Regulations 2015 – Employer cost cap**

#### **Background**

2. Under the Public Service Pensions Act 2013, public service pension schemes are required to include an employer cost cap as a mechanism to manage costs to the scheme. The Police Pension Scheme (Scotland) Regulations 2015 provide for this cost cap mechanism and the employer cost cap is 12.3% of pensionable pay, which represents the “target cost” for the scheme. The cost cap was designed to provide protection to the taxpayer by ensuring any increased costs are shared between members and employers, but the arrangements are symmetrical so that if costs fall below a threshold, savings will be used to the benefit of scheme members.

3. Analysis of the cost cap is included in the quadrennial scheme valuations, with the current valuation using data extracted at 31 March 2016. The 2015 Regulations require action to be taken where the scheme actuary identifies a breach of the employer cost cap. Regulation 188(2) states:

“...Scottish Ministers must consult such persons as appear to the Scottish Ministers to be affected by any steps that will be taken, with a view to reaching agreement on the steps required to achieve the target cost for the scheme. Consultation on any breach should be considered by the SAB.”

4. The Scottish Police Pension Scheme Advisory Board (SAB) provides this statutory role. On 2 September 2018 the Scottish Public Pension Agency (SPPA), having received advice from the scheme actuary, confirmed to the SAB that there had been a downwards breach of the employer cost cap by 4.9%, and commissioned it to consider scheme adjustments to rectify the cost cap breach to return to the target cost. On 15 November 2018, the SAB reached a consensus on the advice to provide for consideration by Scottish Ministers. Scottish Ministers have now agreed that advice.

#### **The SAB's preferred option for rectifying the cost cap breach**

5. As stated in Section 12(7) of the Public Service Pensions Act 2013, rectification can be carried out by adjusting member benefits or contributions, with the default option being a change to the scheme accrual rate, currently 1/56.1 of pensionable pay.

6. Key factors considered by the SAB included the fairness and simplicity of remedial action, as well as the sustainability of the changes which could be subject to review again in the course of subsequent valuations. Having taken all factors into consideration, the SAB reached consensus and its preferred option is for the scheme accrual rate to be adjusted.

7. The scheme actuary has calculated the cost cap can be rectified by a change to the accrual rate to 1/48.1 of pensionable pay.

#### **Employer contribution rate**

8. In order to accommodate the change to the member accrual rate, the scheme actuary must also assess the impact on the employer's scheme contribution rate. In addition, the decision of the UK Government in Budget 2018 to reduce the Discount Rate used to measure public sector pension scheme liabilities from 2.8% above CPI to 2.4% above CPI has also significantly impacted on employer contribution rates across the public sector.

9. The scheme actuary has calculated that the regular contribution rate payable in the police pension scheme must rise from 23.1% of pensionable pay to 29.4 % of pensionable pay for the implementation period from 1 April 2019 to 31 March 2023. The requirement for the employer to pay an additional 0.8% of pensionable pay in respect of ill-health retirements (in the form of a payment of two times a retiring member's pensionable pay) remains unchanged. This rate is the same across the three police pension schemes.

## **Member contribution rate**

10. The contribution rate payable by members is unaffected by these changes and remains 13.46% of pensionable pay.

## **Amendments to reflect the rectification of the employer cost cap breach**

11. Regulation 5 changes the amount of pension for a scheme year from 1/56.1th of pensionable pay to 1/48.1th of pensionable pay.

12. Regulation 6 makes appropriate changes to the annual rate of ill-health pension under the scheme by adjusting the enhancement for notional future accrual.

13. As the member contribution rate remains unchanged, Regulation 10 extends the period for which the rate is payable, to 31 March 2023.

14. Regulation 12 adjusts the employer contribution rate to the amount calculated by the scheme actuary as appropriate for the implementation period.

## **Other amendments**

### **Voluntary Scheme Pays**

15. The 2015 scheme currently reflects the mandatory requirement in the Finance Act 2004 for the scheme manager to discharge annual allowance (“AA”) charges on behalf of the member where that charge exceeds £2,000, known as “mandatory scheme pays”. The amount paid by the scheme manager is recoverable upon the member’s retirement by an actuarially equivalent deduction from the annual pension. These draft regulations include provision for the scheme manager to pay an AA charge on behalf of the member that does not exceed the mandatory level– “voluntary scheme pays” - and then similarly apply a debit to the member’s pension when it is put into payment. The timescales for this provision are shorter than for mandatory scheme pays and require that the member gives the scheme manager sufficient notice.

16. It should be noted that this provision adds an element of risk to the pension scheme, because the pension debit only applies to the member’s pension payments. If the member dies prior to the pension coming into payment or in the early period of retirement, the pension scheme will have paid the cost of the AA tax charge and will be left with no capacity to recover the outlay, for example from any survivor benefits.

17. The scheme manager already has discretion to agree to make this payment by virtue of the Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 (SI 2011/1791). However, introducing it to the police pension scheme regulations may provide scheme members with more assurance and additional flexibility in managing taxation charges. The provision has been added to the corresponding scheme regulations in England and Wales, ensuring a consistent approach is taken by all scheme managers there.

18. The need for consistency is not relevant in Scotland where there is a single police service and one scheme manager able to ensure equal treatment for all police scheme members. In addition, it is worth noting that the same scheme manager also manages other devolved public service pensions schemes, and it must also be recognised that there are other considerations to the facility that could significantly impact on scheme management, with potential implications for administration resources and upfront costs for scheme finances, and therefore departmental budgets, over and above the risks outlined above. Scottish Ministers would welcome consideration of all these aspects before agreeing an appropriate approach that is fair and consistent across the public sector for inclusion in scheme regulations.

19. The instrument as currently drafted does not introduce a condition to stipulate the level of charge that must apply before a member can make a request the scheme manager. We would be grateful for comments on this, and would in particular draw attention to the equivalent legislation introduced to the England and Wales scheme by the Home Office which makes access to the provision conditional on the member's AA charge being in excess of £1,000.

### **Reckonable Service – Unpaid Leave**

20. The draft regulations update the provisions for reckonable pay and service in the 1987 and 2006 schemes so that contributions can be made in respect periods of unpaid family leave provided by the Police Service of Scotland Regulations 2013. In addition, it is proposed to allow officers a limited opportunity to make contributions for any such period of unpaid family leave taken after to 1 September 2014, in line with the option provided to officers in England and Wales by similar amendments.

### **Injury Benefits**

21. Regulations 39 to 56 set out changes to the Police (Injury Benefit) (Scotland) Regulations 2007, and are backdated to 1 April 2015. These changes reflect the intentions set out in SPPA Circular 7/2015. A new Regulation 4A provides that pensionable pay for a 2015 scheme member is worked out by reference to pensionable earnings under the 2015 scheme. For a transition member with continuity of service between the 1987 or 2006 scheme and the 2015 scheme, the continuous period of pensionable service will include service under both schemes. When applying the definition of final pay, all or part of the relevant earnings year may fall when the person was an active member of the 1987 or 2006 scheme.

22. A new Regulation 7A provides for the criteria for “permanent disablement” of a member of the police force who is a member of the 2015 scheme. A member will be considered disabled if they meet the criteria for medical unfitness within the 2015 scheme. The degree of disablement will be linked to the impact the injury has had on the officer's earning capacity.

23. Regulation 46 amends Regulation 13 to extend entitlement to an adult survivor's pension to unmarried partners, subject to the same conditions as set out in the 2006 and 2015 regulations. Other amendments provide necessary references to the 2015 scheme as required.

## **Assignment of pension benefit**

24. Regulation 19 inserts a new Regulation 217A into the 2015 scheme to ensure that no assignment or charge can be placed on any pension benefit payable under the scheme.

## **Minor Amendments**

25. The draft amendments make minor changes to reflect other changes in primary and secondary legislation and clarify some references in the existing regulations. Regulation 27 amends regulation 40 of the 2006 scheme regulations to remove the requirement for a member to nominate an adult partner to receive a survivor pension, in line with changes made to the 2015 scheme in 2017. Regulations 57 to 66 add clarity and make minor corrections to the AVC Regulations as they have effect in Scotland.

## **Consultation**

26. Comments are invited on the draft regulations but in particular:

### **Question**

- 1. Do the amendments to the Police Pension Scheme (Scotland) Regulations 2015 deliver the proposed rectification to the employer cost cap breach?**
- 2. Should scheme regulations include provision for the scheme manager to discharge an annual allowance charge for the member where the conditions for mandatory scheme pays have not been met? If so, should such provision contain a condition that a minimum level of liability should apply, for example £1,000?**
- 3. Do the changes to the Injury Benefit Regulations adequately reflect the introduction of the 2015 pension scheme?**

You can respond to this consultation by completing the Consultation Response Form attached at Annex A which can be submitted electronically to [policepensionsreform@gov.scot](mailto:policepensionsreform@gov.scot), or by post to the following address:

Police Pensions Consultation  
SPPA Policy  
7 Tweedside Park  
Tweedbank  
Galashiels  
TD1 3TE

**The consultation period will run to 28 January 2019.**

A copy of the consultation documentation is also available on the SPPA website at: <http://www.sppa.gov.uk/Documents/Police/Police%20Useful%20Resources/Consulta>

[tions/2018/The%20Police%20Pensions%20\(Miscellaneous%20Amendments\)%20\(Scotland\)%20Regulations%202020.. %20\(003\).pdf](https://www.scotland.gov.uk/Information/Consultations/2018/The%20Police%20Pensions%20(Miscellaneous%20Amendments)%20(Scotland)%20Regulations%202020..%20(003).pdf)

27. We intend to publish a summary of consultation responses as soon as possible after the consultation closes. We would like to be able to include any response you make in that summary. However, if you ask us not to publish your response to this consultation, we will regard it as confidential.

28. Respondents should also be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and will have to respond appropriately to any relevant request made to the SPPA under that Act for information concerning this consultation exercise.

Yours faithfully

Mhairi Kinnaird  
Policy Manager  
Scottish Public Pensions Agency

## ANNEX A

### CONSULTATION RESPONSE FORM - POLICE PENSION SCHEME CONSULTATION ON DRAFT REGULATIONS –The Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2019.

#### 1. Name/Organisation

Organisation Name

Title

Surname

Forename

#### 2. Postal Address

<b>Postcode</b>	<b>Phone</b>	
<b>Email</b>		

**3. Permissions - I am responding as...** (please complete either sections (a), (b) and (d) or sections (c) and (d):

**Individual                      or                      Group/Organisation**

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please state yes or no: \_\_\_\_\_*

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please state yes to one of the following:*

Yes, make my response, name and address all available                      .....

*or*

Yes, make my response available, but not my name and address                      .....

*or*

Yes, make my response and name available, but not my address                      .....

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please state yes or no: .....*

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please state yes or no: .....*

## ABOUT YOU

I am responding ...

- as a member of the 1987 scheme (old scheme)
- as a member of the 2006 scheme (new scheme)
- as a member of the 2015 scheme (CARE scheme)
- on behalf of an Employer Organisation
- on behalf of a Trade Union/Staff Association
- other (please specify)

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What is your gender?

- I am female
- I am male

I am employed as...

- a police officer
- I'm retired
- other (please specify)

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What is your working pattern?

- I work part-time
- I work full- time
- Not applicable



## CONSULTATION QUESTIONS

**1. Do the amendments to the Police Pension Scheme (Scotland) Regulations 2015 deliver the proposed rectification to the employer cost cap breach?**

**2. Should scheme regulations include provision for the scheme manager to discharge an annual allowance charge for the member where the conditions for mandatory scheme pays have not been met? If so, should such provision contain a condition that a minimum level of liability should apply?**

**3. Do the changes to the Injury Benefit Regulations adequately reflect the introduction of the 2015 pension scheme?**

Please e-mail your response to: [policepensionsreform@gov.scot](mailto:policepensionsreform@gov.scot)

Or post your response to:

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The closing date for this consultation is 28 January 2019.