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Dear Colleague

THE LOCAL GOVERNMENT PENSIONS (INCREASED PENSION ENTITLEMENT) (SCOTLAND) REGULATIONS 2009

On 16 December 2008, the Cabinet Secretary for Finance and Sustainable Growth informed the Scottish Parliament of a problem that affects a small proportion of public sector pensioners across the UK. The problem concerns the way that the Annual Percentage Increase has been applied to some pensions with a Guaranteed Minimum Pension (GMP) entitlement. Overpayments resulting from this error have affected public sector pensions across the UK.

The Scottish Government decided that past overpayments should not be recovered. It has also decided that pensioners should not be penalised for a problem that was not of their making. In taking that view Scottish Ministers agreed to exercise their devolved powers to introduce the necessary legislative changes to ensure that, from April 2009, the amount of overpayment currently received will continue to be paid, though it will be frozen at the existing level.

The attached draft regulations establish the following key points:

- Confirms the authority for the overpaid pension to have been paid:
- Confirms that the overpayments may not be recovered:
- Introduces a new entitlement, the Increased Pension Allowance (IPE) which will provide that current overpayment in payment at 5 April 2009 is maintained:
- The new entitlement is payable to the pensioner for life but will not be subject to an annual pension increase or any other inflationary increase:

- That the new entitlement does not provide any inheritable or pension sharing rights with the exception that it should be included in any calculation for an increase of widow's pension or child's allowance during the first 13 weeks under regulation 39:
- This entitlement is only for those pensioners who have been overpaid under these circumstances i.e. as at 5 April 2009 (which is the date before entitlement to IPE is awarded). Any similar overpayments arising after the IPE implementation date would not be subject to an IPE and would need to be treated and actioned as a normal overpayment; and
- The IPE is an increase to the correct pension in payment and is not considered to be a new pension. The regulations introduce the IPE as an additional entitlement with an amendment to the main scheme regulations.

The draft Regulations make changes in the following areas:

Citation and Comment

The regulations will come into force from 6 April 2009 although provide effect for regulations 3 and 4 from 6 April 1979 to 5 April 2009. This provides the authority for administrators to have paid the overpayment during the period which the incorrect increases were applied to the GMP entitlement. The regulations apply only to Scotland.

Amendments to the Local Government Pension Scheme (Scotland) Regulations 1998

Regulation 3 introduces a new Part VII to the 1998 Regulations which specifically provides for the IPE. New regulation 162 identifies those pensioners who at 5 April 2009 are affected i.e. are entitled to a pension under the scheme which includes a GMP entitlement and have been overpaid as a result of an annual pensions increase being paid to them twice on that GMP entitlement. The overpayments are defined as GMP-related payments.

Regulation 163 establishes what the overpayments are, how they have occurred and who paid them. The regulation confirms that the overpayment results from annual increases paid on pre 88 GMP and those paid above 3% for post 88 GMP entitlements paid by the authority. The Department for Work and Pensions (DWP) are responsible for the payment of these increases and the scheme payments made are a duplication of what had already been paid by the DWP.

Regulation 4 introduces regulation 164. This provides the authority for the overpayments to have been paid to the member concerned and confirms that the overpayments may not be recovered. Sub paragraph (3) confirms that those affected pensioners who have died before 5 April 2009 are also subject to any overpayment being written off. Regulation 4 has effect from April 1979.

Regulation 5 introduces regulation 165 and establishes the IPE that affected pensioners will become entitled to. The intention of this allowance is to allow the pensioners' income to remain at the same level at the point of change. The allowance will be an annual amount (in line with normal pension awards) and will be paid with the existing pension entitlement. The allowance will be calculated based on the overpayment made for 2008/09 and in doing this assumes that all affected overpayments will be identified and calculated by 5 April 2009. This amount will be awarded as the IPE from 6 April 2009 for life but it is not subject to any future annual pension increase or any other inflationary increase.

The outcome will be to

- Establish the amount of allowance that is due from and including 6 April 2009.
- Ensure that the existing pension is corrected and that the 2009 PI is correctly applied to that pension taking into account DWP's responsibility for providing the increase for the whole of the pre 88 GMP and the increase above 3% for the post 88 GMP entitlement.
- Write off the resulting overpayment that has arisen up to 5 April 2009.

It is expected that all overpayments will be identified and assessed by 5 April 2009. Similar amendments are being made to the Police and Fire Schemes and if authorities are not able to establish the overpayments by 5 April 2009 in any of the three schemes then it is expected that the IPE implementation date for **all** pensioners affected will move to a later date and will be calculated taking into account the annual pension in payment as at 6 April 2009. As a consequence this will result in the 2009 pension increase being applied to both the pension and the overpayment. SPPA will contact authorities after 20 January to confirm if an IPE implementation date of 6 April 2009 is possible. At that point the SPPA would expect authorities to be able to: a) confirm that an implementation date of 6 April 2009 is achievable or b) propose a firm alternative date.

In the event that all overpayments cannot be determined by 5 April 2009 the draft includes at Reg 165 (3A) and (3B) provision (which will be used in place of the drafted Reg 165(3)) to calculate the IPE. The IPE will be determined by reference to the annual overpayment as at 6 April 2009. Hence if the implementation date for the IPE is not possible until later in the year it would result in the following, assuming an annual overpayment as at 6 April 2009 of £120.

6 April to 5 July - 3 x £10 monthly overpayment subsequently written off with the whole GMP related overpayment.

6 July to 5 April- 9x £10 monthly IPE.

The annual £120 IPE would not be subject to a Pensions Increase from 2011 or any subsequent year.

Regulation 6 amends regulation 39(5)(surviving spouse's or civil partner's short-term pension) so that the IPE is included in the increase paid for the first 13 weeks following the death of a member who has IPE entitlement.

Timescale for comments

In order to have the regulations in force by 6 April 2009 they have to be laid at Parliament by 13 February 2009. Due to this tight timescale I should be grateful for your comments on the proposed regulations by **20 January 2009**. Unless specifically asked to treat a response as confidential, the Agency may wish to publish, in due course, responses to this consultation, or deposit them in the libraries of the Scottish Government or the Scottish Parliament. A copy of this consultation will also be placed on the Agency's website.

A Respondent Information Form for you to complete and return with your comments is also provided. The completed form and any comments you wish to make should be returned, by the deadline, to Jean Steel, Policy Officer, Scottish Public Pension Agency, 7 Tweedside Park, Tweedbank, Galashiels TD1 3TE. Alternatively these can be sent electronically to locgovpensionsreform@scotland.gsi.gov.uk.

Yours sincerely



David Lauder

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National Association of Pension Funds
Scottish Local Government Pension Scheduled Bodies
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