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Dear Colleague

POLICE / FIRE / LOCAL GOVERNMENT PENSIONS CIRCULAR No 2009/No. 1

THE LOCAL GOVERNMENT PENSION SCHEME AMENDMENT (INCREASED PENSION ENTITLEMENT) (SCOTLAND) REGULATIONS 2009 SSI 2009/186

THE POLICE PENSIONS AMENDMENT (INCREASED PENSION ENTITLEMENT) (SCOTLAND) REGULATIONS 2009 SSI 2009/185

THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (INCREASED PENSION ENTITLEMENT) (SCOTLAND) ORDER 2009 SSI 2009/184

This circular should be brought to the immediate attention of managers and administrators of the Local Government, Police and Firefighters' Pension Schemes.

Purpose

1. On 17 December 2008 SPPA consulted on draft regulations to introduce a new entitlement for those pensioners affected by the double indexation of Guaranteed Minimum Pension (GMP). We have taken account of the results of that consultation and I am writing to you to confirm:
 - (a) that the regulations have now been finalised and were laid in Parliament on 15 May;
 - (b) the amendments we have made to the draft regulations issued on 17 December; and

- (c) the action pension administrators for the Local Government (LGPS), Police (PPS) and Firefighters (FPS) pension schemes will need to take to introduce these changes.

Background

2. 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 GMP entitlement. Overpayments resulting from this error have affected public sector pensions across the UK. As a result, where Scottish Ministers have the necessary devolved power, the GMP related overpayment is to be replaced by a new award known as an Increase Pension Entitlement (IPE). The consultation the SPPA issued on 17 December 2008 outlined the details of how an IPE would be calculated and applied and also that any overpayment up to the date before the IPE was awarded would be written off.

Finalised Regulations

3. The SPPA letter of 17 December outlined the key proposals for implementing this new award. Following consideration of the comments received from stakeholders, I can confirm that the following amendments have been made to those original proposals.
4. Scheme administrators confirmed that it would not be possible for all the affected cases to be identified and actioned before 5 April 2009. Consequently, the GMP related overpayments have continued into 2009/10 and the 2009 Annual Pensions Increase (API) has been applied. As a result the IPE is now to be calculated based on the 2009/10 GMP related overpayment.
5. HMRC has confirmed that the award of an IPE is to be treated as an increase to the pension in payment and not as a new pension. The IPE is an authorised payment and its award does not trigger a new Benefit Crystallisation Event. The IPE will also be subject to an API in line with other pension entitlements within these schemes.
6. The regulations provide for the award of an IPE in these circumstances only. Local authorities should now have in place the necessary checks and procedures that would prevent similar overpayments occurring in the future. If such an overpayment does arise in future it will not be eligible to be treated through the award of an IPE and should be treated as a routine overpayment case. Similarly, an IPE may not be awarded retrospectively to any case that had already been identified and corrected prior to this exercise.
7. Entitlement to an IPE should be included in any valuation provided as a result of a Pension Sharing Order.
8. Copies of each of the final regulations are available through the following links:

FPS [The Firefighters' Pension Scheme Amendment \(Increased Pension Entitlement\) \(Scotland\) Order 2009 No. 184](#)

PPS [The Police Pensions Amendment \(Increased Pension Entitlement\) \(Scotland\) Regulations 2009 No. 185](#)

LGPS [The Local Government Pension Scheme Amendment \(Increased Pension Entitlement\) \(Scotland\) Regulations 2009 No. 186](#)

Annexes A, B and C provide a summary outline of what each set of regulations provide.

Action for Pension administrators

9. It is important that, at the earliest opportunity, pension scheme administrators act to correct GMP overpayments in line with these amendment regulations, which provide that the IPE will replace the GMP related overpayment for 2009/10.
10. The most recent update the SPPA received from administrators (during April 2009) confirmed that a number were awaiting information from the National Insurance Contributions Office (NICO) before they could confirm both the final number of affected cases and the total value of overpayments.
11. Pension administrators should now take the following action:
 - a) In each affected case:
 - (i) calculate and write off the GMP related overpayment up to and including 5 April 2009;
 - (ii) calculate the GMP related overpayment for 2009/10 and replace that with an award of IPE from 6 April 2009;
 - (iii) ensure that the IPE is identified as a separate element of the overall pension award. This is because the IPE will need to be identified for any subsequent long term survivor partner award because the IPE is not inheritable. (In the case of the Police and Fire schemes, as originally outlined IPE will be included in the calculation of a widows' short-term pension or child's allowance during the first 13 weeks under regulation and rule E8).
 - b) Confirm the following details to the SPPA:
 - (i) the total number of cases where an IPE has been awarded from 6 April 2009
 - (ii) the total annual value of those IPE payments for 2009/10
 - (iii) the total number of cases where a GMP related overpayment has been written off; and
 - (iv) the total amount of GMP related overpayments written off up to and including 5 April 2009.
 - c) Where administrators believe there is likely to be some delay in confirming the details at 11 b), they are asked to provide their current best estimates of these totals to the SPPA **no later than 30 June 2009**.
12. We recognise that pension scheme administrators have competing priorities and it is for them to determine forward work plans. However it is important that this revisions exercise should be completed as soon as possible. Our current expectation is that the necessary revisions will be completed **no later than 30 September 2009**. If administrators believe that this date will not be achievable, they should let the SPPA know that, and the date by which they will complete the exercise, as soon as possible.

13. If you have any queries regarding the action you need to take please contact:

- a) David Lauder regarding the Local Government Pension Scheme (01896 893227, or david.lauder@scotland.gsi.gov.uk)
- b) Jim Preston regarding the Police and Firefighters' Pension Schemes (01896 893231 or james.preston@scotland.gsi.gov.uk)

Yours sincerely



Chad Dawtry
Director of Policy, Strategy and Development

The Police Pensions Amendment (Increased Pension Entitlement) (Scotland) Regulations 2009

The Regulations make changes in the following areas:

Citation and Comment

The regulations will come into force from 26 June 2009 so will have been available for Parliamentary consideration for the full 40 days before coming into force. The regulations will have effect from 6 April 2009 but provides that regulation 4 in so far as it gives effect to regulation 5 and regulation 5 have effect from 12 November 1979 to 5 April 2009 and regulation 7 has effect from 6 April 2006. The regulations apply only to Scotland.

Amendments to the Police Pensions Regulations 1987

Regulation 3 amends regulation E8 so that a widow's or civil partner's pension or child's allowance payable during the first 13 weeks following the death of the member includes any IPE in payment.

Regulation 4 introduces a new Part N to the 1987 Regulations which specifically provides for the IPE. New regulation N2 confirms that this part only applies to persons who on the 5 April 2009 were entitled to a scheme pension, had title to a GMP and had in any tax year since that GMP entitlement commenced received a GMP related overpayment (i.e. the correct pensions increase had not been applied to that GMP element resulting in an overpayment).

Regulation N3 defines a GMP related pension as a payment made by the police authority which has been made on the basis that no reductions were due in relation to the GMP entitlement. It goes onto confirm what the deduction should have been taking into account the modifications and directions provided with each Increase Order. The amount that should have been reduced from the annual increase for any tax year represents the GMP related overpayment. By referring to the Order in this way it confirms that only those cases where a reduction is necessary are captured. Those cases where DWP pay no increase on the GMP element for example where the pensioner lives abroad and receives no increase to his/her state pension are disregarded as the full increase is correctly paid by the occupational scheme.

Regulation 5 introduces regulation N4, which sets out to whom a police authority may pay GMP-related payments. Regulation 6 introduces new regulation N5, which sets out entitlement to an IPE. Although entitlement to IPE begins on 6th April 2009, the effect of the 1971 Act is that annual increases must apply to IPE from the commencement date of the pension (usually the day after the person's date of retirement). IPE is therefore defined as the amount a pension would have to be at the commencement date of a pension in order for that amount, after annual increases have been applied to equal the GMP-related payment for the tax year 2009-2010. The effect is that for the tax year 2009-10 the IPE that the affected pensioner will receive is equal to the GMP-related payment he or she would have received had no correction been made and the overpayment continued for the remainder of the tax year. The regulation also confirms that an IPE is subject to any termination or forfeiture applied to the member's main pension.

New regulation N6 confirms that an IPE is payable in the same way as the main pension but that it is not subject to any lump sum either fixed or via any commutation request.

Regulation 7 amends paragraph 6(1) of Schedule 3 to the Police (Injury Benefits) (Scotland) Regulations 2007 so that any reduction of an injury award which is calculated by reference to pensions payable under Schedule B of the 1987 Regulations also takes an IPE entitlement into account.

The Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2009

Citation and Comment

The regulations will come into force from 26 June 2009 so will have been available for Parliamentary consideration for the full 40 days before coming into force. The regulations will have effect from 6 April 2009 but provides that paragraph 2 of the Schedule, in so far as required to give effect to paragraph 3 of the Schedule, and paragraph 3 of the Schedule have effect from 12th November 1979 to 5th April 2009. The regulations apply only to Scotland.

The Regulations make changes in the following areas:

Amendments of the Firefighters' Compensation Scheme (Scotland) Order 2006

Regulation 3 amends paragraph 2(1) of Part 1 of Schedule 1 to Part 2 of the Firefighters' Compensation Scheme (Scotland) Order 2006 (calculation of awards for full-time service) to include a reference to a GMP-related payment made under rule P4 and an Increased Pension Entitlement calculated under rule P5.

Amendment of the Firemen's Pension Scheme Order 1992

The Schedule to the Regulations amends Schedule 2 to the Firemen's Pension Scheme Order 1992 as follows –

(a) Paragraph 1 amends rule E8 (increase of pensions and allowances during first 13 weeks) so that to the weekly amount of the deceased's pension, together with any increase in it under the Pensions (Increase) Act 1971, is added the weekly amount of any Increased Pension Entitlement;

(b) Paragraph 2 introduces a new Part P into the Order which specifically provides for the IPE. New rule P2 confirms that this part only applies to persons who on the 5 April 2009 were entitled to a scheme pension, had title to a GMP and had in any tax year since that GMP entitlement commenced received a GMP related overpayment (i.e. the correct pensions increase had not been applied to that GMP element resulting in an overpayment).

(c) New Rule P3 defines a GMP related pension as a payment made by the fire and rescue authority which has been made on the basis that no reductions were due in relation to the GMP entitlement. It goes on to confirm what the deduction should have been, taking into account the modifications and directions provided with each Increase Order. The amount that should have been reduced from the annual increase for any tax year represents the GMP related overpayment. By referring to the Order in this way it confirms that only those cases where a reduction is necessary are captured. Those cases where DWP pay no increase on the GMP element for example where the pensioner lives abroad and receives no increase to his/her state pension are disregarded as the full increase is correctly paid by the occupational scheme.

(d) New Rule P4 sets out to whom a fire authority may pay an IPE and new rule N5 deals with entitlement. Although entitlement to an IPE begins on 6th April 2009, the effect of the 1971 Act is that annual increases must apply to IPE from the commencement date of the pension (usually the day after the person's date of retirement). IPE is therefore defined as the amount a pension would have to be at the commencement date of a pension in order for that amount, after annual increases have been applied to equal the GMP-related payment for the tax year 2009-2010. The effect is that for the tax year 2009-10 the IPE that the affected pensioner will receive is equal to the GMP-related payment he or she would have received had no correction been made and the overpayment continued for the remainder of the tax year. The regulation also confirms that an IPE is subject to any termination or forfeiture applied to the member's main pension.

New rule P6 confirms that an IPE is payable by the relevant fire and rescue authority and that it is payable for life, but that it is not commutable for a lump sum, either in whole or in part.

The Local Government Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Regulations 2009-05-18

Citation and Comment

The regulations will come into force from 26 June 2009 so will have been available for Parliamentary consideration for the full 40 days before coming into force. The regulations will have effect from 6 April 2009 but regulation 4 in so far as required to give effect to regulation 5, regulation 9 in so far as required to give effect to regulation 10, regulation 5 and regulation 10 have effect from 12th November 1979 to 5th April 2009. The regulations apply only to Scotland.

Amendments to the Local Government Pension Scheme (Scotland) Regulations 1998 and to the Local Government Superannuation Scheme (Scotland) Regulations 1987

The Regulations amend the above-named Regulations (“the 1998 Regulations” and “the 1987 Regulations”) as follows:

Regulation 3 amends regulation 39(5) of the 1998 Regulations so as to provide that a surviving spouse’s or civil partner’s short-term pension payable during the first 13 weeks following the death of the member includes any IPE in payment.

Regulation 4 introduces a new Part VII to the 1998 Regulations which specifically provides for the IPE. New regulation 162 confirms that this part only applies to persons who on the 5 April 2009 were entitled to a scheme pension, had title to a GMP and had in any tax year since that GMP entitlement commenced received a GMP related overpayment (i.e. the correct pensions increase had not been applied to that GMP element resulting in an overpayment).

New regulation 163 defines a GMP related pension as a payment made by the relevant administering authority which has been made on the basis that no reductions were due in relation to the GMP entitlement. It goes on to confirm what the deduction should have been, taking into account the modifications and directions provided with each Increase Order. The amount that should have been reduced from the annual increase for any tax year represents the GMP related overpayment. By referring to the Order in this way it confirms that only those cases where a reduction is necessary are captured. Those cases where DWP pay no increase on the GMP element for example where the pensioner lives abroad and receives no increase to his/her state pension are disregarded as the full increase is correctly paid by the occupational scheme.

New regulation 164 sets out to whom an administering authority may pay an IPE and new regulation 165 deals with entitlement to an IPE. Although entitlement to IPE begins on 6th April 2009, the effect of the 1971 Act is that annual increases must apply to an IPE from the commencement date of the pension (usually the day after the person’s date of retirement). IPE is therefore defined as the amount a pension would have to be at the commencement date of a pension in order for that amount, after annual increases have been applied to equal the GMP-related payment for the tax year 2009-2010. The effect is that for the tax year 2009-10 the IPE that the affected pensioner will receive is equal to the GMP-related payment he or she would have received had no correction been made and the

overpayment continued for the remainder of the tax year. The regulation also confirms that an IPE is subject to any termination or forfeiture applied to the member's main pension.

New regulation 166 confirms that an IPE is payable by the relevant administering authority and that it is payable for life, but that it is not commutable for a lump sum, either in whole or in part.

Regulation 7 of the Amendment Regulations provides for the amendment, in accordance with regulations 8 to 11, of the 1987 Regulations in the same manner as the amendments to the 1998 Regulations.