

10 September 2020**Agenda Item: 9****REPORT OF SERVICE DIRECTOR – CUSTOMERS, GOVERNANCE AND
EMPLOYEES.****LOCAL GOVERNMENT PENSION SCHEME – MCCLOUD CONSULTATION
COVER REPORT****Purpose of the Report**

1. To provide the Pensions Committee with a copy of the draft response to the Government Consultation on the proposed changes to the Local Government Pension Scheme Regulations relating to the McCloud Judgement.
2. To consult the Pension Committee on the draft response to the consultation prior to the final submission.

Information and Advice

3. The Ministry of Housing, Communities and Local Government (MHCLG) published its consultation on draft Regulations introducing amendments to the statutory underpin for the Local Government Pension Scheme (LGPS) in England and Wales on 16 July 2020.
4. The proposals are designed to remedy the unlawful discrimination caused by the protection of older members when the scheme was reformed in April 2014.
5. Each year the Pension Regulator issues all LGPS Pension Funds with a Survey that focuses on Governance and Administration of the Pension Fund and in line with the Pension Regulators Section 14 Administration standards for the LGPS.
6. Pension Funds have been encouraged to respond to the consultation document and having attended several webinars with LGPS Manager Colleagues, and with support from the Scheme actuary the draft response has been drawn up on behalf of the fund.
7. The draft regulations set out in the MHCLG consultation for the LGPS in England and Wales will:
 - a. Remove the condition that requires a member to have been within ten years of their 2008 Scheme normal pension age on 1 April 2012 to be eligible for underpin protection.
 - b. Introduce a number of supplementary changes to ensure the revised underpin works effectively and consistently for all members.

8. The consultation closes on 8 October 2020. A similar consultation is being held in respect of the LGPS in Scotland and is expected to be published in Northern Ireland.

The Key Proposals

9. The proposals introduce the term “qualifying member” for someone who meets the following criteria, regardless of age:
- Was an active member of the LGPS on 31 March 2012, and
 - Has accrued benefits in the 2014 Scheme, and
 - Has no disqualifying break in service.
10. The underpin will apply in respect of service between 1 April 2014 and 31 March 2022, or the members “underpin date” (their 2008 scheme normal pension age) if earlier. The final salary link will remain until the member leaves active membership or reaches their underpin date, if earlier. Accrual will be on a CARE basis only for all members from 1 April 2022.
11. The changes will be retrospective, and so benefits for all qualifying leavers since 1 April 2014 will need to be revisited to determine whether the underpin will produce a higher benefit. Qualifying leavers include retirements, deferred leavers, deaths, transfers out.
12. There will be a two-stage calculation process with a provisional check on leaving active membership, or reaching the underpin date (if later), and a final check when benefits are taken (the “underpin crystallisation date”). This is so that the effect of early and late retirement factors on the 2008 Scheme and 2014 Scheme benefits can be considered in calculating whether the underpin gives a higher benefit.
13. Under the current underpin rules, the member must leave with an immediate entitlement to benefits in order to qualify. Because this rule could lead to further age discrimination, it is not included in the draft regulations meaning that the underpin will, in future, also apply to leavers with a deferred benefit entitlement.
14. Another proposed change relates to aggregation. In order to simplify administration, members will be required to aggregate benefits to qualify for the underpin. This isn't the case currently and so the consultation also proposes that active and deferred members who haven't aggregated previously are given an additional 12-month window in which to do so. It should be noted that this only applies where failure to aggregate benefits would mean that the member loses entitlement to the underpin.
15. When the current underpin comparison is carried out, no account is taken of the fact that the 2008 Scheme has a lower normal pension age (generally 65) than the 2014 Scheme (linked to state pension age). In future, to ensure a fairer comparison of the 2008 Scheme benefits and the 2014 CARE benefits, early and late retirement factors will be considered.
16. Something of a grey area under the current underpin rules, the consultation proposes that the underpin will apply to death benefits in future.
17. What the proposed changes mean is that rather than the underpin ceasing to be a consideration for administration after 1 April 2022, when the older members who currently

have protection would have largely retired, many younger members will now have a period of underpin protection to be considered in calculations until they retire.

Impact on Administration

18. Implementing the changes is likely to represent the biggest challenge for administering authorities since the introduction of the CARE scheme in 2014/15. We estimate that around a quarter of the total fund membership will fall into scope of the proposed changes to the underpin resulting from the McCloud ruling.
19. There are many different aspects of work that will need to be carried out to implement the changes and to administer the changes once they take effect. These include:
 - a. ongoing administration changes
 - b. benefits review for leavers
 - c. member communication
 - d. employer communication
 - e. data
 - f. systems
 - g. specialist areas
20. Whilst MHCLG doesn't envisage that many members will not actually see an increase in benefits as a result of the new underpin, the underpin calculations will still need to be carried out for a large number of members, both on an ongoing basis and as a retrospective exercise for leavers.
21. Other impacts of the changes will be the need as an Administering Authority to be able to administer the scheme in compliance with the new regulations from the expected commencement date of 1 April 2022.
22. As highlighted in the briefing report to committee the more immediate challenge will be to ensure that the fund has all the data it requires to calculate the change in benefits.
23. The next steps are to plan for the implementation.

Statutory and Policy Implications

24. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) That Pension Committee consider the consultation response attached in appendix A.

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Service Director – Customers, Governance, and Employees

For any enquiries about this report please contact:

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Constitutional Comments (KK01/09/2020)

25. The proposal in this report is within the remit of the Nottinghamshire Local Pension Committee

Financial Comments (KP01/09/2020)

26. There are no direct financial implications arising from the report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Local Government Pension Scheme – amendments to the statutory underpin

Link to the Government Consultation Document:

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<https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin>