

## **EXECUTIVE NOTE**

### **THE LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) AMENDMENT (NO 3) REGULATIONS 2006 SSI/2006/514**

The above instrument is made in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972. These powers have been executively devolved to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750). The Instrument is subject to negative resolution procedure.

#### **Policy Objectives**

This instrument makes amendments to the Local Government Pension Scheme (Scotland) Regulations 1998.

The LGPS has a normal pension age of 65, and members who choose to retire earlier than this will generally have their pension actuarially reduced to reflect the fact that it is in payment for longer. However, under the Rule of 85 members who decide to retire early and who meet the requirements of the Rule can receive an unreduced pension before their normal pension age. Scottish Ministers consider that the Rule will breach the terms of the EC Directive (2000/78/EC) on equality in the workplace, which makes provisions in the rules of occupational pension schemes which are discriminatory on age grounds unlawful unless they fall within limited exceptions. The Directive requires that such rules are removed by December 2006.

The Local Government Pension Scheme (Scotland) Amendment (No. 3) Regulations 2006 remove the 85 year rule from the Scheme from 1 December 2006, in order to comply with the EC Directive. The Regulations provide transitional protection to existing members: existing scheme members who will be 60 and who satisfy the 85 year rule by 31 March 2020 will be entitled to receive their pension early without any actuarial reduction; other existing members will not be subject to actuarial reduction in relation to any service before 1<sup>st</sup> April 2008. The Regulations also introduce a number of other changes to ensure compliance with age discrimination legislation, and insert the Scottish Police Services Authority into the Schedule of Scheme Employers to allow civilian staff of the new body access to membership of the scheme, as well as correct minor drafting errors in the Local Government Pension Scheme (Scotland) Amendment (No.2) Regulations 2006. Ministers have concluded that these regulations are both affordable and legal.

The regulations have been divided into three Parts.

#### **Part 1: General**

This Part relates to the citation, commencement and application of the regulations.

#### **Part 2: The 85 year rule**

This Part removes the 85 year rule from the Scheme from 1 December 2006.

### **Part 3: Miscellaneous**

This Part contains miscellaneous provisions, including a number of changes to ensure compliance with age discrimination legislation, transitional protections, and the right for certain beneficiaries to opt out of the effect of some changes. It corrects minor drafting errors concerning effective dates and a savings provision in the tax simplification amendments made by previous regulations, which require to have effect from the coming into force date of those previous regulations. It also includes the **Scottish Police Services Authority** (SPSA) within Schedule 2; the establishment of which is provided for by the Police, Public Order and Criminal Justice (Scotland) Act 2006.

#### **Schedule: Transitional Provisions**

The Schedule outlines the form of transitional protections in relation to removing the Rule of 85. It will come into effect from 1 December.

#### **Consultation**

The draft regulations have been subject to consultation with local authorities, with employer and employee representatives, and with other Government Departments.

Thirty percent of the 20 responses, including those from COSLA and those Trades Unions that responded, indicated that they still dispute that the Rule of 85 requires to be removed, and 50% considered that full protection should be provided to all existing members to ensure parity with other public sector schemes. However, no new evidence was presented that would support the consideration and implementation of any alternative options. In addition, a judicial review brought by UNISON in England and Wales against the Secretary of State for Communities and Local Government confirmed that the Rule of 85 does not comply with the EC Directive.

A number of respondents questioned the need to remove Regulation 24(4). Prior to the introduction of Rule of 85, the rule which is now Regulation 24(4) enabled individuals to retire between age 60 and 65 with an unreduced pension where they had 25 years service. The consultation exercise proposed that Regulation 24(4) should be removed alongside the removal of the Rule of 85. Regulation 24(4) demonstrates age discrimination and does not appear to be permitted by the exceptions in article 6.1 or 6.2 of the Directive. Furthermore, there are strong policy reasons for its removal given its close relationship with the rule of 85.

Of those respondents that commented on the level of transitional protection to be provided, the majority supported the Scottish transitional protection proposals.

The technical points raised were used to inform the development of the final regulations.

#### **Financial effects**

An assessment of the financial impact to the LGPS was included in the Regulatory Impact Assessment.

Scottish Public Pensions Agency  
October 2006