EXPLANATORY MEMORANDUM TO

The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2023

S.R. 2023 No. 81

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the Public Service Pensions Act (Northern Ireland) 2014 ("the 2014 Act") and is subject to the negative resolution procedure. The Department of Finance has consented to the making of these Regulations.

1.3. Section 3(3)(b) of the 2014 Act provides that scheme regulations may make retrospective provision. These Regulations are retrospective in effect from 1 April 2023. The retrospective provisions contained in these Regulations do not appear to the Department to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, or members of previous schemes. Accordingly, the procedures set out in section 23 of the 2014 Act are not applicable in relation to these Regulations.

2. Purpose

2.1. The Local Government Pension Scheme Regulations (Northern Ireland) 2014 ("the principal Regulations") established the Local Government Pension Scheme (Northern Ireland) ("the LGPS (NI)") as a career average revalued earnings scheme. According to the Public Service Pensions Act (NI) 2014, a member's pensionable earnings under a career average revalued earnings ("CARE") scheme must be revalued each year to keep up with inflation until the member leaves pensionable service, based upon the index rate adjustment for the relevant period specified in a Treasury Order. The Department of Finance makes an equivalent Order for Northern Ireland. The effect of the changes made by these Regulations to the principal Regulations is that the revaluation adjustment is moved from 1 April to 6 April each year. The result is that the Scheme revaluation is brought into alignment with the HMRC process for assessing the annual allowance tax charge, ensuring that members do not breach the limit as a result of the revaluation process.

2.2. These Regulations amend the principal Regulations.

3. Policy Background

3.1. The tax year runs from 6 April to 5 April and it is the growth in a member's pension over this period (known as the "Pension Input Amount", or PIA) which determines if there is a tax liability.

3.2. A pension may grow in line with inflation (based on the Consumer Price Index (CPI) in the September before the start of the tax year) without contributing to the "Pension Input Amount", but growth in the pension above CPI in the September before the start of the tax year is assessed against the annual allowance. The annual allowance is the maximum amount of pension savings an individual can make in any one year before potentially facing tax charges. The annual allowance is currently £40,000 for most people.

3.3. Typically, a tax liability would arise where growth over the period is more than the annual allowance of £40,000. Currently the calculation of the pension on 5 April takes account of the increase in accrued pension during the tax year due to additional length of service and the increase for inflation through the scheme revaluation process on 1 April, based on CPI during the scheme year.

3.4. For the 2022/23 tax year, a pension may grow 3.1% without contributing to the PIA (based on September 2021 CPI), but LGPS pensions are expected to increase by 10.1% on 1 April 2023 (based on September 2022 CPI). Individuals may face tax liabilities because while the PIA and LGPS (NI) are both based on CPI, they are based on CPI figures as at different dates.

3.5. These amendments to principal Regulations would defer future revaluation increases to 6 April, so for example the 10.1% increase would apply on 6 April 2023, during the 2023-24 tax year. For the 2023/24 tax year, a pension may grow by 10.1% without contributing to the PIA (based on September 2022 CPI). In short, LGPS (NI) revaluation will be aligned with the tax calculations.

3.6. Without these amendments to the principal Regulations, there will be a significant increase in the number of LGPS (NI) members breaching the annual allowance threshold and potentially incurring a tax charge this year. This is despite the revaluation merely ensuring that accrued pensions of active members keep pace with changes in prices.

3.7. The Government Actuary's Department (GAD) undertook an impact analysis to illustrate the number of LGPS (NI) members that may exceed their annual allowance in the 2022/23 tax year as a result of the expected 1 April 2023 revaluation increase of 10.1%. GAD's findings showed that, depending on the level of salary increase in 2022/23, between 200-700 scheme members are at a higher likelihood of exceeding their 2022/23 annual allowance. Under the change where the revaluation date will move from 1 April to 6 April, GAD expect the number of members likely to exceed their annual allowance to reduce significantly.

3.8. Changing the principal Regulations to move the revaluation date from 1 April to 6 April means that inflation would be reflected in the value of the pension after HMRC assess the value of an LGPS pension for the purposes of annual allowance in tax year 2022/23. Thus, by taking revaluation out of scope of the annual allowance calculation for the 2022/23 tax year, we will reduce the number of members receiving an annual allowance charge for this year.

3.9. For tax years from 2023/24 onwards, the LGPS (NI) CARE revaluation would be aligned with the inflationary growth allowed for when calculating how much a pension had grown for annual allowance purposes.

3.10. For members unaffected by the annual allowance, these amendments will have no effect on the amount of LGPS pension benefits they are entitled to on retirement. This is because the Regulations have been drafted to ensure that, notwithstanding the change in the revaluation date, there is no change to the amount of LGPS pension benefits to which members are entitled.

4. Consultation

4.1. As required by section 21 of the 2014 Act, the Department has consulted with such persons or representatives of such persons as appeared to the Department to be appropriate. A total of 7 responses were received. The LGPS (NI) Advisory Board considered these Regulations and is content.

4.2. Copies of the consultation paper and the Department's Response can be found on the website for the Department for Communities.

5. Equality Impact

5.1. The Department has given consideration to compliance with section 75 of the Northern Ireland Act 1998 and has conducted a screening analysis to identify any significant discriminatory or negative differential impact on any particular section 75 group. The screening analysis concluded that a full equality impact assessment is not required as no adverse impacts have been identified. The screening analysis concluded that these amendments will result in a minor positive impact to LGPS (NI) members in relation to the section 75 categories in respect of age.

6. Regulatory Impact

6.1. The Department considers that the amendments will not have a direct impact on businesses, charities, social economy enterprises or the voluntary sector.

7. Financial Implications

7.1. No Executive expenditure required.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that the Regulations comply with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Not applicable.

11. Additional Information

11.1. Not applicable.