

POLICY NOTE

THE LOCAL GOVERNMENT PENSION SCHEME (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2012

SSI 2012/347

1. These Regulations amend the Local Government Pension Scheme (Benefits, Membership and Contributions)(Scotland) Regulations 2008, The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008, and The Local government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008.

2. Purpose of the instrument

2.1 The amendment Regulations provide for changes to the LGPS Regulations in relation to the “scheme pays” option on tax charges where members exceed the annual allowance on contributions to the Scheme.

2.2 In addition, the Regulations make changes in relating to auto-enrolment of LG employees to the Scheme.

2.3 Finally, the Regulations also make miscellaneous amendments to the LGPS regulations.

3. Legislative context

3.1 On 1st April 2008, the new Local Government Pension Scheme in Scotland (“the 2008 Scheme”) was introduced and replaced the earlier arrangements constituted under the Local Government Pension Scheme (Scotland) Regulations 1998 (“the 1998 Scheme”)(S.I. 1998/1612). The 2008 Scheme is constituted by the Benefits Regulations, the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (2008/238)(the “Transitional Regulations”) and the Administration Regulations. The Transitional Regulations revoke most but not all of the provisions of the 1997 Scheme and deal with continuity between the earlier arrangements and the 2008 Scheme. The Local Government Pension Scheme (“LGPS”) is administered through 11 separate funds in Scotland.

4. Territorial Extent and Application

4.1 This instrument applies to Scotland.

5. Policy background

5.1 Annual Allowance Tax Charges – Scheme Pays Option

Under the Finance Act 2011, pension administering authorities must comply with the new tax regime in terms of issuing annual benefit statements which will show whether or not members have exceeded the Annual Tax Allowance.

In such cases to allow for funds to pay the tax charge following a request from a member. Where the tax charge is met by the fund any reduction in accrued rights will be carried out in line with guidance to be issued by the Scottish Ministers. This regulation is back-dated to 6 April 2011, in line with the tax regime applicable to pensions from that date.

5.2 Auto-enrolment of eligible members

Under the Pensions Act 2008, The Pensions (Automatic Enrolment) Regulations 2009 have overriding effect on occupational pension schemes. Employers will be required to comply with new pension duties which are being introduced in stages (starting with the largest employers). Every employer in the UK will be allocated a date from which the duties will first apply to the employer, known as the employer's 'staging date'. An employer's 'staging date' is based on the number of people in the employer's PAYE scheme on 1 April 2012. The first such staging date applicable to LG employers in Scotland is 1st February 2012.

5.3 The Regulations also introduce other miscellaneous amendments.

The Amendments

6. The amendments made by the Regulations are listed in the Appendix to this Note.

Consultation

7. A 4 week technical consultation exercise on the draft Amendment Regulations commenced on 18 October and ending on 15 November 2012.

Contact

8. If you have any queries regarding this instrument, please contact Kimberly Linge at the Scottish Public Pensions Agency (Tel: 01896 893229 or email: Kimberly.linge@scotland.gsi.gov.uk).

Impact Assessment

9. A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

APPENDIX TO POLICY NOTE

THE LOCAL GOVERNMENT PENSION SCHEME (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2012

These Regulations amend three Scottish statutory instruments namely:

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Scotland) 2008 (“The Benefits Regulations”);

The Local Government Pension Scheme (Transitional Provisions)(Scotland) Regulations 2008 (“The Transitional Regulations”); and

The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (The Administration Regulations”).

Section 12 of the Superannuation Act 1972 (“the 1972 Act”) provides that regulations made under section 7 may have effect from a date earlier than the making of the Regulations.

Regulation 1 provides that the Regulations come into force on 1st February 2013 but makes provision for regulation 30 to have effect from 6 April 2011.

Amendments to The Benefits Regulations

Regulation 2 introduces the amendments set out in regulations 3 to 12 relating to the Benefits Regulations.

Regulation 3 amends regulation 2 (which provides for the definition of certain terms) by introducing a definition for the expression “Scheme employer”.

Regulation 4 makes an amendment to regulation 3 (active members) to provide that, although automatic membership of the Scheme does not apply to a person with an employment contract of less than three months, nevertheless it is open to such an employee to “opt-in” to the Scheme.

Regulation 5 amends regulation 9 (final pay: general) to provide clarification as to the meaning of “final pay” .

Regulation 6 amends regulation 14A (election to pay additional contributions: survivor benefits) to provide that an election to pay additional survivor benefits must be made within 12 months of making a declaration to nominate a cohabiting partner under regulation 25 of the Benefits Regulations.

Regulation 7 amends regulation 18 (flexible retirement) to clarify that where a member aged 55 or over has accrued benefits under the 1998 Local Government Pension Scheme in the current membership, the member shall receive payment of those benefits but also has the choice whether to request to receive payment of benefits accrued under the Benefits Regulations.

Regulation 8 amends regulation 26 (meaning of “eligible child”) to update a statutory reference.

Regulation 9 amends regulation 28 (children's pensions: active members) to provide what the calculation of the pension takes into account. A similar amendment is made in regulation 11 which amends regulation 33 (survivor benefits: deferred members).

Regulation 10 amends regulation 30 (choice of early payment of pension) to provide that the appropriate administering authority for a deferred member may consent to the early payment of pension where the member's former employing authority has ceased to be a Scheme employer.

Regulation 11 amends regulation 33 (survivor benefits: deferred members) to correct certain references to related regulations.

Regulation 12 amends regulation 39 (commutation and small pensions) to include an authorised commutation payment prescribed in Regulations made under section 164 of the Finance Act 2004.

Regulation 13 introduces the amendments set out in regulations 14 to 15 relating to the Transitional Regulations.

Amendments to The Transitional Provisions Regulations

Regulation 14 amends regulation 3 (membership accrued before 1st April 2009: active members) to clarify the circumstances where benefits become payable immediately under the 1998 Scheme.

Regulation 15 amends regulation 4 (membership accrued before 1st April 2009: rejoining deferred members) to extend the deadline by which a member may elect to aggregate past service to 31st January 2014.

Regulation 16 amends Schedule 2 to clarify how for the purposes of the rule of 85 transitional provisions total membership is to be calculated.

Regulation 17 introduces the amendments set out in regulations 18 to 34 relating to the Administration Regulations.

Amendments to The Administration Regulations

Regulation 18 amends regulation 5 (employees of non-Scheme employers: transferee admission bodies) by requiring a regulation 5(2)(a) transferee admission body and an administering authority to enter into separate admission agreements where the admission body is performing the functions of a Scheme employer under more than one contract.

Regulation 19 substitutes regulation 6 (admission agreements – further provisions) with a new regulation 6 which consolidates some of the provisions formerly contained in regulation 5 relating to admission agreements for transferee admission bodies so that these now apply to all categories of admission bodies. The amendments also add new requirements to be contained in admission agreements.

Regulation 20 makes a consequential amendment to regulation 9.

Regulation 21 substitutes a new regulation 10 (joining the Scheme) providing for automatic enrolment of eligible members apart from those with employment contracts of less than 3 months, where application for membership is required.

Regulation 22 amends regulation 11 to provide that a person is to be treated as not having been a member of the Scheme, if notice of ending of membership is given within three months of joining the Scheme.

Regulation 23 amends regulation 13 (Re-employed and rejoining deferred members) to provide such members with a period of 12 months or 31st January 2014, whichever is the later, in which to elect to aggregate past service

Regulation 24 amends regulation 15 (contributions during child related leave) so that additional paternity leave is included within the provisions.

Regulations 25, 26 and 27 respectively amend regulation 16 (contributions during reserve forces service leave), regulation 17 (contributions during trade dispute absence) and regulation 18 (contributions during absences with permission) so that additional contributions made in respect of survivor benefits under regulation 21A must continue to be paid during periods of absence.

Regulation 28 amends regulation 29(admission agreement funds) by inserting what was formerly paragraph(1) of regulation 34 (special circumstances where revised actuarial valuations and certificates must be obtained) into regulation 29 of the Administration Regulations so that all matters relating to admission agreement funds are marshalled together.

Regulation 29 amends regulation 34 (special circumstances where revised actuarial valuations and certificates must be obtained) to clarify that it applies to all employing authorities and enables administering authorities to obtain a revised certificate in a wider range of circumstances.

Regulation 30 inserts a new regulation 62A (joint liability in respect of annual allowance charge) to provide that where an administering authority has discharged a member's tax charge, the authority must reduce the value of the member's accrued rights in accordance with guidance issued by the Scottish Ministers.

Regulation 31 amends certain of the definitions in Schedule 2.

Regulation 32 amends Schedule 3 (matters to be included in admission agreements with Transferee admission bodies) so that the matters to be contained in an admission agreement apply to all categories of admission body.

Regulation 33 amends Schedule 4 (appropriate funds) to allow greater flexibility in the use of directions by the Scottish Ministers.

Regulation 34 provides that the amendments made by regulations 19 and 20 do not affect admission agreements entered into before the date that these Regulations come into force.

SPPA

December 2012