

EXPLANATORY MEMORANDUM TO

Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2010

SR 2010 No. 410

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the Superannuation (Northern Ireland) Order 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule makes changes to the following Regulations –
 - Local Government Pension Scheme Regulations (Northern Ireland) 2002 (S.R. 2002 No. 352) (“the 2002 Regulations”) - to the extent that they continue to operate by virtue of the Local Government Pension Scheme Regulations (Amendment and Transitional Provisions) Regulations (NI) 2009;
 - Local Government Pension Scheme Regulations (Benefits, Membership and Contributions) Regulations (NI) 2009 (S.R. 2009 No. 32) (“the Benefits Regulations”);
 - Local Government Pension Scheme Regulations (Administration) Regulations (NI) 2009 (S.R. 2009 No. 33) (“the Administration Regulations”); and
 - Local Government Pension Scheme Regulations (Amendment and Transitional Provisions) Regulations (NI) 2009 (S.R. 2009 No. 34) (“the Transitional Regulations”).

Amendment of Employers’ payments and valuation provisions

- 2.2. The amendments are intended to clarify employers’ liabilities and apply to the employers’ payments and valuation provisions in the 2002 Regulations and the Administration Regulations. Regulations 2 to 8 of the Rule amend the 2002 Regulations. Regulations 24, 33 to 39 and a part of regulation 44 (which inserts definitions relevant to these amendments) amend the Administration Regulations.
- 2.3. A new provision has also been introduced to allow for the apportionment of pension liabilities between the relevant parties, by agreement, when an employer leaves the Local Government Pension Scheme (“the Scheme”) or merges with another employer while remaining within the Scheme. This enables one employing authority to agree with the Northern Ireland Local Government Officers’ Superannuation Committee (“the Committee”) and

one or more other employers or guarantors that its pension liabilities will become the responsibility of those other employing authorities or guarantors. This is similar to the apportionment and withdrawal arrangements currently possible in respect of private sector occupational pension schemes. This new provision will be regulation 78A of the 2002 Regulations and 33A of the Administration Regulations and is inserted by regulations 6 and 36, respectively of the Rule.

- 2.4. The regulations governing termination payments are revised to confirm that a termination payment is payable when a body ceases to employ active members. Amending the regulations will give greater certainty to all parties.
- 2.5. An amendment has been made to enable the Committee to agree with an employing authority, which intends to cease employing active members, that the termination debt may be deferred provided that the employer continues to pay ongoing contributions as if it employed active members.
- 2.6. A new provision has been introduced to allow the Committee to determine a nominated calculation date for the purposes of calculating the contributing body's liabilities where it reasonably believes that a contributing body will cease employing active members in the near future but the actual cessation date is not yet known. When the actual cessation date is known the Committee may then revisit the calculation taking into account any contributions already received from the contributing body.
- 2.7. The Rule also makes express provision for the Committee to obtain a valuation from the Scheme actuary which reports the liabilities of the body which is ceasing to employ active members. This report would include liabilities that have arisen because the exiting body has accepted responsibilities for such liabilities or for which the exiting body has become responsible by virtue of a scheme of reorganisation, or because of the provisions of any legislation.

Other Amendments

- 2.8. The other amendments to the Benefits Regulations, the Administration Regulations and the Transitional Regulations are introduced in line with the policy of broad parity with the Local Government Pension Scheme (LGPS) in England and Wales and in order that the LGPS meets the general requirements of pension law.

Amendments to the Benefits Regulations

- 2.9. Regulation 11 of the Rule amends regulation 4 of the Benefits Regulations to clarify that pensionable pay does not include any amount treated as the money value to an employee of the provision of a motor vehicle or any amount paid in lieu of such provision. This was the case in the 2002 Regulations but was inadvertently omitted from the Benefits Regulations.

- 2.10. Regulation 12 clarifies regulation 8 of the Benefits Regulations by stating that a member's final pay must be his pensionable pay in local government employment.
- 2.11. Regulation 13 makes a number of amendments to regulation 11 of the Benefits Regulations to make it clear that contributions at the appropriate rate must be paid on any fluctuating emoluments received by the member for those amounts to be included in the member's final pay. Also an additional paragraph has been inserted which sets out how a member's final pay is calculated where he has been in receipt of fluctuating emoluments for less than 3 years.
- 2.12. Regulation 14 inserts a new regulation 12A to deal with the loss of enhanced protection for the lifetime allowance in respect of pension tax rules under the Finance Act 2004.
- 2.13. The insertion of a new regulation 14A by regulation 15 of the Rule enables members to make additional contributions in respect of membership prior to 6 April 1988 to provide additional pension for a surviving nominated cohabiting partner. Survivor benefits for nominated cohabiting partners were first provided within the Local Government Pension Scheme by virtue of regulations 24 and 25 of the Benefits Regulations. However, regulation 3(4) of the Transitional Regulations specifies that only periods of membership after 5th April 1988 should be taken into account when calculating the survivor benefit. This date was chosen to be in line with previous improvements to the LGPS which allowed for survivor benefits to be paid to the surviving partner of a civil registered same sex partnership based only on membership accruing since 6th April 1988. Members may now choose to pay additional contributions so that periods of membership before 6th April 1988 can be counted in the calculation of the benefit paid to their surviving nominated cohabiting partner.
- 2.14. Regulation 17 amends regulation 27 (children's pensions) to enables the Committee to pay a children's pension to a parent or legal guardian.
- 2.15. Minor amendments are made to the ill-health retirement benefit provisions to correct a cross reference and to clarify that it was the policy intention that deferred members, with at least one years' membership, would be eligible for ill-health retirement benefits.

Amendments to the Administration Regulations

- 2.16. Regulation 32 inserts a new regulation 20A (payment of additional contributions: survivor benefits (ASBCs)), and new regulation 20B (discontinuance of ASBCs). These new regulations set out the process for making, ending and calculating additional contributions to the pension for a surviving nominated cohabiting partner.
- 2.17. The amendment of regulation 42 removes the right to a return of contributions where a member with concurrent employments ceases to be a member in one of these employments as it is not considered appropriate for a member to have a refund if he/she is continuing to be a member in one of those employments.

- 2.18. Regulation 40 inserts a new regulation 45A (guaranteed minimum pensions) which specifies the circumstances in which a guaranteed minimum pension is paid where a member's local government employment is contracted out. Regulation 45B (survivor benefits: guaranteed minimum pension) and 71A (revaluation of guaranteed minimum) have also been inserted.
- 2.19. An amendment to regulation 91 of the Administration Regulations extends the rights of individuals who have been awarded a share of retirement benefit following their divorce from a member of the LGPS. Previously such pension credit members have only been able to receive their benefits at age 65 but the amendment provides for benefits to be taken at any time that the member chooses from age 60 onward. An appropriate actuarial reduction would be applied to benefits taken before age 65. This amendment is backdated to 6 April 2009, the date on which amendments made by the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/615) to the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054) gave effect to changes in the rules relating to pension credit members.
- 2.20. As a consequence of the changes outlined above a number of new definitions have been added to Schedule 1 of the Administration Regulations.

Amendments to the Transitional Regulations

- 2.21. Regulation 47 amend regulation 3 of the Transitional Regulations to include the early payment of pension due to ill health to the list of benefits accrued under the 2002 Regulations, which should come into payment at the same time as benefits accrued under the current Regulations.
- 2.22. Regulation 3 is also amended to place civil partners on a level footing with spouses with regard to survivor's benefit. All membership will be taken into account, not just that from 6th April 1988 onward. Both widowers' and widow's survivor benefits are based on their spouse's total membership.
- 2.23. Regulation 48 amends regulation 7 of the Transitional Regulation to clarify the amount of death grant payable to a deferred member. A minor technical amendment is also made to Schedule 1 by regulation 49.

3. Background

- 3.1. The Department maintains a policy of broad parity with the Local Government Pension Scheme in England and Wales. The lead department in England and Wales is the Department for Communities and Local Government, which has recently made two sets of amending Regulations. These are-
 - The Local Government Pension Scheme (Miscellaneous) Regulations 2009 (S.I. 2009/3150); and

- The Local Government Pension Scheme (Miscellaneous) Regulations 2010 (S.I. 2010/2090).
- 3.2. Where changes made by the above Regulations are applicable to the LGPS in Northern Ireland they are introduced by way of a statutory rule.
- 3.3. In certain circumstances, amendments specific to the LGPS in Northern Ireland are required. The amendments to the employers' payments and valuation provisions within the 2002 Regulations and the Administration Regulations are needed because of various changes to public bodies in Northern Ireland. For example, the amalgamation of the Further and Higher Education Colleges and the creation of the Library Authority identified areas where the regulations were not sufficiently clear on how the pension liabilities of the original employing authority would be met after the reorganisation.

4. Consultation

- 4.1. On 8th October 2009, the Department issued a letter notifying all consultees of its intention to bring forward a consultation document on proposed amendments to the valuation provisions. A consultation on the draft statutory rule was held from 12 April 2010 to 12 June 2010. Nine responses were received, four of which made no comment. One employing authority, two trade unions and one other body supported the proposed changes and one employing authority did not.

5. Equality Impact

- 5.1. Under the terms of Section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the Rule will not lead to a significant discriminatory or negative differential impact.

6. Regulatory Impact

- 6.1. A regulatory impact assessment has not been carried out because this Rule has no impact on private sector firms, voluntary organisations and charities.

7. Financial Implications

- 7.1. No Exchequer expenditure is required.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department is satisfied that the Rule complies with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The Local Government Pension Scheme in Northern Ireland maintains broad policy parity with that in England and Wales.
- 10.2. Occupational pensions is a reserved matter and therefore the responsibility of the United Kingdom Government. Northern Ireland Ministers, however, have devolved powers to make changes to public pension schemes in Northern Ireland. In practice, this generally means ensuring that scheme regulations are consistent with administrative and legal requirements in Northern Ireland. A Northern Ireland Minister may, however, choose to use executive devolved powers to make more substantial changes (which of course must comply with UK and EU law) such as the amendment of the employers' payments and valuation provisions within the 2002 Regulations and the Administration Regulations.

11. Additional Information

- 11.1. Not applicable.