

EXECUTIVE NOTE

THE LOCAL GOVERNMENT PENSION SCHEME (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2011

SSI 2011/349

1. The above-named regulations amend The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SSI 2008/230, as amended) (“the Benefits Regulations”), The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (SSI 2008/228, as amended) (“the Administration Regulations”) and The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (SSI 1998/192) (“the Discretionary Payments Regulations”).

2. Purpose of the instrument

2.1 The regulations provide for the protection of certain pension rights of staff who have transferred to the Local Government Pension Scheme as a result of Machinery of Government Changes.

The amendments cover the transfers of staff between the following bodies—

- (i) the Scottish Legal Services Ombudsman and the Scottish Legal Complaints Commission;
- (ii) the Scottish Administration and Learning and Teaching Scotland;
- (iii) the Scottish Administration and Social Care and Social Work Improvement Scotland, and
- (iv) The Skills Development Scotland Co. Limited Retirement Benefit Scheme and the Local Government Pension Scheme.

3. The regulations also make miscellaneous amendments to regulations mentioned at paragraph 1.

4. Legislative context

4.1 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.

4.2 This amending instrument is made, in part, in the context of the Machinery of Government changes listed at 4.4 to 4.7 below.

4.3 The remaining regulations are not related to the Machinery of Government changes but make a number of amendments clarifying the various Regulations concerned or introducing minor policy changes.

Learning and Teaching Scotland

4.4 The transfer of functions and staff from the Scottish Administration’s Learning Connections Division (Learning Connections) to Learning and Teaching Scotland (LTS) took place on 1 April 2010.

LTS is a non-statutory Executive Non-Departmental Public Body (NDPB) whose constitutional relationship with the Scottish Government is set out in various documents including LTS’s Memorandum and Articles of Association, (it’s a company limited by guarantee) Management Statement and Financial Memorandum, corporate and annual business plans and a letter from the Cabinet Secretary for Finance and Sustainable Growth to the Chair of 7 May 2009. The high level direction in which LTS operates is set by Ministers including through the recent review of LTS and potentially in annual ministerial letters of guidance.

Skills Development Scotland

4.5 Skills Development Scotland (SDS) is a company limited by guarantee. It was formed on 1 April 2008 from the merger of Learndirect Scotland, Careers Scotland and the main skills and training interventions formerly undertaken by Scottish Enterprise (SEn) and Highlands and Islands Enterprise (HIE).

Scottish Legal Complaints Commission

4.6 The Scottish Legal Services Ombudsman staff transferred to the Scottish Legal Complaints Commission (SLCC) on 1 October 2008. The SLCC is a statutory body set up under the Legal Profession and Legal Aid (Scotland) Act 2007.

Social Care and Social Work Improvement Scotland.

4.7 Social Care and Social Work Improvement Scotland (SCSWIS), a new NDPB, was created from 1 April 2011 SCSWIS under sections 5 and 6 of The Public Services Reform (Scotland) Act 2010.

5. Territorial Extent and Application

5.1 This instrument applies to Scotland.

6. Policy background

6.1 Under Fair Deal for Staff Pensions, transferring staff are entitled to an occupational pension scheme which is certified by an actuary as being overall, materially, at least as good as the public sector pension scheme which they are leaving. On the date of transfer, staff will not be able to retain membership of the scheme to which they formerly belonged, as they will be eligible to join the LGPS.

6.2 These regulations fulfil the obligations of Fair Deal for Staff Pensions by retaining an age 60 retirement (and age 50 for the early release of certain retirement benefits) for those transferring employees who were members of, or were eligible to join, the 1972 and the 2002 Sections of the Principal Civil Service Pension Schemes (“PCSPS”), The Highlands and Islands Enterprise Superannuation Scheme, The Scottish Enterprise Pension and Life Assurance Scheme or The Skills Development Scotland Retirement Benefit Scheme. Some regulatory amendments to the LGPS are required in order to permit the Government Actuary’s Department to certify broad comparability.

6.3 Fair Deal for Staff Pensions also requires that transferring staff have the option to transfer their accrued pension rights to the new pension scheme. The regulations fulfil the obligations of Fair Deal by permitting the transfer of accrued pension rights on ‘bulk transfer terms’ as agreed between the actuaries acting for the old schemes and the LGPS respectively.

Learning and Teaching Scotland

6.4 The decision to transfer some of Learning Connections functions followed recommendations in the Strategic Review of Learning Connections (July 2009) and subsequent decisions of the Learning Connections Transition Board. This transfer is also part of a wider re-organisation of Learning Connections functions to maximise effectiveness in community learning and development policy advice and delivery and practice development.

The transfer is consistent with the outcomes of the recent review of LTS.

Skills Development Scotland

6.5 On its formation SDS inherited staff who were members of four different pension schemes, each with varying membership and benefit structures. SDS was involved in the following four pension schemes:

The Highlands and Islands Enterprise Superannuation Scheme, deferred entitlement only, no active members;

The Local Government Pension Scheme (The Highland Council Pension Fund and the Strathclyde Pension Fund (SPF));

The Scottish Enterprise Pension and Life Assurance Scheme; and

The Skills Development Scotland Retirement Benefit Scheme.

SDS has now consolidated pension arrangements for all its staff in the Local Government Pension Scheme (LGPS) Strathclyde Pension Fund (SPF).

The Scottish Legal Complaints Commission

6.6 Staff employed by the Scottish Legal Services Ombudsman transferred employment to the Scottish Legal Complaints Commission (SLCC) on 1 October 2008. As employees of the Scottish Legal Services Ombudsman, staff were members of the Principal Civil Service Pension scheme. Staff of the SLCC are entitled to membership of the Local Government Pension Scheme under the terms of an admission agreement effective from 1 October 2008 with Lothian Pension Fund.

Social Care and Social Work Improvement Scotland

6.7 Transferring to SCSWIS will be all the staff from the Care Commission (around 550), all of the staff from Social Work Inspection Agency (SWIA) (around 50), and a few staff (around 10) from part of HMIE.

The Care Commission and SWIA will cease to exist when SCSWIS comes into being from 1 April 2011. The staff transferring to SCSWIS from SWIA and HMIE are all civil servants, and will move from the PCSPS to the Local Govt Scheme. The new body will be an admitted body with the Tayside Pension Fund, which is administered by Dundee City Council.

Miscellaneous Amendments

6.8 The regulations also make a number of miscellaneous amendments unconnected with the transfers of staff mentioned above.

The Amendments

6.9 The amendments made by the Regulations are as follows -

Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

Regulations 3 to 6 amend the Discretionary Regulations as follows –

Regulations 3, 5 and 7 correct certain references to “Benefit” (within the title to the Benefits Regulations) to read “Benefits”;

Regulation 4 amends regulation 17(cessation of new employment) to provide that the reduction applicable to Compensatory Added Years awarded under the Discretionary Regulations on the termination of the member’s subsequent re-employment, should only be based upon service up to age 65;

Regulation 6 adds a reference to regulation 13 of the Benefits Regulations to regulation 35 of the Discretionary Regulations. The effect is to add additional pension

awarded by an employer under regulation 13 to augmentation of service under either regulation 51 of the 1998 Regulations or regulation 12 of the Benefits Regulations.

Local Government Pension Scheme (Scotland) Regulations 1998

Regulation 9 amends regulation 150 (“appropriate rights”/“pension credit benefits” under the scheme) which deals with the application of Pension Sharing Orders. The amendment provides that a pension credit member, who previously could not access their share of the benefits until they reached the scheme’s normal retirement age of 65, will now be able to access their share of the benefits at any time on or after age 60, but on an actuarially reduced basis.

The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SSI 2008/230, as amended) -

Regulation 11 amends regulation 5 (meaning of “pensionable pay”) by inserting into the list of exclusions to the meaning of “pensionable pay”, the pay uplift paid to former staff of the Scottish Administration who have transferred to LTS in recognition of the higher contribution rates paid under the LGPS compared to the principal civil service pension scheme (“PCSPS”). Regulation 11 also makes equivalent provision for staff formerly entitled to a pension under the SDS Scheme, staff of the SLCC and staff of SCSWIS (established on 1st April 2011);

Regulation 12 amends regulation 6 (benefits) by inserting a reference to regulations 82A, 82B, 82C and 82D (bulk transfers in) of the Benefits Regulations, so that staff of LTS, those staff who were entitled to a pension under the SDS Scheme, staff of SLCC and staff of SCSWIS are not subject to an initial qualifying period before entitlement to benefits under the LGPS;

Regulation 13 amends regulation 7 (periods of membership) by inserting a reference to regulations 82A, 82B, 82C and 82D (bulk transfers in) of the Benefits Regulations, so that the bulk transfer in of LTS staff, those staff who were entitled to a pension under the SDS Scheme, staff of the SLCC and staff of SCSWIS will enable their membership of the PCSPS or, as the case may be, the SDS Scheme, to be counted towards their period of membership in the LGPS;

Regulation 14 amends regulation 13 (power of employing authority to award additional pension) to make it clear that only an active member can be awarded additional pension (not a deferred or a pensioner member);

Regulation 15 inserts new regulation 14A (“Election to pay additional contributions: survivor benefits”) to provide members with the choice to pay additional contributions so that their periods of membership before 6th April 1988 can be counted as well in the calculation of the benefit paid to their surviving nominated cohabiting partner. This enables such members to increase their partners’ potential survivor benefit whilst offsetting the costs which would have to be met by pension funds. 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 April 1988.

Regulation 16 makes a minor amendment to Regulation 16 (retirement benefits) by introducing a reference to new regulations 16A, 16B, 16C and 16D.

Regulation 17 inserts a new regulation 16A into the Benefits Regulations, to enable staff of LTS, on transfer to the LGPS, to retain the benefit of the normal retirement age of 60 offered under the PCSPS to which they previously belonged. Regulation 17 also inserts regulation 16B into the Benefits Regulations (which makes equivalent provision in relation to those staff formerly entitled to a pension under the SDS Scheme), regulation 16C (which makes equivalent provision in relation to staff of the SLCC and regulation 16D (which makes equivalent provision in relation to staff of SCSWIS).

Regulation 18 amends the title to regulation 22 (limit on total amount of benefits) to add the words “and liability to tax” to clarify the fact that the provision gives the fund administering authority the power to deduct tax on refunds of contributions;

Regulation 19 amends regulation 27 (Children’s pensions) to provide that the administering authority may pay all or part of a child’s pension to a person other than an eligible child;

The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (SSI 2008/228, as amended)

Regulation 21 amends regulation 10 (joining the scheme). This is a tidying-up amendment to allow those members whose enrolment into the LGPS takes place subsequently to their first taking up employment with an LGPS employer, to allow them to count their earlier period of employment as part of their Scheme membership, provided they apply to their employer to pay their arrears of contributions within three months of becoming eligible to join the Scheme, or such longer period as the employer may allow.

Regulation 22 amends regulation 13 (re-employed and rejoining deferred members) by inserting a new sub-paragraph (7A) to allow members to aggregate any of their previous periods of membership, not just the immediately preceding one, provided that they elect to do so within the first 12 months of their new period of membership or within 12 months of the coming into force of these Regulations, whichever is later.

Regulation 23 amends regulation 14 (concurrent employments). This amendment gives certain employees more freedom to aggregate membership, in this case those who have in the past held Scheme membership in respect of more than one employment at the same time. Such members are now able to aggregate membership if they have an entitlement to benefits under Regulation 6(benefits) of the Benefits Regulations, without necessarily having at least three months membership in respect of that employment.

Regulation 24 amends regulation 15 to insert a reference to regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations ;

Regulations 25 to 27 amend regulations 15 (contributions during child-related leave), 16 (contributions during reserve forces leave), 17 (contributions during trade dispute absence) and 18 (contributions during absences with permission) to insert a reference to regulation 14A of the Benefit Regulations;

Regulation 28 introduces new regulations 21A (“Payment of additional contributions: survivor benefits (ASBCs)”) and 21B (“Discontinuance of ASBCs”). Regulation 21A provides that a member who wishes to pay additional contributions under regulation 14A of the Benefits Regulations must make a request to do so in writing to the appropriate administering authority. Regulation 21B makes provision for persons who wish to stop paying ASBCs;

Regulation 29 amends regulation 27(Governance compliance statement) to change the date by which Administering Authorities must have published such a statement to 31 October 2011.

Regulation 30 amends regulation 31A(1)(c) to provide that in the pension fund annual report the report of the arrangements for the administration of each fund should include details of any borrowings of the funds outstanding at the end of the accounting period;

Regulation 31 amends regulation 43 (permanent reductions in pay): certificates of protection of pension benefits - to reduce the period that a member may take into account in the calculation of pensionable pay to a period of no more than three years prior to the date of reduction in the person’s rate of pay. The regulation also removes the words “(“ including the member’s ill-health”) “ in sub-paragraph (3) of regulation 43, and for “date” substitutes the word “rate”.

The regulation also adds new sub-paragraph (11) which clarifies that if the member ceases to be an active member with the employing body that issued the certificate, the certificate does not carry forward in relation to any further period of membership, except where the transfer to another employing authority is as a result of a transfer to which TUPE applies or which is treated as if it were a relevant transfer;

Regulation 32 inserts after regulation 46 (commencement of pensions) new regulation 46A (Guaranteed Minimum Pensions) (“GMPs”). This amendment is being made in order to bring the scheme in Scotland into line with a similar change which was introduced to the LGPS in E & W on 31 December 2009. The amendment deals with the postponement of GMP payments for the increasing number of members who continue working beyond normal pensionable age. Those who change their employment and leave local government may now elect for the payment of their GMP to be suitably postponed if they choose thus enabling them to enjoy actuarial increases and avoid unfair restrictions on access to tax-free lump sums;

Regulation 33 amends regulation 68 (“recovery or retention where former member has misconduct obligation”) to include among the rights which are not protected service credited by virtue of ARCs or ASBCs;

Regulation 34 amends regulation 81 (changes of fund) to update a reference to the President of the Scottish Faculties of Actuaries to refer to the President of the Institute and Faculty of Actuaries;

Regulation 35 introduces a new Part 9A (“Special cases”) comprising five new regulations 82A, 82B, 82C, 82D and 82E:

Regulations 82A and 82D provide for the bulk transfer in of the pension rights of former Scottish Administration staff (LTS, SWIA and HMIE), accrued under the PCSPS. Regulation 82B provides for the bulk transfer in of the pension rights of those staff formerly entitled to a pension under the SDS Scheme, accrued under the SDS Scheme. Regulation 82C provides for the bulk transfer in of pension rights of former SLSO staff, accrued under the PCSPS.

Regulation 82E provides that references to normal retirement age in relation to staff of LTS, those staff formerly entitled to a pension under the SDS Scheme, staff of the SLCC and staff of SCSWIS, are references to 60 instead of 65. There is an exception relating to regulation 84(4), where normal retirement age is still 65.

Regulation 36 amends regulation 95 (“appropriate rights”/“pension credit benefits” under the scheme) to provide that a pension credit member may elect to receive their benefits from age 60, but that such benefits would be reduced as calculated by The Government Actuary’s Department;

Regulation 37 amends Schedule 1 (interpretation) to –

- (i) insert a definition of ASBCs (additional survivor benefits contributions);
- (ii) update the definition of “actuary” to read “a Fellow of the Institute and Faculty of Actuaries”, and
- (iii) define “Normal retirement age” as age 65 “except in regulation 82E...”.

Regulation 39 amends regulation 4 (membership accrued before 1 April 2009: rejoining deferred members) of the Transitional Regulations to insert a reference to the 1987 Scheme and to substitute for sub-paragraph (2) that a member can choose within 12 months of becoming an active member that any service prior to 1 April 2009 should be treated as post-1 April 2009 service.

Consultation

7. A 4 week technical consultation exercise on the draft Amendment Regulations commenced on 16 November 2010. The proposal for a pension fund annual report had previously been consulted upon between 16 July and 9 October 2010.

Contact

8. If you have any queries regarding this instrument, please contact David Lauder at the Scottish Public Pensions Agency (Tel: 01896 893227 or email: david.lauder@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.

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