

SPN/LG CIRCULAR No.2/2008

The Secretary General
Convention of Scottish Local Authorities

The Chief Executive
Scottish Local Authorities

The Chief Executive
Water Authorities

The Principal Reporter
Scottish Children's Reporter Administration

The Chief Executive
Scottish Environment Protection Agency

The Director General
Strathclyde Passenger Transport Executive

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Your ref:
Our ref: LGT/01/21-23/00

17 June 2008

Dear Sir/Madam

THE LOCAL GOVERNMENT PENSION SCHEME (BENEFITS, MEMBERSHIP AND CONTRIBUTIONS) (SCOTLAND) REGULATIONS 2008 - (SSI 2008/230)

THE LOCAL GOVERNMENT PENSION SCHEME (ADMINISTRATION) (SCOTLAND) REGULATIONS 2008 – (SSI 2008/228)

THE LOCAL GOVERNMENT PENSION SCHEME (TRANSITIONAL PROVISIONS) (SCOTLAND) REGULATIONS 2008 – (SSI 2008/229)

1. I am writing about the three sets of Regulations listed above which set out the new Local Government Pension Scheme (LGPS) in Scotland. These Regulations were laid in the Scottish Parliament on 6 June 2008 and come into force on 1 April 2009.

2. Copies of these Regulations can be accessed via the Office of Public Sector Information website using the following links. Additional copies can also be purchased from the Stationery Office.

- [SSI 2008/230 Benefits, Membership and Contributions Regulations](#) and [Executive Note](#)
- [SSI 2008/228 Administration Regulations](#) and [Executive Note](#)
- [SSI 2008/229 Transitional Provisions Regulations](#) and [Executive Note](#)

Background

3. In 2002, the UK Government published a Green Paper entitled “Simplicity, security and choice: Working and saving for retirement” which set out the need to modernise public sector pension schemes and to contain the costs at a sustainable level in the light of major demographic changes, including rising longevity. The UK Government announced in 2003 that it intended to proceed with its reform of public service pension schemes and, in 2004, the Scottish Public Agency (SPPA) consulted with stakeholders on proposed changes to the LGPS in Scotland, in a consultation document called “Facing the Future”, which was aimed at securing changes to the scheme to address affordability issues and its future sustainability.

4. In 2005, Scottish Ministers announced their intention to remove the Rule of 85 from the Scheme because it breached the terms of the EC Directive on equality in the workplace. This led to a joint statement by COSLA and the Unions on the overarching principles for both dealing with the removal of the Rule of 85 and the future development of the local government scheme. Discussions around the removal of the Rule of 85 were protracted and consideration of the new scheme was delayed until these were completed.

5. A tripartite group, called SLOGPAG¹, was established in November 2006 to jointly develop the “new” LGPS for Scotland. The group consisted of representatives of COSLA (on behalf of councils and administering authorities), Unions and the Scottish Government. The Group held tripartite discussions in order to jointly develop consensus based proposals for a new LGPS in Scotland.

Policy Objectives

6. The overall aim is to reform the LGPS to ensure that it is cost effective, viable and sustainable over the longer term. The new LGPS is also required to meet the needs of a modern workforce, through providing a valued set of benefits to members and a useful tool for employers to aid recruitment and workforce change. The new scheme will provide equal access for all local government employees to a set of scheme benefits that are both fair and affordable.

Consultation Process

7. Two consultation exercises were carried out in relation to the new Local Government Pension Scheme in Scotland. The first consultation held between 31 July 2007 and 31st October 2007 was on a consultation paper on proposals developed during the tripartite discussions within SLOGPAG.

8. Comments received were considered by SLOGPAG and discussions continued until final agreement was reached and a Heads of Agreement document was signed by all

¹ SLOGPAG stands for Scottish Local Government Pensions Advisory Group

parties involved in the discussions. The Press Release which announced that agreement and the Heads of Agreement document itself can both be found on the SPPA website (Pensions Reform and Taxation – Local Government).

9. A second technical consultation exercise was carried out on the 3 sets of draft Regulations between 14th February 2008 and 27th March 2008.

Benefit Regulations

10. The new Benefit Regulations introduce such features as a 1/60th accrual rate with the option to convert up to 25% of the value of the pension to a lump sum; improved death in service benefits; benefits for cohabiting partners; and tiered contribution rates for employees based on a tax-banded approach which leads to an average employee contribution rate of 6.3% . A summary of the features of the new Scheme is attached at **Annex A**.

11. **Guidance on the operation of the new tiered contribution rate system**, which has been developed by the Working Party of the Scottish Pensions Liaison Group, will be issued to Administering Authorities no later than the end of June 2008. Administering Authorities will ensure that the guidance is communicated to employers. This will ensure that employers can allocate members to the correct contribution rate and determine members' pensionable pay from 2009/10 onwards.

12. The Benefit Regulations also introduce a **two tier ill-health benefit provision**. Both tiers will require the member to be permanently incapable of carrying out their job. In the first tier, where there is no reasonable prospect of undertaking gainful employment before age 65, accrued pension benefits will be enhanced by 100% of prospective service to age 65. Under the second tier, where there remains a reasonable prospect of individuals undertaking gainful employment before age 65, accrued pension benefits will be enhanced by 25% of prospective service to age 65.

13. **It should be noted that** the phrases “reduced likelihood of obtaining gainful employment” in regulation 20(1)(b), “no reasonable prospect of obtaining gainful employment” in regulation 20(2) and “ reasonable prospect of obtaining gainful employment” in regulation 20(3), are to be interpreted as relating solely to consideration of the individual's ability to do a job from a medical perspective. **It is not the policy intention** that in addition, consideration should be given to the likely state of the job market. Medical referees should therefore be advised that their role is confined to determining, in relation to any of these phrases, whether or not an individual would be capable, on medical grounds alone, of obtaining gainful employment.

14. Provision for employers to operate a discretionary third tier will be made outwith the pension scheme, under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998. A separate consultation exercise on the regulations for this discretionary provision will be carried out in due course.

15. A copy of the Derivation Table for the Benefit Regulations is attached as **Annex B**

Administration Regulations

16. The Administration Regulations primarily consist of the provisions of the 1998 regulations that will be carried forward as part of the new scheme arrangements with effect from 1 April 2009.

17. A copy of the Derivation Table for the Administration Regulations is attached as **Annex C**

18. The Regulations are divided into the following Parts:

Part 1 deals with citation, commencement and extent and also refers to Schedule 1 which provides definitions of expressions used in the regulations;

Part 2 sets out rules relating to membership of the Scheme. Of particular note is Regulation 10 (joining the Scheme), which does not require any person who is eligible to be a member of the Scheme to apply to be such;

Part 3 deals with contributions. Regulation 20 (additional regular contributions) sets out the applicable procedure in circumstances where a member chooses to pay additional contributions under Regulation 14 of the Benefits Regulations. Regulations 22 - 24 simplify and update provisions dealing with additional voluntary contributions and shared cost additional voluntary contributions;

Part 4 deals with pension funds and employers' payments. It also includes a new provision (Regulation 27) requiring Administering Authorities to prepare and publish a governance compliance statement setting out how they deal with governance in relation to maintaining a pension fund. It also includes a change to the Certificate of Protection provision (Regulation 43) to include detail of how to treat reductions in a member's pay as a result of ill-health;

Part 5 deals with the payment of benefits;

Part 6 deals with determination of questions and disputes. Regulation 51 requires the employing authority to decide what contribution rate a member must pay. This is consequential on regulation 4 of the Benefits Regulations, which provide that the contribution rate a member pays will be based on the member's pensionable pay and a range of pay bands. It also maintains the provisions which allow disagreements to be referred to Scottish Ministers for reconsideration, including a requirement that the application should contain relevant supporting documentation.

Part 7 deals with policy statements and the provision of information;

Part 8 deals with special adjustments;

Part 9 deals with transfers. Regulation 82 sets out the provisions which apply where a variable time employee transfers from one pension fund to another.

Part 10 deals with pension sharing.

Transitional Provisions Regulations

19. These Regulations come into force on 1 April 2009 and make provision to protect the benefits accrued by members of the 1998 Scheme before that date, and to protect their rights.

20. Regulations 3 and 4 deal with active and deferred members respectively, both of whom can count periods of membership before and after 1 April 2009.

21. Regulation 7 deals with limits on death benefits for people who become deferred members after 31 March 2009 and who have membership both before and after 31 March 2009.

22. Provisions relating to pension sharing on divorce are reproduced in the Administration Regulations.

23. Rule of 85 transitional protection is continued by Schedule 2 of the Transitional Provisions Regulations and applies to flexible retirement cases under regulation 18 of the Benefits Regulations, as well as those choosing to leave early under regulation 30 of the Benefits Regulations.

24. As well as setting out provisions for transitional protection, this instrument deals with the **revocation** (subject to savings) of the Local Government Superannuation (Scotland) Regulations 1987 ("the 1987 Regulations") (so far as they continue to operate) and the Local Government Pension Scheme Regulations 1998 ("the 1998 Regulations") and of a number of Regulations that amend the 1987 Regulations or the the 1998 Regulations to make provision dependent on them, which are set out in Schedule 1 attached to the SSI
Appropriate guidance from the Government Actuary's Department will be made available before all three Regulations come into force.

Guidance from the Local Government Pensions Committee (LGE)

25. In the lead up to the introduction of the new look scheme in Scotland the Local Government Pensions Committee (LGPC) will be updating the national LGPS members' website (www.lgps.org.uk) and the suite of employee guides to the LGPS, so that both are ready for 1 April 2009. The LGPC will also be producing a DVD / CD Rom explaining the new scheme and how existing members are affected by the changes, together with the text for an explanatory leaflet that Fund administering authorities / employers can use if they so wish. It is planned that these will be ready from January 2009. In addition, the LGPC currently intends to run a number of training events on the new look Scheme during November / December 2008 aimed primarily at administering authorities and during January 2009 aimed primarily at employing authorities. Details of these events will be advertised in due course via an LGPC Circular and on the on-line events booking system at <http://www.lge.gov.uk/lge/events/events-list.do>

Equality Impact Assessment

26. An Equality Impact Assessment has been completed and will be available via the SPPA website shortly. This will include information on how equalities provisions will continue to be addressed in the new scheme.

27. If you wish to discuss any aspect of the new scheme in more detail please do not hesitate to contact David Lauder either by telephone on 01896 893227 or by e-mail to david.lauder@scotland.gsi.gov.uk.

Yours faithfully



Jean Steel
Policy Officer, LGPS