



## SCOTTISH PUBLIC PENSIONS AGENCY

To the listed addressees

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Your ref:  
Our ref: LGT/01/09/00

14<sup>th</sup> June 2004

Dear Sir/Madam

### **DRAFT LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) (AMENDMENT NO. 2) REGULATIONS 2004 – “PHASE 1” AMENDMENTS**

1. I enclose for your comments draft regulations which amend the Local Government Pension Scheme (Scotland) Regulations 1998. Your comments are invited no later than **Friday 30<sup>th</sup> July 2004**.
2. The ODPM announced in July 2003, following the DWP publication of *Simplicity, security and choice: Working and saving for retirement – Action on occupational pensions (Cm 5835)* on 11 June 2003 and as part of the ongoing stocktake process, a number of steps that would be taken over the short to medium term. The attached draft Scottish statutory instrument takes forward the consultation on the Phase I amendments in the proposed series of changes. Also attached at Annex A is an informal commentary on the proposed changes.
3. The draft regulations have been developed as a result of the second stocktake discussion paper, issued by ODPM on 29 October 2002, which concentrated on the scope for simplification of the LGPS regulatory framework. In particular, the draft regulations introduce a requirement that LGPS administering authorities should prepare and publish, by 31 March 2006, a Funding Strategy Statement (Regulation 22)
4. It is not proposed that these regulations will apply only to new members of the Scheme. However, to ensure that the regulations are fair and balanced, and to provide that members' extant rights are protected, Regulation 33 of the attached draft SSI provides a series of transitional arrangements in relation to current active members of the Scheme. The relevant paragraphs of the attached informal explanatory note detail how these transitional provisions would apply.

5. The opportunity has also been taken to make a minor amendment to the principal regulations to provide an exemption from the statutory bar to access to the Scheme in regulation 5 of the principal regulations to ease the facility for partnership working between LGPS and NHS employers.
6. Responses to this letter, the draft SSI and any initial queries should be sent to myself, at the above address no later than 30 July 2004. Electronic responses can be sent to the e-mail address given above.
7. Should any consultees wish to discuss any of the proposed amendments during the course of the consultation exercise, please contact me on 01896 893227.
8. Once these draft regulations have been through the consultation process and any consequent amendments are made to them, it is proposed that they will be amalgamated with the previous set of draft miscellaneous amendments prior to being made.

Yours faithfully



D Lauder  
Policy Manager, LGPS

Addressees

COSLA

TGWU

GMB

STUC

UNISON

Secretary, LGPC

Union of Construction, Allied Trades and Technicians

Strathclyde Passenger Transport Authority

Audit Scotland

National Association of Pension Funds

CIPFA

Women's National Commission

Other Relevant Government Departments.

**Informal Explanatory Commentary on the Local Government Pension Scheme (Scotland) (Amendment No. 2) 2004 Regulations**

**Regulation 3**

Minor clarification to ensure that an appropriate member of a transferee admission body is included in the list of persons who may be an active member of the Scheme.

**Regulation 4**

Disapplies the statutory bar in regulation 5(1) of the principal regulations to allow LGPS members who are transferred to an NHS Scheme employing authority by virtue of a Partnership established under Section 15 of The Community Care and Health (Scotland) Act 2002 to remain within the Scheme. To qualify, such persons must have been active members of the LGPS immediately before their employment was transferred and must be subject to an admission agreement between the relevant LGPS administering authority and NHS employer. The purpose of the amendment is to facilitate increased partnership working between local government and health authorities.

**Regulations 5**

See regulation 12 (Re-employed pensioner members).

**Regulation 6**

This amendment removes the provision which enables scheme employers to determine that certain elements of pay are not pensionable by agreement with employee representatives. Transitional provisions are made for extant agreements, see regulation 33(1).

**Regulation 7**

Reduces the minimum total membership period giving rise to entitlement to LGPS benefits from 2 years to 3 months. Individuals who leave the scheme with less than three months membership, providing they do not have a transfer value credited to them, may be entitled to a refund of their contributions from the appropriate pension fund. Transitional arrangements are made for active members, see Regulations 33(3) and (4).

This amendment does not introduce a requirement for the payment to be made from the fund. Regulation 86 of the 1998 regulations requires that a refund of a member's contributions is to be made from the appropriate fund. Where a refund of contributions is paid from the fund, the administering authority must deduct any tax due under section 598 of the Income and Corporation Taxes Act 1988 - currently 20% - from the gross repayment. There are no provisions that allow the member to claim any repayment of the tax deducted regardless of whether they are normally subject to income tax or not.

**Regulation 8**

See regulation 12 (Re-employed pensioner members).

**Regulation 9**

See regulation 6 (Pensionable pay).

**Regulation 10(a)**

Removes the provision for the immediate payment of an ill-health grant to a member with between one and two years total membership. Following the change introduced by amendment regulation 7, a member with at least three months membership may instead become entitled to ill-health retirement benefits under regulation 26 of the principal regulations.

### **Regulation 10(b)**

Clarifies the definition of “permanently incapable” to make it clear that the assessment of whether an individual is entitled to the payment of LGPS benefits on ill-health grounds under the provisions of either regulation 26 or 30 has been made on the balance of probabilities. The department would wish to make it clear that this amendment is a clarification of the current definition, it is not a weakening or less onerous test.

### **Regulation 11**

Provides that where a member is awarded ill-health benefits for a second or further time those benefits will not be subject to enhancement. However, where a member becomes entitled to multiple ill-health retirement benefits in respect of concurrent employments, which were held and terminated simultaneously, those benefits will be calculated by reference to an enhanced period, subject to the member having at least 5 years membership.

### **Regulation 12**

This amendment removes provision for a re-employed pension member to elect that a retirement pension, awarded in relation to an earlier period of Scheme membership, is recalculated at the time a subsequent LGPS pension becomes payable (Regulations 33(5) to (7) provide transitional arrangements for certain re-employed pensioner members).

The amended regulation 28 provides that a re-employed pensioner member’s former period of LGPS membership shall be taken into account when deciding whether they have the necessary total membership to be entitled to benefits under the Scheme or whether any ill-health retirement benefits are to be enhanced. The former membership must also be taken into account in determining the maximum period of membership that can be awarded under regulation 51 (augmentation).

### **Regulation 14**

Amendment 14(c) restricts the time period for a member to make an election to aggregate two periods of LGPS membership. Such an election must be made within 12 months of the date of becoming an active member again, or such further period as the employing authority may allow. Regulation 33(8) provides that a person who is an active member of the Scheme on the [coming into force date] has until [insert date 12 months after coming into force date] to make such an election, or such longer period as the employing authority allow.

Where a member could have elected to aggregate a period of membership but did not do so, regulation 14(a) provides that they cannot make a subsequent election to aggregate during a further period of LGPS membership. Broadly, this means that where an active member has two or more unaggregated periods of LGPS membership, they may only elect to aggregate the most recent period.

Regulation 8(b) provides that unaggregated periods of service are to be taken into account when deciding whether the member has the necessary total membership to be entitled to benefits under the Scheme or whether any ill-health retirement benefits are to be enhanced. The former membership must also be taken into account in determining the maximum period of membership that can be awarded under regulation 51 (augmentation).

### **Regulations 15, 16 & 17**

See regulation 7 (3-month vesting).

### **Regulation 18**

See regulation 12 (Re-employed pensioner members).

### **Regulation 19**

This regulation replaces the current augmentation provisions with a single provision which allows an employing authority to award a member an additional period of membership at any point during active membership of the Scheme, subject to the limits contained in the amendment.

#### **Regulation 21**

See regulation 10(a) (Short-term ill-health grants).

#### **Regulation 22**

Introduces a requirement for each administering authority to have prepared and published a Funding Strategy Statement, by 31 March 2006, in accordance with guidance issued by the Chartered Institute of Public Finance and Accountancy.

#### **Regulation 23**

Provides that the actuary must have regard to the Funding Strategy Statement in specifying the common rate of employer contribution.

#### **Regulation 24**

See regulation 19 (Augmentation).

#### **Regulation 25**

(a) see regulation 12 (Re-employed pensioner members), (b) see regulation 7 (3-month vesting).

#### **Regulation 26**

See regulation 12 (Re-employed pensioner members).

#### **Regulation 27**

In view of the change introduced by amendment regulation 7, interest is no longer paid on a refund of contributions, unless, of course, it is overdue, because the maximum period that can be refunded is under 3 months.

#### **Regulation 28**

See regulation 10(a) (Short-term ill-health grants).

#### **Regulation 29**

Introduces a requirement for administering authorities to provide Annual Benefit Statements to all active, deferred and pension credit members. The statement must include details of the LGPS benefits that the member has accrued and, in the case of an active member, an indication of the benefits that they could accrue if they continue to be an active member of the Scheme until their normal retirement date. The first statement must be provided by 1 April 2006 and thereafter statements must be issued once in each following 12 month period

#### **Regulation 30**

See regulation 12 (regulation 33(9) provides transitional arrangements to allow for payments arising from allowed elections under the former regulation 28).

#### **Regulation 31**

See regulation 19 (Augmentation).

#### **Regulation 32**

See regulation 19 (Augmentation).

## **Transitional Provisions:-**

### **Regulation 33(1)**

Provides that an agreement, that the whole or a specified part of a member's pay is not pensionable, reached under the former provisions of 12(5) of the principal regulations, will continue to have effect under the amended regulations (See regulation 6).

### **Regulations 33(2) to (4)**

Provides that a person who was an active member on [coming into force date of regulations] may receive a return of contributions if they cease being a member of the Scheme before attaining two years total membership.

### **Regulations 33(5) to (7)**

Where a current active member is a re-employed pensioner member and would therefore have been able to elect for a single pension upon becoming entitled to LGPS benefits arising from his current period of employment (under the provisions of the current Regulation 28) these rights may be protected.

If the member wishes to take up this protection he must make a written election to the appropriate administering authority, within 6 months of these regulations coming into force. The protection afforded by this regulation is subject to a continuous period of employment (unless the member is the subject of a transfer, ie a change of employment that is beyond their control) until eligible to make an election under regulation 28, i.e. when the member becomes entitled to the payment of his further LGPS pension. Protection is also provided, on the same basis, in relation to the former provisions of regulation 47.

### **Regulation 33(8)**

Provides that an active member who has relevant deferred LGPS benefits, which he has not yet elected to aggregate, has 12 months from the date these regulations come into force in which to make such an election (or longer period as determined by his employing authority).

### **Regulation 33(9)**

Makes provision to allow for payments between funds where an election is allowable under the former regulation 28, or in the case of overdue payments, the payment of interest under the former provisions of regulation 81.

## **Regulation 34**

This regulation provides that certain members can opt out of the changes made by these amendment regulations. This applies to members who have ceased to hold an employment in which they were a member of the scheme or who have died in such employment before the date these regulations come into force. Such members, or a relevant beneficiary, may elect that the amendments made by these regulations do not apply in their circumstances. Such an election must be made in writing to the relevant authority within 6 months of these regulations coming into force.