

THE LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) REGULATIONS 2018

Consultation Responses

Executive Summary

The Local Government Pension Scheme (Scotland) Regulations 2018 consolidate all previous amendments to the Local Government Pension Scheme (Scotland) Regulations 2014 (“the 2014 Regulations”). They take into account the day to day experience of applying the 2014 Regulations since 1 April 2015 where areas for clarification have been sought or a change in approach has been requested.

The changes include amendments to allow more flexibility for administering authorities to manage liabilities when employers leave the Scheme and to provide for an ‘exit credit’ to exiting employers if appropriate.

They also provide more flexible options for using Additional Voluntary Contributions in the Scheme following the introduction of the UK Government’s ‘Freedom and Choice in Pensions’ policy provided by the UK Government’s Pension Schemes Act 2015.

Other regulations deal with how the Scheme operates within the Public Sector Transfer Club, while there are a number of draft amending regulations that are intended to improve the administration of the Scheme.

The regulations revise existing provisions to add clarity and address other issues raised as part of good stewardship of the regulatory framework of the Scheme created by the 2014 Regulations (“the Scheme”). Appendix A contains a full list of respondents.

The Scottish Government was grateful for the number of responses made to the consultation on The Local Government Pension Scheme (Scotland) Regulations 2018. The purpose of this paper is to provide stakeholders with a summary of the feedback received to that consultation. This document also sets out our replies to those comments; describing how the draft regulations have been altered in response, or providing further explanation where required.

Analysis and reporting

This report presents a question-by-question analysis of the comments made. A small number of respondents did not make their submission on the consultation questionnaire but submitted their comments in a statement-style format. This content was analysed qualitatively under the most directly relevant consultation question.

The responses were generally very thorough and included some detailed views on the consultation questions and other areas addressed in the consultation documents.

Our analysis has identified a number of common themes and we have summarised these below.

The common themes were:

- Guidance needed
- Employers / administration questions
- Career Average Revalued Earnings (CARE) scheme operation
- Impact of regulations

The comments received and the SPPA's responses are summarized in this document.

Attached is a link to [The Local Government Pension Scheme \(Scotland\) Regulations 2018](#). [The Local Government Pension Scheme \(Scotland\) Miscellaneous Amendments Regulations 2019](#) are currently out to technical consultation until 11 March 2019

Technical comments - amendments have been adopted where appropriate, but not all listed individually in this report.

Summary of consultation responses

Type of Respondent	Total number
Local Government bodies	6
Companies (e.g. actuarial, legal or software)	4
Professional associations	2
Trades unions	1
Individuals	0
TOTAL	13

Draft Regulations – Comments & Responses

Draft Regulation 3 - Active membership

Comment

Contracting out ceased April 2016 - clarification required.

Response: Agreed - the effective date of this change is 6 April 2016, i.e. the day after contracted-out ended. Scottish Government Legal Department confirmed that overriding regulation refers.

Draft Regulation 15 - Employer Contributions during Absence

Comment

We note that a new term of 'assumed pay' has appeared in regulation 15(1)

Response: Drafting error - remove 'assumed'.

Draft Regulations 15 & 16

Comment:

'Additional paternity' leave missing.

Response: Term 'Additional paternity leave' not a term described in regulatory framework and therefore not needed in 2018 regulations.

Draft Regulation 16 - Additional Pension Contributions

Comment

Previous regulations required members who were absent without pay with the consent of their Scheme Employer, to pay contributions on the first 30 days of their absence. Consideration be given to reverting back to paying contributions on the first 30 days.

Response: Agreed, members who are absent without pay with the consent of their Scheme Employer to pay contributions on the first 30 days of their absence.

Draft Regulation 17 – AVC's and Freedom & Choice

Comment

The specific draft amendments regarding 'Freedom & Choice' appear not to be included in draft Regulations.

Response: Reference to the changes to Finance Act 2004 brought about by the Taxation of Pension Act 2014 added in footnote.

Draft Regulation 17 – AVC's and Freedom & Choice

Comment

Paragraphs (14) and (15) deleted.

(14) If the total of payments due under paragraph (12) have not been paid before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably have

been expected to have become aware of the member's death, an amount equal to the shortfall must be paid to the member's personal representatives.

(15) Regulations 70 (first instance decisions) and 89 (forfeiture of pension rights after conviction for employment-related offences) do not apply in relation to an annuity purchased under paragraph (7)(b)(ii) and regulation 19(1)(b) (exclusion of rights to return of contributions) does not apply to any AVC's paid by the member.

Response: (14) Deleted due to overriding legislation - reinstate (15).

Draft Regulation 17(6)

Comment

Regulation 16 should refer to 36.

Response: Agreed – change to 36.

Draft Regulation 18 – Rights to Return of Contributions

Comment

Pension payments out of uncrystallised funds should be backdated to 1 April 2015.

Response: Agreed – will be backdated to 1 April 2015.

Draft Regulation 21 - Assumed pensionable pay and Returning Officers

Comment

Will provide a welcome discretion for employers in assessing assumed pensionable pay as an amount that better reflects actual pay received prior to reduction.

New clause (v) inserted in sub-paragraph 21(4)(b): (v) if the member received no pensionable pay relating to that employment in the 12 weeks preceding the commencement of the pay period in which the absence commenced, APP should be calculated on the pensionable pay the member received relating to that employment in the three months [or 12 weeks] preceding the pay period in which they last received pensionable pay in that employment.

Response: Agreed. Also add (v) to sub-para 21(4)(a).

Comment

Agreed that this seems a sensible discretion, given the difficulties experienced since the introduction of Assumed Pensionable Pay. Note that the paragraphs listed seem to be incorrect.

Response: Agreed, now paragraphs (6) & (7).

Draft Regulation 24 – Deferred member’s pension account and deferred refund account

Comment

Why does a deferred refund account attract revaluation when the member has not satisfied the criteria to entitle them to a scheme benefit?

Response: A deferred refund is money that belongs to the member for whom you do not hold current contact details; therefore it must be revalued until the member contacts you and it can be paid as required in Regulation 18. Rights to return of contributions.

Comment

If the application of revaluation is correct, should the member be issued with a statement to comply with Regulation 84 (1), Annual benefit Statements?

Response: Regulation 84(1) provides for benefit statements to be issued to active, deferred and pension credit members. Under regulation 6, a person is a “deferred member” were they have two or more years’ qualifying service. A person eligible for a refund is not a deferred member.

Draft Regulation 26 - Retirement pension accounts: deferred and pension credit members

Comment

New paragraph (8) inserted:

(8) If the member ceased to be an active member, became a deferred member and a pensioner member within the same Scheme year, the balance in the member’s retirement pension account at the end of the Scheme year in which the retirement pension account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the retirement pension account was opened, in accordance with actuarial guidance issued by the Scottish Ministers.

Response: Added for clarification.

Comment

Add clarification to (4) A member who is an employee in local government service on the day before attaining age 75 must have their retirement pension paid from age 75 even if the member remains in local government service beyond that age.

Response: Agreed – change to “the day before attaining age 75”.

Draft Regulation 29 - Retirement benefits

Comment

(4) A member who is an employee in local government service on the day before attaining age 75 must have their retirement pension paid from age 75 even if the member remains in local government service beyond that age.

Response: Added for clarification as requested.

Regulation 29 (7)

Comment

Another welcome amendment - currently requiring a member with both active and deferred pension accounts to take both when made redundant from the active role. Actual change appears not to have been incorporated into the drafting.

Response: In regulation 29(7) (retirement benefits) for “that employment” substituted “in respect of that employment”. Already previously amended.

Draft Regulation 29 (13) Retirement benefits

Comment

This is an amendment which appears to bring the Scottish Regulations into line with the equivalent regulation in England and Wales. The employer's consent is no longer required where the member wishes to retire between the ages of 55 and 60.

This will add to the difficulty of workforce planning where an employer will have very little notice of an employee choosing to retire and draw pension at effectively any point between their 55th and 75th birthdays.

Pension funds should issue a “health warning” so members are prepared for a loss in pension value of 40% or more, if pension taken at age 55.

Response: Employers could request member gives employer 6 months' notice, as in the Scottish Teacher's scheme.

It is agreed that members should also be fully aware of the implications of early retirement. However it important to stress that there is no loss in pension “value”, rather the annual pension is actuarially adjusted to reflect the fact it will be payable early and for longer. We note that some fund administrators already provide an online calculator to show the effect of early retirement.

Draft Regulation 29 (13)

Comment

Are there plans for this facility to be made available to pre April 2015 deferred beneficiaries via the transitional regulations? If not, it is believed this would lead to complaints / appeals for those denied the right to access benefits upon attaining age 55, without employer's consent?

Response: Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 will also be amended to allow all deferred members to take reduced benefits from age 55. This provision is included in [The Local Government Pension Scheme \(Scotland\) Miscellaneous Amendments Regulations 2019](#) are currently out to technical consultation until 11 march 2019

Draft Regulation 31 - Commencement of pensions

Comment

New paragraph (2) inserted:

(2) The first pay period for which any retirement pension is payable in accordance with regulation 29(4) begins with the member's 75th birthday.

Response: Added for clarification.

Draft Regulation 32 - Election for lump sum instead of pension

Comment

Changes regarding AVC's as a result of freedom & choice, not been included in the draft regulation document. The specific change appears not to have been made to the drafting of regulation 32 either.

Response: Reference to the changes to Finance Act 2004 brought about by the Taxation of Pension Act 2014 added in footnote. The reference to amending Regulation 33 should read Regulation 32.

Comment

We note the insertion of a new sub-paragraph (4)(c). This is not mentioned in Annex A and it would be helpful to know the policy intent behind this addition.

Response

We are grateful for this comment. Sub paragraph (4)(c) has been removed.

Draft Regulations 38 - Death grants: active members

Comment

Paragraph 38(4) from the LGPS (Scotland) Regulations 2014 deleted:

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

Response: Overriding legislation - due to Taxation of Pensions Act 2014 changes.

Comment

Annex A references 'new regulation 17(11)' and also 'regulation 33'. We believe this to be incorrect and it should reference 'Regulation 17(6) (a) and 'Regulation 32'.

Response: Agreed.

Draft Regulations 40 - Survivor benefits: children of active members

Comment

40 (4)(a) the fraction in clause (vi) has changed from 60/320 to 60/160.

40(9)(a) the fraction in clause (iv) has changed from 1/240 to 1/320.

The fraction in clause (v) has changed from 39/240 to 49/320.

The fraction in clause (vi) has changed from 60/240 to 60/160.

Response: Agreed - revert to previous wording.

Draft regulations 41 - Death grants: deferred and pension credit members

Comment

Paragraph 41(4) from the LGPS (Scotland) Regulations 2015 deleted:

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

Response: Due to Taxation of Pensions Act 2014 changes.

Draft Regulations 42 - Survivor benefits: partners of deferred members

Comment

Sub-paragraph 42(4)(e) deleted:

(e) the member's earned pension had accrued at a rate of 1/160th of pensionable pay;

Response: Wrongly deleted - re-instated.

Draft Regulations 43 - Survivor benefits: children of deferred members

Comment

43(4)(f) 43(9)(f) 43(10)(f)

The fraction in sub-paragraph has changed from 60/320 to 60/160. The fraction in sub-paragraph has changed from 60/240 to 60/160. The fraction in sub-paragraph has changed from 60/120 to 60/160.

Response: Wrongly deleted - re-instated correct amounts.

Draft Regulations 44 - Death grants: pensioner members

Comment

Paragraph 44(4) from the LGPS (Scotland) Regulations 2015 deleted:

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

Response: Due to Taxation of Pensions Act 2014 changes.

Draft Regulations 44 - Survivor benefits: partners of pensioner members

Comment

There is a missing bracket at the end of the new inserted text re Tier 1 and Tier 2 benefits. See also regulations 46(4)(a), 46(9)(a) and 46(10)(a).

Response: Statutory Instruments Unit drafting change.

Draft Regulations 45 & 46 - Survivor benefits

Comment

We appreciate the need for the changes being introduced to various regulations associated with survivor benefits (regulations 45 and 46) confirming that those benefits take account of any enhancements resulting from tier 1 or tier 2 ill health awards where they apply. We believe, however, that a corresponding change is also required to draft regulation 46(5)(a).

Response: Add corresponding change to draft regulation 46(5)(a).

Comment

Should 45(9) be removed following changes to the wording of 45(4)(a)? References to 17(7)(b)(i) should now be 17(6)(b)(i).

Response: Agreed. References to 17(7)(b)(i) will now be 17(6)(b)(i).

Draft Regulation 48 - Limit on Total Amount of Benefits

Comment

Text amended from;

"(1) Except to the extent that actuarial guidance issued by the Scottish Ministers provides otherwise, no person is entitled under any provision of these Regulations to receive benefits the capital value of which exceeds that person's lifetime allowance and any benefits to which a person is entitled are restricted accordingly."

to

"(1) No person is entitled under any provision of these Regulations to receive benefits the capital value of which exceed that person's lifetime allowance, except in accordance with actuarial guidance issued by the Scottish Ministers and any benefits to which a person is entitled are restricted accordingly."

A number of protections seem to have been missed from those listed.

Response: Statutory Instruments Unit drafting change. We have added legislative references;

Individual Protection 2016 – Schedule 4 Finance Act 2016

Fixed Protection 2016 – Schedule 4 Finance Act 2016

Fixed Protection 2014 – Schedule 22 Finance Act 2013

Fixed Protection – Schedule 22 Finance Act 2011

Draft Regulation 60 - Actuarial valuations of pension funds

Comment

Paragraphs (5) and (7) from regulation 60 of the 2014 Regulations are now consolidated in paragraph (5).

Response: This was a drafting change made by the Statutory Instruments Unit.

Draft Regulation 61- Aggregate Scheme Costs

Comment

SSI 2016/32 omitted this regulation but it has been reinstated.

Response: Wrongly re-instated – removed.

We are grateful for this comment. Draft Regulation 61 Aggregate Scheme Costs has been removed.

Draft Regulation 62 (61 after the removal of above regulation)

Comment

Unlike the corresponding provision in England & Wales, there's no maximum 3 year time limit for the period of a suspension notice. Is this intentional, or is consideration being given to introduce a maximum period of the notice?

Response: Add 'until any suspension notice is withdrawn'.

Comment

We would welcome clarification on the rationale behind the introduction of exit credits. We are concerned that should the valuation on exit identify a surplus (or 'exit credit'), then there is a risk to the Fund in that the valuation may have understated the level of liabilities, leaving the rest of the employers in the Fund liable.

Response: It is the remit of the fund actuaries to mitigate for this; included in their current responsibilities when advising on the operation of funds.

Comment

Employers with a surplus on cessation given a refund or a 'pension credit'. Consider tax implications of paying a pension credit which we do not believe have been thoroughly considered at this stage.

Response: HMRC confirmed no tax liability – August 2018, however fund authorities must satisfy themselves whether an exit payment could be treated as an 'Authorised Public Service Scheme Payment' under Section 176 of the Finance Act 2004.

Comment

From the Funds' perspective there should be a mechanism to dis-apply the payment of an exit credit in cases where the exiting body would not have been liable for any deficit then the Fund would not expect to pay an exit credit (e.g. if the commercial contract had been drawn up so that pension contributions are determined on a "pass through" basis). There appears to be no such mechanism in the draft LGPS (Scotland) 2018 regulations and we would suggest an amendment to include one as appropriate.

Response: Scottish Ministers would not expect an exit credit normally to be payable in relation to an admission agreement entered into before the new Regulations take effect. In such cases the commercial arrangements will have been drawn up on the basis of the existing regulatory provisions.

Further Comments

- The administering authority will now be able to suspend the exit payment indefinitely regardless of whether they believe the employer is likely to admit new joiners and Funds should consider whether this is a welcome move.
- We suggest that paragraph 4 is clarified to provide that the employer is required to continue contribution until any suspension notice is withdrawn and at that point a valuation is carried out and exit payment/credit is imposed.
- We suggest paragraph 7 is extended to provide that no further payments are due from the exiting employer when it has received an exit credit.
- Given the changes are intended to give administering authorities more flexibility to manage liabilities; we would prefer to see more flexibility to allow the Fund to manage any surplus prior to exit rather than just provide for a 'refund' payment on exit. However in terms of the exit credits we feel the regulations also need to include provision to allow Fund's to determine when and under what circumstances an exit credit payment may not be suitable.
- It will require Funds to ensure they have very detailed exit/termination policies in place to cover all the different circumstances (guarantor, no guarantor, pass through, capped liabilities etc.) for when an exit credit would be paid and the methodology used in the calculations.
- For employers without a guarantor a very prudent approach would need to be taken as there would be no recourse once an exit credit had been paid for the Fund to claim any future deficit.
- It would mean a huge disparity between employers without a guarantor and transferee admission body with a guarantor i.e. with one almost certainly having to make a termination payment and the other receiving a 'refund'.

- It would mean additional work for the Fund in terms of discussions/negotiations on entry to the Fund e.g. around admission agreements, to ensure a clear understanding of when an exit payment/exit credit would be due as well as on-going monitoring.
- We agree suspension notices would be a welcome alternative to issuing an employer with a large termination fee on exit but feel it would be quite difficult to manage in practice and ultimately should be up to the Fund as how and when use of this alternative would be suitable.
- It assumes the suspended employer will continue to exist in the long term to meet the ongoing liabilities, therefore putting more pressure/work on the Fund to carry out ongoing covenant monitoring to protect other employers.
- We welcome the added flexibility.

Response: The regulations do not replace the current actuarial valuation process but allow greater flexibility when dealing with exiting employers depending on covenant strength. It allows LGPS fund authorities to take a pragmatic view and make decisions based on the best outcome for all parties.

Scottish Ministers believe that it remains important that funds continue to monitor covenants on a regular basis. This provision does not apply to commercial arrangements drawn up on the basis of the existing regulatory provisions.

Draft Regulation 76 - Interest for late payment of certain payments

Comment

The regulation does not define to which date interest should be calculated. [The same issue arises in the E & W LGPS Regulations as well.

Response: Regulation 76(4) refers; “Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.”

Draft Regulation 78 - Payments for incapable of managing their affairs

Comment

Where is "mental disorder" defined"?

Response: Include; “is incapacitated (within the meaning of the Adults with Incapacity (Scotland) Act 2000)—“

Draft Regulation 90 – Certificates of Protection

Comment

Consideration should be given to the removal of this regulation. Whilst extensive guidance was provided following the introduction of LGPS 2018, a number of issues experienced by Administering Authorities show that such certificates do not work in a CARE scheme as they did in a final salary scheme.

Response: The retention of Certificates of Protection in the new LGPS 2015 was agreed as part of negotiations with stakeholders in 2014. There are valid reasons to suggest that ‘Certificates of Protection’ are not necessary in a CARE scheme. This request has been forwarded to the Local Government Pension Scheme (Scotland) Advisory Board to address.

Draft Regulation 93/97/98 - Rights to payment out of a pension fund

Comment

Annex A notes the intention to amend the current regulations (2014 Regulations 94/98) as to that relevant authority calculates the transfer in accordance with provisions in the guidance issued by Scottish ministers. However we cannot trace revised draft regulations as seemingly intended.

Response: Add “in accordance with guidance from Scottish Ministers”

Draft Regulation 96 - Effect of acceptance of a transfer value

Comment

Current Regulations already require this - no specific changes are being suggested to what is already required.

Response: Add “in accordance with guidance from Scottish Ministers”

Draft regulation 99 – Separate employments etc.

Comment

Should include a reference to UK parliamentary elections.

Response: Agreed – add.

Schedule 1 Interpretation

Comment

Annex A states that “shared parental leave” is being added after “paternity”. We cannot identify where this has been added.

Response: After ‘Scheme Year’.

Schedule 1 Interpretation

Comments

Definitions of Club memorandum, Club transfer and Public Sector Transfer Club have been inserted into schedule 1. However, we believe that the effective date of this change should be backdated to 1 April 2015.

However, in our view the definition of a Club transfer is not simply a transfer of employment between members of the Public Sector Transfer Club, in fact, such a transfer can take place where it is not a Club transfer.

We would suggest that the definition is tightened to reflect the requirements of paragraph 4.4 of the Club memorandum which prescribes that in order for a transfer of employment between members of the Public Sector Transfer Club to be a Club transfer the break between ceasing membership of the sending pension scheme and joining the receiving scheme in which the person is an active member when making the application for a Club Transfer, is not more than 5 years.

Response: The following definitions have been inserted into Schedule 1:
“Club Memorandum” means the current memorandum published by the Cabinet Office under the title “The Public Sector Transfer Club – memorandum by the Cabinet Office”. Backdated to 1 April 2015. Add a reference to the Public Sector Transfer Club.

Schedule 1 Interpretation

Comment

“local government service” means employment with a body specified in Part 1 of Schedule 2 (scheme employers) seems to be missing.

Response: Agreed - re-instate.

Schedule 4 Part 2

Comments

Paragraphs 2, 4 and 6. We would advise that wording needs to be amended in these paragraphs. All Scottish Water pay notices are now prepared centrally (in Inverness).

Instead Scottish Water have confirmed that new staff are allocated based on the location of their contractual base and where possible, this is aligned with previous practice. We understand this has previously been highlighted by Scottish Water.

Paragraphs 24 - 31 and Paragraphs 44 – 51: we would refer you to previous correspondence from Lothian Pension Fund and Police Scotland to SPPA. We note that the Regulations have still not been updated to reflect the correct employer name.

Response: We are grateful for this comment and acknowledge the wording was out of date. All Scottish Water members are now paid centrally in Inverness. New staff are allocated on location of their contractual base.

Schedule 5 Para 6

Comments

Assumed Pensionable Pay applies to councillors when they are on reserve forces service leave.

In paragraph 9(a), the reference to "(2)" should read "(1)".

The paragraph references reflect the 2014 Regulations. The text should read:

"After regulation 22(10) insert—

“(11) In the case of a deferred member who has been a councillor member, an election under paragraph 7 or 8 may only aggregate councillor membership with former councillor membership and, as the case may be, membership which is not councillor membership with former membership which is not councillor membership.”

Response: Agreed – add.

Contents page

Comment

The Councillors section should be amended – only Regulation 100 relates to Councillors. Regulation 101 relates to separate employments.

Response: Agreed – change.

Comment

At a practical level & to achieve greater efficiency of public services for taxpayers we recommend that all Funds should align their policies accordingly. We would like to see best practice guidance issued such that policies are required to be developed / refreshed and that applications at local level are consistent.

Response: LGA guidance refers provides framework whilst allowing fund authorities flexibility to carry out their duties.

Further Comments

This review and consolidation of regulations should take the opportunity to clearly enable pension funds to operate Voluntary Scheme Pays where necessary. Or an expectation should be conveyed that Voluntary Scheme Pays will operate in each fund unless there is a clear reason why this should not be the case. A standard process should be set out in regulations.

Response: Already covered by overriding legislation. Funds can make the decision whether to allow this option or not as there is some risk to the solvency of the fund in certain circumstances.

Comments

Regulations 34 and 35 create an unsolvable loop in determining ill health retirement. For an active pension member it is the responsibility of the employing authority to decide whether to terminate an employee's contract on grounds of ill health; and to determine whether Tier 1 or Tier 2 ill health pension should be paid.

The administering authority will not make any ill health pension payment without a signed certificate from an Independent Registered Medical Practitioner (IRMP).

The IRMP does not make a decision and only provides a medical opinion, but the employer can only make a decision in line with IRMP opinion.

If the employer, based on other information from, say, an employee's GP and other medical specialists, determines that an ill health pension should be paid, this cannot happen without a signed IRMP certificate.

We have direct experience of more than one such case, where the employer must maintain a position that is not in line with that employer's own view, but where the employer is simply unable to make a different decision (despite commissioning several different IRMP reviews). In effect, the responsibility placed on the employer for making an ill health retirement decision cannot in practice be fully exercised.

Unless these particular regulations are re-considered and re-written then legal challenge by pension fund members could generate a situation where the employer decides an ill health pension should be paid, but the administering authority refuses to pay it, with the pension member caught in the middle.

Response: The regulations reflect the views of the Pensions Ombudsman and Scottish Ministers guidance was provided by [Circular number 7/2016](#).

Response (contd.)

The purpose of this circular was to provide clear [guidance](#) to those persons with the responsibility for making decisions regarding ill-health retirement, and during the subsequent review process, as required by the Local Government Pension Scheme (Scotland) Regulations 2014.

It includes a checklist for both the 'First Instance Decision-maker' and the 'Appointed Person', to ensure that they meet the LGPS regulations and the requirements of the Pensions Ombudsman when making their respective decisions.

Comment

In general, the group feel that the consultation, introduction and aftermath of the 2018 regulations has added greatly to the pressures currently experienced by Administering Authorities. There is also a feeling that consultation was carried out over a relatively short period, albeit with a 10 day extension being afforded. It is unclear why the regulations were consolidated, as opposed to a set of amendments coming into force.

Response: Parliamentary Committees regard consolidation of amendments as best practice and good for democratic access to legislation. The intention is to save a great deal of time for people who would otherwise need to do their own consolidation. This may not affect fund authorities with access to specialist legislation information providers/software or Local Government Association amended versions but employers and members of the scheme may not have access to similar.

The Scottish Government Legal Division has identified pensions as an area where, following the various miscellaneous amendments to the 2014 regulations, it was deemed necessary to consolidate.

Comment

A 'tracked changes' approach would also have greatly reduced the burden on interested parties to respond, and would more likely than not have allowed respondents to circumnavigate the numbering errors which were included. Ultimately, none of the parties involved in responding to the consultation were left with the feeling that our views had been considered. The Group is also concerned that resourcing at SPPA is not adequate resulting in lengthy delays for legislation/guidance to be issued.

Response: We are grateful for this comment and appreciate that a tracked-change version of the 2014 regulations could have made navigation of the changes to the regulations easier.

We understand that responding to the consultation was not straightforward, particularly considering the size of the consolidated instrument. We have reviewed available resources and will seek to ensure that a tracked change version of the draft regulations is available to stakeholders in future consultations for consolidating regulations.

The Scottish Public Pensions Agency wishes to thank the organisations and individuals who took the time to read and submit comments on the draft regulations.

These comments have resulted in changes to the way we will consult stakeholders in the future and informed the LGPS Miscellaneous Amendment Regulations - currently out to consultation until the 11 March 2019.

Kimberly Linge

January 2019

List of respondents;

Aberdeen City Council
Aquila Heywood
COSLA
Dundee City Council
Actuarial Advisors
Jayne Wiberg, LGA
North East Scotland Pension Fund
Philip Perry, MHCLG
Prudential
Scottish Water
SEPA
SPLG
Shetland Islands Council
Strathclyde Pension Fund