

7 Tweedside Park
Tweedbank
Galashiels TD1 3TE
<http://www.sppa.gov.uk>

To the listed addressees

Telephone: 01896 893227
Fax: 01896 893230
david.lauder@scotland.gsi.gov.uk

Your ref:
Our ref: LGT/01/14/00

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Dear Sir/Madam

THE DRAFT LOCAL GOVERNMENT (CIVIL PARTNERSHIP) (AMENDMENT) (SCOTLAND) REGULATIONS 2005

I enclose, for your comments, a copy of draft regulations which the Scottish Ministers propose to make under sections 7, 12 and 24 of the Superannuation Act 1972. The amendments are necessary to implement the survivor pension provisions of the Civil Partnership Act 2004 in the local government pension scheme (Scotland) (LGPS(S)) and related compensation arrangements. They contain detailed technical amendments to the following sets of regulations:

The Local Government Pension Scheme (Scotland) Regulations 1998
The Local Government Pension Scheme (Transitional Provisions)(Scotland)Regulations 1998
The Local Government (Discretionary Payments & Injury Benefits)(Scotland) Regulations 1998

Your comments are invited by Friday 9th September 2005.

Background

With effect from 5 December 2005, the Civil Partnership Act 2004 will allow same-sex partners to register a civil partnership. From that date, same-sex couples wishing to form a civil partnership will be able to notify the Registration Service; the earliest date a registration ceremony can take place will be 21 December 2005.

Certain rights and responsibilities will flow from entering a civil partnership, including pension rights for the surviving civil partner of a member of an occupational pension scheme. Amendments are therefore required to the regulations referred to in the first paragraph above, in order to provide this in the LGPS(S) and related loss of employment and injury compensation arrangements. These survivor benefits will be calculated on a member's membership accrued after 5 April 1988, at no additional cost to members. This applies not only to current active members but also to deferred and pensioner members with membership after that date. The broad principles are set out below.

Local Government Pension Scheme (Scotland) Regulations 1998

The proposed amendments to the 1998 Regulations will provide survivor benefits for civil partners in the event of the death of an active, deferred or pensioner member. Membership after 5 April 1988 will count in calculating any such benefit. This will include added years purchased after 5 April 1988, membership credited on transfer-in from another scheme in relation to LGPS(S) employment commencing after that date, ill-health enhancement and augmentation awarded after that date. The Pension Sharing on Divorce provisions are extended to apply to dissolution of civil partnerships.

The Government's intention is that the surviving civil partner of any member – active, deferred or pensioner – with post 5 April 1988 membership should be entitled to benefit. Because civil partnership will not have been available before December 2005, no distinction will be made on the basis of whether the civil partnership was entered into before or after the member ceases or ceased local government employment.

Local Government Pension Scheme (Transitional Provisions)(Scotland) Regulations 1998

The proposed amendments will have the effect of providing survivor benefits for civil partners in the event of the death of a deferred or pensioner member who ceased local government employment between 6 April 1988 and 31 March 1998. Membership after 5 April 1988 will count in calculating any such benefit, on the same basis as for 1998 scheme members.

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

Regulations 20, 21, 22 and 25 the proposed amendments provide survivor benefits for a civil partner in the event of the death of a former employee who has been awarded a credited period. These benefits are not awarded by reference to membership of the LGPS. However it is considered that to ensure parity of treatment with pensions, civil partners should be entitled to survivor benefits where the former employee ceased employment after 5 April 1988.

Regulation 42 provides for the payment of a death grant where an employee sustains an injury or contracts a disease as a result of something he was required to do in carrying out his work and dies as a result of the injury or disease. The proposed amendments will provide for a death grant to be paid to a civil partner in such circumstances. This amendment will have effect from 5 December 2005 when it becomes possible to notify intention to register a civil partnership.

Part VI provides for the payment of gratuities. The proposed amendments will provide survivor benefits to be paid to a civil partner where the same criteria for paying spouses' benefits are met. These benefits are not awarded by reference to membership of the LGPS. However it is considered that to ensure parity of treatment with pensions, civil partners should be entitled to survivor benefits where the criteria for payment of a spouse's benefits are met.

Costs

The costs which may arise from the introduction of these amendments will be dependent on the actual take-up by the membership at a future date. Ultimately, however, the cost of providing survivor benefits for civil partners, based on membership from April 1988, will be borne by the scheme over time and would need to be factored into each appropriate valuation exercise.

Pre 6 April 1988 membership

There were differences in treatment before 6 April 1988 between male and female scheme members as regards surviving spouses' benefits. The draft regulations aim to achieve parity between married couples and civil partners from that date by providing for membership on or after 6 April 1988 to be taken into account for calculating surviving civil partners' benefits. However it would be possible to provide a facility for active members to count a period of membership between 1 April 1972 and 5 April 1988 for the purpose of calculating a civil partner's benefit, providing the full cost for that period is met by the member. Any such arrangement would go beyond the provisions in the primary legislation governing civil partnerships which the amendments proposed here are intended to implement. It is intended to make provision for the purchase of pre-1988 service and the final version of the regulations will reflect this.

Responses

Comments on the consultation document should be sent, no later than Friday 9th September 2005, to Jean Steel, Policy Officer, Local Government Pension Scheme, Scottish Public Pensions Agency, 7 Tweedside Park, Tweedbank, Galashiels, TD1 3TE. Responses may be sent by e-mail to locgovpensionsreform@scotland.gsi.gov.uk. If you wish to discuss any of the proposals in depth please do not hesitate to contact me on 01896 893227 or send any queries by e-mail to david.lauder@scotland.gsi.gov.uk.

The Agency may wish to publish responses to this consultation in due course, or deposit them in the library of the Scottish Parliament, unless we are asked specifically to treat a response as confidential. Confidential responses will be included in any published statistical summary of comments received and views expressed.

Yours faithfully



D Lauder
Policy Manager, LGPS

Addressees

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