

The draft Local Government Pension Scheme Amendment (Scotland) Regulations 2010 (“the draft Regulations”)

Proposed changes

Amendment of Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (SSI 2008/228)

Regulation 27 (Governance Compliance Statement) (see regulation 3 of the draft Regulations)

1. Paragraph (2) of regulation 27 is amended to change the date by which the governance compliance statement must be published to 31st December 2010. The original date was 30 September but it has been decided to put this back to December.

New regulation 31A – Pension fund annual report (see regulation 4 of the draft Regulations)

2. Regulation 31A is a new provision which requires administering authorities to prepare, in relation to each year beginning on 1st April 2010 and each subsequent year, a pension fund annual report which contains:

- a report about the management and financial performance during the year of each of the pension funds maintained by the authority;
- a report explaining the authority's investment policy for each of those funds and reviewing the performance during the year of the investments of each fund;
- a report of the arrangements made during the year for the administration of each of those funds;
- for each of those funds, a statement by the actuary who carried out the most recent valuation of the assets and liabilities of the fund in accordance with regulation 32 (actuarial valuations and certificates), of the level of funding disclosed by that valuation;
- the current version of the statement referred to under regulation 27 (governance compliance statement);
- for each of those funds, the fund account and net asset statement with supporting notes and disclosures prepared in accordance with proper practices;
- an annual report dealing with:
 - (i) the extent to which the authority and the employing authorities in relation to which it is the administering authority have achieved any levels of performance set out in the pension administration strategy in accordance with regulation 60A(2)(b) (pension administration strategy); and
 - (ii) such other matters arising from its pension administration strategy as it considers appropriate;

- the current version of the statement referred to in regulation 31 (funding strategy statement);
 - the current version of the statement under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) (Consolidation and Amendment) Regulations 2010 (statement of investment principles)¹, and
 - any other material which the authority considers appropriate.
3. The provision requires the authority to publish the pension fund annual report on or before 1st December following the year end and that in preparing and publishing the pension fund annual report, the authority must have regard to guidance given by the Scottish Ministers.

Regulation 42 (Exclusion of rights to return of contributions) (see regulation 5 of the draft Regulations)

4. Paragraph (1) of regulation 42 is amended to include new sub-paragraph (d) which adds to the list of persons who are not entitled to a repayment under regulation 41 (rights to return of contributions). Under new paragraph (d), persons who continue as an active member in another employment held concurrently with the employment in relation to which they cease to be a member will no longer be entitled to a repayment of contributions.

5. Where a member who holds two or more concurrent employments ceases one of them, regulation 41 of the current LGPS (Administration) (Scotland) Regulations 2008 would permit the member to:

- i) aggregate the membership under regulation 41(4), or
- ii) claim a refund of contributions under regulation 41(1) in respect of the employment that has ceased, less the relevant statutory deductions.

6. If the member insisted on a refund of contributions, then, due to the requirements of paragraph 5 of Schedule 29 to the Finance Act 2004, (which requires that, for a "short service refund lump sum" to be paid as an authorised payment, the refund must "extinguish the member's entitlement to all benefits under the pension scheme), the administering authority would either have to:

- a) pay the refund as an unauthorised payment (incurring an unauthorised payment tax charge), thereby ensuring that the benefits from the ongoing employment would not be extinguished; or
- b) to pay the refund as an authorised payment, but that would mean the benefits from the ongoing employment would have to be extinguished (and there is no power in the LGPS Regulations to extinguish benefits).

¹ The current regulation is regulation 9A of the Local Government Pension Scheme (Management & Investment of Funds) (Scotland) Regulations 1998 (SSI 1998/2888). The 2010 Regulations referred to consolidate the 1998 Regulations. Regulation 9A was inserted by SSI 2000/74, regulation 5 and further amended by SSI 2003/138, regulation 3(a) and (b).

7. In order to avoid these problems, regulation 42(1) is being amended to prevent a refund being made available where a member ceases active membership in one employment but continues to be an active member in a concurrent employment. In such a case, the only logical route left to the member is to aggregate the membership in accordance with regulation 41(4).

Schedule 5 (Councillor members) (see regulation 6 of the draft Regulations)

8. Paragraph (6) of Schedule 5 is removed. Regulation 71 (members of local authorities) applies the Administration Regulations to councillor membership subject to the modifications set out in Schedule 5. Paragraph (6) of Schedule 5 disapplies regulation 21 (discontinuance of Additional Regular contributions (ARCs)) to councillor members. This was an error and regulation 6 of the draft Regulations corrects the error with the effect that regulation 21, which allows members to stop paying ARCs before the end of the payment period, applies to councillor members.

Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SSI 2008/230)

Regulation 9 (Final pay: general) (see regulation 8 of the draft Regulations)

Regulation 9(3) provides that a member may *choose* to treat as the member's final pay period either of the two preceding years. The amendment amends paragraph (2) and omits paragraph (3) so as to provide that a member's final pay period is the year ending with the day on which the member stops being an active member or, if that would produce a higher figure, either of the two preceding years. The onus is thereby shifted to the employer to ensure that the highest pensionable salary in the last three years of employment is used in the calculation of the member's benefits.

Regulation 30 (Choice of payment of pension) (see regulation 9 of the draft Regulations)

The words "*or otherwise ceases to be a member...*" are removed from paragraph (1) of regulation 30 (choice of payment of pension). It is considered that these words are unnecessary and have given rise to confusion in the application of this provision. The intended effect of regulation 30 is that only where a member aged 50 or over (55 from 1st April 2010) leaves local government employment can they apply for immediate payment of their pension. Any application below age 60 will require the agreement of the employer to the release of the benefits in accordance with paragraph (2) of regulation 30.