

**The Local Government Pension Scheme
(Miscellaneous Amendments) (Scotland)
Regulations 2019**

Consultation Responses

Executive Summary

The Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 include two principal substantive amendments to the Local Government Pension Scheme (Scotland) Regulations 2018 (“the 2018 regulations”).

Firstly, Regulation 2(16) amends Regulation 29 of the 2018 Regulations to provide that a deferred member who has attained the age of 55 or over may elect to receive immediate payment of a retirement pension, reduced by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers, irrespective of whether the deferred pension member is also an employee in local government service.

Secondly there is an amendment to Schedule 4 to the 2018 regulations which widens the scope of Scottish Ministers’ powers to determine by Direction which local government pension fund any members, or class of members, should belong to.

The other amendments to the 2018 regulations are of a minor nature including ones to correct drafting errors in those regulations.

Regulation 4 of these Regulations amends the Local Government Pension Scheme (Scotland) Regulations 2014 retrospectively to provide that in the various provisions of the 2014 regulations that deal with assumed pensionable pay, no account is to be taken of any reduction in the pensionable pay the member received if the member was working reduced contractual hours as a consequence of ill-health or infirmity of mind or body.

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 analyzed 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 summarized these below.

The common themes were:

- Employers / administration questions
- Operation of Additional Pension Contributions
- Impact of regulations

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

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	4
Companies (e.g. actuarial, legal or software)	1
Professional associations	1
Trades unions	0
Individuals	1
TOTAL	7

Draft Regulations – Comments & Responses

Draft Regulation 2 (2) – Pension Credit Members

Comment

Amendment suggests Pension Credit (PC) are added to the list of those members for whom this regulation has effect from 1st April 2015 (essentially providing for PC members to elect to take benefits from age 55, effective from 1st April 2015). Amendment regulation 2 has effect from 1/6/18? If amendment stays as drafted, what about PC members from 1/4/15 to 31/5/18?

Response: Amendment 2(3)(a) applies to all members. These members can now elect to leave from age 55.

Draft Regulation 2(4)

Comment

This wording seems to consolidate the LGPS 2014 (Scotland Regulations) into the LGPS 2018 (Scotland) Regulations, which was the original intent. What are the certain amendments?

“Certain amendments” - refers to amendments to the 2014 regulations.

Draft Regulation 2(6)

Comment

Regulation 3(3) of LGPS 2018 makes no reference to "33". Should this change not apply to regulation 3(6?)

Response

Agreed – changed

Draft Regulation 2(9)(c)

Comment

The substituted wording has the same effect as the previous wording. Our understanding is that any pension benefits must be in payment before the 75th birthday, therefore contributions would have to cease on the day before the eve of their 75th birthday. We would suggest rewording to “An active member does not make contributions on or after the eve of the member’s 75th birthday” or similar.

Response

Agreed – (c) in paragraph (6) for “on or after” substituted “after the day before”.

Draft Regulation 2 (13)(a)

Comment

We suggest that (7) should actually be replaced by (6) in the above amendment. This removes duplication otherwise created by the amendment currently covered by Regulation 2, Paragraph 13(a)(iii). Including (6) ensures all the appropriate retirement scenarios (early, late, normal etc.) are covered by the amended regulation 17.

Response

Agreed - (7) has been replaced by (6).

Comment

The new wording in relation to deferred members being able to take benefits from age 55 should also be added to the list covered by regulation 17. Deferred from ill health is included so it seems reasonable that standard deferred retirements should also be included.

Response

Deferred members included as set out in the explanatory note to the regulations.

Draft Regulation 2 13(c)

Comment

Currently deletes paragraph (12) of the original regulation 17. Was this intended or is this an error? As currently drafted this amendment not only removes administering authority discretion (creating potential Inheritance Tax issues) but appears to remove the ability of paying the fund out as a lump sum on death.

Response

The Finance Act (No.2) 2015 introduced changes that no longer require the payment of lump sum death benefits within a 2 year period, however, in response, this paragraph has not been removed.

Draft Regulation 2(11)

Comment

We welcome the insertion of paragraph (5), however we would question why paragraph (6) is necessary. Giving the option of applying for a refund of the contributions automatically deducted would increase administrative burden and add confusion, which are both surely aimed at being reduced by paragraph (5). There is also no time limit mentioned to apply for the refund, so the member could potentially request this 30 years after the leave of absence. Our preference would be that only paragraph (5) is inserted. If paragraph (6) must be inserted together with (5), our preference would be for neither to be inserted.

Response

Agreed we have removed paragraph 6 as requested.

Draft Regulation 2(13)(b)

Comment

Agreed, although the group are of the opinion this provision should apply to deferred and pensioner members of earlier schemes. Or simply use the term 'members'. Also, is a footnote sufficient? And should this provision be included in the Transitional Provisions?

Response

"This dispensation also applies to members of earlier schemes".

The definition has also been amended to include members of the 2015 scheme. This will also be included in Transitional Provisions later in 2019.

Draft Regulation 2(13)(c)

Comment

(We) are unsure why this paragraph would be deleted. Whilst the provisions described in (a) and (b) are rare (AVC or SCAVC for the purpose of life assurance), this provision allows Administering Authorities to pay any resultant death benefits in a similar vein to those payable under regulations 38, 41 and 44 (death grants). Paragraphs (c) and (d) meanwhile, cover the payment of AVC's upon death for both deferred and pension credit members, which the group feel is a provision which should be retained in the regulations. Retention of paragraph (e) would also allow the Administering Authority to make a direction in the event of a member who has elected to purchase additional pension under the scheme, dies before accessing said benefit.

Response

The Finance Act (No.2) 2015 introduced changes that no longer require the payment of lump sum death benefits within a 2 year period, however in response, this regulation has been re-instated.

Comment

Additionally, should para 12(e) not reference 'additional pension' as opposed to 'the annuity'? The reference contained within is to para (6)(b)(ii), which covers the 'purchase of additional pension' under the Scheme. Was the intention here that sub paragraph (13) is to be deleted, not sub paragraph (12).

Response

Yes - para 12(e) now refers to 'additional pension'.

Draft Regulation 2(14)

Comment

Can we have some clarity on what this means?

Response

Regulatory references removed.

Draft Regulation 2(19)

Comment

Is draft regulation 29(14) required? Does Regulation 29(6) not already cover active and deferred members of the 2015 scheme? If so, regulation 29(6) would have to be added to the regulations contained in regulation 1(2) of the LGPS 2018 regulations.

Response

Agreed - removed draft regulation 29(14).

Draft Regulation 2(20)

Comment

Agreed. Has any consideration been given to the limit (5,000 & 6,500) being increased. The group understands that the limit should increase each April, in line with CPI.

Response

The regulations are correct as at the coming into force date of the new CARE scheme under the Local Government pension Scheme (Scotland) Regulations 2014.

Draft Regulation 2(21)

Comment

Agreed ~ could the reference just say 'members'? This would cover deferred and pensioner members of earlier schemes

Response

"This dispensation also applies to members of Earlier Schemes..." The definition of 'Earlier Schemes' is amended to include the 2015 Scheme.

Draft Regulation 2(22)

Comment

Surely some sort of evidence needs to be provided to show that the reduction of hours was as a consequence of ill-health? Should an IRMP need to certify?

This regulation only applies to ill-health retirements. Should this not also apply to death in service regulations 38, 39 and 40, as assumed pensionable pay is used in the calculation of these benefits?

Response

We do not believe that this evidence needs to be certified by an IRMP. The decision to pay pension benefits is made by the relevant person whilst taking all evidence into account. This includes the employer's own occupational health records.

Comment

Agreed, although is second scheme year reference in regulation 21(8) correct?

Response

Yes, "The assumed pensionable pay that a member is treated as receiving is adjusted by the revaluation adjustment on the first day of the second Scheme year which commenced after the first date on which the member is treated as receiving assumed pensionable pay."

Draft Regulation 2(22)(b)

Comment

Agreed, although the amendment regulations as they stand, do not cater for this amendment being retrospective. Citation, commencement and effect states that regulations (2) and (3) have effect from 1st June 2018. The group does not believe that the suggested amendment is clear enough, and would suggest the following wording "in calculating assumed pensionable pay in accordance with regulation 21(4) (assumed pensionable pay), no account is to be taken of any reduction in the pensionable pay the member received if an IRMP has certified that the member was working reduced contractual hours as a consequence of the condition that caused or contributed to the member's ill-health retirement". If the group's suggested wording is accepted, we believe a similar provision should be inserted to regulation 39 (as new paragraph (4)(c)). However at the end of the statement, the term 'ill health retirement' should be replaced with the word 'death'. We also believe that these changes should result in regulation 35 (Role of the IRMP) being updated to cater for the IRMP providing such a direction to administering authorities.

Response

Not recommended – we believe that this amendment clearly sets out the policy intent.

Draft Regulation 2(26)(b)

Comment

The group does not support this provision. At present, the discretion over the award of the various death grants rests with Administering Authorities (AA), with each AA having a written statement of policy to that end.

Response

Agreed. It is clear that as long as the Administering Authority has a written policy, to ensure that all decisions are taken in a fair and equitable manner, this would be sufficient.

Draft Regulation 3(3)

Comment

The current wording appears to not allow a member who has re-joined and is active in a different employment to take payment of deferred benefits. We would suggest the phrase "...and who has not become an active member of the 2015 Scheme by virtue of regulation 3(1) of the 2014 Regulations (active membership)..." is removed. If this is to be left, please explain the reasoning.

There is nothing to say the member must no longer be in the employment from which the benefits arise, so a member who opted out would be able to take payment of benefits before leaving the employment. We would suggest something along the lines of "if the member is not an employee in local government service in employment from which the benefits arise" should be added.

Response

Retirement benefits

“29.—(1) a member who attains normal pension age is entitled to immediate payment of a retirement pension without reduction if the member is not an employee in local government service in employment from which the benefits arise” - currently allows this option” (my underlining).

Comment

The definition for ‘Earlier Schemes’ as per the Transitional Regulations “means the 1974, the 1987, the 1998 and the 2009 Schemes collectively”. This regulation and the 2018 regulations only apply from 01/06/2018, therefore this regulation doesn’t cover members who left 01/04/2015 – 31/05/2018. We would suggest either the definition of ‘Earlier Schemes’ is amended to include the 2015 Scheme, or this regulation is amended to have an effective date of 01/04/2015.

Pension credits awarded pre-2015 have 60 as the earliest age benefits are payable from, so should this provision also be extended to Pension Credit members?

Response

Agreed – definition of ‘Earlier Schemes’ has been amended to include the 2015 Scheme, so that the definition now includes all members.

Draft Regulation 3(4)

Comment

The regulations to which this is referring changed numbering as a result of the 2018 Regulations. We would suggest the wording should be “or regulation 31(5) of the 2018 Regulations”.

Response

Amended to “or regulation 31(5) of the 2018 Regulations”.

Amendments affecting the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

Comment

These regulations reference in their definitions “the 2014 Regulations” as meaning the Local Government Scheme (Scotland) Regulations 2014.

These regulations have been revoked but no reference to their revoked status is mentioned?

Response - Revocations will be included in Transitional Regulations later in 2019.

Comment

Significant concerns have been raised by an employing authority over the application of the statutory underpin under regulation 4 of the Transitional Regulations (the Underpin”).

Following correspondence with the administering authority, the issue has now been referred to the Scottish Ministers for determination under the LGPS dispute resolution procedure.

Response

This remains under review. The Scottish Ministers have put this particular dispute decision on hold due to ongoing litigation raised by members of the Judicial and Firefighters' pension schemes. The Court of Appeal has upheld in *McCloud* and *Sargeant* that the transitional protections introduced as part of public service pension scheme reforms in 2015 discriminate on grounds of age. The UK Government has requested leave to appeal this decision to the Supreme Court. As the outcome of this case remains pending, no changes have been made to the statutory underpin at this time.

Amendments affecting the Local Government Pension Scheme (Scotland) Regulations 2014

Comment

The previous regulation 64 (Supply of copies of valuations, certificates etc.) was omitted by the 2018 Regulations. This was raised at the time, but a response was not included in the consultation responses document. Please can it be clarified why this was removed?

Response

This provision is now within regulation 100 of the 2018 regulations.

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

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SPPA
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List of respondents:

Aquila Heywood
Hymans
Local Government Association
North East Scotland Pension Fund
Prudential
Scottish Pensions Liaison Group
Falkirk Pension Fund