

Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 130 – June 2015

This Bulletin contains a commentary for LGPS administering authorities in Scotland on the changes to the LGPS introduced by the Local Government Pension Scheme (Scotland) Amendment Regulations 2015 (Scottish Statutory Instrument 2015 No. 87).

Administering authorities might find this information useful when preparing a Newsletter or other documentation to communicate the changes to scheme members, as required under regulation 8 and part 1 of Schedule 2 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.

Background

The Local Government Pension Scheme (Scotland) Amendment Regulations 2015 were made on 26th February 2015 and came into force on 1st April 2015.

The Amendment Regulations made amendments to:

- the Local Government Pension Scheme (Scotland) Regulations 2014, and
- the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014.

This note provides information on the main amendments to both sets of regulations.

Restriction on eligibility for active membership

Regulation 4(4) of the LGPS (Scotland) Regulations 2014 has been deleted. It provided that a part-time employee of the Scottish Fire and Rescue Service employed on terms under which the retained or voluntary member of the Service could be required to engage in fire-fighting was not eligible for membership of the LGPS. However, the regulation was not required as such employees, being eligible for membership of the Firefighters' Pension Scheme, are already excluded from membership of the LGPS by virtue of regulation 4(1) of the LGPS (Scotland) Regulations 2014 (which debar from membership of the LGPS any person who is eligible for membership of another public service pension scheme).

Information to be supplied by employees

Regulation 88(2)(a) of the LGPS (Scotland) Regulations 2014 has been amended to require that scheme employers must ask new members to provide a statement listing all the person's previous periods of membership of public service pension schemes (including the LGPS in Scotland), rather than just a statement listing all the person's previous periods of membership of the LGPS in Scotland. This is because the administering authority needs to determine for various purposes under the regulations whether or not the member has had a continuous break of more than 5 years in active membership of public service pension schemes.

Inward transfer of pension rights

Regulation 98(6) of the LGPS (Scotland) Regulations 2014 has been amended. Prior to its amendment the regulation required that a request to transfer pension rights into the LGPS had to be made by the member to the appropriate administering authority and the scheme employer within 12 months of joining the scheme or such longer period as the scheme employer and the appropriate administering authority may have allowed. The regulation now requires that a request to transfer pension rights into the LGPS only has to be made by the member to the appropriate administering authority (and not to the scheme employer as well) within 12 months of joining the scheme or such longer period as the scheme employer (and not the appropriate administering authority as well) may allow.

Regulation 9(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 has been amended to deliver the intention behind paragraph 2 of Schedule 7 to the Public Service Pensions Act 2013 (which requires that a transfer from another public service pension scheme shall purchase final salary benefits provided there has been no continuous break of more than 5 years in active membership of a public service pension scheme since ceasing active membership of the scheme from which the transfer is being received). Prior to the amendment, a person who was in a public service pension scheme for, say, 6 months and took a refund, had a 6 year break, joined another public service pension scheme (say the Teachers' Pension Scheme) for a period of time and then moved without a break to the LGPS and requested a transfer from the TPS to the LGPS would not have been entitled under regulation 9(1) to have that transferred service counted as pre 2015 final salary membership (because of the earlier 5 year break). This would have run counter to the requirement of paragraph 2 of Schedule 7 to the Public Service Pensions Act 2013.

Regulation 9(3) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 has been deleted and replaced with regulation 9(3A) to provide that where:

- a) a transfer is received from
 - i) a registered pension scheme which is not a public service pension scheme, or
 - ii) a registered pension scheme which is a public service pension scheme and the member has had a continuous break of more than 5 years in active membership of a public service pension scheme since ceasing active membership in the scheme from which the transfer is being received, or

- iii) a registered pension scheme which is a public service pension scheme but the transfer is not treated as a Club transfer (because the period between leaving the public service pension scheme and joining the LGPS is more than 5 years), or
- iv) a European Pensions Institution, and

b) the relevant date is before 1st April 2015

the transfer shall purchase pre 1st April 2015 final salary membership.

Aggregation of benefits

Regulations 22(6A) and (6B) have been added to the LGPS (Scotland) regulations 2014. These mirror the provisions in the LGPS in England and Wales and provide that where:

- a) an active member with concurrent employments in the 2015 Scheme ceases one of them with an entitlement to a deferred pension, or
- b) a member with a deferred pension under the 2015 scheme re-joins the scheme

the benefits are automatically aggregated unless the member makes an election, within 12 months of ceasing the concurrent employment or of re-joining the scheme, to retain separate benefits.

Regulation 10(6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 has been amended to provide that a member with a deferred benefit that arose prior to 1st April 2015 who wishes to elect to transfer the value of those deferred benefits to purchase an amount of earned pension in the 2015 scheme must make the election within 12 months of re-joining the scheme or such longer period as the scheme employer may allow. The amendment has been made to prevent members from being able to elect to transfer the rights several years after re-joining the scheme and, say, just before redundancy or ill health retirement (which would have left the scheme employer to meet the resulting strain on Fund costs).

The current [aggregation guide](#) and the [aggregation leaflet for scheme members](#) both reflect the above provisions.

Separate employments, etc.

A new regulation 102 (which the Amendment Regulations inadvertently referred to as regulation 45) has been inserted into the LGPS (Scotland) Regulations 2014. It requires that:

- a) where a person holds separate employments under one scheme employer the employments shall, for the purposes of the Regulations, be treated as if they were separate employments under different employers; and
- b) where a scheme member is also employed to carry out the duties of returning officer at local government elections or elections for the Scottish Parliament, or the duties of returning officer (including as a regional or local returning officer at a European Parliamentary election), those additional duties shall be treated as a separate employment.

[Note: the reference in regulation 102(3)(b) to a “returning officer (including as a regional or local returning officer at a European Parliamentary election)” should be to an acting returning officer, not a returning officer]

Employee Contributions

Regulations 9(2) to (4) of the LGPS (Scotland) Regulations 2014 have been amended to clarify that:

- a) employers are (as foreshadowed in the [HR guide](#) for the 2015 scheme) required to reassess each active member’s contribution rate at the commencement of each scheme year (beginning April 2016),
- b) employers must (rather than may) reassess an active member’s contribution rate where there has been a permanent material change to the terms and conditions of the member’s employment which affects the member’s pensionable pay in the course of a financial year, and
- c) the pay bands upon which the contribution rates are based are (as foreshadowed in the [HR guide](#) and the [Payroll guide](#) for the 2015 scheme) to be increased at the beginning of each scheme year by the same increase as would be applied under the Pensions (Increase) Act 1971 to a pension with a pensions increase date of 1st April 2014, with the resulting figure being rounded down to the nearest £100.

The above reflects the guidance contained in the [HR guide](#) and the [Payroll guide](#) issued prior to the introduction of the 2015 scheme and so the amendment should, in practice, have no material impact on existing practices and procedures.

Election to move from the 50/50 section to the main section of the scheme

Regulation 10(3) of the LGPS (Scotland) Regulations 2014 has been amended to require scheme employers to notify the administering authority if a member elects to move from the 50/50 to the main section of the scheme. The relevant election form has been updated accordingly and is available at <http://www.lgpsregs.org/index.php/scotland/forms>.

Automatic cessation of 50/50 election

Prior to the Amendment Regulations a member who had elected to be in the 50/50 section of the scheme was automatically moved back into the main section of the scheme from:

- a) the beginning of the first pay period after the employer’s chosen automatic re-enrolment date (i.e. the same date the employer is required to automatically re-enrol back into the LGPS any eligible jobholders who had opted out of membership of the scheme),
- b) the beginning of the first pay period after the date the member went on to no pay as a result of sickness or injury if the member was still on no pay at the beginning of that pay period, and
- c) the beginning of the first pay period after the date the member went onto no pay during ordinary maternity, paternity or adoption leave.

The problem with (b) was that it would apply where, for example, an employer has a policy of nil pay for the first 3 days of sickness, and the first 2 days of

sickness fall at the end of one pay period and the third day is the first day of the following pay period. In such a situation the employee would have had to be put into the main section from the beginning of that next pay period.

To overcome this problem, regulation 10(5)(b) of the LGPS (Scotland) Regulations 2014 has been amended so that those in (b) above only have to be moved back into the main section of the scheme from the beginning of the first pay period after the date they went on to no pay as a result of **long-term** sickness or injury if they are still on no pay at the beginning of that pay period.

The 50/50 election form and guidance notes have been updated accordingly and are available at <http://www.lgpsregs.org/index.php/scotland/forms>.

Employer contributions whilst member is in 50/50 section of the scheme

Regulation 15(8) of the LGPS (Scotland) Regulations 2014 has been amended to confirm that, as foreshadowed in the [HR guide](#) and the [Payroll guide](#), the employer contributions during the period a member is in the 50/50 section of the scheme continue to be payable at the full rate (not at 50% of the employer rate).

As the above reflects the guidance contained in the [HR guide](#) and the [Payroll guide](#) issued prior to the introduction of the 2015 scheme the amendment should, in practice, have no material impact on existing practices and procedures.

Employer contributions during absences

Regulations 15(1) and 65(4) of the LGPS (Scotland) Regulations 2014 have been amended to confirm that, as foreshadowed in the [HR guide](#) and the [Payroll guide](#), the employer contributions during the period a member is on relevant child-related leave are calculated on assumed pensionable pay or on the actual pay received for any days where it is higher than assumed pensionable pay.

As the above reflects the guidance contained in the [HR guide](#) and the [Payroll guide](#) issued prior to the introduction of the 2015 scheme the amendment should, in practice, have no material impact on existing practices and procedures.

Regulation 15(4) has been amended to provide that, in addition to the requirement for the employer to continue contributing to any shared cost additional pension contribution (SCAPC) contract whilst a member is on reserve forces service leave, child-related leave (including additional maternity, paternity or adoption leave of shared parental leave on no pay), paid sick leave, or authorised leave of absence the employer will also have to continue making contributions to any shared cost additional voluntary contribution (SCAVC) contract during such absences.

Award of additional pension by the employer

Regulation 30(1) of the LGPS (Scotland) Regulations 2014 has been amended to provide that any additional pension awarded by the employer via a Shared Cost APC under regulation 16 does not count towards the current maximum of £5,000 of additional pension the employer can grant under regulation 30 (where the employer has a discretions policy allowing them to grant such additional pension).

Additional Pension Contributions (APCs) and Shared Cost Additional Pension Contributions (SCAPCs)

Regulations 15(5) and 15(6) of the LGPS (Scotland) Regulations 2014 have been amended and regulation 16(18) inserted to provide that:

- a) where a member elects to pay an APC to cover the amount of pension 'lost' whilst on unpaid leave of absence (including additional maternity, paternity or adoption leave or shared parental leave on no pay), or whilst absent due to a trade dispute, the amount of pension 'lost' is to be calculated on the amount of pensionable pay the member would have received but for the absence (rather than on assumed pensionable pay) or calculated in accordance with guidance issued by the Scottish Ministers where the amount of 'lost' pensionable pay cannot readily be determined, and
- b) where the member elects to pay an APC to buy back 'lost' pension (other than pension 'lost' due to a trade dispute) and that election is made within 30 days of return to work, or such longer period as the employer may allow, the employer **must** (not may) contribute two-thirds of the cost (but not in respect of any period of absence that exceeds 36 months).

[Note: the LGPS Secretariat has notified the SPPA that the cross-references in regulation 16(18) to regulations 11(1) and 11(3) appear to be an error and should be deleted because no-one on child-related leave (as defined in schedule 1) or on sick leave has to buy back 'lost' pension via an APC because they are, by virtue of regulations 21(1) and (2) and regulation 12, automatically credited with full pension under regulations 23(4) or (5)].

Regulations 16(2)(e) and 16(4)(d) of the LGPS (Scotland) Regulations 2014 have been amended to provide that whilst the employer can agree to meet part of the cost of purchasing any additional pension a scheme member elects to purchase under regulation 16, the employer cannot agree under regulation 16 to meet the full cost. If the employer wishes to meet the full cost they will have to make an award of additional pension under regulation 30.

Regulations 15(4) and (5) have been inserted into the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 to provide that:

- a) the current limit of £5,000 additional pension that an employer may grant to a scheme member under regulation 30 of the LGPS (Scotland) Regulations 2014 includes any additional pension previously awarded by the employer under regulation 13 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008, and
- b) the current limit of £6,500 additional pension that a scheme member may purchase (or which may be purchased via a Shared Cost APC) under regulation 16 of the LGPS (Scotland) Regulations 2014 includes the amount of any additional pension purchased, or being purchased, under regulation 14 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008.

Earned pension during absence from work

The words “and if in receipt of any pay, the member continues to accrue earned pension in accordance with regulation 23(4) or (5) (active member’s pension account)” have been deleted from the end of regulation 11(4) of the LGPS (Scotland) Regulations 2014. Prior to the deletion of the aforementioned words, regulation 11(4) could inadvertently have been read as meaning that only those members falling within (a) below (i.e. in receipt of pensionable pay) could get credited with earned pension under regulations 23(4) or (5) whereas those falling within (b) below would not get credited with earned pension because regulation 21 says that assumed pensionable pay is to be treated as pensionable pay **except for** the purposes of regulations 9 to 14.

The amendment ensures that:

- a) anyone in receipt of any pensionable pay will automatically be credited under regulations 23(4) or (5) with earned pension based on that pensionable pay, and
- b) anyone falling within regulations 11(1) to (3) will automatically be credited under regulations 23(4) or (5) with earned pension based on their assumed pensionable pay calculated in accordance with regulation 21.

Reserve Forces Service Leave

An amendment has been made to regulation 15(3)(a)(ii) of the LGPS (Scotland) Regulations 2014 to require that the scheme employer, when providing the scheme member with information to be passed to the Ministry of Defence showing the basic employee and employer pension contribution rates, details of any Additional Pension Contributions (APCs) to be paid by the member, and the amount of assumed pensionable pay they are to be collected on, also includes details of any Additional Voluntary Contributions (AVCs) to be paid by the member during the period of reserve forces service leave.

[Note: the amendment to regulation 15(3)(a)(ii) refers to “reserve forces leave” but should refer to “reserve forces service leave”.]

Additional Voluntary Contributions (AVCs)

Under the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 the annual pension illustrations in respect of AVCs have to include an illustration of the entitlement which would be likely to accrue to the member, or be capable of being secured by the member, at the member’s retirement date (being a date specified by the member). Where no date, or no acceptable date, has been specified by the member, it is for the scheme rules to specify an acceptable date. Regulation 17(6) has been deleted as it merely referred to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 without specifying what the default retirement age to be used should be. However, no equivalent of regulation 17(6) of the LGPS in England and Wales has yet been introduced. That regulation specifies that the default retirement age to be used shall be the member’s normal pension age under the LGPS or, if the member has already attained their normal pension age, age 75.

Regulation 17(7) of the LGPS (Scotland) Regulations 2014 has been amended to provide that a member taking early payment of a deferred pension on the

grounds of permanent ill health must, at the same time, use any AVC pot they have by taking it as a lump sum or, to the extent not taken as a lump sum, using it to purchase additional pension from the LGPS or to purchase an annuity.

Regulation 17(10) has been amended to require that a member:

- a) must transfer the realisable value of their accrued AVC account if transferring out their main LGPS scheme rights to another registered pension scheme or QROPS, and
- b) can only transfer out the realisable value of their accrued AVC account if transferring out their main LGPS scheme rights to another registered pension scheme or QROPS.

It should be noted that whilst the amendment to regulation 17(10) was correct as at 1st April 2015 (when the 2015 scheme commenced) it has since become incorrect, as from 6th April 2015, due to the amendments made by the Pension Schemes Act 2015 to the Pensions Schemes Act 1993 which allow AVCs to be transferred even if the main LGPS benefits are not, and vice versa.

Regulation 17(11A) has been introduced into the LGPS (Scotland) Regulations 2014 to clarify that a member with an AVC account can elect, by giving notice in writing to the administering authority, to transfer the realisable value of their accrued AVC account to another AVC account they hold under the scheme.

Payments from the Ministry of Defence

Regulation 69(1) of the LGPS (Scotland) Regulations 2014 has been amended to provide that, if the Ministry of Defence does not pay employee and employer pension contributions direct to the relevant LGPS Fund in respect of a scheme member on reserve forces service leave but, instead, pays the contributions to the scheme employer, the scheme employer must pay them over to the relevant LGPS Fund as part of their normal pay over of contributions to the Fund.

Assumed Pensionable Pay (APP)

As foreshadowed in the [HR guide](#) and the [Payroll guide](#), an amendment has been made to regulation 21(4)(b)(i) of the LGPS (Scotland) Regulations 2014 to confirm that the assumed pensionable pay (APP) for a member (other than a returning officer or acting returning officer) who is paid other than monthly and who:

- is on reduced contractual pay or no pay as a result of sickness or injury; or
- is on relevant child related leave i.e. ordinary maternity, paternity or adoption leave, paid shared parental leave and any paid additional maternity or adoption leave (except any period where the actual pensionable pay received is higher than assumed pensionable pay); or
- is on reserve forces service leave (if the employee, although eligible to be in the Armed Forces Pension Scheme during that period, has elected to remain a member of the LGPS); or
- retires on ill health grounds; or
- dies in service

is to be based on the pensionable pay for that employment which the employee received in the last 12 weeks (and not 13 weeks) preceding the commencement of the pay period in which the circumstances above occurred. Any lump sum payment received in that period is ignored, but the employer can add back into the annual APP figure any regular lump sum payment received by the member in the 12 months preceding the commencement of the pay period in which the circumstances mentioned in the bullet points above occurred.

As the above reflects the guidance contained in the [HR guide](#) and the [Payroll guide](#) issued prior to the introduction of the 2015 scheme the amendment should, in practice, have no material impact on existing practices and procedures.

A new regulation 21(7) has also been added to the LGPS (Scotland) Regulations 2014 to specify how APP should be calculated where a scheme member holds the post of returning officer at local government elections or Parliamentary elections (including Scottish Parliamentary elections) or as an acting returning officer (including as a regional or local returning officer at European Parliamentary elections) and retires on ill health grounds or dies in service.

Prior to the introduction of regulation 21(7) the APP for a returning officer or acting returning officer who died in service and who had not received any fees in the last 3 months (or in the previous 12 months) would have been £nil and so there would have been no death grant payable (whereas one would have been payable under the 2009 scheme if fees had been paid in, normally, the last 3 years). Conversely, if a fee of, say, £6,000 had been paid in the last 3 months, that fee would have been divided by 3 and multiplied by 12 to arrive at an APP figure of £24,000. The death grant would have been $3 \times £24,000 = £72,000$ which is twelve times more than what would have been payable under the 2009 scheme.

If there had been no fees paid in the last 3 months but a fee of, say, £6,000 had been paid in the last 12 months then

- a) if the scheme employer took the view that the payment was not a “regular lump sum” as defined in regulation 21(5) (because it was not paid on a regular basis) then the death grant would have been £nil, and
- b) if the scheme employer took the view that it was a “regular lump sum” as defined in regulation 21(5) (because there has to be an election at least every three years) and the employer decided to add the payment into the annual APP figure then the death grant would have been $£6,000 \times 3 = £18,000$ (which is still 3 times more than would have been paid under the 2009 scheme).

The same problem identified above would equally have applied to the calculation of the APP to be used in the calculation of the amount of enhancement to be added to the survivor benefits in respect of a returning officer or acting returning officer who dies in service (or to be added in the case of a Tier 1 or Tier 2 ill health pension payable to a returning officer or acting returning officer retiring on ill-health grounds).

To overcome the above issues, regulation 21(7) has been inserted, with appropriate cross references being inserted into regulations 37(1)(a), 38(3),

39(4)(b), 40(4)(b), 40(5)(b), 40(9)(b) and 40(10)(b), to provide that the APP figure is to be calculated as the annual average pensionable pay the member received relating to that employment in the three years (or the period the member held the position, if less than three years – see note below) preceding the commencement of the pay period in which the ill-health retirement or death occurred. Thus, for example:

- a) the death grant in the case mentioned above would be $\text{£}6,000 / 3 = \text{£}2,000 \times 3 = \text{£}6,000$ (the same as in the 2009 scheme) and the APP used to calculate the amount of enhancement to be added to the survivor benefits would be $\text{£}6,000 / 3 = \text{£}2,000$; and
- b) the APP used to calculate the amount of ill-health enhancement if the member retired with a Tier 1 or Tier 2 ill-health pension would be $\text{£}6,000 / 3 = \text{£}2,000$.

[Note: regulation 21(7) refers to the annual average pensionable pay the member received relating to that employment in the three years preceding the commencement of the pay period in which the ill-health retirement or death occurred. However, when working out the average for a member who held the position for less than three years, the divisor should be the period of membership in that position.]

Adjustment and closure of active pension accounts

A new sub-paragraph (h) has been added to regulation 22(4) of the LGPS (Scotland) Regulations 2014 to clarify that an active pension account is closed if the member's rights in that account are transferred out to another LGPS Fund in Scotland.

Also, two new sub-paragraphs, (g) and (h), have been added to regulation 23 to provide that an active pension account can be retrospectively adjusted where a member ceases active membership and holds a Certificate of Protection which is to be applied to the calculation of their benefits or has a pensionable payment made after the date of leaving.

Certificates of Protection (CoP)

Regulation 93 of the LGPS (Scotland) Regulations 2014 has been amended to provide that:

- a) a scheme employer can issue a CoP without application from the member but need not issue a CoP if the member does not apply for one within 12 months of the date of the reduction or restriction in pay;
- b) when a member who has been issued with a CoP ceases pensionable employment within 10 years of the date the member's pay was reduced or restricted the CoP is only to be applied to the calculation of the member's benefits if the member so elects;
- c) a CoP shall lapse if the member leaves the employment in respect of which the CoP was issued without becoming entitled to an immediate or deferred pension; and
- d) the operation of a CoP is subject to guidance issued by Scottish Ministers. That guidance is available at Appendix 2 of the [HR guide](#).

Regulation 26 has been inserted into the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 to provide that a CoP issued under regulation 22 of the LGPS (Scotland) Regulations 1998 or regulation 43 of the LGPS (Administration) (Scotland) Regulations 2008 will continue to have effect, in accordance with guidance issued by the Scottish Ministers, for the purpose of calculating final pay for the member's pre 1st April 2015 benefits and for calculating the CARE pension for the member's post 31st March 2015 benefits.

Qualifying for benefits

In order to qualify for benefits under the LGPS Regulations 2013 a member has to have met the 2 year vesting period.

Regulation 3(6) of the LGPS (Scotland) Regulations 2014 lists the various means by which a member who has not actually been in the scheme for 2 years is, nonetheless, to be treated as if they had met the 2 years vesting period. One of these, as set out in regulation 3(6)(g), specified that the 2 years vesting period would be met if a transfer had been received into the LGPS in Scotland **from** a qualifying recognised overseas pension scheme.

This was incorrect and has been amended to provide that the 2 years vesting period is met if the member has previously had a transfer from the LGPS in Scotland **to** a qualifying recognised overseas pension scheme. This is because paragraph 5(1)(c) of Schedule 29 of the Finance Act 2004 says that a refund is only an authorised refund if "there has been no previous benefit crystallisation event in relation to the member and the pension scheme". A QROPS transfer out is a BCE8 and so paying a refund to a member who had had a QROPS transfer from the LGPS in Scotland, returned to the UK, re-joined the LGPS in Scotland, and left again with less than 2 years membership would have been an unauthorised payment.

A consequential amendment has also been made to regulation 7(3) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 so that it also refers to transfers **to** a qualifying recognised overseas pension scheme, rather than transfers **from** a qualifying recognised overseas pension scheme.

Choice of refund or deferred benefit

A member who had a transfer in under the 2009 scheme or any Earlier Scheme from another pension scheme was not entitled to a refund by virtue of regulation 6(1)(b) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008, even if the qualifying period in that scheme was only, say, 6 months and the total membership was less than 2 years. Such a person would fail to meet the requirements of regulation 3(6)(b) of the LGPS (Scotland) Regulations 2014 and would thus be entitled to a refund; whereas, having been entitled to a deferred or actual pension under the Earlier Regulations, the member should have the choice of:

- a) a refund of contributions, or
- b) a deferred pension, or
- c) where the cessation of employment occurs at or after the member's normal pension age under the 2009 scheme, an actual pension.

Regulations 7(5) and (6) have, therefore, been inserted into the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 to provide that a member who ceases active membership of the 2015 scheme with less than 2 years qualifying service but who had transferred in pension rights under the 2009 or Earlier Schemes from another pension scheme has the right to make such a choice. The member must make an election to the administering authority for (a) or (b) within 6 months of cessation of membership or for (c) within 6 months of cessation of the employment in which they had been a member. In the absence of an election the member will be awarded either (b) or (c), as appropriate.

Ill health retirement

Regulations 34, 35(1)(b), 36 and 37 of the LGPS (Scotland) Regulations 2014 have been amended to remove references to “age 65” and replace them with references to “normal pension age” (NPA).

Thus:

- to be entitled to an ill health pension the member must be retired on the grounds of ill-health or infirmity of mind or body before NPA,
- the Independent Registered Medical Practitioner (IRMP) must opine on whether an active member is unlikely to be capable of undertaking gainful employment before NPA
- the member must be unlikely to be capable of undertaking gainful employment before NPA in order to be entitled to a Tier 1 pension,
- the member must be likely to be able to undertake gainful employment before NPA in order to be entitled to a Tier 2 pension, and
- the amount of ill health enhancement is calculated by reference to the period between the date of retirement and NPA.

Similarly:

- to be entitled to payment of a deferred benefit on the grounds of ill-health or infirmity of mind or body the member must be unlikely to be capable of undertaking gainful employment before NPA, and
- the Independent Registered Medical Practitioner (IRMP) must opine on whether the deferred member is permanently incapable of discharging efficiently the duties of their former employment because of ill-health or infirmity of mind or body and is unlikely to be capable of undertaking gainful employment before NPA.

The appropriate sample ill-health certificates have been updated accordingly – see [Bulletin 124](#).

Lastly, regulation 37(7) of the LGPS (Scotland) regulations 2014, which referred to reductions in contractual hours being ignored when calculating the APP for a member retiring on ill-health grounds (if the reduction was caused by the member’s ill health), has been deleted as it was not appropriate to the LGPS in Scotland (and had inadvertently been copied from the LGPS in England and Wales).

The 85 year rule

Paragraph 8 of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 has been amended. The effect is that where:

- (i) regulation 5(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 applies, or is deemed to apply by virtue of regulation 5(5) of those Regulations, and
- (ii) the member subsequently leaves with a deferred pension or deferred refund, and
- (iii) the member subsequently re-joins the LGPS after a break of more than 5 years in membership of a public service pension scheme, and
- (iv) the membership is aggregated

[see regulations 10(3) and (4) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014]

OR

- (i) the member left with a deferred benefit pre 1 April 2015, and
- (ii) regulation 5(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 does not apply, and is not deemed to apply under regulation 5(5) of those Regulations, and
- (iii) the member re-joins the LGPS after 31 March 2015, and
- (iv) the membership is aggregated

[see regulation 10(6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014]

OR

- (i) the member left with a deferred refund pre 1 April 2015, and
- (ii) regulation 5(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 does not apply, and
- (iii) the member re-joins the LGPS after 31 March 2015, and
- (iv) the membership is aggregated

[see regulation 10(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014]

the amount of CARE pension purchased by the transfer will reflect the fact that the CETV for the earlier membership will have been calculated by reference to the member's 85 year rule and will be treated as Part D1 membership. Thus, where a member re-joins and aggregates membership under regulations 10(3) to (6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, the cash equivalent transfer value in respect of the benefits being aggregated would reflect the effect of the 85 year rule applicable to those benefits. The CETV would recognise the member's 85 year rule and so would produce a higher CETV than if the member had not been subject to the 85 year rule and the amount of CARE pension bought by this CETV will therefore be higher than the amount bought by a member not subject to the 85 year rule.

The 85 year rule will continue to apply to that part of the member's post 2015 CARE pension accruing after re-joining if the member is a Group 1 member and re-joins before 1 April 2020 and, where that is the case, the qualifying period of membership that counted towards the 85 year rule in the calculation of the

CETV for the earlier membership will count as 'qualifying' service towards when the 85 year rule is met for that part of the CARE pension accrued after re-joining the scheme (but not for the CARE pension derived from the CETV, as the amount of pension credited from that CETV will already have compensated for the 'loss' of the 85 year rule on that part of the benefits).

[see regulations 10(3) to (6) of, and paragraph 8(2) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014].

Waiving actuarial reductions

The intention behind paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 was to simplify the process for waiving actuarial reductions. In particular it sought to avoid a situation whereby those retiring under regulations 29(5) of the LGPS (Scotland) Regulations 2014 would only have been able to have the actuarial reduction on the pre 1st April 2015 element of their benefits waived on compassionate grounds and the actuarial reduction on their post 31st March 2015 benefits waived in whole or in part on any grounds. This simplification was achieved for members subject to the 85 year rule (and who are thus covered by paragraph 2(1) of Schedule 2 to the Transitional Provisions Regulations) as, in such cases, the employer can waive the reduction on both pre and post 2015 pension rights in whole or in part. However, in the case of members retiring under regulation 29(5) of the LGPS (Scotland) Regulations 2014 who are not subject to the 85 year rule and who have pre and post 2015 benefits the employer could, by virtue of regulation 3(1)(a) of the Transitional Provisions Regulation 2014, only waive the actuarial reduction on the pre 1st April 2015 benefits on compassionate grounds and the actuarial reduction on the post 31st March 2015 benefits in whole or in part on any grounds.

Regulation 3(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 has, therefore, been amended and new regulation 3(12) inserted to overcome this discrepancy and to ensure that in all cases of retirement under regulation 29(5) of the LGPS (Scotland) Regulations 2014 the actuarial reduction on both the pre and post 2015 benefits can be waived in whole or in part.

Limit on total amount of benefits

An amendment has been made to regulation 48 of the LGPS (Scotland) Regulations 2014 which appears to specifically restrict the capital value of a member's pension benefits under the scheme (calculated in accordance with actuarial guidance issued by Scottish Ministers) to the member's lifetime allowance (meaning that any excess benefits could not be paid).

The regulation has also been amended to refer to the Finance Act 2014 in order to cater for those members with Individual Protection 2014.

[Note: the LGPC Secretariat understands it was not the intention to prevent benefits in excess of the LTA from being paid and that the SPPA has decided to reinstate the original wording. This allows excess benefits to be paid in accordance with actuarial guidance issued by the Scottish Ministers and as permitted under the Finance Act 2004.]

Payment of retirement benefits

Regulation 29(1) of the LGPS (Scotland) Regulations 2014 has been amended to clarify that a member who has attained normal pension age is entitled to the immediate payment of a retirement pension without reduction provided the person is not an employee in local government service in the employment from which the benefits arose. In other words, the fact that the employee may still be in another employment in which they are (or have been) an active member does not prevent the person drawing their pension from an employment that has ceased.

[Note: the amendment to regulation 29(1) has inadvertently referred to an “**employer** in local government service” rather than an “**employee** in local government service”.]

Death Grants

An amendment has been made to regulation 38 of the LGPS (Scotland) Regulations 2014 to clarify that where a member dies in service and also has a deferred LGPS pension and / or an LGPS pension in payment under the 2015 Scheme the death grant should be the greater of:

- a) the death in service death grant (or the aggregate death in service death grants where the member dies in service whilst an active member in more than one employment), and
- b) the **aggregate** of the death grants due in respect of the deferred pension and pension in payment.

Although the amendment as worded does not specify that the death grant calculation under (a) should, where a member dies in service whilst an active member in more than one employment, be the aggregate of the death in service death grants, that must be the intention.

An amendment has been made to regulation 41(5) of the LGPS (Scotland) Regulations 2014 to correct the amount of death grant payable in respect of a deceased deferred pension credit member from 3 times the pension credit member’s deferred pension to 5 times the pension credit member’s deferred pension.

An amendment has been made to regulation 44(4) of the LGPS (Scotland) Regulations 2014 to correct the amount of death grant payable in respect of a deceased pensioner member from 5 times the pensioner member’s pension to 10 times the pensioner member’s pension. The element of the death grant relating to the member’s pre 1st April 2015 membership is 10 times the post-commutation pension reduced by the post-commutation pension paid between retirement and death and the element of the death grant relating to the member’s post 31st March 2015 membership is 10 times the pre-commutation pension less the amount of pension paid between retirement and death and the commuted lump sum.

[Note: regulation 21(b) of the Local Government Pension Scheme (Scotland) Amendment Regulations 2015 says that in regulation 38(1) and (2) the words “to (7)” should be replaced with the words “and (6)”. However, this should say that

the amendment is to be made to regulations 37(1) and (2), and not regulations 38(1) and (2).]

Survivor benefits – pensioner members who had retired on the grounds of ill health

Regulations 45(8) and 46(14) have been inserted into the LGPS (Scotland) Regulations 2014 to make it clear that the calculation of the pension payable to a survivor and / or eligible child of a pensioner member who had retired on ill-health grounds includes the relevant fraction of the pension resulting from the ill-health enhancement awarded to the pensioner.

Regulation 17(3) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 has been amended to clarify that the amount of ill-health enhancement to be taken into account in the calculation of a survivor's pension following a death in service after 31st March 2015 is, for a member covered by the protection in regulation 20(5) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 [members who were in the scheme prior to 1st April 2009], to be the higher of the enhancement under the LGPS (Scotland) Regulations 2014 or the enhancement under regulation 27 of the LGPS (Scotland) Regulations 1998.

Survivor benefits – cohabiting partners

Regulation 17(11)(d) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 has been amended to provide that an eligible cohabiting partner's pension is to be based on the deceased member's post 5th April 1988 membership where the cohabiting partnership commenced after the deceased's active membership ceased. Where the cohabiting partnership commenced before the deceased's active membership ceased, the eligible cohabiting partner's pension is to be based on **all** of the deceased's membership.

[Note: the LGPC Secretariat has raised with the SPPA what actions should be taken in respect of active members who are paying, or who have paid, Additional Survivor Benefit Contributions so that their pre 6th April 1988 membership will count towards the pension of an eligible cohabiting partner with whom they commenced a cohabiting partnership whilst an active member. For example, such members might wish to cease future payment of their ASBCs given that their pre 6th April 1988 membership will now automatically count. Additionally, should any ASBCs paid be refunded?

Administering authorities may wish to remind members who cease active membership that if they have an eligible cohabiting partner at the point of leaving they / their partner should retain evidence to be able to prove that the cohabiting partnership commenced whilst the member was an active member of the scheme.]

Survivor benefits - the underpin

Regulations 39, 40, 42, 43, 45 and 46 of the LGPS (Scotland) Regulations 2014 have been amended to provide that any underpin due under regulation 4 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 flows through into the calculation of any pension payable to the surviving widow, widower, civil partner, eligible cohabiting partner and / or eligible child of a deceased member.

Survivor benefits - additional pension purchased from an AVC fund

Regulations 42(4)(d), 43(4)(d), 43(5)(d), 43(9)(d) and 43(10)(d) of the LGPS (Scotland) Regulations 2014 all referred to the survivor and / or eligible child of a deceased deferred member being entitled to a proportion of any additional pension the deferred member had purchased in the scheme under regulation 17(7)(b)(i) from the proceeds of their AVC fund. However, as only an actual pensioner, and not a deferred pensioner, could have purchased such additional pension, regulations 42(4)(d), 43(4)(d), 43(5)(d), 43(9)(d) and 43(10)(d) have all been deleted as they were not relevant.

The opportunity has also been taken to amend regulations 45(4)(e), 46(4)(f), 46(5)(f), 46(9)(f) and 46(10)(f) to:

- a) specify that the survivor and / or eligible child of a deceased pensioner member is only entitled to a proportion of any additional pension the deceased pensioner member had purchased in the scheme under regulation 17(7)(b)(i) if the additional pension purchased included provision for a survivor and / or eligible child's pension, and
- b) for consistency with other regulations, express the proportion of any such additional pension payable to the survivor and / or eligible child as a fraction, rather than a percentage.

Statements of policy about exercise of discretionary functions

Sub-paragraph (aa) has been inserted into regulation 58(1) of the LGPS (Scotland) Regulations 2014 to require that an employer's written discretions policy should include its policy on granting a request made under regulation 29(5) for early payment of pension benefits on or after age 55 (other than on the grounds of permanent ill-health).

[Note: the reference to regulation 29(5) should be to 29(13) so that the employer's policy relates to those requesting early payment on or after 55 (other than on the grounds of permanent ill-health) **and before age 60**. Members requesting payment on or after age 60 do not require employer consent. This has been reported to SPPA for an appropriate amendment to be made.]

Strain on fund charge

Regulations 66(1) and (2) of the LGPS (Scotland) Regulations 2014 have been amended:

- a) to delete early payment of deferred benefits on ill-health grounds under regulation 36 from the list of reasons an administering authority may issue a strain on fund charge to the scheme employer, and
- b) to add early payment of benefits under regulation 29(5) to the list of reasons an administering authority may issue a strain on fund charge to the scheme employer. This is to cater for cases where, for example, the employer gives agreement under regulation 29(13) to early retirement under regulation 29(5) and switches on the 85 year rule under paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, leading to a strain on fund cost.

Annual Benefit Statements (ABS)

Regulation 87(5) of the LGPS (Scotland) Regulations 2014 has been deleted. It had required the Annual Benefit Statement (ABS) to show the benefits accrued at the 31st March preceding the date the ABS was issued *or such later date as the administering authority may have chosen*. This was incompatible with regulation 87(2) which provides that an ABS should always relate to a scheme year (i.e. a year ending 31st March).

Definitions

In Schedule 1 of the LGPS (Scotland) Regulations 2014:

- a) the definition of “child-related leave” has been amended and a new definition of “shared parental leave” has been inserted to cater for legislative changes to the child related leave provisions; and
- b) the definitions of “cohabiting partner” and “partner” have been amended to cater for same sex marriages.

[Note: the amendment to the definition of “child-related leave” says that a new sub-paragraph (c) should be inserted after sub-paragraph (e). Of course, the reference to “(c)” should have been to “(f)”]

Appropriate Funds

Part 1 of Schedule 4 to the LGPS (Scotland) Regulations 2014 has been updated to reflect the changes made by The Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2012 [SSI 2012/347] which had inadvertently not been carried forward into the LGPS (Scotland) Regulations 2014.

Councillor members

Schedule 5 of the LGPS (Scotland) Regulations 2014 has been amended to disapply regulations 22(6) and (7) in respect of councillor members.

[Note: the LGPC Secretariat has informed the SPPA that it believes the above amendment is incorrect and that, instead, the Regulations should contain a statement to simply provide that, in the case of a deferred member who has been a councillor member, the member 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.]

Former NHS scheme members and transport employees

Regulation 24(6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, which referred to “regulation 22 of the 1998 Transitional Regulations (former NHS scheme members) and regulation 128 of the 1998 Regulations (transport employees)” continuing to have effect despite their earlier revocation, has been deleted. This is because those regulations had not actually been revoked. They had been carried forward into regulation 14 of the LGPS (Transitional Provisions) (Scotland) Regulations 2008 and into the LGPS (Administration) (Scotland) Regulations 2008 and so continue to have effect by virtue of regulations 3 and 24 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

Mis-sold personal pensions

A minor amendment has been made to regulation 21 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014. That regulation had provided for regulations 108 and 124 of the LGPS (Scotland) Regulations 1998 to be “preserved”. However, those provisions had previously been revoked by the LGPS (Transitional Provisions) (Scotland) Regulations 2008 and so could not be “preserved”. To overcome this, the regulation has been amended to require that provisions in the same terms as the provisions in regulations 108 and 124 of the LGPS (Scotland) Regulations 1998 shall continue to apply.

Terry Edwards
Senior Pensions Adviser
LGA
17th June 2015

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[LGPS members' website](#)

[LGPS 2014 members' website](#)

[LGPS 2015 members' website](#)

[LGPS Advisory Board website](#)

[LGPS Regulations and Guidance website](#)

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in England and Wales.

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in Scotland.

[Qualifying Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

[The Timeline Regulations](#)

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