



<u>Committee and Date</u>	<u>Item</u>
Pensions Committee 10 February 2010	13 Public

LOCAL GOVERNMENT PENSION SCHEME (MISCELLANEOUS) REGULATIONS 2009

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Summary

The Local Government Pension Scheme (Miscellaneous) Regulations 2009 were made on 1 December 2009 and laid before Parliament on 8 December 2009. The Miscellaneous Regulations come into force on 31 December, but with various effective dates. They amend the four sets of Regulations which currently provide the overall regulatory framework for the LGPS in England and Wales as well as the Local Government (Early Termination of Employment)(Discretionary Compensation)(England and Wales) Regulations 2006. The changes are technical in nature and result from comments made by practitioners in earlier consultations.

Recommendations

- A. Members are asked to note the report.

Report

1. The Local Government Pension Scheme (Miscellaneous) Regulations 2009 are mostly technical and minor amendments that largely originate from comments made by stakeholders in earlier consultations. The Department for Communities and Local Government (CLG) consulted from 28 November 2008 to 20 February 2009 on these regulation changes.
2. The provisions in the Statutory Instrument, attached as **Appendix A**, are as follows:

- i. Regulations 3 – 6 are technical provisions which simply replace the references to the 1997 Regulations in the Compensation Regulations with suitable references to the Regulations for the 2008 Scheme.
- ii. Regulation 9 on the meaning of “pensionable pay” restores the provision inadvertently omitted when the 2008 Scheme was introduced so that the definition of “pay” again continues to exclude the supplement paid by the Environment Agency to certain individuals. As suggested by consultees, a further exclusion, on payments by way of compensation in order to achieve equal pay, has been added.
- iii. Regulation 10 of the Benefits Regulations widens the conditions which need to be fulfilled for a member to be permitted to choose to have his “final pay” treated as the average of three recent consecutive years for pension calculation purposes. Following comments made by stakeholders, the amendment goes further than the original draft in that it deals with cases of contractual changes and restricted pay. The amendment is backdated to 1st April 2008 in order to assist with cases where the members concerned have already retired.
- iv. Regulation 11 inserts a new regulation 12A into the Benefits Regulations. Under the tax regime introduced by the Finance Act 2004 (c. 12), effective from April 2006, a member of the LGPS can apply for a form of protection of pension rights accrued prior to 2006. The protection could be applied for up to April 2009. This provision deals with cases under the 2008 Scheme (and hence the retrospection of this regulation to 1st April 2008) where the protection was agreed and where subsequently members have retired after giving up the protection, with their benefit calculation completed in line with guidance from GAD. The effect is cost neutral for a pension fund and the scheme members of the Shropshire Fund are unaffected by this change.
- v. Regulations 11 also inserts a new Regulation 12B allowing authorities, in effect, to convert “compensatory added years” and other forms of compensation awarded in respect of a former employment under old compensation provisions which are no longer available, into pre-funded additional pension rights. The new provisions are along similar lines as the original Regulation 143 of the 1997 Regulations. Regulation 20 ensures that the conversion process will not affect members’ ability to meet the “85 year rule” governing early retirement.
- vi. Regulations 13, 16, 26, 27 and 28 are specialist provisions concerning the Environment Agency and their partners.
- vii. Regulations 14, 24, 25 and 30 provide members with the choice to pay additional contributions so that any period of membership before 6th April 1988 can be taken into account in the calculation of the benefit to be paid to their surviving nominated cohabiting partner. This enables such members to increase their partners’ potential survivor benefit, whilst pension funds’ costs are appropriately offset by the additional contributions.

- viii. Although the consultation SI provided an equivalent provision for survivor benefits in respect of civil partners, on further consideration CLG concluded that it would be equitable to place civil partners on a level footing with spouses so that members are not obliged to pay additional contributions in order for their pre- 6th April 1988 membership to be taken into account in the calculation of civil partners' survivor benefit. Such benefit is accordingly being provided at no cost to members. The relevant provision, Regulation 18, is backdated to 1 April 2008 which is the date the 2008 Scheme came into effect, and is the date when, in effect, widowers' survivor benefits fully matched the provision covering widows' pension based on their spouses' membership accrued prior to 6 April 1988.
 - ix. Regulation 15 on the payment of children's pensions to third parties restores the same wording as was used in Regulation 47(2) of the 1997 Regulations.
 - x. Regulation 19, a new provision on death grant - under the amendment all cases should be awarded what was formerly the maximum figure.
 - xi. Regulation 23 is a specialist provision which extends access to the LGPS to the Chair of the Olympic Park Legacy Company ("OPLC"). This is in line with existing Regulations which provide access to comparable postholders such as the Mayor of London and the chairman of the London Transport Users' Committee.
 - xii. Regulation 29 deals with the increasing number of employees who work beyond normal pensionable age and who wish to postpone the onset of guaranteed minimum pension (GMP) benefit payments as a result. It is noted, however, that it still falls to Administrators to contact members continuing in employment to ascertain when GMP should be put into payment.
 - xiii. Regulation 32 is another specialist provision, providing for the transfer, to the pension fund of the London Pension Fund Authority, of certain sums relating to London County Council and Greater London Council stocks which were transferred to the Authority from the London Residuary Body, and in respect of which the Authority has now discharged its liabilities.
- 3.** The regulation changes have been implemented by the Pensions Administration Team from the appropriate effective dates where applicable. The changes are largely technical in nature. It is necessary for the Fund to correctly implement these legislative changes so as to ensure the Shropshire Fund correctly administers benefits payments. The Team will continue to keep abreast of regulation changes and communicate any changes to the membership.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) NA
Human Rights Act Appraisal The recommendations contained in this report are compatible with the provisions of the Human Rights act 1998
Environmental Appraisal There is no environmental impact from these changes.
Risk Management Appraisal Correct adoption of the regulations reduces any risk.
Community / Consultations Appraisal N/A
Cabinet Member N/A
Local Member N/A
Appendices A Miscellaneous Regulations 2009