

The Local Government Pension Scheme (Scotland) (Amendment No. 2) Regulations 2015

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Local Government Association

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

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- (d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

Draft amendment 3 - Amend 31 to 32.

Draft amendment 4 - Agreed

Draft amendment 5 - Agreed

Draft amendment 6 - Agreed

Draft amendment 7 - Agreed

Draft amendment 8 - Agreed

Draft amendment 9 - Agreed

Draft amendment 10 - Agreed

Draft amendment 11 – Agreed, though in consequence of this amendment to regulation 31(9) it will be necessary to amend regulation 36(3) by adding at the end of regulation 36(3)(b) the word “and”; and by adding new sub paragraph (c) as follows:

“(c) whether the member met the conditions in sub-paragraphs (a) and (b) on the date the member made the written application under paragraph (1) or, if not, the date the member first met those conditions.”

Draft amendment 12a & 12b – Agreed (as SSI 2015/87 had inadvertently sought to make these amendments to regulation 38).

Draft amendment 12c - Agreed

Draft amendment 13a – Agreed, subject to amending the word “elects” to “elected”. The word must be in the past tense as the member is dead.

Draft amendment 13b - Agreed

Draft amendment 14 – Agreed, subject to amending the word “elects” to “elected”. The word must be in the past tense as the member is dead.

Draft amendment 15 – Agreed, subject to amending the word “elects” to “elected”. The word must be in the past tense as the member is dead.

Draft amendment 16 – Agreed, subject to amending the word “elects” to “elected”. The word must be in the past tense as the member is dead.

Draft amendment 17 – Agreed, subject to amending the word “elects” to “elected”. The word must be in the past tense as the member is dead.

Draft amendment 18 – Agreed, subject to amending the word “elects” to “elected”. The word must be in the past tense as the member is dead.

Draft amendment 19 - Agreed

Draft amendment 20 - Agreed

Draft amendment 21 - Agreed

Draft amendment 22 - Agreed

Draft amendment 23 - Agreed

Draft amendment 24 - Agreed

Draft amendment 25 - Agreed

Draft amendment 26 - Agreed

Draft amendment 27 – Agreed

Draft amendment 28 – We believe the relevant references to the Pension Schemes Act 1993 should be to “Chapter 1 or 2 of Part 4ZA and Chapter II of Part IVA” as 1 and 2 of Part 4ZA cater, respectively, for those entitled to a deferred benefit and those with 3 or more months membership who are not entitled to a deferred benefit; and Chapter II of Part IVA caters for transfers out for Pension Credit members. In addition, regulation 94(4) should be deleted (effective from 6 April 2015) as the rules under the Pension Schemes Act 1993 governing transfers of certain benefits no longer impose such time limits. We can then simply rely on the wording of regulation 94(1) i.e. only those who meet the requirements of, and are entitled to a payment under, the Pension Schemes Act 1993 can have a transfer.

Draft amendment 29 - Agreed

Draft amendment 30 - Agreed

Draft amendment 31 - Agreed

Draft amendment 32 – Agreed

Draft amendment 34 - Agreed

Draft amendment 35 - Agreed

Draft amendment 36 – Agreed. However, we believe there are still outstanding issues with regulation 17, as detailed below:

- i) regulation 17(13) has created consistency of approach (which seems desirable) BUT it appears to have worsened the position of post retirement widows who were married to the deceased at some time whilst he was an active member (i.e. where they were married whilst he was an active member, got divorced, and then remarried post leaving). Under regulation E5(4)(a) of the 1987 Regulations such a widow would have had her pension based on all of the deceased’s membership.
- ii) we understand that the policy intention for survivor benefits is as follows:

Survivor benefits

The Heads of Agreement for the 2015 scheme clearly states “Pensions for partners who cohabit and civil partners equal to those benefits afforded to married couples. There will be no requirement to nominate a cohabitee.”

Under the 2009 scheme, survivor benefits for civil partners (introduced in 2005, therefore part of the 1998 scheme) and for (nominated) cohabiting partners (introduced in 2009) are calculated based on post-1988 membership only, whether the relationship commenced pre-leaving or post-leaving. The 2009 scheme differentiates between pre-leaving and post-leaving marriages, with widow’s survivor benefits based on post-78 membership for post-leaving marriages, and widower’s survivor benefits based on post-88 membership for post-leaving marriages. All membership qualifies for survivor benefits for pre-leaving marriages, for both widows and widowers.

The 2009 scheme sees the addition of same-sex marriage, from 16/12/2014, though the first same sex marriages did not take place until 31/12/2014. Up until the scheme ceases on 31/03/2015, survivor benefits for same sex spouses will be calculated on post-88 membership (i.e., same sex spouses to be treated the same as civil partners for the purposes of survivor benefits).

Under the 2015 scheme, survivor benefits are equalised for all types of relationships. Survivor benefits, like pensions, are calculated separately for final salary benefits and CARE benefits. By default, CARE benefits will all be post-88. Final salary benefits are calculated as under the earlier scheme regulations, with retention of final salary link (unless a person has a continuous break in excess of five years out of active membership of any public sector pension scheme and then aggregates their former deferred benefit entitlement with their current membership of the scheme; note that the 85 year rule of protection is not lost). The 2014 main regulations set out how CARE benefits are calculated. The 2014 transitional regulations set out how final salary benefits are calculated for 2015 scheme members. The transitional regulations retain the post-88 restrictions only for post-leaving relationships (note: post-78 for widows of post-leaving opposite sex marriages).

The policy intent in the 2015 scheme is to equalise survivor benefits for civil partners, cohabiting partners and married couples. Because post-leaving marriage restrictions are applied to married couples under the 2009 scheme, they will continue to apply in the 2015 scheme (the Heads of Agreement does not specify/make the distinction between pre- and post-leaving).

We understand the above to mean that where:

- a) a member leaves after 31 March 2015 and dies after that date, the policy intention is for the survivor’s pension of a pre-leaving civil partnership, pre-leaving same sex marriage or pre-leaving cohabitation to be based on all the deceased member’s pre-15 membership i.e. only post leaving civil partners, post-leaving same sex partners and post-leaving cohabiting partners should have the pre-15 benefits based on post 5 April 1988 membership only; and
- b) a member leaves before 1 April 2015 but dies after 31 March 2015, the

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policy intention is for the survivor's pension of a pre-leaving civil partnership, pre-leaving same sex marriage or pre-leaving cohabitation to be based on the deceased post 5 April 1988 membership (i.e. the same as for a post leaving civil partner, post-leaving same sex partner and post-leaving cohabiting partner.

If our understanding is correct then the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 deliver this policy intention in respect of (b) [or, rather, will do so when amendment 44 is promulgated to cover same sex marriages] but we don't believe they do so in respect of (a)**. That is because regulations 17(1) and (2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 require that, subject to paragraphs (9) to (15), the pre-15 benefits are calculated under the Earlier Schemes. The starting position is, therefore, to look at paragraphs (9) to (15). They do not mention survivors of pre-leaving civil partnerships, pre-leaving same sex marriages or pre-leaving cohabitation. Thus, they do not apply. That leaves us with regulations 17(1) and (2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 which require that the pre-15 benefits for such survivors are calculated under the Earlier Schemes i.e. based on post 5 April 1988 membership only. If the policy intention is as set out in (a) above then regulation 17 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 will need a further paragraph added to say that where a member leaves after 31 March 2015 and dies after that date, the survivor's pension of a pre-leaving civil partnership, pre-leaving same sex marriage or pre-leaving cohabitation is to be based on all the deceased member's pre-15 membership.

**Note, however, that although regulations 17(1), (2), (4), (10), (11) and (13) the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 would appear to provide that the survivor benefit would be based on 6 April 1988 to 31 March 2015 membership plus relevant additional membership as defined in regulation 41(4)(a) to (d) of the LGPS (Scotland) Regulations 1998 plus the survivor benefit calculated under regulations 39, 42 or 45 of the LGPS (Scotland) Regulations 2014, section 4 of the Marriage and Civil Partnership (Scotland) Act 2014 has the effect of providing that the survivor of a pre-leaving same sex marriage is treated in the same way as the widow or widower of a pre-leaving opposite sex marriage. Thus, the survivor benefit would be based on all of the deceased's membership, including any pre 6 April 1988 membership.

- iii) we are aware of a case where a member who left in 2010 and who has a cohabiting partner is thinking of getting married and wants to know what difference this will make to his beneficiary's benefits.

This member had a transfer in back in 1988 and another in 1991 and also has two purchase of service (added years) contracts.

If he remains as a cohabiting partner all his service will count towards his beneficiary's pension as relevant additional membership (RAM) is included by virtue of regulation 17(13)(a)(ii) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014. However, if he were to get married to his partner, and become a post retirement marriage, she would not get the

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RAM membership included in her benefits should he predecease her. This is because by virtue of regulation 17(13)(a)(i) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, RAM would only be included if he was previously married to (or in a civil partnership with) the same person whilst an active member (which he wasn't). This anomaly (which equally applies to female members who have a cohabiting partner to whom they are planning to get married or enter into a civil partnership) requires amendment as it means that upon marrying, the pension for the survivor of a post-leaving marriage or civil partnership would, currently, become inferior to the contingent cohabitee's pension.

- iv) following the amendment made to regulation 17(11)(d) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 by SSI 2015/87 what should administering authorities do in respect of members who are paying, or who have paid, ASBCs to count pre 6 April 1988 membership so that it counts for a survivor's pension in respect of a person they are / were cohabiting with as an active member? Should their contract cease and should they be given a refund of ASBCs already paid? Will SPPA be issuing any advice on this matter?

Draft amendment 37 - Agreed

Draft amendment 38 - Agreed

Draft amendment 40 - Agreed

Draft amendment 41 – Agreed, subject to the following:

- i) we believe that a consequential amendment is needed to regulation 7(3) of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008. The words "Regulation 41" should be amended to "Regulations 41 to 41C.
- ii) in England and Wales the equivalent of regulations 41A and 41B (i.e. regulations 42 B and 42C of the LGPS Regulations 1997) both have additional paragraphs which read:

(4) Paragraph 1 of Schedule 3 to the Marriage (Same Sex Couples) Act 2013 does not apply to the interpretation of this Scheme.

(5) Section 11(1) and (2) of, and paragraph 3 of Schedule 3 to, that Act have effect subject to paragraphs (1) to (3).

Can we assume it has been decided these are not necessary in regulations 41A and 41B of the LGPS (Scotland) Regulations 1998?

Draft amendment 42 - the amendment leaves the regulation reading as though it was the administering authority's responsibility to obtain a certificate from an IRMP for payment of benefits under regulation 26. It would read better if the regulation were amended to read "the Scheme employer, in the case of regulation 26, or the administering authority in the case of regulation 30"

Draft amendment 44 – Agreed, subject to the following:

- i) we believe that a consequential amendment is needed to regulation 7(3) of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008. The words “Regulation 41” should be amended to “Regulations 41 to 41C.
- ii) in England and Wales the equivalent of regulations 24A and 241 (i.e. regulations 42 B and 42C of the LGPS Regulations 1997) both have additional paragraphs which read:

(4) Paragraph 1 of Schedule 3 to the Marriage (Same Sex Couples) Act 2013 does not apply to the interpretation of this Scheme.

(5) Section 11(1) and (2) of, and paragraph 3 of Schedule 3 to, that Act have effect subject to paragraphs (1) to (3).

Can we assume it has been decided these are not necessary in regulations 24A and 24B of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008?