

LGPC Scotland Bulletin 224 – May 2022

Local Government Pensions Committee (LGPC)
Secretary, Lorraine Bennett

The bulletin gives our commentary for administering authorities in Scotland on the changes made by [The Local Government Pension Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2022](#) [2022/153].

The bulletin sets out the information below for each of the main changes:

- the rules before the change
- a summary of the change
- the impact of the change
- the relevant regulations.

We also tell you if we think a change is a material alteration under the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.

We also briefly summarise the minor technical changes in the [Minor technical changes](#) section.

In the bulletin we refer to different regulations, which we have shortened as follows:

- Local Government Pension Scheme (Scotland) Regulations 2018 - 2018 Regulations
- Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 - 2014 Transitional Regulations
- Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2022 - 2022 Amendment Regulations
- Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) 2019 – 2019 Miscellaneous Regulations
- Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 – 2008 Benefit Regulations
- Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 – 2008 Administration Regulations
- Local Government Pension Scheme (Scotland) Regulations 1998 – 1998 Regulations

- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 – Disclosure Regulations 2013.

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Changes

Deferred members who left before 1 April 2015

Summary before the changes

The 2019 Miscellaneous Regulations provided deferred members who left before 1 April 2015 with a new right to elect for early payment. This took effect from 1 June 2018.

The intention of the new right was to allow these members the option to elect to receive early payment at a reduced rate on or after age 55 without needing the employer's consent.

Members may elect for early payment under the new right where:

- the deferred benefits have not come into payment
- the member is not an active member in employment from which the benefits arose, and
- the member is age 55 or over.

The new right is in addition to the existing rights members already had to elect for early payment. The new right did not replace or modify those existing rights.

Issues with the new right

The drafting of the new right caused several issues.

Firstly, it provides that members who become entitled to deferred benefits on opting out in an employment are eligible to elect under the new right while in the same employment. We understand this is not the intention.

Secondly, it is also silent in the following areas:

- whether the right also refers to immediate payment of retirement grants
- how members make the election
- when you put the benefits into payment
- how you treat the reductions for early payment when calculating death benefits
- whether employers can waive any of the reductions for early payment
- whether and how you apply the 'rule of 85' protections
- whether you can reduce the benefits for early payment below the 'requisite benefits' for members who left before 1 April 2009. The requisite benefits mean:
 - Female members – final pay x 1/80 x membership from 6 April 1978 to 31 March 1996

- Male members – final pay x 1/80 x membership from 17 May 1990 to 31 March 1996.

Changes from 1 June 2022, but with effect from 1 June 2018

The 2022 Amendment Regulations resolve these issues with effect from 1 June 2018. The regulations confirm the following for members who elect under the new right:

- Members who become entitled to deferred benefits on opting out in an employment are not eligible to elect for payment of those benefits while in the same employment.
- Retirement grants, if applicable, are also payable.
- Members make an election by notice in writing to the appropriate administering authority.
- You put the benefits into payment from the date of the election.
- When calculating death benefits, you treat the reduction for early payment as if it was a reduction under the relevant earlier regulations. This means the reduction will be ignored if it would have been had the member elected under the existing rights, rather than the new right.
- Employers cannot decide to waive any of the reductions for early payment. Scottish Public Pensions Agency confirmed in the consultation document that:

“Where the member elects under the new route, the former employer will not have any discretionary powers to reduce or eliminate the reduction for early payment. Scottish Ministers are of the view that where employers wish to reduce or eliminate reductions, the member’s election can instead be made under the existing routes under the earlier regulations.”

- You apply paragraph 1(4) of schedule 2 to the 2014 Transitional Regulations to members aged under 60 who qualify for rule of 85 protections. Paragraph 1(4) provides that where the member meets the rule of 85 before 60, you must instead treat the member as meeting it at 60.
- You apply paragraph 1(3) of schedule 2 to the 2014 Transitional Regulations to members aged 60 or over who qualify for rule of 85 protections. Paragraph 1(3) provides that where the member meets the rule of 85, you do not apply a reduction to protected benefits. If the member does not meet the rule of 85, you calculate the reduction by reference to the date they would meet it, or age 65 if earlier. Where the member was 60 or over on 31 March 2020, protected benefits mean pre-April 2020 benefits. Otherwise, it means pre-April 2008 benefits. Unlike paragraph 1(4), paragraph 1(3) does not apply a minimum age on which the rule of 85 can be met.

- Employers cannot agree for paragraph 1(3) to apply to members aged under 60 at the date of making the request. If employers wish to reduce the reductions for early payment, the employer should treat the election as being made under the earlier regulations, ie under the rights that require employer consent. Paragraph 1(3) automatically applies to elections made under the existing rights under the 1998 and 2008 Benefit regulations.
- For members who left before 1 April 2009, you cannot reduce the benefits for early payment below the requisite benefits. For clarity, members can elect to commute pension for lump sum so that the pension is less than the requisite benefits.

Impact

The changes ensure that the regulations reflect the policy intent. We understand that you were already operating in line with the intention. Nonetheless, you will wish to ensure that you are treating these cases correctly.

Relevant provisions

- Regulations 3(13), 3(14), 3(15) of the 2014 Transitional Regulations
- Paragraphs 1(1), 1(2) and 1(3)(a) of schedule 2 to the 2014 Transitional Regulations
- Regulations 3, 5(a)(iii), 5(b) and 5(c)(ii) of the 2022 Amendment Regulations.

Right for pension credit members to elect for early payment

Summary before the changes

Where you awarded a pension credit under the 1998 or 2008 Administration Regulations, the credit member may elect for early payment at a reduced rate between 60 and 65.

You will have awarded a credit under the 1998 Regulations where the sharing order's effective date was before 1 April 2009. You will have awarded a credit under the 2008 Administration Regulations where either:

- the order's effective date is between 1 April 2009 and 31 March 2015, or
- the order's effective date is after 31 March 2015, but the pension debit member has no post-March 2015 membership.

Changes from 1 June 2022, but with effect from 1 June 2018

The Scottish Government intended to use the 2019 Miscellaneous Regulations to give credit members awarded the credit under the 1998 or 2008 Administration Regulations the right to elect for early payment from 55, instead of from 60. It was intended that this would have effect from 1 June 2018.

However, those regulations mistakenly did not achieve the intention. The Scottish Government made clear to authorities their intention to correct this with retrospective effect to 1 June 2018.

The 2022 Amendment Regulations achieve the intention with effect from 1 June 2018.

Impact

You may already have implemented this change relying on the intention. If you chose to wait for the regulations to be amended, you will now need to update your processes and relevant communication materials.

In our view, the change will count as a material alteration under the Disclosure Regulations 2013. You will need to tell members awarded a credit under the 1998 or 2008 Administration Regulations that they can now elect for early payment from 55, rather than from 60. You should give the information before, or as soon as possible after, 1 June 2022. In any event, you must give the information by no later than 31 August 2022.

Relevant provisions

- Regulation 3(b) of the 2022 Amendment Regulations
- Regulations 3(16) and 3(17) of the 2014 Transitional Regulations
- Regulation 150(7) of the 1998 Regulations
- Regulation 95(7) of the 2008 Administration Regulations
- Regulation 8 of, and paragraph 15(g) of schedule 2 to, the Disclosure Regulations 2013.

Changes to survivor benefits

The 2022 Amendment Regulations change the rules on survivor pensions. In particular, the rules on what membership you use when calculating survivor pensions in respect of membership before 1 April 2015.

The changes are made in response to two court cases: Walker v Innospec and Goodwin v Department for Education. The changes place surviving same-sex civil partners, survivors of married same-sex couples and male survivors of female married members in a similar position to female survivors of male married members.

The changes have effect for deaths occurring on or after 5 December 2005.

The 2022 Amendment Regulations also make several changes to confirm policy intent.

Impact

You will need to amend your systems / calculations for future deaths.

You will also need to revisit calculations for past deaths. To help you understand the changes and identify the cases you will need to revisit, we will publish a technical guide. The guide sets out what membership you must include when calculating survivor pensions in respect of membership before April 2015.

The guide will confirm that if a member joined before 1 April 2015 and left on or after that date, you will need to calculate the survivor pension under the 2015 Scheme separately and add that figure to the survivor pension in respect of membership before 1 April 2015.

The Scottish Public Pensions Agency confirmed the following in [Circular 2022/04](#):

“Where the recalculation of a partner’s pension causes a reduction to the rate of an eligible child’s pension, administering authorities will need to recalculate that child’s pension and adjust future payments. We would not expect authorities to recoup past overpayments.

In our view, the changes will count as a material alteration under the Disclosure Regulations 2013. You will need to tell members who are potentially impacted about the changes. You should give the information before, or as soon as possible after, 1 June 2022. In any event, you must give the information by no later than 31 August 2022. In our view, the key points to cover are:

- changes have been made to the calculation of survivor pensions as a result of recent court cases
- the changes improve the calculation for surviving same-sex civil partners, survivors of same-sex marriages and male survivors of opposite-sex marriages
- the calculation now places these survivors in a similar position to female survivors of opposite-sex marriages
- generally, this means that:
 - where the marriage / civil partnership takes place after the member leaves the Scheme, we will use membership the member built up on or after 6 April 1978 to calculate the survivor pension
 - where the marriage / civil partnership takes place before the member leaves the Scheme, we will **also** use membership the member built up before 6 April 1978
- the changes apply to deaths on or after 5 December 2005.

Relevant provisions

- Regulation 4 of the 2022 Amendment Regulations 2022
- Regulation 17 of the 2014 Transitional Regulations 2022
- Regulation 8 of, and paragraph 15(b) of schedule 2 to, the Disclosure Regulations 2013.

APC factors

Summary before the changes

You must determine the amount of additional pension contributions (APCs) in accordance with GAD guidance based on:

- the member's age at the time the APC arrangement starts, and
- the member's gender.

The GAD guidance sets out separate factors for males and females.

Changes from 1 June 2022

The 2022 Amendment Regulations delete the requirement to base the APC amount on the member's gender.

Impact

None.

However, we expect that GAD will issue new gender neutral APC factors over the next few months.

Relevant provisions

- Regulation 16(8)(b) of the 2018 Regulations
- Regulation 7 of the 2022 Amendment Regulations.

Changes to actuarial valuations

Summary before the changes

You must obtain an actuarial valuation of the assets and liabilities of your fund every three years. The next valuation must be calculated as at 31 March 2023. Alongside each valuation, you must obtain a report and a rates and adjustments certificate.

The Scottish Public Pensions Agency is aware that some administering authorities obtain valuations on both an ongoing and cessation basis. It is felt that valuations on a cessation basis give a more realistic exit payment estimate to employers considering leaving.

Changes from 1 June 2022

The 2022 Amendment Regulations require you to obtain valuations on both an ongoing and cessation basis. The regulations also require the rates and adjustment certificate for an employer to specify the amount of liabilities arising in respect of their members as at the valuation date, assessed on both an ongoing and cessation basis.

The changes will apply from the next valuation as at 31 March 2023.

Impact

Discuss the changes with your actuary to ensure that you comply with the requirements from the next valuation.

Relevant provisions

- Regulation 9 of the 2022 Amendment Regulations
- Regulations 60(1)(a) and 60(6A) of the 2018 Regulations.

Termination assessments

Summary before the changes

When an employer becomes an exiting employer, you must obtain:

- an actuarial valuation as at the exit date of the fund's liabilities in respect of the employer's members, and
- a revised rates and adjustment certificate showing the exit payment or exit credit due.

Where an exiting employer is liable to pay an exit payment, you may suspend that liability. To exercise this, you must issue a written notice to the employer. The written notice is referred to in the regulations as a 'suspension notice'.

Changes from 1 June 2022

Where an administering authority has obtained an actuarial valuation for an exiting employer, the 2022 Amendment Regulations limit its ability to obtain a revised valuation before the relevant payment is made. The regulations require that each valuation must remain fixed for 90 days. It is hoped that this change will provide exiting employers with greater certainty on the exit payment amount.

The 2022 Amendment Regulations also require you to specify in a suspension notice the period during which it will apply. You may withdraw the notice earlier at your discretion.

Impact

Ensure that your processes and policies are in line with these changes.

Relevant provisions

- Regulation 10(1) of the 2022 Amendment Regulations
- Regulations 61(2), 61(2A) and 61(3) of the 2018 Regulations.

Employer flexibilities

Changes from 1 June 2022

The 2022 Amendment Regulations give you three new flexibilities when dealing with your employers.

Deferred debt agreements

The 2022 Amendment Regulations provide for deferred debt agreements.

A deferred debt agreement is a written agreement between the administering authority and an exiting employer. Under the agreement, the employer's liability to pay an exit payment is deferred and the employer continues to pay secondary rate employer contributions.

You may enter into a deferred debt agreement where:

- the employer's last active member has left your fund,
- you have set out your policy on deferred debt agreements in your funding strategy statement,
- you have consulted the exiting employer, and
- you have had regard to the views of an actuary appointed by you.

The regulations further set out:

- that the deferred debt agreement must provide for it to remain in place for a specified period
- The period can be varied if you and the deferred employer agree
- what you must include in a deferred debt agreement
- the circumstances when a deferred debt agreement ends
- the employer's duties while a deferred debt agreement is in force.

Amending employer contributions between valuations

For each fund valuation, you must obtain a rates and adjustment certificate prepared by an actuary. The certificate sets out the employer contribution rates for each year of the relevant three-year period.

Currently, regulation 61(9) of the 2018 Regulations allows you to amend the rates and adjustment certificate between valuations in limited situations. For example, where an employer agrees to pay increased contributions to meet the cost of awarding additional pension.

The 2022 Amendment Regulations amend the 2018 Regulations to provide you with a new discretion to be able to do so.

Before you can exercise this new discretion, you must update your funding strategy statement, setting out your policy on amending contributions between valuations.

Once this is in place, you may exercise the discretion where:

- it appears likely to you that the amount of the liabilities arising or likely to arise has changed significantly since the last valuation,
- it appears likely to you that there has been a significant change in the ability of the employer (or employers) to meet scheme obligations, or
- an employer (or employers) has requested a review of the employer contributions and has undertaken to meet the costs of the review.

In revising the certificate, you must consult with the employer (employers) and have regard to the views of an actuary you appointed.

Spreading exit payments

When an employer becomes an exiting employer, you must obtain:

- an actuarial valuation as at the exit date of the fund's liabilities in respect of the employer's members, and
- a revised rates and adjustment certificate showing the exit payment or exit credit due.

Where an exit payment is due, the employer must make the payment over such period as you consider reasonable.

The 2022 Amendment Regulations provide you with a discretion to spread the exit payment. To do this, you would need to obtain a revision to the rates and adjustment certificate. The revised certificate must show the proportion of the payment the employer will pay each year over such period as you consider reasonable.

Before you can exercise this, you must update your funding strategy statement, setting out your policy on spreading exit payments.

In revising the certificate, you must consult with the employer and have regard to the views of an actuary you appointed.

Impact

Consider your policies on deferred debt agreements, amending contributions between valuations and spreading exit payments. Once decided, update your funding strategy statement.

Relevant provisions

- Regulations 10(2), 10(3) and 11 of the 2022 Amendment Regulations
 - Regulations 61(4A) to (4G), 61(10), 61A and 61B of the 2018 Regulations.
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Minor technical changes

The 2022 Amendment Regulations make the following minor technical changes. We do not expect that these will have any impact for you.

- Regulations 5(a)(i) and 5(c)(i) add references to elections made under the 1998 Regulations to schedule 2 to the 2014 Transitional Regulations. Schedule 2 sets out the rule of 85 protections. The additions have effect from 1 April 2015.
- Regulation 8 corrects errors in regulation 40 of the 2018 Regulations. Regulation 40 provides for eligible children's pensions payable on the death of active members. Regulation 40(9)(a)(v) incorrectly shows "39/240", whereas it should show "49/240". Regulation 40(10)(a)(vi) incorrectly shows "60/160", whereas it should show "60/120". The corrections have effect from 1 June 2018.
- Regulation 12 changes the employer cost cap percentage shown in regulation 101(1) of the 2018 Regulations from "15.5%" to "15.2%". Since setting 15.5 per cent, GAD identified an error in the original calculation. The change has effect from 1 April 2015.
- Regulation 13 deletes "under paragraph 3" in paragraph 6 of schedule 4 to the 2018 Regulations. Schedule 4 sets out who is the appropriate administering authority for a member. The deletion merely reflects the revocation of paragraph 3 by the 2019 Miscellaneous Regulations. The deletion has effect from 1 June 2018.
- Regulation 15 clarifies the effective date of paragraph 1(2) of the schedule to the Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019. These regulations authorise GMP overpayments. Previously it was unclear whether paragraph 1(2) took effect from 5 April 2009 or had effect from 12 November 1979 to 8 April 2019. It should be the latter. The clarification has effect from 8 April 2019.

Useful links

[LGA's pensions page](#)

[LGPS member website \(England and Wales\)](#)

[LGPS member website \(Scotland 2015\)](#)

[LGPS Advisory Board website \(England and Wales\)](#)

[LGPS Advisory Board website \(Scotland\)](#)

[LGPS Regulations and Guidance website \(England and Wales\)](#)

[LGPS Regulations and Guidance website \(Scotland\)](#)

[Public Sector Transfer Club](#)

[Recognised Overseas Pension Schemes](#) that have told HMRC that they meet the conditions to be a ROPS and have asked to be included on the list.

LGPS pensions section contact details

If you have a technical query, please email query.lgps@local.gov.uk and one of the team's LGPS pension advisers will get back to you.

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Further information

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