
SCOTTISH STATUTORY INSTRUMENTS

2011 No.

PENSION

**The Local Government Pension Scheme Amendment (Scotland)
Regulations 2011**

<i>Made</i>	- - - -	<i>2011</i>
<i>Laid before the Scottish Parliament</i>		<i>2011</i>
<i>Coming into force</i>	- -	<i>2011</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 7 and 12 of, and Schedule 3 to, the Superannuation Act 1972^(a) and of all other powers enabling them to do so.

In accordance with section 7(5) of that Act, they have consulted such associations of local authorities as appeared to them to be concerned, such local authorities with whom consultation appeared to them to be desirable, and such representatives of other persons likely to be affected by the proposed regulations as appeared to them to be appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Local Government Pension Scheme Amendment (Scotland) Regulations 2011.

(2) These Regulations come into force on [] 2011 and, subject to paragraph (3), have effect from that date.

(3) Regulation [] has effect from 1st April 2010. *[DN: Coming into force dates]*

Regulations dealing with transfer of staff from Scottish Legal Services Ombudsman [Scottish Administration] to the Scottish Legal Complaints Commission need to come into force on 30 September 2008 as the effective transfer date is 1st October 2008.

Regulations dealing with the transfer of staff from the Scottish Administration to Learning and Teaching Scotland need to come into force on 31st March 2010 as the effective transfer date of 1st April 2010.

Regulations dealing with the transfer of pension entitlement from the SDS Scheme to the LGPS need to come into force on 31st March 2010 as the effective transfer date is 1st April 2010.

Regulations dealing with the transfer of staff from the Scottish Administration [HMIE/SWIA] to Social Care and Social Work Improvement Scotland need to come into force on 31st March 2011 as the effective transfer date which will be 1st April 2011.]

^(a) 1972 c.11. The functions of the Secretary of State exercised in the making of these Regulations were transferred to the Scottish Ministers as regards Scotland by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.

Amendments of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

2. The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations(a) are amended in accordance with regulations 3 to 6.

[Comment: The word “Regulations” above needs to be amended to read “Regulations 1998”](#)

3. In regulation 2 (general interpretation)(b)—

- (a) in paragraph (3), for “Benefit” substitute “Benefits”; and
- (b) in paragraph (4), for “Benefit” substitute “Benefits”.

4. In regulation 17 (cessation of new employment) at the end of sub paragraph (1)(b)(i), add “but ignoring any such effective service falling on or after age 65”.

[Comment: To ensure consistency, the words “until his 65th birthday” at the end of regulation 17\(1\)\(b\) need to be amended to read “until the day before his 65th birthday”](#)

5. In regulation 18 (reduction of annual compensation on cessation of new employment)(c), in paragraph (4) for “Benefit” substitute “Benefits”.

6. In regulation 35 (determination to pay and computation of compensation), in paragraph (1), after “or regulation 12” insert “or 13”.

[Comment: In order to ensure compliance with the exemptions in the Equality Act 2010, the words “and the substitution for the references to the calculation date of references to the material date” in regulation 37\(1\) need to be deleted.](#)

7. In regulation 46 (death in service gratuities)(d), in paragraph (5) for “Benefit” substitute “Benefits”.

Amendment of the Local Government Pension Scheme (Scotland) Regulations 1998

8. The Local Government Pension Scheme (Scotland) Regulations 1998(e) are amended in accordance with regulation 9.

9. In regulation 150 (“appropriate rights”/“pension credit benefits” under the scheme)—

- (a) in paragraph (5), for “A pension credit member” substitute “Subject to paragraph (7), a pension credit member”; and
- (b) after paragraph (6), add—

“(7) A pension credit member may elect in writing to the appropriate administering authority for benefits payable under paragraph (1) to be paid at or after age 60 (but before normal benefit age), and such benefits must be reduced by the amounts as are shown to be appropriate in guidance issued by the Government Actuary’s Department.”.

Comments:

- the words “under paragraph (1)” need to be amended to “under paragraph (5)”
- regulation 92 of the LGPS (Scotland) Regulations 1998 will also need an appropriate amendment to refer to when a pension commences following an election under regulation 150(7)
- regulation 95 of the LGPS (Administration) (Scotland) Regulations 2008 needs to be amended in exactly the same way as regulation 150 of the LGPS (Scotland) Regulations 1998

(a) S.S.I. 1998/192.

(b) Regulation 2 was relevantly amended by S.S.I. 2009/187.

(c) Regulation 18(4) was relevantly amended by S.S.I. 2009/187.

(d) Regulation 46(5) was relevantly amended by S.S.I. 2009/187.

(e) S.S.I. 1998/366: various regulations were revoked by S.S.I. 2008/228.

- regulation 46 of the LGPS (Administration) (Scotland) Regulations 2008 will also need an appropriate amendment to refer to when a pension commences following an election under regulation 95(7) of the LGPS (Administration) (Scotland) Regulations 2008
- shouldn't the words "23 (death grants: active members)," at the beginning of regulation 95(4) of the LGPS (Administration) (Scotland) Regulations 2008 be deleted as a Pension Credit Member cannot, in relation to that Credit, be an active member.

Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008

10. The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008(a) are amended in accordance with regulations 11 to 20.

11. In regulation 5 (meaning of "pensionable pay")—

(a) after paragraph (2)(e), add—

"(f) the amount of any supplement paid to an employee whose employment was transferred on 1st April 2010, under a staff transfer scheme, from the Scottish Administration to Learning and Teaching Scotland(b), in recognition of the difference in contribution rates between members of the principal civil service pension scheme(c) and the Scheme;

(g) the amount of any supplement paid to an employee whose entitlement to a pension was transferred on 1st April 2010 from the SDS Scheme to the Scheme, in recognition of the difference in contribution rates between members of the SDS Scheme and the Scheme;

(h) the amount of any supplement paid to an employee whose employment was transferred on 1st October 2008, under a staff transfer scheme, from the Scottish legal services ombudsman(d) to the Scottish Legal Complaints Commission(e) in recognition of the difference in contribution rates between members of the principal civil service pension scheme(f) and the Scheme; and

(i) the amount of any supplement paid to an employee whose employment will be transferred on 1st April 2011, under a staff transfer scheme, from the Scottish Administration to Social Care and Social Work Improvement Scotland(g), in recognition of the difference in contribution rates between members of the principal civil service pension scheme(h) and the Scheme."(i)

(b) after paragraph (3), add—

"(4) In this regulation "the SDS Scheme" has the same meaning as in regulation 16B."

12. In regulation 6 (benefits), in paragraph (1)—

(a) in sub-paragraph (a), omit "or";

(b) in sub-paragraph (b), after "member", add "; or"; and

(c) after sub-paragraph (c), add—

Comment: the above should read "after sub-paragraph (b) add—"

(a) S.S.I. 2008/230, as amended by S.S.I. 2009/93, S.S.I. 2009/187 and S.S.I. 2010/234.

(b) A company limited by guarantee (company number SC200241).

(c) For the definition of the principal civil service pension scheme, see section 2(10) of the Superannuation Act 1972 (c.11).

(d) The Scottish legal services ombudsman was established by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 34 and abolished by S.S.I. 2008/352.

(e) The Scottish Legal Complaints Commission was established by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 1.

(f) For the definition of the civil service pension scheme, see section 2(10) of the Superannuation Act 1972 (c.11).

(g) Social Care and Social Work Improvement Scotland was established under the Public Services Reform (Scotland) Act 2010 (asp 8), section 44.

(h) For the definition of the civil service pension scheme, see section 2(10) of the Superannuation Act 1972 (c.11).

(i) LTS and SDS are, and SLCC and SCSWIS will be, a community admission body in terms of Regulation 4(2) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (S.S.I. 2008/225).

“(c) regulation 82A, 82B 82C and 82D (bulk transfers in) of the Administration Regulations applies to the member.”.

13. In regulation 7 (periods of membership), in sub-paragraph (c), for “82 (changes of fund and variable time employees)” substitute “82D (bulk transfers in)”.

14. In regulation 13 (power of employing authority to award additional pension), in paragraph (1) before “member” insert “active”.

15. After regulation 14 (election in respect of additional pension), insert—

“Election to pay additional contributions: survivor benefits

14A.—(1) An active member may elect to pay additional contributions in respect of any period of membership occurring prior to 6th April 1988, in order to be credited with additional survivor benefits in respect of a surviving nominated cohabiting partner (within the meaning of regulation 25).

(2) An election to pay additional survivor benefits contributions (“ASBCs”) under paragraph (1), must be made no later than 31st March 2011 or within 12 months of the date of nomination being made under regulation 25.

Comment: the above is a very tight deadline and I would suggest amending the date to 30 September 2011.

(3) ASBCs may be paid—

(a) in respect of the whole of any period of membership occurring before 6th April 1988 (whether or not that period constitutes a period of complete years of membership); or

(b) in respect of complete years of membership only.

(4) The amount of ASBCs to be paid under paragraph (1) shall be calculated in accordance with actuarial guidance published by the Scottish Ministers.

(5) If an active member elects to pay ASBCs under paragraph (1), a surviving nominated cohabiting partner’s entitlement to a pension by virtue of regulations 24, 33 or 36 as the case may be, will be based on the period of membership occurring after 5th April 1988 plus any period of membership occurring before that date in respect of which the active member chooses to pay ASBCs.”.

Comment: After the final word in (5) above please add “and in respect of which the member has made completed payments, or is deemed to have completed payments, in accordance with regulations 21A(9), 21B(2) or 21B(3)” otherwise paragraph (5) above appears to permit all the membership to count.

16. In regulation 16 (retirement benefits), for paragraph (2) substitute—

“(2) Subject to regulation 16A, 16B, 16C and 16D the normal retirement age of the scheme is 65.”.

Comment the reference above to “scheme” should be amended to “Scheme”

17. After regulation 16 insert—

General comments in relation to new regs 16A to 16D: The protections afforded by regulation 16A raise a number of general questions:

- i) *I assume that the cost of ARCs in the LGPS are predicated on an NRD of 65. Therefore, will separate ARC factors have to be produced for the transferring staff*

who will have a protected NRD of 60 and who wish to take out an ARC contract under the LGPS?

- ii) Will the fact that the transferring staff have a protected NRD of 60 require the issue of different actuarial reduction factors? Or, as has happened in some previous transfers, should the LGPS apply the former scheme's early retirement factors to any transferees who voluntarily retire / take flexible retirement prior to age 60?
- iii) What are the actuarial reduction/increase factors to be applied under Benefits Regulations 14(2) and (3)?

How should any ARCs and AVCs currently being paid by transferring members be dealt with? Given that these are compulsory transfers:

- i) should a member paying ARCs be permitted to continue with the ARC contract under the former Scheme's terms? Or should the CETV of the ARC be used to purchase a service credit in the LGPS with the member, if they so wish, being able to take out a new ARC contract on the LGPS terms, based on their current age? If it purchases a service credit, should this be on a Club or a non-Club basis?
- ii) should a member paying AVCs be permitted to transfer the AVC pot to the LGPS AVC provision or should the standard LGPS rules be applied such that the AVC pot can only be used to purchase a service credit in the LGPS?

“Normal retirement age: staff of Learning and Teaching Scotland

General comments: should the regulations specify that the protections in regulation 16A cease to apply upon a change of employer (other than upon a transfer which is a transfer to which the Transfer of Employment (Protection of Employment) Regulations 2006 apply or one which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations) but will continue to apply to the membership accrued prior to the change in employer if the member does not opt to aggregate that membership with the membership from the new, or any subsequent, employment.

Should the equivalent of regulation 18A in the Benefits Regulations for England and Wales also be added to the Benefits Regulations in Scotland?

16A.—(1) Subject to paragraphs (2) and (3), the normal retirement age of a person to whom this regulation applies is 60 and—

- (a) regulations 16, 20, 29 and 31 shall be construed accordingly;

Comment: I believe regulation 46(2) of the Administration Regulations needs to be added to the list in (a). Should new Admin regulation 21A(4) also be added to the list?

- (b) references to 55 in regulations 18(1) and 30(1) (but not in regulation 19(1)) shall be construed as references to 50 (“the age 50 protections”); and

Comment: experience with the LSC transfers in England and Wales indicates that the above should be amended to read “(b) references to 55 in regulations 18(1), 19(1) and 30(1) shall be construed as references to 50 (“the age 50 protections”); and”

Regulation 16A(5) then limits the application of the age 50 protections in the appropriate way.

- (c) references to 65th birthday in regulations 18(3) and 20(7) (but not in regulation 17(1)) shall be construed as references to 60th birthday.

- (2) Any increases and enhancements under regulations 14(2) and 29(5) shall not apply to such a person in relation to benefits coming into payment before the age of 65.
- (3) Regulation 30(2) shall not apply to such a person.
- (4) Subject to paragraph (5), this regulation applies to a person who on 31st March 2010, was an employee of the Scottish Administration, and who on that date—
 - (a) was an active member of the 1972 Section or the 2002 Section of the principal civil service pension scheme (“PCSPS”), or was eligible to join one of those Sections;
 - (b) ceased to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of their employment on 1st April 2010 from the Scottish Administration to Learning and Teaching Scotland; and
 - (c) on 1st April 2010 became an active member of the Scheme.
- (5) The age 50 protections and paragraph (3) shall only apply if the person either—
 - (a) became an active member of the 1972 Section or the 2002 Section of the PCSPS before 6th April 2006;
 - (b) became an active member of the 1972 Section of the PCSPS after 5th April 2006, and rule 3.10aa (termination of pensionable service on registration or option out of the scheme) of that Section did not apply to such a person; or
 - (c) became an active member of the 2002 Section of the PCSPS after 5th April 2006, and paragraph (3) of rule D.3 (early payment of pensions with actuarial reduction) of that Section applied to such a person.
- (6) In this regulation—
 - (a) “the principal civil service pension scheme (“PCSPS”) has the same meaning as in section 2(10) of the Superannuation Act 1972;
 - (b) “the 1972 Section” means Section II of the PCSPS; and
 - (c) “the 2002 Section” means Section 1 of the PCSPS.

Normal retirement age: staff formerly entitled to a pension under the SDS Scheme

General comments: should the regulations specify that the protections in regulation 16B cease to apply upon a change of employer (other than upon a transfer which is a transfer to which the Transfer of Employment (Protection of Employment) Regulations 2006 apply or one which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations) but will continue to apply to the membership accrued prior to the change in employer if the member does not opt to aggregate that membership with the membership from the new, or any subsequent, employment.

Should the equivalent of regulation 18A in the Benefits Regulations for England and Wales also be added to the Benefits Regulations in Scotland?

16B.—(1) Subject to paragraphs (2) and (3), the normal retirement age of a person to whom this regulation applies is 60 and—

- (a) regulations 16, 20, 29 and 31 shall be construed accordingly;

Comment: I believe regulation 46(2) of the Administration Regulations needs to be added to the list in (a). Should new Admin regulation 21A(4) also be added to the list?

- (b) [references to 55 in regulations 18(1) and 30(1) (but not in regulation 19(1)) shall be construed as references to 50 (“the age 50 protections”);] and

Comment: experience with the LSC transfers in England and Wales indicates that the above should be amended to read “(b) references to 55 in regulations 18(1), 19(1) and 30(1) shall be construed as references to 50 (“the age 50 protections”); and”

Regulation 16B(5) then limits the application of the age 50 protections in the appropriate way.

(c) references to 65th birthday in regulations 18(3) and 20(7) (but not in regulation 17(1)) shall be construed as references to 60th birthday.

(2) Any increases and enhancements under regulations 14(2) and 29(5) shall not apply to such a person in relation to benefits coming into payment before the age of 65.

(3) Regulation 30(2) shall not apply to such a person.

(4) Subject to paragraph (5), this regulation applies to a person who on 31st March 2010—

(a) was an active member of the SDS Scheme, or was eligible to join the SDS Scheme;

(b) ceased to be a member of the SDS Scheme as a consequence of the transfer of their pension entitlement on 1st April 2010 from the SDS Scheme to the Scheme;

(c) on 1st April 2010 became an active member of the Scheme.

(5) [The age 50 protections and paragraph (3) shall only apply if the person either—

(a) became an active member of the SDS Scheme before 6th April 2006; or

(b) became an active member of the SDS Scheme after 5th April 2006, and rule 4.3.3 of the Scottish Enterprise Pension and Life Assurance Scheme or rule [] of the Highlands and Islands Enterprise Superannuation Scheme applied to such a person.] *[Paragraph (5) is still under consideration.]*

(6) In this regulation the “SDS Scheme”(a) means—

(a) the Scottish Enterprise Pension and Life Assurance Scheme(b);

(b) the Highlands and Islands Enterprise Superannuation Scheme(c);

(c) the Skills Development Scotland Co Limited Retirement Benefit Scheme(d).

Normal retirement age: staff of the Scottish Legal Complaints Commission

General comments: should the regulations specify that the protections in regulation 16C cease to apply upon a change of employer (other than upon a transfer which is a transfer to which the Transfer of Employment (Protection of Employment) Regulations 2006 apply or one which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations) but will continue to apply to the membership accrued prior to the change in employer if the member does not opt to aggregate that membership with the membership from the new, or any subsequent, employment.

Should the equivalent of regulation 18A in the Benefits Regulations for England and Wales also be added to the Benefits Regulations in Scotland?

16C.—(1) Subject to paragraphs (2) and (3), the normal retirement age of a person to whom this regulation applies is 60 and—

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- (a) Skills Development Scotland (SDS) is a company limited by guarantee (Company Number SC202659) and registered in Scotland.
- (b) The SEPALAS means the Scottish Enterprise Pension and Life Assurance Scheme constituted by trust deed by the same name and Rules dated June 2010.
- (c) The Highlands and Islands Enterprise Superannuation Scheme means the Scheme comprising of a trust deed by the same name dated 1st April 1991 and amended by trust deed dated March 1996 and 5th October 2010.
- (d) Skills Development Scotland Co Limited Retirement Benefit Scheme means the Scheme consolidated in 2009.

- (a) regulations 16, 20, 29 and 31 shall be construed accordingly;

Comment: I believe regulation 46(2) of the Administration Regulations needs to be added to the list in (a). Should new Admin regulation 21A(4) also be added to the list?

- (b) references to 55 in regulations 18(1) and 30(1) (but not in regulation 19(1)) shall be construed as references to 50 (“the age 50 protections”); and

Comment: experience with the LSC transfers in England and Wales indicates that the above should be amended to read “(b) references to 55 in regulations 18(1), 19(1) and 30(1) shall be construed as references to 50 (“the age 50 protections”); and”

Regulation 16C(5) then limits the application of the age 50 protections in the appropriate way.

- (c) references to 65th birthday in regulations 18(3) and 20(7) (but not in regulation 17(1)) shall be construed as references to 60th birthday.

(2) Any increases and enhancements under regulations 14(2) and 29(5) shall not apply to such a person in relation to benefits coming into payment before the age of 65.

- (3) Regulation 30(2) shall not apply to such a person.

(4) Subject to paragraph (5), this regulation applies to a person who on 30th September 2008, was an employee of the Scottish legal services ombudsman, and who on that date—

- (a) was an active member of the 1972 Section or the 2002 Section of the principal civil service pension scheme (“PCSPS”), or was eligible to join one of those Sections;
- (b) ceased to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of their employment on 1st October 2008 from the Scottish legal services ombudsman to the Scottish Legal Complaints Commission; and
- (c) on 1st October 2008 became an active member of the Scheme.

(5) The age 50 protections and paragraph (3) shall only apply if the person either—

- (a) became an active member of the 1972 Section or the 2002 Section of the PCSPS before 6th April 2006;
- (b) became an active member of the 1972 Section of the PCSPS after [5th April 2006], and rule 3.10aa (termination of pensionable service on resignation or option out of the scheme) of that Section did not apply to such a person; or
- (c) became an active member of the 2002 Section of the PCSPS after 5th April 2006, and paragraph (3) of rule D.3 (early payment of pensions with actuarial reduction) of that Section applied to such a person.

(6) In this regulation—

- (a) “the principal civil service pension scheme (“PCSPS”)” has the same meaning as in section 2(10) of the Superannuation Act 1972;
- (b) “the 1972 Section” means Section II of the PCSPS; and
- (c) “the 2002 Section” means Section 1 of the PCSPS.

Normal retirement age: staff of Social Care and Social Work Improvement Scotland

General comments: should the regulations specify that the protections in regulation 16D cease to apply upon a change of employer (other than upon a transfer which is a transfer to which the Transfer of Employment (Protection of Employment) Regulations 2006 apply or one which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations) but will continue to apply to the membership accrued prior to the change in employer if the member does not opt to aggregate that membership with the membership from the new, or any subsequent, employment.

Should the equivalent of regulation 18A in the Benefits Regulations for England and Wales also be added to the Benefits Regulations in Scotland?

16D.—(1) Subject to paragraphs (2) and (3), the normal retirement age of a person to whom this regulation applies is 60 and—

- (a) regulations 16, 20, 29 and 31 shall be construed accordingly;

Comment: I believe regulation 46(2) of the Administration Regulations needs to be added to the list in (a). Should new Admin regulation 21A(4) also be added to the list?

- (b) references to 55 in regulations 18(1) and 30(1) (but not in regulation 19(1)) shall be construed as references to 50 (“the age 50 protections”); and

Comment: experience with the LSC transfers in England and Wales indicates that the above should be amended to read “(b) references to 55 in regulations 18(1), 19(1) and 30(1) shall be construed as references to 50 (“the age 50 protections”); and”

Regulation 16D(5) then limits the application of the age 50 protections in the appropriate way.

- (c) references to 65th birthday in regulations 18(3) and 20(7) (but not in regulation 17(1)) shall be construed as references to 60th birthday.

(2) Any increases and enhancements under regulations 14(2) and 29(5) shall not apply to such a person in relation to benefits coming into payment before the age of 65.

(3) Regulation 30(2) shall not apply to such a person.

(4) Subject to paragraph (5), this regulation applies to a person who on 1st April 2011 is an employee of the Scottish Administration, and who on that date—

- (a) is an active member of the 1972 Section or the 2002 Section of the principal civil service pension scheme (“PCSPS”), or is eligible to join one of those Sections;
- (b) ceases to be a member of the PCSPS as a consequence of [being named in a staff transfer scheme, providing for] the transfer of their employment on 1st April 2011 from the Scottish Administration to Social Care and Social Work Improvement Scotland; and
- (c) on 1st April 2011 becomes an active member of the Scheme.

(5) The age 50 protections and paragraph (3) shall only apply if the person either—

- (a) became an active member of the 1972 Section or the 2002 Section of the PCSPS before 6th April 2006;
- (b) became an active member of the 1972 Section of the PCSPS after 5th April 2006, and rule 3.10aa (termination of pensionable service on resignation or option out of the scheme) of that Section did not apply to such a person; or
- (c) became an active member of the 2002 Section of the PCSPS after 5th April 2006, and paragraph (3) of rule D.3 (early payment of pensions with actuarial reduction) of that Section applied to such a person.

(6) In this regulation—

- (a) “the principal civil service pension scheme (“PCSPS”) has the same meaning as in section 2(10) of the Superannuation Act 1972;
- (b) “the 1972 Section” means Section II of the PCSPS; and
- (c) “the 2002 Section” means Section 1 of the PCSPS.”.

18. In regulation 22 (limit on total amount of benefits), at the end of the heading, add “and liability to tax”.

19. In regulation 27 (children’s pensions), after paragraph (4) insert—

“(5) The appropriate administering authority may pay the whole or part of a children’s pension to a person other than an eligible child, to be applied for the benefit of such one or more eligible children as the authority may direct.”.

Comment: please delete the words “or any part of it” from regulation 29(5) as a member cannot choose to draw part of their retirement pension at normal retirement age. The words are, therefore, inaccurate / redundant.

20. In regulation 31 (early payment of pension: ill-health), in paragraph (1) for “immediately, whatever the member’s age” substitute “, whatever the member’s age, immediately from the date of the request or from the date the member becomes so incapable, whichever is later.”.

Comments: Although I had initially thought the words “or from the date the member becomes so incapable, whichever is later” were necessary I have given this further thought and consider that they should be deleted. If the member becomes incapable after the first request is turned down they would simply have to make a fresh request. Regulation 46(4) of the Administration Regulations also needs an appropriate amendment because, as presently written, it appears to permit payment from a date earlier than the date of the member’s request if the member became permanently incapable before the date of request. I think regulation 46(4) of the Administration Regulations should be amended to read something like “begins on the date when the member satisfies the requirements of regulation 31 of those Regulations”.

Comment: given the statements by the Chancellor of the Exchequer regarding employee contribution rates and the potential outcomes from the Hutton Commission wouldn’t it be appropriate at this stage to delete, or at least amend, regulation 41?

Amendment of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008

21. The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008(a) are amended in accordance with regulations 22 to 36.

22. In regulation 10 (joining the scheme)—

(a) for paragraph (5) substitute—

“(5) A person referred to in paragraph (3) who is employed by a body listed in Schedule 2 may be an active member from the date that the employment began provided that the person—

(a) applies to the body to pay contributions in respect of that earlier period at the appropriate contribution rate as provided in regulation 4 of the Benefits Regulations; and

(b) does so within 3 months of becoming eligible to join the Scheme, or such longer period as the employer may allow.”; and

(b) in paragraph (7) after “(payment of additional contributions: survivor benefits)” insert “and regulation 21A(7) (payment of additional contributions: survivor benefits (ASBCs))”.

23. In regulation 13 (re-employed and rejoining deferred members)—

(a) in paragraph (6)(a), after “regulation” insert “or regulation 4 of the Transitional Regulations”;

(b) paragraph (7) is omitted;

(c) after paragraph (7) insert—

“(7A) A member, who was prohibited by paragraph (7)(b) of this regulation from choosing to aggregate any period of former membership, may give notice for the purposes

(a) S.S.I. 2008/228, as amended by S.S.I. 2009/93, S.S.I. 2009/187 and S.S.I. 2010/234.

(b) Paragraph (7) of regulation 13 of the Administration Regulations is repealed by these Regulations.

of paragraph (1) in respect of that period of former membership before the expiry of the period mentioned in paragraph (8)(aa) or before [*date to be inserted – 12 months after the coming into force of this regulation*], whichever is later”;

Comment: as a result of the above, shouldn't regulation 13(1) now commence with the words “Subject to paragraphs (2) and (7A)”?

(d) after paragraph (8)(a) insert—

“(aa) before the expiry of—

- (i) the period of 12 months beginning with the date on which he became an active member in that employment; or
- (ii) such longer period as the employer may allow.”;

(e) after paragraph (10) insert—

“(11) But paragraph (10) does not apply to a member who is the subject of a transfer—

- (a) to which the Transfer of Undertakings (Protection of Employment) Regulations 2006^(a) (“the TUPE Regulations”) apply; or
- (b) which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.”.

24. In regulation 14 (concurrent employments), for paragraph (1) substitute—

“(1) Where a person ceases to be an active member in one employment (“the first employment”)—

- (a) in respect of which the person has at least two years' total membership; or
- (b) in respect of which the person has an entitlement to benefits under regulation 6 (benefits) of the Benefits Regulations; and

continues as an active member in another employment which was held concurrently with the first employment, the person may elect to have the former membership in respect of the first employment aggregated with membership in that other employment.”.

25. In regulation 15 (contributions during child-related leave), in paragraph (8) after “under” insert “regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations or”.

26. In regulation 16 (contributions during reserve forces service leave), in paragraph (4) after “under” insert “regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations or”.

27. In regulation 17 (contributions during trade dispute absence), in paragraph (5)(b) after “under” insert “regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations.”.

Comment: delete the full stop after the word “Regulations” above and replace with either a comma or with the word “or”

28. In regulation 18 (contributions during absences with permission)—

- (a) in paragraph (2)(b) after “under” insert “regulations 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations,”; and
- (b) in paragraph (5)(b) after “under” insert “regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations.”.

29. After regulation 21 (Discontinuance of ARCs), insert—

(a) SSI 2006/246, to which there are amendments not relevant to these Regulations.

“Payment of additional contributions: survivor benefits (ASBCs)

21A.—(1) A member who wishes to pay additional contributions under regulation 14A of the Benefits Regulations must make a request to do so, in writing, to the appropriate administering authority.

(2) A copy of the request must be sent to the member’s employing authority (if different) and must state the length of the period (“the ASB payment period”) over which the member wishes to pay the additional survivor benefits contributions (“ASBCs”).

(3) Before agreeing to the request, the member’s administering authority may pass a resolution requiring the member—

- (a) to satisfy it that the member is in reasonably good health; and
- (b) to produce to it a report by a registered medical practitioner of the results of a medical examination (obtained at the member’s own expense),

and if the administering authority is not so satisfied, it may refuse the member’s request.

(4) The ASB payment period must end before the member’s normal retirement age.

(5) The member may only pay ASBCs if the appropriate administering authority notifies the member in writing that it agrees to the request.

(6) The scheme actuary shall from time to time determine the amount of ASBCs required for any given amount of increased pension and may determine different amounts of ASBCs—

- (a) for—
 - (i) persons of different ages; or
 - (ii) men or women; or
- (b) by reference to the length of different payment periods.

(7) Where the appropriate administering authority agrees to the member’s request—

- (a) it must notify the member and the member’s employing authority (if different) of the amount of ASBCs payable in accordance with the actuary’s determination, expressed as an amount in pounds sterling; and
- (b) the member must pay those ASBCs from the next payment period (as defined in regulation 10(7)) following the date of the administering authority’s notification under paragraph (5).

(8) The actuary may at any time redetermine any amount determined under paragraph (6) and if the actuary does so, the member must pay the redetermined ASBCs from 1st April next following the redetermination.

(9) If the member pays (or is treated under regulation 21B as having paid) ASBCs for the whole of the ASB payment period, the member must be credited with the additional survivor benefits of the amount that those ASBCs purchase.

Discontinuance of ASBCs

21B.—(1) A member—

- (a) may stop paying ASBCs before the end of the ASB payment period if the member notifies the appropriate administering authority and the employing authority (if different) in writing; and
- (b) must stop doing so if the member ceases to be an active member.

(2) If a member stops paying ASBCs before the end of the ASB payment period—

- (a) on leaving their employment on the grounds of ill-health where the employing authority makes a determination under regulation 20(2) or (3) of the Benefits Regulations; or
- (b) on the member’s death,

the member is to be treated as having paid ASBCs up to the end of that period.

Comment: the above could be misread to mean that if a member stops paying ASBCs before the end of the ASBC payment period the ASBCs are deemed to be paid in full even if the ill health retirement or death occurs after they have stopped paying the ASBCs. I would therefore suggest the wording is changed to

(2) If a member stops paying ASBCs before the end of the ASB payment period as a consequence of —

- (a) leaving their employment on the grounds of ill-health where the employing authority makes a determination under regulation 20(2) or (3) of the Benefits Regulations; or
- (b) the member's death,

the member is to be treated as having paid ASBCs up to the end of that period.

(3) If a member stops paying ASBCs and paragraph (2) does not apply, the member must be credited with additional survivor benefits of an amount determined by the scheme actuary, having regard to the ASBCs that were paid before the member stopped paying them.”.

Comment: What happens to contributions paid if the nominated co-habiting partnership ceases to exist? As already commented by the LGPC on regulation 14A of the Benefit Regulations in England & Wales, the contributions could be regarded as non-returnable insurance premiums paid to provide additional benefits for a nominated co-habiting partner. Does there need to be an explicit reference to the non-refundable nature of the additional contributions in the regulations if the co-habiting partnership ceases to exist? Otherwise, a member might argue about the legitimacy of the LGPS fund holding on to the contributions.

30. In regulation 27 (Governance compliance statement)(a) in paragraph (2), for “31st March 2011” substitute “30th September 2011”.

31. In regulation 43 (permanent reductions in pay): certificates of protection of pension benefits)—

(a) in paragraph (1)(a)—

(i) in sub-paragraph (i), omit “and”;

(ii) in sub-paragraph (ii), for “or” substitute “and”; and

(iii) after sub-paragraph (ii), insert—

“(iii) of which the first day is a day no earlier than three years prior to the date of the reduction or, as the case may be, restriction specified in the certificate.”.

Comment: after the word “certificate” above delete the full stop and replace with “, or”

(b) in paragraph (1)(b)—

(i) in sub-paragraph (i), omit “and”;

(ii) at the end of sub-paragraph (ii), add “; and”; and

Comment: delete the word “add” above and replace with the words “for the full stop substitute”

(iii) after sub-paragraph (ii), insert—

“(iii) beginning with a day no earlier than three years prior to the date of the reduction or, as the case may be, restriction specified in the certificate.”.

(a) Regulation 27(2) was amended by S.S.I. 2010/234.

(c) In paragraph (3)—

- (i) omit “(including the member’s ill health)”; and
- (ii) for “date” substitute “rate”.

(d) after paragraph (10), add—

“(11) If the member ceases to be an active member with the employing authority that issued the certificate, the certificate does not carry forward in relation to any further period of membership with another employing authority except where the member transfers employment from the employing authority that issued the certificate to employment with another employing authority as a result of a transfer—

- (a) to which the Transfer of Undertakings (Protection of Employment) Regulations 2006(a) (“the TUPE Regulations”) apply; or
- (b) which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.”.

32. After regulation 46 (commencement of pensions), insert—

“Guaranteed Minimum Pensions

46A.—(1) Where a member’s local government employment is contracted-out employment and he or she has a guaranteed minimum, the member is entitled from the date he or she attains pensionable age to payment of a pension at a weekly rate equal to not less than that guaranteed minimum.

(2) But if the member attains pensionable age while in local government employment, the member is not so entitled until he or she leaves that employment, unless paragraph (3) applies.

(3) If the member—

- (a) continues in local government employment for a further period of five years after attaining pensionable age; and
- (b) does not then leave that employment,

the member is entitled from the end of the period mentioned in sub-paragraph (a) to payment of so much of his or her retirement pension as equals that guaranteed minimum.

(4) If the member attains pensionable age while in local government employment but subsequently changes employment to employment which is not local government employment, the member is entitled.

(5) If the member changes employment to employment which is not local government employment and the member attains pensionable age while in that employment, the member is entitled.

(6) Where paragraph (3), (4) or (5) applies the member may consent to a postponement of the entitlement for any period prior to the day before attaining age 75 during which the member remains in employment beyond pensionable age.

(7) For the purposes of this regulation, a person has a guaranteed minimum if they have such a minimum under section 14 (earner’s guaranteed minimum) of the Pension Schemes Act 1993(b) in relation to benefits under these Regulations or the Benefits Regulations, and references to entitlement are to the entitlement to payment of a pension in accordance with paragraph (1).

(8) In this regulation—

(a) S.I. 2006/246, to which there are amendments not relevant to these Regulations.

(b) 1993 (c.48).

- (a) “contracted-out employment” shall be construed in accordance with section 8 of the Pension Schemes Act 1993; and
- (b) “pensionable age” shall be construed in accordance with section 181 of that Act.”.

33. In regulation 68 (recovery or retention where former member has misconduct obligation), for paragraph (3) substitute—

“(3) The rights specified in paragraph (2)(b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of ARCs, ASBCs, AVCs or SCAVCs.”.

34. In regulation 81 (changes of fund), in paragraph (4)(a) for “the President of the Scottish Faculty of Actuaries” substitute “the President of the Institute and Faculty of Actuaries”.

35. After regulation 82 (changes of fund and variable time employees), add—

“PART 9A

Special cases

Bulk transfers in: Learning and Teaching Scotland

82A.—(1) This regulation applies to a person who on 31st March 2010, was in the employment of the Scottish Administration, and—

- (a) was an active member of the principal civil service pension scheme (“PCSPS”)(a);
- (b) ceased to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of his or her employment on 1st April 2010, from the Scottish Administration to Learning and Teaching Scotland;
- (c) on 1st April 2010 became an active member of the Scheme; and
- (d) opts to transfer his or her accrued rights from the PCSPS to the Scheme under special transfer arrangements.

(2) The actuaries representing the PCSPS and the actuaries representing the appropriate administering authorities shall agree—

- (a) the transfer value payment in respect of a person to whom this regulation applies; and
- (b) the special transfer arrangements mentioned in paragraph (1)(d).

Bulk transfers in: staff formerly entitled to a pension under the SDS Scheme

82B.—(1) This regulation applies to a person who on 31st March 2010—

- (a) was an active member of the SDS Scheme;
- (b) ceased to be a member of the SDS Scheme as a consequence of the transfer of his or her pension entitlement on 1st April 2010, from the SDS Scheme to the Scheme;
- (c) on 1st April 2010 became an active member of the Scheme; and
- (d) opts to transfer his or her accrued rights from the SDS Scheme to the Scheme under special transfer arrangements.

(2) The actuaries representing the SDS Scheme and the actuaries representing the appropriate administering authorities shall agree—

- (a) the transfer value payment in respect of a person to whom this regulation applies; and
- (b) the special transfer arrangements mentioned in paragraph (1)(d).

(a) For the definition of the principal civil service pension scheme, see section 2(10) of the Superannuation Act 1972.

(3) In this regulation the “SDS Scheme”(a) means—

- (a) the Scottish Enterprise Pension and Life Assurance Scheme(b);
- (b) the Highlands and Islands Enterprise Superannuation Scheme(c);
- (c) the Skills Development Scotland Co Limited Retirement Benefit Scheme(d).

Bulk transfers in: Scottish Legal Complaints Commission

82C.—(1) This regulation applies to a person who on 30th September 2008, was in the employment of the Scottish legal services ombudsman, and—

- (a) was an active member of the principal civil service pension scheme (“PCSPS”)(e);
- (b) ceased to be a member of the PCSPS as a consequence of [being named in a staff transfer scheme, providing for] the transfer of his or her employment on 1st October 2008, from the Scottish legal services ombudsman to the Scottish Legal Complaints Commission;
- (c) on 1st October 2008 became an active member of the Scheme; and
- (d) opted to transfer his or her accrued rights from the PCSPS to the Scheme under special transfer arrangements.

(2) The actuaries representing the PCSPS and the actuaries representing the appropriate administering authorities shall agree—

- (a) the transfer value payment in respect of a person to whom this regulation applies; and
- (b) the special transfer arrangements mentioned in paragraph (1)(d).

Bulk transfers in: Social Care and Social Work Improvement Scotland

82D.—(1) This regulation applies to a person who on 31st March 2011, is in the employment of the Scottish Administration, and—

- (a) is an active member of the principal civil service pension scheme (“PCSPS”)(f);
- (b) ceases to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of his or her employment on 1st April 2011, from the Scottish Administration to Social Care and Social Work Improvement Scotland;
- (c) on 1st April 2011 becomes an active member of the Scheme; and
- (d) opts to transfer his or her accrued rights from the PCSPS to the Scheme under special transfer arrangements.

(2) The actuaries representing the PCSPS and the actuaries representing the appropriate administering authorities shall agree—

- (a) the transfer value payment in respect of a person to whom this regulation applies; and
- (b) the special transfer arrangements mentioned in paragraph (1)(d).

(a) Skills Development Scotland (SDS) is a company limited by guarantee (company number SC202659) and registered in Scotland.

(b) [See footnotes to regulation 3].

(c) [See footnotes to regulation 3].

(d) [See footnotes to regulation 3].

(e) For the definition of the principal civil service pension scheme, see section 2(10) of the Superannuation Act 1972.

(f) For the definition of the principal civil service pension scheme, see section 2(10) of the Superannuation Act 1972.

Staff of Learning and Teaching Scotland, staff formerly entitled to a pension under the SDS Scheme, staff of the Scottish Legal Complaints Commission and staff of Social Care and Social Work Improvement Scotland

82E. Except for the purposes of regulation 79(4), the normal retirement age of a person to whom regulation 16A, (normal retirement age: staff of the Learning and Teaching Scotland), 16B (normal retirement age: staff formerly entitled to a pension under the SDS Scheme), 16C (normal retirement age: staff of the Scottish Legal Complaints Commission) and 16D (normal retirement age: staff of Social Care and Social Work Improvement Scotland) of the Benefits Regulations, applies is 60; and

- (a) regulations 16(7), 20(4) and 62(3) shall be construed accordingly; and
- (b) in regulation 46(2) the reference to 65th birthday shall be construed as a reference to 60th birthday.”.

[DN: Need to consider separating these provisions out in line with coming to force dates.]

36. In Schedule 1 (interpretation)—

- (a) insert after the definition of “ARCs”—

““ASBCs” means additional survivor benefits contributions as referred to in regulation 21A;”;
- (b) for the definition of “actuary”, substitute—

““actuary” means a Fellow of the Institute and Faculty of Actuaries”; and
- (c) for the definition of “normal retirement age”, substitute—

“Normal retirement age”, except in regulation 82E, is 65.”.

Amendment of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008

37. The Local Government Pension Scheme (Transitional Provisions)(Scotland) Regulations 2008(a) are amended in accordance with regulation 38.

38. In regulation 4 (membership accrued before 1st April 2009: rejoining deferred members)—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a) after “member of the” insert “1987 Scheme or the”; and
 - (ii) in sub-paragraph (b) after “member of the” insert “1987 Scheme or the”; and

Comment: (ii) above is incorrect. It should say “(ii) in sub-paragraph (c) replace the words “under the 1998 Scheme” with “under the 1987 Scheme or the 1998 Scheme”; and
- (b) for paragraph (2) substitute—

“(2) The person may, by notice in writing to the appropriate administering authority before the expiry of—

 - (i) the period of 12 months beginning with the date on which he became an active member in that employment; or
 - (ii) such longer period as the employer may allow,

choose to be treated as if regulation 3 applied.”.

(a) SSI 2008/229.

St Andrew's House,
Edinburgh
2011

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (“the Discretionary Regulations”), the Local Government Pension Scheme (Scotland) Regulations 1998 (“the 1998 Regulations”), the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (“the Benefits Regulations”), the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (“the Administration Regulations”) and the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 (“the Transitional Regulations”).

Regulation 1(2) provides that the Regulations come into force on 31st March 2011 and regulation 1(3) provides for the Regulations to have effect from a date earlier than that (which is authorised in terms of section 12 of the Superannuation Act 1972 (c.11)). Regulations have effect as follows:

- those relating to the transfer of staff from the Scottish Legal Services Ombudsman (SLSO) to the Scottish Legal Complaints Commission (SLCC) have effect from 30th September 2008;
- those relating to the transfer of staff from the Scottish Administration to Learning and Teaching Scotland (LTS) and the transfer of pension entitlement from the SDS Scheme (as defined in new regulation 16A) to the Local Government Pension Scheme (“LGPS”) have effect from 31st March 2008; and
- those relating to the transfer of staff from the Scottish Administration (HMIE/SWIA) to Social Care and Social Work Improvement Scotland (SCSWIS) will have effect from 31st March 2011.

Regulations 3 to 7 amend the Discretionary Regulations. *[To follow.]*

Regulation 9 amends the 1998 Regulations. *[To follow.]*

Regulations 11 to 20 amend the Benefits Regulations. Regulation 11 amends regulation 5 of the Benefits Regulations (meaning of “pensionable pay”) by inserting into the list of exclusions to the meaning of “pensionable pay”, the pay uplift paid to former staff of the Scottish Administration who have transferred to LTS in recognition of the higher contribution rates paid under the LGPS compared to the principal civil service pension scheme (“PCSPS”). Regulation 11 also makes equivalent provision for staff formerly entitled to a pension under the SDS Scheme, staff of the SLCC and staff of SCSWIS (to be established from 1st April 2011).

Regulation 12 amends regulation 6 (benefits) by inserting a reference to regulation 82A, 82B, 82C and 82D (bulk transfers in) of the Benefits Regulations, so that staff of LTS, those staff who were entitled to a pension under the SDS Scheme, staff of SLCC and staff of SCSWIS are not subject to an initial qualifying period before entitlement to benefits under the LGPS.

Regulation 13 amends regulation 7 (periods of membership) by inserting a reference to regulation 82A, 82B, 82C and 82D (bulk transfers in) of the Benefits Regulations, so that the bulk transfer in of LTS staff, those staff who were entitled to a pension under the SDS Scheme, staff of the SLCC and staff of SCSWIS will enable their membership of the PCSPS or, as the case may be, the SDS Scheme, to be counted towards their period of membership in the LGPS.

Regulation 16 makes a minor amendment to Regulation 16 (retirement benefits) by introducing a reference to new regulation 16A, 16B, 16C and 16D.

Regulation 17 inserts a new regulation 16A into the Benefits Regulations, to enable staff of LTS, on transfer to the LGPS, to retain the benefit of the normal retirement age of 60 offered under the PCSPS to which they previously belonged. Regulation 17 also inserts regulation 16B into the Benefits Regulations (which makes equivalent provision in relation to those staff formerly entitled to a pension under the SDS Scheme), regulation 16C (which makes equivalent provision in relation to staff of the SLCC and regulation 16D (which makes equivalent provision in relation to staff of SCSWIS).

Regulations 18 to 20 [*To follow.*]

Regulation 21 introduces the amendments to the Administration Regulations set out in regulations 22 to 35.

Regulations 22 to 33 [*To follow.*]

Regulation 35 introduces a new Part 9A comprising five new regulations 82A, 82B, 82C, 82D and 82E.

Regulation 82A and 82D provides for the bulk transfer in of the pension rights of former Scottish Administration staff (LTS, SWIA and HMIE), accrued under the PCSPS. Regulation 82B provides for the bulk transfer in of the pension rights of those staff formerly entitled to a pension under the SDS Scheme, accrued under the SDS Scheme. Regulation 82C provides for the bulk transfer in of pension rights of former SLSO staff, accrued under the PCSPS.

Regulation 82E provides that references to normal retirement age in relation to staff of LTS, those staff formerly entitled to a pension under the SDS Scheme, staff of the SLCC and staff of SCSWIS, are references to 60 instead of 65. There is an exception relating to regulation 84(4), where normal retirement age is still 65.

Regulation 35(c) amends the definition of “normal retirement age” in Schedule 1 to take account of the exception made by new regulation 82E.

Regulations 37 and 38 amend the Transitional Regulations.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.