

EXECUTIVE NOTE

THE LOCAL GOVERNMENT PENSION SCHEME AMENDMENT (SCOTLAND) REGULATIONS 2010

S.S.I. 2010/234

The Local Government Pension Scheme Amendment (Scotland) Regulations 2010 (“the Amendment Regulations”) were made by the Scottish Ministers in exercise of the powers conferred by section 7 and 12 of, and Schedule 3 to, the Superannuation Act 1972. Those functions, so far as within devolved competence, have been transferred to the Scottish Ministers by virtue of the Scotland Act (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (SI 1999/1750). The Amendment Regulations are subject to negative resolution procedure.

Policy Objectives

The main purpose of the Amendment Regulations is to amend the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (SSI 2008/228) (“the Administration Regulations”) by the insertion of a new regulation 31A which requires administering authorities to prepare a pension fund annual report for the year beginning on 1st April 2010 and each subsequent year thereafter (regulation 4). Regulation 31A also specifies what the pension fund annual report must contain and that in preparing and publishing the report administering authorities are to have regard to guidance given by the Scottish Ministers.

The opportunity has also been taken to make minor changes to the Administration Regulations and to the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SSI 2008/230) (“the Benefits Regulations”). Those changes are:-

- changing the date by which a governance compliance statement under regulation 27 of the Administration Regulations must be published from 1st April 2010 to 31 March 2011 (regulation 3 of the Amendment Regulations which has effect from 1st April 2010 by virtue of regulation 1(3));
- amending regulation 42(1) (exclusion of rights to return of contributions) of the Administration Regulations to include a further restriction on the right to a refund of contributions in circumstances where a person holding two concurrent employments ceases to be an active member in one of them (regulation 5 of the Amendment Regulations). Without this amendment, a refund of contributions in such a scenario would result in the remainder of the member’s benefits being extinguished due to the operation of paragraph 5 of Schedule 29 to the Finance Act 2004. The amendment in regulation 5 seeks to prevent this and instead the option left open to the member is to aggregate their membership in accordance with regulation 41(4) of the Administration Regulations;
- correcting an error by removing paragraph (6) of Schedule 5 to the Administration Regulations the effect of which is to apply regulation 21 (which allows members to stop paying additional regular contributions before

the end of the payment period) to councillor members (regulation 6 of the Amendment Regulations);

- clarifying that pay for pension purposes set out in regulation 9 of the Benefits Regulations means the pay received in the 12 months leading up to the date of leaving employment, or if it would produce a higher figure, either of the two immediately preceding years (regulation 8 of the Amendment Regulations). This ensures that the highest pensionable salary in the last 3 years is used (as opposed to the member having to choose) in the calculation of the member's benefits; and
- removing the words "or otherwise ceases to be a member" from regulation 30(1)(choice of payment of pension) of the Benefits Regulations as it was considered that these words were unnecessary and had the potential to cause confusion in the application of the provision (regulation 9 of the Amendment Regulations). The intended effect of regulation 30 is that only where a member aged 55 or over leaves local government employment can they apply for immediate payment of their pension.

The Amendment Regulations take account of clarifications suggested by stakeholders, and agreed to by SPPA, following consultation on the draft Regulations.

Consultation

A 4 week technical consultation exercise on the draft Amendment Regulations commenced on 19 November 2009. The proposal for a pension fund annual report had previously been consulted upon between 16 July and 9 October 2009.

Financial Effects

The instrument has no financial effects on the Scottish Government, local government or on business.