

EXPLANATORY MEMORANDUM TO

Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2013

SR 2013 No. 71

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 9 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Statutory Rule amends the following Statutory Rules -
 - Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 ("the Benefits Regulations");
 - Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 ("the Administration Regulations"); and
 - Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 ("the Transitional Regulations").
- 2.2. Regulations 4, 7 to 10, 12, 16, 20 and 23(a) have retrospective effect.
- 2.3. The Statutory Rule contains a number of amendments to enable employers to use the scheme to comply with the new duties, introduced by the Pensions (No.2) Act (Northern Ireland) 2008 (2008 c.13 (N.I.)) and associated subordinate legislation, for the automatic enrolment of employees into a workplace pension scheme.
- 2.4. Regulation 33A (apportionment of liabilities) of the Administration Regulations, is unique to Northern Ireland. During a relevant transfer of liabilities between an employing authority and an inheriting body an apportionment agreement must be produced. Among other things, the apportionment agreement must state the specific amount of liabilities to be transferred. This means that an actuary must be engaged to calculate the specific amount of liabilities. This creates a costly delay in the transfer process. The amendment to regulation 33A removes the requirement to include in the apportionment agreement the specific amount of liabilities to be transferred.
- 2.5. The Statutory Rule introduces two new regulations.
 - 2.5.1. The first deals with instances where a member has exceeded the Annual Tax Allowance and the tax charge is met by the administering authority on behalf of the member. In such cases the administering

authority must reduce the value of the member's accrued rights in accordance with guidance issued by the Government Actuary's Department (GAD).

- 2.5.2. The second new regulation relates to regulations 14A and 14B of the Registered Pension Schemes (Provision of Information) Regulations 2006 which require the Committee to issue a pension savings statement to members who have exceeded the Annual Allowance or who request a statement.
- 2.6. The Statutory Rule also makes a number of minor technical amendments.

3. Background

- 3.1. This Statutory Rule is part of the ongoing programme of modernisation of the Local Government Pension Scheme (Northern Ireland) (LGPS (NI)).

Amendments to the Benefits Regulations

- 3.2. Regulation 3 amends the definition of employing authority in regulation 1(2) (citation, commencement and interpretation) as a consequence of the amendment made at regulation 14 of the Statutory Rule.
- 3.3. Regulation 4 amends regulation 2 (active members) to remove the restriction on membership of the Scheme which applied to a person with a contract of employment of less than 3 months. That person may now apply for membership of the Scheme under regulation 9 (joining the scheme) of the Administration Regulations or where section 3 (automatic enrolment) of the Pensions (No. 2) Act (Northern Ireland) 2008 applies, that person may be automatically enrolled in the Scheme. The amendment will enable employers to use the scheme for both eligible jobholders and non-eligible jobholders under automatic enrolment legislation. It is, however, intended that the normal eligibility condition for scheme membership of a contract of employment of more than 3 months would continue to apply until such times as the employer reaches their staging date for automatic enrolment.
- 3.4. Regulation 5 amends regulation 8 (final pay: general) to comply with the obligation under revisions to the tax regime introduced by the Finance Act 2011 to use earnings relating to the pension input period in calculating the Annual Tax Allowance. The amendment also confirms that a period of membership with a former employer should be included in calculating "final pay".
- 3.5. Regulation 6 amends regulation 18 (flexible retirement) to clarify that when a member aged 55 or over elects for flexible retirement and has accrued benefits under the 2002 Local Government Pension Scheme, those benefits will come into payment. The member has a choice whether to request payment of part, all or none of benefits accrued under the 2009 Local Government Pension Scheme. The amendment also clarifies that the calculation of benefits payable under this regulation is subject to guidance issued by the GAD.

- 3.6. Regulation 7 amends regulation 24(2A) (survivor benefits: active members) to correct a drafting error by deleting the references to additional voluntary contributions (AVCs). The accumulated value of an AVC fund is payable to the deceased member's personal representatives under regulation 22(9) of the Administration Regulations and does not form part of survivor's pensions. References to regulations 20A (payment of additional contributions: survivor benefits (ASBCs)) and 20B (discontinuance of ASBCs) of the Administration Regulations have been inserted at regulation 24(2A)(b) in order to clarify that the calculation of benefits should, where appropriate, include ASBCs. Similar amendments are made in regulation 9 of the Statutory Rule, which amends regulation 33 (survivor benefits: deferred members).
- 3.7. Regulation 8 amends regulation 28 (children's pensions: active members) to provide that the calculation of pension takes into account any additional contributions made by the deceased member and that in the case of a member in part-time employment, no account is taken of any reduction in the member's membership caused as a result of the condition that led to or contributed to the member's death. Similar amendments are made in regulation 10 of the Statutory Rule which amends regulation 34 (children's pensions: deferred members).

Amendments to the Administration Regulations

- 3.8. Regulation 11 introduces amendments to the Administration Regulations.
- 3.9. Regulation 12 amends regulation 3 (general eligibility for membership) by enabling a person with a contract of employment of less than 3 months to apply for membership of the Scheme under regulation 9 (joining the scheme) of the Administration Regulations or where section 3 (automatic enrolment) of the Pensions (No. 2) Act (Northern Ireland) 2008 applies, that person may be automatically enrolled in the Scheme. Again this amendment is designed to assist employers in fulfilling their automatic enrolment duties.
- 3.10. Regulation 13 amends regulation 5 (employees of transferee admission bodies) by requiring a transferee admission body admitted to the Scheme under regulation 5(2)(a) to enter into a separate admission agreement with the Committee where the admission body is performing the functions of an employing authority under more than one contract.
- 3.11. Regulation 14 substitutes regulation 6 (admission agreements – further provisions) with a new regulation 6 which consolidates some of the provisions formerly contained in regulation 5 relating to admission agreements for transferee admission bodies so that these now apply to all categories of admission bodies. The amendments also add new requirements to be contained in admission agreements.
- 3.12. Regulation 15 makes a minor consequential amendment to regulation 8 (further restrictions on eligibility) by updating a reference to regulation 6 (admission agreements – further provisions).

- 3.13. Regulation 16 amends regulation 9 (joining the scheme) to provide for the automatic enrolment of eligible employees into the scheme on their first day of employment except for those with an employment contract of less than 3 months. Employees with employment contract of less than 3 months must apply for membership. It is not intended that the option for members with a contract of employment of less than 3 months to apply for membership should apply before their employer reaches its staging date.
- 3.14. Regulation 17 amends regulation 14 (contributions during child-related leave) so that additional paternity leave is included within the provisions.
- 3.15. Regulation 18 amends regulation 33 (special circumstances where revised actuarial valuations and certificates must be obtained) to clarify that the Committee can seek the payment of liabilities from the guarantor of an outgoing employing authority in the event that the employing authority leaves the Scheme and fails to meet some, or all, of the liabilities. This is designed to limit the risk of the liabilities falling on the remaining employing authorities.
- 3.16. Regulation 19 amends regulation 33A (apportionment of liabilities) to remove the requirement to specify in the apportionment agreement, the amount of liabilities as calculated by an actuary. The apportionment agreement will still have to state the liabilities to be transferred.
- 3.17. Regulation 20 inserts a new regulation 45C (joint liability in respect of the annual allowance charge) to provide that where the member has requested that the tax charge from exceeding the Annual Allowance is met from the fund, the Committee must reduce the value of the member's accrued rights in accordance with the guidance issued by the GAD.
- 3.18. Regulation 21 inserts a new regulation 64A (pension savings statements) to enable the Committee to comply with the requirements of regulations 14A and 14B of the Registered Pension Schemes (Provision of Information) Regulations 2006. These regulations require the Committee to issue a pension savings statement to a member who has exceeded the Annual Allowance or where a member requests it.
- 3.19. Regulation 22 amends regulation 79 (inward transfer of pension rights) to enable a transfer of accrued rights from a European pension scheme into the Scheme.
- 3.20. Regulation 23 amends Schedule 1 (interpretation) to reflect the amalgamation of a professional body in the definition of an actuary. It also makes a consequential amendment to the definition of employing authority and inserts a definition for the term payment period.
- 3.21. Regulation 24 amends Schedule 2 (matters to be included in admission agreements with transferee admission bodies) so that matters to be contained in an admission agreement apply to all categories of admission body.

Amendments to the Transitional Regulations

- 3.22. Regulation 25 introduces amendments to the Transitional Regulations.

- 3.23. Regulation 26 removes regulations 125(6A) and 125(6B) from the list of provisions of the Local Government Pension Scheme Regulations (Northern Ireland) 2002 that are saved from revocation. The combined effect of this amendment and the amendment made by regulation 27 in that a service credit from the inward transfer of pension rights to the Scheme will not account towards the total membership required to qualify for the 85 year rule and brings the Regulations into line with GAD guidance.
- 3.24. Regulation 27 substitutes paragraph 3(2) of Schedule 2 (the 85 year rule: transitional provisions and savings) to insert a reference to regulation 79 (inward transfer of pension rights). This means that a service credit from the inward transfer of pension rights granted after the amendment made by regulation 26 comes into operation will not count towards the total membership calculation for the 85 year rule.

Savings

- 3.25. Regulation 28 provides that the amendments made by regulation 13, 14 and 24 do not affect admission agreements entered into before the date these Regulations come into operation.

4. Consultation

- 4.1. As required by Article 9 of the Superannuation (Northern Ireland) Order 1972, the Department has carried out a consultation with such associations of local authorities, individual local authorities and such representatives of persons affected by the draft Statutory Rule as appear to the Department to be appropriate. A total of 15 responses were received. No respondents opposed the proposed amendments in the Statutory Rule.

5. Equality Impact

- 5.1. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out a screening for equality impact and is satisfied that the Statutory Rule will not lead to a significant discriminatory or negative differential impact.

6. Regulatory Impact

- 6.1. A regulatory impact assessment has not been produced for this Statutory Rule as it has a negligible impact on the cost of businesses, charities, social economy enterprises or voluntary sector.

7. Financial Implications

- 7.1. No Exchequer expenditure is required.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department is satisfied that the Statutory Rule complies with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The Local Government Pension Scheme (Northern Ireland) maintains a policy of broad parity with that in England and Wales. Changes applicable to the LGPS (NI) which were made by The Local Government Pension Scheme (Miscellaneous) Regulations 2012 (S.I. 2012/1989) are included in this Statutory Rule.

11. Additional Information

- 11.1. Not applicable.