

To: Chief Executives
Salaries and Wages
Human Resources
Pension Contacts

Circular 11/2011
19 August 2011

At: All Employing Authorities

Dear Colleagues,

Regulatory Update

The Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2010 (SRNI 2010 No. 410)

The Local Government Pension Scheme (Councillors) (Amendment) Regulations (Northern Ireland) 2011 (SRNI 2011 No. 117)

1. Purpose of this Circular

This circular updates employing authorities on the content of the two sets of amending regulations that have come into operation in the current year.

A brief summary of the first set of regulations was issued to employers on 16 December 2010 and members were advised of the changes in an interim newsletter sent to home addresses in March 2011. This circular contains more detailed information on the clarifications relating to admission agreements, cessations and transfer of liabilities from one employer to another employer. It is important that you are aware of these amendments as they introduce a new facility enabling the transfer of pension liabilities from one employer to another. This is particularly relevant to mergers and schemes of reorganisation. *This set of regulations is subject to judicial review and, as yet, the outcome of this review is unknown.*

The second set of amending regulations enabled councillors to be admitted to the Scheme with effect from 9 May 2011. The councils were advised in circular 07/2011 of the implementation of these regulations and the details of the new Scheme for councillors. The Councillors' Scheme is a career average revalued earnings scheme. This means that councillors' pension benefits are based on a career average pay and not a final pay as we are used to within the Local Government Pension Scheme (NI), the 'Scheme'.

2. Local Government Pension Scheme (Amendment No. 2) Regulations (NI) 2010

2.1 Summary

These amending regulations, which apply retrospectively to both the 2002 and 2009 regulations, were made on 8 December 2010 and came into operation on 17 January 2011.

The amendments clarify the arrangements for employer's pension liabilities and introduce a new regulation allowing, in some circumstances, for pension liabilities to be transferred from one employer to another. This is known as apportionment.

The amendments also allow members, who have nominated a co-habiting partner, to pay additional contributions to include pre- April 1988 membership for survivor's benefits.

In addition, there are several minor technical amendments. These amendments are described in more detail below.

These regulations are currently under judicial review and, as yet, the outcome of this review is unknown.

2.2 Amendments to the 2002 regulations

2.2.1 Designated employers

Five types of employing bodies have been admitted to membership of the Scheme since its inception in 1950. These types of employing bodies are as follows:

1. Scheduled bodies. These are bodies that were scheduled for participation in the Scheme and include the 26 councils, NILGOSC and the NIHE.
2. Designated bodies. These are bodies that were designated to participate in the Scheme during the period from 1950 to 1975. No admission agreements were required at this time and the bodies were designated on the understanding that they would follow the regulations. Regulations made in 1975 stated that those bodies admitted up to that date would be deemed to have admission agreements.
3. Admitted bodies. This status was introduced in 1975 and any employers who were admitted from 1976 to 30 April 2005 will have signed formal admission agreements.
4. Community/Transferee Admission Bodies. From 1 May 2005 onwards any new employer will have been admitted as either a community or a transferee admitted body. The majority of admissions have been as community admission bodies and both types of these bodies have formal admission agreements.

The amending regulations clarify that with effect from 1 April 2006 an employer who was designated under the Local Government (Superannuation) Act (Northern Ireland) 1950 for participation in the Scheme shall be deemed to have an admission agreement as a community admission body for as long as that employer continues to employ active members of the Scheme.

2.2.2 Clarification on the procedures when an admission agreement ceases and revisions of the rates and adjustments certificate

These regulations clarify that when a contributing employer ceases to employ active members or when its admission agreement ceases then the Committee must:

- obtain a cessation valuation on a basis determined by the Scheme's actuary;

- revise any rates and adjustments certificate¹ to show the contributions due from or surplus due to the outgoing employer;
- receive the revised contributions due to the fund or pay the surplus due to the outgoing employer, as a lump sum, within one month of the date of the revised rates and adjustments certificate or such longer period as the Committee and outgoing employer agree.
- ensure that the liabilities include but are not limited to liabilities in respect of current and former employees of the outgoing employer as well as liabilities that the outgoing employer has accepted and become responsible for due to a scheme of reorganisation.

If the Committee reasonably believes that an employer will cease employing active members in the near future it can nominate a calculation date for a cessation valuation. It may be necessary for the actuary to revise or reissue the rates and adjustment certificate following this valuation.

The Committee can request that the actuary issues a revised rates and adjustments certificate for a particular employer if certain circumstances arise. These circumstances are clearly described:

- if there is an augmentation cost (following an employer increasing a member's membership),
- if it appears to the Committee that the amount of liabilities arising, or likely to arise, differs from the amount specified in, or likely as a result of, the assumptions stated for that employer in the actuary's report at the triennial valuation.

If an employer ceases to employ active members the Committee may, with the approval of the Department of the Environment, defer obtaining an actuarial valuation and a revision of the rates and adjustments certificate. During any period of deferral the employer will continue to pay contributions in respect of its liabilities. At a future determined date the actuarial valuation will be carried out and the rates and adjustments certificate revised.

Finally, the Committee may, with the approval of the Department, require active members under an employer to cease future accrual. The purpose of this will be in order to protect the solvency of the fund or prevent liabilities falling onto other employers.

2.2.3 Apportionment of liabilities (effective from 1 August 2007)

This new regulation enables the transfer of liabilities from one employing authority to another. However, all parties (the Committee, the employing authority and the inheriting body) must agree to the apportionment. This may arise when an employer is leaving the Scheme or merging with another employer, perhaps under a scheme of reorganisation.

An apportionment agreement is required and it must specify the effective date, the liabilities that will transfer, when the liabilities will be discharged and any other matters that the Committee feels necessary to protect the solvency of the fund. This means a cessation valuation does not need to be carried out at the cessation date of the original employer. However, a cessation valuation would still apply to the inheriting employer should they cease participation in the Scheme.

The rates and adjustments certificate for the inheriting employer may need to be revised to reflect the transfer of liabilities.

¹ The rates and adjustments certificate is the actuarial certificate that states the contributions that each employer must pay to the Scheme. This is normally issued following the triennial valuation.

Any legal and actuarial fees incurred drafting an apportionment agreement and determining the liabilities will be recharged to the appropriate employing authority. These fees are considerably higher if the apportionment agreement is drafted after the transfer date as the legal work becomes more complex.

Employers who are considering using an apportionment agreement to transfer liabilities, perhaps on a merger, are requested to contact NILGOSC well in advance of any merger so sufficient time is available to allow drafting of the agreement and to carry out the necessary actuarial work.

2.2.4 Employer's contributions

The amendments clarify that a contributing employer's contribution for any year is the sum of –

- The common percentage of the pay on which contributions have been paid by active members; and
- Any individual adjustment specified for that contributing body or guarantor for that year.

2.3 Amendments to the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009

2.3.1 Pensionable pay definitions

Minor amendments have been made to carry forward the following exclusions to pensionable pay from the 2002 regulations.

The following additional payments are not pensionable:

- Any payment as an inducement not to terminate employment
- Any payment to buy out an existing term of condition of employment
- Any amount treated as the money value to an employee of the provision of a motor vehicle or any amount paid in lieu of such provision.

2.3.2 Fluctuating emoluments

Fluctuating emoluments can only be taken into account if contributions have been paid on them.

2.3.3 Additional Survivor Benefits for nominated cohabiting partners

The current benefits payable to a surviving nominated cohabiting partner are calculated in respect of the deceased member's period of membership in the scheme from 6 April 1988. The amendment now enables members to elect to pay additional contributions so that some or all of their period of membership prior to 6 April 1988 can be included in the calculation of survivor benefits payable. These are known as 'additional survivor benefits contributions (ASBCs)'.

The regulations state that an election to pay ASBCs must be made within 12 months of the date of the nomination. However for members of the Scheme who were active when the new regulations came into effect, the Committee is granting an extension of 12 months from the date of notification.

Members who wish to make an election may do so in respect of all their pre-6 April 1988 membership or, select a period of pre-6 April 1988 membership in whole years only. A medical will be required to confirm good health.

NILGOSC has written to all eligible current active members who have nominated cohabiting partners advising them of the option of paying ASBCs.

2.3.4 Children's pensions

A child's pension can now be paid to someone other than the eligible child providing it is applied for the child's benefit.

2.3.5 Ill-health benefits for deferred members

Deferred members leaving after 1 April 2009 must have at least one year's membership of the Scheme and must have a reduced likelihood of obtaining gainful employment.

2.3.6 Guidance on cost-sharing

This regulation has been amended to state that the Committee and employing authorities will have regard to the guidance to be issued by the Department as to the manner in which the costs of the Scheme will be met after 31 March 2011. Previously it stated that the guidance would be issued before 31 March 2010. To date no guidance on cost-sharing has been issued by the Department.

2.4 Amendments to the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009

2.4.1 Eligibility for membership

The regulations now state that a person can only be an active member if he is employed under a contract of employment of a duration of three months or more. The previous regulation stated that the contract of employment had to be for more than three months.

2.4.2 Designated employers- clarification on admission agreements

As per 2.2.1.

2.4.3 Clarification on when an admission agreement ceases

As per 2.2.2.

2.4.4 Apportionment of liabilities

As per 2.2.3.

2.5 Amendments to the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009

2.5.1 Survivor's benefits for civil partners (effective from 1 April 2009)

The regulations now include all the service in the calculation of survivor's benefits. Previously only service from 6 April 1988 was taken into account for civil partners survivor's benefits.

3. Local Government Pension Scheme (Councillors) (Amendment) Regulations (Northern Ireland) 2011

3.1 Summary

These regulations, made on 18 March 2011, allow councillors in Northern Ireland to become members of the Scheme from 9 May 2011. The Scheme for councillors is a career average revalued earnings (CARE) scheme and it is described in detail in circular 07/2011.

NILGOSC now administers both the existing final salary LGPS (NI) Scheme as well as the new CARE scheme for councillors.

I hope this explains both sets of regulations. Please do not hesitate to contact me if you have any queries.

Yours sincerely

A handwritten signature in black ink that reads "Zena Kee". The signature is written in a cursive, slightly slanted style.

Zena Kee
Pensions Manager