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To: Chief Executives
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At: All Employing Authorities

Circular 06/2022
8 April 2022

Dear Colleagues,

New Regulations affecting the Administration of the Scheme, Miscellaneous Updates and Proposed Changes

There have been five recent sets of regulations that affect the administration of the Local Government Pension Scheme ("the Scheme") and, in a few instances, highlighted in blue text below, there are changes that employers will need to implement from 18 April. We are in the process of updating Scheme guides, literature and the website. In the interim, the key changes and employer actions are set out in detail below.

This Circular is based on our understanding of the various sets of regulations and we have used our best endeavours to ensure accuracy. However, in the case of any conflict between this Circular and the provisions of the regulations, the regulations will always prevail.

Contents

1. New Scheme Amendments

The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2022 (SRNI 2022 No. 163) were made on 24 March 2022 and are operational from 18 April 2022. A few of the amending regulations, particularly in relation to some survivors' benefits and death grants are retrospective to 5 December 2005 and 1 April 2015 respectively. NILGOSC will identify those affected, recalculate and pay any monies due.

1.1. Changes to the 30-day rule from 18 April 2022

The 30-day rule applies to absences with permission e.g. career breaks. The current rules state that the member pays employee pension contributions for the first 30 days or less of the absence, even if the absence extends beyond 30 days. The new regulations tweak this rule for absences that last longer than 30 days. In these extended absence cases, the member will not pay any contributions for the first 30 days other than they wish to cover the period retrospectively on their return to work. Employer contributions continue to be due for the period up to 30 days where the member makes contributions. If, following return to work, the member takes out an additional pension contract to cover the lost pension, then the employer meets two-thirds of the cost of the arrangement.

Action for employers: employers may need to amend their payroll software to ensure that from 18 April employer and employee contributions are not paid for the first 30 days where absences with permission extend beyond that period.

1.2. Removal of 50% limit on AVC contributions from 18 April 2022

Up to now active members have not been able to put more than 50% of their pensionable pay in any one pay period into their AVC. This limit is removed from 18 April allowing members to contribute up to 100% of their pensionable pay, subject to any deductions made by their employer, in a pay period.

Action for employers: Employers may need to remove any AVC restrictions within their payroll software to allow AVC contributions up to 100% of pensionable pay in any one pay period less normal statutory deductions e.g. National Insurance and pension scheme contributions.

1.3. Change in the definition of fluctuating emoluments for final salary pension from 18 April 2022

Any members who have built up some final salary pension have that part of their pension calculated on a slightly different definition of pensionable pay from that which is used for the career average revalued earnings (CARE) part of their pension. The final salary pensionable pay currently allows for fluctuating emoluments (e.g., performance related pay, election fees) to be averaged over less than three years where they have been paid for the shorter period. From 18 April 2022, fluctuating emoluments will be included as the average of all such fluctuating emoluments for the three consecutive years ending with the final pay period.

1.4. Discretion for NILGOSC to pay refunds later than five years after the member has left the Scheme

A new discretion, applying from 18 April 2022, gives NILGOSC discretion to pay refunds more than five years after the member has left the Scheme. They must still be paid out before the member reaches age 75.

1.5. Death grants can now be paid when a member dies who is aged 75 or over

Following a change in HM Revenue and Customs rules, the Scheme regulations have been amended retrospectively to 1 April 2015 to allow death grants to be paid to those who qualify and die on or after age 75. Death grants are usually payable where a pensioner dies but has not been in receipt of pension for 10 years (5 years under older rules). The calculations are complex and vary depending on the date the member left the Scheme. For members leaving after 31 March 2015, very approximately the death grant is 10 times the amount of pension before giving up pension for lump sum less the amount of pension paid and tax-free cash taken. NILGOSC will identify the deceased members where additional payments are due and will make any additional payments to their personal representatives, nominated beneficiaries or estates. It continues to be the case that pensions must be paid out by age 75, even if the member has continued in employment.

1.6. Calculation of survivor benefits changed to equalise benefits

As a consequence of recent Court judgements, the calculation of some survivor benefits have been retrospectively changed for deaths from 5 December 2005. This particularly affects survivors' pensions of post-leaving marriages or civil partnerships. A very brief summary of the changes is below:

- The calculation of a male survivor's pension from an opposite sex marriage or civil partnership is improved to include the deceased partner's membership from 6 April 1978 instead of 6 April 1988, except where F11 of the 2000 regulations applies. F11 specifically covers the widower benefits of female leavers between 6 April 1988 and 31 July 2000.
- In very few cases there may be a slight enhancement to the female spouse's survivor pension of a male member where the marriage took place post-leaving and the member's date of leaving was after he reached age 65. Previously any membership after age 65 would have been excluded from the calculation of the widow's pension as this was not treated as contracted out membership.
- Eligible cohabiting partner pensions continue to be based on membership post-5 April 1988.

NILGOSC will contact those few affected members or survivors of deceased members and will, where relevant, make additional payments. We will require software amendments for the calculation of revised survivor benefits.

1.7. Amendment to forfeiture rules

The forfeiture rules allow for forfeiture of pension rights where a member is convicted of a relevant offence. The offence must be committed in connection with the employment relating to that member and, under previous rules, the member had to have left that employment because of the offence. In practice, the employer usually finds out about the offence after the member has left and so usually could not apply for forfeiture. From 18 April 2022 the amendment removes the requirement that the member must have left that employment because of the offence.

1.8. Extension of periods for stage 1 and stage 2 disputes

Previously the timescale for dealing with a stage 1 or stage 2 dispute was two months. From 18 April 2022 this period has been extended to four months for each stage.

1.9. Ability to issue an interim exit certificate

The Department for Communities now has the power to approve the issue of an interim exit certificate by NILGOSC that is then replaced by an exit certificate at a later date. This may be of use in an insolvency situation.

1.10. Clarification on admission of certain new employers

It is clarified that where NILGOSC is admitting either:

- a body that is providing a service or assets in connection with the exercise of the function of an employing authority as a result of the transfer of the service or assets by means of a contract or other arrangement, or
- a public service which is approved by the Department for admission to the Scheme

that NILGOSC may choose whether to admit the employees or not.

2. Entitlement to Bereavement Leave and Pay for parents

The Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations (Northern Ireland) 2022 (SRNI 2022 No 168) were made on 30 March and take effect from 6 April. These regulations provide for a parental entitlement to bereavement leave and pay following the death of a child. They directly amend the Scheme's regulations to include 'parental bereavement leave' under the definition of 'child-related leave'.

Action for employers: As a reminder, if an active member is on child-related leave (which will now include parental bereavement leave):

- **the employer pays contributions on the assumed pensionable pay (APP).**
- **the member pays contributions on the pay actually received.**
- **any pre-existing APC/SCAPC contracts remain payable. If the employee is in receipt of no pay, the employer contributions to a SCAPC or SCAVC remain payable. The employee payments due to an APC or SCAPC which cannot be collected roll over as a debt to be recovered from pay on return to work. AVC contributions for life cover should continue otherwise it will lapse. Any existing part-time buy back contracts, ARCS and added years contracts must continue to be paid.**

3. Changes to the deadlines for Mandatory Scheme Pays

With effect from 6 April 2022, the Finance Act 2022 and the Registered Pension Schemes (Miscellaneous Amendments) Regulations 2022 have extended the timescales for members to make or amend a mandatory scheme pays election when paying an annual allowance tax charge. These changes will only apply when the information used to calculate a member's pension input amount (pension savings in a year) has been retrospectively amended either due to further information being provided by the employer or due to a change in Scheme rules that affects the annual allowance calculation. These amendments have been introduced to cover any retrospective changes in pension savings due to the McCloud remedy. The recalculation can go back to the tax year that began six years before the current tax year.

Normally a member must provide NILGOSC with an election for mandatory scheme pays by no later than 31 July in the year following the tax year in which the annual allowance was exceeded. From 24 February 2022, for any retrospective changes, the member must provide NILGOSC with their election for mandatory scheme pays before:

- the end of the three month period from the date that NILGOSC provided the pension savings statement, or if earlier
- the end of the six-year period beginning with the end of the relevant tax year.

Members continue to be unable to give a mandatory scheme pays election once they are entitled to payment of all their benefits under the Scheme. In addition, the 31 July deadline is not extended for members who previously qualified to elect for mandatory scheme pays but chose not to.

4. Bulk Transfers to recommence

Bulk transfers apply where two or more members' active membership ends when they join a registered non-local government pension scheme. This usually applies to reorganisations and transfers of staff from one part of the public sector to another e.g. compulsory transfer from local government employment to Health and Social Care. In August 2020, due to the McCloud judgement, the Government Actuary's Department (GAD) suspended transfers from the Scheme to other public sector pension schemes in Northern Ireland. It has now been agreed that bulk transfers between public service pension schemes will recommence from 1 April 2022 and GAD has a rolling programme of recommencing bulk transfers.

5. Statutory Redundancy Payments

Following on from Circular 04/2022, The Employment Rights (Increase of Limits) Order (Northern Ireland) 2022 (SRNI 2022 No. 135) was made on 22 March 2022 and came into operation on 6 April 2022. It increases a week's pay for calculation of statutory redundancy from £566 to £594.

6. Annual increase to be applied to pensions from 11 April 2022

Further to Circular 04/2022, The Pensions Increase (Review) Order (Northern Ireland) 2022 (SRNI 222 No. 159) was made on 24 March 2022 and comes into operation on 11 April 2022. It confirms that the increase to be applied to qualifying pensions which began before 12 April 2021 is 3.1%. The part year percentages for pensions that began on or after 12 April 2021 are set out in the explanatory note to the above Order. The Order is available on NILGOSC's website.

7. Increase in Normal Minimum Pension Age (NMPA)

On 2 November 2021, HM Treasury introduced a Bill to Parliament that includes increasing the NMPA from age 55 to age 57 from April 2028. The NMPA is the earliest age when individuals can draw pension benefits (apart from ill-health). At this stage we do not know whether the Department for Communities intends to make legislation to protect those members who had a right to take their Scheme benefits from age 55 before 4 November 2021. Anyone joining the Scheme after that date would be excluded from any transitional protections. In due course it is expected that the Scheme's regulations will be amended to change the earliest payment date from age 55, which is the current regulatory reference.

8. Second State Pension Age review

In December 2021, the Department for Work and Pensions launched its next review of the State Pension Age. The results of this review must be published by 7 May 2023. State Pension Age is currently age 66 and there will be a gradual increase to age 67 for those born on or after April 1960. There is a further gradual increase to age 68 between 2044 and 2046 for those who were born on or after April 1977. The last review of the State Pension Age in 2017 concluded that this review should consider whether the increase to age 68 should be brought forward to between 2037 and 2039. The normal pension age for Scheme benefits is now linked to the State Pension Age so any change in State Pension Age will affect the normal pension age of members with dates of birth falling on or after April 1977. You can check your current state pension age here https://www.gov.uk/state-pension-age.

9. Transfers out

The Government has been increasingly concerned about the prevalence of pension scams, particularly on transfers out. New transfer regulations, made in November 2021, require members wishing to make a transfer out from the Scheme, mainly to non-public service pension schemes to provide additional information to NILGOSC and in some cases to take both pension transfer and pension scams advice. NILGOSC can now refuse to make a transfer should full information not be provided, or it believes that there are significant risks associated with the transfer out.

10. Tax relief in net pay schemes

Following consultation, HM Treasury intends to address anomalies in tax relief for low earners in net pay schemes such as the LGPS (NI). This will apply where a contributing member of the LGPS (NI) has earnings below the threshold for tax and therefore does not benefit from any tax relief on their pension contributions. The Government had intended to introduce top-up payments in respect of contributions made in 2024/25 onwards but has now confirmed they will be in 2026/27. Ongoing HMRC delivery programmes and the complexity of the required IT changes have been cited as the reasons for the delay.

If you have any further queries or wish to speak to us, then please contact either myself or any member of the Pensions Development Team.

Yours sincerely

Zena Kee
Head of Pension Policy