

Local Government Policy Division

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Your reference:
Our reference: DO1-09-6548
3 December 2010

Dear Consultee

LOCAL GOVERNMENT PENSION SCHEME – COUNCILLORS’ PENSIONS

I enclose for consultation, a copy of the draft Local Government Pension Scheme (Councillors) (Amendment) Regulations, which the Department of the Environment proposes to make under the powers conferred by Article 9 of the Superannuation (Northern Ireland) Order 1972. Comments should be received by **28 January 2011**.

The draft Regulations amend both the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (NI) 2009 and the Local Government Pension Scheme (Administration) Regulations (NI) 2009 to provide pension provision for councillors.

Background

The Minister of the Environment, Edwin Poots, has decided that councillors shall be provided with pension provision from the date of the next local government elections. He has also agreed that the pension provision for councillors should be on the basis of the recommendations of the Councillors’ Remuneration Working Group (CRWG). The CRWG included in its membership representatives from the National Association of Councillors, the Northern Ireland Local Government Association, trade unions, business and voluntary sectors together with an independent member.

The CRWG made the following recommendations on pensions for councillors-

- pension provision should be open to all councillors;
- councillors should be able to join the LGPS;
- the normal retirement age for councillors should be same as for other LGPS members (age 65);
- calculations should be based on career average to reflect the possibility that councillors may hold positions of responsibility with higher remuneration at various times in their council career; and
- pension provision should be available from the next local government elections.

The Local Government Pension Scheme (LGPS) is a statutory public service pension scheme, as defined by the Pensions Schemes Act (NI) 1993. The LGPS is funded by contributions made by both employees and employers who have been designated as employing authorities or admitted to the LGPS.

The draft Regulations currently make all councillors, who are elected at the next local government elections, members of the LGPS. Should a councillor wish to opt out of membership of the LGPS, the councillor may notify the council in writing.

The CRWG's recommendation that calculations should be based on career average is designed to address the unpredictability with which councillors' income may go up or down depending on the position they hold within the council.

Calculations carried out on a career average basis match each year's benefit accrual to earnings in each year. The earnings figure for each years' membership of the LGPS will be up-rated in line with prices. For example,

- a councillor member who contributes to the LGPS from May 2011 until May 2041 may retire with 30 years' membership of the LGPS, provided the councillor has reached the normal retirement age of 65;

- the LGPS provides a pension calculated as 1/60th of pay for each year of service;
- to calculate pension each year's pensionable pay will be up-rated with inflation and then aggregated;
- it will then be divided by 30 (years' service) to provide the "average" pay, which is then multiplied by 30/60 to arrive at the pension payable.

This type of pension scheme is known as the career average revalued earnings scheme or CARE scheme. This type of scheme is more suited to a person whose income remains fairly constant or where the level of income fluctuates throughout their career.

Proposed benefit structure for councillors pensions in Northern Ireland

The proposed benefit structure for councillors will be largely similar to that for all LGPS members in Northern Ireland. From the next local government elections, it is proposed that all councillors will automatically become members of the LGPS. The other benefits include-

- a pension for life that increases with the cost of living, based on career average pay. As with other public sector pensions, this will be Consumer Price Index (CPI) from April 2011;
- the option to take a tax-free lump sum on retirement (age 65) by converting up to 25% of the capital value of pension at a conversion rate of £1 pension for £12 lump sum;
- a pension based on career average pay calculated as 1/60th career average pay multiplied by the number of years of membership;
- an ability to increase membership by paying additional voluntary contributions or if under the age of 64 additional contributions can be made to buy up to £5,000 of extra LGPS pension in blocks of £250;
- after 3 months membership, a member may retire voluntarily from age 60, however, benefits taken before age 65 will be paid at a reduced rate;
- it is also possible to retire from age 55 and receive benefits immediately but only if the member's council gives consent;
- ill-health retirement from any age, following a minimum of 1 year's membership of LGPS;

- death in service lump sum of 3 times career average pay;
- widow's, widower's, civil partner's or cohabiting partner's pension;
- children's pensions; and
- member's contribution rate will be based on a 7-tier contribution system, with contributions based on how much remuneration as a councillor falls into each tier. The contribution range is increased annually as if it were a pension. Based on the following contribution rate, a councillor would be likely to pay either 5.5% or 5.8% of basic allowance and, if applicable, special responsibility allowance.

Band	Range	Contribution rates
1	£0 - £12,600	5.5%
2	£12,601 - £14,700	5.8%
3	£14,701 - £18,900	5.9%
4	£18,901 - £31,500	6.5%
5	£31,501 - £42,000	6.8%
6	£42,001 - £78,700	7.2%
7	More than £78,700	7.5%

Equality

Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the draft Regulations will not lead to discriminatory or negative differential impact.

This letter, the draft Regulations and the equality screening are available to view at http://www.doeni.gov.uk/index/local_government/local_government_consultations.htm. Copies of the documents in different formats are available and may be requested using the above contact details.

Freedom of Information

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may

be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the attached Annex on the confidentiality of consultations which will give you guidance on the legal position about any information given by you in response to this consultation.

I should be grateful to receive your email address, which will be used solely for future consultations - please entitle the email *e-consultation* followed by your organisation's name.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Cochrane', is centered on the page. The signature is written in a cursive style with a horizontal line at the end.

Marie Cochrane

Encl.

Addressees

All the Members of the Northern Ireland Legislative Assembly

All Northern Ireland political parties, MPs and Members of the House of Lords

The Clerk and Chief Executive of each District Council

The Chief Executive of each Education and Library Board

The Chief Executive, Northern Ireland Housing Executive

Other Employing Authorities contributing to the Local Government Pension Scheme

The Northern Ireland Local Government Association

The Northern Ireland Local Government Officers' Superannuation Committee

The Northern Ireland Committee of the Irish Congress of Trade Unions

The Northern Ireland Public Service Alliance

Various Representative Bodies and Interest Groups

Equality Commission for Northern Ireland

The Freedom of Information Act 2000 – Confidentiality of Consultations

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk>).

2011 No.

LOCAL GOVERNMENT

**Draft Local Government Pension Scheme (Councillors) (Amendment)
Regulations (Northern Ireland) 2011**

Made - - - - - ***

Coming into operation - - - - - ***

The Department of the Environment makes these Regulations in exercise of the powers conferred by Article 9 of the Superannuation (Northern Ireland) Order 1972(1) and now vested in it(2).

In accordance with Article 9 of that Order, the Department has consulted with the Northern Ireland Local Government Association, the Northern Ireland Local Government Officers' Superannuation Committee and such representatives of other persons likely to be affected by the Regulations as appeared to it to be appropriate.

Citation and commencement

1. These Regulations may be cited as the Local Government Pension Scheme (Councillors) (Amendment) Regulations (Northern Ireland) 2011 and shall come into operation on the fourth day after the date of the election (see section 11(2) of the Electoral Law Act (Northern Ireland) 1962).

Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009

2.—(1) The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009(3) shall be amended in accordance with paragraphs (2) and (3).

(2) After regulation 2 (active members), insert—

“Eligibility of councillors

2A. These Regulations apply to councillor members in respect of their councillor membership with the modifications set out in the Schedule.”.

(3) The Schedule within Schedule 1 shall be inserted in the appropriate place at the end of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009.

Amendment of the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009

3.—(1) The Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009(4) shall be amended in accordance with paragraphs (2) and (3).

(1) S.I. 1972/1073 (N.I. 10); Art. 9 was amended by Art. 34 S.I. 2005/1968 (N.I. 18).

(2) S.R. & O (N.I.) 1973 No. 504 Article 7(1); S.I. 1976/424 (N.I. 6).

(3) S.R. 2009 No. 32 to which there are amendments not relevant to these Regulations.

(4) S.R. 2009 No. 33.

(2) After regulation 3 (general eligibility for membership), insert—

“Eligibility of councillors

3A. These Regulations apply to councillor members in respect of their councillor membership with the modifications set out in Schedule 4.”.

(3) Schedule 4 within Schedule 2 shall be inserted after Schedule 3 in Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009.

Amendment of the Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001

4.—(1) The Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001⁽⁵⁾ shall be amended in accordance with paragraph (2).

(2) For regulation 32(1) (interpretation of Part V), substitute—

“32.—(1) In this Part relevant employment is employment with an LGPS employer, otherwise than—

- (a) retained or volunteer membership with a fire and rescue authority as defined in Article 3 of the Fire and Rescue Services (Northern Ireland) Order 2006;
- (b) as an employee pensionable under a superannuation scheme provided in regulations for the time being in force under Article 11 of the 1972 Order;
- (c) as an employee of Citybus Limited or Ulsterbus Limited; or
- (d) as a councillor member of the Local Government Pension Scheme under regulation 2A of the Benefits Regulations and regulation 3A of the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009.”.

Sealed with the Official Seal of the Department of the Environment on ***



Wesley Shannon
A senior officer of the Department of the Environment

(5) S.R. 2001 No. 279 as amended by S.R. 2009 No. 34.

“SCHEDULE

Regulation 2A

COUNCILLOR MEMBERS

PART 1

CONTRIBUTIONS

Pay

1. For regulation 4 (meaning of “pensionable pay”) substitute—

“**4.**—(1) A councillor member’s pensionable pay in any year is the total of all basic allowance and special responsibility allowance paid to the councillor by a district council under the Local Government (Payments to Councillors) Regulations (Northern Ireland) 1999**(6)**.”

(2) “Basic allowance” and “special responsibility allowance” have the same meaning as in regulations 3 and 5 respectively of the Local Government (Payments to Councillors) Regulations (Northern Ireland) 1999.

(3) All references to “pay” in these Regulations and in the Administration Regulations in respect of a councillor member and the councillor membership shall be construed in accordance with paragraph (1).

(4) “Career average pay” in these Regulations shall mean an amount equal to the total of the councillor member’s pay for each year or part year of his active membership divided by the number of those years or part years.

(5) All references to “final pay” in these Regulations and in the Administration Regulations shall, in respect of a councillor member and councillor membership, be taken to mean “career average pay”.

(6) When calculating a councillor member’s career average pay, the pay for any year other than the final year shall be increased in proportion to the increase in the Consumer Price Index from the last day of that year up to the last day of the month in which the his active membership ends.

(7) “Year” means the 12 months ending with 31st March.

(8) “Final year” means the year during which, or at the end of which, the councillor member’s active membership ends.

(9) “Consumer Price Index” means the index of retail prices for the United Kingdom published by the Office of National Statistics.

(10) No sum may be taken into account in calculating pensionable pay unless income tax liability has been determined on it.”.

PART 2

BENEFITS

Preliminary

2. For regulation 7(5) (calculation of length of periods of membership) substitute—

(6) S.R. 1999 No. 449 as amended by S.R. 2007 No. 168.

“(5) The amount of any annual pension payable to a councillor as a result of his membership is calculated by multiplying his total councillor membership by his career average pay and divided by 60.”.

3. Delete regulations 8 (final pay: general), 10 (final pay: reductions) and 11 (final pay: fluctuating emoluments).

Retirement Benefits

4. Delete regulation 19 (early leavers: inefficiency and redundancy).

5. For regulation 20(1) (early leavers: ill-health) substitute—

“20.—(1) Where a councillor member, who has a total membership of at least one year, ceases to be a member of his district council on grounds that —

- (a) his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of that office; and
- (b) he has a reduced likelihood of being capable of undertaking gainful employment (whether in local government or otherwise) before his normal retirement,

the Committee may, at the request of the employing authority, determine that his retirement pension comes into payment before his normal retirement age in accordance with this regulation in the circumstances set out in paragraph (2), or (3), as the case may be.”.

Death grants

6. In regulation 23 (death grants: active members)—

(a) for paragraph (3) substitute—

“(3) The death grant of a councillor member is his career average pay multiplied by 3.”; and

(b) delete paragraph (4).

7. For regulation 32(3) (death grants: deferred members) substitute—

“(3) The death grant for a councillor deferred member is 5 times the pension that would have been payable if he had retired at the date of death.”.

8. For regulation 35(3) (death grants: pensioner members) substitute—

“(3) The death grant for a councillor pensioner member is 10 times his pension less the amount of any pension paid to him.”.

PART 3

OPTIONAL ADDITIONAL BENEFITS

Increases of membership and pensions

9. Delete regulations 12 (power of employing authority to increase total membership of members) and 13 (power of employing authority to award additional pension).”.

SCHEDULE 2

Regulation 3

“SCHEDULE 4

Regulation 3A

COUNCILLOR MEMBERS

Membership

1. Regulation 12(1) (re-employed and rejoining deferred members) shall only apply to a councillor member in respect of any councillor membership where both the former membership and the membership as an active member referred to in that paragraph are councillor membership.

2. Delete regulation 13 (concurrent employments).

Additional voluntary contributions and shared cost AVC schemes

3. Delete regulation 21(3) (additional voluntary contributions and shared cost additional voluntary contributions).

4. In regulations 21 to 23 delete “and SCAVCs” and “or SCAVCs” where it occurs.

Members’ contributions

5. Delete regulation 20(2) (discontinuance of ARCs).

6. In regulation 22(1)(a)(ii) (use of accumulated value of AVCs and SCAVCs) delete “19 (early leavers: inefficiency and redundancy)”.

Transfers

7. In regulation 41 (rights to return of contributions) delete paragraphs (4) and (5).

8. Delete regulations 77 to 81 (bulk transfers (transfers of undertaking), etc., calculation of amount of transfer payment under regulation 77, inward transfers of pension rights, right to count a credited period and community scheme transferees).”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Regulations which constitute the Local Government Pension Scheme to allow councillors in Northern Ireland to become members of the Scheme from the next local government elections.

Regulation 2 amends the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 (the Benefits Regulations) by inserting a new regulation which applies the Benefits Regulations to councillor membership of the Scheme subject to the modifications contained in Schedule 1.

Schedule 1 modifies the application of some regulations for councillors and removes the application of other regulations within the Benefits Regulations. Within Schedule 1-

Paragraph 1 substitutes regulation 4 which defines pensionable pay for councillor membership of the Local Government Pension Scheme (LGPS). It means that a councillor's membership will be based on their income from basic allowance and special responsibility allowance on a career average basis. When calculating a councillor's career average pay every year's pay except the final year's pay is increased in proportion to the increase in the consumer price index. Every year's pensionable pay is then added together and divided by the total number of year's membership to arrive at the councillor's career average pay for pension calculation purposes.

Paragraph 2 substitutes regulation 7(5) which specifies the calculation of a councillor's pension. The accrual rate of pension of one sixtieth per year of membership of the LGPS is the same as for the rest of the Scheme. The calculation is therefore the total number of years of councillor membership of the LGPS multiplied by the councillor's career average pay divided by 60.

Paragraphs 3 and 4 delete regulations 8 (final pay: general), 10 (final pay: reductions), 11 (final pay: fluctuating emoluments) and 19 (early leavers: business efficiency and redundancy). This means that for the purposes of councillor membership of the LGPS these regulations do not apply.

Paragraph 5 substitutes regulation 20(1) to enable a councillor member of the LGPS to have the same access to ill-health pension provision as other members of the LGPS.

Paragraphs 6, 7 and 8 modify regulations 23, 32 and 35 to enable death grants to be paid upon the death of a councillor member to the councillor member's personal representatives.

Paragraph 9 removes an employing authority's ability to increase total membership of a councillor member or to award additional pension to a councillor member.

Regulation 3 amends the LGPS (Administration) Regulations (Northern Ireland) 2009 (the Administration Regulations) by inserting a new regulation which applies the Administration Regulations to councillor membership of the LGPS subject to the modifications contained in the Schedule.

Schedule 2 modifies the application of some regulations for councillors and removes the application of other regulations. Within Schedule 2-

Paragraph 1 changes regulation 12(1) so that a councillor member may only aggregate two periods of membership if those two periods are periods during which he or she was a councillor member of the LGPS.

Paragraph 2 deletes regulation 13 (concurrent employments) which means that for the purposes of councillor membership of the LGPS these regulations do not apply.

Paragraph 3 deletes regulation 21(3) (Additional voluntary contributions and shared cost additional voluntary contributions), which defines an additional voluntary contribution arrangement to which an employing authority contributes is a shared cost additional voluntary contributions arrangement. This means that for the purposes of councillor membership of the LGPS this provision does not apply.

Paragraph 4 removes any further reference to a shared cost additional voluntary contribution or SCAVC from the Regulations which apply to councillor membership of the LGPS.

Paragraph 5 deletes regulation 20(2) (discontinuance of ARCs) which means that a councillor will not be treated as having paid his ARCs up to the end of the ARC payment period where a councillor ceases to be a member of a district council on grounds of his or her ill-health or the councillor's death.

Paragraph 6 removes the words "19 (early leavers: inefficiency and redundancy)" from regulation 22(1)(a)(ii) (use of accumulated value of AVCs and SCAVCs) because regulation 19 does not apply to councillors.

Paragraph 7 deleted paragraphs (4) and (5) of regulation 41 (rights to return of contributions) because these paragraphs deal with the rights to return of contributions where an active member continues in another employment held concurrently with the employment in which he ceased to be an active member may elect for an amount equal to the repayment to be treated as contributions to the LGPS as respects that concurrent employment. These paragraphs do not apply to a councillor.

Paragraph 8 deletes regulations 77 to 81 as these regulations relate to the transfer of pension rights.

Regulation 4 amends the Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001 to exclude councillors from eligibility for additional discretionary payments.

A regulatory impact assessment has not been produced for these Regulations as it has no impact on the cost of businesses, charities or voluntary bodies and does not have a significant financial impact on any public bodies.