

# CIPFA Scottish Pension Workshop

## **Legal Developments in Public Sector Pensions**

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# Agenda

1. **Look Back:** law enacted in year to 31 Aug 16 – summary in Appendix A
2. **Look Forward:** law expected in year to 31 Aug 17 – summary in Appendix B
3. **LGPS pooling:** current developments
4. **Brexit & Continuing EU Trends:** the law in prospect

**Appendices:** sources & further reading



## 1. **Look Back:** law *enacted* in year to 31 Aug 16

(Summary in Appendix A)

- **Background:** to these new laws
- **2 Feb 2016:** Misc amendments on survivor benefits, historic liabilities, exit & cessation type liabilities
- **1 April 2016:** Cost Capping, scheme actuary requirement, revaluation adjustment
- **1 April 2016:** LGPS contributions into partnerships – limit up from 15% to 30%



## **2. Look Forward:** law *expected* in year to 31 Aug 17

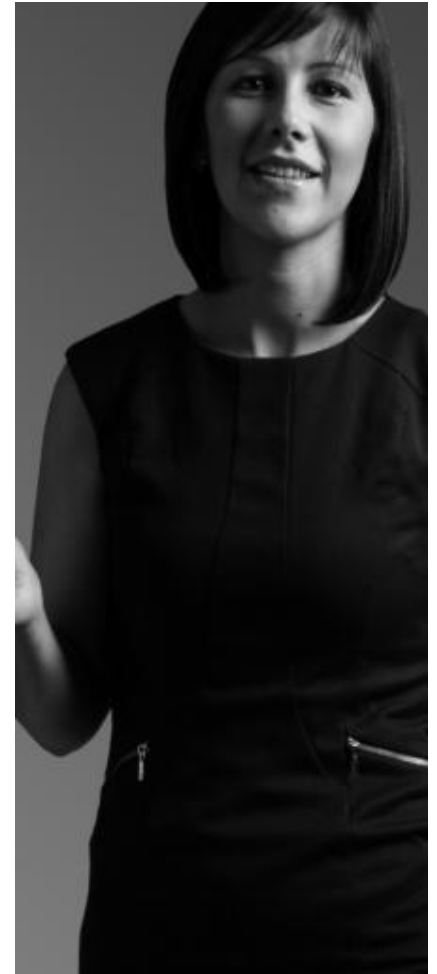
(Summary in Appendix B)

- **Background:** to these expected laws
- **Exit Payments:** Restrictions likely to affect LGPS in Scotland
- **Fair Deal in England & Wales:** Summary of regime in Scotland
- **Fund Mergers:** London trends to move North?
- **NIC Tightening:** HMRC comments on immunity of salary sacrifice suggesting pension tax relief not immune from further change



### 3. LGPS Pooling: Current Status

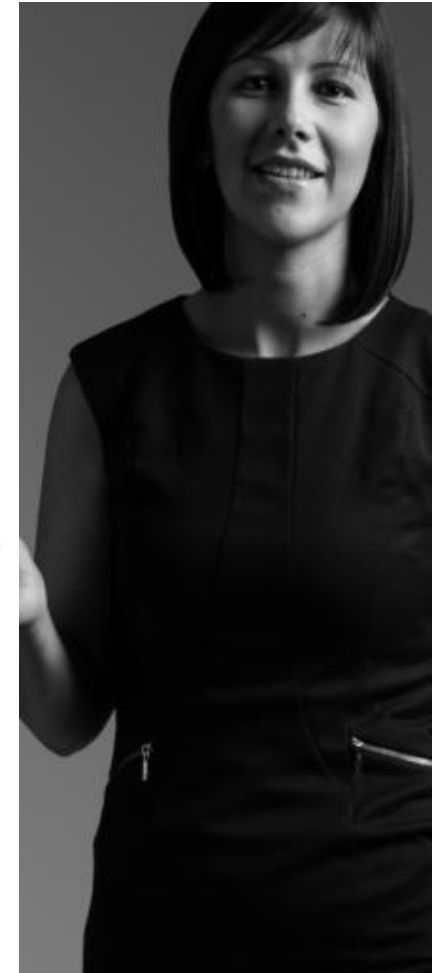
- LGPS: investment reform criteria and guidance – published November 2015 (*Dept. for Communities and Local Government*)
- Key drivers/advantages of LGPS pooling:
  - economies of scale
  - cost savings
  - improved and centralised governance framework
  - increased access to infrastructure and other alternatives
- Pooling Options (e.g. multi-asset pools, single asset pools, national platforms, liability pools)
- July 2016: 8 pools submitted detailed proposals to Government



### 3. LGPS Pooling: Key Structuring Issues

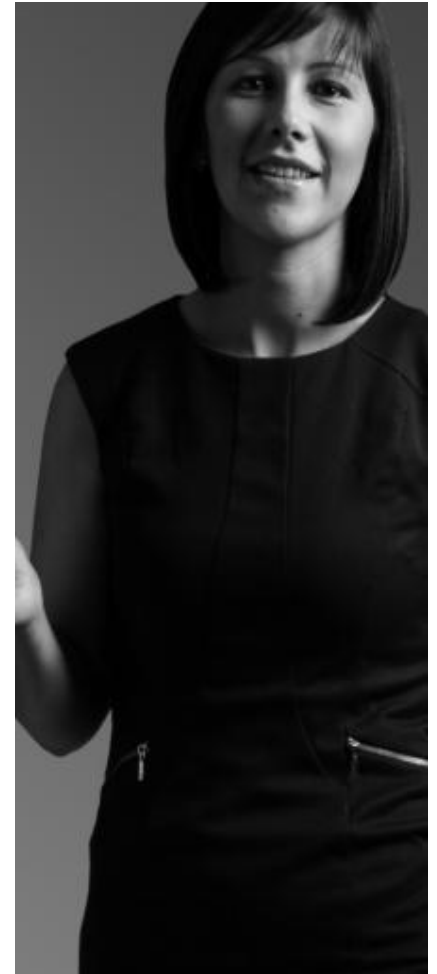
#### Potential Options

- Authorised Contractual Scheme
- Exempt Unauthorised Unit Trust
- Life Policy
- Limited Partnership
- Joint Committee



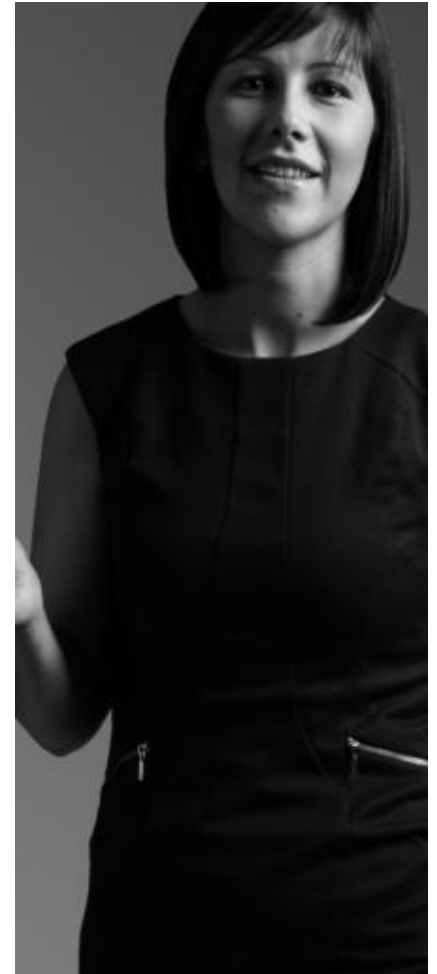
### **3. LGPS Pooling: Key Structuring Issues cont.**

- Key Tax Considerations
  - Tax transparent or tax neutral?
  - Withholding tax for pension funds
  - SDLT and seeding relief – dependent upon vehicle
  - VAT exemption for investment management – dependent upon vehicle
- Legal status of Investment Pool
  - Legal personality
  - Contracting with third parties
  - Recognition outside UK
- Infrastructure and Private Equity – may require bespoke arrangements



### 3. LGPS Pooling: Key Structuring Issues cont.

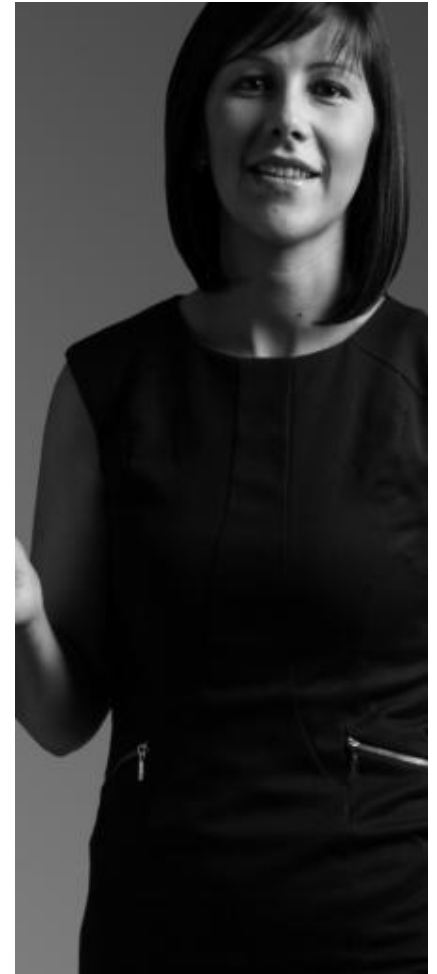
- Operator of Investment Pool – *Build or Buy?*
  - Costs
  - Implementation timeframe
  - Due diligence and risk/governance requirements
  - Staffing requirements – impact on existing structures?
  - Engagement between operator and LGPS pool – internal structure vs. external contractual arrangements
  - Change management/replacement – exit planning, TUPE
  - External service providers – selection and oversight



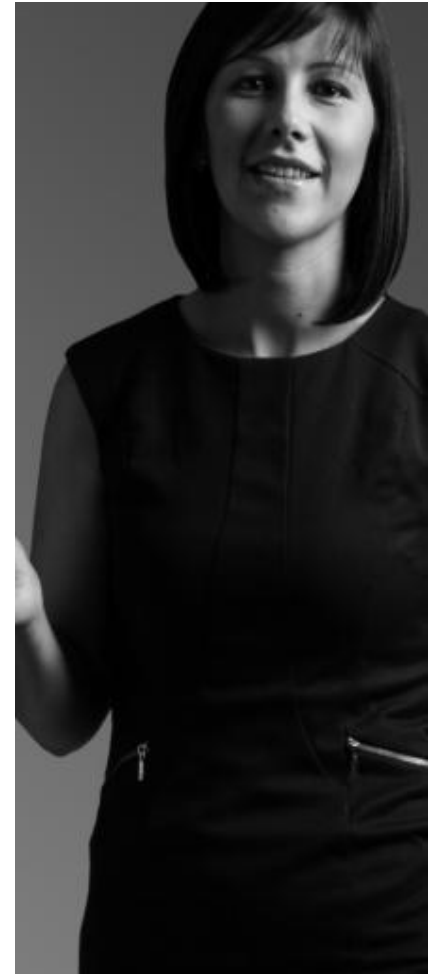
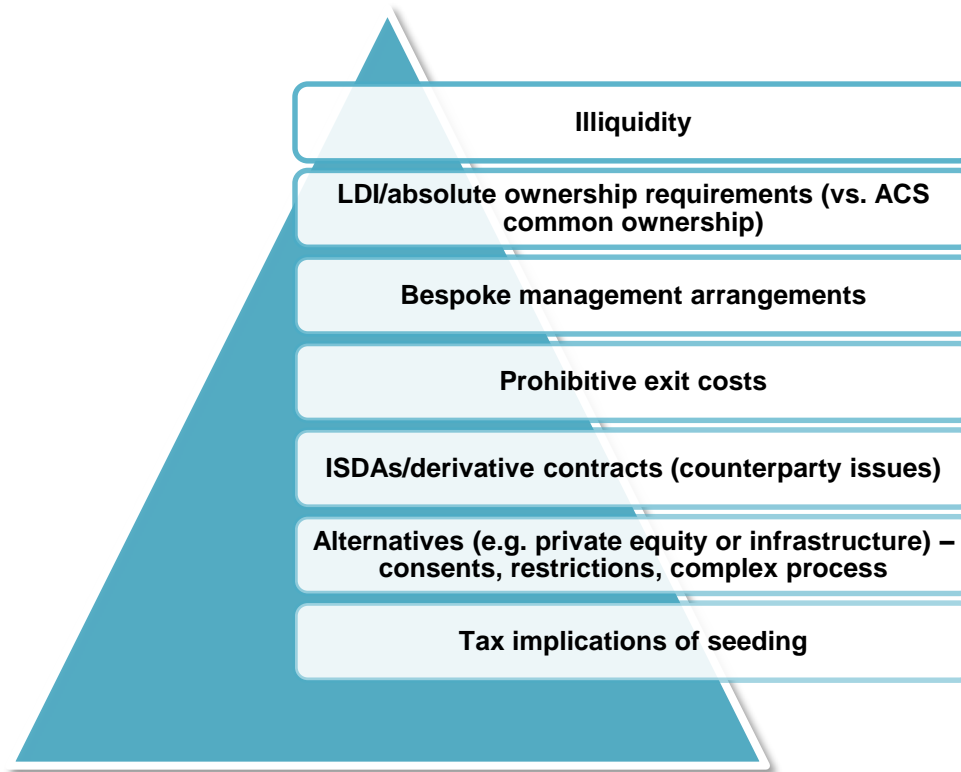


### 3. LGPS Pooling: Key Structuring Issues cont.

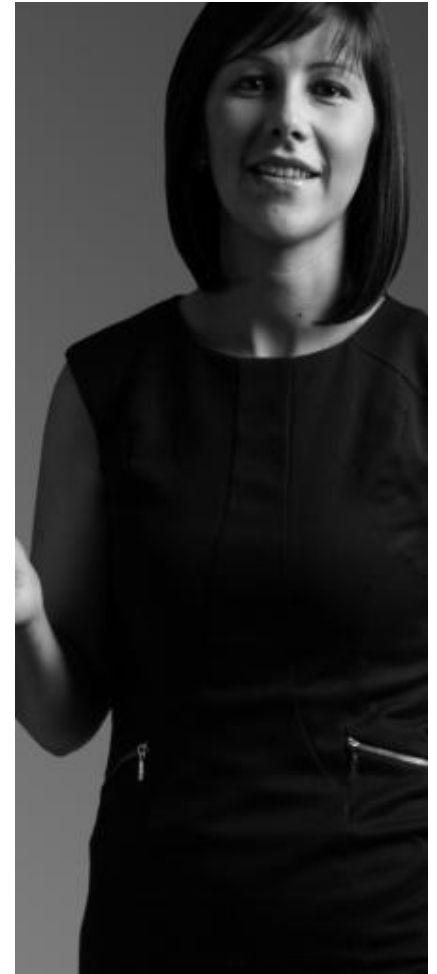
- Procurement Process (if using third party operator)
  - Contractual arrangements and governance framework should be determined at procurement stage
  - Timing / logistical issues
  - Complex process
  - Procurement process for other third parties (e.g. depositary?)
- External Investment Management
  - Existing relationships (LGPS and third party operator)
  - IMA terms
  - Extent of Investment Manager obligations may vary depending upon structure (e.g. tax reclaims and other administration functions)
  - AIFMD considerations (e.g. delegation requirements)



### 3. LGPS Pooling: Key Issues in Asset Transitions

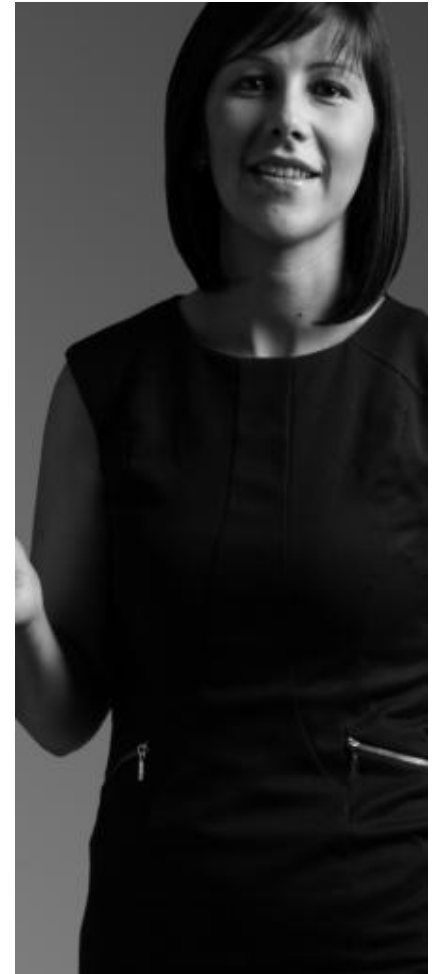


### 3. LGPS Pooling: Governance



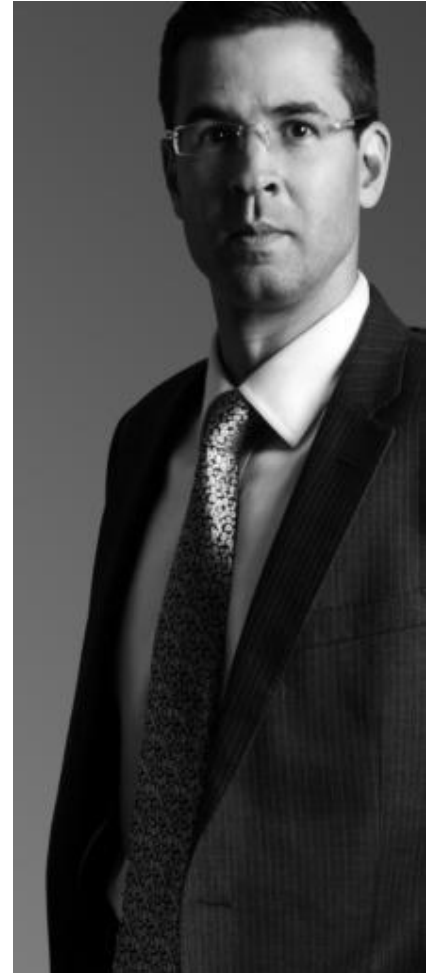
### 3. LGPS Pooling: Key Issues – Governance cont.

- Internal or external operator?
- LGPS as investor – robust governance framework required
- Inter-Authority Agreement / MoU
- Key policies (e.g. cost sharing, transition costs, retention of assets, conflicts of interest)
- Engagement with operator – strategy and oversight?

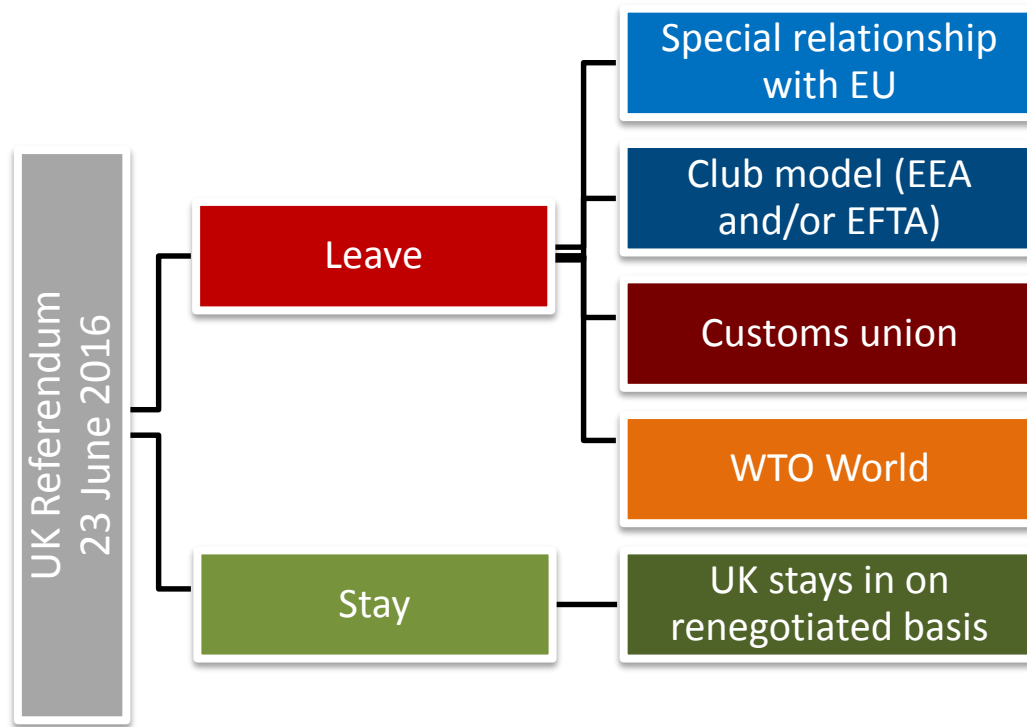


## 4. Brexit – What Now ?

- Article 50 TEU requires two years' notice of withdrawal:
  - Terms of leaving would be renegotiated during that period with possible extension
  - UK would still be expected to remain in line with EU laws
  - EU directives and regulations would cease to apply at the end of that period
- What would replace EU membership? A number of possible structural options



## 4. Brexit – Potential Options



## 4. Brexit – Short Term Impact on Investments



## 4. Brexit – What can be considered now?

- Pension Schemes
  - Sponsor strength/covenant
  - Exposure of sponsors to market volatility
  - Risk Management Process
- Potential impact on contracts
  - Termination clauses
  - Force Majeure
  - Representations and Warranties
  - Break clauses
  - Governing law and jurisdiction
- Investment restrictions in IMAs – geographic, UCITS etc





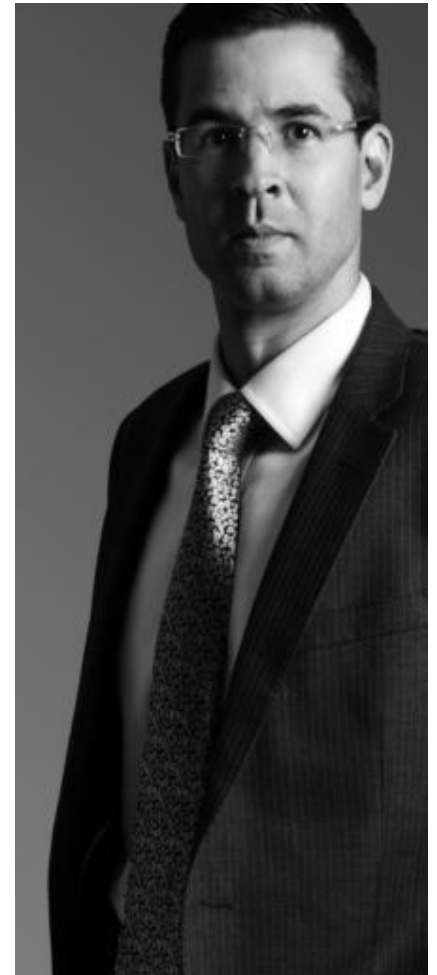
## 4. Brexit – What can be considered now? cont.

- Investment Managers will be affected by significant changes in the legislative framework (eg UCITS, AIFMD, MIFID, CRD IV etc)
- Pension Schemes may be impacted by structural changes to others' business models



## 4. Brexit – Looking Ahead: Law and Regulation

- EU law constitutes one-sixth of UK statute book
  - This does not include “regulations” – which have a direct effect on member states
- UK may choose to implement/retain EU legislation in any event, but will have no influence over new laws
- Much of UK pensions law has origins in EU legislation but has been enacted domestically – will there be deviations going forward?
- What about EU legislation in the pipeline?
- Status Quo for now



Any  
questions?



## Appendix A: law enacted in year to 31 Aug 16

<ul style="list-style-type: none"> <li>• <b>SI / SSI Number &amp; Name</b></li> <li>• <b>[date in force]</b></li> </ul>	<b>Government's Explanatory Note</b>	<ul style="list-style-type: none"> <li>• <b>Comments</b></li> <li>• <b><u>Sources</u></b></li> </ul>
<ul style="list-style-type: none"> <li>• LGPS (Scotland) Regs 2014</li> <li>• [April 2015]</li> </ul>	Background primary law – UK-wide – was Public Service Pension Act 2013: primary legislation for all public service schemes including Scottish LGPS	<ul style="list-style-type: none"> <li>• Framework for later SIs in England &amp; Wales, and SSIs in Scotland</li> <li>• <a href="http://www.legislation.gov.uk/ukpga/2013/25/contents">http://www.legislation.gov.uk/ukpga/2013/25/contents</a></li> </ul>
<ul style="list-style-type: none"> <li>• <b>SSI 2015 No. 448</b></li> <li>• LGPS (Scotland) Amendment (No 2) Regs 2015</li> <li>• [02 Feb 2016]</li> </ul>	Misc amendments to the Main Regs (the LGPS (Scotland) Regs 2014), the LGPS (Scotland) Regs 1998 and the LGPS (Benefits, Membership and Contributions) (Scotland) Regs 2008 to allow for survivor benefits re. same sex marriages under old schemes carried over into the 2015 Scheme. Regs also on employer payments for historic liabilities, exit and cessation type liabilities.	<ul style="list-style-type: none"> <li>• Main governance Regs for LGPS in Scotland pre-date this.</li> <li>• LGA Pensions: <a href="http://www.lgpsregs.org/timelineregscot/si/siidx.htm">http://www.lgpsregs.org/timelineregscot/si/siidx.htm</a></li> </ul>
<ul style="list-style-type: none"> <li>• <b>SSI 2016 No. 32</b></li> <li>• LGPS (Scotland) Amendment Regs 2016</li> <li>• [01 April 2016]</li> </ul>	Amendments to the Local Government Pension Scheme (Scotland) Regs 2014 re. cost capping of employer contributions, requirement to have a scheme actuary, and definition of “revaluation adjustment” to specify percentage as being the change in prices.	<ul style="list-style-type: none"> <li>• Convergence with E&amp;W, mainly</li> <li>• LGA Pensions: <a href="http://www.lgpsregs.org/timelineregscot/si/siidx.htm">http://www.lgpsregs.org/timelineregscot/si/siidx.htm</a></li> </ul>
<ul style="list-style-type: none"> <li>• <b>SSI 2016 No. 74</b></li> <li>• LGPS (Management and Investment of Funds) (Scotland) Amendment Regs 2016</li> <li>• [1st April 2016]</li> </ul>	Increase the maximum proportion of a Scottish local government pension fund which can be invested in contributions to partnerships from 15% to 30%.	<ul style="list-style-type: none"> <li>• Greater investment freedom.</li> <li>• LGA Pensions: <a href="http://www.lgpsregs.org/timelineregscot/si/siidx.htm">http://www.lgpsregs.org/timelineregscot/si/siidx.htm</a></li> </ul>

## Appendix B: law expected in year to 31 Aug 17

SI / SSI Number & Name / Consultation / Policy Paper	Government's Explanatory Note / Policy Statement	Comments & Sources
Enterprise Act 2016: Royal Assent: 4th May 2016	Part 9 Public Sector Employment (Restrictions on Exit Payments): Provides powers to the Treasury, the Scottish Ministers and the Welsh Ministers to make regulations to restrict exit payments that are payable in the public sector.	<ul style="list-style-type: none"> <li>LGA Pensions: <a href="http://www.lgpsregs.org/timelineregs/scot/si/siidx.htm">http://www.lgpsregs.org/timelineregs/scot/si/siidx.htm</a></li> </ul>
27th May 2016	Draft regulations amend various LGPS Regs for E&W 'to provide clarifications that have been requested by practitioners' and introduce the 'Fair Deal for staff pensions' for staff in the LGPS who are compulsorily transferred to another service provider. Different regime for Scotland but may show future trend.	<a href="#">Consultation paper</a>
4th August 2016	Merger of Wandsworth and Richmond Upon Thames pension funds. LGPS E&W, but indicating pressure for Scotland to follow?	<a href="#">Consultation paper</a> <a href="#">Draft regulations</a>
10th August 2016	Salary sacrifice for the provision of benefits-in-kind: SS not a target for tightening of NIC regime, but further reduction in pension tax relief?	<a href="https://www.gov.uk/government/consultations/salary-sacrifice-for-the-provision-of-benefits-in-kind">https://www.gov.uk/government/consultations/salary-sacrifice-for-the-provision-of-benefits-in-kind</a>

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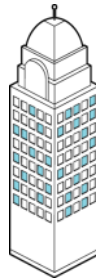
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