

To : addressees below

24 December 2009

Dear Colleague,

**DRAFT LOCAL GOVERNMENT PENSION SCHEME
(MISCELLANEOUS) REGULATIONS 2010**

1. I attach, with Ministers' agreement, draft proposals for further amendments to the Local Government Pension Scheme (LGPS) Regulations as set out below.
2. Your comments are invited by 18 March 2010. Stakeholders who wish to discuss the proposals are invited to get in touch without delay to allow discussions to take place within the consultation period.
3. These Miscellaneous Regulations will amend four sets of Regulations which currently provide the overall regulatory framework for the LGPS in England and Wales - the Administration Regulations, the Benefits Regulations, the Transitional Regulations and the 1997 Regulations.
4. The amendments are necessary to make some corrections and cross-references, to clarify detailed aspects of the Scheme's extant provisions, to restore minor omitted aspects of the 1997 Scheme, to provide clearer definitions and to introduce some new provisions, as described below.
5. Proposals relating specifically to the ill health regime are set out in Annex 1. The other proposals are as follows:

Local Government Pension Scheme (Administration) Regulations 2008
"The Administration Regulations"

Admitted Body Status

Regulation 7

Administration Regulations 7 (5) provides that any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Secretary of State for determination. This is an infrequently used provision because the admission agreement is a matter between the parties - ie the administering authority, the admitted body and, for transferee admission bodies, the appropriate

letting authority. The terms of the admission agreement should, therefore, be a matter for discussion and agreement without reference to the Secretary of State and so it is proposed that this provision be removed.

As part of the informal reviews looking at the practical application of the admitted body status provisions in the LGPS, revised guidance will be issued very soon with the aim that pensions issues are considered early in any outsourcing exercise and that the role of all the parties is clear.

Following from this, CLG propose to ask practitioners about a range of issues about the regulatory framework to see if improvements are needed to the ABS measures. Following representations made to CLG, it is also proposed to look at whether the regulations are sufficiently flexible to deal with scheme employers in the event that they are merged, become new entities, are wound up, or, perhaps, in extremis, go into administration. CLG proposes an informal consultation with stakeholders to start this process and intends to issue a letter, setting out the issues brought to CLG's attention, seeking the views of practitioners, and this letter will be issued as early as is possible.

More specifically, in order to rectify any problems caused by delays in admitted body status being obtained, an additional paragraph is proposed along the following lines : "An admission agreement may provide that a period of employment by the admission body before the date of the agreement counts as membership of the Scheme."

Regulation 8

A foundation school or a foundation special school should not be in a position to deny their staff access to the LGPS. It is therefore proposed that the words "and the local education authority has, with the consent of his employer," be changed to "and the local education authority has with, in the case of (a) and (c), the consent of his employer".

Regulation 10

In this regulation on rent officers, the reference to the Secretary of State needs to be replaced by one to the Commissioners.

Regulation 13(5)

This regulation does not specify to whom, or by when, an application to backdate membership has to be made. The option to do so should not be open-ended, otherwise a member could, say, decide just before retirement, to opt to backdate membership for a period that occurred, say, 20 years previously. It is therefore proposed that the words "if he applies to be so" should therefore be amended along the lines of "if he applies to that body to be so" and, at the end of paragraph (5) that words along the following lines be added "The application must be made within 3 months of becoming eligible to join the Scheme, or such longer period as the employer may allow."

Regulation 16

Following comments received in response to our letter of 28 November 2008, it is proposed that newly re-employed deferred members should be permitted to aggregate any of their previous periods of membership, not just the immediately previous one, provided that they elect to do so in the first 12 months of their new period of membership.

Regulation 17(1)(a)

This regulation on aggregation of membership does not cover those members who cease to be an active member having become entitled to a deferred benefit but who do not have three months membership. It is therefore proposed that Regulation 17(1)(a) should be amended to read “ceases to be an active member in one employment (“the first employment”) in respect of which he has an entitlement to benefits by virtue of regulation 5 of the Benefits Regulations.”

Regulation 26

An addition is proposed for this Regulation on AVCs and SCAVCs, with the insertion of “29,” between “19,” and “30” in paragraph (1)(a)(ii).

In paragraph (2) it is proposed to insert “or (b)” after “(1)(a)(i)”; to delete paragraph (7); and in paragraph (8) to delete “or with paragraph (7)(b)”. It is also proposed to amend paragraph (3) along the following lines : “The permissible ways are –
a) to subscribe to a registered pension scheme (other than the Scheme), but only if making a transfer under Part 9 [of his other LGPS rights]
b) to subscribe to the AVC [or SCAVC] scheme operated by his new administering authority where regulation 86(1) and (2) apply
c) to purchase an appropriate policy from one or more insurance companies (within the meaning of section 275 of the finance Act 2004)”

Regulation 39

It is proposed that it is made clear in the current Regulations that the position which pertained under the 1997 Regulations with regard to Funds’ powers to be able to charge employers, who no longer have any LGPS members, for pensions increase costs remains unchanged so that unfunded PI liabilities post-April 2008 can also be re-charged.

Regulation 47(1)

It would not seem to be appropriate for a member who had been in more than one employments to be entitled to a refund under Regulation 46 if he was continuing in one of those employments. It is therefore proposed that a further exclusion is added – if “(d) he continues in a concurrent employment in which he is an active member”.

Regulation 51 (3)(b)

In order to be consistent with 51(1) it is proposed that the words “the Transitional Regulations or” should be amended to “the Transitional Regulations, the Earlier Regulations or”.

Regulation 58(9)

It is suggested that a more appropriate reference to the appeal process would be to 63(2) rather than 63(1).

Regulation 74(3)

It is proposed that ARCs should be removed from the scope of the forfeiture provisions.

Regulation 87

This regulation only covers the position where a variable-time member transfers to another variable-time employment. An additional regulation is needed to cover the position where a variable-time member transfers to a full or part-time employment, along the lines of Regulation 82(2) of the LGPS (Administration) (Scotland) Regulations 2008.

Schedule 2

Academy Trusts

An Academy within the meaning of section 482 of the Education Act 1996 or by virtue of section 67 of the Education Act 2002 (conversion of city academies into Academies) is listed as a scheme employer in Schedule 2 of the Administration Regulations. There is some doubt as to whether an Academy Trust set up under the Education Act 1996 or subsequent legislation would, in fact, be covered by paragraph 21 of Schedule 2. It was not the intention to exclude Academy Trusts from eligibility for the LGPS and so to ensure that there is no doubt about an Academy Trust's status within the LGPS, it is proposed that these organisations are included in the definition of paragraph 21 of Schedule 2. This will enable non-teaching staff employed to do work for the Trust rather than at a specific academy, to be covered by the Scheme.

City Colleges

Schools known as a city technology college or city college for the technology of the arts can, by agreement, become an Academy. There is some doubt as to whether such a body can be regarded as a scheme employer in the LGPS regulations and it is, therefore, proposed to add these bodies to those described as an Academy in paragraph 21 Part 1 Schedule 2 of the Administration Regulations.

Scheme employers

The Greater London Authority can be treated as a LGPS employer by virtue of paragraph 2 Part 2 of Schedule 2 of the Administration Regulations. It is considered

that the GLA should be listed as a scheme employer and it is proposed that the Greater London Assembly will be added to those bodies in Part 1 of Schedule 2.

Schedule 4

In paragraph 2 it is proposed to amend “paragraph 3 of Part 2 of the Table in Schedule 5” to “paragraph 3 of the Table in part 2 of Schedule 5”. This will mirror the method of referencing used within paragraph 7 of the Table in Part 1 of Schedule 4.

It is also proposed to delete the word “active” in notes (1), (2) and (3) at the bottom of the Table in Part 1 of Schedule 4, as those who are active at 1st April 2008 will eventually become deferred or pensioner members whilst still belonging to the relevant Funds.

Local Government Pension Scheme (Transitional Provisions) Regulations 2008 **“The Transitional Regulations”**

Regulation 3(2)

It is proposed that the provision for benefits to be payable immediately is augmented by a reference to Regulation 31 of the Benefits Regulations on early payment of pension due to ill-health.

Regulation 10(1)(b)

This regulation should be corrected by replacing the reference to appropriate administering authority by one to the employing authority.

Regulation 14

It is proposed to amend the pension sharing on divorce provisions so as to allow for early release of pension credit rights from age 60 with an appropriate scheme standard actuarial reduction (ie using the GAD guidance for Scheme members with no “rule of 85” protection retiring at age 60).

Schedule 1

A minor correction should be made by replacing 108(A) with 108A.

Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, “The Benefits Regulations”

Regulation 1(4)

To be consistent with the definition of “the Scheme” in Transitional Provisions Regulations and the Administration Regulations, it is proposed that the definition of “the Scheme” in the Benefits Regulations be amended to “means the occupational pension scheme constituted by these Regulations, the Administration Regulations and the Transitional Regulations”.

Regulation 2

The wording of this regulation says that an active member of the Scheme on 31st March 2008 must remain a member for so long as he remains eligible to be a member. An employee who opts out of membership of the Scheme under regulation 14 of the Administration Regulations is, technically, still “in employment which makes him eligible to be” an active member of the Scheme. The act of opting out does not stop the person from being eligible for membership. Thus, regulation 2(2) would apparently suggest that an active member of the 1997 Scheme has to remain an active member until such time as he / she ceases employment or attains age 75 i.e. the person cannot opt out of membership. This, of course, contradicts regulation 14 of the Administration Regulations. To overcome this anomaly, it is proposed that regulation 2(2) ought to start with the words “Subject to regulation 14 of the Administration Regulations”.

Regulation 3(3)

In order to aid payroll administration, it is proposed that this regulation be amended to say “On the first day of the pay period in which 1st April 2009 falls, and on the first day of the pay period in which each subsequent 1st April falls.”

Regulation 3(3A)

It is considered that this amendment should itself be amended to make it of greater practical use. Firstly, it is proposed that the words “if they were pensions” were amended to read “if they were pensions beginning on 1st April 2008”. Secondly, the regulation says the pay ranges should be increased by “the amount by which the figures would be increased with effect from 6th April of the relevant year if they were pensions to which the Pensions (Increase) Act 1971 applied.” As Pensions Increases rarely take effect exactly on a 6th April it is proposed that the regulation be amended to read “with effect from the first Monday falling on or after 6th April of the relevant year”).

Regulation 3(9)

It is proposed that this Regulation be amended so as to preclude the possibility of active members making contributions from the day before their 75th birthday onward. This would make the Regulation consistent with those on the latest possible point for the payment of retirement benefits.

Regulation 3(11)

It is proposed to delete this paragraph as there would appear to be no reason why the administering authority should have the role of determining the interval at which a member’s contributions should be paid – the administering authority can only determine the intervals at which the employer must then pay such deductions to themselves.

Regulation 7(3)

This Regulation should commence with words along the lines of “Other than for the purposes of regulation 5(1)(a)” as it is necessary to use the calendar length of membership, not the pro-rata part-time period, to determine whether or not a member has total membership of at least three months in order to be entitled to a benefit.

Regulation 11

It is suggested that this Regulation on the effect of fees on final pay could be clarified by two minor amendments. If the membership period is less than 3 years then the fees received should be divided, not by three, but by the number of years and days constituting the membership period. Practitioners may find it helpful if this was made clear in paragraph (1)(a) by adding after “the three consecutive years” the words “(or his total membership period if less)”. Secondly, Paragraph (2) should commence with the words “But, for the purposes of paragraph (1)(a),”. This would make it completely clear that where paragraph (2) applies, the member’s final pay is calculated as the sum of paragraphs (1)(a) and (1)(b).

Regulation 14(1)

Purely as an aid to clarity, it is proposed that the phrase “active member” rather than simply “member” is used.

Regulation 15(1)

To ensure consistency across the Regulations, paragraph (1) should commence “subject to Regulation 26 of the Administration Regulations”.

Regulation 16(1)

Members who remain in employment after age 65 are entitled to an actuarial increase under regulation 17(2). Members who leave before age 65 with a deferred pension and who, by virtue of regulation 50(2) of the Administration Regulations, defer payment of their benefits beyond age 65, are entitled to an actuarial increase to recompense them for the delayed payment of their benefits by virtue of regulation 29(5) of the Benefits Regulations. However, members who leave at 65 and choose to defer payment of their benefits beyond age 65 in accordance with regulation 50(6) of the Administration Regulations are not entitled to an actuarial increase to recompense them for the delayed payment of their benefits. This is not intended but, unfortunately, neither of the above regulations covers them and there is no provision in regulation 16 to provide for an actuarial increase. Nonetheless, paragraph 1.3 of the GAD late retirement guidance says “For the avoidance of doubt, Communities and Local Government’s (CLG’s) policy intention is that similar increases should also be applied in respect of members who leave service with immediate entitlement to benefits under regulation 16 but who choose not to receive payment immediately.” This amendment should, therefore, reflect what seems to be the usual practice on such actuarial increases.

Regulation 17

The Regulation should be amended to cover those who join the Scheme after normal retirement date, as well as those who remain in employment. Also, to ensure consistency, paragraph (3) should commence “subject to Regulation 50(6) of the Administration Regulations”.

Regulation 18

There are two proposals to aid the flexible retirement provisions. In order to ensure that members taking flexible retirement receive any due actuarial increases, it is proposed that a further paragraph be added after (3) to the effect that “If the payment of benefits referred to in paragraph (1) takes effect after the member’s 65th birthday, the benefits shall be increased in accordance with guidance issued by the Government Actuary”. Also, as a member can take flexible retirement on more than one occasion, it is proposed that Regulation 18 itself should be included in the list of Regulations quoted in paragraph (5).

Regulation 19

It is proposed that this provision on early leavers is extended so that it covers those who are dismissed on or before 31 March 2010 rather than only before that date. This amendment will be backdated as appropriate.

Regulation 21

Paragraph (5) should be made more explicit by referring to “Regulation 18(2)” rather than “Regulation 18”.

Regulations 24(2), 33(2), and 36(2)

Regulations 24(2), 33(2) and 36(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 need to be amended to commence with the words “Subject to regulations 20(4)(a) and 20A of the 1997 Regulations, as saved by regulation 2 of and schedule 1 to, the Transitional Regulations and regulations 14, 14A or 15, and regulations 23 to 26 of the Administration Regulations,”. This is to ensure that the benefits under regulations 24(2), 33(2) and 36(2) take into account any Pension Debit suffered by the member and any increase in survivor benefits purchased by the member.

Regulation 27(2) (also 24, 33 & 36)

These Regulations need to be made more specific so that it is made clear that survivor benefit payments should begin on the day following death.

Regulation 29(5)

It is proposed to delete the misleading phrase “or any part of it” as there is no provision for an early leaver to choose to take only part of their deferred benefits at age 65 – ie in effect, to flexibly retire.

Regulation 30

It is proposed to amend paragraph 6 so that members who cease to be active members have to make an election *on or before* 31 March 2010 if they wish to take advantage of the possibility of retiring at age 50 onward. It is also proposed to similarly amend the *1997 Regulations* so that members who ceased to be active members under those Regulations have to make an election on or before 31 March 2010 if they wish to take advantage of the possibility of retiring at age 50 onward - ie the 1997 Regulations would be amended so that it would be as if Regulation 30(6) of the Benefits Regulations applied to such members.

To be consistent with regulations 18(4A) and 18(4B), two more paragraphs along the following lines are proposed:

(7) Paragraph (6) only applies to a member whose active membership has been continuous with that same employer throughout that period.

(8) For the purposes of paragraph (7), the active membership of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply shall be treated as being continuous with the transferee employer.

Regulation 35(3)

This Regulation needs to be amended to provide that any abatement reduction at the date of death due to re-employment should be ignored when calculating 10 times the pension in payment. Also, the Regulation needs to cover the reduction of the 10 year calculation not just by the amount of any retirement pension paid to the deceased member but also by the amount that would have been paid to him / her if abatement had not applied. For example, to take a case where a pensioner dies after 6 years on pension but for 5 of those years the pensioner had been re-employed and the pension had been abated to £nil. The death grant should be 10 x pension less 1 year of pension paid less 5 years of notional pension paid leaving a death grant of 4 years pension (not 10 years pension less 1 year of pension paid leaving a death grant of 9 years pension). These two points can be overcome by amending regulation 35(3) along the lines of the following : "The death grant is his pension in payment multiplied by 10, ignoring any reduction due to abatement under regulation 71 of the Administration Regulations, but the amount so calculated is reduced by the amounts of any retirement pension paid to him or that would have been paid to him had his pension not at any time been subject to abatement under regulation 71 of the Administration Regulations." This Regulation also needs to be made consistent with Regulation 32(4).

8. Your comments should be sent by 18 March 2010 to Philip Perry, Workforce, Pay & Pensions division, Department for Communities & Local Government, Zone 5/G6, Eland House, Bressenden Place, London SW1E 5DU. Electronic responses can be sent to philip.perry@communities.gsi.gov.uk

Yours sincerely

Philip Perry

PROPOSALS FOR REGULATORY CHANGES TO THE ILL HEALTH RETIREMENT REGIME TO MAKE CERTAIN PROVISIONS MORE CLEAR OR TO IMPROVE THE FRAMEWORK

Early retirement – ill health, and related matters

From April 2008, the new look LGPS introduced a three tier of ill health retirement benefits better targeting a greater amount of benefits to those not likely, or less likely, to work again before the schemes normal retirement age of 65. For those permanently incapable of their current local authority employment but who are judged capable of obtaining gainful employment again within three years of leaving that local authority employment, a reviewable benefit was introduced to recognise that they were judged able to obtain work soon.

There is no change to this policy intention and the practical application of the new ill health regime is being assessed and evaluated by the Ill Health Monitoring Group. The Group and other practitioners, have identified some changes that would make the new regime work better and have recommended the introduction of some new measures and these are consistent with the principles of the new ill health regime.

The following are proposed:-

1. Make a change to make it clear that Benefits Regulations 20(7) relates to tier 3 benefits only ie a review only applies to the 3rd tier.
2. Provide that a review is not required if the member with 3rd tier benefits attains age 65 within 18 months – ie amend words in Benefits Regulations 20(7)(a) to: 'Once benefits under paragraph (4) have been in payment for 18 months, and provided the member has not attained normal retirement age.'
3. Provide that 3rd tier benefits do not stop under Benefits Regulations 20(8)(b) if the member attains age 65 within the 3 year period.
4. In Benefits Regulations 20(4) amend the words "within three years of leaving his employment" to "within three years of leaving his employment or normal retirement age, if this is the earlier".
5. Put it beyond doubt, by amending the Administration Regulations 56(1), that:
 - a) at a 3rd tier review, the same IRMP who made the original 3rd tier decision may reassess the member who has a 3rd tier benefit, and
 - b) when making an assessment under Benefits Regulations 31, an IOHP may sign the certificate even if that IOHP has previously been involved in the case.
6. Under Benefits Regulations 31, benefits are payable immediately, whereas Administration Regulations 50(4) says that benefits are payable from the date the member became permanently incapable. It is the intention that benefits should be payable immediately and it is proposed that Administration Regulations 50 (4) is amended so that benefits are payable from the date of the application for early release of retirement benefits on the grounds of ill health.

7. Add the word “employing” between the words “an authority” in Benefits Regulations 20(5) for clarity.

8. Make a change to Benefits Regulations 31 to make it consistent with Benefits Regulations 20(5), by replacing the words in Benefits Regulations 31 with “Before determining whether to agree to a request under paragraph (1), an employing authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he has a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age, or for at least three years, whichever is the sooner.”

9. Make a regulatory provision so that the protection, for a member who reduces their hours of employment as a result of a medical condition which results in early release of ill health benefits, also applies for the calculation of survivor and death benefits. The aim is to provide that no account shall be taken of the reduction in hours that is attributable to the condition that results in the death of the member when considering survivor benefits.

10. It is not the intention that the age 45 protection applies where a member leaves their employment with a LGPS employer with deferred benefits, returns to local government employment but that employment is then terminated on the grounds of ill health. Clarification will be made to ensure that Benefits Regulations 20 (13) applies to a person who was an active member before 1st April 2008, who has had continuous membership in respect of which their employment is terminated on the grounds of ill health, and who has not received any benefits as a result of that membership.

11. There is some concern that a decision to uplift a 3rd tier to a 2nd tier level of benefits may incur an unauthorised charge on the relevant administering authority. Concern was also expressed that, as drafted, the regulations allow a member who has received 3rd tier retirement benefits, to ask to have 2nd tier retirement benefits at any time, even when 3rd tier benefits had stopped, and a request could be made many years after the first determination. A better approach would be to re-examine the 3rd tier award to see if an uplifted 2nd tier award should have been made at outset. As such, an amendment is proposed to permit a member who has been awarded a 3rd tier retirement benefit, to appeal against a decision to award that 3rd tier benefit, for a period up to 3 years and 6 months after the date of the determination.

12. As IDRP is now to be extended for 3rd tier beneficiaries and that appeal might result in the award of a higher level of ill health retirement benefits, it is considered that Benefits Regulations 20 (11) is no longer required and will be removed.

13. It is not the intention that a member receives more than the equivalent of one award of 1st tier benefits as the member had not been expected to return to gainful employment when originally retired on the grounds of ill health. In the event that a second ill health retirement award is made, there is to be a new provision which

ensures that any enhancement for prospective service does not exceed what the member would have received had he been awarded a tier 1 ill health retirement originally.

14. A member whose 3rd tier benefits have ceased and who becomes a pensioner member with deferred benefits, is not currently able to access those deferred benefits before age 65. It is considered that this type of member should have the same opportunities to access deferred benefits at age 60 as other deferred members. It is proposed, therefore, that there is a new provision to permit a member, whose third tier benefits have been paid and ceased, to access actuarially reduced retirement benefits between age 60 and normal retirement age (65). The actuarial reduction would be applied in accordance with GAD guidance unless the member is entitled to unreduced benefits for other reasons.

The consultation is addressed to:

The Chief Executive of:

- County Councils (England)
- District Councils (England)
- Metropolitan Borough Councils (England)
- Unitary Councils (England)
- County and County Borough Councils in Wales
- London Borough Councils
- South Yorkshire Pension Authority
- Tameside Metropolitan Borough Council
- Wirral Metropolitan Borough Council
- Bradford Metropolitan City Council
- South Tyneside Metropolitan Borough Council
- Wolverhampton Metropolitan Borough Council
- London Pension Fund Authority
- Environment Agency

Town Clerk, City of London Corporation
Clerk, South Yorkshire PTA
Clerk, West Midlands PTA

Fire and Rescue Authorities in England and Wales
Police Authorities in England and Wales
Audit Commission
National Probation Service for England and Wales

Local Government Association (LGA)

Employers' Organisation
LGPC

ALACE
PPMA
SOLACE
CIPFA
ALAMA

Association of Colleges
Association of Consulting Actuaries
Association of District Treasurers
Society of County Treasurers

Society of Welsh Treasurers
Society of Metropolitan Treasurers
Society of London Treasurers
Association of Educational Psychologists

NALC
Society of Local Council Clerks

Trades Union Congress	UCATT
UNISON	GMB
NAEIA	NAPO
AMICUS	TGWU

Equal Opportunities Commission