

Addressees as below

28 November 2008

Dear Colleague,

**DRAFT LOCAL GOVERNMENT PENSION SCHEME  
(MISCELLANEOUS) REGULATIONS 2009**

1. I attach, with Ministers' agreement, draft proposals for further amendments to the Local Government Pension Scheme (LGPS) Regulations as set out below. It is intended that these Regulations would take effect either from 1 April 2008 or 1 April 2009 as indicated in the draft SI.

2. Your comments are invited by 20 February 2009. 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, as follows :

- one regulation amends the Scheme's old 1997 Regulations
- seven regulations amend the current Benefits Regulations
- one regulation amends the Transitional Regulations
- ten regulations amend the current Administration Regulations

There are a further five regulations which update the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, bringing them up to date by replacing references to the old 1997 Regulations with references to the Benefits Regulations or the Administration Regulations as appropriate.

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, to revise the Scheme consequent to taxation changes and to introduce some new provisions, as described below.

5. The more significant amendments are as follows :

Regulation 2 makes an amendment to the LGPS Regulations 1997 necessitated by the Valuation Office Agency assuming responsibility for Rent Officers' support staff, enabling members to remain in the LGPS.

Regulations 3 to 7 amend the "Discretionary Compensation Regulations" and more specifically tidy up the cross referenced definitions in those Regulations;

Regulations 8-15 amend the LGPS Benefit Regulations, specifically as follows:

Regulations 8-9 are technical provisions;

Regulation 10 introduces a provision specifically for a protected group employed by the Environment Agency, and consequential changes to regulation 4 of the Benefits Regulations;

Regulation 11 adjusts the circumstances in which a member may choose to have the average of any three consecutive years' pensionable pay within their final ten used as the basis for their pension, rather than using the final year's pay;

Regulation 12 allows authorities to convert pensioner members' "compensatory added years" into "augmented service". This amendment should promote effective administration, with the value of payments received by the member remaining unaltered;

Currently only membership accrued after 5 April 1988 is taken into account in calculating survivor benefits for civil partners or nominated cohabiting partners. Regulations 13 and 20 - 22 establish the framework for members to make additional payments so that periods of their pre-1988 service are counted as regards survivor benefits for such partners, further promoting equality in this area;

Regulation 14 extends the range of individuals to whom a child's pension can be paid;

Regulation 15 enables the Environment Agency to discharge their obligations to pay pensions administering authorities in respect of certain pensions increase costs by making appropriate lump sum payments. The value of payments received by members would be unaffected.

Regulation 16 amends the Transitional Regulations to simplify death grant due on the death of deferred members by stating that it should be a sum equal to their retirement pension multiplied by five. This amendment would confirm the practice which has already been adopted by a number of authorities.

Regulations 17 to 26 amend the Administration Regulations as follows:

Regulations 17 and 18 are technical changes;

Regulation 19, which amends regulation 12, enables certain former staff of the Commission for Social Care Inspection to remain members of the LGPS when they transfer to the Care Quality Commission. This measure is being proposed with the

agreement of the Commission. The proposed new regulation 12(6)(d) is likely to be withdrawn before these Regulations are finalised as it will become unnecessary. A new Regulation 16 (7) of the LGPS (Administration) Regulations 2008, is to be contained in the LGPS (Administration) (Amendment) Regulations 2009 as consultation responses for provisions in those draft Regulations supported a new measure to provide that regulation 16 (6) does not apply to a member whose employment is TUPE transferred, or is treated as if it were being TUPE transferred, to another employer participating in the Scheme. If Ministers agree, the intention is that the LGPS (Administration) (Amendment) Regulations 2009 will be made and laid in January 2009 and Regulation 16 (7) would come into effect retrospectively from June 2008.

Regulation 20 makes a technical change to the definition of payment period;

Regulations 21-22 introduce consequential changes to provisions allowing members to buy extra pension linked to survivor benefits and discontinuance of payments where a member dies or retires on ill health grounds;

Regulation 23 makes it clear that “other money purchase schemes” may be paid by a member into their additional voluntary contribution arrangements;

Regulation 24 recasts the provision requiring employer payments following exercise of their discretion to augment membership or award extra pension;

Regulation 25 enables the Environment Agency to alter the arrangements for dealing with payments to members which have arisen from water industry reorganisation and

Regulation 26 states that the guaranteed minimum pension is not to be put into payment when a member moves between LGPS-related employments in the first five years after they have attained the state pensionable age.

6. There is one further issue on which we would welcome comments during the consultation period and that concerns the aggregation of LGPS membership. The most immediately relevant Regulations in this area are Regulation 16 of the Administration Regulations and Regulation 4 of the Transitional Regulations. Under Regulation 16 deferred LGPS members may, within the first 12 months of any new local government employment, choose to aggregate only their immediately previous period of membership. However, Regulation 4 omits this stipulation, permitting deferred members simply to aggregate membership of the “1997 Scheme” within 12 months of resuming active membership. The current Regulations do not deal with deferred members who have deferred benefits under the 1995 Regulations or under any earlier LGPS Regulations, nor do they deal with individuals who were entitled to a refund under the 1997 Regulations and who, on resuming local government employment on 1 April 2008 or later, wish to use their “frozen refund” to buy LGPS membership.

7. We are aware that some authorities are allowing members to aggregate any of their previous periods of service, not just the one that was immediately previous. It could be argued that this policy supports equality, as women seem to be more likely

to choose to move into lower-paid employment at some stage of their career. We therefore welcome comments on :

- whether the regulations should be amended in the interests of equality
- whether they need to be amended to improve the overall clarity of the provisions on aggregation
- any other aspects of this issue.

8. Your comments should be sent by 20 February 2009 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](mailto:philip.perry@communities.gsi.gov.uk)

Yours sincerely

**Philip Perry**

**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  
New Towns Pension Fund

Local Government Association (LGA)

Employers' Organisation  
LGPC

ALACE  
PPMA  
SOLACE  
CIPFA

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  
Society of Chief Personnel Officers  
Association of Educational Psychologists

NALC  
Society of Local Council Clerks

Trades Union Congress	UCATT
UNISON	GMB
NAEIAC	NAPO
AMICUS	TGWU

Equality and Human Rights Commission