

Addressees as below

5 December 2011

Dear Colleague,

**DRAFT LOCAL GOVERNMENT PENSION SCHEME
(MISCELLANEOUS) REGULATIONS 2012**

1. I attach, with Ministers' agreement, draft proposals for further amendments to the Local Government Pension Scheme (LGPS) Regulations as set out below. These Regulations would take effect as soon as possible after the consultation or as indicated in the draft SI.

2. This consultation exercise marks the start of the formal statutory consultation process for proposed amendments to the LGPS Regulations, as required by section 7(5) of the Superannuation Act 1972.

3. Your comments are invited by 27 February 2012. Business partners who wish to discuss the proposals are invited to get in touch without delay to allow discussions to take place within the consultation period.

Topic of this consultation:	This consultation covers a wide range of mainly unrelated proposals for amendments to the Local Government Pension Scheme (LGPS) Regulations. However, draft Regulations 10, 13, 17, 18, 28, 33 and 34 of the accompanying draft statutory instrument all relate, in whole or in part, to ill-health provisions, as explained in this letter.
Scope of this consultation:	The department welcomes, in particular, comments on : - whether the wording of the draft Regulations achieves the policy intention - whether they are properly consistent with existing Regulations - coming into force dates.
Geographical scope:	England and Wales
Impact Assessment:	There is no Impact Assessment associated with this consultation.

Basic Information

To:	All LGPS business partners.
Body/bodies responsible for the	Workforce, Pay and Pensions Division Communities and Local Government

consultation:	
Duration:	5 December 2011 – 27 February 2012
Enquiries:	Philip Perry Department for Communities and Local Government Zone 5/G6 Eland House Bressenden Place London SW1E 5DU Phone : 0303 44 42174 E-mail : philip.perry@communities.gsi.gov.uk
How to respond:	Preferably by e-mail, otherwise by post – addresses as above
Additional ways to become involved:	The consultation will be available for viewing on the LGPS website at http://www.clg.heywood.co.uk/ As the consultation largely concerns technical issues, this will be primarily a written exercise. However, Workforce, Pay & Pensions division will consider holding meetings if it transpires that particular issues need to be discussed in detail.
After the consultation:	A summary of the outcome of the consultation will be published at http://www.clg.heywood.co.uk/
Compliance with the Code of Practice on Consultation:	The consultation complies with the Code.

Background

Getting to this stage:	The current regulatory framework for the LGPS is laid down in the following: LGPS (Benefits, Membership & Contributions) Regulations 2007 LGPS (Administration) Regulations 2008 LGPS (Transitional Provisions) Regulations 2008 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 All of these sets of Regulations have been subject to periodic amendment.
Previous engagement:	A number of proposals were made in discussions with the Local Government Employers. This resulted in the amendments at draft Regulations 7, 10, 14, 24, 25, 26, 27 and 34. Some of the provisions being implemented in the SI relate to primary legislation debated in Parliament as follows : Equalities Act 2010 Finance Act 2011 Police Reform & Social Responsibility Act 2011 The Localism Act 2011

4. These Miscellaneous Regulations will amend the existing Regulations, as follows:

- 11 regulations amend the Benefits Regulations
- 3 regulations amend the Transitional Regulations
- 24 regulations amend the current Administration Regulations

There is a further amendment which updates the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (“the Compensation Regulations”), to include in the definition of

“employing authority” the list of schools set down at Regulation 8(1) of the Administration Regulations.

5. Amendments are necessary to make some corrections and cross-references, to clarify detailed aspects of the Scheme’s extant provisions, to provide new definitions, to take into account changes to the taxation rules and to introduce some new provisions, as described below.

6. The more significant amendments are as follows :

Regulations 4 – 15 amend the LGPS Benefits Regulations, specifically as follows:

Regulation 6 amends Benefits Regulation 8 to bring it into line with the obligation under the revisions to the tax regime introduced by the Finance Act 2011 to use earnings relating to the pension input period in calculating the Annual Tax Allowance, and clarify what is intended by the term “that employment”, in Regulation 8 (1), in relation to concurrent periods of membership.

Regulation 7 amends Regulation 14A of the Benefits Regulations, making renewed provision for the purchase of additional survivor benefit (ASB) by members. Under the LGPS (Miscellaneous) Regulations 2009, certain members were given the right to elect to pay additional contributions in respect of any period of membership occurring prior to 6th April 1988, in order to be credited with additional survivor benefits in respect of a surviving nominated cohabiting partner. Such elections had to be made by 31 March 2011. As that deadline has now passed, the current amendment provides for the ongoing purchase of ASB, with the new stipulation that elections to purchase must be made within 12 months of the nomination of a co-habiting partner.

Regulation 8 amending Benefits Regulation 18 makes it clear that members taking flexible retirement are not obliged to take any of their post – 1 April 2008 benefits. They do have to take all of their benefits accrued under earlier sets of Regulations.

Regulation 9 amends Regulation 26 of the Benefits Regulations which provides the meaning of “eligible child”. The inclusion of dependent children who are disabled is currently made by reference to the Disability Discrimination Act 1995. This Act was revoked in its entirety by Part 1 of Schedule 27 to the Equality Act 2010. The amendment therefore brings Regulation 26 up to date by substituting a reference to the Equality Act 2010.

Regulations 10 and 14, amending respectively Benefits Regulation 28 on children’s pensions for deceased active members and 33 on survivor benefits for deferred members, make it clear that the calculation of these benefits should be subjected to the impact of various other provisions – for example those on additional regular contributions and additional voluntary contributions – and with no regard to a reduction to part-time earnings if it is proven that this was linked with the condition that caused the member’s death. The changes ensure consistency with survivor benefits for active members, which were provided for in the Local Government Pension Scheme (Miscellaneous) Regulations 2010.

Regulations 11 and 12 amending respectively Benefits Regulations 30 and 30A deal with a particular problem arising when an employing authority has ceased to be a Scheme employer. A deferred member or pensioner member with deferred benefits who wishes to draw their pension between the ages of 55 and 60 requires the consent of their employer. The amendment makes it clear that where this is not possible because the former Scheme employer no longer exists, the question of consent would be at the discretion of the appropriate administering authority. **Regulation 5**, amending Benefits Regulation 1, is consequential to these amendments, providing a necessary definition of "Scheme employer".

Regulation 15 amends Benefits Regulation 39 on trivial commutation. This provision provides for certain members to have the right to have their accrued rights commuted to a lump sum, which also assists administering authorities by reducing ongoing administration of small amounts of benefit payments. Benefits Regulation 39 sets down two alternative provisions which need to be satisfied for trivial commutation to take place and the amendment adds a third which is facilitated by Section 164(1)(f) of the Finance Act 2004.

Regulations 16 to 19 amend the Transitional Regulations as follows:

Regulation 19 proposes the removal of two old provisions which are either no longer required or their intention can more accurately be covered by guidance issued by the Secretary of State having sought advice from the Government Actuary's Department.

Regulations 20 to 44 amend the Administration Regulations as follows:

Regulation 21 amends Regulation 6 of the Administration Regulations relating to transferee admission bodies to prevent administering authorities entering into admission agreements covering more than one contract with a contractor which is, or is about to be, a transferee admission body. It is important that separate admission agreements are entered into because the start and end dates will be different for each contract and there may be no obligation on the contractor to make a cessation payment where the admission agreement continues by virtue of another contract.

Regulation 22 amends Administration Regulation 7 by making it a mandatory requirement to have an indemnity or bond for all transferee admission bodies and now community admission bodies. This replaces the existing requirement on the letting authority (in the case of an Administration Regulation 6 (2) (a) body) or the transferee admission body to carry out an assessment of the level of risk of premature termination of the provision of the service should the body get in financial difficulties.

A new provision is added making it a requirement for a transferee admission body or a community admission body to provide some form of parent guarantor should the body be unable to provide an indemnity or bond in the event that the body cannot meet its liabilities.

'Person' referred to in Regulation 7 (4) (a) means a body of persons corporate or unincorporated. 'Secretary of State' in 7 (4) (c) means any Secretary of State of any Government Department, although in practice admission agreements are dealt with by DCLG Workforce Pay and Pension officials.

These new provisions seek to protect other employers in the fund and council tax payers in the event that an admitted body is wound up or falls into administration or faces other financial difficulties.

Regulation 7 (6) (existing Regulation 7(3)) makes it a requirement for administering authorities to inform the Secretary of State of information relating to the making of admission agreements. Not all administering authorities do this and therefore DCLG has an incomplete picture of how many admission agreements are in existence and who they relate to. On the basis that not all practitioners are submitting this data, we would like views on whether administering authorities would like this requirement to be removed from the regulations. Alternatively, the requirement to submit data could be replaced with one to send copies of admission agreements to the Secretary of State. Assuming that a requirement is retained, consultees may wish to comment on whether it should be strengthened by including a particular deadline for compliance.

Regulation 23 amending Administration Regulation 12 deals with eligibility to be a member of the Scheme. Regulation 12 states that in certain specified situations a person may be a member of the LGPS despite being eligible to be a member of the National Health Service Pension Scheme for England and Wales. One of those situations is if their entitlement to the NHS Scheme is by reason of employment arising through a prescribed arrangement under section 75 of the NHS Act 2006, a provision which covers only England. The amendment adds section 33 of the NHS (Wales) Act 2006 so that an employee in a health partnership arrangement in the principality can be eligible for the LGPS.

Regulation 24 amends Administration Regulation 18 on contributions during child-related leave. The amendment makes it clear that additional paternity leave should be treated in the same way as additional maternity or adoption leave. This achieves the objective of making the Regulations compliant with the Additional Paternity Leave Regulations 2010.

Regulations 25, 26 and 27 amend Administration Regulations 19, 20 and 21 dealing with absences respectively during reserve forces special leave, during trade disputes and “with permission”. The amendment provides that, when the member is thus absent Additional Survivor Benefit Contributions should be treated in a similar way as additional regular contributions and payments to increase total membership. This ensures consistency between the treatment of the three types of additional contribution.

Regulations 29 and 30 deal with Administration Regulation 30 and a new Regulation 30A on appropriate funds to allow movements of employers to occur between funds without threatening the stability of pension funds or the viability of employers where premature crystallisation of pension deficits requires an immediate cash payment. The regulation provides for an application to the Secretary of State to make a Direction as to the appropriate fund where an employer moves to a new location in a different geographical area (in circumstances not covered by a Secretary of State Direction already available in paragraphs (2) and (3) of Schedule 4); wishes to consolidate its participation in a number of different pension funds; or

merges with another body in a different geographical area. The Secretary of State would need to be assured that the parties agree to the proposed Direction and a Direction may prescribe certain requirements to ensure funds are protected.

Regulation 31 moves Administration Regulation 38(1) to Administration Regulation 32, as this Regulation deals with admission agreement funds.

Regulation 32 amends Administration Regulation 38 recasting it to make it explicit that an administering authority can call for a payment following a cessation valuation in respect of a scheme employer when it ceases to be an employer in the fund. There is a new facility to permit the obtaining of a revised rates and adjustment certificate covering current and former employees of the scheme employer that sets out the actuarial valuation.

32 (b) amends Administration Regulation 38 (2) to reinforce the requirement for transferee admission bodies and community admission bodies to notify the administering authority of any material change in the terms and conditions of employment or any matter that may affect its participation in the Scheme and makes a cross reference to paragraphs 6, 8 and 9 of Schedule 3.

32 (d) amends Administration Regulation 38(4) to permit, but not instruct, administering authorities, where there is evidence that an employer is to leave the LGPS at some point soon, the circumstances relating to a scheduled body have substantially altered, or there are other circumstances which are likely to result in the fund's valuation, to hold more frequent actuarial reviews of employer contribution rates and allows them to obtain a revised rates and adjustment certificate, including for any lower employer contributions to manage the gradual reduction of any pension deficit or surplus. This Regulation will provide administering authorities greater flexibility so they can adjust contributions within the triennial valuation period to manage the termination process rather than call for one cessation payment.

Regulation 34 amending Administration Regulation 66 stipulates that each authority must prepare, publish and keep under review a written statement on its policy regarding possible early payment of pension to deferred members. This achieves consistency with the current obligation to prepare such a statement for active members.

Regulations 35 and 36 dealing with Administration Regulation 68 and a new Regulation 68A introduce changes to the Scheme to ensure pension administering authorities comply with the new tax regime in terms of issuing annual benefit statements which will show whether or not members have exceeded the Annual Tax Allowance, and subsequent to that allows for funds to pay the tax charge following a request from a member. Where the tax charge is met by the fund any reduction in accrued rights will be carried out in line with guidance to be issued by the Secretary of State.

Regulation 37 amending Administration Regulation 83 is simply a correction, replacing the original incorrect reference to the "Pensions Schemes Act 2004" with one to "the Pensions Act 2004".

Regulations 38 and 39, amending Administration Regulation 86 and Schedule 1 respectively, reflect the merger which took place on 1 August 2010 between the Institute of Actuaries and the Faculty of Actuaries, replacing the references with the Institute and Faculty of Actuaries.

Regulation 40 updates the list of scheme employers (subject to the passage of the Localism Bill in some instances) :

in Part 1 of Schedule 2 – by adding Mayoral Development Corporations (which will include the Olympic Development Corporation); replacing police authorities with Police and Crime Commissioners and chief constables - reflecting the reforms being implemented by the Police Reform and Social Responsibility Act 2011; by omitting Firebuy Ltd and the Standards Board for England which have been abolished, and removing the National College for School Leadership which is to become an executive agency of the Department for Education in April 2012.

in Part 2 of Schedule 2 – by removing the London Development Authority which is being abolished from 1 April 2012; and removing the Metropolitan Police Authority whose non-uniformed staff are eligible for the Civil Service pension arrangements.

Regulation 41 amends Schedule 3 so that the matters to be contained in admission agreements apply to all categories of admission body.

Regulation 42 amends the Table in Schedule 4 to provide that where the proprietor of an Academy is responsible for one or more Academies in the same or different administering authority areas, the appropriate fund for an employee of an Academy is the administering authority within whose local government area that employee's Academy is located.

Regulation 43 provides that the amendments made by regulations 21, 22 and 41 do not affect admission agreements entered into before the date that these Regulations come into force.

Consultees will be aware of the requirements regarding **auto-enrolment** set down in the Pensions Act 2008 and its associated secondary legislation including the Employers' Duties (Implementation) Regulations 2010, that sets down the statutory regime that will govern enrolment onto the Scheme, with which employers must comply. **Regulation 44** is a stand alone transitional provision that bridges the way from the old Administration Regulation 13 ("AR 13") to the new AR 13 (dealing with the voluntary opt-in aspects of the new regime) with reference to the Employers' Duties Regulations. Ordinarily, amendments would take effect on the calendar date that the SI comes into force, or on another single calendar date specified in the commencement provisions. However, the complexity with amending AR 13 is that in effect its integrity needs to be preserved until such time as the last auto-enrolment staging date has passed. The various staging dates apply to employers at different times depending on the size of employer and the amendments need to bite in tandem with the staging dates. Therefore whilst for some employers AR 13 as amended would apply, for other employers, old AR 13 would continue to apply until such time as the relevant staging date is reached.

You may also wish to consider if there are any other LGPS Regulations which require amendment in order to be consistent with the new statutory regime. However, it should be noted that it is the Department's view that the Pensions Act 2008 / its associated Regulations would prevail over the LGPS Regulations without the need to make amendments to the latter.

Ill health retirements - for ease of reference, proposals for regulatory changes to the ill health retirement regime to make certain provisions clearer or to improve the framework are explained together below as follows:-

LGPS (Benefits, Membership and Contributions) Regulations 2007

Regulation 10 amends Benefit Regulation 28 to provide that in the case of a member in part time employment as a result of a condition that subsequently leads to the death of the member, no account is taken of any reduction in the member's pay if the condition led to or contributed to the member's death. A consequential amendment is made in Regulation 14 which amends Benefit Regulation 33 (Survivor benefits: deferred members). The intention of these amendments are to ensure consistency with Benefit Regulation 24 (Survivor benefits: active members) which was similarly amended in 2010.

Regulation 13 amends Benefit Regulation 31 to provide that a pensioner member with deferred benefits ie "a Benefit Regulation 20(9) member" can apply for normal retirement benefits for an unrelated medical condition at a future date. As drafted, Benefit Regulation 31 only relates to members who left employment without an entitlement to the immediate payment of retirement benefits and the amendment adds former tier 3 members (who left with an entitlement to retirement benefits albeit that they are subsequently discontinued) as there was no intention to preclude this class of member accessing retirement benefits this way.

This regulation also clarifies that where an employing authority ceases to exist, the question of consent (where a former member seeks early payment of their retirement benefits) rests with the relevant LGPS administering authority.

LGPS Transitional Regulations 2008

If agreed, Regulation 18 would amend Transitional Regulation 10 to provide that a pensioner member with deferred benefits ie "a Benefit Regulation 20(9) member" is accorded the same opportunity as a deferred member to receive an unreduced pension by virtue of Benefit Regulation 30A provided they meet the transitional "rule of 85" and that they were an active member of the 1997 Scheme. The case in favour of this approach can be matched by the view against such a provision as the pensioner member with deferred benefits will have received benefits from the scheme unlike a deferred member who had not received such benefits, putting the regulation 20 (9) pensioner member in a better position than a deferred member. DCLG would, therefore, like comments on whether such a provision is merited in these circumstances. To assist practitioners, a draft consequential amendment has been drafted and **Regulation 17, if adopted with Regulation 18**, would amend Transitional Regulation 3 to include Benefit Regulation 30A members.

LGPS (Administration) Regulations 2008

Regulation 28 amends Administration Regulation 26(1)(c) and refers to the payment of ill health benefits under LGPS Benefits Regulations 20(2)(b) and 20(3)(b) so that only those members who had been awarded first or second tier ill health benefits would be able to crystallise an in-house AVC. Additionally, this amendment enables pensioner member members with deferred benefits under Benefit Regulation 30A to use the accumulated value of their additional contributions to provide for any additional pension.

Regulation 33 amends Administration Regulation 56(1A) so that the independent registered medical practitioner (IRMP), who gave an opinion in respect of a tier 3 award, can also give a subsequent opinion when consideration is being given to uplift the member from a tier 3 to a tier 2 at, say, the review stage ie under Benefit Regulation 20(11)(a). The intention of this is to make it consistent with the amendment DCLG made last year where an IRMP who assessed the member for the award of tier 3 ill health retirement benefits is now permitted to also assess the member at the review stage under Benefit Regulation 20 (7).

This regulation also permits the same IRMP who has previously been involved in an ill health retirement case (ie for tier 3) to advise on the same case if a later request is made (by virtue of Benefit Regulation 31(4)) to issue a further certificate where a member seeks early payment of benefits for an unrelated medical condition.

Regulation 34 amends Administration Regulation 66(1) to clarify that a LGPS employer should have a written policy on the exercise of the discretion on the early payment of benefits before age 60 in respect of Benefits Regulation 30A (Choice of payment of pension: pensioner member with deferred benefits). This amendment makes it consistent with Benefits Regulation 30 which is already contained within Administration Regulation 66.

Pensionability of fees for referendums and elections

There were two separate referendums in 2011, a UK referendum on the alternative vote and a Welsh referendum on the powers of the National Assembly. The Parliamentary Voting System & Constituencies Act 2011 provides that local authorities' claims to the Electoral Commission for reimbursement in respect of Counting Officer's fees at the UK referendum may include any claims in respect of any increase in superannuation contributions. The Act and its associated guidance does not make the fees pensionable but does anticipate the possibility that they can be pensionable.

The Department has received representations that fees paid for Counting Officer duties at the two 2011 referendums and also for the elections of a Police and Crime Commissioner should be pensionable, akin to the arrangements which exist currently for the duties of Returning and Acting Returning Officers.

Consultees' views are now invited on those representations. In responding, consultees are invited to consider the implication of such a step given that further pensionability of items carries with it public expenditure consequences.

Consultation responses

7. Your comments should be sent by 27 February 2012 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

Use of Information

8. Information provided in responses to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

9. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

10. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

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
Metropolitan Police Authority

Local Government Group
Local Government Employers' Organisation
LGPC
Policy Review Group

Department for Education
Home Office
DWP
National Assembly for Wales
Scottish Public Pensions Agency
DOE NI
Young People's Learning Agency

CBI
BSA

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
Society of Chief Personnel Officers
Association of Educational Psychologists

NALC
Society of Local Council Clerks

Trades Union Congress	UCATT
UNISON	GMB
NAEIAC	NAPO
UNITE	

Equal Opportunities Commission
Electoral Commission