

Mr Philip Perry
Workforce Pay & Pensions Division
Department for Communities & Local
Government
Zone 5/G6, Eland House,
Bressenden Place,
London,
SW1E 5DU

Our Ref: PS/PM

Your Ref:

Direct Line: 0151 242 1390

Please ask for: Peter Mawdsley

Date: 16 February 2009

Dear Mr Perry,

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

I refer to your letter dated 28 November 2008 in which you invited comments on proposed amendments to the LGPS Regulations.

Please note that the following comments on technical issues are submitted on behalf of Wirral Council in its roles as a district council and as the Administering Authority of the Merseyside Pension Fund.

Regulation 11 - (changes to regulation 10) the circumstances when the average of any three consecutive years' pensionable pay within their final ten can be used - still requires further clarification to ensure that members who suffer a restriction or reduction in their pay rather than purely a reduction are protected. The change should be effective from 1 April 2008.

The regulation should also confirm to who an election under it should be made and in what timescale and what the position should be if a member dies in service without having made an election who would have benefited from the provision.

The Authority would support the proposal that regulation 10(1) be amended by the addition of a sub paragraph (d) to include a restriction or reduction in pay instigated by the employer, as a result of the removal of a contractual payment or benefit.

Sub paragraph 10 (2) should be amended to also exclude a reduction in pay which immediately follows a period in which the member's pay was temporarily increased. The treatment of a reduction which may be experienced during the run up to retirement in respect of variable performance related pay should be clarified.

The Authority would support the proposal made by the LGE in its recent paper on Final Pay to deal with the discrepancies that exist between Regulations 8 and 10 of the BMC Regulations 2007.

It would also be helpful if Regulation 4(2) of the BMC Regulations 2007 (meaning of pensionable pay) was amended to confirm whether or not lump sum payments to buy out a pensionable payment or benefit are pensionable or not.

Regulation 12B - (conversion of discretionary compensation into membership). The potential implications of such a decision in terms of possible the HMRC Lifetime Allowance test and for members in relation to Pensions Sharing on Divorce should be spelt out to all parties.

Regulations 13 - (election to pay additional pension: survivors benefits) Should reference to before 4th April 1988 be amended to before 6th April 1988?

The Authority would support the view that to only provide such an option to provide extra pension to members with a co-habiting partner or civil partner does not seem equitable and that on equality grounds the regulation should also allow a spouses pension to be increased in the same way.

It seems strange that the purchase of up to £5,000 of additional survivor's pension is completely unrelated to the actual length of the pre 6th April 1988 membership of the member in the Scheme. This contrasts with the past treatment of female scheme members who could only uprate their actual pre 6th April 1988 membership for widower's pension purposes.

Although new regulation 14A sets out the rules for paying ARCS for additional survivor's pension regulation 24(2) of the BMC Regulations 2007 should also set out how the benefits are payable.

Regulation 16 - death grants for deferred members and **Regulation 26** GMP's should both be effective from 1 April 2008.

Regulation 23 - (other money purchase schemes may be paid by a member into their additional voluntary contribution arrangement).

The change proposed is not in line with the latest agreed and stated intention of the DCLG that it should only be possible to transfer LGPS AVCs into the LGPS AVC arrangement and that other free standing AVCs and other money purchase arrangements should instead purchase membership under regulation 83 of the administration regulations.

Paragraph 6 of the covering letter referred to possible changes to **Regulation 16 and Transitional Regulation 4** - dealing with aggregation of LGPS membership.

Under regulation 16 deferred members may within the first 12 months of any new local government employment choose to aggregate only their immediately previous period of membership but (TP) Regulation 4 permits members simply to aggregate membership of the 1997 Scheme within 12 months of resuming active membership.

Some authorities are also allowing members to aggregate any of their previous periods of service, not just only the one that was immediately previous. Also although employers have discretion to extend the 12 months deadline to enable members to choose to aggregate the immediately previous deferred benefit many are not prepared to do so because of the cost implications.

It is noted that the current regulations do not deal with members who have deferred benefits under the 1995 or earlier regulations or those who have frozen refunds.

The Authority would support the proposal by the LGE that to avoid confusion and differential treatment, that the Transitional Provisions Regulations should provide that Regulation 16 of the Administration regulations should equally apply to those who left with deferred benefits under the 1997 Regulations or earlier regulations and who rejoin the LGPS on or after 1 April 2008. The Rules on aggregation should equally apply to aggregation of a frozen refund.

This is an area of great confusion with many Funds faced with employees who were transferred under best value type outsourcing contracts who although they were allowed to remain in the LGPS by virtue of admission agreements chose to retain separate deferred benefits as they had concerns about the security of their terms and conditions with the new private companies. A number of these staff have subsequently been transferred on one or more occasions to different contractors on re-tendering of contracts and opted to retain separate deferred benefits each time. A number of these staff now find themselves facing redundancy and the financial implications of their past decisions not to aggregate their earlier periods of membership resulting in no entitlement to draw pension benefits for large periods of their employment which remain deferred until age 60 or later. The Authority would support a wider debate on the whole area of aggregation of previous periods of membership and rules on transfers in, having regard to the current discussions about the future of the Club Arrangements.

If you require any further information or assistance please do not hesitate to contact me.

Yours sincerely

Deputy Head of Pension Fund