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Dear Colleague

LGPS Draft Regulations, Regulation 11

Without restricting the consultation process in any way, it might be helpful to share informally with you all some clarifications which have already been established through the close working established with stakeholders.

These are as follows:-

- Regulation 11, which was drafted with a view to respecting implications of age discrimination provisions has been redrafted. It now clarifies the intention that once an employer is able to satisfy a redundancy or efficiency departure is lawful or objectively justified then the pension follows – providing the age test has also been satisfied. It should now read as follows –

“Early leavers: inefficiency and redundancy

11—(1) Where—

- (a) a member is dismissed by reason of redundancy; or
- (b) his employing authority has decided that, on the grounds of business efficiency, it is in the employing authority’s interest that he should leave their employment; and
- (c) in either case, the member has attained the age of 55,

he is entitled to immediate payment of retirement pension without reduction.

(2) In the case of a person who is a member on 31st March 2008, and is dismissed under (1) before 31st March 2010, paragraph (1) applies as if “aged 50” were substituted for “aged 55”.”

- In Regulation 19(1) the definition of a co-habiting partner, which now appears as from January 2007 in the Teachers Pension Scheme, will be used in the LGPS until such time as any possible alteration in primary legislation is available which may require an adjustment to be made. The TPS change has been effected by

regulation 41 of SI 2006/3122 of The Teachers' Pensions etc (Reforms Amendments) Regulations 2006.

- The benefit regulations will also include, as modifications, those issues dealing with pension credit and debit members which relate to the actual benefit, and councillor members.
- The following items will be covered either in a transitional schedule to the regulations, or as a separate Transitional Statutory Instrument – as flagged up in the list of definitions in the current consultation draft:
 - i. For a member who was an active member on 31 March 2008 who continues to be a member by virtue of regulation 2, all membership accrued on a 1/80th and 3/80th basis under the 1997 Regulations up to that date will be calculated using final salary on leaving with or without immediate entitlement to pension or where a flexible retirement occurs.
 - ii. The provisions in draft regulation 4(2)(f), 4(2)(g), 4(3) and 4(4) should be in a saving provision.
 - iii. A member who joins the LGPS on or after 1 April 2008 with preserved rights under the 1997 Regs will be treated as if draft regulation (2) and (i) above applied. Such a member must make an election within 12 months of rejoining in order to qualify.
 - iv. Where a member becomes entitled to a pension under regulation 12 and was a continuous member they will have membership enhanced by the better of the 1997 Regulations or 2007 Regulations.
 - v. Subsequent to the separate calculation of benefits under above regulations 6, 10, 11, 12 and 16 of the 2007 Regulations the two amounts shall be added and treated as a single BCE for the purpose of calculating benefits under 13 and 14.
 - vi. Retaining the facility to pay the lump sum death benefit to a deferred member for pre 2008 membership, this is to be paid along with any lump sum payable under regulation 17.
 - vii. In the case of survivor benefits as well as rights accruing under these regulations, and to be paid under regulation 20 or 21, in the case of survivor continue the provision that only membership between 1988 and 2008 counts for calculating that part of the pension for civil registered or cohabiting partners.
 - viii. Consider whether a provision be inserted which allows reduction in pre 2008 membership or payment for this period for those wishing to count pre-1988 membership.]
 - ix. In the case of deferred member continue right of child of such a member to receive survivor pension under 1997 Regulations.

- x. In the case of a pensioner at 1 April 2008 continue right to pay survivor benefits as under the 1997 Regulations.
- xi. Continue to commute trivial pensions as accrued under 1997 Regulations.
- xii. In the case of commutation in cases of serious ill-health, benefits have first to be calculated as above.
- xiii. Added years contracts entered into before 31 March 2008 will be honoured and will be credited as pre 2008 membership.
- xiv. Any augmented membership awarded under the 1997 Regulations will be credited as pre 2008 membership.
- xv. Continuous membership before 1 April 2008 will count towards the 3 month qualifying condition if 1997 qualifying condition not completed as at 31 March 2008.
- xvi. The schedule to SI 2006/966, which deals with protection linked to the removal of the rule of 85, will continue to apply irrespective of different accrual rates, as will the guidance issued by GAD.

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