

**Date: 11 July 2006**

**Draft Local Government Pension Scheme (Amendment) (No.2) Regulations 2006.**

Thank you for making available the opportunity for interested parties to comment on the draft Local Government Pension Scheme (Amendment) (No.2) Regulations 2006 (the draft No.2 Regulations).

This response reflects the views of South Tyneside Council in its role of administering authority to the Tyne and Wear Pension Fund. Consequently this response primarily addresses administrative and technical issues.

My comments follow the order of the draft No. 2 Regulations

**Regulation 3**

The amendment contained in this Regulation amends Regulation 11A of the principal regulations so that Regulation 11A(1) now applies to “A” Class members. Adjusted pre-2006 service is to be aggregated with post-2006 membership. However, we are very concerned that other issues with Regulation 11A that were outlined by Terry Edwards in LGE Circular 184 have still not been addressed. In particular, we are concerned that unless further amendments are made to Regulation 11A:-

- any pre-1989 membership of “A” class members will not be included in the aggregated total service,
- transferred-in service will not be included in the aggregated total service,
- all transferred-in service will continue to be excluded from apportionment. Whilst in some circumstances transferred-in service should not be adjusted, there are other circumstances (set out in Circular 184) where it should,
- The formula contained in Regulation 11A(3) will still not adequately deal with fee earners, returning and acting returning officers, and those members with specific final pay requirements,
- Regulation 11A will continue to only cater for those in active membership on 5<sup>th</sup> April 2006. Consequently a pre-2006 deferred award which then becomes subject to aggregation on or after 6<sup>th</sup> April 2006 will continue to escape reduction, and

- augmentation awarded pre-2006 to a capped member under Regulation 52, or added years under Regulation 55, will escape adjustment.

#### **Regulation 4**

The amendment contained in this Regulation amends Regulation 19A of the principal regulations in respect of the limit on total amount of benefits for high earners.

The forthcoming GAD guidance will presumably be taking into account the comments made in LGE Circular 184, with particular reference to payments of excess benefits and the treatment of enhanced protection cases, and especially how to monitor the protection and the procedures to follow when it ceases to apply.

#### **Regulation 5**

The amendments contained in this Regulation amend Regulation 20 of the principal regulations that describe the formulae for benefit calculations. The amended Regulation 20(3)(B), and especially its paragraphs (b) and (c), seems at odds with the provisions of Regulations 64 and 66 of the principal regulations and the GAD guidance of recent date on the subject of additional cash commutation.

The deletion of Regulation 64(6) of the principal regulations by Regulation 6 appears to allow all AVCs to be paid as lump sums (see comment on Regulation 6 below). Regulation 20(3)(B)(c.) would limit the total cash available to 25% of the capital value of a member's accrued rights. Latest GAD guidance confirms that cases in which the post-commutation lump sum value exceeds 25% of the standard LTA are to be dealt with under future guidance for Regulation 19A.

As the regulations currently stand, AVC funds under "old" Regulation 66 would still only produce a service credit with nil lump sum entitlement (Regulation 66(8)). This service credit, treated as if it were membership under Regulation 121, produces additional pension that is capable of commutation under Regulation 20(3). We believe that current retirees, who acquire transfer credits with their AVC fund under old Regulation 66, should not have their funds included as an AVC cash value in the calculation of maximum lump sums and the 25% limit, as old Regulation 66 can only provide a pension without lump sum. However, the recent GAD guidance on commutation asks that we add it to the equation as cash valued prior to purchase of the service credit.

The later Regulation 66 provisions, taking effect from 13th November 2001, presently offer an annuity from the AVC fund, calculated using factors supplied by GAD. It appears that the omission of Regulation 64(6) will now allow members to either receive this as an annuity or to take all or part of it as cash value. In any event the cash value of the fund when added to the retirement grant will form part of GAD's calculations for maximum lump sums.

## **Regulation 6**

The amendment contained in this Regulation deletes Regulation 64(6) of the principal regulations. The deletion of this provision will, on initial reading, allow AVCs to be paid as a lump sum. However, Regulation 66(6) countermands the payment of lump sums except in certain “old regime cases”. Additionally, it should be noted that Regulation 64(2) requires that an administering authority must use a leaving member’s AVC fund to provide “additional pension benefits under a pension policy at any time prior to the 75th birthday of the member”. These inconsistencies need to be resolved.

## **Regulation 7**

The amendment contained in this Regulation amends Regulation 35(1A) of the principal regulations with regard to the requirement for employer consent in the payment of certain benefits. We believe the amended wording is capable of being interpreted as allowing the employer not only a discretion over if the benefit may come into payment but also over the amount of the benefit payable. We do not believe that this is the intention and the amendment should be revised to clarify the position.

## **Areas of concern**

We are extremely concerned that the draft No.2 Regulations only address a small proportion of the regulatory amendments needed to deal with problems identified by Terry Edwards of LGE and listed in LGE Circular 184, and by others. We believe that it is absolutely imperative that, in addition to dealing with the issues identified earlier in this letter, the draft No.2 Regulations be expanded to address all the remaining issues.

In particular, there is an urgent need for the draft No.2 Regulations to address the following issues:-

(1) Regulation 6(3) debars entry to the scheme “after the day before his 75<sup>th</sup> birthday” This has already been flagged as an inconsistency since benefits must be paid by the same day. There is no amendment to this or the other inconsistencies in relation to age 75 retirement.

(2) Regulation 20(4A) allows for members continuing beyond their 65th birthday to receive an actuarial increase in benefits on retirement but only in cases where there has been no BCE prior to age 65, but there is no similar provision to increase benefits in any other cases of over age 65 members currently in the Scheme. Presumably these should receive similar treatment.

(3) Regulation 20 (3A) allows members the opportunity to commute a part or all their pension to increase their cash payment. The Finance Act 2004 includes pension credit

members within the definition of “members” but the Regulations, as proposed, do not extend this facility to them. Is this intended?

(4) Regulation 49 provides a discretion that allows an administering authority to commute dependant(s) long-term pension for a lump sum payment providing that all the dependant(s) long term pension(s) payable do not exceed £260 and their capital value(s) do not exceed £15,000.

Unfortunately there is an inconsistency between Regulation 49 and HMRC requirements. The LGPS Regulations allow the administering authority to commute the long-term pension but we understand that HMRC take the stance that a commutation payment will be unauthorised if the recipient has already started to receive a Scheme pension.

In most cases, therefore, the dependant(s) will have started to receive a Scheme pension (the short-term dependants pension) and by virtue of this appear to be thereafter ineligible to be considered for a commutation lump sum. This inconsistency needs to be urgently resolved.

I hope these comments and observations will be of some use to you in your deliberations.

Yours sincerely

**Dave Smith**  
**Pensions Manager**