

To: LGPS Pension Managers

Please see the attached letter and draft SI in respect of drafting changes to the LGPS (Benefits, Membership & Contributions) Regs 2007 and draft (Transitional Provisions) Regs for your consideration.

As regards the Transitional Provisions part of the consultation, this provides a regulation appropriate to the issues identified back in February.

Further, I should be grateful if you would **please note the short deadline for return of comments - ie 3 August.**

Thanks.

Nicola Rochester
CLG
LGFPSD4
22.6.07

Brian Town
Local Government and Firefighters'
Pension Schemes

Addressees as attached

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22 June 2007

Dear Colleague

The Local Government Pension Scheme

With the agreement of Ministers this letter starts a limited period of statutory consultation on two separate sets of proposals :-

- (i) drafting changes believed necessary to the **Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 [the Benefit Regulations]**; and
- (ii) draft **LGPS (Transitional Provisions) Regulations 2007**

A version of the final Statutory Instrument to deal with (i) will be examined during the course of the consultation period by a working group drawn from interested parties. Comments on both the draft SI and the proposals to amend the Benefit Regulations should be returned by no later than **3 August 2007**.

(I) Proposed Changes to the Benefit Regulations

The publication of the Benefits Regulations a year in advance of their coming into effect is intended to provide administrators and Scheme members with details of the new pension package that would be replacing the benefits available under the existing LGPS Regulations 1997. This also provides an opportunity to make any necessary amendments brought to our attention as administering authorities begin to assess how best to put them into operation and adjust systems.

Set out below are the proposals, brought to our attention through several means, including from Scheme pension managers and others, which we propose to introduce as formal Scheme amendments as soon as possible:-

Regulation 2

As previously indicated in the Q&A published on 15 May, it is intended that only current members as at 31 March 2008 become auto-enrolled in the Scheme as from 1 April 2008.

New joiners are auto enrolled unless it is made clear on starting that employment is for less than three months.

Regulation 3

The letter of intent which was circulated to LGPS interests on 3 May addressed the concerns regarding identifying pay bands for members of the Scheme. For the majority of Scheme members, in particular where moves to single status pay arrangements have been completed, identifying and allocating the appropriate pay band is a straightforward process. Similarly for new joiners the starting salary on joining is known and a member should be told to which band they have been attributed. For these members the payroll provider should use the known annual salary. Since the Benefit Regulations have been designed to apply for members joining and events occurring on and after 1 April 2008 the regulation will be amended to confirm that on becoming a member under regulation 2 they will be allocated to a specific band for that employment. Any changes in contractual terms subsequent to first joining will mean the employer can re-attribute the specific payband (upwards or downwards). The transitional provisions will include a provision which states that all current active members will be treated for the purposes of regulation 2 as new joiners and they will be attributed to a payband by their employer. The initial attribution and any subsequent changes can only be done on a reasonable basis, otherwise the employer decision may be challenged under the IDR process and the intended yield may not be realised. For fee earners deduction should be the band relative to the actual fee. Thus if the fee is £8,000 the contribution rate is 5.5 %. If the fee is £24,000 the relevant contribution rate is 6.5%. Employers and their payroll providers are advised to now proceed on this basis.

Regulation 6

In terms of establishing entitlement to benefit regulation 5 makes clear that transferred in membership counts for “qualifying” purposes. The new administration Regulations will also be dealing with transfers in, and for the avoidance of doubt transferred in service will be shown to count as part of membership for the purposes of regulation 6.

Regulation 10

In terms of consistency with the 1997 Regulations and the application of regulation 23, this regulation will be clarified to ensure the stepping down occurs within the last ten years of a person’s period of membership.

Regulation 18

As with the 1997 Regulations, this will be amended to make clear that employer consent to release of pension, as well as change of contractual terms, is required.

Regulation 20

It is proposed to move regulation 20(5) so that it is provided in the Transitional Regulations, where it will be made clear that protection covers all members aged 45 as at 31 March 2008.

Regulation 25

References to the Secretary of State will be replaced with references to relevant administering authority.

Regulation 26

Ensure definitions of eligible child and when this dependent benefit can cease are in step with current approach.

Regulation 31

The intention of this regulation is no different from the current capacity to release deferred benefits on ill-health grounds, and a rephrasing of the regulation will achieve this intention and simplify the wording.

(II) The Local Government Pension Scheme (Transitional Provisions) Regulations 2007

These Regulations will effect the revocation of the Local Government Pension Scheme Regulations 1997, but certain parts of those Regulations will continue to apply in respect of future periods and the revocation does not affect any of the rights relating to deferred and pensioner members of the Scheme and the periods of membership used in calculating their benefits and other entitlements accruing to 31 March 2008.

The very straightforward approach taken in regulations 3 and 4 to deal with members who can count periods of membership both before and after 1 April 2008 has dealt with the majority of points raised earlier this year as needing specific reference. For reference purposes the list of items is now included as annex A, with notations explaining whether they have been resolved by this approach.

The relatively small number of other issues has been dealt with as follows:-

- Reg 6 introduces the tapers for increased contribution rates protected rights members
- Reg 5 deals with limits on death benefits for future deferred members where membership straddles 31 March and 1 April or is treated as straddling
- Provisions relating to pension sharing on divorce are not revoked

Regulation 3(4) deals with pre 2008 membership used in calculation of benefits for co-habiting partners, to bring these in line with the provision in the 1997 Regulations dealing with civil partners. Views are sought as part of this consultation as to whether further regulation is required, both for co-habitees and civil partners, to allow for earlier periods, membership accruing prior to 1 April 1988, to count either by paying for all or part of such earlier membership or having a reduction applied to total period of membership in respect of all or part of such earlier membership in line with actuarial guidance.

Views of consultees are also sought on two other proposals. First, to move the current level of ill-health enhancement protection for members who will be 45 by 31 March 2008 from regulation 20 to these provisions. Second, in line with the proposal to amend

regulation 3 of the Benefit Regulations, as set out above, the insertion in the Transitional Provisions of a requirement for employers to attribute members covered by regulation 2(3) of the Benefit Regulations to the appropriate payband in regulation 3. The Administration Regulations are also being revised to place this obligation on employers from 1 April 2008 for all new joiners and changes of circumstance.

This proposed Statutory Instrument does not revoke the Schedule to the Local Government Pension Scheme (Amendment) Regulations 2006 [as amended] which provides the transitional protection following the removal of the rule of 85.

Any queries regarding this letter or responses should be sent in the first instance to Nicola Rochester Zone 2/F7 Ashdown House, 123 Victoria Street, London SW1E 6DE or emailed to Nicola.rochester@communities.gsi.gov.uk. A summary of responses to this consultation will be published within 3 months of the close of consultation at www.xoq83.dial.pipex.com. This consultation follows the Government code of practice on consultations. Information provided in response 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).

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 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, in itself, be regarded as binding on the Department. 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.

As there are intended to be no direct financial implications arising from these amendments, or impacts on business, charities or the voluntary sector, a Regulatory Impact Assessment has not been prepared.

Yours sincerely

Brian Town
LGFPS

ADDRESSEES

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 Pensions Authority
Tameside Metropolitan Borough Council
Wirral Metropolitan Borough Council
City of Bradford Metropolitan District Council
South Tyneside Metropolitan Borough Council
Wolverhampton City Council
London Pension Fund Authority
Environment Agency
Police Authorities in England and Wales
Fire and Rescue Authorities in England and Wales.
National Probation Service for England and Wales

Town Clerk, City of London Corporation
Clerk, South Yorkshire PTA
Clerk, West Midlands PTA

The Secretaries of:

Local Government Association
LGPC
Employers' Organisation for Local Government (LGE)
PPMA
SOLACE
ALACE
CIPFA
New Towns Pension Fund
ALAMA
UCEA
NALC
SLCC
Society of County Treasurers
Society of District Council Treasurers
Society of Welsh Treasurers
Association of Metropolitan Treasurers
Society of London Treasurers
Association of Consulting Actuaries
Northern Ireland Public Service Alliance

Trades Union Congress

UNISON

TGWU

GMB

UCATT

Aspect

Amicus

NAPO

Association of Educational Psychologists

Audit Commission

NILGOSC

Confederation of British Industry

Business Services Association

Other Government Departments with public service pension interests:

GAD

DoE (NI)

SPPA

Annex A

- 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. **Dealt with by regulation 3(3)**
- ii. The old provisions defining pay which have not been replicated in the 2007 Regulations will be protected and continue for those affected individuals under the 2008 regime; **Not revoked**
- iii. A member who joins the LGPS on or after 1 April 2008 with preserved rights under the 1997 Regulations which have not come into payment will be treated as if regulation (2) and (i) above applied. Such a member must make a choice within 12 months of rejoining in order to qualify. **Dealt with by regulation 4**
- iv. 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. **Dealt with by virtue of regulation 3**
- v. 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. **Dealt with by regulation 5**
- vi. 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. **Dealt with by regulation 3(4)**
- vii. 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. **views being sought as part of the consultation**
- viii. In the case of deferred member continue right of child of such a member to receive survivor pension under 1997 Regulations. **Dealt with by virtue of saving old provisions**
- ix. In the case of a pensioner at 1 April 2008 continue right to pay survivor benefits as under the 1997 Regulations. **Dealt with by virtue of saving old provision**
- x. Continue to commute trivial pensions as accrued under 1997 Regulations. **Dealt with by virtue of saving old provision**
- xi. Added years contracts entered into before 31 March 2008 will be honoured and will be credited as pre 2008 membership. **Dealt with by virtue of saving old provision**

- xii. Any augmented membership awarded under the 1997 Regulations will be credited as pre 2008 membership. ***Dealt with by virtue of saving old provision***
- xiii. 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. ***Dealt with by virtue of saving old provision***
- xiv. 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. ***This separate SI has not been revoked***
- xv. A phasing of increases to the 5% contribution rate of pre-1998 manual workers, bringing their contributions in line with all other Scheme members after the 2010 actuarial valuation and with effect from 1 April 2011. The phased rates will be 5%/6.5% in 2008/09; 5%/7.5% in 2009/10; 5.25/7.5% in 2010/11. ***Dealt with by virtue of regulation 6***

2007 No. 0000

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Transitional Provisions) Regulations 2007

| | |
|-------------------------------|-----------------------|
| <i>Made</i> - - - - | <i>xxth xx 2007</i> |
| <i>Laid before Parliament</i> | <i>xxth xx 2007</i> |
| <i>Coming into force</i> - - | <i>1st April 2008</i> |

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(a).

In accordance with section 7(5) of that Act, the Secretary of State has consulted (a) such associations of local authorities as appeared to her to be concerned; (b) the local authorities with whom consultation appeared to her to be desirable; and (c) such representatives of other persons likely to be affected by the Regulations as appeared to her to be appropriate.

The Secretary of State makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions) Regulations 2007.

(2) These Regulations apply in relation to England and Wales(b).

(3) These Regulations shall come into force on 1st April 2008.

(4) In these Regulations—

“the 1997 Regulations” means the Local Government Pension Scheme Regulations 1997(c);

“the 1997 Scheme” means the occupational pension scheme constituted by the 1997 Regulations;

“the 2007 Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(d); and

“the Scheme” means the Local Government Pension Scheme 2008 constituted by the 2007 Regulations.

(a) 1972 c. 11.

(b) The Secretary of State’s functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (1998 c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(c) S.I. 1997/1612.

(d) S.I. 2007/1166.

Revocation of 1997 Regulations

2.—(1) The Regulations listed in the Schedule are revoked.

(2) Accordingly, no person may become a member of the 1997 Scheme after 31st March 2008 or accrue benefits in it in respect of any service after that date.

Membership accrued before 1st April 2008: active members

3.—(1) This regulation applies to a person who was an active member of the 1997 Scheme and becomes a member of the Scheme by virtue of regulation 2 of the 2007 Regulations.

(2) Notwithstanding the revocations effected by regulation 2 of these Regulations, the regulations listed in the Schedule continue to have effect, subject to regulation 4, so far as is necessary so that—

(a) his total membership accrued in the 1997 Scheme in respect of, or calculated by reference to, his service before 1st April 2008, and the pension rights accrued at that date, are preserved; and

(b) his benefits under the 1997 Scheme are payable immediately where benefits become payable without reduction under regulations 16, 17, 19 and 20 of the 2007 Regulations, or with the appropriate actuarial reduction in line with guidance produced by GAD where benefits become payable under regulations 18 or 30 of the 2007 Regulations

(3) But his pay, for the purposes of any calculation of benefits under paragraph (2), is calculated in accordance with regulations 8 to 11 of the 2007 Regulations.

(4) And, for the purposes of regulations 24, 33 or 36 of the 2007 regulations, only periods of membership after 31st March 1998 are to be taken into account.

Membership accrued before 1st April 2008: deferred members

4.—(1) This regulation applies to a person—

(a) who was a deferred member of the 1997 Scheme;

(b) who becomes a member of the Scheme by virtue of regulation 9 of the Administration Regulations; and

(c) whose preserved benefits under the 1997 Scheme have not yet come into payment.

(2) He may choose, by notice in writing to the appropriate administering authority within 12 months of becoming a member of the Scheme under paragraph (2)(b), to be treated as if regulation 3 applied.

Deferred members: limit on death grant

5. Where a person to whom regulation 3 applies becomes a deferred member after 31st March 2008 and dies before his pension comes into payment, any death grant to which he is entitled under any provision of the Scheme or the 1997 Scheme, as continued in effect by regulation 3, shall not exceed his retirement pension multiplied by five.

Members' contributions: lower rate rights

6.—(1) Subject to paragraph (4), the contribution rates set out in the table in regulation 3(2) of the 2007 Regulations (“the 2007 table”) do not apply to a person to whom regulation 12(3) of the 1977 Regulations, as continued in effect by regulation 3, applies.

(2) Instead, the contribution rate to be applied to such a member is calculated in accordance with the following table.

| Year commencing | Contribution rate |
|-----------------|-------------------|
| 1st April 2008 | 5.25% |

| | |
|----------------|------|
| 1st April 2009 | 5.5% |
| 1st April 2010 | 6.5% |

(3) After 1st April 2011, such a member makes contributions in accordance with the 2007 table.

(4) But if the application of the table set out in paragraph (2) would result in a member's contribution rate being greater than if the 2007 table applied, his contribution is paid at the lower rate.

Pension sharing

7.—(1) Regulations 147(2)(a) and 155(2) of the 1997 Regulations, as continued in effect by regulation 3, apply as if they included a reference to rights accruing under the Scheme as well as under the 1997 Scheme.

(2) But Regulations 152 and 156 do not continue to apply.

(3) In relation to any entitlement under the 1997 Scheme, a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act may be paid in accordance with the rules relating to the payment of such benefits under the Finance Act 2004.

Signed by authority of the Secretary of State

Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULE 1

REGULATIONS REVOKED

The Local Government Pension Scheme Regulations 1997 [etc...]
Regulations 1-143 and Regulation 157; Schedules 1, 2, 2A, 3, 5, 6 and 7

Do not revoke

regulation 13(2)(f)(g) and (h); regulation 20A; regulation 20B; regulation 122A;
regulation 127-131; regulations 136-145; regulations 146-156; regulations 158-161

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out transitional provisions relating to members of the Local Government Pension Scheme 1997 ("the 1997 Scheme"), which is to be replaced by the new Local Government Pension Scheme ("the Scheme") with effect from 1st April 2008.