

To : addressees below

Our Ref : LGR 136/7/10

23 December 2009

Dear Colleague

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

1. With the agreement of Ministers, I enclose Regulations made on 1 December 2009 under powers contained in sections 7, 12 and 24 of the Superannuation Act 1972, and laid before Parliament on 8 December 2009. The Miscellaneous Regulations come into force on 31 December 2009, but with various effective dates set out in Regulation 1(3), and amend the following sets of Scheme provisions:

the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, (“the Compensation Regulations”);

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

the Local Government Pension Scheme (Administration) Regulations 2008, (“the Administration Regulations”);

the Local Government Pension Scheme (Transitional Provisions) Regulations 2008, (“the Transitional Regulations”).

The Regulations also introduce a new freestanding provision in respect of the London Pension Fund Authority.

2. These mostly technical and minor amendments largely originate from comments made by stakeholders in earlier consultations. The Department consulted widely on the majority of the provisions in the period 28 November 2008 to 20 February 2009. A summary of the responses to this consultation exercise is attached.

3. The draft Regulations regarding transfers into members’ AVC arrangements were removed from the final SI in response to comments received from consultees. It was accepted that the proposals may have had unacceptable cost implications for individual funds. The provisions concerning Rent Officers and the Care Quality Commission, both of which needed to be dealt with as a matter of urgency, were dealt with separately and included in the Local Government Pension Scheme (Administration)(Amendment) Regulations 2009 (SI 2009 No. 447) which was made on 2 March 2009.

4. The provisions in the SI now laid before Parliament are as follows :

- i. Regulations 3 – 6 are technical provisions which simply replace the references to the 1997 Regulations in the Compensation Regulations with suitable references to the Regulations for the 2008 Scheme.
- ii. Regulation 9 on the meaning of “pensionable pay” restores the provision inadvertently omitted when the 2008 Scheme was introduced so that the definition of “pay” again continues to exclude the supplement paid by the Environment Agency to certain individuals. As suggested by consultees, a further exclusion, on payments by way of compensation in order to achieve equal pay, has been added.
- iii. Regulation 10 of the Benefits Regulations widens the conditions which need to be fulfilled for a member to be permitted to choose to have his “final pay” treated as the average of three recent consecutive years for pension calculation purposes. Following comments made by stakeholders, the amendment goes further than the original draft in that it deals with cases of contractual changes and restricted pay. The amendment is backdated to 1st April 2008 in order to assist with cases where the members concerned have already retired.
- iv. Regulation 11 inserts a new regulation 12A into the Benefits Regulations. Under the tax regime introduced by the Finance Act 2004 (c. 12), effective from April 2006, a member of the LGPS can apply for a form of protection of pension rights accrued prior to 2006. The protection could be applied for up to April 2009. This provision deals with cases under the 2008 Scheme (and hence the retrospection of this regulation to 1st April 2008) where the protection was agreed and where subsequently members have retired after giving up the protection, with their benefit calculation completed in line with guidance from GAD. The effect is cost neutral for a pension fund.
- v. Regulations 11 also inserts a new Regulation 12B allowing authorities, in effect, to convert “compensatory added years” and other forms of compensation awarded in respect of a former employment under old compensation provisions which are no longer available, into pre-funded additional pension rights. The new provisions are along similar lines as the original Regulation 143 of the 1997 Regulations. Regulation 20 ensures that the conversion process will not affect members’ ability to meet the “85 year rule” governing early retirement.
- vi. Regulations 13, 16, 26, 27 and 28 are specialist provisions concerning the Environment Agency and their partners, and together facilitate an equivalent process of converting annual compensation into additional pension, as well as introducing mechanisms for the Agency to discharge its responsibilities for making Pension Increase payments and permitting the Agency to discharge its liabilities to Water Act Companies by making one-off capital payments.

- vii. Authorities will be aware that currently only membership accrued after 5th April 1988 should be taken into account when calculating the survivor benefit for civil partners and nominated cohabiting partners. The new provisions set out in Regulations 14, 24, 25 and 30 provide members with the choice to pay additional contributions so that any period of membership before 6th April 1988 can be taken into account in the calculation of the benefit to be paid to their surviving nominated cohabiting partner. This enables such members to increase their partners' potential survivor benefit, whilst pension funds' costs are appropriately offset by the additional contributions.
- viii. The additional benefits are not subject to forfeiture provisions. GAD's new guidance note, attached, gives advice on the cost to members of purchasing the new benefit.
- ix. Although the consultation SI provided an equivalent provision for survivor benefits in respect of civil partners, on further consideration CLG concluded that it would be equitable to place civil partners on a level footing with spouses so that members are not obliged to pay additional contributions in order for their pre- 6th April 1988 membership to be taken into account in the calculation of civil partners' survivor benefit. Such benefit is accordingly being provided at no cost to members. The relevant provision, Regulation 18, is backdated to 1 April 2008 which is the date the 2008 Scheme came into effect, and is the date when, in effect, widowers' survivor benefits fully matched the provision covering widows' pension based on their spouses' membership accrued prior to 6 April 1988.
- x. Regulation 15 on the payment of children's pensions to third parties restores the same wording as was used in Regulation 47(2) of the 1997 Regulations, with the addition of the word "such" to make the provision more precise.
- xi. Regulation 19, a new provision on death grant, is simply aimed at achieving consistency - under the amendment all cases should be awarded what was formerly the maximum figure.
- xii. Regulation 23 is a specialist provision which extends access to the LGPS to the Chair of the Olympic Park Legacy Company ("OPLC"). This is in line with existing Regulations which provide access to comparable postholders such as the Mayor of London and the chairman of the London Transport Users' Committee.
- xiii. Regulation 29 deals with the increasing number of employees who work beyond normal pensionable age and who wish to postpone the onset of guaranteed minimum pension (GMP) benefit payments as a result. Following comments received from stakeholders, the Regulation now deals with a greater range of scenarios than was the case in the consultation draft, thus providing for greater flexibility. Administrators should note, however, that it still falls to them to contact members

continuing in employment to ascertain when GMP should be put into payment.

- xiv. Regulation 32 is another specialist provision, providing for the transfer, to the pension fund of the London Pension Fund Authority, of certain sums relating to London County Council and Greater London Council stocks which were transferred to the Authority from the London Residuary Body, and in respect of which the Authority has now discharged its liabilities. The provision will give the Authority legal authority to transfer the surplus money, which is currently held in its general administration fund. The external auditor will accordingly be able to approve the relevant item in the Authority's accounts for the financial year when the transfer is made. The amount transferred will be used to offset part of the deficit in the pension fund.

5. Any queries regarding the new Regulations should be addressed to Philip Perry, Workforce, Pay and Pensions Division, Communities and Local Government, Zone 5/G6, Eland House, Bressenden Place, London SW1E 5DU (telephone 0303 44 42174), e-mail philip.perry@communities.gsi.gov.uk

Yours faithfully,

Brian Town

Annex A

Addressee list

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
Local Government Association (LGA)
Employers' Organisation
LGPC ALACE
PPMA SOLACE
ALAMA CIPFA
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
Association of Educational Psychologists
NALC
Society of Local Council Clerks
Trades Union Congress UCATT
UNISON GMB
NAEIAC NAPO
AMICUS Unite
Equal Opportunities Commission