

Addressees as below

17 September 2008

Dear Colleague

**LOCAL GOVERNMENT PENSION SCHEME
(MISCELLANEOUS) REGULATIONS 2008**

1. With the agreement of Ministers, I enclose Regulations made on 9 September 2008 under powers contained in sections 7 and 12 of the Superannuation Act 1972, and laid before Parliament on 17 September 2008. The Miscellaneous Regulations come into force on 17 October 2008, but with the effective dates set out in Regulation 1(3), and amend:

- the Local Government Pension Scheme Regulations 1997, (“the 1997 Regulations”);
- the Local Government (Management and Investment of Funds) Regulations 1998, (“the Investment 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”).

2. These mostly technical and minor amendments originate from comments made by stakeholders in earlier consultations. Most of the proposals were put before the LGPS Technical Group on 18 December 2007 and no objections were made. The Department also consulted widely last year on two amendments in particular, that on extending the period in which employing authorities are permitted to make decisions on granting augmented membership in cases of redundancy, and that on facilitating the transfer of membership of pensions institutions based elsewhere in the EU. The former proposal was welcomed, whilst the latter attracted very little comment.

3. Although the Local Government Pension Scheme Regulations 1997 have been replaced, they still apply to all pre-1 April 2008 membership of the Scheme and therefore continue to be of importance. The need for the various amendments became apparent during the final year of the 1997 Scheme, but it was not possible to put them into effect earlier because CLG had given assurances to stakeholders that, in view of the need for all concerned to make preparations for the 1 April implementation, it would accord the highest priority to a timely release of the key Regulations for the 2008 Scheme. The opportunity has also been taken to make a number of unrelated minor amendments to the regulations for the 2008 Scheme, whilst some of the initiatives taken in the SI involve making amendments to the Regulations for both Schemes.

4. The Department intends to consolidate the Benefits Regulations and the Administration Regulations into one Statutory Instrument when they have been in operation for at least 12 months. This in our view will allow for a sufficient settling down period during which time we can properly evaluate whether further changes need to be made following any concerns expressed by the pension scheme administrators. Any earlier consolidation than this risks the necessity of issuing further amending instruments later, thereby defeating the object of such a comprehensive exercise.

5. The provisions are as follows:

Regulation 3: Optional contribution during absences or “Keeping in Touch Scheme” days – Regulation 18 of the 1997 Regulations

5.1 This amendment replicates one that has already been included in the Administration Regulations on “Contributions during child-related leave”. An amendment is necessary to direct that “keeping in touch” days (KITS) should be disregarded for the purposes of setting contribution rates for voluntary contributions paid during unpaid maternity leave. This is necessary because contribution rates would otherwise be artificially increased in such circumstances, which would potentially discourage individuals either from using KITS or from making voluntary contributions.

5.2 The proposed amendment was put forward to the Local Government Pension Scheme Technical Group meeting on 18 December 2007 who raised no objection to it.

Regulation 4, and regulations 18 and 20: Death grants – Regulation 38 of the 1997 Regulations and Regulations 23 and 32 of the Benefits Regulations

5.3 Under these amendments, in respect of deaths occurring after 5th April 2006, death grant is allowed to be paid within two years of the date when administering authorities could reasonably have become aware of the member’s death. This is in order to allow more flexibility in scenarios where notification of death is delayed, and brings the Scheme into line with the Finance Act 2007.

5.4 The proposed amendments were put forward to the Local Government Pension Scheme Technical Group meeting on 18 December 2007 who raised no objection.

Regulation 5: Definition of “eligible child” – Regulation 44 of the 1997 Regulations

5.5 Regulation 26 of the Benefits Regulations (as amended by regulation 15 of the Local Government Pension Scheme (Amendment) Regulations 2008 (S.I. 2008/1083)) introduced a new definition for children of deceased members who may be eligible for benefits, updating the Local Government Pension Scheme in accordance with recent finance / taxation legislation. To ensure consistency, the amendment ensures that the same definition is used in applying the 1997 Regulations.

5.6 The proposed amendment was put forward to the Local Government Pension Scheme Technical Group meeting on 18 December 2007 who raised no objection to it.

Regulation 6: Commutation: small pensions (trivial commutation) – Regulation 49 of the 1997 Regulations

5.7 Members are entitled to receive a lump sum if the annual pension they would otherwise receive can be regarded as *de minimis* under the 1997 Regulations. This amendment, requested by the LGE provides for guidance to be supplied by the Government Actuary's Department with regard to the calculation of such instances of trivial commutation. The amendment restores one of the original provisions in the 1997 Regulations which was inadvertently removed by the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2007 (S.I. 2007/1488).

5.8 The proposed amendment was put forward to the Local Government Pension Scheme Technical Group meeting on 18 December 2007 who raised no objection to it.

Regulations 7 and 17: Power of employing Authority to increase total membership (augmentation) – Regulation 52 of the 1997 Regulations and Regulation 12 of the Benefits Regulations

5.9 This amendment allows employers to make decisions on awarding augmented service for up to six months after termination of employment in cases of redundancy, in the interests of efficiency of the employing authority's functions or at the ending of a joint appointment because the other appointment holder has left.

5.10 The amendment emerged in part from the helpful discussions between employer and employee representatives on CLG's Compensation Regulations Monitoring Group. It is seen as a constructive initiative to meet the needs of scheme members and employers when employees are involved in events involving leaving employment, which can mean that it is not always possible for decisions on augmentation to be made within the usual timeframe. The Group considered that six months would be a sufficient period of time to allow individual cases to be properly resolved.

5.11 CLG held a consultation on this issue in the period 14 August 2007 – 15 November 2007 with its usual stakeholders including all local authorities, the Local Government Association, the LGE, trades unions and professional organisations. Although relatively few were received, the great majority of comments were supportive. 13 stakeholders expressed support, with only one opposing the length of time to be allowed for decisions - preferring one month - and only one expressing general opposition.

5.12 Five stakeholders commented that post-termination augmentation should be deemed to have taken place on the day before termination. As a result of these comments, in the final SI, resolutions on the augmentation of membership are deemed to have taken effect on the day the member leaves his employment. We consider this to have been the original intention of the stakeholders who made representations on this issue, as “the day before retirement” is perceived by many administrators to mean the final day of service.

Regulation 8: Rights to return of contributions – Regulation 87 of the 1997 Regulations

5.13 This is an amendment which integrates the 1997 Regulations with reforms that have been introduced by HMRC. Members with short terms of service are entitled to a return of their contributions. The amendment provides that where such repayments have not been made before a member’s death, the sum concerned is a lump sum death benefit for tax purposes.

5.14 The proposed amendment was put forward to the Local Government Pension Scheme Technical Group meeting on 18 December 2007 who raised no objection to it.

Regulation 9(3): Pension sharing orders – Regulation 153 (1) of the 1997 Regulations

5.15 Divorcing couples have the facility to split a member’s local government pension at the time of the divorce by means of a pension sharing order. There is currently a conflict between Regulation 153, which provides that pension increases should be applied from the valuation date and the Pensions (Increase) Act 1971 as amended by the Welfare Reform and Pensions Act 1999, which provides that increases should apply from the date of the Pension Sharing Order. The amendment therefore brings the Regulations into line with the Pensions (Increase) Act 1971. GAD’s note of 5 September 2007, attached, gives further advice.

5.16 The proposed amendment was put forward to the Local Government Pension Scheme Technical Group meeting on 18 December 2007 who raised no objection to it.

Regulation 10 and regulation 22(b): Occupational pension schemes and transfers from EU-based pension institutions – Schedule 1 to the 1997 Regulations and Regulation 83 of the Administration Regulations

5.17 This amendment originates from a request from DWP to amend the LGPS transfer-in provisions to enable funds to accept a transfer in from a pension institution operating in a member state of the EU. The definition of “occupational pension scheme” in the 1997 Regulations is being widened to accommodate this. The provisions in the Administration Regulations on inward transfer of pension rights are being altered so as to include accrued rights under defined European pensions institutions.

5.18 CLG consulted on this issue at the same time and with the same stakeholders as the consultation on augmented service – paragraph 5.11 above refers. Only four respondents commented on the proposal, with none of them opposing it.

Regulations 11 – 14: Amendments to the Investment Regulations

5.19 The Local Government Pension Scheme is a funded scheme. The Investment Regulations make the relevant provisions. They continue to apply with the coming into force of the 2008 Scheme on 1 April 2008.

5.20 These minor consequential amendments are needed to ensure consistency with other parts of the 2008 Scheme, suitably updating the cross references they contain to the other Regulations for the Scheme.

Regulation 21: Amendments to Schedule 1 to the Transitional Regulations

5.21 The amendments make a number of retrospective savings and transitional provisions for stated purposes, in respect of previously revoked provisions in the 1997 Regulations. The relevant provisions include those which are amended by regulations 3 to 5 and regulation 7 of these Regulations.

Regulation 22(a): Governance compliance statements – Regulation 31 of the Administration Regulations

5.22 This Regulation gives legal effect to an informal undertaking by CLG to administering authorities to give them longer to prepare their first governance compliance statements, and therefore enable them to take account of statutory guidance to be issued under regulation 73A(1)(c). Draft guidance is currently out for consultation with a view to its publication in final form in the Autumn.

6. The LGPS website is located at:

<http://www.communities.gov.uk/localgovernment/personnelandworkforce/localgovernmentpensions/>

Additional material, including the new Miscellaneous Regulations, can be found at <http://www.xoq83.dial.pipex.com/>

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 020 7944 6017), e-mail philip.perry@communities.gsi.gov.uk

Yours faithfully,

Brian Town

List of 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 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
- New Towns Pension Fund

- Local Government Association (LGA)

- Local Government Employers (LGE)
- LGPC

- ALACE
- SOCPO
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