

**RESPONSES TO CONSULTATION ON LOCAL GOVERNMENT  
(MISCELLANEOUS) REGULATIONS 2009**

	PREAMBLE AND REG. 1 ON COMMENCEMENT ETC.
GMB	The starting date of Regulation 11 should be 1 April 2008.
Local Government Employers (LGE)	Regulations 2 – 11, 14, 16, 18, 19(a), 21, 23 and 26 should have effect from 1 <sup>st</sup> April 2008, with the remainder taking effect from 1 April 2009.
	REG. 2 – RENT OFFICERS' SUPPORT STAFF
LGE	The proposals (ie including Regulation 19 of the draft) do not properly complement each other. It is unclear if the proposals cover employees who do not have full continuity of employment.
HMRC/ VOA	The amendment should be widened so that the staff concerned would remain eligible for the LGPS whatever civil service post they may take up in the future.
	REGS. 3 – 7 – UPDATING THE REFERENCES IN THE COMPENSATION REGULATIONS
LGE	The amendment to Regulation 2(1)(a) of the Compensation Regulations should commence “a body listed in <i>Part 1 of Schedule 2</i> ”.
South Yorkshire Pensions Authority (SYPA)	It is recommended that Regulation 13 of the Benefits Regulations, the power to award additional pension, is added. This would mean that members who have benefited under that Regulation would become ineligible for Discretionary Compensation.
West Yorkshire Pension Fund (WYPF)	It would be useful to include a reference to Regulation 13 of the Benefits Regulations – the power to award additional pension.
	REGS. 8 – 9 – TECHNICAL PROVISIONS

	REG. 10 – PROTECTION FOR ENVIRONMENT AGENCY EMPLOYEES CONCERNING THEIR CONTRIBUTION RATE
Environment Agency	The amendment is supported.
LGE	A further exclusion should be added to the definition of “pensionable pay”, namely “a lump sum payment to buy-out a pensionable payment or benefit”.
	REG. 11- ADJUSTMENT TO CIRCUMSTANCES IN WHICH MEMBER MAY OPT OUT OF USING FINAL YEAR’S PAY AS BASIS FOR THEIR PENSION
Bristol City Council	This will add a useful protection where employees are treated as though TUPE applies during an outsourcing exercise.
Carmarthenshire County Council	The proposal on staff affected by job evaluation is welcomed.
Cheshire County Council	It should be made clear that the period of service should all be with the same employer. The regulation should cover cases of restricted pay.
Derbyshire City Council	Regulation 11 should be backdated to 1 April 2008 in order to accommodate a group of staff who had a reduction in 2008.
Derbyshire County Council	Regulation 11 should be backdated to 1 April 2008 in order to accommodate a group of staff who had a reduction in 2008.
Dorset County Council	It should be made clear that this provision should not apply to cases of flexible retirement.
Environment Agency	Regulation 11 should be backdated to 1 April 2008. In paragraph (1), the words “or restricted” should be added. It is questioned whether the all three years have to be in the last ten.
Greater Manchester Pension Fund (GMPF)	The provision seems to have been inadvertently worded to place members in a worse position than was the case under regulation 23(1)(b) of the 1997 Regulations, with the protection offered by the provision being eroded after around seven years.
Hammersmith & Fulham Homes	Local trades unions are concerned that the effect of this regulation should cover situations where a pensionable emolument has ceased. H & F Homes would accordingly

	support the addition of a paragraph (d) to cover “as a result of ceasing a pensionable emolument”.
LGE	<p>In paragraph (1), the words “or restricted” should be added. The wording of the draft does not appear to cover sufficiently wide circumstances under which it would be reasonable for a member to be allowed to make an election. It is also not made clear how the member should make his election on final pay.</p> <p>A policy decision should be made on whether the Regulation should protect members whose pay reduces through a decline in their performance prior to retirement. Sub-paragraph (3) should commence with the words “subject to regulations 8(3) and 8(4)” (of the Benefits Regulations).</p> <p>It should be clarified whether the whole three year period should be included within the final ten years’ employment. The Technical Group has observed that there are discrepancies on Final Pay between regulations 8 and 10 of the Benefits Regulations.</p>
London Pension Fund Authority (LPFA)	The regulation should cover cases of restricted pay. It should be clarified whether the whole three year period should be included within the final ten years’ employment.
Neath Port Talbot Council	Regulation 11 should be backdated to 1 April 2008.
Tyne & Wear	In paragraph (1), the words “or restricted” should be added.
Sefton MBC	<i>Related</i> query gives rise to question of whether restricting pay levels could be included within the amendment.
SYPA	In paragraph (1), the words “or restricted” should be added. The mechanics of the election need to be covered. Measures need to be taken to prevent a member engineering reductions in pay whilst retaining a facility to have benefits calculated on pre-reduced pay.
Wiltshire County Council	In paragraph (1), the words “or restricted” should be added. The termination of such emoluments as lease car emoluments should be covered, whilst flexible retirement should be specifically excluded.
Wirral / Merseyside Pension Fund (MPF)	The regulation should cover cases of restricted pay, including as a result of the removal of a contractual payment or benefit. It should be backdated to 1 April 2008. It should stipulate to whom the election should be made and by when. 10(2) should be amended to exclude a reduction which immediately follows a period in which pay

	was temporarily increased. The treatment of variable performance related pay should be clarified.
WYPF	In paragraph (1), the words “or restricted” should be added after the word “reduced” to protect members whose pay has been frozen.
West Midlands Pension Fund (WMPF)	The amendment does not appear to cover cases where pay has been restricted.
GMB	GMB support the re-introduction of Certificates of Protection with effect from 1 April 2008. They also have a particular concern that pensionable emoluments are not adequately protected.
	<b>REG.12 (NEW REGULATION 12A) – POWER OF AUTHORITY TO INCREASE MEMBERSHIP</b>
Avon Pension Fund	As regards proposed Regulation 12A, the authority are opposed to members being given pension rights in excess of HMRC limits on the grounds that it would raise the potential for public criticism of the level of LGPS benefits compared to private sector provision.
Environment Agency	The change is welcome in principle. GAD guidance would confirm whether the overall aim is achieved. It is not clear if the reference to Regulation 22 works as it is currently framed.
GMPF	It would be helpful to have a worked example showing how a reduction in membership under the Finance Act 2004 is calculated and the effect of granting an equivalent additional period of membership.
LGE	In new Regulation 12A(1) “in accordance with guidance issued by the Government Actuary” should be inserted after “reduction in membership”. The circumstance in which enhanced protection can be lost should be widened.
	<b>REGS.12, 24 – CONVERSION OF “COMPENSATORY ADDED YEARS” TO “AUGMENTED MEMBERSHIP”</b>
Carmarthenshire County Council	The authority has no objection in principle, but it is noted that added years converted to augmentation would be excluded from abatement procedures.

Cheshire County Council	The new power should extend to all cases, regardless of when the award was made and under which Regulations.
Dorset County Council	The necessary calculations could produce a significant amount of work for administering authorities. More guidance is required, particularly from GAD.
Environment Agency	The Regulation should be widened to include earlier (to be defined) Compensation Regulations. The Agency suggest an additional amendment to deal with annual gratuities granted under the 1996 Discretionary Payments Regulations. Ideally, the provisions should not impose a deadline for the resolution, but a deadline of 31/3/2014 would be acceptable.
LGE	The Regulation should be widened to include earlier (to be defined) Compensation Regulations. It should be made clear in proposed 24A(9) and 24B(3) that the benefit is for the survivor, rather than for the member. The LGE question what happens to the additional benefit if the member ceases to co-habit or the civil partnership is ended.
LPFA	The new power should extend to all cases, regardless of Regulations used.
GMPF	The Fund questions why the option is time-limited. It would be hard to give a sufficient explanation to members to enable them to make decisions by 31/3/ 2010.
MPF	The implications for the HMRC Lifetime Allowance test and for pensions sharing on divorce should be spelt out to all parties.
Wiltshire County Council	New Regulations 12A and 12B are welcomed.
WYPF	New Regulation 12B should have a deadline of 31 March 2011 rather than 2010 in order to allow time for the processes involved. It needs to be considered how the proposal would interact with HMRC requirements on Lifetime Allowance and Benefit Crystallisation Events calculations for members who retired before 6 April 2006.
	REGS. 13, 20-22 – ADDITIONAL SURVIVOR BENEFITS (ASBs)
Avon Pension Fund	The authority notes that many members would be unable to afford additional contributions. They also note the ECJ ruling in respect of civil partners' pension rights in the 2008 Tadao Maruko v Versorgungsanstalt der deutschen Bühnen case and the potential for IDRPs or discrimination

	claims on grounds of inequality.
Bristol City Council	The amendment is supported.
Carmarthenshire	The authority would support the introduction of survivor benefits to 1974 at no additional cost.
Cheshire County Council	Allowing service purchase would seem to be the fairest approach.
Derbyshire County Council	The amendment is supported in the interests of equality.
Dorset County Council	The methods currently proposed potentially seem to enable the survivors concerned to be placed in a better position than survivors of marriages. The proposal should apply to service before 6 <sup>th</sup> April 1988, rather than 4 <sup>th</sup> April. New 24A should be re-numbered as 23A, whilst new 24B should be 24A.
Environment Agency	The facility to buy ASBs could be opened to all members. The reference to 4 <sup>th</sup> April would appear to be a drafting error. It is questioned whether members who have pre-4 April 1988 membership, but have left the Scheme and subsequently re-joined can still purchase ASBs.
GMPF	As an alternative to the proposed amendment, Regulation 14 could be extended to all members. References to guidance to be provided by actuaries should be made consistent.
LGE	The proposal should apply to service before 6 <sup>th</sup> April 1988, rather than 4 <sup>th</sup> April. Spouses should be made eligible for the new benefit. The current wording of the draft does not actually oblige authorities to pay the new survivor benefit. In 14A(2), the wording should be "actuarial guidance obtained and issued by the Secretary of State" to be consistent with wording used in draft 24A(6) and 24B(3) of the Administration Regulations. A member can purchase ARCs under Regulation 14 even if they are not married. The new ASBs could therefore be seen as discriminatory in that they oblige a nomination of a beneficiary to have already taken place. They could be excluded, using 74(3) of the Administration Regulations, from the benefits which authorities are able to recover or retain in the event of serious misconduct.
LPFA	The introduction of such benefits is supported in principle, but in the interests of equality a different approach is needed. For example, individuals could be permitted to buy periods of service or all members could be allowed to

	buy increased survivors' pension.
MPF	The proposals are inconsistent with similar previous initiatives, in that the length of pre-1988 service is not being taken into account. 24(2) of the Benefits Regulations should set out how benefits are payable.
LB Sutton	New 14(A)(1) should cite 6 <sup>th</sup> April 1988, not 4 <sup>th</sup> April 1988.
SYPA	New 14(A)(1) should cite 6 <sup>th</sup> April 1988, not 4 <sup>th</sup> April 1988. The proposal should be in the form of up-rating periods of membership. It should be made clearer that the survivor rather than the member should be credited. The possibilities arising when a partnership ends should be considered.
Tyne & Wear	The proposal is welcome in principal, but a different approach is needed to provide a "level playing field" between spouses and other partners.
Wiltshire	As drafted the new Regulation raises a possible equality issue, as it enables members to buy benefits for the survivor only, which is not an available option for married members.
WYPF	In the interests of fairness and of HMRC rules, the proposal should be in the form of up-rating periods of membership.
WMPF	If at some point in the future, benefits in respect of pre-1988 membership are granted at no cost to the member, individuals who have purchased ASBs should receive refunds of their contributions.
	REG. 14 – CHILDREN'S PENSIONS
Dorset County Council	The amendment is welcomed.
Environment Agency	The amendment is welcomed.
GMB	Payments should be permitted up to age 23, which would be consistent both with the Finance Act 2004 and with the NHS scheme.
Wiltshire County Council	The proposal is welcome, but there should be an amendment to Regulation 26 making reference to "a child wholly or mainly dependent on the deceased at the time of his death."

	REG. 15 – DISCHARGE OF LIABILITIES BY THE ENVIRONMENT AGENCY
Dorset County Council	The amendment is welcomed.
Environment Agency	It is noted that the draft does not permit the respective fund actuaries to agree together the size of the one-off capital payments.
LGE	There should be a right for the receiving Fund to challenge the amount to be paid by the Environment Agency under this Regulation.
SYPA	The administering authority should have a power of veto on the Agency's proposals and the sums involved.
Tyne & Wear	The lump sums required should be calculated by the receiving fund.
Wiltshire County Council	The amendment is welcomed.
WYPF	The amendment is welcomed. However, provision should be made for calculations to be either in accordance with GAD guidance or with the agreement of the administering authority's actuary.
	REG. 16 – SIMPLIFICATION OF DEATH GRANT
Bristol City Council	The amendment is supported.
Environment Agency	The amendment is supported and should be effective from 1/4/08.
MPF	The amendment should be effective from 1/4/08.
WMPF	The amendment requires changes to the UPM System.
	REGS. 17 – 18 – TECHNICAL AMENDMENTS
	REG. 19 – TRANSFERS TO THE CARE QUALITY COMMISSION
	REG.21 – DISCONTINUANCE OF ARCs
Cheshire County Council	The proposal is unnecessary. Those qualifying for third tier benefits receive only their accrued main Scheme benefits and only for a limited period. By being granted the full amount of their ARC contract, the member is effectively being compensated up until the end of that contract, which seems out of line with the principle of their

	being capable of gainful employment within three years.
Cornwall County Council	The proposal that employees paying Additional Regular Contributions should have the contract counted in full if leaving under 3 <sup>rd</sup> Tier Ill Health is rather generous and will place additional financial burden on the fund.
Environment Agency	There would be better protection for funds if contracts were only deemed to be complete if a 3 <sup>rd</sup> Tier pension was converted to 2 <sup>nd</sup> Tier.
LGE	Proposed Regulation 12(6)(d) should be dropped.
LPFA	The proposal is unnecessary. Those qualifying for third tier benefits receive only their accrued main Scheme benefits and only for a limited period. By being granted the full amount of their ARC contract, the member is effectively being compensated up until the end of that contract, which seems out of line with the principle of their being capable of gainful employment within a short time.
WYPF	The proposal is welcomed.
	<b>REG. 23 – CLARIFICATION OF AVC PROVISIONS</b>
Bristol City Council	In certain circumstances members who started their AVC policy before 13 November 2001 can convert AVCs into LGPS membership. Therefore as this provision could potentially increase employer liabilities the amendment should be removed.
Carmarthenshire	The authority has reservations regarding the proposal. This is because members will use the provision to take lump sums from their AVC fund rather than commute pension, which would increase overall Scheme costs.
Cheshire County Council	The authority has reservations regarding the proposal. This is because members will use the provision to take lump sums from their AVC fund rather than commute pension, which would increase overall Scheme costs. It is unclear if transfers would be into members' AVCs or fund membership.
Dorset County Council	Regulation 83 of the Administration regulations would need to be modified to make it clear whether AVCs can be transferred into a member's main pension.
Lynda Twigg, East Riding	Backdating the amendment to 1 April 2008 would have serious implications for authorities and their members,

	given that the position on AVC transfers would have been substantially changed.
Environment Agency	The proposal is opposed due to possible infringement of HMRC rules.
GMPF	The authority has reservations regarding the proposal. This is because members will use the provision to take lump sums from their AVC fund rather than commute pension, which would increase overall Scheme costs. Members' facility to buy a scheme annuity may be a potential burden for employers. The proposal also creates increased complexity for administrators.
LGE	GAD should be asked if it is in the Scheme's financial interests to permit all types of money purchase schemes to be transferred into LGPS AVCs or permit only other LGPS AVCs to be transferred into LGPS AVCs. There is a danger that the amendment, as drafted, would lead HMRC to allege that a 100% cash benefit has been facilitated.
MPF	The proposal is inconsistent with the current position of non-LGPS AVCs being used to buy Scheme membership.
SYPA	The authority oppose the proposal.
Tyne & Wear	The authority have grave reservations regarding the proposal. This is because: i) members will use the provision to take lump sums from their AVC fund rather than commute pension, ii) they would be able to circumvent their employer's refusal to transfer in pension, iii) HMRC would be concerned if members were able to transfer in from overseas schemes.
Wiltshire	The current position is that only LGPS AVCs should be transferred to a member's AVC. The Technical Group have now recommended that the draft regulation should not be taken forward.
WMPF	The proposal does not square with the current position, whereby imported AVCs are used to buy membership credit.
WYPF	WYPF have several concerns with respect to the proposal. There is no definition of money purchase scheme. Members could transfer into the Fund shortly before retirement and then take a large proportion as a lump sum. This has implications for the Fund's costs and for HMRC rules. The new system would also be complicated to administer.

	<b>REG. 25 – DISCHARGE OF ENVIRONMENT AGENCY’S LIABILITY TO MAKE CERTAIN PAYMENTS</b>
Environment Agency	A new form of wording is suggested to allow the Agency’s actuary and the actuary appointed by the Water Act company to agree together the size of the one-off capital payment, as well as to generally clarify the amendment.
LGE	New Regulation 40A(3) should perhaps specify to whom the lump sum payment should be made.
	<b>REG. 26 – CONDITIONS THAT NECESSITATE PAYMENT OF GUARANTEED MINIMUM PENSION</b>
Cheshire County Council	The authority draws attention to issue 35 of HMRC’s Pension Industry Newsletter (Dec. 2008) which states that payment of GMP should not alter with SPA and remains at 60 for a woman and 65 for a man.
Environment Agency	The proposal is welcome. It would reduce administration and be easier to understand.
LGE	An additional paragraph is suggested for the proposed Regulation 50A. The equivalent of Regulations 37, 43 and 114 of the 1997 Regulations also need to be introduced into the Administration Regulations. The LGPS Regulations do not properly conform to section 13 of the Pension Schemes Act 1993 as the GMP date is 60 for women and 65 for men, nit the State Pension Age.
MPF	The amendment should be effective from 1/4/08.
	<b>AGGREGATION OF SERVICE</b>
Avon Pension Fund	The authority would not object to the Regulations being relaxed to allow any previous period of membership to be aggregated. This should reduce the likelihood of IDRPs appeals.
Bedfordshire County Council	The authority consider that members should be permitted to amalgamate any period of service and that the 12 month deadline should be dropped.
Bristol City Council	Allowing members to link LGPS membership more freely could considerably increase the costs on employers. This is especially so when an individual transfers benefits just before they are made redundant, which increases the “strain on the fund cost” falling on the employer. The current regulations provide the same equality of opportunity to all, so there is no need to amend them on equality grounds. Individuals who choose to transfer former LGPS service after 12 months should only be able

	to do so with their employer's consent. If such a transfer takes place, it should be on the basis of a non-club transfer.
Carmarthenshire	It is considered that this is an equality issue and that members should be permitted, no later than retirement date, to aggregate past membership.
Cheshire County Council	The authority believe that the proposed loosening of restrictions should remain within the remit of each employer.
Derbyshire Constabulary	The authority supports the proposals to broaden the regulations (as well as the draft SI as a whole), although further clarity would be needed in respect of any new provisions.
Derbyshire County Council	The authority supports the proposals to amend the regulations in the interests of clarity.
Dorset County Council	In principle, the Council agree to amendment in the interests of equality and clarity. However, the Fund is concerned that there could be increased costs amounting to 0.1% of payroll expenditure, and it would have to be considered if change would be retrospective.
Environment Agency	Members should be able to aggregate any periods of membership, as well as frozen refunds, but should only be able to so in their first 12 months of the new employment.
Hampshire County Council	The authority would have no objection to members' being allowed to aggregate any period of service.
LB Lewisham	The Regulations should be amended in the interests of equality, so that members are able to aggregate any past periods of membership when they take up new employment.
LGE	In the short term the Transitional Regulations should provide that the rules set out in Regulation 16 of the Administration Regulations should apply equally to those who left with deferred benefits under the 1997 or earlier Regulations and who join the LGPS on or after 1 April 2008. The reference in Regulation 16 to "paragraph 4(b)" needs to be amended to read "paragraph 4(b)(i)". Also, the rules on aggregation should be made to apply equally to frozen refunds. However, there needs to be a far wider debate on the whole area of transfers.

LPFA	In the interests of equality, the proposal is supported. Consideration should be given to retrospection, but on balance, the LPFA would prefer any amendment to be only made for future changes of employment given the potential administrative burden of allowing a degree of retrospection.
GMPF	The proposal would bring benefits to employees and costs to employers. Its introduction should therefore be a matter of negotiation between CLG, employers and unions.
MPF	The authority supports the LGE's proposal that the Transitional Provisions Regulations should provide that regulation 16 of the Administration Regulations should equally apply to those who left with deferred benefits under the 1997 Regulations or earlier regulations and who rejoin the LGPS on or after 1 April 2008. The rules should apply equally to aggregation of a frozen refund. The currently confusing state of play is potentially a source of hardship for staff who have been transferred on a number of occasions and chosen not to aggregate their membership.
Neath Port Talbot	The authority supports the proposals to broaden the regulations, although further clarity would be needed in respect of any new provisions.
South Norfolk Council	The Council supports the removal of restrictions on aggregation. [Also generally support the draft SI].
South Tyneside	The restrictions on the membership that can be aggregated and imposing a 12 month limit should both be removed.
SYPA	A wider debate is required before changing restrictions.
Tyne & Wear	The authority would support a time-limited opportunity of aggregation each time a member re-entered the LGPS.
Wiltshire	It should be made possible to aggregate any period of service, including frozen refunds and non-local government transfers under Regulation 83(8) of the Administration regulations. However, there should be a firm limit of 12 months during which members would be able to do so.
WYPF	The Council supports the removal of restrictions on aggregation.

GMB	Members should be permitted to aggregate any periods of service, regardless of when it was accrued. They should also be able to use "frozen refunds" to purchase LGPS membership.
	<b>UNRELATED ISSUES</b>
	Casual Employees
GMB	Membership should not be restricted to those who hold contracts of three months or more