

**Agenda Item No 4(d)**

**DERBYSHIRE COUNTY COUNCIL  
PENSIONS AND INVESTMENTS COMMITTEE**

**3 August 2016**

**Report of the Director of Finance**

**CONSULTATION ON LGPS REGULATIONS - FAIR DEAL**

**1 Purpose of the Report**

To seek approval to a proposed response to the Government's Consultation on amendments to the LGPS Regulations.

**2 Information and Analysis**

In May the Government issued a consultation seeking to amend LGPS regulations with two main elements:

- to provide clarifications requested by practitioners and improve the operation of the regulations
- to introduce the "Fair Deal for Staff Pensions" for staff in LGPS who are compulsorily transferred to another service provider.

A copy of the proposals is attached

**Fair Deal Proposals**

The current Best Value Staff Transfer (Pensions Direction) 2007 covers the situation where local authority services are contracted out and staff transferred under TUPE to an independent provider. The Pensions Direction ensures those staff have the right to acquire pension benefits that are the same as, or at least broadly comparable to, those under LGPS.

In practice, within the Derbyshire Fund, all providers have complied with this direction by seeking admitted body status, allowing staff to remain members of LGPS. This has led to a dramatic increase in the number of employers within the Derbyshire Fund, many of whom have a very small number of employees within LGPS.

The consultation proposes that all transferring employees will be permitted to remain in the scheme i.e. unless the employees agree, the independent

provider will no longer be able to offer a broadly comparable scheme but **must** seek admitted body status.

The proposal does not apply to higher and further education institutions which are classified as private sector bodies, and although Police & Crime Commissioners **may** adopt Fair Deal they are not required to.

A new category of scheme employer, a 'protected transferred employer' would be created, for those employees who are transferred. Independent service providers will be obliged to enter into an admission agreement and the costs of providing LGPS to transferring staff should be clearly set out in tender documentation.

If a contract is retendered, employees carry their protection to the new employer who would also have to provide LGPS.

The introduction of the proposals will make little change in practice to administration within the Derbyshire Fund as all outsourced bodies have sought admitted body status but as members are aware there are a rapidly increasing number of such bodies within the fund, many of whom have a small number of employees within LGPS. The administration effort in admitting such bodies is recharged but becomes an oncost on the cost of the contract. The subsequent administration cost is not proportionate to the number of employees and becomes an overhead on the whole fund, reflected in employer rates.

Whilst welcoming this proposal, which simplifies the current arrangements and reflects what happens in practice, it may be opportune to remind government and others that the creation of admitted bodies with a small number of LGPS employees which is likely to increase with increasing academisation, does not provide value for money.

## **Changes to 2013 Regulations**

A number of other changes are proposed, among which the following merit a response:

### **Assumed Pensionable Pay**

The current regulations provide for the amount of ill health pension payable to a member, or death grant payable to their survivor, to be based on pay received in the 12 weeks or 3 months prior to their death or illness. In some cases, where such pay was abnormally high or low, the benefits due will be inappropriately high or low. The proposal is to allow the employer to use its discretion to use a pensionable pay figure that more closely reflects the normal pay of the member over a longer period of time, resulting in a more equitable rate of ill health pension/death grant. DCC has recently introduced a

similar discretion in relation to calculation of redundancy pay and this change for pension purposes is sensible.

### **Auto Aggregation (Pension Accounts)**

Currently, when a member with a deferred pension account becomes an active member again, the two accounts are automatically aggregated and the member has 12 months to opt to separate the former deferred account from the new active account. This has proved to be complex to administer and to allocate earned pension into the correct tax year as the 12 month option period can mean decisions are made outside specific tax years. To remedy the position, it is proposed that Regulation 22(8) is amended to give the member the option to aggregate their deferred and active pension accounts within 12 months of becoming an active member. This prevents situations occurring where automatically aggregated pensions accounts have to be disaggregated and follows the policy in the 2008 Scheme which worked more smoothly.

This is a very welcome proposal that will help to improve administrative efficiency in this area of work.

### **Retirement Benefits - Deferred and Active**

Currently, where a member aged over 55 has employment terminated due to redundancy or business efficiency they are required to take pension, but if they do so this includes both active and any deferred pensions with LGPS relating to the same employment. A change is proposed to allow the member to take only pensions benefits relating to the employment being terminated if they choose. This provides more choice for the individual without impacting on the fund.

### **Special Circumstances where Revised Actuarial Valuations and Certificates must be obtained**

If an employer no longer has active members and leaves the fund any surplus accrued remains with the fund. At DCC an example has arisen where one organisation has two employers within the fund, one for each outsourced contract it has. One “employer” left the fund in surplus but the current regulations did not permit this surplus to be used to offset the deficit on the other employer. The proposed amendment provides flexibility for administering authorities to be more equitable.

### **Transfers**

This relates to the underpin arising from the 2014 changes whereby anyone within 10 years of normal retirement age at 1 April 2012 would be protected

against any loss of benefits arising from the introduction of CARE compared to what would have been receivable should the 2008 scheme have continued.

The proposal is to permit the underpin also to apply to someone transferring into the 2014 LGPS Scheme from another public service pension scheme even though they were never in the LGPS final salary scheme. The LGA are concerned that this not only provides a greater level of protection than such individuals would have received in their former scheme but could also prove difficult to establish to who this might apply. LGA plan to strongly oppose this proposal.

### **3 Other Considerations**

In preparing this report the relevance of the following factors has been considered: financial, legal and human rights, human resources, equality and diversity, health, environmental, transport, property, social value and prevention of crime and disorder.

### **4 Officer's Recommendations**

- (i) That Derbyshire Pension Fund responds to the consultation, welcoming the proposed changes with the exception of Draft Regulation 25 which it opposes.
- (ii) That Committee use the consultation to express concern at the increasing number of "small" employers within the Fund and its advance effect on value for money.

PETER HANDFORD

Director of Finance



Department for  
Communities and  
Local Government

## Local Government Pension Scheme

### Consultation : Local Government Pension Scheme Regulations



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# The Consultation Process and how to Respond

## Scope of the consultation

<b>Topic of this consultation:</b>	<p>The Local Government Pension Scheme (Amendment) Regulations 2016</p> <p>These draft regulations amend the Local Government Pension Scheme Regulations 2013 (SI/2356), and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI/525) in order to provide clarifications that have been requested by practitioners and improve the operation of the regulations.</p> <p>They introduce the Fair Deal for Staff Pensions for staff in the Local Government Pension Scheme who are compulsorily transferred to another service provider. The Treasury 'Fair Deal for Staff Pensions' policy issued in October 2013<sup>1</sup> sets out new requirements for securing pension protection for staff transferring out of the public sector. This consultation seeks comments on proposals to ensure that local government and participating employers in the Local Government Pension Scheme, provide the appropriate level of pension provision as set out in the new Fair Deal guidance.</p>
<b>Scope of this consultation:</b>	<p>Section 21 of the Public Service Pensions Act 2013 requires consultation with parties that may be affected by the scheme regulations. This consultation seeks responses from interested parties on amendments to Local Government Pension Scheme Regulations 2013 and the Local Government Pensions Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 which came into force on 1 April 2014.</p>
<b>Geographical scope:</b>	<p>England and Wales.</p>
<b>Impact Assessment:</b>	<p>No impact assessment is needed because the affect of these amendments are outside the scope of the Better Regulation Framework. While the provisions relating to the Fair Deal may require private, voluntary and charitable organisations to become employers in the Scheme if they secure contracts that involve local government service delivery, Fair Deal does not compel businesses to enter into contracts that would involve the transfer of Scheme members.</p> <p>The Impact Assessment<sup>2</sup> for the Public Service Pensions Bill (which became the Public Service Pensions Act 2013) addressed the issue of Fair Deal, and it concluded that 'By offering transferred staff the right to remain members of the public service scheme private, voluntary and social enterprise providers will no longer be required to take on the risks of their own defined benefit pension schemes. The new schemes will be more affordable than the cost of equivalent provision purchased in the market. This may increase competition for public service contracts for smaller organisations.'</p> <p>These regulations also introduce additional ways in which a scheme member can access their Additional Voluntary Contribution 'pots', as part of the</p>

<sup>1</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262490/PU1571\\_Fair\\_Deal\\_for\\_staf\\_pensi\\_ons.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262490/PU1571_Fair_Deal_for_staf_pensi_ons.pdf)

<sup>2</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205841/Public\\_Sector\\_Pensions\\_impact\\_analysis.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205841/Public_Sector_Pensions_impact_analysis.pdf)



	<p>Government's 'Freedom and Choice in Pensions' policy This has no affect on the member's employer, whether they are in the private, charity or voluntary sectors. The Impact Assessment<sup>3</sup> for the Pension Scheme Bill (which became the Pension Scheme Act 2015) addressed the issues around the additional flexibilities for Defined Contribution benefits.</p> <p>Equalities</p> <p>Under section 149 of the Equality Act 2010, the Department is required to give due regard to the impact of any policy decisions that it enacts on persons with protected characteristics. The protected characteristics are:</p> <ul style="list-style-type: none"> <li>• Age;</li> <li>• Disability;</li> <li>• Gender Reassignment;</li> <li>• Pregnancy and Maternity;</li> <li>• Race;</li> <li>• Religion or belief;</li> <li>• Sex;</li> <li>• Sexual Orientation; and</li> <li>• Marriage and Civil Partnership (but only in respect of the first aim of the Equality Duty: eliminating unlawful discrimination).</li> </ul> <p>The general public sector equality duty requires public authorities to have 'due regard' to the need to:</p> <p>a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;</p> <p>b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and</p> <p>c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</p> <p>None of the policies or amendments proposed in this consultation would adversely impact on a protected group, and all of the protected groups and people not in a protected group will benefit from the amendments equally.</p> <p>The introduction of 'Fair Deal' will result in fewer scheme members leaving public service pensions schemes, including the Local Government Scheme. HM Treasury published a central Equalities Impact Assessment for the Public Service Pensions Act 2013<sup>4</sup>. In addition the Department published an Equalities Impact Assessment for the scheme as a whole.<sup>5</sup></p>
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#### Basic Information

<b>To:</b>	This consultation is aimed at Local Government Pension Scheme interested parties. The department publishes a list of bodies that it would normally expect to consult <sup>6</sup>
<b>Body/bodies</b>	The Secretary of State for Communities and Local Government

<sup>3</sup> <http://www.parliament.uk/documents/impact-assessments/IA14-13A.pdf>

<sup>4</sup> <http://www.parliament.uk/documents/impact-assessments/IA12-024.pdf>

<sup>5</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/244257/Local\\_Government\\_Pension\\_scheme\\_-\\_Equality\\_Statement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244257/Local_Government_Pension_scheme_-_Equality_Statement.pdf)

<sup>6</sup> <https://www.gov.uk/government/publications/local-government-pension-scheme-regulations-information-on-who-should-be-consulted/local-government-pension-scheme-regulations-information-on-persons-to-be-consulted>

<b>responsible for the consultation:</b>	
<b>Duration:</b>	This is a 12 week consultation which starts on 27 May and will conclude on 20 August
<b>Enquiries:</b>	For enquiries and to respond to this consultation, please e-mail  Vincent.kiddell@communities.gsi.gov.uk
<b>How to respond:</b>	When responding, please ensure you have the words Local Government Pension Scheme Amendment Regulations or Fair Deal in your reply.  Alternatively you can write to: Vincent Kiddell Workforce, Pay and Pensions Department for Communities and Local Government SE Quarter Fry Building 2 Marsham Street London SW1P 4DF  For more information, please see <a href="https://www.gov.uk/government/organisations/department-for-communities-and-local-government">https://www.gov.uk/government/organisations/department-for-communities-and-local-government</a>
<b>Additional ways to become involved:</b>	As this is a largely technical issue with specialist interests following discussions with those affected, this will be a purely written exercise
<b>After the consultation:</b>	The Government's response will be published along side the substantive amending regulations
<b>Compatibility with the Consultation Principles:</b>	This consultation complies with the Cabinet Office's consultation principles.

#### Background

<b>Getting to this stage:</b>	Following the implementation of the reforms of the Local Government Pension Scheme from 1 April 2014, work has continued with practitioners to identify areas in the regulations that require clarification and correction. These amending regulations are the product of that work and contain other policy developments such as provisions as a result of the Pension Schemes Act 2015 and measures relating to Fair Deal.
<b>Previous engagement:</b>	There continues to be regular engagement with the Local Government Association and other Scheme practitioners, to identify amendments needed including a meeting with business, trades unions and the LGA on the Fair Deal provisions.

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent and, where relevant, who else they have consulted in reaching their conclusions when they respond.

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 the 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, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact CLG Consultation Co-ordinator.

Department for Communities and Local Government  
Fry Building  
2 Marsham Street  
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or by e-mail to: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)

# Chapter 1

## Introduction

1. The Secretary of State for Communities and Local Government is consulting on these proposed regulations which will be made under the powers conferred by sections 1 and 3 of, and Schedule 3 to, the Public Service Pensions Act 2013. Under Section 3(5) of the 2013 Act, the Regulations require the consent of HM Treasury before being made. Draft regulations 3 to 22 amend the Local Government Pension Scheme Regulations 2013 (“the 2013 Scheme Regulations”), and draft regulations 24 to 29 amend the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) regulations 2014 (“the Transitional Regulations”).
2. The provisions contained in the draft regulations take into account the day to day experience of applying the 2013 Regulations since 1 April 2014 where areas for clarification have been sought or a change in approach has been requested. Recent Government policies have been taken into account such as Freedom and Choice in Pensions and the reformed way of delivering the Fair Deal policy. These draft regulations revise existing provisions to add clarity and address other issues raised as part of good stewardship of the regulatory framework of the Scheme created by the 2013 Regulations (“the Scheme”).
3. Your comments are invited on the set of draft regulations at **Annex A**
4. **The closing date for responses on the draft regulations at Annex A, and the related questions in Chapter 3 is 20 August 2016.**

# Chapter 2

## The 'Fair Deal' proposals

1. Fair Deal for Staff Pensions sets out how pension issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. The Government announced in December 2011 that the Fair Deal policy, introduced in 1999, was to be retained but delivered in a different way. Staff transferring from the public sector will have continued access to their public service pension scheme rather than being offered a broadly comparable private pension scheme, as was previously the case.
2. The Treasury published its revised guidance, Fair Deal for Staff Pensions: staff transfers from central Government, in October 2013. It covers central Government departments and their agencies, the NHS, schools that are not local authority maintained, academies, and any other parts of the public sector under the control of Ministers where staff are eligible to be members of a public service pension scheme.
3. In local government, the Best Value Staff Transfers (Pensions Direction) 2007 sets out the current level of pension protection for employees of English best value authorities (and Welsh police authorities) where the provision of services are contracted out, and staff transferred under TUPE to an independent provider. The Pensions Direction ensures that the employee has the right to acquire pension benefits that are the same as or count as being broadly comparable to or better than those that he had as an employee of the authority. It is now proposed that the 2013 Regulations will contain provisions to permit all transferring members to remain in the Scheme. The Pensions Direction will be revoked in due course and the associated primary legislation will be repealed.
4. When considering how best to implement the reformed Fair Deal in the Local Government Pension Scheme, account was taken of the existing admitted body regulatory framework which has been operating for over 15 years. The admitted body status framework includes safeguards to protect other employers in the Scheme by requiring appropriate risk assessments and the need for a bond, indemnity or guarantee where risks are identified. Admitted bodies are required to pay the appropriate amounts to the Scheme to meet the pensions that accrue for the members they employ. In view of this, the draft regulations build on admitted body status. **However, if there are better ways to adopt the reformed Fair Deal in local government, consultees are invited to recommend an alternative approach and say why they consider this to be preferable.**
5. Employees who would be covered by these draft regulations are those eligible for the Scheme and compulsorily transferred from local authorities and other employers listed on the face of the 2013 Regulations. This includes those employees who are designated as eligible and employees of other bodies that participate in the Scheme through an admission agreement (admitted bodies).

### Higher and Further Education Institutions and other exempt bodies

6. Fair Deal does not apply to higher and further education institutions, which are classified as private sector bodies, as the Fair Deal policy applies to transfers from the public sector. Police and Crime Commissioner are not required to adopt Fair Deal, as they are not best value authorities like a Police Authority. A PCC would not be precluded from adopting the principles of Fair Deal should they wish to.

### **Introducing a protected transferee and a protected transferee employer**

7. The category of person covered by Fair Deal is an employee of a current Scheme employer referred to in paragraphs 5 and who is compulsorily transferred to an independent service provider who does not offer a public service pension scheme. This category of member will be a 'protected transferee' and would remain so as long as that member remains wholly or mainly employed on the delivery of the service or function transferred.
8. The regulations introduce a new category of Scheme employer, a 'protected transferee employer' who is obliged to participate in the Scheme under the 2013 Regulations for those staff they receive that are 'protected transferees'. These employers will, generally, be providing a service or function under contract with a Scheme employer and can be profit-making bodies as well as not-for-profit or voluntary organisations.
9. It is envisaged that a 'protected transferee employer' can itself transfer staff to a new provider and these staff would also be regarded as 'protected transferees'. The original 'protected transferee employer' will be regarded as a Scheme employer for these purposes as will the receiving second 'protected transferee employer'.

### **Admitted body status**

10. Admitted body status arrangements have been a feature of the Scheme for many years and is the means for independent service providers to become employers in the Scheme. The 2013 Regulations will be amended to align more closely with the provisions in the Public Service Pensions Act 2013 ("the 2013 Act") dealing with eligibility for membership of a public service pension scheme. For local government, a person will be eligible for membership if actually employed in local government service; if deemed by the regulations to be employed in local government service; or if, despite not being employed in local government service, is subject to a "determination" under section 25(5) of the 2013 Act.
11. A determination under section 25(5) of the 2013 Act is made when an administering authority enters into an admission agreement with an independent provider of services. Alignment of the 2013 Regulations with the provisions in the 2013 Act will require no changes to the existing process for entering into admission agreements and no alteration to the status of any existing admission agreements.
12. Under the proposed regulations, independent service providers will be obliged to enter into an admission agreement so that the protected transferee can retain their eligibility for the Scheme. The costs of providing a local government pension to transferring staff should be clearly set out in the tender documentation. Those seeking to provide public services or functions for the first time will be obliged to offer membership of the Scheme for staff they receive under the compulsory transfer but all bidding organisations would be under the same pension obligations.

13. There are already provisions in the Scheme to mitigate the risks of participating employers falling into insolvency or simply failing to meet their financial obligations under the Scheme Regulations which could have the effect of requiring other employers sharing the debt left by the failing body or, ultimately, financial pressures on local tax payers. The risk assessment regime is provided for in the 2013 Regulations in Schedule 2, Part 3, paragraphs 6 – 8 and, if the level of risk identified by the assessment based on actuarial advice requires it, the protected transferee employer would have to provide a bond, indemnity or a guarantee. This will apply to a 'protected transferee employer' as it would apply to any admission body and provides a proportionate means to mitigate any risks identified and this is permitted by section 25(8) of the 2013 Act.
14. The provisions dealing with ceasing participation in the Scheme, for example when a contract ends, would apply to this category of Scheme employer as it does to other employers in the Scheme. This means that when the amounts needed to meet all liabilities falling to the exiting employer cannot be made by the assets held in the administering authority's pension fund, an exit payment must be paid to that administering authority to address the shortfall.

**Retenders of contracts involving members who were previously transferred out to a new provider and joined the provider's broadly comparable pension scheme**

15. A member who has moved out of the Scheme under an earlier transfer may still be in that provider's broadly comparable pension arrangement permitted under the Best Value Authorities (Pensions) Direction 2007 (see paragraph 3 above) and retains the Pensions Direction protections when a contract is retendered. The Treasury code: Fair Deal for Staff Pensions states that contracting authorities should (where this is compatible with their obligations under the Public Contracts Regulations 2006) require bidders to provide them with access to the appropriate public service scheme. The legal position is not the same for local government as it would require explicit statutory powers to achieve this. The draft regulations do not include a requirement that, at retender, the formerly transferred member becomes a protected transferee member and the successful bidder becomes a protected transferee employer. This is because the individual is not being transferred out of the public sector at that point as they are employed by the current external provider. It will remain the case that new providers at a retender can access the Scheme should they wish to by seeking admitted body status but it is not proposed that they will be required to do so.
16. **Views are sought on whether this is the right approach.** If consultees recommend an alternative approach, they are asked to say why that approach should be considered and how that might be achieved from a practical perspective eg how would accrued rights transfer from the provider's Scheme to the Local Government Pension Scheme?

**Publishing lists of members participating in the Scheme**

17. Section 25(5) of the 2013 Act, requires the publication of a list of persons to whom the Scheme relates and the list must be kept up to date. This does not require publication of the names of individual members of the Scheme but would be a list of the determinations that have been made under that section (that is to say admission agreements entered into). The draft Regulations delegate the obligations to publish this list to the relevant administering authority. The provision in the 2013 Regulations in Schedule 2, Part 3,

paragraph 11 (which requires individual notification of admission agreements to the Secretary of State) is no longer required and will be removed.



# Chapter 3

## Changes to the 2013 Scheme Regulations

1. We are also consulting on specific draft regulations that would provide members with more options for using their Additional Voluntary Contributions in the Scheme following the introduction of the Government's policy 'Freedom and Choice in Pensions'. Other draft regulations deal with how the Scheme operates within the Public Sector Transfer Club, while there are a number of draft amending regulations that are intended to improve the administration of the Scheme.

### **Local Government Service and Fair Deal – Draft Regulations 3 to 5**

2. Draft Regulation 3 would amend Regulation 2 of the Local Government Pension Scheme Regulations 2013, to deem certain categories of person to be in local government service for the purposes of the Regulations, aligning the Scheme with Schedule 1 of the Public Service Pensions Act 2013, and requiring contractors who have entered into arrangements to deliver local government service to be admitted to the Scheme.
3. Draft Regulation 4 proposes an amendment to Regulation 3 (active membership) by broadening the categories of persons eligible to be an active member of the Scheme in an employment, to include a member deemed to be or potentially eligible for membership if they are a protected transferee as a result of a compulsory transfer to a new provider. It delegates the function of making a determination under section 25(5) of the Act to administering authorities. The requirement to publish, and keep up to date, a list under section 25(9) of the Act is delegated to administering authorities.
4. Draft Regulation 5 proposes a new Regulation 3B requiring a protected transferee employer and the appropriate administering authority to enter into an admission agreement with the relevant administering authority, when the admission agreement comes into effect and who should be included in the admission agreement.

### **Temporary Reduction in Contributions- Draft Regulation 6**

5. A member may elect to pay contributions at half the rate specified in the 2013 regulations, and accrue earned pension at half the normal rate. It is proposed that Regulation 10(5)(a) is amended to make it clear that a member's election to pay reduced contributions is cancelled due to either the automatic re-enrolment process, or going on to no pay as a result of sickness or injury, rather than both those conditions having to be met.

### **Contributions During absence from work - Draft Regulation 7**

6. Regulation 11(4) specifies that a member remains an active member whilst absent from work on child related leave, reserve forces service leave, leave due to illness,

injury or a trade dispute, or leave with permission from their employer. It is proposed that the words after paragraph (c) will be deleted as they are unnecessary.

### **Additional Voluntary Contributions (AVC) - Draft Regulation 8 & 9**

7. In order to meet the aims of the Government's pension reform 'Freedom and Choice in Pensions'<sup>7</sup>, it is proposed to amend regulation 17 and introduce new Regulation 17A, setting out a new set of options for accessing benefits accrued through the Scheme's additional voluntary contribution arrangements. A member who has accrued benefits under these arrangements may, depending on when they access those benefits, use them for one or more lump sums, to purchase additional pension, to purchase an annuity, or transfer the benefits into another appropriate pension arrangement.

### **Assumed Pensionable Pay- Draft Regulation 10**

8. The current method of calculating assumed pensionable pay can produce anomalous results for a member whose pay varies over time. The amount of ill health pension payable to a member, or the amount of death grant payable to their survivor, is currently dependant on how much pay they received in the 12 weeks or 3 months before their death or illness. In some cases, where the member's pay was relatively high in that period then the value of the benefit to be paid will be inappropriately high but, in other cases, including those where the member was not in receipt of pay or on reduced pay due to any of the specified absences, the benefits due to them will be inappropriately low and potentially nil. Regulation 21 is, therefore, being amended to allow the employer the discretion to use a different pensionable pay figure that more closely reflects the normal pay of the member over longer periods of time, resulting in a more equitable rate of ill health pensions and death grant.
9. In addition, a new paragraph (5B) is proposed in regulation 21 which provides that returning officer fees are averaged over a three year period. Currently, the calculation for death grant and ill-health pension does not take into account returning officer fees that were received more than 3 months before their death, illness or injury. However, if they do receive fees in the 3 months before their death, illness or injury then the current assumed pensionable pay calculation will result in a disproportionately large benefit. Therefore, we are proposing that returning officer fees are averaged over a period of 3 years, as this will result in death grants and ill-health pensions that more accurately reflect the member's pay.

### **Pension Accounts- Draft Regulation 11**

10. Currently, when a member with a deferred pension account becomes an active member again, the two accounts are automatically aggregated and the member has 12 months to opt to separate the former deferred account from the new active

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332714/pensions\\_response\\_online.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf)

account. This has proved to be complex to administer and to allocate earned pension into the correct tax year as the 12 month option period can mean decisions are made outside specific tax years. To remedy the position, it is proposed that Regulation 22(8) is amended to give the member the option to aggregate their deferred and active pension accounts within 12 months of becoming an active member. This prevents situations occurring where automatically aggregated pensions accounts have to be disaggregated and follows the policy in the 2008 Scheme which worked more smoothly.

### **Retirement Benefits - Draft Regulation 12**

11. Currently, regulation 30(7)(b) has the unintended consequence of requiring that a member with both deferred and active pensions accounts has to take benefits relating to both accounts where employment is terminated due to redundancy or business efficiency and the member is required to take retirement benefits because they are aged over 55. It is proposed to amend this requirement so that the member is required to take only benefits from the active pension account in those circumstances.

### **Election for Lump Sum instead of pension – Draft Regulation 13**

12. As a consequence of the introduction of new Regulation 17A referred to in paragraph 7, it is proposed to amend Regulation 33 so that all lump sum payments are taken into account when identifying the limit on taking benefits in the form of a lump sum.

### **Survivor Benefits - Draft Regulation 14**

13. Regulations 39(1)(a) and (2)(a) provide that a tier 1 or 2 ill health pension that a member may receive is based on the earned pension that the member would have received had they continued in work until normal pension age. It is proposed that regulations 47(4)(a), 48(4)(a), 48(5)(a), 48(9)(a) and 48(10)(a) are amended so that the amount of pension that a surviving partner or child of a member who was in receipt of a tier 1 or 2 pension before death is based on the pension the member received rather than on the amount of pay that the member earned before award of the ill health pension.

### **Special Circumstances Where Revised Actuarial Valuations and Certificates Must Be Obtained - Draft Regulation 15**

14. It is proposed to amend Regulation 64 to allow for exit credits to be paid to employers that no longer have active members in a pensions fund which was not previously provided for. This will give more flexibility for administering authorities to manage liabilities when employers leave the Scheme.

### **Employer's Further Payments - Draft Regulation 16**

15. To complete the list of circumstances when an administering authority can require an employer to make payments in addition to regular employer contributions, it is proposed to amend regulation 68(2) to include occasions when a member takes

early retirement and the employer has waived the actuarial reduction to the member's benefits that would otherwise have been made.

### **Rights to payments out of the pension fund, and inward transfers of pension rights – Draft regulations 17 & 18**

16. The Public Sector Transfer Club allows easier movement of staff mainly within the public sector, by making sure that employees receive broadly equivalent credits when they transfer their pensionable service to their new scheme. As the Scheme participates in the Club, it is proposed to amend regulation 96 so that the relevant administering authority calculates the transfer in accordance with provisions in the Club Memorandum, during both the transfer out and the transfer in of the accrued rights.

### **Effect of acceptance of a transfer value – draft regulation 19**

17. Where there has been an inward transfer of pension rights, Regulation 101 is being amended to require that the amount of earned pension is calculated either in accordance with the Club Memorandum if the transfer is under the Public Sector Transfer Club and in any other case, in accordance with actuarial guidance issued by the Secretary of State.

### **Interpretation – Draft Regulation 20**

18. The proposed amendments to Schedule 1 introduce the necessary definitions relating to the Public Sector Transfer Club and associated revaluation arrangements, and a protected transferee and protected transferee employer. In addition, the definition of statutory pay is amended to include statutory sick pay, and the definition of partner is no longer restricted to partners of active members.

### **Scheme employers - Draft Regulation 21**

19. Paragraph 5 of Part 2 of Schedule 2 refers to 'An entity connected with a local authority listed in paragraphs 1 to 5 of [Part 1 of this Schedule](#)'. However joint boards, bodies and committees and Mayoral development corporations are not local authorities, so the proposed amendment corrects the position.
20. The proposed amendment to Part 3 of Schedule 2 is intended to put beyond doubt that administering authorities are able to agree that an admission agreement can have retrospective effect. Also, it is proposed that administering authorities are no longer required to inform the Secretary of State when they enter into admission agreements, this will no longer be necessary as draft regulation 4 requires administering authorities to publish a list of admission agreements that they have entered into.

### **Pension funds Draft Regulation 22**

21. A reference to 'the local authority or local authorities' is removed from the table in Part 2 of Schedule 3, as this is no longer needed following the amendment to paragraph 5 of Part 2 of Schedule 2 (see Draft regulation 20).

## **Amendments to the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014**

### **Membership before 1<sup>st</sup> April 2014 - Draft Regulation 24**

22. Draft Regulation 24 proposes to remove the need for an employer or former employer to give their consent when a member aged between 55 and 60 wishes to have early payment of benefits under Regulations 30(2) and 30A (3) of the 2007 Benefits Regulations. As these benefits will be actuarially reduced there is no cost to the employer, and the proposal gives the member more options about how to access their benefits which is in line with the Government's Freedom and Choice in Pensions policy
23. **Consultees are invited to comment on whether the Regulations should be further amended to remove the requirement for employer's consent for members aged between 55 and 60 with deferred benefits under earlier revoked regulations and how that might be achieved.**
24. It is also proposed to amend regulation 3 to specify that the normal pension age for deferred benefits accrued before 1 October 2006 is age 65. Without such an amendment, a member would be in a better position under the 2013 Scheme Regulations than he would have been had the 2007 Benefits and Contribution Regulations remained in force, and that was not the intention.

### **Transfers - Draft Regulation 25**

25. Regulation 4 of the Transitional Regulations describes the person to whom the statutory underpin applies. The proposed amendment to Transitional Regulation 9 establishes that a person to whom the underpin applies and has any protected benefits accrued under another public service pension scheme, is treated as if the person had been an active member of the 2008 Scheme. This will ensure that the member is in a no worse position under the 2014 Scheme than they would have been had the member joined the final salary arrangement under the 2008 Scheme.

### **Interfund Adjustments etc. - Draft Regulation 26**

26. It is proposed to amend Regulation 10 to give a member, with deferred benefits accrued before 1 April 2014 and who became a member of the 2014 Scheme on a date after 1<sup>st</sup> April 2014, 12 months, or such longer period as the employer permits, to elect to receive a transfer value payment in relation to the deferred benefits into their active pension account. This would be consistent with regulation 22 of the 2013 Regulations, and regulation 5(5) of the Transitional Regulations.

### **Contributions - Draft Regulation 27**

27. Contributions returned to members under regulation 18 of the 2013 Regulations should include additional contributions made under Earlier Schemes that have been aggregated into an active account. It is proposed to amend regulation 14(2) to make this clear.

### **Additional Contributions – Draft Regulation 28**

28. It is the intention that the additional options for taking benefits accrued by making additional voluntary contributions as detailed in draft regulations 7 and 8 above, are replicated for benefits accrued by additional contributions made before 1 April 2014. It is proposed that Regulation 15 is amended to achieve that.

### **Rule of 85 - Draft Regulation 29**

29. As specified in paragraph 4 of Schedule 2, members whose age plus length of membership in the Scheme (and Earlier Schemes) is equal to 85 years or more, may receive unreduced benefits when taking retirement benefits early. To ensure consistency with members between the ages of 55 and 59 who take early retirement under regulation 30(5) of the 2013 Regulations, members between the ages of 55 and 59 who choose to take early pension under regulations 30(1) or 30A of the Local Government Pension Scheme (Benefits, Membership and Contributions) 2007, may also benefit from the 'rule of 85' with their employer's consent.

### **Transitional Provisions- Draft Regulation 30**

30. This Regulation makes it clear that admission agreements that continue when these regulations come into force are deemed to be a determination under section 25 (5) of the Public Service Pensions Act 2013 and each administering authority has 12 months to publish a list of admissions agreements that they have entered into at the time that these regulations come into force.

# Annex A: Draft regulations

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## STATUTORY INSTRUMENTS

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2016 No.

### PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

## The Local Government Pension Scheme (Amendment) Regulations 2016

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

These Regulations are made in exercise of the powers conferred by sections 1, 3 and 25 of, and Schedule 3 to the Public Service Pensions Act 2013<sup>(8)</sup>.

In accordance with section 21 of that Act, the Secretary of State has consulted the representatives of such persons as appeared to the Secretary of State to be likely to be affected by these Regulations.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

The Secretary of State makes the following Regulations:

#### Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations 2016.

(2) These Regulations come into force on [xxx] but have effect as follows [xxx].

(3) These Regulations extend to England and Wales.

#### Amendment of the Local Government Pension Scheme Regulations 2013

2. The Local Government Pension Scheme Regulations 2013<sup>(9)</sup> are amended in accordance with regulations 3 to 22.

3. In Regulation 2 (introductory) after paragraph (1) insert—

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<sup>(8)</sup> 2013 c. 25

<sup>(9)</sup> S.I. 2013/2356; those Regulations have been amended by S.I. 2014/44, S.I. 2014/525, S.I. 2014/1146, S.I. 2015/57 and S.I. 2015/755.

“(1A) A person employed by a person specified in—

- (a) Part 2 of Schedule 2 (scheme employers) who is designated or who belongs to a class of employees that is designated by that body as being eligible for membership of the Scheme, or
  - (b) column 1 of the table in Part 4 of Schedule 2,
- is deemed to be working in local government service for the purpose of these Regulations.

(1B) The Scheme may potentially relate to a person employed by an admission body.”.

**4.—(1)** In regulation 3<sup>(10)</sup> (active membership) for paragraph (1) substitute—

“(1) Subject to regulation 4 (restriction on eligibility for active membership), a person is eligible to be an active member of the Scheme—

- (a) if working in local government service;
- (b) if deemed by regulation 2(1A) (introductory: deemed local government service) to be working in local government service;
- (c) if—
  - (i) by virtue of regulation 2(1B) (introductory: potential eligibility for membership) the Scheme may potentially relate to that person;
  - (ii) a determination under section 25(5) of the Public Service Pensions Act 2013 has been made in respect of that person; and
  - (iii) that person’s employer has designated that person, or a class of employees to which that person belongs as being eligible for membership of the Scheme.”.

**(2)** After paragraph (1) insert—

“(1A) The functions of making a determination under section 25(5) of the Public Service Pensions Act 2014 (“a determination”), in relation to persons of the description in regulation 2(1B) and of publishing a list under section 25(9) of that Act of the persons to whom the Scheme relates by virtue of a determination, are delegated to administering authorities.

(1B) An administering authority must make a determination and accordingly enter into an admission agreement with the employer of a person, where an application for a determination is received in relation to a person who is or who is to become a protected transferee.

(1C) A protected transferee for the purposes of these Regulations is an active member or a person who is eligible to be an active member and who was employed by—

- (a) a Scheme employer specified in Parts 1 or 2 of Schedule 2 (Scheme employers) other than a person within paragraphs 6, 7 or 14 of Part 1 of that Schedule 2 (police and further or higher education employers); or
- (b) an admission body,

immediately before that person’s employment was compulsorily transferred to a different employer who does not offer membership of another public service pension scheme, for so long as that person remains wholly or mainly employed on the delivery of the service or function transferred.”.

**(3)** In paragraph (2) for “by virtue of paragraph 1(d)” substitute “by virtue of regulation 2(1A)(b)”.

**5.—(1)** After regulation 3A<sup>(11)</sup> (civil servants etc engaged in probation provision) insert the following regulation—

**“Fair Deal in local government**

**3B.—(1)** A protected transferee employer must enter into an admission agreement with the administering authority which was the appropriate administering authority for the protected transferees immediately before the transfer of their employment.

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<sup>(10)</sup> There are amendments to regulation 3 which are not relevant to these Regulations.  
<sup>(11)</sup> Regulation 3A was inserted by S.I. 2014/1146.



(2) The admission agreement mentioned in paragraph (1) must take effect from the date of the transfer of employment of the protected transferees and must relate to all of the protected transferees.

(3) A person who would be a protected transferee but for the fact that the person's new employer is a person listed in Part 2 of Schedule 2 (scheme employers who can designate employees as eligible for membership) is deemed to be a protected transferee for the purposes of this regulation.

(4) A person listed in Part 2 of Schedule 2 which following a compulsory transfer of employment, becomes the employer of a protected transferee, must designate that person, or a class of employee that includes that person, as being eligible for membership of the Scheme from the date of the transfer of employment.”.

6. In regulation 10(5) (temporary reduction in contributions) at the end of sub-paragraph (a) for “and” substitute “or”.

7. In regulation 11(4) (contributions during absence from work) omit the words after sub-paragraph (c).

8. In regulation 17<sup>(12)</sup> (additional voluntary contributions)—

- (a) omit paragraphs (7) to (10);
- (b) in paragraph (12)(e) for “made an election under paragraph (7)(b)(ii)” substitute “made an election to purchase an annuity under regulation 17A (use of additional voluntary contribution benefits)”; and
- (c) in paragraph (15) for “an annuity purchased under paragraph (7)(b)(ii) substitute “an annuity purchased under regulation 17A”.

9. After regulation 17 (additional voluntary contributions) insert—

**“Use of additional voluntary contribution benefits**

**17A.**—(1) This regulation sets out the ways in which the realisable value in an AVC arrangement under regulation 17 (additional voluntary contributions) (“AVC benefits”) may be taken.

(2) A member under the age of 75 may transfer the whole of that member's AVC benefits to one or more registered pension schemes or qualified recognised overseas pension schemes.

(3) A member aged 55 or over and under the age of 75 may take AVC benefits wholly or in part as one or more uncrystallised funds pension lump sums.

(4) A member who starts to draw benefits under these Regulations may at the time of drawing those benefits—

- (a) take AVC benefits wholly or in part as a pension commencement lump sum;
- (b) use some or all of the AVC benefits to purchase additional pension under the Scheme, the amount of which is to be determined by the administering authority in accordance with actuarial guidance issued by the Secretary of State;
- (c) use some or all of the AVC benefits to purchase an annuity from one or more insurance companies (within the meaning of section 275(1) of the Finance Act 2004); or
- (d) transfer some or all of the member's AVC benefits to one or more registered pension schemes or qualified recognised overseas pension schemes.

(5) A member who starts to draw benefits under these Regulations may defer taking AVC benefits until reaching the age of 75 and at any time before that date may—

- (a) take up to 25% of the AVC benefits as a pension commencement lump sum;
- (b) take AVC benefits wholly or in part as one or more uncrystallised funds pension lump sums;
- (c) use some or all of the AVC benefits to purchase an annuity from one or more insurance companies (within the meaning of section 275(1) of the Finance Act 2004); or
- (d) transfer some or all of the member's AVC benefits to one or more registered pension schemes or qualified recognised overseas pension schemes.

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<sup>(12)</sup> Regulation 17 was amended by S.I. 2015/755.

(6) If a member reaches the age of 75 without having taken all AVC benefits accrued, those benefits must be paid to the member in such lawful manner as the member requests or if no request is made, in such manner as the administering authority considers reasonable.

(7) In this regulation—

“pension commencement lump sum” has the same meaning as in paragraph 1 of Schedule 29 to the Finance Act 2004<sup>(13)</sup>; and

“uncrystallised funds pension lump sum” has the same meaning as in paragraph 4A of that Schedule.”.

**10.** In regulation 21<sup>(14)</sup> (assumed pensionable pay)—

(a) in paragraph (4), for “The annual rate of assumed pensionable pay” substitute “Subject to paragraphs (5A) and (5B), the annual rate of assumed pensionable pay”; and

(b) after paragraph (5) insert—

“(5A) Where the pensionable pay received by a member during the period specified in paragraph (4)(a)(i) or (4)(b)(i) was in the opinion of the Scheme employer, materially lower than that member normally received, for the purposes of this regulation the Scheme employer may substitute for the pensionable pay the member received, a higher level of pensionable pay to reflect the level of pensionable pay that the member would normally have received.

(5B) Where any pensionable pay that has been received by a member includes fees of the kind listed in regulation 20(2)(j)(i) to (iv) (returning officer fees), for the purposes of this regulation the annual rate of pensionable pay relating to those fees for the period specified in paragraph (4)(a)(i) or (4)(b)(i) is the annual average of that pay during the three years preceding the date the ill-health retirement or death occurred.”.

**11.** In regulation 22<sup>(15)</sup> (pension accounts) for paragraph (8) substitute—

“(8) Where a deferred member again becomes an active member (other than where a member becomes entitled to deferred benefits as a consequence of a notice served under regulation 5(2) (ending active membership)), the benefits in the deferred member’s pension account may be aggregated with those in the active member’s pension account if—

(a) within 12 months of the active member’s pension account being opened; or

(b) such longer time as the Scheme employer in relation to that active member’s pension account permits,

the member makes an election to the appropriate administering authority to aggregate those accounts.”.

**12.** In regulation 30(7)(b) (retirement benefits) for “that employment” substitute “that active member’s pension account”.

**13.** In regulation 33 (election for lump sum instead of pension) for paragraph (2) substitute—

“(2) But the total amount of a member’s commuted sum must not exceed 25% of the capital value of the member’s accrued rights under all local government pension provision in relation to that benefit crystallisation event including those under regulation 17A(3), (4)(a), (5)(a) or (5)(b) (use of additional contribution benefits).”.

**14.** In regulations 47(4)(a), 48(4)(a), 48(9)(a) and 48(10)(a) (survivor benefits: partners and children of pensioner members) after the words “earned pension” insert “(including any amount added under regulations 39(1)(a) or 39(2)(a) (enhancement of member’s Tier 1 and Tier 2 benefits))”.

**15.** In regulation 64 (special circumstances where revised actuarial valuations and certificates must be obtained)—

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<sup>(13)</sup> Schedule 29 has been amended by the Finance Acts 2005, 2006, 2007, 2011, 2013 and 2014 and S.I. 2006/572; Paragraph 4A (which inserts the definition of uncrystallised funds pension lump sum) was inserted by the Taxation of Pensions Act 2014 (c.30).

<sup>(14)</sup> Regulation 21 was amended by S.I. 2015/755.

<sup>(15)</sup> Regulation 22 was amended by S.I. 2015/755.

- (a) in paragraph (1)<sup>(16)</sup> at the end add “or entitled to receive an exit credit”;
- (b) in paragraph (2)(b) after “exit payment due from the exiting employer” insert “or exit credit payable to the exiting employer”;
- (c) after paragraph (2) insert—  
“(2ZA) If an exit credit is payable to an exiting employer the appropriate administering authority must pay the amount payable to that employer within one month of the date when that employer ceases to be a Scheme employer, or such longer time as the administering authority and the exiting employer agree.”;
- (d) in paragraph (7) after the definition of “exiting employer” insert—  
““exit credit” means the amount required to be paid to the exiting employer by the administering authority to meet the excess of assets in the fund relating to that employer over the liabilities specified in paragraph (2)(a).”.

**16.** In regulation 68(2) (employer’s further payments) for “regulation 30(6) (flexible retirement or (7) (early leavers on grounds of redundancy or business efficiency)” substitute “regulation 30(5) (early retirement), (6) (flexible retirement) or (7) (early leavers on grounds of redundancy or business efficiency)”.

**17.** In regulation 96 (rights to payments out of pension fund) after paragraph (1) insert—

“(1A) Where a transfer under paragraph (1) is a Club Transfer, the administering authority must comply with the provisions in the Club Memorandum in relation to that transfer.”.

**18.** In regulation 100 (inward transfers of pension rights), at the end insert—

“(8) Where a relevant transfer is a Club Transfer, the administering authority must comply with the provisions in the Club Memorandum in relation to that transfer.”.

**19.** In regulation 101 (effect of acceptance of transfer value) for paragraph (2) substitute—

“(2) The calculation of the appropriate amount of earned pension for the purposes of paragraph (1) is—

- (a) in the case of a transfer of employment between members of the Public Sector Transfer Club, in accordance with the Club Memorandum; and
- (b) in any other case in accordance with actuarial guidance issued by the Secretary of State.”.

**20.** In Schedule 1<sup>(17)</sup> (interpretation)—

- (a) after the definition of “children’s pension” insert—

““Club Memorandum” means the memorandum published by the Cabinet Office under the title “The Public Sector Transfer Club – memorandum by the Cabinet Office” issued in March 2015 but effective from 1st April 2015<sup>(18)</sup>;

“Club Transfer” means a transfer of employment between members of the Public sector Transfer Club;”

- (b) for the definition of “local government service” substitute “means employment with a body specified in Part 1 of Schedule 2 (scheme employers)”;
- (c) in the definition of “partner” omit “in relation to an active member”;
- (d) after the definition of “permanently incapable” insert—  
““protected transferee” has the meaning given in regulation 3(1C);  
“protected transferee employer” means a body which is not a Scheme employer specified in Part 1 of Schedule 2 which becomes the employer of a protected transferee;

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<sup>(16)</sup> Regulation 64(1) was substituted by S.I. 2015/755.

<sup>(17)</sup> There are amendments to Schedule 1 which are not relevant to these Regulations.

<sup>(18)</sup> The Club Memorandum is published on the Cabinet Office website and can be accessed at the following address <http://www.civilservicepensionscheme.org.uk/media/95083/club-memorandum-march-2015.pdf>; a hard copy may be obtained from [xxx].

“Public Sector Transfer Club” means the arrangements approved by the Secretary of State and detailed in the Club Memorandum as providing reciprocal arrangements between the Scheme and other registered occupational pension schemes for making and receiving transfer value payments;”;

- (e) for the definition of “revaluation adjustment”<sup>(19)</sup> substitute—

““revaluation adjustment” means—

- (a) in the case of a balance transferred under a Club Transfer, the adjustment that would have applied to that balance if it had not been transferred; and
- (b) in any other case the percentage specified as the change in prices in the relevant Treasury order made under section 9(2) of the Public Service Pensions Act 2013 which is to be applied to a sum in a pension account at the beginning of the next scheme year.”;
- (f) in the definition of “statutory pay”<sup>(20)</sup> for “statutory maternity, paternity, shared parental or adoption pay” substitute “statutory sick, maternity, paternity, shared parental or adoption pay”.

**21. In Schedule 2<sup>(21)</sup> (Scheme employers)—**

- (a) in paragraph 5 of Part 2, for “local authority listed in paragraphs 1 to 5 of Part 1 of this Schedule” substitute “body listed in paragraphs 1 to 5 of Part 1 of this Schedule”;
- (b) In Part 3—
- (i) after paragraph 1(e) insert—
- “(f) a protected transferee employer.”;
- (ii) omit paragraph 11; and
- (iii) at the end add—

“14. An admission agreement may take effect on a date before it is executed.”.

**22. In the table in Part 2 of Schedule 3<sup>(22)</sup> (pension funds), in the 7th row (relating to an employee of a Scheme employer listed in paragraphs 5 or 6 of Part 2 of Schedule 2), in column 2 omit the words “the local authority or authorities, or”.**

**Amendment of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014**

**23. The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014<sup>(23)</sup> are amended in accordance with regulations 24 to 29.**

**24. In regulation 3 (membership before 1st April 2014)—**

- (a) after paragraph (5) insert—
- “(5A) Notwithstanding paragraph (1)(a), regulations 30(2) and 30A(3)<sup>(24)</sup> of the Benefits Regulations (requirements for member aged between 55 and 60 to obtain consent for early payment of pension) cease to have effect.”
- (b) at the end of paragraph (6) add “but notwithstanding paragraph (1)(a), the normal pension age in relation to deferred benefits accrued before 1st October 2006 is age 65”.

**25. In regulation 9 (transfers)—**

- (a) in paragraph (1)—
- (i) omit “before 1st April 2015”; and

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<sup>(19)</sup> The definition of “revaluation adjustment” was amended by S.I. 2015/755.

<sup>(20)</sup> The definition of “statutory pay” was amended by S.I. 2014/3255.

<sup>(21)</sup> Schedule 2 was amended by S.I. 2014/1146 and 2015/755.

<sup>(22)</sup> The table in part 2 of Schedule 3 was amended by S.I. 2014/1012, 2014/1146 and 2015/755.

<sup>(23)</sup> S.I. 2014/525.

<sup>(24)</sup> Regulation 30A was inserted by S.I. 2010/2090.

(ii) at the end add “since ceasing active membership in the scheme from which the transfer payment is received”;

(b) after paragraph (1) insert—

“(1A) Regulation 4 (statutory underpin) applies to a person of the description in paragraph (1) as if that person had been an active member of the 2008 Scheme in respect of the service in the different public service pension scheme.”.

**26.** In regulation 10 (interfund adjustments etc) for paragraph (6) substitute—

“(6A) A member with deferred benefits relating to the Earlier Schemes, who did not become a member of the 2014 Scheme by virtue of regulation 5(1) of these Regulations (membership of the 2014 Scheme), but who subsequently becomes an active member of the 2014 Scheme may—

(a) within 12 months of the active member’s pension account being opened, or

(b) such longer time as the Scheme employer permits,

elect to receive a transfer value payment in relation to the deferred benefits to be credited to the active member’s account to purchase earned pension in accordance with actuarial guidance issued by the Secretary of State.

(6B) Where the appropriate administering authority in relation to the active member’s pension account mentioned in paragraph (6A) (“the current authority”) is different to the administering authority which is the appropriate administering authority in relation to the deferred benefits (“the previous authority”), the previous authority must make the transfer value payment to the current authority.”.

**27.** In regulation 14(2) (contributions) after “refund of contributions” insert “(including additional contributions)”.

**28.** In regulation 15 (additional contributions)—

(a) omit paragraph (1)(b);

(b) for paragraph (1)(d) substitute—

“(d) regulation 14 (election in respect of additional pension) and 14A<sup>(25)</sup> (election to pay additional contributions: survivor benefits) of the Benefits Regulations and regulations 23, 24, 24A and 24B of the Administration Regulations<sup>(26)</sup> (payment, discontinuance and use of additional contributions) as they apply to a member who has elected before 1<sup>st</sup> April 2014 to pay additional contributions under those regulations.”.

(c) after paragraph (2) insert—

“(2A) Regulations 17 and 17A of the 2013 Regulations (additional voluntary contributions) apply to an AVC arrangement entered into before 1st April 2014 as they apply to an AVC arrangement entered into on or after that date save that—

(a) the normal pension age in an AVC arrangement entered into before 1st April 2014 is the normal retirement age under the 2008 Scheme; and

(b) regulation 66(8) of the 1997 Regulations (persons making elections in relation to AVCs prior to 13th November 2001) continues to have effect in relation to persons of the description in that regulation.”;

(d) omit paragraph (4);

(e) in paragraph (5) for “paragraph (4)” substitute “paragraph (2A)”.

**29.** In Schedule 2 (rule of 85) in paragraph 1(1)(c)<sup>(27)</sup> after “of the 2013 Regulations” insert “, or regulations 30(1) (choice of early pension) or 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations,”.

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<sup>(25)</sup> Regulation 14A was inserted by S.I. 2009/3150 and was amended by S.I. 2010/2090 and S.I. 2012/1989.

<sup>(26)</sup> Regulations 24A and 24B were inserted by S.I. 2009/3150.

<sup>(27)</sup> There are amendments to Schedule 2 which are not relevant to these Regulations.

## Transitional Provision

**30.**—(1) Any admission agreement which subsists at the date these Regulations come into force remains in force and is treated as if it had been the subject of a determination under section 25(5) of the Public Service Pensions Act 2013<sup>(28)</sup>.

(2) Each administering authority must, within 12 months of the date these Regulations come into force, include in its list published under section 25(9) of the Public Service Pensions Act 2013, details of the persons included in admission agreements to which it is a party, to whom the Scheme relates by virtue of the provision in paragraph (1).

We consent to the making of these Regulations

Date *Names*  
Two of the Lords Commissioners of Her Majesty's Treasury

Signed by authority of the Secretary of State for Communities and Local Government

*Name*  
Parliamentary Under Secretary of State  
Department for Communities and Local Government

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”) and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (“the Transitional Regulations”). Both sets of regulations came substantively into effect on 1st April 2014 and the amendments in these Regulations mostly take effect from that date. Section 3(3)(b) of the Public Service Pensions Act 2013 provides that scheme regulations may make retrospective provision.

Regulations 3 to 5 implement the Government’s “Fair Deal” policy for local government workers with the effect that members of the Local Government Pension Scheme who are compulsorily transferred to another employer retain the right to membership of the Scheme. Amendments are made to the 2013 Scheme to align the categories of person eligible for membership more closely with the regime contained in section 25 of the Public Service Pensions Act. Regulations 21(b) and (c) and 22(b)(i) make consequential amendments to the admission body regime.

Regulations 6 and 7 make minor clarifications to provisions in the 2013 Regulations relating to contributions.

Regulations 8 and 9 introduce flexibilities into the manner in which AVC benefits may be taken.

Regulation 10 permits employers to adopt a higher reference figure for the calculation of assumed pensionable pay where it would otherwise be unfairly low and identifies how irregularly- received income from fees for acting as a returning officer are to be included in calculation of assumed pensionable pay.

Regulation 11 changes the default position as regards aggregation of benefits when a former member of the Scheme resumes active membership.

Regulations 12, 14 and 16 make minor clarifications to provisions in the 2013 Regulations relating to the calculation of pensions.

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<sup>(28)</sup> 2013 c. 25.

Regulation 13 makes changes consequential to the introduction of a new regulation 17A into the 2013 Regulations and clarifies that all lump sum payments are taken into account when identifying the limit on taking benefits in the form of a lump sum.

Regulation 15 makes provision for employers to receive credit for any surplus assets in a fund upon ceasing to be a Scheme employer.

Regulations 17 to 19 and 20(a) make provision for the Scheme to comply with its membership obligations of the Public Sector Transfer Club.

Regulation 20(c) amends the definition of “partner” and regulation 20(f) provides for statutory sick pay to come within the definition of “statutory pay”.

Regulation 21(b) clarifies that an admission agreement may be backdated and removes the requirement for details of admission agreements to be sent to the Secretary of State.

Regulation 22 amends provisions in Schedule 3 (pension funds) to clarify which is the appropriate administering authority for employees of entities wholly owned by bodies listed in paragraphs 1 to 5 of Part 1 of Schedule 2.

Regulation 24 amends the Transitional Regulations to remove the requirement for persons aged between age 55 and 60 to obtain their employer’s consent to draw benefits early.

Regulation 25 ensures that members of other public service pension schemes who are entitled to transitional protection under those schemes and who are continuing to accrue final salary benefits can obtain final salary benefits within the Local Government Pension Scheme if they transfer those benefits in and can benefit from the statutory underpin.

Regulation 26 introduces a 12 month time limit (which is capable of extension by the employer) if a former member of the Earlier Schemes takes up active membership of the Scheme and wishes to aggregate the benefits.

Regulation 27 clarifies that the term “contributions” includes additional contributions when used in regulation 14 of the Transitional Regulations.

Regulation 28 has the effect that the administration of AVC benefits is carried out under the provisions in regulation 17 of the 2013 Regulations irrespective of when the AVC arrangement was established.

Regulation 29 makes an amendment to the provisions in Schedule 2 to the Transitional Regulations (“the rule of 85”) consequential to the amendment made by regulation 20, which removes the requirement for employer consent for members aged between 55 and 60 to draw benefits.

Regulation 30 is a transitional provision giving administering authorities 12 months to include details of existing admission agreements in their notices of details of persons to whom the Scheme relates by virtue of a determination under section 25(5) of the Public Service Pensions Act 2013.