

Philip Perry
LGPS Regulations
Department for Communities and Local Government
Zone 5/G6
Eland House
Bressenden Place
London
SW1E 5DU

23 May 2013

Dear Philip,

The Draft Local Government Pension Scheme Regulations 2013

Thank you for the Department's consultation document inviting comments on the draft LGPS Regulations 2013 and on the matters set out in Annex B of the consultation document.

I am pleased to attach a copy of our comments on the draft LGPS (Transitional Provisions and Savings) Regulations 2013 and the draft LGPS (Miscellaneous Amendments) Regulations 2013.

Our comments on the matters raised in Part B of Annex B of the consultation document are as follows:

1. Special Cases

We will leave individual Funds to respond to the questions posed relating to special cases.

2. Regulation 23 of the 1997 Transitional Provisions Regulations

We are of the view that this regulation, which covered former NHS staff transferring in the main to the Education sector, needs to be carried forward into the LGPS (Transitional Provisions and Savings) regulations 2013. It is our understanding that Funds have continued to apply the protections afforded by that regulation despite it not being carried forward into the LGPS (Transitional Provisions) Regulations 2008.

3. Survivor Benefits

Despite regulation 42A of the LGPS Regulations 1997 not being mentioned in regulation 6 of, or listed in Schedule 1 to, the LGPS (Transitional Provisions) Regulations 2008, the surviving partner of a civil partnership was, until regulation 3(4) of those Regulations was amended by SI 2009/3150, only entitled to a survivor benefit based on the deceased's membership after 5 April 1988. However, SI 2009/3150 came into force on 31 December 2009 and deleted the reference to civil partners in regulation 3(4) with retrospective effect to 1 April 2008. This meant that the surviving partner of a post leaving civil partnership was then placed in a better position than the survivor of a post leaving marriage i.e. the civil partner's pension would be based on all of the deceased's membership whereas a widow's pension would only be based on the deceased's post 5 April 1978 contracted-out membership and a widower's pension would only be based on the deceased's post 5 April 1988 membership.

In our view, the provisions contained in regulations 42 and 42A of the LGPS Regulations 1997 should not be carried forward into the 2014 Scheme and, equally, the survivor pension for a nominated co-habitee should be based on all of a deceased member's membership - see our comment under regulation 15(1) of the draft LGPS (Transitional Provisions and Savings) Regulations 2013. This would mean that the survivor benefit for a widow, widower, civil partner or nominated co-habitee would be based on all of the deceased member's period of membership (and regardless of whether the marriage, civil partnership or nomination occurred before or after leaving). This would, we believe, have negligible cost in relation to the scheme design and would markedly simplify matters for pensions administrators, pension software providers and for scheme members and their survivors.

Another reason for rationalising survivor benefits is related to the proposal that, at some point in the future, there may be same sex marriages. If there is a same sex post leaving marriage would the surviving partner be treated as a widow (under regulation 42(1)) or a widower (under regulation 42(2))? This issue would not arise if our suggestion that regulation 42 (and regulation 42A) of the LGPS Regulations 1997 should not be carried forward into the 2014 Scheme.

We would also urge that regulation 42 of the LGPS Regulations 1997 is corrected in respect of the benefits due to the widows and widowers of pre 1 April 2014 leavers in order to address the following anomalies in the 1997 Regulations:

- 1) regulation 42(1) – this regulation does not reflect regulation F6 of the LGPS Regulations 1995. Under the 1995 Regulations, the widow's pension in respect of a post retirement marriage where the widow had been married to the member at some time while he was in local

government employment after 31 March 1972 would have been based on all the member's service. However, under the 1997 Regulations, the widow's pension in such cases is only based on the member's post 5 April 1978 contracted-out membership. In order to tie in with regulation F6 of the 1995 Regulations, the opening of regulation 42(1) should be amended to read "Where a male pensioner member or deferred member marries [after becoming such a member] and [subsequently] dies, [and the widow was not her husband's wife at some time while he was in local government employment after 31 March 1972 and before he became entitled to a retirement pension] .." The wording in brackets is the extra wording that should be added. We suspect that the amendment introduced to regulation 42(3) by SI 1998/1238 was, inadvertently, incorrect and should, in fact, also have referred to widows.

- 2) regulation 42(3) – until its amendment by SI 1998/1238, regulation 42(4) applied to widows and widowers, but SI 1998/1238 limited regulation 42(4) so that it only applied to the widower of a deceased member where the widower was married to the member at some time whilst she was in local government employment after 31 March 1972. We suspect that the amendment introduced to regulation 42(3) by SI 1998/1238 was, inadvertently, incorrect and should, in fact, also have referred to widows.
- 3) regulation 42(4) - although not specifically catered for by regulation 42(4), regulations E6(4)(d) and D13 of the Local Government Superannuation Regulations 1986 and regulation F8(3)(d) of the LGPS Regulations 1995 made it clear that part-time buy back should count as post 5 April 1988 service for widower's pension purposes. Regulation 42(4) should be amended to reflect the earlier provisions.
- 4) regulation 42(4)(c) - regulation E6(4)(b) of the Local Government Superannuation Regulations 1986 and regulation F8 of the LGPS Regulations 1995 treated added years contracts which commenced after 5 April 1988 as post 5 April 1988 service for widower's pension purposes. Regulation 42(4)(c) only treats the amount of added years purchased since 1 April 1998 as post 5 April 1988 service for the purposes of calculating a widower's pension and so appears to be an error in drafting i.e. all added years contracts entered into since 5 April 1988 should count when calculating the amount of a widower's pension.
- 5) regulation 42(4)(d) - if a female member elected to uprate her 1 April 1972 to 5 April 1988 membership for widower's pension purposes the service would, by virtue of regulation 9(3) of the LGPS (Transitional Provisions) Regulations 1997, count as post 5 April 1988 membership. It would appear that this would then count towards a post retirement widower's pension. However, the amendment made to regulation 42(3) by SI 1998/1238 contradicts this and says that the service can only count under regulation 42(4)(d) if the member has remarried the same person to whom they were previously married at some point whilst in active membership after 31 March 1972.
- 6) regulation 42(4)(e) – this regulation and regulation 122(6) are contradictory in that regulation 122(6) provides that the credited

period from a transfer in is treated as a period of membership after 5 April 1988 (and so would automatically count under regulation 42(2)) in all cases, but regulations 42(3) and (4)(e) provide that membership attributable to a transfer received after 5 April 1988 only counts in respect of a pre-retirement marriage. However, in view of the mechanism for calculating the transfer in service credit, regulation 122(6) should take precedence over regulation 42(4)(e).

- 7) regulation 42 – it would be helpful if regulation 42 could make it clear what proportion of any increase to benefits under regulation 20(4A) should count towards the spouse's pension of a post retirement marriage i.e. does all the increase count as post 5 April 1978 / post 5 April 1988 service (as the actual membership for people who remain contributing to the Scheme beyond age 65 would do) or is the increase apportioned as pre and post 5 April service relative to the amount of pre and post 5 April actual membership (which is what the regulation appears to require).

I am happy to discuss any of the matters contained in our response with you should you require further information or clarification.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'TBE Edwards'.

Senior Pensions Adviser