
STATUTORY INSTRUMENTS

2013 No.

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	1st April 2014

Please note that comments in green are to explain suggested changes to the draft regulations. Notes in mauve are for information only. Items highlighted in yellow are policy issues.

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of, and Schedule 3 to, the Superannuation Act 1972(1).

In accordance with section 7(5) of that Act, the Secretary of State consulted such associations of local authorities as appeared to the Secretary of State to be concerned; the local authorities with whom consultation appeared to the Secretary of State to be desirable; and such representatives of other persons likely to be affected by the Regulations as appeared to the Secretary of State to be appropriate.

The Secretary of State makes the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013.

(2) These Regulations extend to England and Wales.

(2A) These Regulations apply in relation to the Isles of Scilly as if they were a district of the county of Cornwall and the council of the Isles of Scilly were the council of that district.

Comment: this additional paragraph has been added to mirror regulation 1(3) of the 2013 Regulations.

(3) These Regulations come into force on 1st April 2014.

(4) In these Regulations, where an expression is used in relation to provisions in the 1995, 1997, Benefits, Administration, 2008 Scheme Transitional, or 2013 Regulations, those expressions are to be construed in accordance with the meaning given to those expressions in the provisions referred to, unless the context indicates otherwise.

(1) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

(5) In these Regulations—

“the 1995 Regulations” means the Local Government Pension Scheme Regulations 1995(2);

“the 1995 Scheme” means the occupational pension scheme constituted by the 1995 Regulations;

“the 1997 Regulations” means the Local Government Pension Scheme Regulations 1997(3);

“the 1997 Scheme” means the occupational pension scheme constituted by the 1997 Regulations;

Comment: Wouldn't it make more sense to refer to this as “the 1998 Scheme” (in the same way as we refer below to “the 2013 Regulations” and “the 2014 Scheme”)?

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(4);

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008(5);

Comment: I think “the Administration Regulations” definition should be placed before the definition of “the Benefits Regulations” and both definitions should be placed between the definition of “the 2014 Scheme” and the definition of “the Earlier Schemes”.

“the 2008 Scheme Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions) Regulations 2008;

“the 2008 Scheme” means the occupational pension scheme constituted by the Administration Regulations, the Benefits Regulations and the 2008 Scheme Transitional Regulations;

“the 2013 Regulations” means the Local Government Pension Scheme Regulations 2013(6);

“the 2014 Scheme” means the occupational pension scheme constituted by these Regulations and the 2013 Regulations;

“the Earlier Schemes” means the 1995, the 1997 and the 2008 Schemes collectively;

“Protected Final Pensionable Pay” has the meaning given in regulation 25(3) of these Regulations;

“public service pension scheme” has the same meaning as in section 1 of the Pensions Schemes Act 1993(7).

Comment: amendment made to reflect the correct title of the Act. Also, is this definition needed at all, as it is already included in Schedule 1 of the 2013 Regulations?

Revocation of Regulations

2.—(1) Except where these Regulations provide otherwise, the Regulations listed in Schedule 1 are revoked.

(2) Accordingly, no person may become a member of the 2008 Scheme after 31st March 2014 or accrue benefits under the 2008 Scheme in respect of any service after that date.

Note: although we are retaining the right for:

- certain members to purchase membership after 31 March 2014 under protected regulation 66(8) of the 1997 Regulations (see regulation 15(5)), and

- pensionable pay / contributions received after 31 March 2014 which relate to a period prior to 1 April 2014 to be treated as if received pre 1 April 2014 (see regulations 3(6) and 14(1))

this does not conflict with the wording of paragraph (2) above or section 18(1) of the Public Service pensions Act 2013 because both paragraph (2) above and the Act refer to service after the closing date (31 March 2014), not to membership.

(2) S.I. 1995/2953; these regulations are varied by and applied by virtue of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 (S.I. 1997/1613).

(3) S.I. 1997/1612; these regulations are varied and applied by virtue of the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (S.I. 2008/238).

(4) S.I. 2007/1166.

(5) SI 2008/239.

(6) S.I. 2013/

(7) 1993 c. 48; section 1 has amendments which are not relevant to this instrument.

Similarly, the statutory underpin in regulation 4 is not allowing members to accrue benefits under the 2008 Scheme in respect of service after 31 March 2014; rather, it is setting out a minimum payment under the 2014 Scheme.

Membership before 1st April 2014

3.—(1) Notwithstanding the revocations effected by regulation 2 of these Regulations, the regulations listed in Schedule 1 continue to have effect so far as is necessary—

- (a) so that membership accrued in the 1997 and 2008 Schemes in respect of service before 1st April 2014, the pension rights accrued at that date, and any rights and obligations imposed on any person under those Schemes in relation to service before 1st April 2014, are preserved; and
- (b) so that benefits are payable in accordance with these Regulations.

(2) In paragraph (1)(a) the expression “pension rights accrued” includes any right to any pension, lump sum, grant or other benefit due to or in respect of a member.

(3) Where a person has been an active member of the 2014 Scheme, retirement pension payable to a member as a consequence of paragraph (1) is payable in accordance with regulation 11 (retirement benefits).

(4) But a retirement pension and any retirement grant payable to a member under paragraph (3) is subject to actuarial adjustment if it would have been subject to actuarial adjustment under the 2008 Scheme, irrespective of whether retirement pension under the 2014 Scheme payable at the same time is subject to actuarial adjustment.

Comment: additional wording added as there is a retirement grant in respect of pre 1 April 2008 membership and, as originally drafted, an actuarial reduction could only have been applied to the retirement pension (not to the lump sum retirement grant).

(5) Where a person has not been an active member of the 2014 Scheme, benefits payable as a consequence of paragraph (1) are payable in accordance with the 2008 Scheme as applied by this regulation.

(6) Any pensionable pay received or contribution paid by a member after 1st April 2014 which relates to work carried out before that date shall be dealt with in accordance with the 2008 Scheme.

(7) An increase in membership may be awarded to a member under regulation 12(4) of the Benefits Regulations (power of employing authority to increase total membership of active members) after 31st April March 2014 if the member’s relevant date for the purposes of that regulation is before 1st April 2014 and that increase shall be an increase in membership of the 2008 Scheme notwithstanding the fact that the award may occur after 31st March 2014.

Comment: amendments made to refer to the correct date and, as in paragraph (8) below, to clarify that the membership counts as membership under the 2008 Scheme.

(8) Where an employing authority grants an increase in membership under regulation 12A (duty of employing authority to increase total membership: enhanced protection) of the Benefits Regulations(8) following a notice served by a member before 6th April 2009, that increase shall be an increase in membership of the 2008 Scheme notwithstanding the fact that the grant may occur after 31st March 2014.

(9) A member’s final pay for the purposes of regulations 8 to 11 of the Benefits Regulations as applied by this regulation, is the pensionable pay calculated in accordance with regulation 25 (calculation of final pay) of these Regulations.

Statutory underpin

4.—(1) This regulation applies to a person who—

- (a) was an active member of the 2008 Scheme on 31st March 2012 and who, on 1st April 2012, was 10 years or less from the normal retirement age applicable to that member under the 2008 Scheme on 1st April 2012;

Comments:

(8) Regulation 12A was inserted by S.I. 2009/3150.

- as originally drafted this could be read in one of two ways i.e. (i) the member was within 10 years of their NRD as defined in the 2008 Scheme as the Regulations stood on 1 April 2012, or (ii) on 1 April 2012 the member had to be within 10 years of NRD under the 2008 Scheme (as the regulations governing that Scheme stood at 31 March 2014). I think the protection under the Public Service Pensions Act 2013 is (ii) and so I've amended the wording accordingly,
- should condition (a) also require that the member should have had continuous membership of the 2008 Scheme between 1st April 2012 and 31 March 2014 (i.e. that a member with a break in membership of the LGPS on or after 31 March 2012 and before 1 April 2014 should not have entitlement to the underpin)? **This is a policy matter.**

(b) was an active member of the 2008 Scheme on 31st March 2014 and 1st April 2014;

Comment: Sections 18(5) and 18(6) of the Public Service Pensions Act 2013 only requires that scheme regulations "may" allow for continued membership after the scheme closure date and for this to be subject to the satisfaction of conditions specified in regulations. I know that the underpin is not actually continued membership of the 2008 Scheme, but rather a minimum payment from the 2014 Scheme. However, I think the word "may" in the Act is important and it is my understanding that the underpin for the LGPS is only meant to apply if the member was an active member on 31 March 2012 and on 31 March 2014 / 1 April 2014. That position is reflected in regulation 10(6) which does not provide a final salary link to anyone who left with a deferred benefit before 31 March 2014 and rejoins post 31 March 2014. If we do not include (b) above then the underpin would apply to:

- a Pension Credit member in the LGPS 2008 on 1/4/12 who post 31/3/14 joins the LGPS as an active member. That would clearly be a nonsense as the person was not in the LGPS as an active member at any time prior to 1/4/14 and so should not have the underpin protection
- a member who was an active member at 31/3/12, left with a deferred pension prior to 31/3/14, rejoined post 31/3/14 and aggregated the membership with less than a 5 year gap.

This is a policy matter.

(c) who is an active member immediately before the underpin date and receives payment of benefits under the 2014 Scheme on or after the underpin date~~normal retirement age applicable to that member under the 2008 Scheme; and~~

Comment: the underpin should not apply if a member leaves before NRA with a deferred benefit and draws that deferred benefit at or after NRA. The underpin should only apply if the member is an active member at NRA. I've therefore amended sub-para (c) above and para (2) below accordingly.

(d) who does not have a disqualifying break in service.

(2) The ~~date on which the person receives benefits under paragraph (1)(b), or, if earlier, the normal retirement age applicable to that member under the 2008 Scheme, is the~~ underpin date for the purposes of this regulation is the normal retirement age applicable to that member under the 2008 Scheme.

(3) A disqualifying break in service for the purposes of paragraph 1(ed) is a break, after 31st March 2014, of more than 5 years in membership of a public service pension scheme.

Comments:

- Should –
 - i) the words "a break" be amended to "a continuous break" and
 - ii) the words "membership of" be amended to "eligibility for membership of"
 to reflect the definition of continuity of employment in paragraph 3 of Schedule 7 to the Public Service Pensions Act 2013, or is the underpin for the LGPS deliberately more restrictive? **This is a policy matter.**
- The words "after 31st March 2014" have been added as, otherwise, a member who meets the conditions in (a) to (c) would not meet condition (d) if the member had had a break of more than 5 years prior to 1st April 2014.

(4) The benefits that are payable under the 2014 Scheme to a person to whom this regulation applies, are increased by the amount by which the underpin amount exceeds the assumed benefits on the underpin date.

(5) The assumed benefits are calculated by assessing the benefits the member would have been entitled to under the 2014 Scheme if—

- (a) the member had paid contributions under regulation 9 of the 2013 Regulations (contributions) from 1st April 2014 to the underpin date, but excluding any period when the member was not an active member and any period of absence from work in respect of which the member has not paid contributions in accordance with regulation 11 of the 2013 Regulations;

Comment: the additional wording has been added as the underpin calculation should exclude breaks in service and exclude any period where the member was on leave of absence from work and does not pay contributions in accordance with regulation 11 of the 2013 Regulations. Note that the actual wording to be added to (a) above might need to be different to that suggested depending on how the wording in regulations 11 to 15 of the 2013 regulations is eventually crafted.

- (b) the member had paid no additional contributions under regulations 16 (additional regular contributions) or 17 (additional voluntary contributions) of the 2013 Regulations during that period;
- (c) the member had not been awarded additional annual pension under regulation 31 of the 2013 Regulations (award of additional pension) during that period;
- (d) the ~~Scheme member~~ had received no transfer value payment in respect of the member relating to rights accrued under a registered pension scheme or a European pensions institution;

Comment: the wording has been amended as it is the Scheme, and not the member, that receives a transfer value.

- (e) the revaluation adjustment made to the member's account had been made up to and including the end of the scheme year prior to the member attaining the normal retirement age applicable to that member under the 2008 Scheme.

Comment: how do we deal with Pension Debits (from a Pension Sharing Order) and an annual allowance tax charge (from a Scheme pays election) when performing the assumed benefits amount and the underpin amount?

(6) The underpin amount is calculated by assessing the benefits the member would have been entitled to under the 2008 Scheme if—

- (a) the member had, subject to sub-paragraph (b), continued to accrue membership under the 2008 Scheme rather than benefits in the 2014 Scheme from 1st April 2014 to the underpin date;

Comment: the additional wording has been added to reflect the amendment to paragraph (5) above and make it clear that breaks in service (of less than 5 years) and periods of absence for which no contributions have been paid, or deemed to have been paid, do not count.

- (b) the period of membership taken into account were the period specified in regulation 6(a) of the Benefits Regulations (period for which a member has paid, or is treated as having paid contributions); and
- (c) the final pay for the purposes of regulations 8 to 11 of the Benefits Regulations were the Protected Final ~~Pensionable~~ Pay calculated in accordance with regulation 25 (calculation of final pay) of these Regulations as at the underpin date.

Comment: see comments under regulation 25 to explain deletion of the word "Pensionable". Also, why does this paragraph refer to "Protected Final Pay" whereas regulations 3(9), 10(2)(a), 12(1)(b)(ii) and 17(2) refer to "Final Pay"?

Membership of the 2014 Scheme

5.—(1) A person who is an active member of the 2008 Scheme in an employment immediately before 1st April 2014 becomes an active member of the 2014 Scheme on 1st April 2014 in that employment and that person's benefits under the 2014 Scheme in relation to that employment are aggregated with any entitlement to benefits from the active membership in relation to that employment at 31st March 2014 under the 1997 or 2008 Schemes.

Comment: I've added the additional wording into paragraph (1) to cater for members with multiple employments.

General comment: I know the word "aggregated" in the sense used above (and in regs 7(4), 9(1) and 13) means "linked to" but regulation 3(1)(a) might cause some confusion in that it talks about the membership and pension rights at 31/3/14 being "preserved" (which does not signify that the benefits are aggregated). I'm not sure whether / how to make this clearer.

(2) Notwithstanding regulation 3(3) of the 2013 Regulations (active membership), a person who is eligible to be an active member of the 2008 Scheme immediately before 1st April 2014 who is not a member of the 2008 Scheme, does not become a member of the 2014 Scheme on 1st April 2014 unless that date is the automatic enrolment date for that member or the person makes an election under regulations 3(4)(b) or 3(6)(a) of the 2013 Regulations to join the 2014 Scheme from that date.

Comment: extra wording added to cover people who are not active members on 31 March 2014 but who elect to join from 1 April 2014.

(3) Paragraph (1) does not apply to a person who ceases to be an active member on 31st March 2014 by virtue of regulation 14 of the Administration Regulations (ending of membership) and these Regulations apply to any such person as if that person is not an active member immediately before 1st April 2014.

(4) If any person has notified an employer under regulation 14(2) of the Administration Regulations before 1st April 2014 of a wish to leave the 2008 Scheme, but would not (apart from this paragraph) have ceased to be an active member immediately before 1st April 2014—

- (a) paragraph (1) does not apply to that person;
- (b) the person's active membership ceases on 31st March 2014; and
- (c) these Regulations apply to that person as if that person is not an active member immediately before 1st April 2014.

(5) A designation by an authority of an employee or class of employees as being eligible for membership of the 2008 Scheme pursuant to regulations 4, 7, 8, 8B or 12(6) of the Administration Regulations has effect as designation as being eligible for membership of the 2014 Scheme.

Comment: I've amended the reference from "regulation 12" to "regulation 12(6)" as it is only under reg 12(6) that a person may be designated (and even that reg doesn't actually use the word "designation").

Admission agreements

6.—(1) Any admission agreement entered into before 1st April 2014 continues to have effect after 1st April 2014 and employees of admission bodies designated in accordance with an admission agreement as eligible for membership of the Local Government Pension Scheme are, on 1st April 2014, and subject to regulations 5(2) to (4) of these Regulations, members of the scheme by virtue of the agreement.

Comment: I've added in the reference to 1 April 2014 as, otherwise, the regulation would have been open-ended. I've added "to (4)" after "5(2)" as regulations 5(3) and 5(4) are also relevant to regulation 6(1).

(2) Regulation 8B of the Administration Regulations (eligibility for membership: employees of Newcastle International Airport Limited) continues to have effect notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations).

Qualifying service for the 2014 Scheme

7.—(1) Any period of as an active membership in the 1997 and 2008 Schemes which the member has at 31st March 2014 counts as qualifying service in the 2014 Scheme for the purposes of ~~R~~regulation 3(7)(a) and (c) of the 2013 Regulations (active membership).

Comment: I've added the additional wording because the only periods that can count are periods that the person had been an active member of the 1997 or 2008 Schemes which have not been wiped out by reason of the member taking a refund of contributions or having had a transfer out of pension rights. Only the active membership which is still active membership at 31 March 2014 should still count towards the 2 years qualifying service.

(2) Any transfer value payment accepted into the 1997 or 2008 Schemes counts as a transfer value payment into the 2014 Scheme for the purposes of regulation 3(7)(b); ~~and (d) and (e)~~ of the 2013 Regulations.

Comment: amendment has been made as (e) is not relevant (and is not related to transfers in).

(2A) a transfer value payment made under the Earlier Schemes to a qualifying recognised overseas pension scheme counts as qualifying service in the 2014 Scheme for the purposes of regulation 3(7)(g) of the 2013 Regulations (active membership).

Comment: this additional paragraph has been added as a transfer out to a QROPS under the Earlier Schemes should debar a refund under the 2013 Regulations.

(3) A member of the 2014 Scheme who has a deferred benefit under the Earlier Schemes is treated as having qualifying service for a period of 2 years for the purposes of regulation 3(7) of the 2013 Regulations, but if that deferred benefit—

- (a) is for less than 2 year's membership; and
- (b) is aggregated with any 2014 Scheme benefits,

and the aggregate of that membership and the service in the 2014 Scheme is less than 2 years, the member may, upon ceasing to be an active member, elect instead of having a deferred benefit under the 2014 Scheme, to have regulation 18 of the 2013 Regulations (rights to return of contributions) deemed to apply to the contributions and accordingly, subject to regulation 19 of the 2013 Regulations (exclusion of rights to return of contributions), to receive a refund of those contributions where the conditions for such a refund are satisfied.

Comment: extra wording added to make it clear that an election can only be made when a person ceases active membership and to make it clear that the right to a refund in cases covered by this regulation is subject to regulation 19 of the 2013 Regulations.

Note: paragraph (3) would enable those employees who, at 31 March 2014, are not in the Scheme as a result of opting out, to rejoin the Scheme for, say, 1 month, then opt out again and get a refund in place of the earlier deferred benefit and the contributions paid to the 2014 Scheme (provided the total membership is under 2 years).

(4) A person to whom regulation 5(1) of these Regulations applies (membership of the 2014 Scheme), and who has at least 3 months qualifying service in the 2014 Scheme (which expression includes for this purpose any of the period of active membership in the Earlier Schemes if aggregated with membership of the 2014 Scheme), who ceases to be an active member of the 2014 Scheme before achieving ~~two years~~ qualifying service for a period of two years in that Scheme may elect—

Comment: I've made the above amendment because the qualifying service may, in part, derive from benefits under the Earlier Schemes (e.g. an unaggregated deferred benefit) and the phrase "qualifying service for a period of two years" is defined in Schedule 1 of the 2013 Regulations.

- (a) to receive a refund under regulation 18 of the 2013 Regulations (rights to return of contributions) of the contributions paid both into the Earlier Schemes and the 2014 Scheme (where the period in respect of which contributions to the Earlier Schemes were paid has been aggregated with membership of the 2014 Scheme);
- (b) to be a deferred member of the 2014 Scheme notwithstanding regulation 6(1) of the 2013 Regulations (deferred and deferred pensioner members); or
- (c) if the member has reached the age of 65, to draw retirement pension immediately, notwithstanding regulations 6(1) and 30(1)(a) of the 2013 Regulations.

Comments:

- I think regulation 30(1)(a) of the 2013 Regulations also needs to be referenced as some members who attain age 65 will be entitled to a deferred benefit (i.e. those whose NRA is after 65) but some will be entitled to an immediate benefit (i.e. those whose NRA is 65). NB: the reference to regulation 30(1)(a) is a reference to that regulation in the draft 2013 Regulations, as amended by my comments on those draft Regulations.
- An alternative approach to (c) would be not to give such members a choice but to simply award them the right to an immediate retirement pension which most of them would be able to commute

on the grounds of triviality (which would produce a far higher sum for the member than a refund of contributions).

(5) An election under paragraph (3) or (4) must be made in writing to the member's administering authority within the period of 1 year beginning with the date on which the active membership ceased and in default of any election being made the member shall—

- (a) in the case of a member satisfying the conditions in paragraph (3), be awarded a deferred benefit under the 2014 Scheme;
- (b) in the case of a member satisfying the conditions in paragraph (4), be awarded a deferred benefit in the 2014 Scheme, or an immediate pension, as appropriate.

Pensionable pay

8.—(1) For the purposes of regulation 20(1) of the 2013 Regulations (meaning of pensionable pay) no account is taken of—

- (a) any supplement paid—
 - (i) by the Environment Agency or the Natural Resources Body for Wales; or
 - (ii) to an employee whose employment transferred on 1st April 2010 from the Learning and Skills Council for England to a local authority or to London Councils Limited,in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the 2008 or 2014 Schemes; or
- (b) in the case of an employee or former employee of the Commission for New Towns, any payment made under any scheme relating to the termination of the employment of employees by the Commission in respect of the completion before a specified date of specified functions.↵

Comment: superfluous comma replaced by a full stop.

(2) Notwithstanding regulation 20(2)(f) of the 2013 Regulations (meaning of pensionable pay: exclusions), a member's pensionable pay for the purposes of regulation 20(1) of those Regulations, includes an amount in respect of an amount treated as the money value to the member of the provision of a motor vehicle or an amount paid in lieu of such provision, if the condition specified in regulation 13(8) of the 1997 Regulations (meaning of "pay": money value of provision of motor vehicle) is satisfied in relation to the member, unless the condition specified in regulation 13(9) of those Regulations is satisfied in relation to the member.

(3) For the purposes of calculating assumed pensionable pay under regulation 21 of the 2013 Regulations (assumed pensionable pay), if the periods referred to in paragraph (65) of that regulation fall before 1st April 2014, the calculation may be based on the earnings a member received before 1st April 2014 as if any remuneration received during that period fell to be assessed as pensionable pay under the 2013 Regulations.

Comment: the cross reference was incorrect and should refer to "paragraph (5)".

Transfer payments

9.—(1) Where a transfer payment is to be made to a registered pension scheme or qualifying recognised overseas pension scheme in respect of a member of the 2014 Scheme, that transfer payment shall include any benefits accrued by that member under the 1997 and 2008 Schemes that are aggregated with the service under the 2014 Scheme.

(2) Where a transfer payment is received from a registered pension scheme or a European Pensions Institution in respect of a member of the 2014 Scheme, if the ~~option relevant~~ date was before 1st April 2014, that transfer payment shall be dealt by the appropriate administering authority as if it had been received in respect of membership of the 2008 Scheme.

(3) The ~~relevant option~~ date for the purposes of paragraph (2) is the date on which the member made an election to the administering authority for the transfer payment to proceed.

Comment: I've changed the words "relevant date" to "option date" because "relevant date" already has a specific meaning in relation to transfers in. The "relevant date" determines what factors, MLI, age, etc to

use when working out what the transfer in will purchase. The “option date” will determine whether the transfer will purchase membership under the 2008 Scheme or an additional amount of pension under the 2014 Scheme.

Interfund adjustments etc

10.—(1) Paragraph (2) applies to a member ~~with deferred benefits relating to the 1997 or 2008 Schemes~~ in a fund who—

Comment: I’ve deleted the wording as a member to whom regulation 5(1) applies doesn’t actually have deferred benefits (merely benefits that are preserved under regulation 3).

- (a) became an active member of the 2014 Scheme by virtue of regulation 5(1) of these Regulations,
- (b) subsequently became a deferred member of the 2014 Scheme,
- (c) becomes an active member ~~in a different fund~~ with a break in membership of any public service pension scheme of less than 5 years, and

Comments:

- Should –

- i) the words “a break” be amended to “a continuous break” and
- ii) the words “membership of” be amended to “eligibility for membership of”

to reflect the definition of continuity of employment in paragraph 3 of Schedule 7 to the Public Service Pensions Act 2013, or is the final salary link for the LGPS deliberately more restrictive? **This is a policy matter.**

- I’ve deleted the words “in a different fund” in order to cater for intra, as well as inter, fund transfers (as intra-fund transfers equally have the final salary protection on the pre 1 April 2014 membership) and have covered the inter fund position by making an amendment to the wording in (2)(b) below.

(d) elects to aggregate those deferred benefits with the benefits accruing under the 2014 Scheme.

(2) A member falling within the description in paragraph (1) is entitled, notwithstanding the revocations effected by regulation 2—

- (a) to have the pension rights accrued in respect of service before 1st April 2014 preserved by regulation 3, calculated under these Regulations with final ~~pay salary~~ calculated according to regulation 25 of these Regulations; and

Comment: The words “calculated under these Regulations” have been inserted as the sentence does not make sense without them. The words “final salary” have been amended to “final pay” to tie in with the wording used in regulations 3(9), 4(6)(c), 12(1)(b)(ii) and 17(2). Are the words “with final pay calculated according to regulation 25 of these Regulations” required given that regulation 3 already requires the final salary to be calculated in accordance with regulation 25 (see regulation 3(9))?

- (b) where the new period of active membership under paragraph (1)(c) is in a different fund, to have a payment made by the first administering authority to the subsequent administering authority in respect of those pension rights, calculated in accordance with actuarial guidance issued by the Secretary of State.

Note: the underpin under regulation 4 is not relevant here as, if the member is transferring pre NRA, there is no underpin calculation performed at that time, and if the member is transferring post NRA, the underpin calculation will already have been performed and will have been added into the post 2014 active account (and this will be reflected in the valuation of the post 2014 benefits for the purposes of the transfer value calculation).

(3) Paragraph (4) applies to a member ~~with deferred benefits relating to the 1997 or 2008 Schemes~~ in a fund who—

- (a) became an active member of the 2014 Scheme by virtue of regulation 5(1) of these Regulations,
- (b) subsequently became a deferred member of the 2014 Scheme,

- (c) becomes an active member in ~~a different fund~~ with a break in membership of any public service pension scheme of 5 years or more, and
- (d) elects to aggregate those deferred benefits with the benefits accruing under the 2014 Scheme.

Comment: the comments made under paragraph (1) equally apply to paragraph (3).

(4) A member falling within the description in paragraph (3) is entitled to a cash equivalent value payment in relation to the deferred benefits to be ~~paid by the first administering authority to the subsequent administering authority and~~ credited to the member's active member account to purchase additional pension calculated in accordance with actuarial guidance issued by the Secretary of State and, where the new period of active membership under paragraph (3)(c) is in a different fund, the authority which has ceased to be the member's appropriate administering authority shall make the cash equivalent value payment to the authority that has become the member's appropriate administering authority.

Comment: amendments made to ensure the paragraph caters for both intra-fund and inter-fund transfers.

(5) A member entitled to a refund of contributions from the Earlier Schemes, who becomes an active member of the 2014 Scheme ~~in a different fund~~, is entitled to a cash equivalent value payment in relation to the benefits in respect of that membership, which is to be credited to the member's active member account to purchase additional pension calculated in accordance with actuarial guidance issued by the Secretary of State and, where the new period of active membership is in a different fund, the authority which has ceased to be the member's appropriate administering authority shall make the cash equivalent value payment to the authority that has become the member's appropriate administering authority.

Comment: amendments made to ensure the paragraph caters for both intra-fund and inter-fund transfers.

(6) A member with deferred benefits relating to the Earlier Schemes ~~to whom regulation 5(1) does not apply, who does not become a member of the 2014 Scheme on 1st April 2014~~ but who subsequently becomes an active member of the 2014 Scheme ~~in a different fund~~, may elect to receive a cash equivalent value payment in relation to the deferred benefits to be credited to the member's active member account to purchase additional pension calculated in accordance with actuarial guidance issued by the Secretary of State and, where the new period of active membership is in a different fund, the authority which has ceased to be the member's appropriate administering authority shall make the cash equivalent value payment to the authority that has become the member's appropriate administering authority.

Comment: amendments made to ensure the paragraph caters for both intra-fund and inter-fund transfers. The wording at the beginning has been amended to refer to regulation 5(1) as the wording, as originally drafted, would have covered members who happened to rejoin the scheme on 1 April 2014 but were not active members at 31 March 2014..

(7) In this regulation—

“the first administering authority” means the appropriate administering authority within whose Fund the deferred benefits are held~~at the time when the member accrued the membership which gives rise to the deferred benefits;~~ and

Comment: the wording has been changed for two reasons. Firstly, the membership which gave rise to the deferred benefits might (although now in one Fund) have originally accrued in a number of different Funds. Secondly, there will be cases where a deferred benefit awarded in one Fund is transferred to another Fund as part of a direction issued by the Secretary of State (see Schedule 4 of the LGPS Admin Regulations 2008) and so the deferred benefit is in a Fund in respect of which none of the membership had actually accrued.

“the subsequent administering authority” means the appropriate administering authority at the time the member elects to aggregate benefits under the 2014 Scheme with benefits from the Earlier Schemes.

Retirement benefits

11.—(1) A member to whom regulation 5(1) of these Regulations (membership of the 2014 Scheme) applies must, upon drawing a retirement pension under regulation 30(1), (2), (3) or (5) of the 2013 Regulations (retirement pension), draw any aggregated benefits accrued in the 1997 Scheme and 2008 Scheme at the same time as those benefits accrued under the 2014 Scheme are drawn.

(2) A member to whom regulation 5(1) of these Regulations applies must, if exercising the option in regulation 30(4) of the 2013 Regulations (flexible retirement), make a request to receive the benefits mentioned in paragraph (3) and such benefits may, with the member's employer's consent be paid to the member notwithstanding that the member has not retired.

(3) The benefits referred to in paragraph (2) are—

- (a) all of the aggregated benefits from the 1997 Scheme,
- (b) all, part or none of the aggregated benefits accrued under the 2008 Scheme,
- (c) all, part or none of the aggregated benefits accrued under the 2014 Scheme, and
- (d) any additional benefits in accordance with actuarial guidance issued by the Secretary of State.

Note: if a member aggregates pre 1 April 2014 membership with post 31 March 2014 membership after a break of more than 5 years the pre 14 membership will cease to be pre 14 membership (because the CETV will simply purchase an amount of additional pension in the 2014 Scheme). Thus, in such a case, there will be no benefits under paragraphs (3)(a) and (b).

Ill-health retirement

12.—(1) A member who qualifies for Tier 1 or Tier 2 benefits under the 2013 Regulations who would have benefited from the protection in regulation 20(13) of the Benefits Regulations (transitional protection for those aged 45 before 1st April 2008) if those Regulations had applied on the date the member's employment was terminated, is entitled to benefits equalling the higher of—

- (a) the Tier 1 or Tier 2 benefits, as the case may be, calculated under the 2013 Regulations and these Regulations, or
- (b) the benefits the member would have received under paragraph (a) if the amount to be added under regulation 39(1) or (2) of the 2013 Regulations (calculation of ill-health pension amounts) were calculated by reference to the period that would have been added had regulation 28 of the 1997 Regulations (amounts of ill-health pension and grant) applied and if—
 - (i) the period of membership the member had accrued under the 2008 Scheme and the 2014 Scheme had counted as a period of membership of the 1997 Scheme; and
 - (ii) the member's final pay for the purposes of the calculation of benefits under regulation 28 of the 1997 Regulations was calculated in accordance with regulation 25 of these Regulations (calculation of final pay).

Comment: this is an “enhanced” protection as the membership granted under this protection will be at 1/49th accrual whereas the membership under the 1997 Regulations was at the equivalent of a 1/64th accrual (i.e. 1/80th pension + 3/80ths lump sum) and which, when the protection was given under the 2008 Scheme, was at a 1/60th accrual. Also, whereas regulations 3(9), 10(2)(a) and 17(2) provide that the final salary should only apply to benefits accrued up to 31 March 2014, regulation 12(b)(ii) appears to say that the final salary link also applies to the post 31 March 2014 benefits, even if the member was not within 10 years of NRA at 1 April 2012 and so not subject to the normal underpin protection. **Is this intended?**

Note: under (b), the period of enhancement granted under regulation 28 of the LGPS Regulations 1997 cannot exceed the period between the date of leaving and age 65. Under (a), however, the period of enhancement by which a Tier 1 or Tier 2 pension is calculated under the 2013 Regulations is by reference to the period between date of leaving and NRA (and NRA in the 2014 Scheme can be after age 65).

(2) The 2013 Regulations shall apply to a person in respect of whom benefits are paid under regulation 20(2) of the Benefits Regulations (early leavers: ill-health) as if that person were in receipt of Tier 1 Benefits under the 2013 Regulations.

(3) The 2013 Regulations shall apply to a person in respect of whom benefits are paid under regulation 20(3) of the Benefits Regulations as if that person were in receipt of Tier 2 Benefits under the 2013 Regulations.

(4) The 2013 Regulations shall apply to a person in respect of whom benefits are, or have been paid under regulation 20(4) of the Benefits Regulations as if that person were, or had been in receipt of Tier 3 Benefits under the 2013 Regulations.

Comment: I can understand the need for paragraphs (2) and (3) as they are required for the purposes of regulations 39(6) and 39(7) of the 2013 Regulations. However, I don't understand the reasoning behind (4). If the Benefits Regulations still apply to pre 1 April 2014 leavers (which they must surely still do, even though they have been revoked – see my paper on revocations), then what is the need for (4) as, even though a Tier 3 review for a pre 1 April 2014 leaver can occur post 31 March 2014 leading to, potentially, an uplift to Tier 2, wouldn't that still be done under the Benefits Regulations?

(5) A certificate produced by an IRMP under the 2008 Scheme may be used for the purposes of making determinations under the 2014 Scheme.

Lump sum commutation

13. Where a member elects to commute pension under regulation 33 of the 2013 Regulations (election for lump sum instead of pension), the member's benefits under the 1997 and 2008 Schemes which are aggregated with the member's benefits under the 2014 Scheme are taken into account for the purposes of regulation 33(1) and any lump sum received in respect of those benefits under the 1997 Scheme or the 2008 Scheme are taken into account for the purposes of regulation 33(2) of the 2013 Regulations.

Contributions

14.—(1) Notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations), the Administration Regulations and the Benefits Regulations continue to have effect so far as is necessary to ensure that where—

- (a) a member has a period of absence from work which begins before 1st April 2014 and ends after that date, the period falling before 1st April 2014 is to be dealt with in accordance with those Regulations and the period falling after 31st March 2014 is to be dealt with in accordance with the 2013 Regulations; and
- (b) a member receives pensionable pay after 31st March 2014 which relates to a period prior to 1st April 2014, the member's contributions are payable on the pensionable pay as defined in regulation 4 of the Benefits Regulations, and

any contributions that the member makes after 1st April 2014 in respect of the absence or that pay must be allocated according to the period to which they relate and benefits are accrued accordingly.

Comment: see the comment under regulation 25 regarding receipt of pensionable pay after leaving.

(2) A member entitled to a refund of contributions under regulation 18 of the 2013 Regulations (rights to return of contributions) who has paid contributions under the Earlier Schemes and has aggregated the periods in which those contributions were paid with membership of the 2014 Scheme, is entitled to a refund of the contributions paid to the Earlier Schemes in respect of that aggregated membership at the same time.

Comment: extra wording added as there may be some contributions paid to the Earlier Schemes where the membership was not aggregated (and so paragraph (2) does not apply to those contributions).

Additional contributions

15.—(1) A member's ARC payment period under regulation 23 (payment of additional regular contributions (ARCs)), and ASB payment period under regulation 24A (payment of additional contributions: survivor benefits (ASBCs))(9), of the Administration Regulations, ~~and an added years contract under regulation 55 of the 1997 Regulations (payments to increase total membership)~~ terminates on 31st March 2014 and the increased pension payable to a member or survivor under the 2008 Scheme relating to an ARC or, an ASB ~~or an added years~~ contract shall be recalculated to reflect the fact that the payment period terminated on that date.

(9) Regulation 24A was inserted by S.I. 2009/3150.

Comment: I have left ASBCs in (1) above as I gather DCLG are awaiting a Government policy line on this. However, our preferred approach would be for any ASBC contracts to end, for the member to be refunded the contributions paid (plus some interest) and for pre 6 April 1988 membership to automatically count for nominated co-habiting partner pensions.

(2) The recalculation required by paragraph (1) shall be carried out by the appropriate administering authority taking account of actuarial guidance issued by the Secretary of State.

(2A) An added years contract under regulation 55 of the 197 Regulations shall cease on 31st March 2014 and

(a) the capital sum of the outstanding contributions that were due in respect of the contract shall be calculated by the appropriate administering authority as at 1st April 2014 in accordance with actuarial guidance issued by the Secretary of State;

(b) the member shall be credited with the period of membership which the member had entered into the contract to purchase;

(c) the credited period of membership shall be treated as pre 1st April 2008 membership if the contract had been entered into before 1st October 2006 or as membership with a normal retirement age as defined in the 2008 Scheme if the contract had been entered into on or after 1st October 2006;

(d) subject to sub-paragraph (e), the member must pay to the administering authority the capital sum of the outstanding contributions by-

(i) regular instalments deducted from pay, or

(ii) a lump sum payment

with any payment outstanding at the date the member ceases to be an active member with the employing authority by whom the member was employed on 31st March 2014 being payable by the member by either –

(iii) a lump sum payment within 1 month of the date of cessation, or

(iv) a deduction from the member's lump sum retirement grant when it is paid

in accordance with actuarial guidance issued by the Secretary of State.

(e) if, before payment of the capital sum of the outstanding contributions has been completed, the member ceases to be an active member with the employing authority by whom the member was employed on 31st March 2014 by reason of death or by reason of being, more likely than not, incapable until age 65 of discharging efficiently the duties of that employment or any comparable employment with the employing authority because of ill health or infirmity of mind or body, the remaining payments shall be treated as having been paid.

Comment: I think this is basically the approach we have agreed to take in respect of added years contracts to reflect the fact that members cannot continue to accrue membership post 31 March 2014 but they have a contract that we need to seek to honour (and protect the member's expectation that the added years will impact on the date they attain the 85 year rule). However, it would be worth checking with GAD that this approach is OK from an actuarial point of view. The wording in (c) reflects the GAD guidance on how the membership counts towards the 85 year rule. The wording in (e) takes account of regulation 83 of the 1997 Regulations and the wording used in regulation 27(1) and (5) of the 1997 Regulations.

(2B) For the purposes of paragraph (2A)(e) if the member is, post 31st March 2014, subject to -

(a) a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations") apply; or

(b) a transfer which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations

and the new employment is scheme employment, the member shall, in that new employment, be deemed to be in the employment of the employing authority by whom the member was employed on 31st March 2014.

Comment: the above has been added to clarify that paragraph (2A)(e) would continue to apply if the member's employment is TUPE transferred or treated as if it was TUPE transferred to a new employer providing membership of the LGPS.

(3) A person whose ARC or ASB payment period, ~~or added years contract~~ is terminated by virtue of paragraph (1) may enter into a MARC or MASARC contract under regulation 16 of the 2013 Regulations (additional regular contributions) from 1st April 2014 to the end of the payment period that would have applied but for paragraph (1), on the same actuarial assumptions as applied at, and using the member's age and gender at, the date the terminated ARC or ASB payment period commenced, ~~or added year contract was taken out,~~ and regulation 16(4) of the 2013 Regulations is modified accordingly.

Comments:

- the references to added years have been deleted because this is now dealt with in paragraph (2A).
- what if the member has changed gender between the date of the original contract and 1st April 2014?
- as mentioned in our comments on the 2013 Regulations we do not believe there should be a MASARC facility in the 2014 Scheme
- payments under regulation 16 drop into a member's active account each year. The original (pre 2014) ARC contracts did not work like that and the sum being purchased was increased by CPI (or RPI for pre 1 April 2012 contracts) between the date of the first ARC payment and the date of cessation, and thereafter the amount of pension purchased was increased by CPI (or RPI for pre 1 April 2012 contracts). Are we going to honour that way of calculation for the old ARC contracts? If we are, then the 2013 regulations that deal with pension accounts for members and survivors will need tweaking as they cross refer to regulation 16 (for example, the active member's account would only have the additional pension bought by a normal ARC that year dropped into it; I'm not sure how the pension bought under the old style ARC should be accounted for in the pension account). If, because of these problems, we do not honour the old way of calculation for the old ARC contracts then this ought to be made clear – in which case, the use of the words “on the same actuarial assumptions as applied at” would not be correct. **This is a policy matter.**
- see the comments under paragraph (1) regarding ASBCs. It should be noted that the proposal in the draft regulation that a member paying ASBCs should have the contract terminated and, if they want to continue with additional survivor cover, elect to pay a MASARC would mean the member would in effect be forced to pay for additional pension for himself / herself as well as for the nominated co-habiting partner (which would increase the cost to the member).

(4) A contract under regulation 25 of the Administration Regulations (additional voluntary contributions and shared cost additional voluntary contributions) entered into before 1st April 2014 continues to have effect and the accumulated values under such a contract may be used in accordance with regulation 17 of the 2013 Regulations (additional voluntary contributions).

(5) Regulation 66(8) of the 1997 Regulations (elections as to use of accumulated value of AVCs prior to 13th November 2001) continues to have effect and where a membership credit is made under that regulation after 31st March 2014 it shall be calculated using the Normal Retirement Age under the 2008 Scheme and treated as pre 1st April 2014 membership.

Comment: the additional wording has been added to clarify how the membership is to be calculated and that the membership counts as pre 1 April 2014 membership. This is necessary to mirror the GAD guidance and because the service credit counts towards the 85 year rule for the purposes of regulation 19 and Schedule 2 – see paragraphs 8 and 11 of the GAD guidance at http://timeline.lge.gov.uk/GAD/E_W_AVCServCreds_GAD_guidance240811.pdf

Annual allowance

16. If a member gives the administering authority notice of joint and several liability under section 237B of the Finance Act 2004⁽¹⁰⁾ (liability of scheme administrator) in respect of the member's annual allowance charge after 1st April 2014, the administering authority may adjust the member's benefits

(10) 2004 c. 12. Section 237B was inserted by the Finance Act 2011 (c. 11).

accrued within the 1997 or 2008 Schemes in accordance with actuarial guidance issued by the Secretary of State.

Survivor benefits

General comment: this regulation makes reference to benefits being calculated under the 2008 Scheme. However, such references will need to be amended if our suggestions regarding nominated co-habiting partners (see the comment under regulation 15(1)) and the suggestions in our covering letter concerning survivor benefits are taken forward.

17.—(1) Survivor pensions in the case of a survivor of a member to whom regulation 5(1) of these Regulations (membership of the 2014 Scheme) applies ~~and who aggregated membership~~, are calculated by adding together the 2008 Scheme survivor pension and the 2014 Scheme survivor pension.

Comment: wording deleted as regulation 5(1) provides that the membership is automatically aggregated. Thus, in paragraph (1) and (7), the words “and who aggregated membership” are superfluous.

(2) Subject to paragraph (8), 2008 Scheme survivor pensions are calculated under the 2008 Scheme, notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations), taking account of the deceased member’s membership up to 31st March 2014 but ~~—~~

- (a) ~~in the case of a death in service where a survivor benefit is payable under regulations 41 or 42 of the 2013 Regulations~~, excluding any augmentation under regulation 20(2) of the Benefits Regulations (early leavers: ill-health), and
- (b) using final pay calculated in accordance with regulation 25 of these Regulations (calculation of final pay).

Comment: I’ve added the additional wording to clarify to whom the exclusion applies and I’ve split the sentence into sub-paragraphs (a) and (b) as (a) only applies to a specific category of member whereas (b) applies to all relevant members.

(3) 2014 Scheme survivor pensions are calculated in accordance with the 2013 Regulations.

(4) Subject to paragraph (8), ~~where - survivor pensions in the case of~~

- (a) ~~a survivor of~~ a member ~~who~~ did not accrue any membership in the 2014 Scheme, ~~or~~
- (b) ~~a member did accrue membership in the 2014 Scheme and has pension rights under the Earlier Schemes that have not been aggregated with the rights in the 2014 Scheme~~

~~the survivor pension in the case of paragraph (a) and the survivor pension in respect of the rights under the Earlier Schemes in the case of paragraph (b)~~ are calculated under the Earlier Schemes notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations).

Comment: the paragraph has been amended to also cover those who did accrue rights in the 2014 Scheme but did not aggregate rights in the Earlier Schemes with membership in the 2014 Scheme. The survivor benefits in respect of the unaggregated rights are to be calculated under the Earlier Schemes.

(5) Subject to paragraph (8), ~~where - death grants in the case of~~

- (a) a member who did not accrue any membership of the 2014 Scheme, ~~or~~
- (b) ~~a member did accrue membership in the 2014 Scheme and has pension rights under the Earlier Schemes that have not been aggregated with the rights in the 2014 Scheme~~

~~death grants in the case of paragraph (a) and death grants in respect of the rights under the Earlier Schemes in the case of paragraph (b)~~ are calculated under the Earlier Schemes notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations).

Comment: the paragraph has been amended to also cover those who did accrue rights in the 2014 Scheme but did not aggregate rights in the Earlier Schemes with membership in the 2014 Scheme. The death grants in respect of the unaggregated rights are to be calculated under the Earlier Schemes.

(6) Death grants in the case of an active member who accrued any membership of the 2014 Scheme are calculated under the 2014 Scheme regardless of whether the member had accrued any membership of the Earlier Schemes.

(7) Death grants in the case of a deferred or pensioner member to whom regulation 5(1) of these Regulations (membership of the 2014 Scheme) applies ~~and who aggregated membership~~ are calculated by adding together the death grant calculated under the 2008 and 1997 Schemes based on membership of those schemes accrued before 1st April 2014, and death grant calculated under the 2014 Scheme based on membership after 31st March 2014.

Comment: see comment under paragraph (1) above.

General comment: Paragraphs (5) to (7) should be removed from regulation 17 and inserted into their own, separate, regulation. This is for consistency of treatment with the 2013 Regulations (where survivor benefits and death grants are covered by separate regulations) and because regulation 17 is headed up “Survivor benefits” but a death grant can be paid to someone other than a “survivor” within the meaning of the 2013 Regulations.

(8) For the purposes of calculating eligibility of a person to a pension under the 2008 Scheme the definition of “eligible child” contained in Schedule 1 to the 2013 Regulations (interpretation) replaces the definition contained in regulation 26 of the Benefits Regulations (meaning of “eligible child”).

Interest

18. Where interest is due for late payment of any benefit under the 2014 Scheme and a member to whom regulation 5(1) of these Regulations (membership of the 2014 Scheme) applies ~~and who has aggregated membership~~ is entitled to a payment under the 1997 or 2008 Schemes at the same time, interest calculated in accordance with regulation 49 of the 2013 Regulations (interest on late payment of certain benefits) shall be payable on that payment also.

Comments:

- The wording has been deleted for the same reason given in the comment under regulation 17(1)
- A member subject to regulation 5(1) might also have an earlier deferred benefit under the 1997 or 2008 Schemes to which they become entitled at the same time. That would mean interest on that deferred benefit would be payable under the 2013 Regulations and not under the regulations governing the 1997 or 2008 Schemes. On that basis and because

i) regulation 18 is rather wordy, and

ii) I'm not sure I fully understand what regulation 18 is actually saying

wouldn't it be simpler to amend regulation 18 to say:

“Where interest is due for late payment of any benefit due under regulation 3, interest calculated in accordance with regulation 49 of the 2013 Regulations (interest on late payment of certain benefits) shall be payable on that payment (as well as on any payment due under the 2014 Scheme).”

The 85 year rule

19. Schedule 2 (which makes transitional provision relating to the so-called “85 year rule”) has effect in relation to a member who was subject to regulation 10 of, and Schedule 2 to, the 2008 Scheme Transitional Regulations prior to their revocation by these Regulations and does not apply to membership accrued on or after the date in regulation 32(4) (commencement of Pensions following flexible retirement) of the 2013 Regulations.

Comments:

- I have added the additional wording to make it clear to whom Schedule 2 can be applied. The exclusion for the rule applying to membership accrued after taking flexible retirement has been added to reflect regulation 18(5) of the Benefits Regulations and paragraph 3.7 of the GAD guidance at [http://timeline.lge.gov.uk/GAD/Flexible Retirement Guidance 24 Jan 2013.pdf](http://timeline.lge.gov.uk/GAD/Flexible_Retirement_Guidance_24_Jan_2013.pdf)
- Regulation 19 and / or Schedule 2 need to cover the variation of the 85 year rule as it applies to LSC transferees (see regulation 16A of the Benefits Regulations) and to civil servants transferred to the Environment Agency (see regulation 15 of the Transitional Provisions Regulations 2008).

- What neither this regulation nor Schedule 2 does is:
 - say that if a member subject to the 85 year rule has not met the 85 year rule when drawing their benefits but would have done so before NRA, the benefits are subject to a lesser reduction than would apply to a member who has no 85 year rule protection
 - say that if a member subject to the 85 year rule has a cash equivalent transfer value paid to another registered pension scheme, or to a qualifying recognised overseas pension scheme, or to another LGPS Fund via an inter-fund adjustment, or has a Pension Sharing Order, the 85 year rule needs to be reflected in the calculation of their cash equivalent transfer value calculation.
 - set out that there is a tapered reduction for members covered by paragraph 7 of Schedule 2 if they would attain their Critical Retirement Age by 31 March 2020

All of the above situations are not currently set out in regulations but are covered in the GAD guidance on the application of the 85 year rule.

- The 85 year rule applies to deferred 2008 Scheme members and deferred 1997 Scheme members. However, if by virtue of regulation 3 of these Regulations, the TP Regulations 2008 and the 1997 Regulations (and hence the 85 year rule) continue to apply to such members despite the revocation of those Regulations then there is no need to build something into regulation 19 to cater for them. If, however, the view is taken that the 85 year rule needs protecting for deferred members who left pre 1 April 2014, then we need to cover them in this regulation too.

Appropriate funds

20. The pension funds which are the appropriate funds for members of the 1997 Scheme or the 2008 Scheme who do not become members of the 2014 Scheme shall continue to be the appropriate funds for those members.

Comment: presumably the appropriate fund for those who do become members of the 2014 Scheme will be included in the Administration section of the 2013 regulations.

Application of abatement policy in individual cases

21. (1) Notwithstanding the revocation of regulation 110 of the 1997 Regulations (application of abatement policy in individual cases), paragraph (5) of regulation 110 of the 1997 Regulations shall continue to apply to a person who was a member of the 1995 Scheme immediately before 1st April 1998.

(2) Notwithstanding the revocation of regulation 70 of the Administration Regulations that regulation shall, subject to paragraph (1), continue to apply to a person who had become entitled to a retirement pension prior to 1st April 2014.

Comments:

- I've added paragraph (2) as I'm not sure that regulation 3 delivers this.
- I assume that there will eventually be something added into the administration part of the 2013 Regulations to deal with abatement for those who become entitled to a retirement pension after 31 March 2014.

Pension sharing

22.—(1) Valuations of benefits of a person who is a member of the 2014 Scheme shall, for the purposes of a Pension Sharing Order which has an effective date on or after 1st April 2014, take account of any benefits the member has accrued in the 1997 and 2008 Schemes.

Comment: Either the words “who is a member of the 2014 Scheme” should be replaced with “to whom regulation 5(1) applies” if the intention of this regulation is to cover those members or, alternatively, the words “the 1997 and 2008 Schemes” should be amended to “the Earlier Schemes” if the intention of this regulation is to cover any earlier benefits, regardless of whether or not regulation 5(1) applies.

(2) The beneficiary of an Order of the type described in paragraph (1) is not to be credited with any benefits under the 1997 or 2008 Schemes, but is entitled to a pension credit under the 2014 Scheme in compliance with the Pension Sharing Order and calculated in accordance with actuarial guidance issued by the Secretary of State.

Comment: The words “the 1997 or 2008 Schemes” should be amended to “the Earlier Schemes” if the intention of this regulation is to cover any earlier benefits, regardless of whether or not regulation 5(1) applies.

(3) Where a Pension Sharing Order requires a pension debit in respect of a percentage of a member’s pension benefits, any benefits accrued in the 1997 Scheme, 2008 Scheme or 2014 Scheme shall be debited by the same percentage unless the Order specifies otherwise, with the debit being calculated in accordance with actuarial guidance issued by the Secretary of State.

Comments:

- The additional wording has been added to match paragraph (2)
- The words “the 1997 Scheme, 2008 Scheme or” should be amended to “the Earlier Schemes or” if the intention of this regulation is to cover any earlier benefits, regardless of whether or not regulation 5(1) applies.

(4) Where a Pension Sharing Order requires a pension debit in terms other than a percentage of a member’s pension benefits, the debit is to apply in proportion to the cash equivalent transfer value of the benefits accrued within the 1997 Scheme, the 2008 Scheme and the 2014 Scheme unless the Order specifies otherwise.

Comment: The words “the 1997 Scheme, the 2008 Scheme and” should be amended to “the Earlier Schemes and” if the intention of this regulation is to cover any earlier benefits, regardless of whether or not reg 5(1) applies.

Councillor pensions

23. Notwithstanding the revocation of the 2008 Transitional Regulations, the 1997 Regulations continue to have effect in respect of councillor members and their councillor membership as applied by regulation 137A(11) of those Regulations (members of local authorities – general), with the modifications set out in Schedule 8 to those Regulations (councillor members).

Comment: Whether or not this regulation is required will depend on the outcome of the Government’s consultation on the future of councillor’s pensions.

Mis-sold personal pensions

24. Regulations 108A (provision of information, charging and prescribed persons)(12) and 122A of the 1997 Regulations (credited periods for transferring members with mis-sold pension rights) are preserved so far as is necessary to ensure that administering authorities are under a duty to provide information requested to a prescribed person as to the restitution payment applicable to an individual but no membership may be granted under the 1997 Scheme or the 2008 Scheme in relation to a restitution payment.

Note: the above would not debar the member requesting the cash equivalent transfer value of benefits granted by the insurance company in the personal pension scheme to compensate for the loss of LGPS membership (based on the amount of the restitution payment) to be transferred into the 2014 Scheme to purchase additional pension (subject, of course, to the time limits under the 2014 Scheme that apply to making an election for a transfer in).

(11) Regulation 137A and Schedule 8 were inserted by S.I. 2003/1022.

(12) Regulations 108A and 122A were inserted by S.I. 1997/594 as amended by S.I. 1997/1613.

Calculation of final pay

25.—(1) Notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations), unless a member's final pensionable pay is Protected Final Pensionable Pay, that member's final pensionable pay is calculated according to the regulations under which contributions relating to that pay were paid.

- (2) A member's final pensionable pay is Protected Final Pensionable Pay, if that member—
- (a) was an active member of the 2008 Scheme on 31st March 2014 and on 1st April 2014,
 - (b) has subsequently had no break in membership of any public service pension scheme of more than 5 years, and

Comments:

- Should –

- i) the words “no break in” be amended to “no break in continuous” and
- ii) the words “membership of” be amended to “eligibility for membership of”

to reflect the definition of continuity of employment in paragraph 3 of Schedule 7 to the Public Service Pensions Act 2013, or is the underpin for the LGPS deliberately more restrictive? This is a policy matter.

- The word subsequently has been added to mirror my amendment to regulation 4(3).

- (c) has aggregated benefits accrued under the 2014 Scheme with benefits accrued under the 2008 Scheme.

(3) Protected Final Pensionable Pay is the higher of—

- (a) the pay the member was receiving at that member's normal retirement agedate under the 2008 Scheme, calculated in accordance with regulations 8 to 11 of the Benefits Regulations, as if the 2008 Scheme were still in force, or

Comments: “normal retirement date” has been amended to “normal retirement age” (as that is what it is referred to in Benefits reg 19) and the extra wording has been added to make it clear it is the NRA under the 2008 Scheme that sub-paragraph (a) is referring to, and not the NRA under the 2014 Scheme.

- (b) the member's final pensionable pay calculated according to the regulations under which contributions relating to that pay were paid.

Comment: I assume (b) caters for paragraph 1(2)(ii) in Schedule 7 to the Public Service Pensions Act 2013. However, in the LGPS, this could lead to a significant increase in final pay compared to the definition in the 2008 Scheme (because the 2014 definition of pensionable pay includes non-contractual overtime). This could have cost implications for the scheme and major cost implications for certain employers who have a workforce that undertakes a significant amount of overtime. I'm not convinced the Public Service Pensions Act 2013 intended such an outcome as it seems to me that the purpose of the Act was to protect the pre 1 April 2014 benefits, not make them materially better (or materially less – see paragraph 1(3) of the Act).

(4) Where a member has a certificate of protection of pension benefits issued under regulation 23 of the 1997 Regulations (permanent reductions in pay: certificates of protection of pension benefits), that certificate continues to have effect for the calculation of the member's final pay, subject to the requirements of that regulation.

Comment: as originally drafted, the regulation simply says that if a Certificate has been issued it continues to have effect (indefinitely). The additional wording has, therefore, been added to make it clear that the time limits in regulation 23 of the 1997 Regulations continue to apply.

(5) Where a member's pensionable pay was reduced or restricted for the purposes of regulation 10 of the Benefits Regulations (final pay: reductions), or would have been considered to be reduced or restricted for those purposes if that regulation had continued to have effect, that regulation continues to have effect for the calculation of the member's final pay notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations).

General comments on regulation 25:

- I have deleted the word “pensionable” throughout this regulation as regulations 8 to 11 of the Benefits Regulations refer to “Final Pay” not “Final Pensionable Pay”.
- If I’ve understood 25(3)(b) correctly this could lead to a significant increase in final pay and, thus, be an unwarranted cost to the scheme. Surely, for the purposes of regulations 3(9), 4(6)(c), 10(2)(a), 12(1)(b)(ii) and 17(2), the 2008 definition of final pay should continue be used to calculate
 - a) benefits under the 2008 Scheme which have not been aggregated with benefits under the 2014 Scheme,
 - b) benefits accrued in respect of membership prior to 1 April 2014 which has been aggregated with post 31 March 2014 membership provided the member was an active member of the 2008 Scheme on 31 March 2014 and on 1 April 2014 and has subsequently had no break in continuous eligibility for membership of any public service pension scheme of more than 5 years, and
 - c) for those members to whom regulation 4(1) applies, benefits accrued in respect of membership prior to, on and after 1 April 2014 up to the underpin date (as set out in regulation 4(6)).
- Do we also need a paragraph within regulation 25 to reflect paragraph 5 of Schedule 7 to the Public Service Pensions Act 2013 (final salary link not to apply again to a pension in payment)?
- The calculation under regulation 25 needs further consideration as a result of HM Treasury’s insistence that the Public Service Pensions Act 2013 requires compulsory aggregation of benefits where a member
 - (i) was an active member of the 2008 Scheme on 31st March 2014 and on 1st April 2014, and
 - (ii) has had no break in membership of any public service pension scheme of more than 5 years

even in cases where the member’s pay in the new employment is materially less than in the former employment. Compulsory aggregation will mean that all references to a member having the right to elect for aggregation will be incorrect – see regulations 10(1)(d) and 10(3)(d) – and consideration may also need to be given to the wording of regulations 17(4)(b) and 17(5)(b).
- Further thought is also required to determine whether or not a simpler methodology can be arrived at to calculate the benefits covered by regulations 3(9), 4(6)(c), 10(2)(a), 12(1)(b)(ii) and 17(2) in order to avoid:
 - (i) employers having to retain the knowledge to calculate final pay under the pre 1 April 2014 definition, and
 - (ii) payroll systems having to potentially hold pensionable pay cumulatives based on the pre 1 April 2014 definition of pensionable pay

for many, many years to come.

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

Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULES

SCHEDULE 1

Regulation 2

The 1997 Regulations in so far as they are not already revoked;
The Benefits Regulations;
The Administration Regulations;
The 2008 Scheme Transitional Regulations.

SCHEDULE 2

Regulation 19

1. Where a member makes a request to receive immediate payment of retirement benefits under—

(a) regulations ~~30~~30(1) (choice of early payment of pension) or 30A (choice of payment of pension: pensioner member with deferred benefits)(13) of the Benefits Regulations,

Comment: superfluous comma deleted

(b) regulation 30(3) (retirement benefits: early retirement) of the 2013 Regulations if the member was aged 60 or over at the date of making the request, or

(c) regulation 30(4) (retirement benefits: flexible retirement) of the 2013 Regulations; and

(d) the member satisfies the 85 year rule,

that part of the member's retirement benefits which is calculated by reference to any period of membership before the relevant date shall not be reduced in accordance with regulations 30(4) or 30A(4) of the Benefits Regulations or regulation 30(3) or (4) of the 2013 Regulations.

2.—(1) For the purposes of paragraph 1, the relevant date for a member who will be aged 60 or more on 31st March 2016 and who was a member of the 1997 Scheme before 1st October 2006, is the earlier of—

(a) 1st April 2016, and

(b) the date on the day after the day on which the member leaves local government employment.

(2) For the purposes of paragraph 1, the relevant date for a member who will not be aged 60 or more on 31st March 2016, but who was a member of the 1997 Scheme before 1st October 2006, is 1st April 2008.

3.—(1) For the purposes of this Schedule, a member satisfies the 85 year rule if the sum of—

(a) the member's age in whole years on the date the request is made under paragraph 1(a);

(b) the member's total membership in whole years;

(c) in a case where the request is made after the member's local government employment ends, the period beginning with the end of that employment and ending with the date the request is made; and

(d) in the case of a person who was a member of the 1995 Scheme immediately before 1st April 1998, any qualifying period counted by virtue of regulation 123 of the 1997 Regulations (rights as to service not matched by credited period) which was awarded before 1st April 2008,

is 85 years or more.

(2) In calculating the member's total membership—

(a) active membership in the 2014 Scheme is treated in the same manner as membership of the Earlier Schemes, and

(b) no account is to be taken of—

(13) Regulation 30A was inserted by S.I. 2010/2090.

- (i) any increase in membership awarded under regulations 12 (power of employing authority to increase total membership of active members) or 12B (conversion of periods under Discretionary Compensation Regulations etc into membership)⁽¹⁴⁾ of the Benefits Regulations,
- (ii) any membership credited after 1st October 2012 under regulation 84 (right to count credited period) of the Administration Regulations, or
- (iii) any membership credited under regulation 40A (Water Act company pensions: Environment Agency payments)⁽¹⁵⁾ of the Administration Regulations.

4.—(1) This paragraph applies to a member to whom regulation 4 of the 2008 Scheme Transitional Regulations (membership accrued before 1st April 2008: deferred members), regulation 16 of the Administration Regulations (re-employed and rejoining deferred members), or regulation 10(1) of these Regulations applies.

(2) Where such a member does not choose, or does not choose as respects all periods of membership, to be treated as if regulation 3 of the 2008 Scheme Transitional Regulations (membership accrued before 1st April 2008: active members) applies, or to have the member's membership aggregated under regulation 16 of the Administration Regulations, or under the 2013 Regulations, as the case may be, or does aggregate under the 2013 Regulations but had a break in [continuous eligibility for] membership of any public service pension scheme of more than 5 years. then in applying paragraph 2 of this Schedule as respects any later membership, the total membership excludes unaggregated periods.

Comments:

- The additional wording has been added as the 85 year rule protection lapses if a member who was an active member prior to 1 October 2006 ceases to be an active member before, on or after 1 April 2014, rejoins the Scheme post 31 March 2014, aggregates benefits and has had a break in continuous service (as defines in the Public Service Pensions Act 2013) of more than 5 years. If the member aggregates, the cash equivalent transfer value in respect of the pre 1 April 2014 rights would not retain the final salary link or any 85 year rule protection and would, instead, purchase an amount of additional pension in the member's post 2014 active account. This CETV would recognise the member's 85 year rule and so would produce a higher CETV than if the member had not met the 85 year rule and this, in turn, will purchase a larger pension in the member's active account. The sum in the post 31 March 2014 deferred account would be transferred to the active account. If the same member decides not to aggregate, then the deferred benefit would, of course, still be based in the final pensionable pay upon which the deferred benefit was awarded and would retain any 85 year rule protection.
- I've never understood why the above paragraph in the 2008 Transitional Regulations referred to paragraph 2. It doesn't seem to make any real sense. Surely it should refer to paragraphs 1 to 4. Also, we obtained counsel's opinion in March 2010 to the effect that when a member took all or part of their benefits on flexible retirement the 85 year rule did not apply to any subsequent benefits paid (even to any part of any benefits not drawn at flexible retirement). I think it would be worth spelling this out here.

5.—(1) This paragraph applies to a member who was a member of the 1997 Scheme before 1st October 2006 who—

- (a) before 1st October 2006 elected to make additional contributions to the Scheme to increase total membership under regulation 55(1) of the 1997 Regulations (payments to increase total membership); and
- (b) was assumed to retire from a local government employment on a date before the member's 65th birthday ("the assumed date") for the purposes of calculating additional contributions under regulation 55(6) of the 1997 Regulations.

(2) Where a member to whom this paragraph and regulation 15(2A) of these Regulations applies—

- ~~(a) continues paying the additional contributions until the assumed date; and~~
- ~~(b) retires on or after the assumed date;~~

(14) Regulation 12B was inserted by S.I. 2009/3150.

(15) Regulation 40A was inserted by S.I. 2009/3150.

~~the member shall not pay any additional contributions after that date and the whole of~~ the additional period may be counted as part of the total membership.

Comment: the amendment has been made to reflect the amendment I've suggested to regulation 15. However, even if that amendment is not accepted, paragraph (2) clearly needs amending as even regulation 15 as originally drafted says the member cannot continue paying the additional contributions under the original added years contract.

(3) An additional period counted as a period of total membership as a result of this paragraph shall be treated as a period of membership before 1st April 2008.

6.—(1) This paragraph applies to a person who was a member before 1st October 2006 and who—

- (a) leaves local government employment and ceases to be an active member of the 1997 Scheme, the 2008 Scheme or the 2014 Scheme (whether before, on, or after that date); and
- (b) resumes such employment before the relevant date specified in paragraphs 2(1)(a) or 2(2) for the purposes of paragraph 1.

Comments: I have amended the wording in (a) as, otherwise, a member who left with a deferred benefit and rejoined would not be covered by (1) because they had not ceased to be a member. I have inserted a clarifying amendment in (b) above because the relevant date in paragraph 2(1)(b) cannot apply (because that refers to a date on which the member leaves local government employment and this paragraph is talking about someone who leaves such employment and then returns to such employment – one cannot resume such employment before one has left it).

(1A) This paragraph applies to a person who was a member before 1st October 2006 and who—

(a) ceases to be an active member of the 1997 Scheme, the 2008 Scheme or the 2014 Scheme (whether before, on, or after that date) as a result of giving a notice under regulation 8 of the 1997 Regulations, regulation 14(2) of the Administration Regulations or regulation 5(2) of the 2013 Regulations to cease active membership; and

(b) rejoins the Scheme before the relevant date specified in paragraphs 2(1)(a) or 2(2) for the purposes of paragraph 1.

Comments: I have added (1A) to cover optants out.

(2) If a member to whom this paragraph applies aggregates any period of membership after the resumption of employment with the period of membership accrued in the previous local government employment, this Schedule applies to the whole period of the aggregated membership.

7.—(1) This paragraph applies to a member who was a member before 1st October 2006, who retires having reached the age of 60 on or after 1st April 2016 and before 1st April 2020, and whose retirement benefits would (but for the provisions of this paragraph) have been actuarially reduced on account of the age at which they were drawn.

(2) That part of the member's retirement benefits which is calculated by reference to any period of membership after 31st March 2008 shall be reduced in accordance with actuarial guidance issued by the Secretary of State.