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S T A T U T O R Y   I N S T R U M E N T S

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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.

**2013 No.**

**PENSIONS, ENGLAND AND WALES**

**The Local Government Pension Scheme Regulations 2013**

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

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These Regulations are made in exercise of the powers conferred by sections 7, 12 and 24 of, and Schedule 3 to the Superannuation Act 1972(a).

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:

## PART 1

### Membership, contributions and benefits

#### Preliminary Provisions

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme Regulations 2013 and come into force on 1st April 2014.

(2) These Regulations extend to England and Wales(b).

(3) 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.

#### **Introductory**

2.—(1) These Regulations establish a scheme for the payment of pensions and other benefits to or in respect of persons working in local government service, referred to in these Regulations as “the Scheme”.

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(a) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7); section 24 has amendments not relevant to this instrument.

(b) The Secretary of State’s functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(2) The scheme manager responsible for the local administration of pensions and other benefits payable under these Regulations is referred to in these Regulations as the “administering authority”.

Comment: An equivalent of this regulation will need to be included in the Transitional Provisions and Savings Regulations 2013 so as to provide that the scheme manager is also responsible for the payment of benefits in accordance with those Regulations.

(3) Schedule 1 (interpretation) contains definitions of expressions used in these Regulations which apply for their interpretation unless the context indicates that they have a different meaning.

## Membership

### Active membership

3.—(1) Subject to regulation 4, a person is eligible to be an active member of the Scheme in an employment—

- (a) if employed by a body listed in Part 1 of Schedule 2 (membership);
- (b) if employed by a body listed in Part 2 of Schedule 2 and is designated, or belongs to a class of employees that is designated by the body as being eligible for membership of the Scheme;
- (c) if employed by an admission body within the meaning of paragraph 1 of Part 3 of Schedule 2 and is designated, or belongs to a class of employees that is designated by the body under the terms of an admission agreement, as being eligible for membership of the Scheme; or
- (d) if specified in the first column of the table in Part 4 of Schedule 2.

(2) In the case of a person eligible for membership by virtue of paragraph 1(d), the person specified in the second column corresponding to that member is deemed to be that member’s Scheme employer for the purposes of these Regulations.

(3) Subject to paragraph (4), a person eligible to be an active member of the Scheme in an employment becomes an active member on the day that person’s employment begins or (if later) the day the person becomes eligible for membership.

(4) A person who would, apart from this paragraph, be an active member of the Scheme by virtue of paragraph (3) who is employed under a contract of employment of less than 3 months does not become a member on the day specified in paragraph (3) but becomes an active member—

- (a) on the member’s automatic enrolment date, or
- (b) if the person applies to become a member, or
- (c) on the first day of the payment period following an extension to the contract of employment to be for 3 months or more  
whichever is the earlier.

Comment: the additional sub-paragraph has been added as such a person was not covered by paragraph (3) and may not be covered by (4)(a) or (b) or (6)(a) or (b).

There are casual workers who have a succession of individual short-term contracts of employment for a day or two broken by periods of a day or two where no contract of employment exists. If they opt in they will, technically, be a leaver each time there is a break in their contract and would have to reapply for membership each time the new contract starts. So they might be a leaver and starter on, say, a dozen occasions in a month and would have to reapply to join each and every time. At a practical level this would be ridiculous and employers / funds will probably treat their initial option in as covering all subsequent periods of employment unless and until the person tells them otherwise (i.e. opts out). In any event, by virtue of paragraph (6)(a), any election to join could not take effect until the beginning of the next payment period. The regulations as drafted do not really cater for these types of employee and I’m not certain how they could be drafted to do so (unless there were a provision saying that an option in under (4)(b) would be deemed to also apply to each

subsequent short-term contract of employment with that employer – but that seems likely to create as many issues as it solves e.g. there could be a break between short-term contracts of several months, or even years).

Note: Sub-paragraph (a) means that an eligible jobholder with a contract of less than 3 months would be contractually\* enrolled into the LGPS on the first day of employment unless the employer issues a postponement notice delaying the automatic enrolment date. By issuing a 3 month postponement notice employers can effectively provide that such employees are not enrolled into the LGPS (because they should have ceased employment before the end of the 3 month postponement period) although the employee could opt into the LGPS beforehand under sub-paragraph (b). If the contract is extended to be for 3 months or more, the employee will be contractually enrolled into the LGPS from the beginning of the payment period following the date contract is extended.

\*NB: it would be contractual enrolment because, although the relevant date is what would have been the employee's automatic enrolment date, the actual enrolment occurs under the terms of the LGPS Regulations 2013 and so is contractual enrolment.

(5) Where an administering authority enters into an admission agreement with an admission body—

- (a) the admission agreement must comply with the requirements specified in paragraphs 3 to 12 of Part 3 of Schedule 2; and
- (b) these Regulations apply to the admission body and to employment with the admission body in the same way as if the admission body were a Scheme employer listed in Part 2 of Schedule 2.

(6) A person who is eligible to be an active member of the Scheme in an employment, but who is not an active member of the Scheme in that employment—

- (a) may apply in writing to the person's Scheme employer to join the Scheme, and becomes an active member of the Scheme in that employment on the first day of the payment period following the application; but in any event,
- (b) becomes an active member of the Scheme in an employment on the automatic enrolment date or automatic re-enrolment date relating to that employment.

Comment: where an employer (for example, an admitted body or a FE / HE body) has an eligible employee who has opted out of the LGPS and the employer has enrolled them into another qualifying scheme before what would have been the eligible jobholder's automatic enrolment date or automatic re-enrolment date, that person will not be covered by (b) because, as they are already in a qualifying scheme, they will not have an automatic enrolment date or automatic re-enrolment date. However, we need to include something in the regulations that requires those employers who have employees who are eligible for membership of the LGPS (be they eligible jobholders, non-eligible jobholders or entitled workers), but who have enrolled those employees in another qualifying scheme, to remind those employees on the employer's re-enrolment date under the Pensions Act 2008 that the employee has the right to be a member of the LGPS.

Note: enrolment under (6) would be contractual enrolment. This is true even in cases covered by (6)(b) because, although the relevant date is what would have been the employee's automatic enrolment or re-enrolment date, the actual enrolment occurs under the terms of the LGPS Regulations 2013 and so is contractual enrolment.

(7) Subject to paragraph (8) and regulation 5(5) (person whose membership is less than three months treated as never having been a member), an active member has qualifying service for a period of two years if—

- (a) that member has spent two years as an active member of the Scheme;
- (b) a transfer value payment has been received in respect of rights accrued in a different occupational pension scheme or under a European Pensions Institution and the length of service in respect of which that person accrued benefits in that scheme was two or more years;

- (c) the aggregate of the period the person has spent as an active member of the Scheme and of a different occupational pension scheme or European Pensions Institution in respect of which a transfer value payment has been accepted, is two years;
- (d) a transfer value payment has been received in respect of rights accrued in a scheme or arrangement that does not permit a refund of contributions to the member;
- (e) the member has paid National Insurance contributions whilst an active member of the Scheme and ceases active membership after the end of the tax year preceding that in which the member attains pensionable age (meaning that a contributions equivalent premium cannot be paid under section 55 of the Pension Schemes Act 1993(a));
- (f) the member already holds a deferred benefit or is in receipt of a pension (other than a survivor's pension or pension credit member's pension) under these Regulations; or  
 Comment: the amendment is for consistency with the terminology used in regulation 8(1), schedule 1 and other regulations.
- (g) a transfer value payment has been made to a qualifying recognised overseas pension scheme
- (h) the member ceases active membership at age 75.

Note: (g) refers to a transfer "to" a QROPS because paragraph 5(1)(c) of Schedule 29 of the Finance Act 2004 says that a refund is only an authorised refund if "there has been no previous benefit crystallisation event in relation to the member and the pension scheme". A QROPS transfer out is a BCE8 and so paying a refund to a member who had had a QROPS transfer, returned to the UK, re-joined the LGPS, and left again with less than 2 years membership would be an unauthorised payment. So the scheme does not allow a refund in such circumstances and provides for a benefit to be awarded instead.

(8) The following periods do not count as periods of qualifying service for the purposes of these Regulations—

- (a) any period for which contributions have been returned to the member;
- (b) any period of membership derived from a non-contributory pension scheme or arrangement from which a transfer payment has been received and which is attached to the membership in respect of which contributions have been returned under regulation 18 (rights to return of contributions).
- (c) any period in respect of which rights have been transferred to another registered pension scheme other than a qualifying recognised overseas pension scheme;
- (d) any period in respect of which the member has been deprived of benefits under regulation 91 (forfeiture of pension rights after conviction for employment-related offences).

Comment: I'm not certain what should happen if there is a GMP which cannot be forfeited due to regulation 95. Is any qualifying service left? I doubt there will ever be a case so I haven't spent any time in seeking to make an appropriate amendment to (d) above.

### Restriction on eligibility for active membership

4.—(1) Subject to paragraph (2) the following are not entitled to be active members of the Scheme in an employment—

- (a) a person entitled to membership of another public service pension scheme in relation to that employment
- (b) a person aged 75 or over;
- (c) an employee of an admission body who is a member of another occupational pension scheme in relation to that employment.

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(a) 1993 c. 48. Section 55 has been amended but the amendments are not relevant to this instrument.

(2) Paragraph (1)(a) does not apply to a person who is entitled to be a member of the National Health Pension Scheme (“the NHS Scheme”) for England and Wales if—

- (a) the person’s entitlement to be a member of the NHS Scheme is by reason of employment by—
  - (i) a Care Trust designated under section 77 of the National Health Service Act 2006(a),
  - (ii) an NHS Scheme employing authority as a result of a prescribed arrangement under section 75 of that Act, or section 33 of the National Health Service (Wales) Act 2006(b), or
  - (iii) the Care Quality Commission as a result of a transfer of employment from the Commission for Social Care Inspection, in connection with its dissolution under Part 1 of the Health and Social Care Act 2008(c);
- (b) the person is designated, or belongs to a class of employees that is designated as eligible for membership of the Scheme in an admission agreement made between an administering authority and one of the bodies specified in sub-paragraph (a)(i) to (iii);
- (c) the person was an active member of the Scheme immediately before becoming employed by one of those bodies; and
- (d) the person is not an active member of the NHS Scheme in relation to that employment.

(3) Paragraph (1)(a) does not apply to a member on reserve forces service leave who is entitled to be a member of the Armed Forces Pension Scheme if the person makes an election to the Scheme employer to remain a member of the Scheme.

Comment: the additional wording has been added to cater for members on reserve forces service leave who are entitled to membership of the Armed Forces Pension Scheme but can elect to remain members of the LGPS during the period of reserve forces service leave – see regulation 5 of the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 [SI 2005/859] which says:

*5 Pensions payments*

*(1) If the reservist is a member of an occupational pension scheme ("the pension scheme") into which his employer made contributions for the benefit of the reservist, his spouse or partner or any dependants, and such contributions are suspended by his employer during the relevant period--*

- (a) if the reservist elects to stay in that scheme during the relevant period; and*
- (b) the reservist continues to pay any contributions required of him into that scheme,*

*he shall be entitled to apply to an adjudication officer for a continuation of those contributions which his employer would have made into his pension scheme.*

If the person does not elect to remain a member of the LGPS then regulation 21(4) below applies.

### **Ending active membership**

**5.—(1)** A person ceases to be an active member in an employment if that person ceases to be eligible for membership of the Scheme through that employment and membership in that employment ceases from the date that eligibility ceases.

(2) A person ceases to be an active member in an employment from the date specified in a written notice given by that person to that person’s Scheme employer that the person wishes to leave the Scheme.

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(a) 2006 c. 41. Section 77 has been amended by the Health and Social Care Act 2012 (c. 7).  
(b) 2006 c. 42.  
(c) 2008 c. 14.

(3) But an active member who gives notice under paragraph (2) specifying no date, or a date earlier than the date the notice is given, ceases to be an active member in that employment at the end of the payment period during which the notice is given.

(4) A person ceases to be an active member when that person attains the age of 75.

(5) A person who, by virtue of a written notice given under paragraph (2), ceases to be an active member before being an active member of the Scheme in the employment for three months is to be treated as not having been an active member in that employment, except where the employment is one in which the member is working reduced hours or is employed on a reduced grade following an election under regulation 30(6).

Comment: I've inserted the words "in the employment" and "in that employment" to make clear that:

- a person who already holds a deferred benefit can opt out in a new employment and be treated as never having been a member in that new employment (despite already having been a member for 3 or more months in the earlier employment that gave rise to the deferred benefit), and

- a person who already holds an existing (concurrent) employment can opt out in the new (concurrent) employment within 3 months of commencing that new (concurrent) employment, and be treated as never having been a member in that new (concurrent) employment, despite already having 3 or more months membership in the existing (concurrent) employment.

The words from "except" have been added to prevent a member who has taken flexible retirement from being treated as never having been in the scheme in the job they undertake immediately following flexible retirement (if they make an election under regulation 5). The new job might be a new employment (as it results from a reduction in hours or grade). Making this amendment prevents a potential difficulty whereby, if the member does not take all of their accrued AVCs at the date of flexible retirement and then, within 3 months of flexible retirement, opt from the new employment, Funds could be left with orphan AVCs.

### Deferred and deferred pensioner members

6.—(1) A person is a deferred member of the Scheme in relation to an employment if—

- (a) the person has qualifying service for a period of at least two years;
- (b) the person is no longer an active member of the Scheme in relation to that employment;
- (c) the person has not started to receive any pension under the Scheme in relation to that employment; and
- (d) the person has not reached the age of 75.

(2) A person may be a deferred member of the Scheme in relation to one period of membership notwithstanding the fact that the same person is a member in the same or a different category in relation to a different period of membership.

(3) A person who was in receipt of Tier 3 benefits is a deferred pensioner member of the Scheme whilst those benefits are discontinued under regulation 37(3) or (7)(c).

(4) A person may be a deferred pensioner member of the Scheme in relation to one period of membership notwithstanding the fact that the same person is a member in the same or a different category in relation to a different period of membership.

### Pensioner members

7.—(1) A person is a pensioner member of the Scheme if that person—

- (a) was an active member of the ~~Scheme and had qualifying service for a period of two years~~; or
- (b) was a pension credit member,

and is in receipt of a benefit from the Scheme relating to that membership.

Comment: the wording that I've struck through had originally been inserted because, unlike in regulation 6 (which requires 2 years qualifying service for entitlement to a deferred benefit) there

used to be nothing in regulations 7 or 30 requiring 2 years qualifying service for entitlement to a pension. The only regulation that mentioned such a requirement was regulation 35 (ill health retirement). However, the current draft of regulation 30 now includes such a requirement (see regulation 30(9)) and so the wording in (a) above is now not required.

(2) A person may be a pensioner member in relation to one period of membership notwithstanding the fact that the same person is a member in the same or a different category in relation to a different period of membership.

### **Pension credit and survivor members**

8.—(1) A person is a pension credit member of the Scheme if that person has been given a pension credit in the Scheme as a consequence of a pension debit created under section 29 of the Welfare Reform and Pension Act 1999(a) in relation to a member of the Scheme.

(2) A person is a survivor member of the Scheme if that person is entitled to a benefit under regulations 41, 42, 44, 45, 47 or 48 (survivor pensions).

## Contributions

### **Contributions**

9.—(1) Subject to Regulation 10 (temporary reduction in contributions), an active member shall pay contributions to the Scheme in respect of an employment at the contribution rate applicable to the annual pensionable pay that member is receiving in the pay period in which April 1st falls for that employment (or in the case of an active member whose membership commences after 1st April in any year, on the annual pensionable pay the member receives at the commencement of that membership).

(2) The contribution rate applicable to an employment is as specified in the following table, with the contribution rate specified in the third column applicable to the band of pensionable pay specified in the second column into which the active member's annual pensionable pay, rounded down to the nearest whole pound, falls:

<i>Band</i>	<i>Pensionable pay range for an employment</i>	<i>Contribution rate for that employment</i>
1	Up to £13,500	5.5%
2	£13,501 to £21,000	5.8%
3	£21,001 to £34,000	6.5%
4	£34,001 to £43,000	6.8%
5	£43,001 to £60,000	8.5%
6	£60,001 to £85,000	9.9%
7	£85,001 to £100,000	10.5%
8	£100,001 to £150,000	11.4%
9	£150,001 or more	12.5%

(3) Where there is a change in employment, or a material change which affects the member's pensionable pay ~~in the course of a financial year~~, the Scheme employer may determine that a contribution rate from a different band should be applied and ~~the authority shall inform the member of the contribution rate applicable and~~ the date from which it is to be applied.

Comments: the wording "in the course of a financial year" has been struck through because, now that the annual uprating of the bands is no longer in the regulations, the wording is superfluous. The wording "the authority shall inform the member of the contribution rate applicable and" has been struck through as the decision of the employer is one taken (under

(a) 1999 c. 30.

regulation 72) by the employer as to the liability of the member to pay contributions. As such, it is a decision about which the member must already be notified under regulation 73 (and so the wording is not necessary in this regulation).

Note: guidance will need to be issued as to the matters an employer should consider when determining how / when to amend the contribution rate for a member e.g. if pensionable pay fluctuates across bands on a regular basis due to the level of excess hours / overtime worked, if there is a backdated payment that tips the member into a higher band for a single month, etc.

(4) For this regulation and regulation 10 any reduction in pensionable pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work shall be disregarded for the purposes of identifying which is the applicable contribution rate, as shall any reduction in pensionable pay whilst on child-related leave, leave of absence with permission, sick leave or leave due to injury, reserve forces service leave or absence due to a trade dispute.

### Temporary reduction in contributions

10.—(1) A person, other than a person on reserve forces service leave, may elect to pay reduced contributions in an employment for a period by giving written notice to the member's Scheme employer that the member wishes to do so.

Comment: the additional wording has been added as there would otherwise be potential administrative difficulties if the member could elect to move from the full section to the 50/50 section (or vice versa) part way through a period of reserve forces service leave. This is because the member would have to give the notification to the employer who would then have to issue a letter to the member to pass on to MoD telling them what the new employee rate is from the MoD's next available pay period. The MoD would then have to tell the administering authority the date that the next available pay period commenced so that the administering authority could make the appropriate amendment to the member's record. That's a lot of paperwork with the potential for mistakes along the way. I have, therefore, made the amendment above so that during a period of reserve forces service leave a member cannot change sections. If he / she wishes to move section he / she should do so before going on reserve forces service leave (or after coming back from such leave). A member in the 50/50 section during reserve forces service leave would still be protected for ill health and death in service cover as all ancillary benefits are treated as if the member were in the full section.

Note: Although paragraph (1) commences with the words "A person" it subsequently refers to the person giving "notice to the member's Scheme employer" where "the member wishes to do so". Thus, only a member can elect for the 50/50 section and so a person cannot make the election before commencing employment (in the same way that a person cannot complete an opting out form before commencing employment). All new employees (or an existing employee commencing a new employment for which a separate record is required e.g. a concurrent employment where the employer has determined a single employment relationship does not exist) should, therefore, be contractually enrolled into the main section on commencement of that employment. However, although all new starters are contractually enrolled into the main section of the scheme they can elect, on or after the first day of employment in that job and before the first payroll run for that employment has been closed, to join the 50/50 section from the first day of that employment.

Similarly an optant-out who wants to join the 50/50 section would have to opt into the main section first and then elect for the 50/50 section.

(2) Where a notice is given under paragraph (1), from the beginning of the next available payment period following the giving of the notice, the contribution rate payable on the member's pensionable pay in relation to that employment is 50% of what would otherwise be payable under regulation 9 (contributions).

Comment: the amendments to (2) and (4) and in the second line of (5) have been made at the request of payroll providers who have pointed out that a payroll may close input on the 15<sup>th</sup> of a month for payment of the 20<sup>th</sup> of the month. If the election is received on, say, the 16<sup>th</sup> June the

next payment period would be June but the next available payment period would not be until July (as the payroll for June had been closed).

(3) An active member may cancel the election under paragraph (1) at any time, other than during a period of reserve forces service leave, by giving written notice to the member's Scheme employer to this effect.

Comment: amendment made for the same reason set out under paragraph (1).

(4) Where a notice is given under paragraph (3), the contribution rate payable on the member's pensionable pay in relation to that employment is as provided by regulation 9 from the beginning of the next available payment period following the giving of the notice, ~~the contribution rate payable on the member's pensionable pay in relation to that employment is as provided by regulation 9.~~

Comment: the re-ordering of the wording above is to make it read more easily.

(5) An active member's election under paragraph (1) is cancelled ~~from the beginning of the first pay period after~~ —

- (a) from the beginning of the first available pay period after the member's automatic re-enrolment date or, if the employer so chooses, from the automatic re-enrolment date unless, in either case, the member had made the election within 12 months prior to the automatic re-enrolment date; and
- (b) from the beginning of the first available pay period after going on to no pay as a result of sickness or injury provided that the member is still on no pay for that reason at the beginning of that pay period,

and the contribution rate payable on the member's pensionable pay in relation to that employment is as provided by regulation 9 from that date.

Comments: I've again suggested additional wording to (a) because

- the first re-enrolment date will be the third anniversary of the employer's 'staging date' or such other date chosen by the employer within a period of 3 months either side of the third anniversary date [Reg 12(1)(a) of SI 2010/772 as amended by SI 2012/215]. All staging dates start on the 1<sup>st</sup> of a month – so if an employer chooses the date 3 years after its staging date, or the beginning of a month up to 3 months either side of that 3 year anniversary, the original wording in the draft regulation would work for weekly / fortnightly paid employees for whom the re-enrolment date would normally fall part way through a pay period (unless the re-enrolment date and the beginning of the pay period both happened to fall on the 1<sup>st</sup> of a month), and so a move to the full section from the beginning of the next payment period would avoid a move from the 50/50 section to the full section part way through a pay period. However, for monthly paid staff who have a pay period beginning on the 1<sup>st</sup> of a month, whilst moving them to the full section from the beginning of the following month staggers the workload for HR/payroll (given that eligible jobholders who are not in the LGPS will have to be brought into the full section of the scheme from the re-enrolment date - see regulation 3(6)(b)) some employers might not wish to stagger the workload and may want to deal with enrolling non-members and moving those in the 50/50 section to the full section all in the same pay period. I've therefore added the words "or, if the employer so chooses, from the member's automatic enrolment date", and

- although it runs counter to the DCLG policy instructions, it would be ridiculous to move someone from the 50/50 section to the full section only a matter of weeks after they had opted for the 50/50 section. The automatic enrolment regime already provides that re-enrolment should not occur where the member had opted out within the previous 12 months and the recent DWP consultation on technical amendments to the automatic enrolment regime proposes that automatic enrolment should not occur if a person had opted out of contractual enrolment within the previous 12 months. The amendment I've suggested to (a) follows the same logic.

I've also deleted the word "member" in (a) because the member does not have a re-enrolment date (as they are already in a qualifying scheme); we simply want to refer to the re-enrolment date chosen by the employer for its non-members and use this as a peg.

I've added the words into (b) as it is only if the member is still on no pay due to sickness at the beginning of the next pay period that the person is moved to the full section. If the member is on

no pay for some other reason (e.g. strike or leave of absence) then they would remain in the 50/50 section.

Note: the “automatic re-enrolment date” under (a) is not an automatic re-enrolment date specific to that person as defined in the Pensions Act 2008 (because the person is already an active member of the scheme). Instead, it is the automatic re-enrolment date as defined in Schedule 1 which is the date the employer chooses as its re-enrolment date for its eligible jobholders who are eligible for, but are not active members of, the LGPS (or the date it would have so chosen if it does not have any such employees) with the date being decided by the employer in accordance with section 5 of the Pensions Act 2008 and regulation 12 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010. Having determined what the “automatic re-enrolment date” is that is the date that everyone in the 50/50 section is to be re-enrolled into the full section (regardless of whether the employee in the 50/50 section is an entitled worker, non-eligible jobholder or eligible jobholder).

Note: one effect of (b) will be that a person in the 50/50 section whose employer does not pay sick pay for, say, the first 3 days of absence will be moved to the full section on the first day of the pay period after they went sick if the 3 days span the end of one pay period and the beginning of another.

(5A) Paragraph (5)(a) does not apply if, on the date specified in that paragraph, the member is on reserve forces service leave in which case the election under paragraph (1) is cancelled from the date the member returns from reserve forces service leave.

Comment: added to tie in with the suggested amendments to paragraphs (1) and (3).

(6) A member may make a further election under paragraph (1) at any time when the member is liable to make contributions as is provided by regulation 9.

(7) The Scheme employer of any member who elects to pay reduced contributions under paragraph (1) shall give the member information about the effect on that member’s likely benefits consequent to that election.

(8) Subject to paragraph (5), an active member’s election under paragraph (1) continues in force if the member’s scheme employment is the subject of -

(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.

Comment: the above has been added to clarify that, whilst an election under paragraph (1) would lapse on a voluntary change of employer (as it would be a new employment), the election under paragraph (1) does not lapse 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. The reason I think it is important to include (8) is because advice we have received previously said that an election to opt out of membership of the LGPS would cease upon a TUPE transfer. If an election to opt out ceases then one would assume that an election for the 50/50 section would also cease (unless we make specific provision, as suggested above, for it not to cease).

### **Contributions during absence from work**

11.—(1) An active member must pay contributions under regulations 9 (contributions) or 10 (temporary reduction in contributions) during an absence from work on child-related leave in accordance with regulation 12 (contributions during child-related leave).

(2) An active member must pay contributions under regulations 9 or 10 during an absence on reserve forces service leave in accordance with regulation 13 (contributions during reserve forces service leave).

(3) An active member must pay contributions under regulations 9 or 10 during an absence from work because of illness or injury in accordance with regulation 14 (contributions during absence for illness etc).

(4) A person remains an active member of the Scheme during any absence from work—

- (a) of the description mentioned in paragraphs (1) to (3)
- (b) due to a trade dispute, or
- (c) with permission from the member's Scheme employer,

and continues to accrue earned pension in accordance with regulation 23(4) or (5).

Note: paragraph (4) is merely clarifying that during the above periods of absence from work the person remains an active member. During the leave mentioned in (4)(a) the member accrues pension based on APP. During the leave mentioned in (4)(b) and (c) it is important to note that although the paragraph says the member continues to accrue earned pension in accordance with regulation 23(4) or (5) the amount of pension accrued during that leave period is zero if the member is in receipt of no pay. That is because regulation 23(4) and (5) refer to an accrual of 1/49<sup>th</sup> or 1/98<sup>th</sup> of pensionable pay. The pensionable pay during the leave period was zero; so, 1/49<sup>th</sup> or 1/98<sup>th</sup> of zero is £nil.

### Contributions during child-related leave

12.—(1) An active member on child-related leave must pay contributions in accordance with regulations 9 or 10 on any pensionable pay received, including statutory pay but that pay does not include any amount that reduces the member's actual pensionable pay on account of possible entitlement to statutory pay.

(2) If an active member is on ordinary maternity leave, paternity leave or ordinary adoption leave and is not entitled to receive pensionable pay (including statutory pay) for any of that period, that member is treated for the purposes of these Regulations as if that member had paid contributions for that unpaid period under paragraph (1).

Comment: the child related leave provisions will need to be looked at and amended as necessary to cater for parental leave / parental pay when these provisions are introduced in 2015 – see the documents at :

<https://www.gov.uk/government/consultations/consultation-on-the-administration-of-shared-parental-leave-and-pay>

### Contributions during reserve forces service leave

13.—(1) An active member on reserve forces service leave must pay contributions in accordance with regulations 9 or 10 ~~if (and only if) the reserve forces pay during that period equals or exceeds the pensionable pay the member would have received if the former employment had continued.~~

(2) The contributions under paragraph (1) are payable on the member's assumed pensionable pay ~~calculated under regulation 21. the member would have received if the former employment had continued.~~

Note: the above does not specify how the member has to pay the contributions. This is deliberate as

- if the member is receiving no pay from the employer, the MoD will deduct the employee (and employer) contributions (based on the APP figure supplied to them) from the pay they pay to the reservist and send those contributions to the Pension Fund.
- if the member is receiving some pay from the employer and the remainder from the MoD, the MoD will deduct the employee (and employer) contributions (based on the APP figure supplied to them) from the pay they pay to the reservist and send those contributions to the Pension Fund. This will not result in a doubling of the employee and employer contributions in respect of the pay paid by the Scheme employer (i.e. contributions on that pay and on the APP too) as no contributions are payable on the pay paid by the Scheme employer by virtue of regulation 20(2)(i). Contributions are only payable on the APP figure.

~~(3) If an active member on reserve forces service leave is not required to pay contributions under paragraph (1) –~~

~~(a) that member is treated for the purposes of these Regulations as if that member had paid contributions under paragraph (1);~~

~~(b) if that member has an arrangement under regulation 16 (additional pension contributions) which was entered into prior to the commencement of that member's period of absence, that member is treated for the purposes of these Regulations as if that member had paid contributions under regulation 16.~~

Comment: The changes above have been made to reflect the proposed mechanism for dealing with members on reserve forces service leave. The SaBRE website – see <http://www.sabre.mod.uk/FAQs/Employer/Mobilisation/What-happens-to-a-Reservists-company-pension-while-they-are-away> confirms that if a reservist chooses to continue with their company pension scheme (a reservist has a few other options available to them at the point of mobilisation, such as paying into a military scheme) then the Ministry of Defence (MOD) will pay the employer contributions and will normally deduct the reservist's contribution from their military wage (but, failing that, the member would have to pay the contributions direct to the Fund and claim the tax relief from HMRC via self-assessment).

So, provided the reservist elects to stay in the LGPS and tells the MoD at the outset what the employer and employee contributions should be, the MoD will deduct the employee contributions from the MoD pay and pay them and the employer contributions to the LGPS Fund. That means we can deal with reserve forces service leave in the following way.

The member accrues APP on the payroll. No employee or employer contributions are directly payable on the APP figure on the Scheme employer's payroll (nor on pay, if any, paid to the reservist by the Scheme employer).

Instead, the employer tells the reservist what the APP figure is and gives the reservist information on what the employee and employer % contribution rates are. The reservist has to pass this information on to the MoD. The MoD will normally deduct employee contributions from that APP figure (from the pay the MoD are paying to the reservist) and pay them and the relevant employer contributions over to the LGPS Fund.

Any pre-existing post 2014 APC / SCAPC or AVC / SCAVC contracts remain payable. The employer could send the relevant details to the reservist to pass on to MoD in order to get them to arrange the relevant deductions from MoD pay and for MoD to pay these over to the LGPS Fund / AVC provider. The employee can elect to terminate the contract if he / she wishes but, in the case of an AVC / SCAVC, might wish to consider not doing so where it provides life assurance cover.

Note that the deletions in regulation 13(1) and (3) reflect the fact that a reservist will not be on less pay than they would have received from their Scheme employer. This is because regulation 3 of the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (SI 2005/859) allows the reservist to claim from the MoD an amount equal to the difference between their normal pay and what the reservist receives as service pay and any continuing earnings from the Scheme employer (subject to a claim limit of £548 per day for a normal reservist, or £822 per day for a reservist who is an accredited medical consultant and whose relevant service is with the Defence Medical Services as a medical consultant). So, in effect, the reservist always finishes up getting at least full normal pay (or more than full normal pay if their service pay exceeds their full normal pay).

There is one extra matter that will eventually need to be catered for. There is a White Paper called "Reserves in the Future Force 2020". Paragraph IX of the executive summary says "From April 2015, when the new Armed Forces pension scheme is introduced, reservists will accrue pension entitlements for **time spent on training** as well as when mobilised" and paragraph 3.11.2 of the White Paper says "We will provide access to the future Armed Forces pension scheme in respect

of all elements of reserve service (training and deployments). The MOD is introducing a single Armed Forces pension scheme in 2015, to be known as Armed Forces Pension Scheme 2015 (AFPS 15). To recognise the value of reserve service we will give reservists access to AFPS 15 from 1 April 2015 to provide a defined pension contribution for all paid service. This will deliver parity of treatment between regular and reservist personnel and will help to encourage transfer from regular to reserve service.” So, from April 2015 it looks like we would have to amend the LGPS Regulations 2013 to cater for reservists training days.

#### Contributions during absence for illness etc

14.—(1) An active member away from employment by reason of illness or injury must pay contributions in accordance with regulations 9 or 10 on any pensionable pay received, including statutory pay but that pay does not include any amount that reduces the member’s actual pensionable pay on account of possible entitlement to statutory pay.

(2) If an active member is absent from employment by reason of illness or injury and is not entitled to receive pensionable pay (including statutory pay) for any period that member—

- (a) is treated for the purposes of these Regulations as if that member had paid contributions for that period under paragraph (1); and
- (b) if that member has an arrangement under regulation 16 (additional pension contributions) which was entered into prior to the commencement of the period of absence, that member is treated for the purposes of these Regulations as if that member had paid contributions under regulation 16.

#### Employer contributions during absences

15.—(1) A Scheme employer must, in respect of an active member on child-related leave, pay contributions in accordance with regulation 67(4) on the assumed pensionable pay, or pensionable pay received where this is greater, and must-

(a) pay the employer’s share of any SCAVC arrangement the active member has under regulation 17 on any pensionable pay received, or

(b) if the SCAVC is in respect of pension sacrifice, pay the employer’s share of the SCAVC on the assumed pensionable pay, or pensionable pay received where this is greater-of-an active member on child-related leave.

Comments: I’ve added a reference to reg 67(4) to distinguish those contributions from any other employer contributions e.g. to a SCAPC or SCAVC. I’ve also added the reference to pensionable pay received, if greater, to deal with KIT days and Stringer days and situations where the employer gives contractual pay during child-related leave that is greater than APP – and this is now consistent with regulation 21(3). I’ve added (a) and (b) to deal with situations where there is a SCAVC in place during child related leave (as defined in Schedule 1). Note that no employer contributions to a SCAVC are due during a period of unpaid additional maternity, paternity or adoption leave). Paragraph (b) relates to pension sacrifice arrangements under a SCAVC – I’m only aware of one authority (Northumberland CC) that has such an arrangement.

~~(1)(2)~~ A Scheme employer must pay contributions in accordance with regulation 67(4) where a member on the pensionable pay received, including statutory pay, of an active member on reserve forces service leave or who is absent from employment by reason of illness or injury.

Comments: Wording deleted as reserve forces service leave is not covered in regulation 67(4) – see amendments made to that regulation. Also, whilst a member is on sick leave on full pay, the employer pays contributions on that pay (regulation 67(4)(a)), but where the member is on reduced or no pay due to sickness the employer pays contributions on APP (regulation 67(4)(b)).

We ought to include a provision here to say that during any period where an active member is absent from employment by reason of illness or injury and is not entitled to receive pensionable pay (including statutory pay) for any period, any employer contributions to a SCAVC are not payable.

~~(2)~~(3) If an active member on reserve forces service leave-

(a) has an arrangement under regulation 16 (additional pension contributions) the ~~Scheme employer must pay the~~ employer contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions) must continue to be paid if that regulation applies ~~even if the active member is not required to pay contributions~~

Comment: I have deleted the words “Scheme employer must pay the” and inserted the words “must continue to be paid” as it is the MoD who will have to pick up the tab for the employer contributions (not the Scheme employer). I’ve deleted the wording at the end of the paragraph as reg 13(3) has been deleted.

(b) has a SCAVC arrangement under regulation 17 (additional voluntary contributions) the employer contributions to that SCAVC must continue to be paid.

Comment: paragraph (b) has been added to ensure the employer share of any SCAVC continues to be paid (by the MoD).

~~(3)~~(4) Subject to paragraph (5), if an active member who is absent from work with permission with no pensionable pay otherwise than because of illness or injury, child-related leave or reserve force service leave, elects to enter into an arrangement to pay additional contributions under regulation 16 (additional pension contributions), the member’s Scheme employer must pay contributions under regulation 16(2)(e) or (4)(d) to meet two-thirds of the cost of the arrangement.

Comment: I’ve added “or (4)(d)” to cater for shared cost lump sums (which most leave of absences are likely to be covered by).

~~(4)~~(5) The amount that a Scheme employer can be required to pay under paragraph (4) may not exceed the cost of an arrangement which would give rise to additional pension accrual equivalent to that which a member would have accrued if treated as receiving assumed pensionable pay for the period of absence from work up to a maximum period of 36 months.

~~(5)~~(6) In paragraph (4) the expression “absent from work with permission” does not include an absence due to a trade dispute.

Comment: This regulation is, apart from in paragraph (3), entirely silent on pre-existing SCAPCs (i.e. ones that were already in existence before the current period of absence began). It appears to me that the employer’s share of any pre-existing APC

- must be paid whilst the member is on child related leave, which for this regulation includes any period of additional maternity, additional adoption leave, or additional paternity leave during which the member receives no pensionable pay;
- must be paid whilst the member is absent due to sickness or injury and in receipt of pay. *Regulation 14(2)(b) specifies that in the circumstances covered by that regulation (member on sick leave with no pay) the scheme member’s contributions to an APC (or SCAPC) are deemed to have been paid. Presumably we ought to include a corresponding provision to say that any employer contributions to a SCAPC are deemed to have been paid in those circumstances (which will mean the cost will be picked up at the next valuation)*
- must be paid whilst the member is absent due to a trade dispute
- must be paid whilst the member is on authorised unpaid leave of absence

I’ve dealt with the above (*except the bit in italics*) by making an appropriate amendment to regulations 16(6)(a), (c) and (d).

### **Additional pension contributions**

**16.—**(1) Subject to paragraph (15), an active member who is paying contributions under regulation 9 (contributions) may enter into arrangements to pay additional pension contributions (“APCs”) by regular contributions in accordance with paragraph (2), and a member who is paying contributions under regulation 10 (temporary reduction in contributions) may do so if the arrangement is to cover a period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work) unless the appropriate administering authority determines in any particular case that it would not be practical to allow APCs to be paid by regular contributions.

Comment: the additional wording has been inserted as regulation 11(4)(a) is not appropriate. A member who is subject to regulation 11(4)(a) will have already been credited with pension during the period of absence (based on APP). Therefore, the member would not need to purchase pension to cover the period of absence.

Note: the reference to “an active member” means that a person cannot make an election after leaving (which Admin regulation 22 would have allowed for leave of absence cases) but is consistent with paragraph (10)(d).

(2) Where APCs are to be paid by regular contributions, the arrangements mentioned in paragraph (1)—

- (a) must, when entered into, be for a complete year or number of years with a minimum period of one year;
- (b) must specify the amount of extra contribution to be paid each scheme year;
- (c) must, where the member has more than one active member pension account, specify which account the APC is to be attached to;
- (d) must specify the amount of additional pension to be credited to the active member’s pension account at the end of the scheme year; and
- (e) may be funded in whole or in part by the member’s Scheme employer.

(3) Subject to paragraph (15), an active member who is paying contributions under regulation 9 (contributions) may enter into arrangements to pay APCs by lump sum contribution in accordance with paragraph (4), and a member who is paying contributions under regulation 10 (temporary reduction in contributions) may do so if the arrangement is to cover a period of absence of the description in regulation 11(4) (contributions during absence from work).

(4) Where APCs are to be paid by a lump sum contribution, the arrangements mentioned in paragraph (3)—

- (a) must specify the amount of extra contribution to be paid;
- (b) must, where the member has more than one active member pension account, specify which account the APC is to be attached to;
- (c) must specify the amount of additional pension to be credited to the active member’s pension account at the end of the scheme year; and
- (d) may be funded in whole or in part by the member’s Scheme employer.

(5) The amount of additional annual pension that is to be credited to the active member’s pension accounts pursuant to arrangements under this regulation must not exceed ~~£6,500~~ £6,500 in aggregate. ~~but additional pension to cover a period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work), up to the amount of pension that member would have accrued if treated as receiving assumed pensionable pay during the absence, does not count towards the £5,000 limit. [Note: I amended 11(4) to 11(4)(b) or (c) as only those two sub-paragraphs were relevant. However, the wording has now been deleted for the reasons shown below]~~

Comments:

- The limit has been raised to £6,500 as per the discussion with HMT. The additional wording has been deleted as we have agreed the chances that a person will enter into a contract for £6,500, then go on leave of the types in regulation 11(4)(b) or (c), and wanting to buy back the ‘lost’ pension are minimal. As this is only likely to affect one in a million people we do not think it is worth building a SCAVC requirement into the regulations to cover this particular situation. We would leave such cases to be dealt with at a contractual level i.e. when a Fund issues information on APCs they can tell the person that they can purchase up to £6,500 of additional pension but, if they pay the maximum, it would mean that there would be no headroom left if they subsequently wished to purchase a later period of authorised leave of absence on no pay or a period of unpaid additional maternity, paternity or adoption leave, or a period of absence due to industrial action. They will, therefore, have been forewarned and this should protect the scheme from a complaint. Even if a complaint were to be successful, the employer could always voluntarily enter into a SCAVC

arrangement with the member. This has no additional impact for members with existing ARC contracts as the maximum under those contracts is £5,000. If, post 31/3/14, they wanted to take out another contract for £1,500 it would come with the same warning as above.

- An additional regulation needs to be added to provide that the figure of £6,500 shall be adjusted annually in line with the Pensions (Increase) Act 1971 (or is it in line with the Treasury Revaluation Order – and if the latter, can the value go down if there is a negative Revaluation Order?)

(6) The amount of the contributions to be paid in respect of arrangements under this regulation is to be determined in accordance with actuarial guidance issued by the Secretary of State based on—

- (a) the age of the member at the time the arrangements commence; and
- (b) the gender of the member.

(7) Actuarial guidance issued by the Secretary of State under paragraph (6) may be revised at any time and if so, from the 1st April following any such revision, any contributions payable are to be based on the revised actuarial guidance.

(8) An application by an active member to make arrangements under this regulation must—

- (a) be made in writing to the member's appropriate administering authority, and a copy sent to the member's Scheme employer if that member is not employed by the administering authority,
- (b) where those arrangements are under paragraph (1), state the length of the period, in whole years ending before the member's normal pension age, over which the member wishes to pay additional contributions.

(9) An administering authority may require an active member to produce a report by a registered medical practitioner of the results of a medical examination, undertaken at the member's own expense, and may refuse an application to make arrangements under paragraphs (1) to (4) if that authority is not satisfied that the member is in reasonably good health.

(10) Arrangements made under paragraph (1) continue until any of the following occurs—

- (a) the period entered into has expired,
- (b) they are terminated by the member giving one month's written notice to the administering authority,
- (c) the member begins to pay reduced contributions under regulation 10 (temporary reduction in contributions) unless the arrangement was to cover a period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work),

Comment: the additional wording has been inserted as regulation 11(4)(a) is not appropriate. A member who is subject to regulation 11(4)(a) will have already been credited with pension during the period of absence (based on APP). Therefore, the member would not have been purchasing pension to cover the period of absence.

- (d) subject to paragraph (10A), the member ceases to be an active member of the Scheme with the employer by whom the member was employed when entering into the arrangement, or

Comment: this amendment has been made to clarify a question that had arisen under the 2008 Regulations i.e. that an APC cannot continue upon a voluntary change of employer (whether that employer is in the same Fund or a new Fund). This is necessary as, if the member does not aggregate their main scheme benefits, it is difficult to see how an APC could continue where the new employment is in another Fund. Furthermore, and crucially, if the member changes employer, a SCAPC would have to cease because the employer that had agreed to the SCAPC is no longer the member's employer.

- (e) the member dies.

General comment: a member taking flexible retirement will not have ceased to be an active member. Therefore, there is nothing in this regulation that would require such a person to

cease their APC arrangement. The member would draw the amount of the additional pension transferred from the active account to the flexible retirement account and could continue making APCs to the ongoing active account under the existing APC arrangement. **Is this a deliberate policy change?** Under the 2008 Scheme, an ARC contract had to cease when a member drew benefits under flexible retirement – see [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)

(10A) For the purposes of paragraph (10)(d) a member shall not be treated as ceasing to be an active member of the Scheme if the member’s scheme employment is the subject of -

(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.

Comment: the above has been added to clarify that, whilst an arrangement would cease upon a voluntary change of employer, it would not cease 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. The reason I think it is important to include (10A) is because of the suggested amendment to paragraph (10)(d) and because advice we have received previously said that an election to opt out of membership of the LGPS would cease upon a TUPE transfer. If an election to opt out ceases then one would assume that an APC election would also cease (unless we make specific provision, as suggested above, for it not to cease).

(11) If arrangements entered into under paragraph (1) terminate for any reason and new arrangements are entered into under that paragraph, the amount of contributions payable is determined under paragraph (6) in accordance with the age of the member at the date the new arrangements are entered into and the actuarial guidance issued by the Secretary of State in force at that date.

(12) If additional contributions are paid in accordance with arrangements made under this regulation, and are not refunded under regulation 18 (rights to return of contributions), that member’s active member’s pension account must be credited with the amount specified in those arrangements as additional pension at the end of the scheme year in which the contributions are paid, or at the date the arrangements terminate, if earlier.

(13) If a member who is paying APCs ~~dies or~~ is granted Tier 1 or Tier 2 benefits in relation to the pension account to which the arrangements are attached before the end of the period the arrangements made under paragraph (1) were due to cease (“the APC period”), that member is to be treated as having paid the contributions required from the date the member ~~dies, or~~ is granted Tier 1 or Tier 2 benefits, up to the end of the APC period and the additional pension bought by those contributions is to be included in the active member’s pension account for the year of ~~death, or as the case may be,~~ leaving.

Comment: the amendments have been made because APCs do not impact on survivor benefits (as there are simply member only APCs, not member and survivor APCs).

(14) If a member fails to pay all the additional contributions due under arrangements made under paragraph (1), and paragraph (13) does not apply to that member, the member’s active member pension account must be credited in the Scheme year when the contributions ceased with the additional amount of pension acquired in that year~~of an amount calculated in accordance with actuarial guidance issued by the Secretary of State.~~

Comment: I’ve made this change as I cannot see the need for any actuarial guidance. Each year the active account is credited with the amount of additional pension acquired in the year (see regulations 16(2)(d) and 23(2)(c)) and in the year the contributions cease for any reason (other than that in paragraph (13)) the active account will simply be credited with the additional pension acquired in that year.

(15) Where an arrangement is one to which regulation 15(4) (employer contributions during absences) applies, application by an active member to make the arrangements under this regulation must be made before the expiry of a period of 30 days beginning with the day on which the person returns to work.

(16) Where an active member to whom regulation 11(4) applies (contributions during absence from work) has an arrangement under this regulation which was entered into prior to the commencement of the period of absence, the APCs under that arrangement—

- (a) must be paid by the member, and by the Scheme employer where the APC is one to which paragraph 15(4) applies, during any period of child-related leave, which for this regulation includes any period of additional maternity, additional adoption leave, or additional paternity leave during which the member receives no pensionable pay;
- (b) must be paid by the member during any period of reserve forces service leave where regulation 13(1) (contributions during reserve forces service leave) applies;
- (c) must be paid by the member, and by the Scheme employer where the APC is one to which paragraph 15(4) applies, during any period of absence for illness or injury where regulation 14(1) applies;
- (d) must be paid by the member, and by the Scheme employer where the APC is one to which paragraph 15(4) applies, during any period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work).

Comment: additional wording has been added to (a), (c) and (d) to ensure that the employer meets their share of any pre-existing SCAPC. There is no need for an amendment to (b) as this is already covered in regulation 15(3)(a). If, however, it is felt that it would be preferable to amend 16(16)(b) instead, it should not say that the Scheme employer must pay the shared cost APC (because it is the MoD and not the Scheme employer who will pay them) but, rather, either say that those contributions are payable by the MoD (but that would rely on the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (SI 2005/859) not changing) or, preferably, that those contributions are payable (without specifying by whom they are payable – which is the approach taken in regulation 15(3)(a)).

#### General notes:

- if a scheme member who is paying APCs dies in service, or stops paying APCs part way through the contract whilst continuing to be an active member and subsequently dies in service, the current GAD guidance states that no death grant is payable. However, if the scheme member had stopped paying APCs part way through the contract as a result of ceasing to be an active member the additional pension (AP) purchased would become deferred with the rest of the scheme benefits. If the scheme member then subsequently died whilst a deferred member, a death grant of 5 x AP would be payable under regulation 43(3) or if the member died as a pensioner member a death grant of 10 x AP would be payable under regulation 46. Whilst it might seem fairer to make an amendment to regulation 40 to allow for the revalued AP sitting in the active member's account at the point of death to be paid as a death grant where a member dies in service, the policy decision is that there should be no change to the position that applies under the 2008 Scheme.
- if a member retires before NPA (other than on tier 1 or 2 health grounds), their Additional Pension should be subject to an actuarial reduction even if their main LGPS pension is not (e.g. in cases of retirement on redundancy or efficiency grounds). That seems an entirely logical position to take as a APC is a voluntary arrangement to purchase an extra benefit payable from NPA. If it is paid early, it should be cost neutral to the Fund and to the scheme member and so an actuarial reduction should apply (or an actuarial increase if the benefits are drawn after NPA). This is reflected in regulations 30(4), (5), (6) and (7)(a).

#### **Additional voluntary contributions**

**17.—(1)** An active member may enter into arrangements to pay additional voluntary contributions (“AVCs”) or to contribute to shared cost additional voluntary contribution arrangements (“SCAVCs”) in respect of an employment.

Note: the wording above allows for a member to pay into an AVC arrangement an AVC transfer from another LGPS Fund without having to make ongoing contributions (and hence the wording of paragraph (3) which says “where an active member wishes to make contributions to an arrangement”).

(2) The arrangements mentioned in paragraph (1) must be a scheme established under an agreement between the appropriate administering authority and a body approved for the purposes under the Finance Act 2004(a) (“the AVC provider”), registered in accordance with that Act and administered in accordance with the Pensions Act 2004(b).

(3) Where an active member wishes to make contributions to an arrangement under paragraph (1), the active member or the AVC provider authorised by the member to act on the member’s behalf must specify in a written notice given both to the appropriate administering authority and the member’s Scheme employer, if the member is not employed by the administering authority—

- (a) the percentage of pensionable pay or the amount that the member wishes to contribute from pensionable pay in respect of an employment in each pay period (but see paragraph (4); and
- (b) whether any of the contributions are to be used to provide life assurance benefits payable upon death in service as an active member and, if so, the proportion or amount to be so used.

(4) Where a member is paying AVCs for life insurance and pensionable pay in a pay period, net of any deductions made by the Scheme employer, is less than the AVC due, the member may pay the contribution due by way of a payment direct to the AVC provider or to the Scheme employer for onward transmission to that body in order to ensure that the life assurance cover continues.

(5) A member may vary the amount specified in, or cease contributing to, an arrangement by service of a further written notice given to the member’s Scheme employer by the member or by the AVC provider authorised by the member to act on the member’s behalf.

(6) For the purposes of regulation 5(5) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(c) the retirement date used for the purposes of paragraph 6ZA(1) of Schedule 2 to those regulations(d) is, where no acceptable date has been specified for that purpose by the member, normal pension age or, if the member has already attained normal pension age, age 75.

(7) If a member draws benefits under regulation 30(1), (2), ~~(34)~~, (5), ~~or (7)~~, ~~(10) to (12)~~ (retirement benefits) or regulation 35 (ill health retirement) or, if a member who draws benefits under regulation 30(6) (flexible retirement) makes an election to draw the realisable value in the AVC arrangement at the same time, that member must notify the appropriate administering authority that the realisable value under arrangements made under this regulation—

- (a) is to be taken in full or in part by the member as a lump sum, and where only part is taken as a lump sum, the member must specify the amount to be so taken; and
- (b) to the extent that the realisable value has not been taken as a lump sum, it is to be used—
  - (i) to purchase additional pension under the Scheme, the amount of which is to be determined by the administering authority in accordance with actuarial guidance issued by the Secretary of State, or
  - (ii) to the extent that it has not been used to purchase additional pension under the Scheme, to purchase an annuity from one or more insurance companies (within the meaning of section 275 of the Finance Act 2004(e)).

**Comment: the amendments to paragraphs (7), (8) and (12) are to cater for pension credit members who have been awarded a share of the debit member’s AVC account under a Pension Sharing Order. Paragraph (7) has also been amended to correct a**

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(a) 2004 c. 12.  
(b) 2004 c. 35.  
(c) S.I. 1996/1655; paragraph (5) of regulation 5 was substituted by S.I. 2010/2659.  
(d) Paragraph 6ZA was inserted by S.I. 2002/1383.  
(e) 2004 c. 12.

cross referencing error and to make reference to regulation 35 as it had inadvertently been missed from the list of relevant regulations.

(8) If a pension debit member has made an election under paragraph (7)(a) or regulation 33 before the valuation date used when implementing the Pension Sharing Order, the pension credit member cannot make an election under paragraph (7)(a) but, in any other case, where a member chooses to take some or all of the benefits referred to in paragraph (7) in the form of a lump sum, that sum forms part of the total amount referred to in regulation 33(2) (election for lump sum instead of a pension).

(9) A person with an arrangement under paragraph (1) who becomes a deferred member of the Scheme is entitled to a deferred AVC account with the AVC provider.

(10) A member must transfer the realisable value in a deferred AVC account to another registered pension scheme or qualified recognised overseas pension scheme if making a transfer under regulation 96 (rights to payment out of pension fund).

(11) Where a member aggregates a deferred member's pension account or a deferred refund account with an active member's pension account, the realisable value in any deferred AVC account must be transferred to an arrangement under this regulation and the member may make an election to make further payments to the arrangement.

Comment: we are aware that this provision, which seeks to remove the problem of orphan AVCs creates its own, probably worse, problem i.e. a number of the AVC providers apply a penalty if monies are transferred from them before the member has paid AVCs for a minimum period of time. For example, if the member has a Prudential AVC for less than 5 years, they will suffer a penalty if they transfer out to another LGPS fund (between 15% if they leave/transfer out within the 1<sup>st</sup> year to 5% within 5 years). If members only have post 2014 membership then there is not a problem as they can elect to keep their LGPS rights (and hence the AVC pots) separate. However, if they have any pre 2014 membership and don't have a 5 year break, they will be forced under the Public Service Pensions Act 2013 to aggregate their main scheme benefits. If we force those members to aggregate their AVC pots they might well have a reasonable claim for compensation. Thus, on balance, I would suggest that paragraph (11) can be retained but the Transitional Provisions and Savings Regulations 2013 will need to allow such members with pre 2014 membership to elect not to transfer the AVC pot (i.e. should allow for there to be orphan AVC pots).

(12) If—

- (a) an active member who is paying contributions to an AVC or SCAVC for the purpose of life assurance dies, or
- (b) an active member who is paying contributions to an AVC or SCAVC other than for the purpose of life assurance dies, or
- (c) a deferred member dies and has a deferred AVC account attached to the deferred member's pension account,
- (d) a pension credit member who has been awarded a share of a pension debit member's AVC account dies before drawing benefits under regulations 30(10) to (12), or
- (e) a member who has made an election under paragraph (7)(b)(ii) dies before the annuity has been purchased,

the appropriate administering authority shall, at its absolute discretion, decide that any life assurance sum due under (a), and the realisable value of any arrangement under (b) to (e), should be paid to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(13) Where a member had attained the age of 75 at the date of death, any tax chargeable under section 206 of the Finance Act 2004 is to be deducted from the payment due under paragraphs (12) or (14).

(14) If the total of payments due under paragraph (12) have not been paid before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably have been expected to have become aware of the

member's death, an amount equal to the shortfall must be paid to the member's personal representatives.

(15) Regulations 72 (first instance decisions) and 91 (forfeiture of pension rights after conviction for employment-related offences) do not apply in relation to an annuity purchased under paragraph (7)(b)(ii) and regulation 19(1)(b) does not apply to any AVCs paid by the member.

Comment: The additional wording has been added as this would allow AVCs paid by the member to be refunded and seems reasonable given that they were additional, personal, contributions paid by the member. If the additional wording is not added the AVCs would be forfeited but what would happen to them – they are sitting in an AVC pot held by an AVC provider and it would not be appropriate for the AVC provider to keep them.

### **Rights to return of contributions**

**18.**—(1) If a person's qualifying service in the Scheme determined under regulation 3(7) (active membership) is for less than two years, that person is entitled, when that active membership ceases, to be repaid by the administering authority—

- (a) any contributions paid under or in accordance with regulations 9 or 10 in relation to that active membership;
- (b) any additional contributions paid by the person under regulation 16 in relation to that active membership;
- (c) the realisable value of any AVC or SCAVCs paid by the person, or SCAVCs paid by the Scheme employer under a salary sacrifice scheme, under regulation 17 in relation to that active membership (other than such contributions paid for life assurance cover or additional survivor benefits); and

#### Comments:

- the amendment has been made in order to correlate with, and be consistent with, regulation 18(2).
  - we will need to keep an eye on the amended proposal for a Directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights. Included in that proposal is a recommendation that if a member leaves before the 2 year vesting period ends the member shall be entitled to a return of their contributions, **or where (as is the case with AVCs) they bear the investment risk, the value of the invested contributions.** We will need to check whether “the value of the invested contributions” has the same meaning as “realisable value”.
- (d) any contributions included in a transfer payment received from a registered pension scheme or from a pension scheme or arrangement of a European Pensions Institution.

(2) Where a person is entitled to repayment under paragraph (1)(c), the realisable value of any SCAVC contributions paid by the Scheme employer are repayable to the Scheme employer (other than contributions specifically paid for additional life assurance cover, in respect of additional survivor benefits or paid by the employer under a salary sacrifice scheme).

Comment: The second reference to “Scheme employer” in (2) would not be correct if the employer is no longer a Scheme employer. The default position in this case would be that the money simply reverts to the Fund and is not repayable to the employer.

Note: any SCAPC paid by the employer will remain in the Fund and this will be reflected in the next Fund valuation.

(3) A person entitled to repayment under paragraph (1)(a) (b) or (d) is also entitled to interest on the sum due under those sub-paragraphs if repayment is not made before the expiry of one year beginning with the date active membership ceased.

(4) Interest due under paragraph (3) is calculated at one per cent above base rate on a day to day basis from the date active membership ceased and compounded with three-monthly rests.

(5) An administering authority shall refund contributions to a person entitled under paragraph (1) when the person requests payment, or on the expiry of a period of five years beginning with the date the person's active membership ceased if no request is made before then or, if the person attains age 75 before then, on the day before attaining age 75.

(6) If a person entitled to a repayment under paragraph (1) dies before the payment is made, the administering authority must pay the sum due to the person's estate.

(7) The administering authority ~~may~~shall deduct any tax due under the Finance Act 2004 or certified amount due under section 61 of the Pension Schemes Act 1993(a) from any repayment under paragraph (1) and where any such deduction is made shall secure that the money withheld is used to discharge the tax liability or is included in the contributions equivalent premium liability due under section 55 of the Pensions Schemes Act 1993(b).

*Comment: I've amended this to "shall" as we don't want a member to claim the administering authority has discretion over whether or not to make such deductions where any such tax or certified amount is due.*

(8) This regulation is subject to regulation 19 (exclusion of rights to return of contributions).

### **Exclusion of rights to return of contributions**

**19.**—(1) A person is not entitled to a return of contributions under regulation 18 if that person—

(a) becomes an active member of the Scheme again within one month and one day of ceasing active membership in an employment, or before ~~receiving~~the date a return of contributions has been issued by the relevant administering authority, whichever is the later;

*Comment: the wording has been amended as requested by HMT in order to avoid any dispute about what "receiving" means.*

(b) left the employment because of —

- (i) an offence of a fraudulent character, or
- (ii) grave misconduct

in connection with the employment;

(c) benefits from a transfer payment to another registered pension scheme or to a qualifying recognised overseas pension scheme ;

(d) continues as an active member in another employment held concurrently from the employment in which that person has ceased to be an active member;

(e) is an active member and dies in service.

(2) Where paragraph (1)(b) applies the Scheme employer may direct payment out of the appropriate fund of a sum equal to all or part of the member's contributions to the member, the member's spouse, civil partner, cohabiting partner or any of the member's dependents.

### **Meaning of pensionable pay**

**20.**—(1) Subject to regulation 21 (assumed pensionable pay), an employee's pensionable pay is the total of—

- (a) all the salary, wages, fees and other payments paid to the employee, and
- (b) any benefit specified in the employee's contract of employment as being a pensionable emolument.

(2) But an employee's pensionable pay does not include—

- (a) any sum which has not had income tax liability determined on it;

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(a) 1993 c. 48; section 61 was amended by the Pensions Act 1995, the Child Support, Pensions and Social Security Act 2000 and the Pensions Act 2004.

(b) 1993 c. 48; there are amendments to section 55 which are not relevant to this instrument.

- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate a contract of employment;
- (e) any payment as an inducement not to terminate employment before the payment is made;
- (f) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision;
- (g) any payment in consideration of loss of future pensionable payments or benefits;
- (h) any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees;

- (i) any payment made by the Scheme employer to a member on reserve forces service leave;

Comment: this additional exclusion has been added so that where a member on reserve forces service leave gets reservist pay and also gets some pay from the Scheme employer, no contributions are payable on the latter. This is because the employee and employer contributions will be payable on the APP notified to the MoD and the MoD will collect these and remit them to the Pension Fund.

- (j) returning officer, or acting returning officer fees other than fees paid in respect of—
  - (i) local government elections,
  - (ii) elections for the National Assembly for Wales,
  - (iii) Parliamentary elections, or
  - (iv) European Parliamentary elections.

### **Assumed pensionable pay**

**21.**—(1) During the period the circumstances specified in paragraph (2) apply in relation to an employment, the pensionable pay that an active member is, in relation to that employment, treated as receiving for the purposes of these Regulations (including this regulation), other than regulations 9 to 14 (contributions), is that member's assumed pensionable pay calculated in accordance with paragraphs (5) and (6).

(2) The circumstances are that the member—

- (a) is on leave due to sickness or injury and is on reduced contractual pay or no pay;
- (b) is on relevant child-related leave;
- (c) is absent on reserve forces service leave.

(3) Relevant child-related leave for the purposes of paragraph 2(b) means any period during which the member is on child-related leave other than any part of that period where the pensionable pay received is greater than the assumed pensionable pay.

Note: The reference to “other than any part of that period where the pensionable pay received is greater than the assumed pensionable pay” is to cater for situation such as KIT days and Stringer days and situations where an employer pays contractual pay during child-related leave that is greater than APP. In those situations, regulation 12(1) requires employee contributions to be paid on the actual pay received. Thus, for example, during the leave period the accrual should be based on APP but if the person has a Keep In Touch day where the pay is higher, the person will pay contributions on the pay received and get accrual on that higher pay figure for that day. Note, however, that the APP to be used after the KIT day would be the same as applied prior to the KIT day (i.e. it would not have to be recalculated on account of the KIT day) – see paragraph (8) below.

(4) Paragraph (2)(c) does not apply in respect of any period of service which qualifies the member for benefits under any other occupational pension scheme in respect of that service.

(5) The annual rate of assumed pensionable pay for an employment for a scheme year is—

(a) where the member is paid monthly—

- (i) the pensionable pay the member received relating to that employment in the pay periods falling within the 3 months preceding the commencement of the pay period in which the circumstance specified in paragraph (2) began or, for the purposes of regulations 39(2)(a) and 40(3), the pay period in which, respectively, the ill health retirement or death occurred;

Comment: the additional wording has been added at the beginning to cater for those members who happen to move from weekly to monthly pay periods within the previous 3 months and the additional wording at the end has been added as we need to specify how APP is to be calculated for the purposes of regulations 39(2)(a) and 40(3).

- (ii) less any ~~regular or irregular~~ lump sum received that is not payable every pay period;

Comment: the amendment has been made so that lump sums paid every pay period are included (e.g. first aid allowance)

- (iii) with the resulting sum being grossed up to an annual figure;

- (iv) ~~to which any regular lump sum payment received should be added;~~

Comment: this has been deleted as we have realised this leads to double counting. We have, instead, inserted a new paragraph (7)(a). In essence, if a member is in receipt of APP and during the period he / she is receipt of APP the employer would have normally given them a lump sum payment (but doesn't because they are on sick leave, or leave of absence, or reserve forces service leave), the employer can recalculate the APP figure from the date the lump sum would have been paid and apply the new APP figure from that date onwards.

(b) where the member is paid otherwise than monthly—

- (i) the pensionable pay the member received relating to that employment in the pay periods falling within the 12 weeks preceding the commencement of the pay period in which the circumstance specified in paragraph (2) began or, for the purposes of regulations 39(2)(a) and 40(3), the pay period in which, respectively, the ill health retirement or death occurred;

Comment: the additional wording has been added at the beginning to cater for those members who happen to move from monthly to weekly pay periods within the previous 3 months and the additional wording at the end has been added as we need to specify how APP is to be calculated for the purposes of regulations 39(2)(a) and 40(3).

- (ii) less any ~~regular or irregular~~ lump sum received that is not payable every pay period;

Comment: the amendment has been made so that lump sums paid every pay period are included (e.g. first aid allowance)

- (iii) with the resulting sum being grossed up to an annual figure;

- ~~(iv) to which any regular lump sum payment received should be added.~~

(6) For the purposes of paragraph (5) a ~~an~~ ~~irregular~~ lump sum” is a payment for which the member’s employer determines there is ~~an~~ expectation that such a payment would be paid on a regular basis.

(7) The assumed pensionable pay calculated in accordance with paragraph (5) that a member is treated as receiving –

- (a) may subsequently be increased, at the discretion of the Scheme employer, to reflect any regular lump sum payment the Scheme employer would have made to the member, with the increase being applied from the date the payment would have been made, and

~~(a)~~(b) is adjusted by the revaluation adjustment on the first last day of the second scheme year which commenced after the first date on which the member is treated as

receiving assumed pensionable pay save that if the revaluation adjustment is negative, the assumed pensionable pay shall not be reduced.

Comment: the additional wording has been added to reflect the changes made to other regulations e.g. regulations 23(2), 24(7), etc and to provide that in any year where the Treasury Revaluation order is negative, APP shall not be reduced.

Note: The above means that the amount of APP will not be increased unless and until the member remains on reduced or no pay for a period that crosses two Scheme year ends (i.e. two 31 March), at which point the APP will, on the second 1 April (being the second 1 April following the period upon which the APP was calculated) and each 1 April thereafter during a continuous period of leave on reduced or no pay, be increased in line with the Treasury Revaluation Order (save that in any year when the Revaluation Order is negative, the APP shall not be reduced). This approach means that, in the majority of cases, it will not be necessary to revalue APP.

(8) If assumed pensionable pay has been calculated for a member who is on relevant child related leave and, at any time during that period of leave, the pensionable pay received temporarily exceeds the assumed pensionable pay, the assumed pensionable pay is not to be recalculated.

Comment: this is to cater for members on relevant child related leave for whom APP has been calculated and who, during the period of leave, have (for example) a KIT day where the pensionable pay received is greater than APP. When the person ceases the KIT day and returns to relevant child related leave the APP figure previously calculated continues to be used i.e. it is not necessary to recalculate it simply because there has been a paid KIT day during a period of relevant child related leave.

## Pension accounts

### Pension accounts

General comment: there will need to be something added to the regulations governing pension accounts to deal with payments made after leaving. The additional pension derived from a retrospective payment made after leaving (e.g. from a backdated pay award or backdated re-grading) should be credited to the member's account that is open at that time\* (e.g. a deferred refund account, a deferred account or pension account) with no retrospective recalculation of Treasury Order or PI revaluation (and no arrears of pension paid for a member in receipt of a pension). The logic is that the contributions were not collected from the member/employer until the pay period the arrears of pay were paid and so the CARE account should not be credited with the additional pension retrospectively i.e. the additional CARE pension accrual should only be credited from the date the additional payment was actually made. For a pension already in payment, the additional pension amount would constitute a further BCE for the purposes of the LTA and, if the payment is made in the Scheme year after leaving, for the purposes of the annual allowance check. Note, however, that if the member has pre 1/4/14 membership the retrospective pay will result in a recalculation of the final year's pensionable pay. Any pension already paid in respect of the pre 2014 membership (or the underpin) will need to be recalculated and, consequently, arrears of pension paid.

\*At a practical level, I suspect the additional pension derived from a payment made after leaving but in the pay period of leaving (e.g. date of leaving 6 June, pay date 12 June) or in the pay period immediately after leaving, will be credited into the active account.

**22.—(1)** An administering authority must open and maintain one or more pension accounts for each member of the Scheme.

(2) A separate pension account must be opened in relation to each employment where a member is or was employed in two or more Scheme employments.

(3) A pension account—

- (a) must contain such matters as are required by these Regulations;
  - (b) must identify which one of the following categories of pension account it is—
    - (i) an active member’s pension account;
    - (ii) a deferred member’s pension account;
    - (iii) a deferred refund account;
    - (iv) a retirement pension account;
    - (v) a flexible retirement pension account;
    - (vi) a deferred pensioner member’s account;
    - (vii) a pension credit account; or
    - (viii) a survivor member’s account,
 but, subject to that,
  - (c) may be kept in any form that the administering authority considers appropriate.
- (4) An administering authority must close a pension account if—
- (a) a transfer value payment is made in respect of the member if the effect of the transfer is that the member is no longer entitled to any benefits from the account;
  - (b) a refund of contributions is paid under regulation 18 (rights to return of contributions);
  - (c) all the benefits in the account are forfeited under regulation 91 (forfeiture of pension rights after conviction for employment-related offences);
  - (d) the member dies;
  - (e) the last survivor entitled to a benefit from a survivor member’s account ceases to be entitled to a benefit from the account (by reason of death or upon ceasing to be an eligible child); or
  - (f) due to aggregation of the benefits in the account with a different account, it is no longer required.

(5) Where a member with an active member’s pension account also has a deferred refund account, the benefits in the deferred refund account must be aggregated with the active member’s pension account and the deferred refund account closed.

~~(6) Where a member with an active member’s pension account also has a deferred member’s pension account the member may elect to aggregate the benefits in the deferred member’s pension account with those in the active member’s pension account in the following circumstances—~~

- ~~(a) within 12 months of starting a new employment, or such longer time as the new Scheme employer permits;~~
- ~~(b) within 12 months of terminating one concurrent employment, or such longer time as the Scheme employer in any other employment permits; or~~
- ~~(c)(a) \_\_\_\_\_ within 12 months of rejoining the Scheme after having opted out and becoming a deferred member, or such longer time as the Scheme employer permits.~~

Comment: paragraph (6) has been deleted and replaced with the paragraphs below as the view has been taken that benefits should automatically be aggregated but with the right, in certain circumstances, for the member to elect to retain separate benefits. This has been discussed and agreed at the LGPCs Technical Group.

(6) Where an active member with concurrent employments ceases an employment and does not have qualifying service for a period of two years, the active member’s pension account in respect of that employment must be closed and the benefits in that account must be aggregated with the ongoing active member’s pension account and, if there is more than one such account, the one chosen by the member.

(7) Where a deferred member again becomes an active member, the benefits in the deferred member’s pension account shall be aggregated with those in the active member’s pension account unless –

- (a) within 12 months of the active member's pension account being opened, or
- (b) such longer time as the Scheme employer in relation to that active member's pension account permits

the member makes an election to the administering authority in whose Fund the active member's pension account is held, to retain the deferred member's pension account.

Comment: a person who, by virtue of a written notice given under regulation 5(2), ceases to be an active member before being an active member of the Scheme for three months is to be treated as not having been an active member. If they are treated as never having been a member then paragraph (7) above would not apply to them (as they have not "become an active member") and thus the benefits in the deferred account would not be automatically aggregated with the active account. Would you agree with this logic? If not, then perhaps paragraph (7) should commence with the words "Apart from where regulation 5(5) applies ...."

(8) An election under paragraph (7) may not be made if the member became entitled to the deferred member's pension account as a result of a written notice given under regulation 5(2) if, since then, the person has remained eligible to be an active member of the Scheme under regulation 3(1).

Comments: paragraph (8) has been inserted to stop members opting out, rejoining and retaining separate benefits with the sole intention of gaining increased benefits in times where pay rises are lagging behind CPI.

We need to have a regulation too which provides that an election under (7) cannot be made if regulation 10(1) of the Transitional Provisions and Savings Regulations applies i.e. compulsory aggregation where a member with pre 2014 benefits returns with less than a 5 year break. I'm not clear whether such a regulation should be included here or be included in the Transitional Provisions and Savings Regulations.

(9) Where an active member with concurrent employments ceases an employment with entitlement to a deferred pension, the benefits in the deferred member's pension account shall be aggregated with those in the ongoing active member's pension account and, if there is more than one such account, the one chosen by the member unless –

(a) within 12 months of the date the concurrent employment ceased, or

(b) such longer period as the Scheme employer in relation to relevant ongoing active member's pension account permits.

the member makes an election to the administering authority in whose Fund the active member's pension account is held, to retain the deferred member's pension account.

(10) The member's choice of account under paragraphs (6) or (9) must be made in writing by the member to the administering authority within whose Fund the ongoing active member's pension account is held within 12 months of the closure of the active member's pension account and, in the absence of an election from the member, the administering authority shall make the determination on the member's behalf.

(11) Where a deferred member's pension account or a deferred refund account is to be aggregated with an active member's pension account and the gap between the member's last day of membership to which the deferred member's pension account or deferred refund account relates and the first day of active membership to which the active member's pension account relates does not exceed 5 years, the balance in the deferred member's account or deferred refund account shall be recalculated, before aggregation, as if the amount in that account had been increased by the revaluation adjustment and not the index rate adjustment.

Note: paragraph (11) is to cater for the requirement in section 9(6) of the Public Service Pensions Act 2013 that the revaluation adjustment will apply if any gap in a person's pensionable service does not exceed 5 years. This could potentially result in a reduction in the value of an aggregated deferred benefit if a Treasury Order revaluation figure in any given year is negative but the PI order for that year was zero.

## Active member's pension accounts

23.—(1) At the beginning of each scheme year, an active member's pension account in relation to an employment must specify the opening balance for that year .

(2) At the end of each scheme year—

- (a) the balance mentioned in paragraph (1); plus
- (b) the amount of earned pension, if any, for the scheme year; plus
- (c) the amount of any additional member pension acquired during the scheme year pursuant to arrangements made under regulation 16(1) or (3) (additional pension contributions) ; plus or minus, as the case may be,
- (d) the sum resulting from any pension account adjustment during the scheme year,

~~must be adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State, must be aggregated and the revaluation adjustment for that scheme year shall be applied at the beginning of the next scheme year in accordance with guidance issued by the Secretary of State.~~

(3) The revalued balance calculated under paragraph (2) becomes the new opening balance for the following scheme year.

Comment: the amendment to paragraphs (2) and (3) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004)

(4) Except where regulation 10 (temporary reduction in contributions) applies, the amount of earned pension for a scheme year is 1/49th of the member's pensionable pay received in that year (irrespective of whether it relates to work carried out in that year).

(5) Where regulation 10 (temporary reduction in contributions) applies, the amount of earned pension for a scheme year is 1/98th of the member's pensionable pay received in that year while that regulation applies (irrespective of whether it relates to work carried out during that period).

Note: although paragraphs (4) and (5) refer to pay received in the year, any pay received post 31/3/14 that relates to work carried out before 1/4/14 does not accrue any benefit in the CARE scheme (see regulation 3(6) of the Transitional Provisions and Savings Regulations 2013).

(6) Other than to correct an error in a pension account, a pension account adjustment can only arise as a consequence of—

- (a) an award of additional pension under regulation 31 (award of additional pension);
- (b) a transfer value payment being made or received;
- (c) a pension debit being made;
- (d) a Scheme pays election;

Comment: There is a problem over when deductions under paragraphs (6)(c) and (d) should be made. Firstly, the deductions might increase by a rate greater than the other elements in the member's account. For example, it is possible that in a year of negative inflation, the Treasury Revaluation Order will be negative and yet a Pension Sharing debit should not have a negative revaluation applied as it should mirror the Pension Credit (which will, under the PI Act 1971, have a 0% adjustment applied). Secondly, if pension debit and scheme pays deductions are not made in the appropriate scheme year the member's account will be overstated and annual benefit statements might lead the member to believe there is more in his / her account than there actually is. However, if the deductions are made in the appropriate scheme year (as currently drafted) and the deduction is based on an actuarial assumption that the member will draw benefits at NPA, the amount of the deduction will have been too great if the member eventually retires before NPA and will have been too little if the member retires after NPA. A regulation would then be required to permit a further adjustment to the active account (or a deferred account) at the point benefits are drawn. These issues were raised for consideration by GAD at meetings with them on 19<sup>th</sup> June and 25<sup>th</sup> July 2013. It may be that sub-

paragraphs (c) and (d) above should be deleted and a separate paragraph added that simply deals with the adjustment of the account on account of a pension debit or annual allowance tax charge. Perhaps paragraph (9) below is sufficient on its own to cater for each of the above issues but it would be helpful if GAD could confirm whether, in their view, any consequential amendments would also be needed to paragraphs (1) to (8). There are significant ramifications for the regulations dealing with most other pension accounts too.

- (e) a transfer into the member's account from a different account upon aggregation of those accounts; or
- (f) an adjustment of the description mentioned in regulation 94 (adjustment of accounts following forfeiture etc).

(7) If an active member's pension account is closed before the end of a scheme year any pension account adjustment applicable to the account must be made immediately before the date the account is closed, but no revaluation adjustment is to be made to the active member pension account for that scheme year.

*Note: The revaluation adjustment for the part-year would be made to the deferred account or pension account at the beginning of the following year (see regulations 24(7) and 25(6)).*

(8) If a member starts to draw benefits under regulation 30(6) (flexible retirement) any pension account adjustment applicable to the active member's pension account must be made immediately before the date on which benefits start to be paid.

(9) Where—

- (a) a pension debit as is mentioned in paragraph (6)(c) is made, or
- (b) the joint liability amount specified in a notice given in relation to an election as mentioned in paragraph (6)(d) is met by the pension fund,

the appropriate administering authority shall reduce the balance in the member's account to reflect the reduction in the value of the member's rights, calculated in accordance with actuarial guidance issued by the Secretary of State.

*Comment: the GAD guidance will need to cover the issues raised under paragraph (6) above and also how deductions would be applied in the case of Tier 3 ill health retirees.*

### **Deferred member's pension account and deferred refund account**

**24.—**(1) If a member ceases to be an active member and becomes a deferred member in relation to an employment—

- (a) the active member's pension account must be closed; and
- (b) a deferred member's pension account must be opened.

(2) The deferred member's pension account must specify the opening balance in that account.

(3) On the day the account is opened, the opening balance is the amount of pension the member has accrued.

(4) The amount of pension a member has accrued is—

- (a) the opening balance for the member's last active scheme year; plus
- (b) the amount of earned pension, if any, from the first day of the member's last active scheme year until the last day of active membership; plus
- (c) any additional pension acquired during that period pursuant to arrangements made under regulation 16(1) or (3) (additional pension contributions); plus, or minus, as the case may be,
- (d) any pension account adjustment applicable during that period.

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

(5) Except where regulation 10 (temporary reduction in contributions) applied, the amount of earned pension for the period mentioned in paragraph (4)(b) is 1/49th of the pensionable pay received during that period (irrespective of whether it relates to work carried out in that period).

(6) Where regulation 10 (temporary reduction in contributions) applied to any of the period mentioned in paragraph (4)(b), the amount of earned pension is 1/98th of the member's pensionable pay received while that regulation applied (irrespective of whether it relates to work carried out in that period).

Note: although paragraphs (5) and (6) refer to pay received in the year, any pay received post 31/3/14 that relates to work carried out before 1/4/14 does not accrue any benefit in the CARE scheme (see regulation 3(6) of the Transitional Provisions and Savings Regulations 2013).

(7) The balance in the member's account at the end of the scheme year in which the member becomes a deferred member is adjusted at the beginning of the following scheme year by the revaluation adjustment applicable to the ~~that~~ scheme year in which the member became a deferred member, in accordance with guidance issued by the Secretary of State.

(8) The revalued balance calculated under paragraph (7) is the opening balance for the following scheme year and thereafter, subject to paragraph (9), the balance in the account is adjusted each year by the index rate adjustment.

Comment: the amendment to paragraphs (7) and (8) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004)

(9) If a deferred member's account is closed before the end of a scheme year, any pension account adjustment applicable to the account must be made immediately before the date the account is closed.

(10) Other than to correct an error in a deferred member's pension account, the only pension account adjustment that can arise under this regulation (including, but not limited to, an adjustment under paragraph (4)(d)) is an adjustment as a consequence of a matter specified in regulation 23(6) (adjustments to active member's pension accounts).

Comment: The only place the words "pension adjustment" are previously used in this regulation is in paragraph (4)(d). That paragraph only permits adjustments that arise during the period from the beginning of the last active scheme year to the date of cessation of active membership to be made. Paragraph (4)(d) does not allow for future adjustments to the deferred member's pension account of the types mentioned in regulation 23(6)(c) and (d) i.e. where a Pension Sharing Order or an Annual Allowance scheme pays election is made **after** the period mentioned in paragraph (4)(d) above, and so, to make it clear that such adjustments can be made under paragraph (10), I've inserted the extra wording. Also, see the issues raised under regulation 23(6)(c) and (d).

(11) If a member ceases to be an active member without becoming entitled to any benefits because that member has less than two years qualifying service—

- (a) the active member's pension account must be closed; and
- (b) a deferred refund account must be opened.

(12) The deferred refund account must specify the balance in that account which remains until that balance—

- (a) is refunded to the member under regulation 18 (right to return of contributions);
- (b) is transferred to a different registered pension scheme or qualifying recognised overseas pensions scheme; or
- (c) is aggregated with a different pension account,

or until

(d) all the benefits in the account are forfeited under regulation 91 (forfeiture of pension rights after conviction for employment-related offences); or

(e) the member dies,

at which point the deferred refund account must be closed.

Comment: additional paragraphs added to mirror regulations 22(4)(c) and (d).

(13) Paragraphs (3) to (10) of this regulation apply to deferred refund accounts as they apply to deferred member pension accounts.

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

### **Retirement pension accounts : active members**

**25.**—(1) When an active member becomes entitled to immediate payment of a full retirement pension in relation to an employment—

- (a) the active member's pension account must be closed; and
- (b) a retirement pension account must be opened.

(2) The retirement pension account must specify—

- (a) the amount of accrued pension;

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

- (b) the amount of any additional pension purchased under regulation 17(6)(b)(i) (additional voluntary contributions);
- (c) the early payment reduction or deferred payment enhancement (if any) and the amount of pension to which that reduction or enhancement is to be applied;

*Note: The reason for this wording is to reflect the fact that whilst the basic pension accrual from normal contributions might not be subject to an actuarial reduction (e.g. on retirement on the grounds of redundancy or efficiency) and any Additional Pension granted by the employer under regulation 31 would not be subject to an actuarial reduction or enhancement, the additional pension bought by an APC would always be subject to an actuarial reduction if paid before NPA (except for retirement under ill health Tiers 1 or 2) or an enhancement if paid after NPA. Similarly, additional pension purchased by the member under regulation 17(7)(b)(i) after NPA will not be subject to an actuarial increase (because the factors used to purchase that pension are age related) whereas the main LGPS pension would be subject to an actuarial increase. Thus, there will be circumstances where part of the money in the account will be subject to an actuarial reduction or increase and part of the money in the account will not be.*

- (d) the commutation amount (if any);
- (e) the amount of any pension adjustment;

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

- (f) the amount of pension payable from time to time and the date from which it is to be paid.

(3) Subject to paragraph (4), the amount of accrued pension for the purposes of paragraph (2)(a) is the amount that would have been specified under regulation 24(4) (deferred member's pension account) if a deferred member's pension account had been opened for that member.

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

(4) The commutation amount for the purposes of paragraph (2)(d) is the amount the member has given up in return for a lump sum in accordance with regulation 33 (election for lump sum instead of pension) and the amount of accrued pension specified in paragraph (2)(a) is reduced accordingly.

(5) The amount of any pension adjustment not already accounted for under paragraph (2)(a) is, for the purposes of paragraph (2)(e)—

- (a) the aggregate of the amounts calculated in accordance with actuarial guidance issued by the Secretary of State to account for any tax to which the administering authority may become chargeable under the Finance Act 2004 in accordance with regulation 87 (tax) or as a result of a pension sharing order, and

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

- (b) any increase in pension resulting from a decision to award Tier 2 benefits under regulations 37(7)(b) or 37(10) (special provision in respect of members receiving Tier 3 benefits).

(6) The balance in the member's account at the end of the scheme year in which the member becomes a pensioner member is adjusted at the beginning of the following scheme year by the revaluation adjustment applicable to the ~~that~~ scheme year in which the member became a pensioner member, in accordance with guidance issued by the Secretary of State.

(7) The revalued balance calculated under paragraph (6) is the opening balance for the following scheme year and, thereafter, the balance is adjusted each year by the index rate adjustment.

*Comment: the amendment to paragraphs (6) and (7) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004)*

(8) For the purposes of this regulation a full retirement pension means a retirement pension other than a pension payable under regulation 30(6) (flexible retirement pensions).

### **Retirement pension accounts : deferred, deferred pensioner and pension credit members**

**26.**—(1) When a deferred member becomes entitled to immediate payment of a retirement pension—

- (a) the deferred member's pension account must be closed; and
- (b) a retirement pension account must be opened.

(2) The retirement pension account must specify—

- (a) the amount of accrued pension;

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

- (b) the amount of any additional pension purchased under regulation 17(6)(b)(i) (additional voluntary contributions);
- (c) the early payment reduction or deferred payment enhancement (if any), and the amount of pension to which that reduction or enhancement applies;

*Note: This reflects the fact that whilst the basic pension accrual from normal contributions might not be subject to an actuarial reduction (e.g. on payment of benefits before NPA where the member meets the 85 year rule protection) and any Additional Pension granted by the employer under regulation 31 would not be subject to an actuarial reduction or enhancement, the additional pension bought by an APC would always be subject to an actuarial reduction if paid before NPA or an enhancement if paid after NPA. Similarly, additional pension purchased by the member under regulation 17(6)(b)(i) after NPA will not be subject to an actuarial increase (because the factors used to purchase that pension are age related) whereas the main LGPS pension would be subject to an actuarial increase. Thus, there will be circumstances where part of the money in the account will be subject to an actuarial reduction or increase and part of the money in the account will not be.*

- (d) the commutation amount (if any);
- (e) the amount of any pension adjustment;

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

- (f) the amount of pension payable from time to time and the date from which it is to be paid.

(3) Subject to paragraph (4), the amount of accrued pension for the purposes of paragraph (2)(a) is the amount specified in that member's deferred member's pension account immediately before it was closed.

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

(4) The commutation amount for the purposes of paragraph (2)(c) is the amount the member has given up for a lump sum in accordance with regulation 33 (election for lump sum instead of pension) and the amount of accrued pension specified in paragraph (2)(a) is reduced accordingly.

(5) The amount of any pension adjustment not already accounted for under paragraph (2)(a) is, for the purposes of paragraph (2)(e), the aggregate of the amounts calculated in accordance with actuarial guidance issued by the Secretary of State to account for—

- (a) any tax to which the administering authority may become chargeable under the Finance act 2004 in accordance with regulation 87 (tax); or
- (b) a pension sharing order.

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

(6) The balance in the member's account is adjusted each year by the index rate adjustment.

(7) This regulation applies in relation to deferred pensioner members who become entitled to immediate payment of a retirement pension as it applies to deferred members with the following modifications—

- (a) all references to deferred members are to be read as references to deferred pensioner members; and
- (b) in addition to the items mentioned in paragraph (5)(a) and (b), account is also taken of any increase in pension resulting from a decision to award Tier 2 benefits under regulation 37(7)(b) or 37(10) (special provision in respect of members receiving Tier 3 benefits).

(8) This regulation applies in relation to **pension** credit members who become entitled to immediate payment of a retirement pension as it applies to deferred members with the following modifications—

- (a) all references to deferred members are to be read as references to **pension** credit members; and
- (b) the reference to accrued pension in paragraph (2)(a) is to be read as a reference to the amount of pension credit in the **pension** credit member's account.

*Comment: the amendments to paragraph (8) and in the heading to regulation 26 are for consistency with the terminology used in regulation 8(1), schedule 1 and other regulations.*

*Note: where a pension credit member, upon implementation of a Pension Sharing Order, is already of pensionable age and draws an immediate pension it would make sense for that person to have an immediate retirement pension account set up. However, this regulation assumes that the member will have had a pension credit account opened for them under regulation 29 which is then immediately closed under regulation 26. In practical terms, pensions administrators can ignore this intermediate step.*

### **Flexible retirement pension accounts**

**27.**—(1) When an active member is entitled to immediate payment of a retirement pension under regulation 30(6) (flexible retirement pensions) in relation to an employment—

- (a) a flexible retirement pension account must be opened; and
- (b) the balance in the active member's pension account must be reduced by the amount of accrued pension transferred into the member's flexible retirement account.

(2) The flexible retirement pension account must specify—

- (a) the amount of accrued pension transferred from the active member's pension account;

*Comment: see the issues raised under regulation 23(6)(c) and (d).*

- (b) the amount of additional pension purchased under regulation 17(6)(b)(i) (additional voluntary contributions);
- (c) the early payment reduction or deferred payment enhancement (if any) and the amount of pension to which that reduction or enhancement is to be applied;

Note: This reflects the fact that whilst the basic pension accrual from normal contributions might not be subject to an actuarial reduction (e.g. on payment of benefits before NPA where the member meets the 85 year rule protection) and any Additional Pension granted by the employer under regulation 31 would not be subject to an actuarial reduction or enhancement, the additional pension bought by an APC would always be subject to an actuarial reduction if paid before NPA or an enhancement if paid after NPA. Similarly, additional pension purchased by the member under regulation 17(6)(b)(i) after NPA will not be subject to an actuarial increase (because the factors used to purchase that pension are age related) whereas the main LGPS pension would be subject to an actuarial increase. Thus, there will be circumstances where part of the money in the account will be subject to an actuarial reduction or increase and part of the money in the account will not be.

- (d) the commutation amount (if any);
- (e) the amount of any pension adjustment;

Comment: see the issues raised under regulation 23(6)(c) and (d).

- (f) the amount of pension payable and the date from which it is to be paid.

(3) The commutation amount for the purposes of paragraph (2)(d) is the amount the member has given up in return for a lump sum in accordance with regulation 33 (election for lump sum instead of pension) and the amount of accrued pension specified in paragraph (2)(a) is reduced accordingly.

(4) The amount of any pension adjustment not already accounted for under paragraph (2)(a) is, for the purposes of paragraph (2)(e), the aggregate of the amounts calculated in accordance with actuarial guidance issued by the Secretary of State to account for an adjustment as a consequence of a matter specified in regulation 23(6) (adjustments to active member's pension accounts) and for any tax to which the administering authority may become chargeable under the Finance Act 2004 in accordance with regulation 87 (tax).

Comment: this extra wording has been added to allow for tax in respect of benefits in excess of the Lifetime Allowance to be paid (and mirrors the provision in the first part of regulation 25(5)(a)).

Comment: see the issues raised under regulation 23(6)(c) and (d).

(5) The balance in the member's flexible retirement pension account At the end of the scheme year in which the member became entitled to the immediate payment of a retirement pension under regulation 30(6) (flexible retirement), ~~the balance in the member's flexible retirement pension account~~ is adjusted at the beginning of the following scheme year by the revaluation adjustment applicable to ~~the that~~ in which the member became entitled to that retirement pension, in accordance with guidance issued by the Secretary of State.

(6) The revalued balance calculated under paragraph (5) is the opening balance for the following scheme year and, thereafter, the balance in~~of~~ the account is adjusted each year by the index rate adjustment.

Comment: the amendment to paragraphs (5) and (6) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004)

### Deferred pensioner member accounts

**28.**—(1) When a pensioner member who has been in receipt of Tier 3 benefits has those benefits discontinued under regulation 37(3) or (7)(c) (special provision in respect of members receiving Tier 3 benefits)—

- (a) the member's retirement pension account must be closed, and
- (b) a deferred pensioner member account must be opened.

(2) The deferred pensioner member account must specify the amount of accrued pension transferred from the member's retirement pension account.

Comment: see the issues raised under regulation 23(6)(c) and (d) and 23(9).

(3) The amount of accrued pension transferred under paragraph (2) is the opening balance for the following scheme year and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

(4) The amount in the deferred pensioner member's account ~~may~~shall be adjusted by amounts calculated in accordance with actuarial guidance issued by the Secretary of State as a result of a pension sharing order or to account for any tax to which the administering authority may become chargeable under the Finance Act 2004 in accordance with regulation 87 (tax).

Comment: I've amended this to "shall" as we don't want a member to claim the administering authority has discretion over whether or not to adjust the member's benefits where there has been a pension sharing order or the administering authority has become chargeable to tax under the Finance Act 2004 in accordance with regulation 87.

Comment: see the issues raised under regulation 23(6)(c) and (d).

### **Pension credit accounts**

**29.**—(1) When a person becomes a beneficiary of a pension sharing order, a pension credit member account must be opened.

(2) The pension credit account at the date it is opened must be credited from the member's pension account that is to be debited with an amount in compliance with the pension sharing order and calculated in accordance with actuarial guidance issued by the Secretary of State.

(3) The amount credited under paragraph (2) is the opening balance for the following scheme year and, thereafter, the balance in the account each year is adjusted by the index rate adjustment.

(4) The amount in a pension credit account may be adjusted by amounts calculated in accordance with actuarial guidance issued by the Secretary of State as a result of a further pension sharing order.

(5) The account shall be debited by the amount calculated in accordance with actuarial guidance issued by the Secretary of State to account and for any tax to which the administering authority may become chargeable under the Finance Act 2004 in accordance with regulation 87 (tax).

Comment: this extra wording has been added so that, when the pension credit is brought into payment, any tax in respect of benefits in excess of the Lifetime Allowance can be deducted from the benefits payable. It mirrors the provision in the first part of regulation 25(5)(a). Alternatively, this extra paragraph could be added at the end of regulation 30 (to accompany regulations 30(11) and (12)).

## **Benefits**

### **Retirement benefits**

**30.**—(1) Subject to paragraph (3), a member who attains normal pension age and is not an employee in local government service is entitled to, and must take, immediate payment of a retirement pension without reduction.

(2) A member to whom paragraph (1) applies and who has concurrent employments may draw a pension in relation to an employment so long as the member is not an employee in local government service in relation to that employment.

(3) A member to whom paragraph (1) applies may elect to defer payment of a retirement pension to a date after that member's normal pension age up to the date when that member attains the age of 75.

(4) A member who starts to receive payment of a retirement pension from a date after that member's normal pension age is entitled to enhancement of the pension by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.

(5) A member who has not attained normal pension age but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an

employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.

(6) An active member who has attained the age of 55 or over who reduces working hours or grade of an employment may, with the Scheme employer's consent, elect to receive immediate payment of all or part of the retirement pension to which that member would be entitled in respect of that employment if that member were not an employee in local government service on the date of the reduction in hours or grade, adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.

(7) Where an active member who has attained the age of 55 or over is dismissed from an employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency, that member is entitled to, and must take immediate payment of —

- (a) retirement pension relating to that employment payable under regulation 16 (additional pension contributions), adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State; and
- (b) any other retirement pension relating to that employment payable under these Regulations, without reduction.

(8) A Scheme employer, former employer which is a Scheme employer, or, where a member's employer or former employer has ceased to be a Scheme employer, the appropriate administering authority, may agree to waive in whole or in part any reduction that would, apart from this paragraph, be required by paragraphs (5) or (6).

(9) In paragraphs (1) to (8) of this regulation the expression "member" means a member with qualifying service for a period of two years and does not include a pension credit member.

(10) Subject to paragraph (11), a pension credit member who attains normal pension age is entitled to, and must take, immediate payment of a retirement pension deriving from the pension credit, without reduction, irrespective of whether that pension credit member is also an employee in local government service.

(11) A pension credit member may elect to defer payment of a retirement pension deriving from a pension credit to a date after that member's normal pension age and, if the member does so, is entitled to immediate payment of a retirement pension from any date up to the date when that member attains the age of 75, enhanced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State, irrespective of whether the pension credit member is also an employee in local government service.

(12) A pension credit member who has attained the age of 55 or over may elect to receive immediate payment of a retirement pension deriving from the pension credit, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State, irrespective of whether the pension credit member is also an employee in local government service.

### **Award of additional pension**

**31.**—(1) A Scheme employer may resolve to award—

- (a) an active member, or
- (b) a member who was an active member who was dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

additional annual pension of, in total (including any additional pension purchased by the Scheme employer under regulation 16), not more than ~~£6,500~~£5,000 payable from the same date as any pension payable under other provisions of these Regulations from the pension account to which the additional pension is attached, provided that, in the case of a member falling within subparagraph (b), the resolution to award additional pension is made within 6 months of the date the member's employment ended ~~but this limit does not apply where a Scheme employer is contributing to the purchase of additional pension to cover a period of absence up to the amount of~~

~~pension that a member would have accrued if treated as receiving assumed pensionable pay during the absence.~~

Comment: The limit has been raised to £6,500 as per the discussion with HMT. Also see comment at regulation 16(5).

(2) An award of additional pension under—

- (a) paragraph (1)(a) is to be credited to the relevant active member pension account in the scheme year in which the resolution to award the additional pension is made; and
- (b) paragraph (1)(b) is to be treated as credited to the relevant active member pension account on the day before the date of termination of employment.

Comment: paragraph (b) may need to be amended once we build into the regulations the provisions detailing how retrospective pay is to be dealt with.

(3) The restrictions specified in paragraph (1) apply to Scheme employers which have power under section 1 of the Localism Act 2011<sup>(a)</sup> (local authority's general power of competence) or section 5A(1) of the Fire and Rescue Services Act 2004<sup>(b)</sup> (powers of fire and rescue authorities) in the exercise of those powers.

Note: The restrictions referred to are the limitation of the maximum amount of additional pension that can be awarded (maximum of £6,500) and the restriction that an award can only be made to active members. All employers under the Scheme are covered by these restrictions, but for authorities with a general power of competence, any restrictions in legislation passed after the date the power of general competence commenced must make express provision if the intention is to limit the exercise of that that general power of competence.

### Commencement of pensions

**32.—**(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable, begins with the day after the date on which the employment ends.

(2) Subject to paragraphs (3) and (4), in the case of a member who leaves local government service and who is not entitled to immediate payment of retirement pension, the first period for which payment begins is the member's normal pension age unless that member gives written notice to the administering authority to defer payment (but any such deferral shall not extend beyond the day before the member's 75th birthday).

(3) Where a member elects under regulation 30(3), (5), (11) or (12) to have a pension paid from a date other than normal pension age, the first period for which retirement pension is payable begins on the date the member specifies in a written notice to the appropriate administering authority.

(4) When, in a written notice to the appropriate administering authority, a member elects under regulation 30(6) (flexible retirement) to receive immediate payment of all or part of that member's benefits, if the member's Scheme employer consents to the payment, the first period for which retirement pension is payable begins on the date of the reduction in hours or grade.

(5) A notice given under paragraph (3) must be given not less than three months before the beginning of the period specified and a notice given under paragraph (4) must be given within one month of the reduction in hours or grade.

(6) A member may give a further notice under paragraph (3) altering the date specified in an earlier notice, but any such further notice must be given not less than three months before the beginning of the period specified in the further notice.

(7) An administering authority may agree to extend the time limits specified in paragraphs (5) and (6).

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(a) 2011 c. 20.

(b) 2004 c. 21; section 5A was inserted by section 9 of the Localism Act 2011.

(8) Where a member is entitled to early payment of pension due to ill-health under regulation 35 (early payment of retirement pension on ill-health grounds: active members) the first period for which retirement pension is payable is the day after the date on which the member's employment is terminated.

(9) Where a member is entitled to Tier 2 benefits following a review under regulation 37(7)(b) or (10) (special provision in respect of members in receipt of Tier 3 benefits) the first period for which those benefits are payable is the date of the review decision under regulation 37(7)(b) or the date of the determination under regulation 37(10).

Comment: I've made this change because regulation 37(10) says that the Tier 2 benefits are payable from the "date of the determination" whereas regulation 37(7)(b) says the Tier 2 benefits are payable from the "date of the review decision"

(10) Where a member is entitled to early payment of pension due to ill-health under regulation 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members), the first period for which retirement pension is payable begins on the date of the determination that the member is permanently incapable under that regulation.

Comments:

The wording of regulation 39(5) needs to be considered (i.e. the use of the word "awarded") to make sure is consistent with the wording of paragraph (10) above.

Does an additional paragraph (11) need to be added to specify the date from which a recalculated pension under regulations 42(3), (6) and (11), 45(3), (6) and (11), 48(3), (6) and (11) should be payable from or is the wording contained in those regulations sufficient?

Also, at some point in the future, a further amendment to the regulations should be made so that the date of payment under (10) is the date of application by the member, if the IRMP certifies the member was permanently incapable at that date, or the date the IRMP certifies the member became permanently incapable, if the member became permanently incapable after the date of application. This will also require an amendment to regulation 38 to require the IRMP to make the relevant certification (or build the provision into regulation 36). Additionally, we might also need to look at the date benefits are to be paid from under regulation 32(9) to seek consistency of approach.

### **Election for lump sum instead of pension**

**33.—**(1) Subject to paragraph (4), a member entitled to a retirement pension under the Scheme may by written notice given to the appropriate administering authority before any benefits in relation to the benefit crystallisation event become payable, commute the retirement pension payable, or part thereof, at a rate of £12 for every £1 of annual pension commuted.

(2) But the total amount of the member's commuted sum, including any sum received as benefits provided in the form of a lump sum referred to in regulation 17(7)(a) (additional voluntary contributions), shall not exceed 25% of the capital value of the member's accrued rights under all local government pension provision in relation to that benefit crystallisation event.

(3) The capital value of a member's accrued rights shall be calculated in accordance with actuarial guidance issued by the Secretary of State.

(4) Paragraph (1) does not apply to—

(a) a pension credit member where the debit member has made an election under this regulation before the valuation date used when implementing the Pension Sharing Order;

Comment: the amendment is for consistency with the terminology used in regulation 8(1), schedule 1 and other regulations.

(b) a deferred pensioner member; or

(c) any additional pension purchased by the member under regulation 17(7)(b)(i) (additional voluntary contributions).

## Commutation and small pensions

**34.**—(1) Any authorised payments within the meaning of section 164 (authorised member payments) of the Finance Act 2004<sup>(a)</sup> listed in sub-paragraphs (a) to (c) may be paid in accordance with the rules relating to the payment of such benefits under that Act or relevant regulations under that Act—

- (a) a lump sum which is a trivial commutation lump sum within the meaning of section 166 (lump sum rule) of that Act;
- (b) a trivial commutation lump sum death benefit within the meaning of section 168 (lump sum death benefit rule) of that Act; or
- (c) a commutation payment under regulations 6 (payment after relevant accretion), 11 (de minimis rule for pension schemes) or 12 (payments by larger pension schemes) of the Registered Pension Schemes (Authorised Payments) Regulations 2009<sup>(b)</sup>.

(2) Any payment under paragraph (1) shall be calculated in accordance with actuarial guidance issued by the Secretary of State.

(3) If a member receives a payment under this regulation, any pension account relating to that payment must be closed and the member is entitled to no further benefits in relation to that account and no survivor benefits are subsequently payable upon the death of the member.

## Ill-health retirement

### Early payment of retirement pension on ill-health grounds: active members

**35.**—(1) An active member who has qualifying service for a period of two years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must take, early payment of a retirement pension if that member satisfies the conditions in paragraphs (3) and (4) of this regulation.

*Comment: We would still argue that the words “is terminated by an employing authority” should be replaced with “ceases” as we (and the unions) and the LGPC Technical Group are of the view that the employment (and employment law) decision as to whether or not to terminate employment should be divorced from (and not conflated with) the pension scheme requirements for entitlement to a pension. There is quite a big difference between the wording used and the word “ceases” as the word “ceases” allows employees who voluntarily resign due to permanent ill health to be covered by regulation 35 (where they meet the permanent ill health definition) whereas the current drafting only allows employees whose employment is terminated by the employer due to permanent ill health to be covered by regulation 35. A danger, however, is that a member could voluntarily resign even though the employer was willing to make adjustments to the member’s working conditions and, thereby, become entitled to a pension (whereas the employer would have preferred to have retained the person in work). These are matters that should be considered when the review of ill health provisions is undertaken.*

(2) The amount of the retirement pension that a member who satisfies the conditions mentioned in paragraph (1) receives is determined by which of the benefit tiers specified in paragraphs (5) to (7) that member qualifies for, calculated in accordance with regulation 39 (calculation of ill-health pension amounts).

(3) The first condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

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<sup>(a)</sup> 2004 c. 12; section 164 was amended by the Finance Act 2006 (c. 25), the Finance Act 2008 (c. 9), the Finance Act 2009 (c. 10) and the Finance Act 2011 (c.11).

<sup>(b)</sup> S.I. 2009/1171; regulations 11 and 12 were amended by S.I. 2011/1751.

(4) The second condition is that the member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment.

(5) A member is entitled to Tier 1 benefits if that member has a reduced likelihood of being capable of undertaking any gainful employment before normal pension age.

(6) A member is entitled to Tier 2 benefits if that member—

- (a) is not entitled to Tier 1 benefits;
- (b) has a reduced likelihood of being capable of undertaking any gainful employment within three years of leaving the employment; but
- (c) is likely to be able to undertake gainful employment before reaching normal pension age.

(7) Subject to regulation 37 (special provision in respect of members receiving Tier 3 benefits), if the member is likely to be capable of undertaking gainful employment within three years of leaving the employment, or before normal pension age if earlier, that member is entitled to Tier 3 benefits for so long as the member is not in gainful employment, up to a maximum of three years from the date the member left the employment.

### Role of the IRMP

36.—(1) A decision as to whether a member is entitled under regulation 35 (early payment of retirement pension on ill-health grounds: active members) to early payment of retirement pension on grounds of ill-health or infirmity of mind or body, and if so which tier of benefits the member qualifies for, shall be made by the member's Scheme employer after that authority has obtained a certificate from an IRMP as to—

- (a) whether the member satisfies the conditions in regulation 35(3) and (4); and if so,
- (b) how long the member will have a reduced likelihood of undertaking any gainful employment; and
- (c) where a member had, within the previous continuous period of 3 years of membership (or the member's actual continuous period of membership if less) –
  - (i) ~~has been working~~ reduced their working hours, or
  - (ii) moved to a position on a lower grade or with less responsibility

and had reduced pay as a consequence ~~of the reduction in working hours, whether that change in their terms of employment whether that member was in part-time service~~ wholly or partly as a consequence of ill-health or infirmity of mind or body.

Comment: If a member tries to carry on working (at reduced hours or at a reduced grade or with less responsibility) and it does not work out, it is reasonable to base their enhancement on the pay they would have received had the hours or grade not been reduced (even though we will not be basing the CARE benefit up to the point of leaving on the pay they would have received had their hours or grade not been reduced). The 3 year limit has been entered as HM Treasury have stipulated that protections should be for temporary and unexpected reductions in pay. The 3 year limit draws a parallel with the 3 year limit for temporary tier 3 benefits. If the reduction in hours or grade carries on beyond 3 years then there is an argument that it is no longer a temporary reduction in pay and has simply become the person's new terms and conditions. I've changed the wording from a reduction in hours to a reduction in hours or a move to a job on a lower grade or with less responsibility (the wording used in Benefits regulation 10(1)) as a person might, for example, not reduce their hours but move, on their doctor's advice, to a job at a lower grade or with less responsibility (e.g. in stress cases). The reason for mentioning continuous period of membership is to exclude cases where the reduction occurred in an employment, say, 2 years ago, the person then voluntarily left and subsequently rejoined in a new job (see Benefits regulation 10(1) which also refers to "continuous").

(2) Except in the circumstances specified in regulation 37(11) (special provision in respect of members receiving Tier 3 benefits) an IRMP from whom a certificate is obtained under paragraph

(1) must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested.

(3) If the Scheme employer is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of IRMP.

(4) The Scheme employer and IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation and regulations 37 (special provision in respect of members receiving Tier 3 benefits) and 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members).

### **Special provision in respect of members receiving Tier 3 benefits**

**37.**—(1) A member in receipt of Tier 3 benefits who attains normal pension age continues to be entitled to receive retirement pension and ceases to be regarded as being in receipt of Tier 3 benefits from that date, and nothing in the remainder of this regulation applies to such a person.

(2) A member who receives Tier 3 benefits shall inform the former Scheme employer upon starting any employment while those benefits are in payment and shall answer any reasonable inquiries made by the authority about employment status including as to pay and hours worked.

(3) Payment of Tier 3 benefits shall cease if a member starts an employment which the Scheme employer determines to be gainful employment, or fails to answer inquiries made by the employer under paragraph (2), and the employer may recover any payment made in respect of any period before discontinuance during which the member was in an employment it has determined to be gainful employment.

**Comment:** I've never understood this. The administering authority has paid the money from the Pension Fund so if the employer recovers the payment shouldn't it be required to refund that to the Pension Fund? Also, is it the gross or net payment (after tax) that is recovered? I think it is the gross sum, in which case the member would have to claim back from HMRC any tax paid – if it was the net sum, the Pension Fund would have to claim back from HMRC any tax paid.

(4) A Scheme employer may determine that an employee has started gainful employment for the purposes of paragraph (3) if it forms the reasonable view that the employment is likely to endure for at least 12 months and it is immaterial whether the employment does in fact endure for 12 months.

(5) A Scheme employer must review payment of Tier 3 benefits after they have been in payment for 18 months.

(6) A Scheme employer carrying out a review under paragraph (5) must make a decision under paragraph (7) about the member's entitlement after obtaining a further certificate from an IRMP as to whether, and if so when, the member will be likely to be capable of undertaking gainful employment.

(7) The decisions available to a Scheme employer reviewing payment of Tier 3 benefits to a member under paragraph (5) are as follows:

- (a) to continue payment of Tier 3 benefits for any period up to the maximum permitted by regulation 35(7) (early payment of retirement pension on ill-health grounds: active members);
- (b) to award Tier 2 benefits to the member from the date of the review decision if the authority is satisfied that the member—
  - (i) is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either
  - (ii) has a reduced likelihood of being capable of undertaking any gainful employment before normal pension age, or
  - (iii) has a reduced likelihood of being capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age; or
- (c) to cease payment of benefits to the member.

Notes:

This is a shift from the position under the 2008 Scheme under which, technically, a move to a Tier 2 pension could not be made if the member satisfied the Tier 1 condition (and Tier 1 benefits could not be paid, even if the member satisfied that condition). This regulation permits a Tier 2 pension to be paid if the member satisfies either the Tier 1 or Tier 2 conditions.

The correct interpretation of the wording of (7) and (10) is that a Tier 2 pension is not payable retrospectively from the original date of leaving but, rather, the enhanced Tier 2 pension, calculated as at the date of leaving, is only payable from the date of the determination with no arrears paid. A regulation 37(7)(b) or 37(10) review is not purporting to be a correction of an initial error, but rather a fresh consideration of the same question at a later date.

(8) A member whose Tier 3 benefits are discontinued under paragraph (3) or (7)(c) is a deferred pensioner member from the date benefits are discontinued and shall not be entitled to any Tier 3 benefits in the future.

(9) A Scheme employer which determines that it is appropriate to discontinue payment of Tier 3 benefits for any reason shall notify the appropriate administering authority of the determination.

(10) A Scheme employer may, following a request for a review from a member in receipt of Tier 3 benefits or within 3 years after payment of Tier 3 benefits to a member are discontinued, make a determination to award Tier 2 benefits to that member from the date of the determination, if the employer is satisfied after obtaining a further certificate from an IRMP, that the member—

- (i) is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either
- (ii) has a reduced likelihood of being capable of undertaking any gainful employment before normal pension age, or
- (iii) has a reduced likelihood of being capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age.

Note: this regulation allows a pension to be moved from Tier 3 to Tier 2 up to 6 years after the member originally left i.e. the Tier 3 pension may have been in payment for 3 years before it was suspended and the uplift to Tier 2 can be 3 years after the Tier 3 pension was suspended. Also see notes under paragraph (7). This is a matter that should be considered when the review of ill health provisions is undertaken.

(11) The IRMP who provides a further certificate under paragraphs (6) or (10) may be the same IRMP who provided the first certificate under regulation 36(1) (role of the IRMP).

(12) Where the member's former employer has ceased to be a Scheme employer, the references in paragraphs (5) to (7), (9) and (10) to a Scheme employer shall be interpreted as meaning the appropriate administering authority.

Comment: Regulation 37 mentions Scheme employer several times but does not say what happens if, whilst a Tier 3 pension is in payment, the former employer ceases to be a Scheme employer (as defined in Schedule 1). I've therefore added new paragraph (12) to mirror the provisions in regulation 30(8).

### **Early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members**

**38.**—(1) A deferred member who, because of ill-health or infirmity of mind or body—

- (a) becomes permanently incapable of discharging efficiently the duties of the employment that member was engaged in at the date the member became a deferred member, and
- (b) has a reduced likelihood of being capable of undertaking any gainful employment before normal pension age, or for at least three years, whichever is the sooner,

may ask to receive payment of a retirement pension whatever the member's age.

(2) A request under paragraph (1) must be made in writing to the deferred member's former Scheme employer or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.

(3) Before determining whether or not to agree to a request under paragraph (1), the deferred member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member is suffering from a condition that renders the member—

- (a) permanently incapable of discharging efficiently the duties of the employment the member was engaged in because of ill-health or infirmity of mind or body; and, if so,
- (b) whether as a result of that condition the member has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal pension age, or for at least three years, whichever is the sooner.

(4) A deferred pensioner member who, because of ill-health or infirmity of mind or body, has a reduced likelihood of undertaking any gainful employment before normal pension age, may ask to receive payment of a retirement pension, whatever the member's age.

Note: Regulation 31(5) of the Benefits Regulations 2007 refers to the member being "permanently incapable of undertaking any gainful employment" (to NPA). The shift above to "a reduced likelihood" is a deliberate change for consistency with other provisions in these regulations e.g. regulation 35(5).

(5) A request under paragraph (4) must be made to the deferred pensioner member's former Scheme employer, or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.

(6) Before determining whether to agree to a request under paragraph (4), the deferred pensioner member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member has, as a result of ill-health or infirmity of mind or body, a reduced likelihood of being capable of undertaking any gainful employment before normal pension age.

Note: Regulation 31(7) of the Benefits Regulations 2007 refers to the member being "permanently incapable of undertaking any gainful employment" (to NPA). The shift above to "a reduced likelihood" is a deliberate change for consistency with other provisions in these regulations e.g. regulation 35(5).

(7) If the body making the determination under paragraph (6) Scheme employer is not the deferred or deferred pensioner member's appropriate administering authority, it must obtain that authority's consent to the appointment of an IRMP under this regulation.

Comment: I've made the above amendment as the body making the determination may not be the Scheme employer; it may be the administering authority where the member's former Scheme employer has ceased to be a Scheme employer.

(8) An IRMP appointed under paragraph (6) of this regulation may be the same IRMP who provided the first certificate under regulation 36(1) (role of the IRMP).

### Calculation of ill-health pension amounts

39.—(1) Subject to paragraphs (6) to (8), Tier 1 benefits are calculated by adjusting the active member's pension account in accordance with paragraph (2).

Comment: see the issues raised under regulation 23(6)(c) and (d).

(2) (a) An amount is added to the balance in the account for the year in which the member's employment was terminated, equivalent to the amount of earned pension the member would have accrued between the day following the date of termination and normal pension age, if that member had been treated as receiving assumed pensionable pay, calculated in accordance with regulation 21(5), for each year and fraction of a year in that period and treating any election under regulation 10 (temporary reduction in contributions) as lapsed at the date of the termination of the member's employment.

Comment: the additional wording has been added to mirror the wording in regulation 40(3) and to make it clear how APP is to be calculated.

- (b) Retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated.

Comment: An e-mail from Bob Holloway dated 31 May 2013 contained the following "Treasury announced a policy paper which, in certain circumstances like ill-health retirement, will require schemes to base potential membership, not only on the NPA/SPA set out in statute at the time of entitlement but, if applicable, to also take account of any Government policy announcement on SPA changes". Has this become policy? If so, presumably the wording in (b) above will need to be amended to take this on board.

- (3) (a) Subject to paragraphs (6) to (9), Tier 2 benefits are calculated by adjusting the active member's pension account for the year in which the member's employment was terminated, by adding one quarter of the sum calculated in accordance with paragraph (2)(a).

Comment: see the issues raised under regulation 23(6)(c) and (d).

- (b) Retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated.

- (4) Tier 3 benefits are the retirement pension that would be payable to the member if that member had reached normal pension age on the date the active member's employment was terminated.

- (5) Benefits payable under regulation 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members) are the retirement pension that would be payable to the member if that member had reached normal pension age on the date from which benefits are awarded.

- (6) Where a member entitled to Tier 1 benefits subsequently becomes an active member of the Scheme, no addition is to be made under paragraph (2)(a) or (3)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership.

Note: this covers members awarded a Tier 1 benefit under the 2014 Scheme and regulation 12(2) of the Transitional Provisions and Savings Regulations 2013 treats a Tier 1 pension awarded under the 2008 Scheme as if it had been awarded under regulation 39 of the 2013 Regulations.

Comment: What about where enhancement was awarded under the 1997 or earlier Regulations? I assume this has not been mentioned in the Transitional Provisions and Savings Regulations 2013 as it would be difficult to devise a formula to account for such cases.

- (7) Where a member entitled to Tier 2 benefits ("the initial ill-health retirement") subsequently becomes an active member of the Scheme, the addition made under paragraph (2)(a) or (3)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership is modified in accordance with paragraph (8).

Note: this covers members awarded a Tier 2 benefit under the 2014 Scheme and regulation 12(2) of the Transitional Provisions and Savings Regulations 2013 treats a Tier 2 pension awarded under the 2008 Scheme as if it had been awarded under regulation 39 of the 2013 Regulations.

Comment: What about where enhancement was awarded under the 1997 or earlier Regulations? I assume this has not been mentioned in the Transitional Provisions and Savings Regulations 2013 as it would be difficult to devise a formula to account for such cases.

- (8) The number of years for which a member to whom paragraph (7) applies is treated as having received assumed pensionable pay for the purposes of paragraph (2)(a) or (3)(a) shall not exceed—

- (a) the number of years at the date of the initial ill health retirement up to the member's normal pension age at that time, less
- (b) a quarter of the number of years calculated in accordance with sub-paragraph (a), less
- (c) the number of years during which the member has been an active member of the Scheme after the initial ill-health retirement.

- (9) Paragraph (3) applies in the case of a member entitled to Tier 2 benefits following a review under regulation 37(5) or (10) with the following modifications—

- (a) the references to the date on which the member’s employment terminated are to be read as references to the date on which the review under regulation 37(5) was carried out or the determination under regulation 37(10) was made; and
- (b) the account that the member has on the date of the review decision under regulation 37(5) takes place, or the date of the determination under regulation 37(10), is treated as if it were an active member’s pension account for the purposes of the calculation of the benefits to which the member is entitled.

Comment: I’ve made these changes because regulation 37(10) says that the Tier 2 benefits are payable from the “date of the determination” whereas regulation 37(7)(b) says the Tier 2 benefits are payable from the “date of the review decision”

(10) For the purposes of this regulation—

- (a) in calculating assumed pensionable pay in accordance with regulation 21(5) (assumed pensionable pay), the assumed pensionable pay shall, if the IRMP certifies under regulation 36(1)(c) that the member had, within the a continuous period of 3 years of membership prior to the date of termination of employment, or within the member’s actual continuous period of membership if less—
  - (i) reduced their working hours, or
  - (ii) moved to a position on a lower grade or with less responsibility, and
  - (iii) had reduced pay as a consequence, and
  - (iv) that change in their terms of employment was wholly or partly as a consequence of ill-health or infirmity of mind or body

~~be calculated as if that reduction in pay had not occurred; and, account is only taken of any reduction in the pensionable pay the member received as a consequence of the circumstances specified in regulation 21(2)(a) if an IRMP has certified that the member was working reduced contractual hours as a consequence of the ill health or infirmity of mind or body; and~~

Comment: The regulation as drafted didn’t work. I think it was trying to say that in calculating the Tier 1 and Tier 2 enhancement, the pay figure to be used is an APP figure, but that figure should be calculated as if the person had not been working reduced contractual hours or at a reduced grade. The cross reference to regulation 21(2)(a) is not correct because that assumes the person was on leave of absence due to sickness on reduced or no pay, whereas the person was not on leave of absence – they were working, but working reduced hours or at a reduced grade or in a post with less responsibility. I’ve therefore amended the wording to reflect the suggested changes to regulation 36(1)(c) – see the comments under that regulation for more detail on the rationale behind the revised wording in paragraph (10)(a) above.

- ~~(a)(b)~~ no adjustment is to be made to any sum by virtue of regulation 21(7) for any period after the date of termination of employment under regulation 35 (early payment of retirement pension on ill-health grounds: active members).

#### Survivor benefits

#### Death grants: active members

**40.**—(1) If an active member dies before attaining the age of 75, an administering authority shall pay a death grant.

(2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member’s nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(3) The death grant is three times the member’s annual assumed pensionable pay calculated in accordance with regulation 21(5) as at the date of the member’s death.

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

#### **Survivor benefits: partners of active members**

**41.**—(1) If an active member dies leaving a surviving spouse, civil partner or cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The relevant administering authority shall close the active member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the amounts in sub-paragraphs (a) and (b)—

(a) the pension that the member would have been entitled to draw if—

(i) the member had been entitled to draw a pension on the date of the member's death,

*Comment: see the issues raised under regulation 23(6)(c) re pension debit.*

(ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election,

(iii) the pension excluded additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),

~~(iv) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),~~

*Comment: this paragraph has been deleted because the member has died in service. The member could not, therefore, have purchased additional pension under regulation 17(7)(b)(i) because such a pension can only be purchased by a member who had already retired in the circumstances set out in regulation 17(7).*

~~(iv)~~(iv) the member's earned pension had accrued at a rate of 1/160th of pensionable pay, and

~~(vi)~~(v) ~~any transferred-in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/160ths;~~

*Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (vi).*

(b) a sum equivalent to 1/160th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(5) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

*Comment: Regulations 36(1)(c) and 39(10)(a) as currently drafted seek to ignore the effects of a reduction in hours caused by the member's ill health. If those regulations are retained then (b) above should also include such a proviso to cover the situation where the person working the reduced hours dies in service.*

(5) The balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted at the beginning of the following scheme year by the revaluation adjustment applicable to the ~~that~~ scheme year in which the

survivor member's account was opened, in accordance with guidance issued by the Secretary of State.

(6) The revalued balance calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following scheme year and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

Comment: the amendment to paragraphs (5) and (6) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004)

(7) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

### Survivor benefits : children of active members

42.—(1) If an active member dies leaving one or more eligible children, they are entitled to a children's pension which shall come into payment on the day following the member's death.

(2) If a pension is payable to a partner of an active member under regulation 41(1), the relevant administering authority shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(3) The opening balance of a survivor member's pension account opened under paragraph (2) is the amount of pension payable to the eligible child or children calculated in accordance with paragraph (4) or (5), but if the pension payable under regulation 41(1) ceases to be paid, the pension payable to the eligible child or children is recalculated in accordance with paragraph (9) or (10) as from the day following the date the pension under regulation 41(1) ceased to be paid.

(4) The amount of pension payable under paragraph (3) where there is only one such child is calculated by adding together the amounts in sub-paragraphs (a) and (b),

(a) the pension that the member would have been entitled to draw if—

- (i) the member had been entitled to draw a pension on the date of the member's death,
- (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn, or following a Scheme pays election, or any pension debit applied on account of a pension sharing order,
- (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),

(iv) ~~the pension included 15.3125% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions);~~

Comment: this paragraph has been deleted because the member has died in service. The member could not, therefore, have purchased additional pension under regulation 17(7)(b)(i) because such a pension can only be purchased by a member who had already retired in the circumstances set out in regulation 17(7).

(v) the member's earned pension had accrued at a rate of 1/320th of pensionable pay and,

(vi) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/320ths;~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (vi).

(b) a sum equivalent to 1/320th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(5) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

Comment: Regulations 36(1)(c) and 39(10)(a) as currently drafted seek to ignore the effects of a reduction in hours caused by the member's ill health. If those regulations are retained then (b) above should also include such a proviso to cover the situation where the person working the reduced hours dies in service.

(5) The amount of pension payable under paragraph (3) where there is more than one such child, is calculated by adding together the amounts in sub-paragraphs (a) and (b), and is payable to those children in equal shares—

- (a) the pension that the member would have been entitled to draw if—
  - (i) the member had been able to draw a pension on the date of the member's death,
  - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial reduction relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
  - (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
  - (iv) ~~the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),~~

Comment: this paragraph has been deleted because the member has died in service. The member could not, therefore, have purchased additional pension under regulation 17(7)(b)(i) because such a pension can only be purchased by a member who had already retired in the circumstances set out in regulation 17(7).

- (v) the member's earned pension had accrued at a rate of 1/160th of pensionable pay and,
- (vi) ~~any transferred-in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/160ths;~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (vi).

- (b) a sum equivalent to 1/160th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(5) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

Comment: Regulations 36(1)(c) and 39(10)(a) as currently drafted seek to ignore the effects of a reduction in hours caused by the member's ill health. If those regulations are retained then (b) above should also include such a proviso to cover the situation where the person working the reduced hours dies in service.

(6) At the point at which the number of eligible children is reduced to one, if a pension is still payable to a surviving partner under regulation 41(1), the pension payable to that eligible child is recalculated in accordance with paragraph (4) as from the day following the date the other eligible child's or children's pension ceased to be paid.

(7) If, on the day following the member's death, no pension is payable to a partner of an active member under regulation 41(1), the relevant administering authority shall close the active member's pension account and shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(8) The opening balance of a survivor member's pension account opened under paragraph (7) is the amount of pension payable to the eligible child or children, calculated in accordance with paragraph (9) or (10).

(9) The amount of pension payable under paragraph (8) where there is only one such child is calculated by adding together the amounts in paragraphs (a) and (b),

- (a) the pension that the member would have been entitled to draw if—
  - (i) the member had been entitled to draw a pension on the day the member died,

- (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),

- (iv) ~~the pension included 20.4167% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),~~

Comment: this paragraph has been deleted because the member has died in service. The member could not, therefore, have purchased additional pension under regulation 17(7)(b)(i) because such a pension can only be purchased by a member who had already retired in the circumstances set out in regulation 17(7).

- (v) the member's earned pension had accrued at a rate of 1/240th of pensionable pay and
- (vi) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/240ths;~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (vi).

- (b) a sum equivalent to 1/240th of the member's annual assumed pensionable pay, calculated in accordance with regulation 21(5) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

Comment: Regulations 36(1)(c) and 39(10)(a) as currently drafted seek to ignore the effects of a reduction in hours caused by the member's ill health. If those regulations are retained then (b) above should also include such a proviso to cover the situation where the person working the reduced hours dies in service.

(10) The amount of pension payable under paragraph (7) where there is more than one such child, is calculated by adding together the amounts in paragraphs (a) and (b), and is payable to those children in equal shares—

- (a) the pension that the member would have been entitled to draw if—
  - (i) the member had been entitled to draw a pension on the date the member died,
  - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
  - (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),

- (iv) ~~the pension included 40.833% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),~~

Comment: this paragraph has been deleted because the member has died in service. The member could not, therefore, have purchased additional pension under regulation 17(7)(b)(i) because such a pension can only be purchased by a member who had already retired in the circumstances set out in regulation 17(7).

- (v) the member's earned pension had accrued at a rate of 1/120th of pensionable pay and
- (vi) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/120ths;~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (vi).

- (b) a sum equivalent to 1/120th of the member's annual assumed pensionable pay, calculated in accordance with regulation 21(5) as at the date of the member's death, for

each year or fraction of a year between the date of the member's death and the member's normal pension age.

Comment: Regulations 36(1)(c) and 39(10)(a) as currently drafted seek to ignore the effects of a reduction in hours caused by the member's ill health. If those regulations are retained then (b) above should also include such a proviso to cover the situation where the person working the reduced hours dies in service.

(11) At the point at which the number of eligible children is reduced to one, the pension payable to that child is recalculated in accordance with paragraph (9).

(12) The balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted at the beginning of the following scheme year by the valuation adjustment applicable to the scheme year in which the survivor member's account was opened, in accordance with guidance issued by the Secretary of State.

(13) The revalued balance calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following scheme year and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

Comment: the amendment to paragraphs (12) and (13) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004)

#### **Death grants: deferred members, pension credit members and deferred pensioner members**

**43.**—(1) If a deferred member dies an administering authority shall pay a death grant.

(2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(3) The death grant is the amount the member would have been entitled to receive as retirement pension annually if—

- (a) the member had been able to draw a pension on the day the member died, and
- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn,

multiplied by 5.

Notes:

- paragraph (3) includes the earned pension, additional member pension purchased under regulation 16 or granted under regulation 31, the amount of any member pension bought by a transfer in, and takes account of the reduction to the member's pension due to a pension sharing order and any reduction to the member's pension due to a Scheme pays election or LTA deduction, plus revaluation/indexation.
- The death grant is 5 times the deferred pension. This is 5 times whatever the deferred pension is at the date of death (which, if death occurs shortly after leaving, and in the same scheme year, will not have been fully revalued at that point in time). This reflects the position under the LGPS (Benefits, Membership and Contributions) Regulations 2007 (where no balancing PI payment is paid on the death grant in the April following death).
- Whilst the 50/50 option does not impact on the death grant for an active member, it impacts on the death grant in respect of a deferred member.

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the member's death or, where the authority did not know about the member's death before the expiry of that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

(5) This regulation applies to pension credit members (including persons entitled to a pension credit who die before the appropriate administering authority awards a pension credit) as it applies to deferred members with the modification that for the amount of death grant calculated under paragraph (3), the amount calculated under paragraph (3)(a) and (b) is multiplied by 3.

Note: a policy decision was taken to retain a multiplier of 3 in respect of a death grant for pension credit members.

(6) This regulation applies to deferred pensioner members as it applies to deferred members except that the amount of death grant calculated under paragraph (3) is reduced by the amount of pension already paid to the member under regulation 35(7) (early payment of retirement pension on ill-health grounds: active members) and any lump sum paid under regulation 33 (election for lump sum instead of pension).

### Survivor benefits: partners of deferred members and deferred pensioner members

44.—(1) If a deferred member dies leaving a surviving spouse, civil partner or cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The relevant administering authority shall close the deferred member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the pension that the member would have been entitled to draw if—

(a) the member had been able to draw a pension on the date the member died,

Comment: see the issues raised under regulation 23(6)(c) re pension debit.

(b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election,

(c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),

(d) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),

(e) the member's earned pension had accrued at a rate of 1/160th of pensionable pay, and

(f) ~~any transferred-in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/160ths.~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (f).

(5) If the member ceased to be an active member, became a deferred member and died all within the same scheme year, the balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted at the beginning of the following scheme year by the revaluation adjustment applicable to ~~the that~~ in which the member died, in accordance with guidance issued by the Secretary of State.

(6) Where—

(a) paragraph (5) applies, the revalued balance calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following scheme year;

(b) paragraph (5) does not apply, the balance under paragraph (3) is the opening balance of the survivor member's pension account for the following scheme year,

and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

Comment: the amendment to paragraphs (5) and (6) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004).

(7) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

(8) This regulation applies to deferred pensioner members as it applies to deferred members.

Note: paragraph (8) correctly does not make a reference to Pension Credit members as no survivor benefits are payable in respect of such members.

### Survivor benefits: children of deferred members

**45.**—(1) If a deferred member dies leaving one or more eligible children, they are entitled to a children's pension which shall come into payment on the day following the member's death.

(2) If a pension is payable to a partner of a deferred member under regulation 44(1) (survivor benefits: partners of deferred members), the relevant administering authority shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(3) The opening balance of a survivor member's pension account opened under paragraph (2) is the amount of pension payable to the eligible child or children calculated in accordance with paragraph (4) or (5) but if the pension payable under regulation 44(1) ceases to be paid, the pension payable to the eligible child or children is recalculated in accordance with paragraph (9) or (10) as from the day following the date the pension under regulation 44(1) ceased to be paid.

(4) The amount of pension payable under paragraph (3) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been entitled to draw a pension on the date the member died,
- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
- (d) the pension included 15.3125% of any pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
- (e) the member's earned pension had accrued at a rate of 1/320th of pensionable pay, and
- (f) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/320ths.~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (f).

(5) The amount of pension payable under paragraph (3) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been entitled to draw a pension on the date the member died,
- (b) the pension the member would have been able to draw on the date the member died had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31,
- (d) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),

- (e) the member's earned pension had accrued at a rate of 1/160th of pensionable pay and,
- (f) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/160ths.~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (f).

(6) At the point at which the number of eligible children is reduced to one, if a pension is still payable to a surviving partner under regulation 44(1), the pension payable to that eligible child is recalculated in accordance with paragraph (4) as from the day following the date the other eligible child's or children's pension ceased to be paid.

(7) If, on the day following the member's death, no pension is payable to a partner of a deferred member under regulation 44(1), the relevant administering authority shall close the deferred member's pension account and shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(8) The opening balance of a survivor member's pension account opened under paragraph (7) is the amount of pension payable to the eligible child or children, calculated in accordance with paragraph (9) or (10).

(9) The amount of pension payable under paragraph (8) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been entitled to draw a pension on the date the member died,
- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
- (d) the pension included 20.41667% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
- (e) the member's earned pension had accrued at a rate of 1/240th of pensionable pay, and,
- (f) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/240ths.~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (f).

(10) The amount of pension payable under paragraph (8) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been entitled to draw a pension on the date the member died,
- (b) the pension the member would have been able to draw on the date the member died had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
- (d) the pension included 40.8333% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
- (e) the member's earned pension had accrued at a rate of 1/120th of pensionable pay, and,
- (f) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/120ths.~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (f).

(11) At the point at which the number of eligible children is reduced to one, the pension payable to that child is recalculated in accordance with paragraph (9).

(12) If the member ceased to be an active member, became a deferred member and died all within the same scheme year, the balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted at the beginning of the following scheme year by the revaluation adjustment applicable to ~~the that~~ scheme year in which the member died, in accordance with guidance issued by the Secretary of State.

(13) Where—

- (a) paragraph (12) applies, the revalued balance calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following scheme year;
- (b) paragraph (12) does not apply, the balance under paragraph (3) or (8), as the case may be, is the opening balance of the survivor member's pension account for the following scheme year,

and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

Comment: the amendment to paragraphs (12) and (13) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004).

(14) This regulation applies to deferred pensioner members as it applies to deferred members.

Note: paragraph (14) correctly does not make a reference to Pension Credit members as no survivor benefits are payable in respect of such members.

#### **Death grants : pensioner members**

**46.—**(1) If a pensioner member dies before attaining the age of 75 an administering authority shall pay a death grant.

(2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(3) Subject to paragraph (4), the death grant is 10 times the annual amount the member was receiving as retirement pension at the date of death, but the amount so calculated is reduced by the amounts of any retirement pension paid to the member.

Comment: If the member had a £1,000 pension, commuted none for a lump sum, and died the day after retirement, the death grant would be  $10 \times £1,000 = £10,000$ .

If the same member had converted £100 into a lump sum of £1,200 the remaining pension would have been £900 and the death grant would have been £9,000; so the total pay-out would have been £10,200. If we knocked the lump sum paid (£1,200) off the death grant of £9,000, the death grant would be £7,800 and the lump sum derived from the commutation would, in effect, have been debited twice. The method of calculating the death grant in the LGPS Regulations is, therefore, not incorrect.

One may argue that in the example given, the member who commuted finishes up £200 better off; however, conversely, if that same member had lived for 20 years he would have received a total of  $(£900 \times 20) + £1,200 = £19,200$  whereas if he had not commuted pension for a lump sum he would have received  $£1,000 \times 20 = £20,000$  (and so, because he had commuted, would be £800 worse off). That's the nature of the risk taken.

An alternative method of calculation would be to say the 10 year guarantee is 10 times the pre commutation pension less

- a) the commuted lump sum paid (not any automatic 3/80ths lump sum) and
- b) the pension paid.

This has the advantage of properly valuing the lump sum paid (at 12:1 and not 10:1). So, in the first example above (assuming the member had commuted £100 of pension for a £1,200 lump sum) the death grant would be  $(10 \times £1,000) - £1,200 = £8,800$ . The total pay-out would have been £10,000 (exactly the same as the total pay-out would have been had the member not commuted any pension for lump sum). In the second example above the result would be no different i.e. if the member had lived for 20 years he would have received a total of  $(£900 \times 20) + £1,200 = £19,200$  whereas if he had not commuted pension for a lump sum he would have received  $£1,000 \times 20 = £20,000$  (and so, because he had commuted, would be £800 worse off). That's the nature of the risk taken by commuting pension for lump sum.

So, one might say that the current methodology produces winners and losers, whereas the alternative methodology has no winners, only losers. The reason for this alternative approach being outlined is that HMT have queried whether the approach in the draft regulation is correct as, given that the scheme is supposed to simply give a 10 year guarantee, the alternative methodology is more accurate. **A policy decision will need to be taken on this point.**

Notes:

- Subject to the above comments, the death grant is 10 times the pension in payment. This is 10 times whatever the pension in payment is at the date of death (which, if death occurs shortly after leaving, and in the same scheme year, will not have been fully revalued at that point in time). This reflects the position under the LGPS (Benefits, Membership and Contributions) Regulations 2007 (where no balancing PI payment is paid on the death grant in the April following death).
- Whilst the 50/50 option does not impact on the death grant for an active member, it impacts on the death grant in respect of a pensioner member.

(4) Where any pension paid to a member derived from a pension credit, the death grant is 5 times the annual amount the member was receiving as that pension at the date of death, reduced by the amount of that pension paid to the member.

Note: a policy decision was taken to retain a multiplier of 5 in respect of a death grant for pension credit members.

(5) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the member's death or, where the authority did not know about the member's death before the expiry of that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

### **Survivor benefits : partners of pensioner members**

**47.—**(1) If a pensioner member (other than a pensioner member where the pension the member was in receipt of was derived from a pension credit) dies leaving a surviving spouse, civil partner or cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The relevant administering authority shall close the pensioner member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

(a) the member's earned pension had accrued at a rate of 1/160th of pensionable pay,

*Comment: see the issues raised under regulation 23(6)(c) re pension debit.*

(b) the pension had not been subject to any actuarial adjustment relating either to the age at which it was drawn or following a Scheme pays election,

(c) there had been no commutation under regulation 33 (election for lump sum instead of pension),

(d) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),

(e) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions), and

(f) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/160ths.~~

*Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (f).*

(5) If the member ceased to be an active member, became a pensioner member and died all within the same scheme year, the balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted at the beginning of the following scheme year by the revaluation adjustment applicable to ~~the that~~ scheme year in which the member died, in accordance with guidance issued by the Secretary of State.

(6) Where—

(a) paragraph (5) applies, the revalued balance calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following scheme year;

(b) paragraph (5) does not apply, the balance under paragraph (3) is the opening balance of the survivor member's pension account for the following scheme year,

and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

*Comment: the amendment to paragraphs (5) and (6) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004).*

(7) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

### **Survivor benefits: children of pensioner members**

**48.—**(1) If a pensioner member (other than a pensioner member where the pension the member was in receipt of was derived from a pension credit) dies leaving one or more eligible children, they are entitled to a children's pension which shall come into payment on the day following the member's death.

(2) If a pension is payable to a partner of a pensioner member under regulation 47(1) (survivor benefits: partners of pensioner members), the relevant administering authority shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(3) The opening balance of a survivor member's pension account opened under paragraph (2) is the amount of pension payable to the eligible child or children calculated in accordance with paragraph (4) or (5) but if the pension payable under regulation 47(1) ceases to be paid, the pension payable to the eligible child or children is recalculated in accordance with paragraph (9) or (10) from the day following the date the pension under regulation 47(1) ceased to be paid.

(4) The amount of pension payable under paragraph (3) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension, had accrued at a rate of 1/320th of pensionable pay,
- (b) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/320ths,~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (b).

- (c) the member's pension had not been subject to any actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (d) there had been no commutation under regulation 33 (election for lump sum instead of pension),
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension), and
- (f) the pension included 15.3125% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(5) The amount of pension payable under paragraph (3) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension, had accrued at a rate of 1/160th of pensionable pay,
- (b) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/160ths,~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (b).

- (c) the member's pension had not been subject to any actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (d) there had been no commutation under regulation 33 (election for lump sum instead of pension)
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension), and
- (f) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(6) At the point at which the number of eligible children is reduced to one, if a pension is still payable to a surviving partner under regulation 47(1), the pension payable to that eligible child is recalculated in accordance with paragraph (4) as from the day following the date the other eligible child's or children's pension ceased to be paid.

(7) If, on the day following the member's death, no pension is payable to a partner of a deferred member under regulation 47(1), the relevant administering authority shall close the pensioner member's pension account and shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(8) The opening balance of a survivor member's pension account opened under paragraph (7) is the amount of pension payable to the eligible child or children, calculated in accordance with paragraph (9) or (10).

(9) The amount of pension payable under paragraph (8) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension had accrued at a rate of 1/240th of pensionable pay,
- (b) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/240ths,~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (b).

- (c) the member's pension had not been subject to any actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (d) there had been no commutation under regulation 33 (election for lump sum instead of pension),
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension), and
- (f) the pension included 20.41667% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(10) The amount of pension payable under paragraph (8) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member's earned pension had accrued at a rate of 1/120th of pensionable pay,
- (b) ~~any transferred in benefit had accrued at a rate of the amount of earned pension credited under regulation 101(1) had been multiplied by 49/120ths~~

Comment: this amendment has been made at the request of HMT to clarify the meaning of sub-paragraph (b).

- (c) the member's pension had not been subject to any actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order, and
- (d) there had been no commutation under regulation 33 (election for lump sum instead of pension), and
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension), and
- (f) the pension included 40.8333% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(11) At the point at which the number of eligible children is reduced to one, the pension payable to that child is recalculated in accordance with paragraph (9).

(12) If the member ceased to be an active member, became a pensioner member and died all within the same scheme year, the balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted at the beginning of the following scheme year by the revaluation adjustment applicable to ~~the that~~ scheme year in which the member died, in accordance with guidance issued by the Secretary of State.

(13) Where—

- (a) paragraph (12) applies, the revalued balance calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following scheme year;
- (b) paragraph (12) does not apply, the balance under paragraph (3) or (8), as the case may be, is the opening balance of the survivor member's pension account for the following scheme year,

and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

Comment: the amendment to paragraphs (12) and (13) are to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004).

## Adjustments of benefits

### No double entitlement

**49.**—(1) Where apart from this regulation any member would be entitled to a pension or lump sum under two or more regulations by reason of the same period of membership—

- (a) that member shall be entitled to benefits under only one regulation;
- (b) the member may choose under which provision benefits are to be paid; and
- (c) if the member does not choose, the administering authority shall notify the member in writing of the provision under which benefits are to be paid.

(2) A member's choice must be by notice in writing given to the administering authority before the expiry of three months beginning with the day on which the member becomes entitled to choose under which provision the pension or lump sum is to be paid.

(3) Paragraph (1) does not affect the member's rights under the Pension Schemes Act 1993(a).

### Limit on total amount of benefits

**50.**—(1) No person is entitled under any provision of these Regulations to receive benefits the capital value of which exceed that person's lifetime allowance, except in accordance with actuarial guidance issued by the Secretary of State and any benefits to which a person is entitled are capped accordingly.

(2) In this regulation "lifetime allowance" is to be construed in accordance with section 218 of and Schedule 36 to the Finance Act 2004(b) and, where applicable, is to include primary protection, enhanced protection or fixed protection within the meaning of those provisions.

(3) The capital value of a person's benefits shall be calculated in accordance with actuarial guidance issued by the Secretary of State.

### Guaranteed minimum pensions

**51.**—(1) Where a member's local government employment is contracted-out employment and that member has a guaranteed minimum, the member is entitled from the date of attaining pensionable age to payment of a pension at a weekly rate equal to not less than that guaranteed minimum.

(2) But if the member attains pensionable age while in local government employment, the member is not so entitled until leaving that employment, unless paragraph (3) or (4) applies.

(3) If the member—

- (a) continues in local government employment for a further period of five years after attaining pensionable age; and
- (b) does not then leave that employment,

the member is entitled from the end of the period mentioned in sub-paragraph (a) to payment of so much of the retirement pension as equals that guaranteed minimum.

(4) If the member attains pensionable age while in local government employment but subsequently changes employment to employment which is not local government employment, the member is entitled.

(5) If the member changes employment to employment which is not local government employment and the member attains pensionable age while in that employment, the member is entitled.

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(a) 1993 c. 48.

(b) 2004 c. 12; section 218 was amended by the Finance Act 2011 (c.11). There are numerous amendments to Schedule 36 which are not relevant to these regulations.

(6) Subject to regulation 30(3) (retirement after normal retirement date), where paragraph (3), (4) or (5) applies, the member may consent to a postponement of the entitlement.

(7) For the purposes of this regulation, a person has a guaranteed minimum if they have such a minimum under section 14 (earner's guaranteed minimum) of the Pension Schemes Act 1993(a) in relation to benefits under these Regulations, and references to entitlement are to the entitlement to payment of a pension in accordance with paragraph (1).

(8) In this regulation "contracted out employment" shall be construed in accordance with section 8 of the Pension Schemes Act 1993.

**Comments:**

- The majority of GMPs will relate to membership under the Earlier Schemes. However, there is nothing in the Transitional Provisions and Savings Regulations 2013 about GMPs unless we can simply rely on regulations 3(1) and (2) of those Regulations to cater for GMPs under the Earlier Schemes.
- Having gone back to section 13 of the Pension Schemes Act 1993 I have realised that the Act requires the Scheme rules to specify how / when the GMP is to be paid and how / when the GMP can be postponed. Thus, regulation 51 should remain in the Regulations.

**Pension debits**

**52.**—(1) Administering authorities shall have regard to actuarial guidance issued by the Secretary of State as to reduction of benefits payable under these Regulations in consequence of a pension debit created under section 29 of the Welfare Reform and Pension Act 1999(b).

(2) An administering authority shall make such adjustments to a member's pension accounts as are required to give effect to a pension debit.

## PART 2

### Administration

#### Administering authorities

**Scheme Managers**

**53.**—(1) The bodies listed in Part 1 of Schedule 3, referred to in these Regulations as "administering authorities", must maintain a pension fund for the Scheme.

(2) An administering authority is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate administering authority under these Regulations.

(3) The appropriate administering authority in relation to a person who is or has been a member of the Scheme, or is entitled to any benefit in respect of a person who is or has been a member of the Scheme, is the authority specified in Part 2 of Schedule 3 in relation to that person.

(4) Each administering authority shall establish a pensions board responsible for assisting it in relation to securing compliance with –

- (a) these Regulations;
- (b) any other legislation relating to the governance and administration of the Scheme; and
- (c) requirements imposed by the Pensions Regulator in relation to the Scheme.

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(a) 1993 c. 48; section 14 was amended by the Proceeds of Crime Act 2002, the Pensions Act 1995, and the Social Security Contributions (Transfer of Functions, etc) Act 1999.

(b) 1999 c. 30.

Comment: At some point after the consultation on Governance has closed, this regulation will need to include the matters resulting from that consultation including the matters set out in section 5(4) of the Public Service Pensions Act 2013 i.e.

- (4)The regulations must include provision-
  - (a) requiring the scheme manager-
    - (i) to be satisfied that a person to be appointed as a member of the board does not have a conflict of interest, and
    - (ii) to be satisfied from time to time that none of the members of the board has a conflict of interest;
  - (b) requiring a member of the board, or a person proposed to be appointed as a member of the board, to provide the scheme manager with such information as the scheme manager reasonably requires for the purposes of provision under paragraph (a);
  - (c) requiring the board to include employer representatives and member representatives in equal numbers.

### **Admission agreement funds**

Comment: It is our view that the facility provided by this regulation should be extended so that the administering authority can establish separate funds for any types of Scheme employer, not just admission bodies, thereby enabling it to ring-fence liabilities to the employers within a sub-fund should one of them cease to participate leaving a deficit. This would allow the deficit to be spread across only the employers participating in the sub-fund, rather than being spread across all employers.

**54.**—(1) An administering authority which has made an admission agreement may establish a further pension fund (an “admission agreement fund”) in addition to the fund maintained under regulation 53(1) (scheme managers) (“the main fund”).

(2) Immediately after an authority establishes an admission agreement fund, it must give the Secretary of State written notice that it has done so.

(3) The notice must specify the admission bodies whose employees are eligible for benefits from the admission agreement fund.

(4) Where an admission agreement fund is established—

- (a) the liabilities of the main fund as respects membership in employment with those specified bodies become liabilities of the admission agreement fund; and
- (b) assets of such value as an actuary appointed by the appropriate administering authority determines to be appropriate must be transferred from the main fund to the admission agreement fund.

(5) When valuations under regulation 62 (actuarial valuations and certificates) of both the main fund and the admission agreement fund are first obtained after the admission agreement fund is established, the administering authority must obtain from the actuary appointed by the authority—

- (a) a transfer statement; and
- (b) a rates and adjustment certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for its main fund.

(6) The transfer statement must specify whether, in the actuary’s opinion, there is a need for further assets to be transferred from the main fund to the admission agreement fund or vice versa and, if so, their value.

Comment: additional wording added to allow assets to be transferred back to the main fund if too much was originally transferred to the admission agreement fund.

(7) Where the transfer statement specifies that assets of a specified value need to be transferred, the administering authority must arrange for assets of that value to be transferred as soon as is reasonably practicable.

## **Administering authorities: governance compliance statement**

**55.**—(1) An administering authority must prepare a written statement setting out—

- (a) whether the authority delegates its functions, or part of its functions under these Regulations to a committee, a sub-committee or an officer of the authority;
- (b) if the authority does so—
  - (i) the terms, structure and operational procedures of the delegation,
  - (ii) the frequency of any committee or sub-committee meetings,
  - (iii) whether such a committee or sub-committee includes representatives of Scheme employers or members, and if so, whether those representatives have voting rights;
- (c) the extent to which a delegation, or the absence of a delegation, complies with guidance given by the Secretary of State and, to the extent that it does not so comply, the reasons for not complying.
- (d) details of the terms, structure and operational procedures relating to the local pension board established under regulation 53(4) (scheme managers).

(2) An administering authority must keep a statement prepared under paragraph (1) under review, and make such revisions as are appropriate, following a material change to any of the matters mentioned in that paragraph.

(3) Before preparing or revising a statement under this regulation, an administering authority must consult such persons as it considers appropriate.

(4) An administering authority must publish its statement under this regulation, and any revised statement.

*Comment: the items under paragraphs (1)(a), (b) and (d) appear to be more relevant to a governance policy document, rather than a governance compliance statement. Only paragraph (1)(c) relates to compliance. Thus, once the responses to the DCLG discussion paper on new governance arrangements have been considered it might be worth rewriting this regulation to cover the need for both the governance policy and the governance compliance statement to be prepared, maintained and published. A point that will need to be considered is whether the administering authority should be required to publish both (perhaps in a combined document) and the Pensions Board (assuming it is a separate body) comment on whether or not they agree with the administering authority's view on whether or not the administering authority had, and the extent to which they had (or had not), complied with guidance issued by the Secretary of State; or whether the administering authority should only publish the governance policy document and the Pension Board should publish the governance compliance statement stating whether or not, in their view, the administering authority had, and the extent to which they had (or had not), complied with guidance issued by the Secretary of State.*

## **Accounts and audit**

**56.**—(1) After any of its pension funds has been audited, an administering authority must immediately send copies of the following to each body whose employees are active members—

- (a) a summary of the revenue account and balance sheet of the fund; and
- (b) any report by the auditor.

(2) The pension input period for the purposes of section 238 of the Finance Act 2004<sup>(a)</sup> is the year ending on 31st March 2015 and each year ending on 31st March after that year.

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<sup>(a)</sup> 2004 c. 12; section 238 was amended by the Finance Act 2011 (c. 11).

### **Pension fund annual report**

**57.**—(1) An administering authority must, in relation to each year beginning on 1st April 2014 and each subsequent year, prepare a document (“the pension fund annual report”) which contains—

- (a) a report about the management and financial performance during the year of each of the pension funds maintained by the authority;
- (b) a report explaining the authority’s investment policy for each of those funds and reviewing the performance during the year of the investments of each fund;
- (c) a report of the arrangements made during the year for the administration of each of those funds;
- (d) for each of those funds, a statement by the actuary who carried out the most recent valuation of the assets and liabilities of the fund in accordance with regulation 62 (actuarial valuations and certificates), of the level of funding disclosed by that valuation;
- (e) the current version of the statement under regulation 55 (governance compliance statement);
- (f) for each of the funds, the fund account and net asset statement with supporting notes and disclosures prepared in accordance with proper practices;
- (g) an annual report dealing with—
  - (i) the extent to which the authority and the Scheme employers in relation to which it is the administering authority have achieved any levels of performance set out in a pension administration strategy in accordance with regulation 59 (pension administration strategy), and
  - (ii) such other matters arising from a pension administration strategy as it considers appropriate;
- (h) the current version of the statement referred to in regulation 58 (funding strategy statement)
- (i) the current version of the statement under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (statement of investment principles)(a);
- (j) the current version of the statement under regulation 61 (statements of policy concerning communications with members and Scheme employers); and
- (k) any other material which the authority considers appropriate.

(2) The authority must publish the pension fund annual report on or before 1st December following the scheme year end.

*Comment: wouldn't it make sense to amend this date to 1<sup>st</sup> October to bring it into line with the final audit date of 30<sup>th</sup> September? This would overcome the current period of 'limbo' where the accounts are finalised but cannot be signed off until the Annual Pension Fund Report is ready.*

(3) In preparing and publishing the pension fund annual report, the authority must have regard to guidance given by the Secretary of State.

### **Funding strategy statement**

**58.**—(1) An administering authority must, after consultation with such persons as it considers appropriate, prepare, maintain and publish a written statement setting out its funding strategy.

(2) The ~~first~~ statement must be published no later than 31st March 2015.

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(a) S.I. 2009/3093.

Comment: deleted as it implies there should be a second and third statement, etc, whereas paragraph (3) merely requires that the statement is kept under review an amended version of the statement is published.

(3) The authority must keep the statement under review and, after consultation with such persons as it considers appropriate, make such revisions as are appropriate following a material change in its policy set out in the statement, and if revisions are made, publish the statement as revised.

(4) In preparing, maintaining and reviewing the statement, the administering authority must have regard to—

- (a) the guidance set out in the document published in March 2004 by CIPFA, the Chartered Institute of Public Finance and Accountancy and called “CIPFA Pensions Panel Guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No. 6)”**(a)**; and
- (b) the statement of investment principles published by the administering authority under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009**(b)**.

### **Pension administration strategy**

**59.**—(1) An administering authority may prepare a written statement of the authority’s policies in relation to such of the matters mentioned in paragraph (2) as it considers appropriate (“its pension administration strategy”) and, where it does so, paragraphs (3) to (7) apply.

(2) The matters are—

- (a) procedures for liaison and communication with Scheme employers in relation to which it is the administering authority (“its Scheme employers”);
- (b) the establishment of levels of performance which the administering authority and its Scheme employers are expected to achieve in carrying out their Scheme functions by—
  - (i) the setting of performance targets,
  - (ii) the making of agreements about levels of performance and associated matters, or
  - (iii) such other means as the administering authority considers appropriate;
- (c) procedures which aim to secure that the administering authority and its Scheme employers comply with statutory requirements in respect of those functions and with any agreement about levels of performance;
- (d) procedures for improving the communication by the administering authority and its Scheme employers to each other of information relating to those functions;
- (e) the circumstances in which the administering authority may consider giving written notice to any of its Scheme employers under regulation 70 (additional costs arising from Scheme employer’s level of performance) on account of that employer’s unsatisfactory performance in carrying out its Scheme functions when measured against levels of performance established under sub-paragraph (b);
- (f) the publication by the administering authority of annual reports dealing with—
  - (i) the extent to which that authority and its Scheme employers have achieved the levels of performance established under sub-paragraph (b), and
  - (ii) such other matters arising from its pension administration strategy as it considers appropriate; and
- (g) such other matters as appear to the administering authority after consulting its Scheme employers and such other persons as it considers appropriate, to be suitable for inclusion in that strategy.

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**(a)** ISBN No 085299 996 8; copies may be obtained from CIPFA at 3 Robert Street, London WC2N 6RL.

**(b)** S.I. 2009/3093.

- (3) An administering authority must—
- (a) keep its pension administration strategy under review; and
  - (b) make such revisions as are appropriate following a material change in its policies in relation to any of the matters contained in the strategy.
- (4) In preparing or reviewing and making revisions to its pension administration strategy, an administering authority must consult its Scheme employers and such other persons as it considers appropriate.
- (5) An administering authority must publish—
- (a) its pension administration strategy; and
  - (b) where revisions are made to it, the strategy as revised.
- (6) Where an administering authority publishes its pension administration strategy, or that strategy as revised, it must send a copy of it to each of its employing authorities and to the Secretary of State as soon as is reasonably practicable.
- (7) An administering authority and its Scheme employers must have regard to the pension administration strategy when carrying out their Scheme functions.
- (8) In this regulation references to the functions of an administering authority include, where applicable, its functions as a Scheme employer.

#### **Statements of policy about exercise of discretionary functions**

**60.**—(1) A Scheme employer must prepare a written statement of its policy in relation to the exercise of its functions under regulations—

- (a) 16(2)(e) and 16(4)(d) (funding of additional pension);
- (b) 30(6) (flexible retirement);
- (c) 30(8) (waiving of actuarial reduction); and
- (d) 31 (award of additional pension),

and an administering authority must prepare such a statement in relation to the exercise of its functions under regulation 30(8) in cases where a former employer has ceased to be a Scheme employer.

*Note: the abatement provisions (abatement of pension upon re-employment depending on level of earnings) have not been carried forward into the 2014 Scheme so administering authorities do not have to have a policy on abatement for post 31<sup>st</sup> March 2014 leavers.*

(2) Each Scheme employer must send a copy of its statement to each relevant administering authority before 1<sup>st</sup> July 2014 and must publish its statement.

*Comment: the amendment has been made as there was no time frame within which Scheme employers had to prepare and publish a policy and send a copy to the administering authority. Leaving it open ended would mean employers could take years to get round to preparing and publishing their policy and sending it to the administering authority. I have plumped for a 3 month period to mirror the time frame in Administration regulation 66(2).*

- (3) A body required to prepare a statement under paragraph (1) must—
- (a) keep its statement under review; and
  - (b) make such revisions as are appropriate following a change in its policy.
- (4) Before the expiry of a month beginning with the date any such revisions are made, each Scheme employer must send a copy of its revised statement to each relevant administering authority, and must publish its statement as revised.
- (5) In preparing, or reviewing and making revisions to its statement, a body required to prepare a statement under paragraph (1) must have regard to the extent to which the exercise of the functions mentioned in paragraph (1) in accordance with its policy could lead to a serious loss of confidence in the public service.

(6) In this regulation a relevant administering authority in relation to a Scheme employer, is any authority which is an appropriate administering authority for that employer's employees.

### **Statements of policy concerning communications with members and Scheme employers**

**61.**—(1) An administering authority must prepare, maintain and publish a written statement setting out its policy concerning communications with—

- (a) members;
- (b) representatives of members;
- (c) prospective members; and
- (d) Scheme employers.

(2) In particular the statement must set out its policy on—

- (a) the provision of information and publicity about the Scheme to members, representatives of members and Scheme employers;
- (b) the format, frequency and method of distributing such information or publicity; and
- (c) the promotion of the Scheme to prospective members and their employers.

(3) The statement must be revised and published by the administering authority following a material change in their policy on any of the matters referred to in paragraph (2).

### **Actuarial valuations**

#### **Actuarial valuations and certificates**

General comment: HMT have commented as follows:

*“This regulation attempts to provide for a local fund valuation, per section 13 of the 2013 Act:*

- (1) The requirement of section 13(3) for actuarial valuations is provided for by R62(1).*
- (2) Section 13(2) provides that employer contributions must be set at an appropriate level to ensure (a) the solvency of the fund and (b) the long-term efficiency of the scheme. R62(5) attempts to cater for (a). But R62(6)(d) speaks of the desirability of long-term efficiency. I am not sure that this is sufficiently strong to secure the long-term efficiency of the scheme, nor is it explicitly linked to employer contributions, which is what the 2013 Act requires.*
- (3) The requirement for an actuary to be appropriately qualified is not yet included in the regulation as drafted.*
- (4) The elements of the actuary's report set out at section 13(4)(a) to (c) are not yet included in the regulation as drafted.*
- (5) The recommendation of remedial steps and the consequences of such a recommendation at section 13(6) are not yet included in the regulation as drafted.”*

At the meeting with HMT on 25 July 2013 they were clear that they wished regulation 62 to follow section 13 of the Act.

**62.**—(1) An administering authority must obtain—

- (a) an actuarial valuation of the assets and liabilities of each of its pension funds as at 31st March 2016 and on 31st March in every third year afterwards;
- (b) a report by an actuary in respect of the valuation; and
- (c) a rates and adjustments certificate prepared by an actuary.

(2) Each of those documents must be obtained before the first anniversary of the date (“the valuation date”) as at which the valuation is made or such later date as the Secretary of State may agree.

(3) A report under paragraph (1)(b) must contain a statement of the demographic assumptions used in making the valuation; and the statement must show how the assumptions relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(4) A rates and adjustments certificate is a certificate specifying—

- (a) the primary rate of the employer's contribution; and
- (b) the secondary rate of the employer's contribution,

for each year of the period of three years beginning with 1st April in the year following that in which the valuation date falls.

(5) The primary rate of employers' contributions is the amount in respect of the cost of future accruals which, in the actuary's opinion, should be paid to a fund by all bodies whose employees contribute to it so as to secure its solvency, expressed as a percentage of the pay of their employees who are active members.

*Comment: There is a difference between "solvency" in (5) above and "long term cost efficiency" in (6)(d) below. The ACA might wish to consider whether they would like definitions to be included in Schedule 1 or whether they would wish guidance to be issued.*

(6) The actuary must have regard to—

- (a) the existing and prospective liabilities arising from circumstances common to all those bodies;
- (b) the desirability of maintaining as nearly constant a common rate as possible;
- (c) the current version of the administering authority's funding strategy mentioned in regulation 58 (funding strategy statements); and
- (d) the desirability of securing long term cost efficiency of the fund.

(7) The secondary rate of employers' contributions is any percentage or amount by which, in the actuary's opinion, contributions at the primary rate should, in the case of a Scheme employer, be increased or reduced by reason of any circumstances peculiar to that employer.

(8) A rates and adjustments certificate must contain a statement of the assumptions on which the certificate is given as respects—

- (a) the number of members who will become entitled to payment of pensions under the provisions of the Scheme; and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(9) The administering authority must provide the actuary preparing a valuation or a rates and adjustments certificate with the consolidated revenue account of the fund and such other information as the actuary requests.

### **Aggregate scheme costs**

**63.—**(1) Administering authorities and Scheme employers must have regard to any guidance issued by the Secretary of State about how future costs of the Scheme will be met.

*Comment: is this all we need to say at this stage or do we need to say something about the mechanisms for agreeing how the cost will be controlled, and the default position if agreement cannot be reached? Or is this something to add in post the governance consultation? There are two mechanisms running alongside each other – the LGPS specific mechanism and the HMT mechanism.*

(2) To enable the Secretary of State to calculate those costs for the purposes of that guidance, each administering authority must provide to the Secretary of State by 31st August 2016, and by 31st August in every third year afterwards, all the information used for the purposes of providing an actuarial valuation under regulation 62 (actuarial valuations and certificates).

(3) For the purposes of that guidance, an actuary appointed by the Secretary of State shall provide to the Secretary of State by 31st October 2016 and in every third year afterwards—

- (a) an actuarial valuation of the assets and liabilities of the Scheme as at 31st March 2016 and in every third year afterwards, based on the information provided to the Secretary of

State under paragraph (2), carried out in accordance with any direction issued by the Treasury under section 11 of the Public Service Pensions Act 2013(a);

- (b) a report in respect of the valuation (“the valuation report”); and
- (c) an overall cost certificate.

(4) The valuation report must contain a statement of the financial and demographic assumptions used in making the valuation; and the statement must show how the assumptions relate to the events which have actually occurred in relation to the members of the Scheme since the last valuation.

(5) The assumptions used in making the valuation under paragraph (4) shall be determined by the Secretary of State after consultation with such persons with whom consultation appears to the Secretary of State to be desirable.

(6) An overall cost certificate is a certificate—

- (a) specifying the cost of future accrual of pension liabilities; and
- (b) adjusted where appropriate to reflect surpluses or deficits arising from variations between events which have actually occurred in relation to members of the Scheme and the assumptions used in making valuations for each year following 31st March 2013.

### **Special circumstances where revised actuarial valuations and certificates must be obtained**

**64.**—(1) If a person—

- (a) ceases to be a Scheme employer (including ceasing to be an admission body participating in the Scheme), or
- (b) was a Scheme employer, but no longer has an active member contributing to a fund,

that person becomes “an exiting employer” for the purposes of this regulation.

(2) When a person becomes an exiting employer, the appropriate administering authority must obtain—

- (a) an actuarial valuation at the exit date of the liabilities of the fund in respect of benefits due to the exiting employer’s current and former employees; and
- (b) a revised rates and adjustments certificate showing the exit payment due from the exiting employer in respect of those benefits.

(3) Where for any reason it is not possible to obtain all or part of the exit payment due from the exiting employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the exiting employer, the administering authority must obtain a further revision of any rates and adjustments certificate for the fund showing—

- (a) in the case where a body is an admission body falling within paragraph 1(d) of Part 3 of Schedule 2 to these Regulations (scheme employers: bodies providing services as a result of transfer of a service), the revised contribution due from the body which is the related employer in relation to that admission body; and
- (b) in any other case, the revised contributions due from each Scheme employer which contributes to the fund,

with a view to providing that assets equivalent to the exit payment due from the exiting employer are provided to the fund over such period of time as the administering authority considers reasonable.

(4) Where in the opinion of an administering authority there are circumstances which make it likely that a Scheme employer (including an admission body) will become an exiting employer, the administering authority may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary’s opinion—

- (a) the contribution at the primary rate should be adjusted; or

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(a) 2013 c. 25.

(b) any prior secondary rate adjustment should be increased or reduced, with a view to providing that assets equivalent to the exit payment that will be due from the Scheme employer are provided to the fund by the exit date or, where the Scheme employer is unable to meet that liability by the exit date, over such period of time thereafter as the administering authority considers reasonable.

(5) When an exiting employer has paid an exit payment into a fund, no further payments are due from that authority in respect of any liabilities relating to the benefits due to any current or former employees of that employer as a result of these Regulations.

(6) Paragraph (7) applies where—

- (a) a Scheme employer agrees to pay increased contributions to meet the cost of an award of additional pension under regulation 31 (award of additional pension); or
- (b) it appears likely to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with a Scheme employer exceeds the amount specified, or likely as a result of the assumptions stated for that authority, in a rates and adjustments certificate by virtue of regulation 62(8) (actuarial valuations and certificates: assumptions).

(7) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that Scheme employer.

(8) For the purposes of this regulation—

“exiting employer” means an employer of any of the descriptions specified in paragraph (1);

“exit payment” means the assets required to be paid over such period of time as the administering authority considers reasonable, to meet the liabilities specified in paragraph (2);

“exit date” means the date on which the employer becomes an exiting employer; and

“related employer” means any Scheme employer which is a party to the admission agreement (other than an administering authority in its role as an administering authority) .

*Comment: why have Administration regulations 38(5), (6) and (7) not been replicated? It would appear that they are still necessary and should be replicated (although, perhaps, (7) should be placed in the Transitional Provisions and Savings Regulations 2013).*

#### **Aggregate scheme costs: revised certificates**

**65.** Where as a result of the valuation exercise under regulation 63 (aggregate scheme costs), the Secretary of State amends these Regulations, an administering authority must consider whether the rates and adjustments certificate obtained under regulation 62(1)(c) (actuarial valuations and certificates) should be revised to take account of the amendment; and if, in the authority’s view the certificate should be so revised—

- (a) the authority must ensure that the certificate is revised accordingly and as soon as possible; and
- (b) the revised certificate must cover the period beginning with 1st April in the second year following that in which the valuation date falls under regulation 62 (actuarial valuations and certificates).

#### **Supply of copies of valuations, certificates etc**

**66.**—(1) An administering authority must publish and send copies of any valuation, report, certificate or revised certificate obtained under regulations 62 (actuarial valuations and certificates) or 64 (special circumstances where revised actuarial valuations and certificates must be obtained) to—

- (a) the Secretary of State;
- (b) each body with employees who contribute to the fund in question; and
- (c) any other body which is, or may become liable to make payments to that fund.

Comment: amendment made to mirror section 13(5) of the Public Service Pensions Act 2013.

- (2) An administering authority must also send to the Secretary of State—
- (a) a copy of the consolidated revenue account with which the actuary was provided under regulation 62(9); and
  - (b) a summary of the assets of the fund at the valuation date (unless such a summary is contained in the report under regulation 62(1)(b)).

## Payments

### Employer's contributions

**67.**—(1) A Scheme employer must contribute to the appropriate fund in each year covered by a rates and adjustment certificate under regulation 62 (actuarial valuations and certificates) or 64 (circumstances in which revised actuarial valuations and certificates must be obtained) the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).

(2) During each of those years a Scheme employer must make payments to the appropriate fund on account of the amount required for the whole year.

(3) Those payments on account must—

- (a) be paid at the end of the intervals determined under regulation 69 (payment by Scheme employers to administering authorities); and
- (b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.

(4) An employer's contribution for any year is the primary percentage for that year of—

- (a) the pensionable pay on which contributions have been paid into the fund by active members in accordance with regulations 9 to 12 and 14 (contributions), except where paragraph (b) applies, and
- (b) the assumed pensionable pay in respect of members on child-related leave or leave due to sickness or injury on reduced contractual pay or no pay,

increased or reduced by any secondary rate adjustments specified for that employer for that year in the rates and adjustments certificate.

Comment: the above amendments have been made

- to reflect the agreement with HMT that employer contributions should be payable on APP for members on reduced contractual pay or no pay due to sickness or injury and to ensure that during any period of such sick leave and any period of child related leave during which the employee has received some pay, the employer does not pay contributions on the pay received and the APP but, instead, only pays contributions on the APP

- to recognise that employer contributions are not payable on any pay the employer pays to a member whilst on reserve forces service leave (as employer contributions are indirectly due on APP instead)

I haven't added reserve forces service leave to the list in (b) because, although employer contributions are payable on APP, they are not payable directly by the employer but, rather, they are paid by the MoD.

(5) The primary percentage is the primary rate of the employer's contribution specified in that certificate expressed as a percentage of the pay of its employees who are active members of the Scheme.

(6) A Scheme employer must also contribute to the appropriate fund in each year any employer contributions made under regulation 16 (additional pension contributions).

Note: employer contributions to a SCAVC under regulation 17 are not mentioned above as those contributions are not payable to the Fund but, instead, are payable to the AVC provider.

### Employer's further payments

**68.**—(1) Any extra charge on the appropriate fund resulting from a member's becoming entitled to benefits under regulation 35 (early payment of retirement pension on ill-health grounds) or 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members) must be paid into the fund by the Scheme employer concerned.

(2) An administering authority may require the Scheme employer concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund resulting from retirements benefits becoming immediately payable to a member under regulation 30(6) (flexible retirement) or (7) (early leavers on grounds on redundancy or business efficiency), including the cost as calculated by an actuary appointed by the administering authority, as a result of a waiver of any reduction under regulation 30(8).

(3) Other than where regulation 64(6) (special circumstances where revised actuarial valuations and certificates must be obtained) applies, a Scheme employer making an award under regulation 31 (award of additional pension) must pay a sum into the appropriate fund to meet the cost of any additional pension, in accordance with actuarial guidance issued by the Secretary of State.

### Payment by Scheme employers to administering authorities

**69.**—(1) Every Scheme employer must pay to the appropriate administering authority on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine—

- (a) all amounts received from time to time from employees under regulations 9 to 14 and 16 (contributions);
- (b) any charge payable under regulation 68 (employer's further payments) of which it has been notified by the administering authority during the interval;
- (c) a contribution towards the cost of the administration of the fund; and
- (d) any amount specified in a notice given in accordance with regulation 70 (additional costs arising from Scheme employer's level of performance).

(2) But—

- (a) a Scheme employer must pay the amounts mentioned in paragraph (1)(a) within the prescribed period referred to in section 49(8) of the Pensions Act 1995(a); and
- (b) paragraph (1)(c) does not apply where the cost of the administration of the fund is paid out of the funds under regulation 4(5) of the Local Government Pensions Scheme (Management and Investment of Funds) Regulations 2009 (management of pension fund)(b).

(3) Every payment under paragraph (1)(a) must be accompanied by a statement showing—

- ~~(a) the name, pay and band (as set out in column 1 of the table in regulation 9(2) (contributions)) of each of the Scheme employer's employees who is an active member;~~
- ~~(b) which employees are paying contributions under regulation 10 (temporary reduction in contributions);~~
- ~~(c) which employees are paying contributions under regulation 16 (additional pension contributions); and~~
- ~~(d) the amounts which represent deductions in each of the pay bands from each of the employees and the periods covered by the deductions, distinguishing amounts representing deductions for any voluntary contributions.~~
- (a) the total pensionable pay received by members during the period covered by the statement whilst regulation 9 applied (including the assumed pensionable pay members

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(a) 1995 c. 26.

(b) S.I. 2009/3093.

- were, in accordance with regulation 21, treated as receiving during that period whilst regulation 9 applied).
- (b) the total employee contributions (if any) deducted from the pensionable pay under paragraph (a).
- (c) the total pensionable pay received by members during the period covered by the statement whilst regulation 10 applied (including the assumed pensionable pay members were, in accordance with regulation 21, treated as receiving during that period whilst regulation 10 applied).
- (d) the total employee contributions (if any) deducted from the pensionable pay under paragraph (c).
- (e) the total employer contributions in respect of the pensionable pay under paragraphs (a) and (c).
- (f) the total additional pension contributions (if any) paid by members under regulation 16 during the period covered by the statement, and
- (g) the total additional pension contributions (if any) paid by the employer under regulation 16 during the period covered by the statement.

Comment: The above list represents the information we believe Funds will need in order to:

- code employee and employer contributions (and additional contributions)
- check that the money paid into the Fund's bank account each period tallies with the amount shown on the statement
- check that the sum of the amounts on the statements provided during the Scheme year tally with the amounts shown on the end of year statement provided under regulation 80(3).

Also see the comments under regulation 80(3).

(4) An administering authority may direct that the information mentioned in paragraph (3) shall be given to the authority in such form, and at such intervals (not exceeding 12 months) as it specifies in the direction.

(5) If an amount payable under paragraph (1)(c) or (d) can not be settled by agreement, it must be determined by the Secretary of State.

~~(6) Paragraphs (1) to (5) do not apply to a Scheme employer which is an administering authority, but such an authority must pay its share of any contribution towards the cost of administration of the fund where it has required a contribution from Scheme employers under paragraph (1)(c).~~

Comment: I have deleted this paragraph as I don't think it will be appropriate for the 2014 Scheme. The administering authority, wearing its hat as a scheme employer, will need to supply (to itself, wearing its administering authority hat, or to whomever it has outsourced the pension function) the data necessary to ensure the correct calculation of benefits. A number of administering authorities already have this 'Chinese wall' between the employing authority and administering authority roles and, wearing the administering authority hat, require the employing authority (payroll and HR) to supply to the Pensions Section information in the same way as any other employing authority participating in the Scheme. See also the comment at regulation 80(1).

#### **Additional costs arising from Scheme employer's level of performance**

**70.**—(1) This regulation applies where, in the opinion of an administering authority, it has incurred additional costs which should be recovered from a Scheme employer because of that employer's level of performance in carrying out its functions under these Regulations.

(2) The administering authority may give written notice to the Scheme employer stating—

- (a) the administering authority's reasons for forming the opinion mentioned in paragraph (1);

- (b) the amount the authority has determined the Scheme employer should pay under regulation 69(1)~~(e) or~~ (d) (payments by Scheme employers to administering authorities) in respect of those costs and the basis on which the specified amount is calculated; and

*Comment: the words have been deleted as only regulation 69(1)(d) is concerned with costs arising from the level of an employer's performance.*

- (c) where the administering authority has prepared a pension administration strategy under regulation 59, the provisions of the strategy which are relevant to the decision to give the notice and to the matters in sub-paragraphs (a) or (b).

### **Interest on late payments by Scheme employers**

**71.**—(1) An administering authority may require a Scheme employer from which any payment is due under regulations 67 to 70 (employer's contributions or payments) is overdue to pay interest on that amount.

(2) The date on which any amount due under regulations 67 (employer's contributions), 68 (employer's further payments), 70 (additional costs arising from Scheme employer's level of performance) is overdue is one month from the date specified by the administering authority for payment.

(3) The date on which any amount due under regulation 69 (payment by Scheme employers to administering authorities) (other than an extra charge payable under regulation 68 and referred to in regulation 69(1)(b)) is overdue is the day after the date when that payment is due.

(4) Interest payable under this regulation must be calculated at one per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

*Comment: should this regulation allow for interest to be charged to a former Scheme employer who, after it has ceased to be a Scheme employer, still owes the Fund money from a time when it was a Scheme employer?*

## Decisions

### **First instance decisions**

**72.**—(1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) In these Regulations, reference to the Scheme employer or appropriate administering authority of a prospective member is a reference to the body that would be that prospective member's Scheme employer or appropriate administering authority if that person were to become an active member in the employment by virtue of which eligibility to join the Scheme would be established.

(3) The appropriate administering authority must decide any question concerning—

- (a) a person's previous service or employment;
- (b) the crediting of additional pension under regulation 16 (additional pension);
- (c) the amount of any benefit, or return of contributions, a person is or may become entitled to out of a pension fund.

(4) A person's Scheme employer must decide any question concerning any other matter relating to the person's rights or liabilities under the Scheme.

*Comment: shouldn't this paragraph be amended to allow for a decision to be taken by the administering authority where, before the Scheme employer has decided a question, it ceases to be a Scheme employer?*

(5) A decision under this regulation must be made as soon as is reasonably practicable.

## Notification of first instance decisions

**73.**—(1) Every person whose rights or liabilities are affected by a decision under regulation 72 (first instance decisions) must be notified of it in writing by the body which made it as soon as is reasonably practicable.

(2) A notification of a decision that the person is not entitled to a benefit must contain the grounds for the decision.

(3) A notification of a decision about the amount of a benefit must contain a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

- (a) specify the rights available under regulations 74 (applications for adjudication of disagreements) and 76 (references of adjudications to administering authority);
- (b) specify the time limits within which the rights under those regulations may be exercised; and
- (c) specify the job title and the address of the person appointed under regulation 74(1) to whom an application may be made.

## Applications for adjudication of disagreements

General comment: The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 [SI 2008/649] permit schemes to have a one stage Internal Dispute Resolution Process if they so desire (but schemes who wish to retain a two stage process are able to do so). The Pensions Act 2004 (Commencement No.11) Order 2008 [SI 2008/627] sets the effective date for the change as 6 April 2008. We believe it would be appropriate to eventually consider a move to a single stage IDR process (although we accept that this might be an amendment to be made after the 2014 Scheme has been introduced and could be a matter for the Shadow Board or one of the Shadow Board's sub-committees to consider and come forward with detailed proposals – perhaps coupled with proposals for a national approach to medical appeals).

**74.**—(1) Each Scheme employer and administering authority must appoint a person (“the adjudicator”) to consider applications from any person whose rights or liabilities under the Scheme are affected by—

- (a) a decision under regulation 72 (first instance decisions); or
- (b) any other act or omission by a Scheme employer or administering authority,

and to make a decision on such applications.

(2) An applicant under paragraph (1)(a) may apply to the adjudicator appointed by the body making the decision, within six months of the date notification of the decision is given under regulation 72.

Comment: see the penultimate comment under regulation 89(4) regarding limiting the type of notification a member may appeal against following notification of a benefit accrual. The only appeal that should be permitted would be against (a) the final year's accrual, (b) the previous year's accrual (if the notification of that was within the last 6 months), and (c) that the sum of each year's accrual had been correctly totalled. The member should not be permitted to appeal against the individual amount accrued in any given year – other than (a) and (b)).

(3) An applicant under paragraph (1)(b) may apply to the adjudicator appointed under paragraph (1) by the body responsible for the act or omission, within six months of the date of the act or omission which is the cause of the disagreement, or, if there is more than one, the last of them.

(4) The adjudicator may extend the time for making an application under paragraph (2) or (3).

(5) An application under paragraph (2) or (3) must—

- (a) set out the applicant's name, address and date of birth;

- (b) if the applicant is not a member of the Scheme, set out the applicant’s relationship to any relevant member of the Scheme and give that member’s full name, address, date of birth, national insurance number and the name of the member’s Scheme employer;
  - (c) include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;
  - (d) be accompanied by a copy of any written notification under regulation 73 (notification of first instance decision);
  - (e) be signed by or on behalf of the applicant.
- (6) The adjudicator must determine—
- (a) the procedure to be followed when exercising functions under this regulation; and
  - (b) the manner in which those functions are to be exercised.

### **Decisions of the adjudicator**

**75.**—(1) The adjudicator must give written notice of a decision under regulation 74 (applications for adjudication of disagreements) to—

- (a) the applicant;
- (b) the Scheme employer; and
- (c) if the Scheme employer is not an administering authority, to the appropriate administering authority

before the expiry of two months beginning with the date on which the application was received.

(2) But if no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out—

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision (“the expected decision date”).

(3) A notice under paragraph (1) must include—

- (a) a statement of the decision;
- (b) a reference to any legislation on which the adjudicator relied;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of these Regulations conferring the discretion;
- (d) a reference to the right of the applicant to refer the disagreement for reconsideration by the appropriate administering authority under regulation 76 (reference of adjudications to administering authority) and to the time within which the applicant may do so; and
- (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme that remains unresolved including the address at which it may be contacted.

(4) A decision under paragraph (1) takes effect as a decision of the Scheme employer or administering authority, as the case may be, except where the matter concerns the exercise of a discretion, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration or, where that body would have been the Scheme employer but that body is no longer a Scheme employer, back to the appropriate administering authority.

*Comment: the amendment has been made to cater for situations where the former employer that made the original decision has ceased to be a Scheme employer*

### **Reference of adjudications to administering authority**

**76.**—(1) An applicant under regulation 74 (applications for adjudication of disagreements) may refer a decision under regulation 75 (decisions of the adjudicator) for reconsideration by the appropriate administering authority.

- (2) A reference under paragraph (1) must—
- (a) be made before the relevant date;
  - (b) set out the applicant’s full name, address and date of birth;
  - (c) if the applicant is not a member of the Scheme, set out the applicant’s relationship to any relevant member of the Scheme and give that member’s full name, address, date of birth, national insurance number and the name of the member’s Scheme employer;
  - (d) include a statement that the applicant wishes the decision to be reconsidered by the administering authority;
  - (e) set out the details of the grounds on which the applicant relies;
  - (f) be accompanied by a copy of any written notifications under regulations 73 (notification of first instance decisions) and 75 (decisions of the adjudicator); and
  - (g) be signed by or on behalf of the applicant.
- (3) The relevant date for the purposes of paragraph (2)(a) is—
- (a) in a case where notice of a decision has been given under regulation 75(1), six months from the date the notice is received;
  - (b) in a case where an interim reply has been sent under regulation 75(2), but no notice has been given under regulation 75(1), seven months from the expected decision date;
  - (c) in a case where no notice have been given under regulation 75(1) and no interim reply was sent under regulation 75(2), nine months from the date on which the application was made.
- (4) The administering authority must determine—
- (a) the procedure to be followed when exercising its functions under this regulation; and
  - (b) the manner in which those functions are to be exercised, but it must ensure that no person who was involved in the making of a first-instance decision or a decision under regulation 75 (decisions of the adjudicator) is involved in a decision on reconsideration.
- (5) For the purposes of paragraph (1) of this regulation, the appropriate administering authority is the administering authority which is or was the last appropriate administering authority for the member who is the applicant, or who is the relevant member in relation to any other applicant.

### **Decisions of the administering authority on reconsideration**

**77.**—(1) An administering authority must give written notice of decision after reconsideration under regulation 76 (reference of adjudications to administering authority) to—

- (a) the applicant; and
- (b) where the administering authority is not the Scheme employer, to the Scheme employer, before the expiry of the period of two months beginning with the date the application is received.

(2) But if no such notice is given before the expiry of that period, an interim reply must be sent as soon as is reasonably practicable to the persons mentioned in paragraph (1)(a) and (b) setting out—

- (a) the reasons for the delay; and
  - (b) an expected date for giving the decision (“the expected decision date”)
- (3) A notice under paragraph (1) must include—
- (a) a statement of the decision;
  - (b) a reference to any legislation on which the administering authority relied;
  - (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of these Regulations conferring the discretion;
  - (d) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme that remains unresolved;

- (e) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes Act 1993(a); and
- (f) the addresses at which the Pensions Advisory Service and the Pensions Ombudsman may be contacted.

(4) A decision under paragraph (1) takes effect as a decision of the Scheme employer or administering authority, as the case may be, except where the where the matter concerns the exercise of a discretion, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration or, where that body would have been the Scheme employer but that body is no longer a Scheme employer, back to the appropriate administering authority.

Comment: additional wording at the beginning has been added as the decision of the administering authority might be overturning a decision made by the scheme employer. The wording at the end has been added to cater for situations where the former employer that made the original decision has ceased to be a Scheme employer.

### **Rights of representation**

**78.**—(1) An application under regulation 74 (applications for adjudication of disagreements) or 76 (reference of adjudications to administering authority) may be made or continued to be made on behalf of the applicant by a representative nominated by the applicant.

(2) Where a person who has the right to make, or has made such an application dies, the application may be made or continued on the applicant's behalf by the applicant's personal representatives.

(3) Where such a person is a minor or is or becomes incapable of acting, the application may be made or continued on the applicant's behalf by a family member or some other suitable representative.

(4) Where a representative is nominated before an application is made, the application must specify the representative's full name and address, and whether that address is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used, the representative must nevertheless be sent a copy of—

- (a) any notice under regulation 75(1) (decisions of the adjudicator) or 77(1) (decisions of the administering authority on reconsideration); or
- (b) an interim reply under regulation 75(2) or 77(2).

### **Appeals by administering authorities**

**79.**—(1) This regulation applies where

- (a) a Scheme employer—
  - (i) has decided, or failed to decide any question falling to be decided by that employer under regulation 72 (first instance decisions), otherwise than in the exercise of a discretion; and
  - (ii) is not an administering authority, or
- (b) an adjudicator has issued a decision under regulation 75.

(2) Where this regulation applies, an administering authority maintaining a pension fund into which at the Scheme employer pays contributions or to which a decision under regulation 75 relates may appeal to the Secretary of State against the employer's decision on a question or failure to make a decision on a question or against an adjudicator's decision.

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(a) 1993 c. 48.

Comment: the above amendments have been made to allow the administering authority to appeal against an adjudicator's decision (e.g. in cases where the adjudicator's decision is clearly wrong on a point of law). It must be borne in mind that an adjudicator appointed by, for example, a small employer, may not have the necessary background expertise to arrive at a correct determination or may have overlooked something in the regulations (and this is borne out by the experience of administering authorities). I accept that an adjudicator's decision, by virtue of regulation 75(4), takes effect as a decision of the employer (and so it might be argued that it is, therefore, technically already capable of being the subject of appeal) but I am not convinced that a decision under regulation 75 falls within the wording of regulation 79(1)(a) i.e. a decision taken by the employer under regulation 72; it is a decision taken by an adjudicator under regulation 75 that supplants the employer decision. I think the amendments I've suggested make the process clearer.

- (3) Such an appeal must be made by notice in writing given before the end of—
- (a) the period of six months beginning with the relevant date; or
  - (b) such longer period as the Secretary of State allows.
- (4) The relevant date is—
- (a) where a Scheme employer has decided a question, the date of the notification of the decision;
  - (b) where a Scheme employer has failed to decide a question, the date of the failure.
- (5) For the purposes of paragraph (4)(b) a Scheme employer is to be taken to have failed to decide a question if it has not given a decision in writing at the expiry of three months beginning with the date on which the administering authority has requested a decision in writing.
- (6) Subject to paragraph (7), the Secretary of State must make a decision on the appeal which is to take effect as a decision of the Scheme employer and must issue a notice in writing to the appellant and to any other person appearing to the Secretary of State to be affected by it.
- (7) The appeal must be stayed if, before the appeal is determined, any application is made, to the adjudicator under regulation 74 (applications for adjudication of disagreements), or reference to the administering authority under regulation 76 (reference of adjudications to administering authority) in respect of any of the matters which are the subject of the appeal under this regulation.
- (8) The administering authority must inform the Secretary of State whether it wishes to continue with an appeal stayed under paragraph (7), or to withdraw it and if the appeal is continued, the Secretary of State must make a decision under paragraph (6).

### Exchange of information

- 80.—(1) A Scheme employer ~~which is not an administering authority~~ must—
- (a) inform the appropriate administering authority of all decisions made by the employer under regulation 72 (first instance decisions) or by an adjudicator appointed by the Scheme employer under regulation 74 (applications for adjudication of disagreements) concerning members; and
  - (b) give that authority such other information as it requires for discharging its statutory Scheme functions.

Comments: I have deleted the wording in paragraph (1) as I don't think it will be appropriate for the 2014 Scheme. The administering authority, wearing its hat as a scheme employer, will need to supply (to itself, wearing its administering authority hat, or to whomever it has outsourced the pension function) the data necessary to ensure the correct calculation of benefits. A number of administering authorities already have this 'Chinese wall' between the employing authority and administering authority roles and, wearing the administering authority hat, require the employing authority (payroll and HR) to supply to the Pensions Section information in the same way as any other employing authority participating in the Scheme. See also the comment at regulation 69(6).

I've added the word "statutory" into paragraph (b) as the regulations should only set out what the administering authority must have to discharge its functions, rather than an all-embracing

requirement to send anything the administering authority asks for (e.g. to enable it to undertake consistency checking, which is a service, not a statutory function, and which should therefore simply be a matter for agreement between the employer and the administering authority). Paragraph (3) below sets out the information to be provided annually whereas (1)(b) allows for information to be sent at other times of the year (e.g. when a person commences or ceases membership) and allows for other information that must be provided to the administering authority (other than that in paragraph (3)) e.g. information requirements under the automatic-enrolment procedures under the Pensions Act 2008.

(2) If—

- (a) an administering authority makes any decision under regulations 72 (first instance decisions), 75 (decisions of the adjudicator) or 76 (reference of adjudications to administering authority) about a person for whom it is not the Scheme employer; and
- (b) information about that decision is required by the person's Scheme employer for discharging that employer's Scheme functions,

that authority must give that employer that information.

(3) Within 3 months of each Scheme year end, each Scheme employer must send to the appropriate administering authority a statement showing, for each employment of each of the Scheme employer's employees who have been active members of the Fund during the Scheme year—

- (a) their name and gender,
- (b) their date of birth and national insurance number,
- (c) a unique identifier for the employment,
- (d) date joined the Scheme in the employment if this was during the Scheme year,
- (e) date ceased active membership of the Scheme in the employment if this was during the Scheme year,
- (f) cumulative pensionable pay received in the employment during the Scheme year whilst regulation 9 applied (including the assumed pensionable pay the member was, in accordance with regulation 21, treated as receiving during the Scheme year whilst regulation 9 applied),
- (g) cumulative employee contributions (if any) deducted from pensionable pay under paragraph (f),
- (h) cumulative pensionable pay received in the employment during the Scheme year whilst regulation 10 applied (including the assumed pensionable pay the member was, in accordance with regulation 21, treated as receiving during the Scheme year whilst regulation 10 applied),
- (i) cumulative employee contributions (if any) deducted from pensionable pay under paragraph (h),
- (j) which one of regulations 9 or 10 the member was subject to in the employment at the end of the Scheme year (or at the date of cessation of active membership in the employment if on or after the start of the Scheme year and before the end of the Scheme year),
- (k) cumulative employer contributions in respect of the pensionable pay under paragraphs (f) and (h),
- (l) cumulative additional pension contributions (if any) paid in respect of the employment by the member under regulation 16 during the Scheme year,
- (m) cumulative additional pension contributions (if any) paid in respect of the employment by the employer under regulation 16 during the Scheme year,
- (n) cumulative additional voluntary contributions (if any) paid in respect of the employment by the member under regulation 17 during the Scheme year, and
- (o) cumulative additional voluntary contributions (if any) paid in respect of the employment by the employer under regulation 17 during the Scheme year.

Comment: The above list has been compiled following discussions with both payroll and pensions administration software providers and provides the minimum requirements which we believe are necessary for the 2014 Scheme to be administered. We can see no reason for the list to include the member's pay band (or bands) and the member's contribution rate (or rates) that have applied during the Scheme year nor the periods during which they applied given that, technically, none of that information is necessary to administer the scheme. There could be up to a maximum of 53 changes in a year (if a weekly paid member was on the cusp of a pay band and varied their pensionable hours each week) and, bearing in mind that pensionable pay can fluctuate per pay period, the information would be of little use to the administering authority unless the pensionable pay per pay period is also submitted by the employer. Note that I have only used the term "name" in paragraph (3)(a), rather than forename(s) and surname, as that is the term used in regulation 3(1) of the Occupational and Personal Pension Schemes (automatic Enrolment) Regulations 2010 [SI 2010/772]. See also the comments under regulation 69(3).

### **Interest on late payment of certain benefits**

**81.—**(1) Where all or part of a pension or lump sum payment due under these Regulations (other than a payment due under regulation 17 (additional voluntary contributions)) is not paid within the relevant period after the due date, an administering authority must pay interest on the unpaid amount to the person to whom it is payable.

(2) The relevant period is—

- (a) in the case of a survivor pension, the period ending one month after the date on which the administering authority receives notification of the member's death;
- (b) in the case of any other pension, one year;
- (c) in the case of a lump sum payment, one month.

(3) The due date is—

- (a) in the case of a pension, the date on which it becomes payable;
- (b) in the case of a lump sum under regulation 33 (election for lump sum instead of pension) the benefit crystallisation event date;
- (c) in the case of a death grant, the date on which the member dies or, where notification of death is received more than two years after the date of death, the date of notification;
- (d) in the case of a lump sum under regulation 34 (commutation and small pensions) the date of the commutation election or, if later, the nominated date within the meaning of paragraph 7(3) of Part 1 of Schedule 29 to the Finance Act 2004<sup>(a)</sup>.

(4) Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.

Comment: When a deferred benefit is brought into payment it has Pensions Increase applied to it under the Pensions (Increase) Act 1971. However (and this is a problem that has been ongoing for years), if a deferred benefit for a leaver in April 2015 should have been paid in, say, April 2019 (age 65) with 4 years accumulative PI added, but was not paid until, say, August 2021 (because the administering authority could not trace the member until then), the basic LGPS pension will have interest added under regulation 81 but the PI will not have any interest added (because the PI is due under the PI Act and regulation 81 only provides for interest to be paid on pension and lump sum amounts due under the 2013 Regulations). I know that in the real world some administering authorities take a moral line and pay interest on the PI and others take the line that there appears to be no vires for payment of interest on PI (and so make no such payment). If the policy line is that interest ought to be payable on PI then it would be helpful if regulation 81 could be amended to provide for this. However, if the policy line is that interest should not be payable on PI, it would be helpful if this could be confirmed.

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(a) 2004 c. 12.

### Payments due in respect of deceased persons

**82.**—(1) Paragraph (2) applies if, when a person dies, the total amount due to that person's personal representatives under the Scheme (including anything due at that person's death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965(a) and applying in relation to that person's death.

(2) An administering authority may pay the whole or part of the amount due from its pension fund to—

- (a) a person's personal representatives, or
- (b) any person or persons appearing to the authority to be beneficially entitled to the estate, without the production of probate or letters of administration of the person's estate.

(3) Such a payment discharges that authority from accounting for the amount paid.

### Payments for persons incapable of managing their affairs

**83.**—(1) If it appears to an administering authority that a person other than an eligible child is entitled to payment of benefits under the Scheme but is, by reason of mental disorder or otherwise, incapable of managing his or her affairs—

- (a) the authority may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the authority may determine, to be applied for the benefit of the person entitled; and
- (b) in so far as the authority does not pay the benefits in that manner, the authority may apply them in such manner as the authority may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

### Non-assignability

**84.**—(1) Every benefit to which a person is entitled under the Scheme is payable to or in trust for that person.

(2) No such benefit is assignable or chargeable with that person's, or any other person's, debts or other liabilities.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with an income payments order under section 310 or 310A of the Insolvency Act 1986(b).

### Deduction and recovery of member's contributions

**85.**—(1) A Scheme employer may deduct from a person's pay any contributions payable by the member under these Regulations.

(2) Sums payable under regulation 13(1) (reserve forces leave) may be deducted ~~by the member's former employer~~ from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(c), to the extent that they are payable in respect of the same period.

#### Comments:

- the wording has been struck through because contributions are not deducted by the member's former employer; they are deducted by the MoD from the reserve forces pay

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(a) 1965 c. 32; there are amendments to section 6 which are not relevant to this instrument.

(b) 1986 c. 45; there are amendments to section 310 which are not relevant to this instrument. Section 310A was inserted by the Enterprise Act 2002 (c. 40).

(c) 1951 c. 65.

received by the reservist (based on the instructions the former employer has given to the reservist to pass on to the MoD).

- should the reference to the 1951 Act also make mention of the payments due under regulation 3 of Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 2005 (SI 2005/859)?

(3) An administering authority may recover any contributions or sum remaining due and not deducted under paragraph (1) or (2)—

- (a) as a simple contract debt in any court of competent jurisdiction; or
- (b) by deducting it from any payment by way of benefits to or in respect of the person in question under these Regulations.

(4) But the sums mentioned in paragraph (2) are only recoverable under paragraph (3) if unpaid for 12 months after the person ceases to perform relevant reserve forces service.

(5) If—

- (a) a Scheme employer deducts in error any amount in respect of contributions from a person's pay or any other sum due to that person; and
- (b) the amount has not been repaid before the expiry of the period of one month beginning with the date of the deduction,

the appropriate body must pay interest on the amount, and the due date for the calculation of the interest payable is the date of the deduction.

(6) Where the employee's contributions have been paid into a fund, the repayment and any interest must be made out of that fund.

(7) Interest must be calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.

(8) The "appropriate body" for the purposes of paragraph (5) is—

- (a) the appropriate administering authority, where the employee's contributions have been paid into a fund; and
- (b) the person's Scheme employer where the employee's contributions have not yet been paid into a fund.

### **Joint liability in respect of annual allowance charge**

**86.**—(1) This regulation applies where a member gives notice to the appropriate administering authority of joint and several liability under section 237B (liability of scheme administrator) of the Finance Act 2004(a) in respect of the member's annual allowance charge.

(2) Where the joint liability amount specified in the notice is met by the pension fund, the appropriate administering authority shall reduce the value of the member's rights accrued under the Scheme in accordance with actuarial guidance issued by the Secretary of State.

### **Tax**

**87.** The appropriate administering authority is responsible for deducting from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.

### **Pension increase under the Pensions Schemes Act 1993**

**88.** Any increase of pension required by reason of Chapter 3 of Part 4 of the Pension Schemes Act 1993 (protection of increases in guaranteed minimum pensions: anti-franking)(b) must be paid from the appropriate fund held by the administering authority.

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(a) 2004 c. 12; section 237B was inserted by the Finance Act 2011 (c. 11).

(b) 1993 c. 48.

## Annual benefit statements

89.—(1) An administering authority must issue an annual benefit statement to each of its active, deferred, deferred pensioner and pension credit members.

(2) Subject to paragraph (3), the statement must be issued no later than 65 months after the end of the scheme year to which it relates.

Comment: the amendment to paragraphs (2) and (3) have been made to conform with sections 14(4) and (5) of the Public Service Pensions Act 2013 which requires that the annual benefit statements under the 2014 Scheme be issued by 31<sup>st</sup> August after the end of each Scheme year.

(3) A statement must be issued before the end of the 65 month period mentioned in paragraph (2) where a member makes a request in writing to the administering authority, unless that authority is unable to comply with the request because relevant data is not available.

(4) A statement must contain an illustration of the amount of benefit entitlement in respect of the rights that may arise under the Scheme which—

- (a) has been accrued by the member at the relevant date; and
- (b) in the case of an active member, is capable of being accrued by that member if remaining in the Scheme until normal-retirement pension age.

Comments:

- the amendment to (b) has been made to ensure the correct terminology is used
- paragraph (4) refers to an illustration of accrued rights and projected rights to NPA.

However, I have a number of major concerns.

Firstly, on what basis is the projection to be made? Is it based on a projection of what the member had accrued in the previous Scheme year – but how would this work if the member had been in the 50/50 section for part of the year and in the full section for part of the year? What if the member was in the 50/50 section at the end of the Scheme year – should the projection assume continued membership of the 50/50 section (even though the 50/50 section is only meant to be a short-term option) or should the projection assume the member is in the full section? There is no legal obligation to provide an automatic ABS and no requirement to provide a projection to NPA (although we could choose to do so). If we did so choose, should the projection assume any rate of revaluation? Well, the Disclosure Regulations only allow us to not take account of projected salary increases, so it would appear that we would have to provide the amount of the benefit already accrued and what the revalued amount of that accrued benefit would be at NPA. However, we do not know what the likely revalued accrued pension would be at NPA as we do not know what CPI will be over the period to NPA. So it would appear that a solution would simply be to provide an ABS based on the current accrued values (and say these will go up each year in line with CPI) and not project assumed future accruals. Regulation 5(4) of, and paragraph 4 of Schedule 2 to, the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 [SI 1996/1655] require that:

“Except in relation to money purchase benefits, the information mentioned in paragraph 4 of Schedule 2, so far as it relates to any active member, deferred member or pension credit member, shall be furnished to such members, on request (not being a request made within 12 months of the last occasion on which any such information as is mentioned in that paragraph was furnished to the member making the request) as soon as practicable and, in any event, within 2 months of the request being made.”

Paragraph 4 to Schedule 2 says that the information to be provided is “in the case of -

(a) an active member, the information specified in either (the trustees having the option to choose which one) of paragraphs (i) or (ii), together with the information specified in paragraph (iii) -

(i) the amounts of his own benefits and of his survivors' benefits which would be payable from normal pension age or death if his pensionable service were to terminate within 1

month of the date on which the information is furnished to him, calculated without regard to possible increases in his salary;

(ii) the amounts of his own benefits and of his survivors' benefits which would be payable from normal pension age or death thereafter if his pensionable service were to terminate on his attaining normal pension age, calculated without regard to possible increases in his salary;

(iii) except in the case of a simplified defined contribution scheme, the amount of any death in service benefits that would be payable if the member were to die on a specified date which is within 1 month of the date on which the information is furnished to him, with details of how those benefits are calculated;

(b) a deferred member, the date pensionable service ceased and the amounts of his own benefits and of his survivors' benefits payable from normal pension age or death.

(c) a pension credit member, the amounts of his own benefits and of any survivors' benefits payable from normal benefit age or death.

In the case of an active member or a deferred member, the information must include:

- the date on which the member's pensionable service commenced;
- the accrual rate or formula for calculating the member's own benefits and any survivors' benefits;
- the amount of the member's pensionable remuneration on a specified date being, in the case of an active member, the date on which the information is furnished to him or a date within 1 month thereof, and in the case of a deferred member, the date pensionable service ceased; and
- details of how any deduction from benefits is calculated.

In the case of a pension credit member, the information must include:

- the method or formula for calculating the member's own benefits and any survivors' benefits; and
- details of how any deduction from benefits is calculated.

Note: the draft Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 propose the consolidation and harmonisation of the principal disclosure of information regulations for occupational and personal pension schemes. Regulation 16 of, and schedule 5 to, that draft SI say:

*16 Statements of benefits: non money-purchase benefits*

*(1) The information mentioned in paragraph (2) must be given in accordance with this regulation where-*

- (a) the member has rights to benefits that are not money-purchase benefits,*
- (b) the member requests that information, and*
- (c) that information has not been given to that member in the 12 months before that request.*

*(2) The information that must be given is-*

- (a) for active members, the information listed in Parts 1 and 2 of Schedule 5,*
- (b) for deferred members, the information listed in Parts 2 and 3 of Schedule 5,*
- (c) for pension credit members, the information listed in Part 4 of Schedule 5.*

*(3) The information must be given as soon as practicable but no more than two months after the request.*

#### *Schedule 5*

#### *Statements of Benefits: Non Money-Purchase Benefits*

##### *Part 1*

##### *Information for Active Members*

*1 The amount of any benefits (and how they are calculated) that would be payable on a date specified by the trustees or managers of the scheme if a member of the scheme were to die in service.*

*2 One of the following amounts of the member's benefits and survivors' benefits calculated without regard to possible increases in the member's salary<sup>3/4</sup>*

*(a) the amounts that would be payable from the date benefits are payable if pensionable service were to end on a date specified by the trustees or managers of the scheme,*

*(b) the amounts that would be payable from the date benefits are payable if pensionable service were to end on the member attaining normal pension age, or*

*(c) the amounts that would be payable from the date benefits are payable if pensionable service were to end on a date agreed between the member and the trustees or managers of the scheme.*

*3 The amount of the member's pensionable remuneration on a date specified by the trustees or managers of the scheme.*

##### *Part 2*

##### *Information for Active and Deferred Members*

*4 The date on which the member's pensionable service started.*

*5 The method or formula for calculating the member's benefits and any survivors' benefits.*

*6 Details of how any deduction from benefits is calculated.*

##### *Part 3*

##### *Information for Deferred Members*

*7 The date pensionable service ended.*

*8 The amount of the member's benefits and survivors' benefits payable from the date benefits are payable.*

*9 The amount of the member's pensionable remuneration on the date pensionable service ended.*

Part 4

Information for Pension Credit Members

10 The amount of the member's benefits and survivors' benefits payable from the date benefits are payable.

11 The method or formula for calculating the member's benefits and any survivors' benefits.

12 Details of how any deduction from benefit is calculated.

Given all of the above, I would suggest that paragraph (b) should be deleted and that we simply either rely on paragraph (5) or go beyond that by saying that the information on the benefit statement shall conform with the Treasury Order issued under section 14(3) of the Public Service Pensions Act 2013 **and** any guidance issued by the Secretary of State (or the National Scheme Advisory Board?).

Secondly, I do not think the regulation should describe the annual benefit statement (ABS) as an illustration of accrued rights. If there is to be a projection of future rights, then that can be described as an illustration, but accrued rights should be described as a notification of the amount of accrued benefits. The reason for this is that the ABS should be seen as a formal notification under regulation 73 of an amount of benefit against which the member can submit a formal IDRPs under regulation 74. We must seek to avoid a situation where a member, upon being notified of the value of their benefits at retirement, seeks to query a CARE benefit accrual for a Scheme year 30 years ago (for which the employer is no longer likely to hold any detailed pay records). The only appeal that should be permitted would be against (a) the final year's accrual, (b) the previous year's accrual (if the notification of that was within the last 6 months), and (c) that the sum of each year's accrual had been correctly totalled. The member should not be permitted to appeal against the individual amount accrued in any given year – other than (a) and (b). If this suggestion is taken forward then an appropriate amendment will need to be made to regulation 74(2).

Should regulation 89 require that administering authorities conform with the Statutory Money Purchase Illustration (SMPI) requirements of regulation 5(5) of the Occupational Pension Schemes (Disclosure of information) Regulations 1996? Probably not, as that regulation is, in itself, overriding.

(5) The ~~illustration-statement for an active member~~ must be ~~provided calculated~~ in accordance with ~~Treasury directions specified under~~ section 14 of the Public Services Pensions Act 2013(a).

Comments: The word “illustration” has been amended to “statement” for the reason given under paragraph (4).

The words “for an active member” have been added as section 14 of the Public Service Pensions Act 2013 only covers members who are in pensionable service (pensionable service being defined by section 37 of the Act as meaning “service which qualifies a person to a pension or other benefits under that scheme”). The only members who are in pensionable service are active members.

The remaining amendments have been made to reflect the fact that section 14 of the Public Service Pensions Act 2013 is slightly wider in scope than simply the calculation of the benefits to be shown on the ABS.

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(a) 2013 c. 25.

(6) The relevant date is 31st March before the date that the statement is issued, or such later date as the authority may choose.

### **Information to be supplied by employees**

**90.**—(1) Before the expiry of three months beginning with the date on which a person becomes a member, the Scheme employer must ask the member in writing for the documents specified in paragraph (2).

(2) Those documents are—

- (a) a statement in writing listing all the person’s previous periods of employment; and
- (b) copies of all notifications previously given to the member under these Regulations and their equivalents under any previous regulations.

*Note: the words “previous regulations” have been used here rather than “Earlier Regulations” as the use of that latter term, as defined in the Transitional Provisions and Savings Regulations 2013, would not have covered notifications given under the 1974 or 1986 Regulations.*

(3) A request under this regulation must contain a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining the member’s rights under the Scheme.

(4) The Scheme employer need not request any documents if it is satisfied that it, or the appropriate administering authority (if different), already has all material information.

### **Forfeiture**

#### **Forfeiture of pension rights after conviction for employment-related offences**

**91.**—(1) If a member is convicted of a relevant offence, the former Scheme employer may apply to the Secretary of State who may issue a forfeiture certificate.

(2) A relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment.

(3) Where a former Scheme employer applies for a forfeiture certificate, it must at the same time send the convicted person and the appropriate administering authority a copy of the application.

(4) Where a forfeiture certificate is issued, the member’s former Scheme employer may direct that any of the member’s rights under these Regulations are forfeited.

(5) The former Scheme employer must serve a notice of its decision to make a direction on the member.

(6) A forfeiture certificate is a certificate that the offence—

- (a) was gravely injurious to the State, or
- (b) is liable to lead to a serious loss of confidence in the public service.

(7) If the former Scheme employer incurred loss as a direct consequence of the relevant offence, it may only give a direction under paragraph (4) if it is unable to recover its loss under regulation 93 (recovery or retention where former member has misconduct obligation) or otherwise, except after an unreasonable time or at disproportionate cost.

(8) A direction under paragraph (4) may only be given if an application for a forfeiture certificate has been made by the former Scheme employer before the expiry of the period of three months beginning with the date of conviction.

#### **Interim payments directions**

**92.**—(1) If—

- (a) a person leaves an employment in which that person was a member of the Scheme because of an offence in connection with that employment; and

(b) a forfeiture certificate has been issued under regulation 91(1) (forfeiture of pension rights after conviction of employment-related offences) in respect of that offence, the former Scheme employer may give an interim payments direction to the appropriate administering authority.

(2) But it may not give such a direction if it has—

- (a) notified the person of a decision under regulation 72 (first instance decisions) on any question as to entitlement to benefit; or
- (b) given any direction under regulation 91(4) (“a forfeiture direction”).

(3) An interim payments direction is a direction to make interim payments to any person who appears to the former Scheme employer to be a person who would be entitled to receive payment of a benefit under the Scheme if no forfeiture direction were given.

(4) The person to whom payments must be made and the amounts must be specified in the direction.

(5) The amounts must not exceed the amounts which the person specified would be entitled to be paid if no forfeiture direction were given.

(6) An interim payments direction is not a decision under regulation 72 (first instance decisions) as to any person’s entitlement to a benefit.

(7) Payments in accordance with an interim payments direction shall be deemed to be payments in respect of a benefit to which the recipient was entitled (regardless of any contrary forfeiture direction or decision under regulation 72).

### **Recovery or retention where former member has misconduct obligation**

93.—(1) This regulation applies where a person—

- (a) has left an employment in which that person was or had at some time been a member of the Scheme, in consequence of grave misconduct or a criminal, negligent or fraudulent act or omission in connection with that employment;
- (b) has incurred some monetary obligation, arising out of that misconduct, act or omission, to the body that was the Scheme employer in that employment; and
- (c) is entitled to benefits under these Regulations which, for the purpose of this regulation, includes entitlement to a refund of contributions.

*Comment: the additional wording has been added to clarify that, for the purposes of this regulation, a benefit includes a refund of contributions. This equates to Administration regulation 76(1)(c)(ii).*

(2) The former Scheme employer may recover or retain out of the appropriate fund the lesser of—

- (a) the amount of the monetary obligation; or
- (b) the value at the time of recovery or retention of all rights-benefits in respect of the former employee with respect to that person’s previous membership (as determined by an actuary, except where the benefit is a refund of contributions).

*Comment: the words “the lesser of” have been added so that, for example, if the monetary obligation is less than the value of the members rights, the Scheme employer only has the right to retain or recover the monetary obligation. The word “rights” has been amended to “benefits” to tie in with paragraph (1)(c). The words “except where the benefit is a refund of contributions” have been added as there is no need for any actuarial input to calculate that amount – it is something the administering authority can easily calculate.*

(3) The rights specified in paragraph (2)(b) do not include earned pension credited under regulation 101 (inward transfer of pension rights), additional pension purchased by the member under regulation 16 (additional pension contributions) or additional voluntary contributions paid by the member under regulation 17 (additional voluntary contributions).

(4) The former Scheme employer must give the former employee—

- (a) not less than three months' notice of the amount to be recovered or retained under paragraph (2); and
- (b) a certificate showing the amount recovered or retained, how it is calculated and the effect on the person's benefits or prospective benefits.

(5) If there is any dispute over the amount of the monetary obligation specified in paragraph (1)(b), the former Scheme employer may not recover or retain any amount under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbitrator.

#### **Adjustment of accounts following forfeiture etc**

**94.**—(1) Where a forfeiture direction is issued under regulation 91 (forfeiture of pension rights after conviction for employment-related offences) the appropriate administering authority must transfer out of the member's pension account the benefits which are forfeited.

(2) Where an amount is recovered or retained under regulation 93 (recovery or retention where former member has misconduct obligation), the appropriate administering authority must transfer out of the member's pension account the amount recovered or retained and pay it to the relevant Scheme employer.

(3) If the effect of a forfeiture direction, or of the recovery or retention of an amount, is to extinguish the member's entitlement to benefits, the administering authority must close the member's pension account.

(4) If after making a payment under paragraph (2) the appropriate administering authority is required to make a transfer payment under Chapter 4 or Chapter 5 of Part 4 of the Pension Schemes Act 1993 or to make a payment under regulation 103 (changes of administering authority) for a former employee, the former Scheme employer must repay it if requested to do so.

*Comment: Unless there is anything in overriding legislation to require this (and, although I've looked, I can't find it) I'd suggest this paragraph is deleted.*

#### **Protection of guaranteed minimum pension rights**

**95.**—(1) The power to direct forfeiture of benefits under regulation 91 (forfeiture of pension rights after conviction for employment-related offences) or to recover or retain amounts under regulation 93 (recovery or retention where former member has misconduct obligation) may not be exercised so as to deprive a person of the guaranteed minimum pension or any widow's, widower's or surviving civil partner's guaranteed minimum pension.

(2) But such a power may be exercised if the person is convicted—

- (a) of the offence of treason; or
- (b) of one or more offences under the Official Secrets Acts 1911 to 1989 for which the person has been sentenced on the same occasion—
  - (i) to a term of imprisonment of at least 10 years, or
  - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years.

#### Transfers

*General comment: The issue of Club Transfers post 31/3/14 needs to be clarified i.e.*

- *how are transfers in from a Club scheme after 31/3/14 to be dealt with given that the other Club schemes will still have a final salary scheme but the LGPS will not? This will not just be a problem during 2014/15 but also thereafter in respect of members within 10 years of NPA who will have been left in the sending scheme's final salary section beyond 2014/15, and*

- how are transfers out occurring during 2014/15 to be dealt with by the receiving scheme, given that the LGPS will have a CARE scheme in 2014/15 but the other public sector schemes in the Club will not.

There will also be difficulties in that the revaluation rates in the schemes are different. This could, depending on how the Club arrangements are implemented, result in a cost to the LGPS in respect of all Club transfers in and this, coupled with the additional cost if the LGPS is a net importer, which seems likely, will mean the cost of the Club to the LGPS may far outweigh the purported benefit of ease of movement of staff. In any event, one might have to question the need for a Club long term when there will come a time when most employees will be in a CARE scheme.

### **Rights to payment out of pension fund**

**96.**—(1) A member may apply for a transfer under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993 (as modified by these Regulations) and where the member does so the amount of any transfer payment due in respect of the member under the relevant transfer may only be paid by the administering authority from its pension fund if the transfer payment is a recognised transfer (within the meaning of section 169 of the Finance Act 2004<sup>(a)</sup>).

(2) Where such a transfer payment is to be or has been paid from a fund, no other payment or transfer of assets may be made from the fund as respects the accrued rights covered by the transfer payment.

(3) Paragraph (2) overrides anything to the contrary in any regulations including these Regulations or in any local Act scheme.

*Comment: delete “or in any local Act scheme” if no administering authorities come forward with a reason to retain those words.*

### **Contracting-out requirements affecting transfers out**

**97.**—(1) There must be deducted from the transfer payment to be made in respect of any person ~~to a contracted-in defined benefit registered pension scheme—~~

- (a) the amount of any contributions equivalent premium payable pursuant to section 55 of the Pension Schemes Act 1993; or
- (b) an amount sufficient to meet the liability in respect of the person’s contracted-out rights.

~~(2) But the amount mentioned in paragraph (1) may not be deducted where the transfer payment is made to a registered pension scheme which is contracted-out.~~

~~(3)~~(2) Where the amount mentioned in paragraph (1)(a) is deducted, the appropriate administering authority must use that amount to pay the premium.

~~(4)~~(3) Where the amount mentioned in paragraph (1)(b) is deducted, the appropriate administering authority may use the amount in preserving the liability mentioned in that paragraph in the appropriate fund unless the member wishes a transfer payment in respect of it to be paid to the trustees or managers of a ~~non~~-contracted-out defined benefit or contracted-in defined contribution registered pension scheme.

~~(5)~~(4) Contracted-out rights, in relation to a member, are—

- (a) the member’s, and any surviving spouse’s, civil partner’s or cohabiting partner’s rights to guaranteed minimum pensions; and
- (b) the member’s section 9(2B) rights as defined in regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(b)</sup>.

*Comment: The amendments above have been made because Regulation 6 of the Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes)*

(a) 2004 c. 12.

(b) S.I. 1996/1172; the definition of section 9(2B) rights in regulation 1(2) was amended by S.I. 1997/786, 1999/3198 and 2011/1246.

(Consequential Amendments) Regulations 2011 [SI 2011/1245] substitutes new regulations 5 and 10 into the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] and allows transfers of contracted-out rights to Contracted-in defined contribution schemes.

### **Bulk transfer (transfers of undertakings etc)**

**98.**—(1) This regulation applies where—

- (a) two or more members' active membership ends on their joining a registered non-local government scheme ("the new scheme");
- (b) it is agreed by—
  - (i) the members' appropriate administering authority,
  - (ii) the members' Scheme employers (if different), and
  - (iii) the trustees or managers of the new scheme,that a payment should be made under this regulation; and
- (c) the members—
  - (i) agree in writing that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993, and
  - (ii) waive any rights they might have under those Chapters by virtue of the cessation of their active membership.

(2) The appropriate administering authority must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5 of Part 4 of the Pensions Schemes Act 1993, as they apply as modified by these Regulations (assuming in any case where a member would not be entitled to such a payment that the member was so entitled).

(3) The appropriate administering authority must provide each member with sufficient information in writing to check that fact before the member agrees as mentioned in paragraph (1)(c).

(4) The appropriate administering authority must—

- (a) set aside (whether in cash or in assets or both) such part of the appropriate fund ("the transfer payment") as an actuary appointed by the authority and an actuary appointed by the trustees or managers of the new schemes for the purpose may agree as appropriate for the acquisition of such rights in that scheme as they may so agree; and
- (b) pay or transfer it to the trustees or managers of the new scheme for the benefit of the relevant members.

(5) The appropriate administering authority must certify to the new scheme's trustees or managers the amount included in the transfer payment which represents each member's contributions and interest on them.

(6) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made from the pension fund by reason of membership covered by the transfer payment.

(7) Paragraph (6) overrides anything to the contrary in any regulations including these Regulations or in any local Act scheme.

**Comment:** delete "or in any local Act scheme" if no administering authorities come forward with a reason to retain those words.

### **Calculation of amount of transfer payment**

**99.**—(1) The amount of the transfer payment to be paid under regulation 98 (bulk transfers) is the amount determined by an actuary appointed by the member's appropriate administering authority to be equal to the value at the date they join the new scheme of the actual and potential liabilities payable from its fund which have then accrued in respect of the members and the persons who are or may become entitled to benefits under the Scheme through them.

(2) The actuary may make such adjustments as are thought fit in calculating that amount and in particular as respects the period from that date to the date of actual payment of the transfer value.

(3) The actuary must specify in the valuation the actuarial assumptions used in making it.

(4) The Scheme employer shall bear the costs of determining the appropriate part of the fund and apportioning the fund.

(5) But if there is more than one Scheme employer involved, each shall bear such part of the costs as the actuary determines to be appropriate.

### **Inward transfers of pension rights**

**100.**—(1) An active member with relevant pension rights may request the appropriate administering authority to accept a transfer value for some or all of those rights from the relevant transferor.

(2) Relevant pension rights are—

(a) accrued rights under a registered scheme other than rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit; and

(b) accrued rights under a European pensions institution.

(3) Accrued rights under a registered scheme include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993(a).

(4) The relevant transferor is the trustees or managers of the scheme under which the transferring person's relevant pension rights arise.

(5) But the relevant transferor for the rights specified in paragraph (3) is the trustees and managers of the scheme, or the insurance company, to which a payment in respect of the person's accrued rights has been made.

(6) A request from a transferring person under paragraph (1) must be made by notice in writing given before the expiry of the period of 12 months beginning with the date on which the person first became an active member in an employment (or such longer period as the Scheme employer may allow).

Note: The item headed "LGPS 2008 – Inward Transfers" in LGPC Bulletin 60 – see

[http://www.local.gov.uk/c/document\\_library/get\\_file?uuid=808c342c-9e7a-452c-95db-3b03faf7eb8b&groupId=10171](http://www.local.gov.uk/c/document_library/get_file?uuid=808c342c-9e7a-452c-95db-3b03faf7eb8b&groupId=10171) set out the Technical Group's view on how the 12 month time limit should be applied in various scenarios. One grey area concerned optants out. The wording above clarifies the position and means that an optant out who continues in employment with the same employer and rejoins the scheme does not have a further 12 month window to opt for a transfer in following the date of rejoining the scheme (unless the Scheme employer so allows).

(7) Where a request under paragraph (1) is duly made, the administering authority may accept the transfer value and credit it to its pension fund.

### **Effect of acceptance of transfer value**

**101.**—(1) Where a transfer value has been accepted under regulation 100 (inward transfer of pension rights), the administering authority must credit the active member's pension account with the appropriate amount of earned pension.

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(a) Section 19 was amended by S.I. 2001/3649, 2005/2050 and 2007/3014.

- (2) The calculation of the appropriate amount of earned pension for the purposes of paragraph (1) is to be in accordance with actuarial guidance issued by the Secretary of State.

### Community scheme transfers

**102.**—(1) The persons mentioned in paragraph (2) are entitled to such rights under the Scheme as are specified in actuarial guidance issued by the Secretary of State.

(2) Those persons are—

- (a) a person who became employed by an EU institution after having been employed in local government service; or
- (b) a surviving spouse, civil partner, cohabiting partner, dependant or child of such a person.

(3) In this regulation—

- (a) “EU institution” means a body treated as one of the EU’s institutions for the purposes of the European Union’s scheme; and
- (b) “the European Union’s scheme” means the pension scheme provided for officials and other servants of the European Union in accordance with regulations adopted by the Council of the European Union.

### Changes of administering authority

**103.**—(1) This regulation applies where—

- (a) ~~an administering authority a pension fund~~ becomes an active member’s appropriate ~~pension fund~~ administering authority;
- (b) immediately before it does so, another ~~pension fund~~ administering authority was that member’s appropriate ~~pension fund~~ administering authority; and
- (c) in a case where a member has the option ~~under regulation 22(7) or (8) to retain a deferred benefit in respect of aggregating~~ the past period of membership ~~with the current period of membership~~, the member has not exercised ~~that the~~ option ~~to aggregate those periods~~.

Comment: the above changes to (a) and (b) and the amendment to (2) below from “and” have been made to deal with transfers between an admission agreement fund and a main fund, both of which are administered by the same administering authority – see regulation 54. I appreciate that there is no definition of “pension fund” but feel this is self-explanatory. I also appreciate that it was initially felt best to remain silent on such transfers between funds held by the same administering authority but the changes will be even more relevant if the suggestion in the comment at the beginning of regulation 54 is taken up. The amendment to (c) has been made to mirror the amendments proposed to regulation 22.

(2) Where paragraph (1) applies and the member’s appropriate administering authority has also changed, the ~~An~~ administering authority which has ceased to be a member’s appropriate administering authority must make a transfer value payment to the member’s new appropriate administering authority in accordance with actuarial guidance issued by the Secretary of State.

Comment: The words “Where paragraph (1) applies” have been added because, without them, the regulation (by using the word “must”) would have required a transfer to be paid even if the member had not aggregated benefits. The additional wording makes it clear that, in cases where a member has a choice over whether or not to aggregate, a transfer is only paid if the member has not chosen to retain separate benefits.

(3) Where paragraph (2) applies as respects 10 or more members by virtue of a single event, the amount of the payment under that paragraph shall be determined by agreement between an actuary appointed by the administering authority by which the payment must be made and an actuary appointed by the administering authority to which it must be made.

(4) Where the actuaries cannot agree on the amount within 12 months of the date of transfer, or where there is more than one date of transfer, the date of the last transfer which relates to the single event—

- (a) the matter shall be referred to a third actuary, chosen by agreement between the actuaries, or in default of agreement, by the President of the Institute and Faculty of Actuaries; and
- (b) that actuary's determination shall be final.

(5) The costs of determining the amount to be transferred shall be paid in equal shares by the fund held by the member's former appropriate administering authority and the fund held by the member's new appropriate administering authority.

(6) Any payment under paragraph (2) must be credited to the new appropriate administering authority's fund.

(7) This regulation does not apply where a member enters an employment which is concurrent with another in which the member is also an active member.

Signed by authority of the Secretary of State.

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

Date

## SCHEDULES

### SCHEDULE 1

Regulation 2

#### Interpretation

“active member” means a person who is in an employment, and—

- (a) paying contributions to the Scheme,
- (b) treated as paying contributions to the Scheme, or
- (c) absent from that employment for one of the reasons mentioned in regulation 11 and entitled to pay contributions to the Scheme;

“actuarial guidance issued by the Secretary of State” means guidance identified by the Secretary of State as such which has been produced after consultation with the Government Actuary's Department;

“additional maternity or adoption leave” means leave under section 73 or 75B of the Employment Rights Act 1996(a);

“additional paternity leave” means leave under the Additional Paternity Leave Regulations 2010(b);

“additional pension” means pension under these Regulations other than earned pension;

“additional voluntary contributions” means payments made under regulation 17;

“administering authority” means a body listed in Part 1 of Schedule 3 which is required to hold a fund for the purposes of these Regulations;

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(a) 1996 c. 18; section 73 was substituted by the Employment Relations Act 1999; section 75B was inserted by the Employment Act 2002.

(b) S.I. 2010/1055

“admission agreement” means an agreement between an administering authority and an admission body that named individuals, or all or any specified class of the admission body’s employees, may be members of the Scheme;

“admission body” has the meaning given in paragraph 1 of Part 3 of Schedule 2;

“amount of accrued pension” means the earned pension in a member’s pension account adjusted to take account of any revaluation adjustment applicable;

“amount of pension payable” means the earned and additional pension in a member’s pension account adjusted to take account of any revaluation adjustment, index ~~rate ation~~-adjustment, commutation amount or pension account adjustment applicable;

**Comment:** “indexation adjustment” amended to “index rate adjustment” as this is the term used throughout the regulations and in Schedule 1.

“annual allowance charge” has the meaning given to that expression by section 227 of the Finance Act 2004(a);

“assumed pensionable pay” has the meaning given by regulation 21;

“automatic enrolment date” means the automatic enrolment date within the meaning of section 3 of the Pensions Act 2008(b);

“automatic re-enrolment date” means the automatic re-enrolment date chosen by a member’s employer in accordance with section 5 of the Pensions Act 2008(c) and regulation 12 of the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010(d) for those of its eligible jobholders who are not active members of the Scheme (or the date the employer would have chosen if the employer does not have any such employees);

“base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

“benefit crystallisation event” has the meaning given by section 7 of the Finance Act 2004;

“child-related leave” means—

- (a) ordinary adoption leave under section 75A of the Employment Rights Act 1996(e);
- (b) ordinary maternity leave under section 71 of that Act;
- (c) additional maternity or adoption leave under section 73 or 75B of that Act(f) during which the member receives some pensionable pay;
- (d) paternity leave under regulations 4 or 8 of the Paternity and Adoption Leave Regulations 2002; or
- (e) additional paternity leave under the Additional Paternity Leave Regulations 2010 during which the member receives some pensionable pay.

“children’s pension” means a pension payable to an eligible child in accordance with regulation 42, 45 or 48;

“commutation amount” means the amount of pension a member has elected to give up in return for a lump sum in accordance with regulation 33;

“co-habiting partner” means a person who fulfils the following conditions—

- (a) the person (P) has fulfilled the condition in paragraph (b) for a continuous period of at least 2 years on the date the member (M) died, and

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(a) 2004 c. 12; section 227 has been amended by the Finance Act 2009 and the Finance Act 2011.  
(b) 2008 c. 30; section 3 was substituted by the Pensions Act 2011 and there have been further amendments which are not relevant to this instrument.  
(c) Section 5 was substituted by the Pensions Act 2011 and there have been further amendments which are not relevant to this instrument.  
(d) S.I. 2010/772.  
(e) 1996 c. 18; section 75A was inserted by the Employment Act 2002.  
(f) Section 73 was substituted by the Employment Relations Act 1999 and was amended by the Employment Act 2002 and the Work and Families Act 2006; section 75B was inserted by the Employment Act 2002.

- (b) the condition is that—
  - (i) M is able to marry, or form a civil partnership with P,
  - (ii) M and P are living together as if they were husband and wife or as if they were civil partners,
  - (iii) neither M nor P is living with a third person as if they were husband and wife or as if they were civil partners, and
  - (iv) either P is financially dependent on M, or M and P are financially interdependent;

Note: unlike under the 2008 Scheme, there is no requirement in the 2014 Scheme for the member and the co-habiting partner to have completed a nomination form.

“deferred member” has the meaning given by regulation 6;

“deferred payment enhancement” means the amount by which a member’s entitlement is increased pursuant to regulation 30(4) or (11);

“deferred pensioner member” has the meaning given by regulation 6;

“dependent” in relation to a person means that in the opinion of the administering authority, at the date of the member’s death—

- (a) the person was financially dependent on the member
- (b) the person’s financial relationship with the member was one of mutual dependence, or
- (c) the person was dependent on the member because of physical or mental impairment;

“early payment reduction” means the amount by which a member’s entitlement is reduced pursuant to regulation 30(5), (6) or (12);

“earned pension” means pension accrued from the member’s pensionable pay pursuant to regulation 23(4) or (5) or as otherwise provided in these Regulations.

“eligible child”, in relation to a deceased member, means—

- (a) a natural or adopted child of a member who meets any of conditions A to C and who was born before, on, or in the case of a natural child, within 12 months of the member’s death; or
- (b) a step-child or child accepted by the deceased as a member of the family (excluding a child sponsored by the member through a registered charity) who—
  - (i) meets any of conditions A to C; and
  - (ii) was dependent on the member at the date of death.

Condition A is that the person is aged under 18.

Condition B is that the person is in full-time education or vocational training and has not reached the age of 23 (but an administering authority may continue to treat a person as fulfilling Condition B notwithstanding any break in a course of education or vocational training, although the person does not fulfil Condition B during such a break).

Comment: I think the words “although the person does not fulfil Condition B during such a break” mean the pension is not payable during that break (as the child is not any eligible child during such a break). That is what we would wish but it would be helpful if this could be made clearer.

Condition C is that the person is unable to engage in gainful employment because of physical or mental impairment and either—

- (i) has not reached the age of 23; or
- (ii) the impairment is in the opinion of an IRMP likely to be permanent and the person was dependent on the member at the date of the member’s death because of that physical or mental impairment.

“European Pensions Institution” has the same meaning as in section 293(8) of the Pensions Act 2004(a)

“gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months;

“index rate adjustment” means the percentage increase that would apply if the balance in the member’s account were a pension in payment eligible for increase under the Pensions (Increase) Act 1971(b);

“IRMP” means an independent registered medical practitioner who is registered with the General Medical Council and—

- (a) holds a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state; and for the purposes of this definition, “competent authority” has the meaning given by section 55(1) of the Medical Act 1983(c); or
- (b) is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA state;

“joint liability amount” has the meaning given to that expression by section 237B(3) of the Finance Act 2004(d);

“local government service” means an employment by virtue of which the person employed is or has been a member of the Scheme;

“membership” is to be construed in accordance with section 124(1) of the Pensions Act 1995(e)

*Note: although there is no definition of membership in that section of the Act there is a definition of “member” and “membership” is to be construed in accordance with that.*

“normal pension age” means the pensionable age of a person as specified from time to time in Schedule 4 to the Pensions Act 1995(f), or if higher, age 65.

“occupational pension scheme” has the meaning given by section 1 of the Pensions Schemes Act 1993(g);

“ordinary adoption leave” means leave under section 75A of the Employment Rights Act 1996(h);

“ordinary maternity leave” means leave under section 71 of the Employment Rights Act 1996;

“paternity leave” means leave under regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(i);

“payment period” means a period of service to which an employee’s wages or salary payments relate;

“pensionable age” has the meaning given in section 181 of the Pension Schemes Act 1993;

“pensionable pay” has the meaning given by regulation 20 but if the circumstances specified in regulation 21(2) apply, references in these Regulations to a member’s pensionable pay are references to that member’s assumed pensionable pay;

“pension credit” means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;

“pension credit member” has the meaning given by regulation 8(1);

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(a) 2004. c. 35; section 293(8) was amended by S.I. 2007/3014.

(b) 1971 c. 56.

(c) 1983 c. 54; the definition of “competent authority” was inserted by S.I. 2007/3101.

(d) 2004 c.12; section 237B was inserted by the Finance Act 2011.

(e) 1995 c. 26.

(f) 1995 c. 26.

(g) 1993 c. 48; the definition of “occupational pension scheme” was substituted by the Pensions Act 2004 and was amended by S.I. 2007/3014.

(h) 1996 c. 18; section 75A was inserted by the Employment Act 2002 and was amended by the Work and Families Act 2006.

(i) S.I. 2002/2788.

“pension debit” means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999(a);

“pensioner member” has the meaning given by regulation (7)(1);

“pensions board” means a board or committee established by an administering authority to discharge functions under regulation 2(3);

“pension sharing order” means any provision or order specified in section 28 of the Welfare Reform and Pensions Act 1999;

“Pensions Regulator” means the body corporate established under section 1 of the Pensions Act 2004(b)

“permanently incapable” means that the member will, more likely than not, be incapable until at the earliest, the member’s normal pension age;

“public service pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993(c);

“qualifying recognised overseas pension scheme” has the same meaning as in section 169(2) of the Finance Act 2004(d);

“qualifying service for a period of two years” has the meaning given in regulation 3(7);

“reference banks” means the seven largest persons for the time being who—

- (a) have permission under Part 4 of the Financial Services and Markets Act 2000(e) to accept deposits;
- (b) are incorporated in the United Kingdom and carry on there a regulated activity of accepting deposits; and
- (c) quote a base rate in sterling,

and for the purposes of this definition, the size of the person at any time is to be determined by reference to the gross assets denominated in sterling of that person, together with any subsidiary (as defined in section 1159 of the Companies Act 2006(f)), as shown in the audited end-of-year accounts last published before that time;

“registered pension scheme” has the same meaning as in section 150(2) of the Finance Act 2004(g);

“reserve forces pay” means the total of—

- (a) pay for performing relevant reserve forces service (including marriage, family and similar allowances), and
- (b) any payments under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(h);

“reserve forces service leave” means absence from duty because of being called out or recalled for permanent service in Her Majesty’s armed forces pursuant to a call-out notice served, or a call-out or recall order made, under the Reserve Forces Act 1996(i);

“revaluation adjustment” means the consumer prices index of annual inflation published by the Office of National Statistics for the September preceding the end of a scheme year which is to be applied to the sum in a pension account at the beginning of the next ~~end of that~~ scheme year;

Comments:

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- (a) 1999 c. 30.
  - (b) 2004 c. 35.
  - (c) 1993 c. 48; section 1 has amendments which are not relevant to this instrument.
  - (d) 2004 c. 12.
  - (e) 2000 c. 8.
  - (f) 2006 c. 46.
  - (g) 2004 c. 12.
  - (h) 1951 c. 65.
  - (i) 1996 c. 14.

- the amendment to the wording is to reflect the decision that the adjustment should occur at the beginning of the new scheme year and not the end of the old scheme year (in order to tie in with the annual allowance calculation required under the Finance Act 2004).
- Treasury have requested that this definition should be amended to refer instead to section 9(2) of the Public Service Pensions Act 2013. We could also, if Treasury was concerned, have a fall-back of CPI in case no Treasury Order was made in time for 1/4/15 (unlikely to occur, but theoretically possible).

“the Scheme” means the scheme established by these Regulations;

“Scheme employer” means a body listed in Schedule 2 employing an employee who is eligible to be a member and includes an admission body;

“Scheme employer’s consent” includes the consent of the appropriate administering authority in circumstances where the member’s former employer is no longer a Scheme employer;

“scheme employment” means an employment by virtue of which a person is entitled to be a member of this Scheme;

“scheme manager” has the meaning given by regulation 2(2);

“Scheme pays election” means a member giving the administering authority notice of joint and several liability under section 237B of the Finance Act 2004(a) in respect of the member’s annual allowance charge;

“scheme year” means a period of one year beginning with 1st April and ending with 31st March;

“shared cost additional voluntary contribution arrangements” means arrangements established under regulation 17 to which both the Scheme employer and the active member contribute;

“statutory pay” means any statutory maternity, paternity or adoption pay payable under the Social Security Contributions and Benefits Act 1992(b);

“survivor member” means a person entitled to a survivor pension or a children’s pension;

“survivor pension” means a pension payable under regulations 41, 42, 44, 45, 47 or 48;

“Tier 1 benefits” has the meaning given by regulation 35(5) calculated in accordance with regulation 39;

“Tier 2 benefits” has the meaning given by regulation 35(6) calculated in accordance with regulation 39;

“Tier 3 benefits” has the meaning given by regulation 35(7) calculated in accordance with regulation 39;

“trade dispute” has the meaning given in section 218 of the Trade Union and Labour Relations (Consolidation) Act 1992(c);

“transferred in benefit” means a benefit in a member’s pension account deriving from a transfer value payment;

“transfer value payment” means a payment made from the Scheme to another registered pension scheme or qualifying recognised overseas pension scheme, or a payment received by the Scheme from a registered pension scheme or from a European Pensions Institution.

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

(b) 1992 c. 4.

(c) 1992 c.52.

## SCHEDULE 2

Regulation 3

### Scheme employers

#### PART 1

**1.** In England, a county council, a district council, a London borough council, the Greater London Authority or the Common Council of the City of London.

**2.** In Wales, a county council or a county borough council.

**3.** A joint board, body or committee appointed under any Act or statutory order or statutory scheme, of which all the constituent authorities are councils of a description in paragraph 1 or 2 or a combination of such councils.

**4.** A Mayoral development corporation within the meaning of section 198 of the Localism Act 2011**(a)**.

**5.** A fire and rescue authority within the meaning of the Fire and Rescue Services Act 2004**(b)**.

**6.** A police and crime commissioner.

**7.** A chief constable within the meaning of section 2 of the Police Reform and Social Responsibility Act 2011**(c)**.

**8.** The Commission for Local Administration in England.

**9.** A probation trust established under section 5 of the Offender Management Act 2007**(d)** or a National Probation Service local board.

**10.** The Chichester Harbour Conservancy.

**11.** The Lee Valley Regional Park Authority.

**12.** An integrated transport authority within the meaning of the Local Transport Act 2008**(e)**.

**13.** The Broads Authority.

**14.** A further education corporation, a sixth form college corporation or a higher education corporation within the meaning of section 90 of the Further and Higher Education Act 1992**(f)**.

**15.** The London Pensions Fund Authority.

**16.** The South Yorkshire Pensions Authority.

**17.** The Environment Agency.

**18.** A National Park Authority established under Part 3 of the Environment Act 1995**(g)**.

**19.** An Education Action Forum within the meaning of section 11 of the School Standards and Framework Act 1998**(h)**.

**20.** A proprietor of an Academy within the meaning of section 579 (general interpretation) of the Education Act 1996 who has entered into Academy arrangements within the meaning of section 1 (academy arrangements) of the Academies Act 2010**(i)**.

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**(a)** 2011 c.20.

**(b)** 2004 c. 21.

**(c)** 2011 c.13.

**(d)** 2007 c. 21.

**(e)** 2008 c. 26.

**(f)** 1992 c. 13. Relevant amendments to section 90 were made by the Education Act 2011 (c. 21) and the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22 ).

**(g)** 1995 c. 25.

**(h)** 1998 c. 31.

**(i)** 2010 c. 32. Section 1 has been amended by the Education Act 2011 (c. 21).

**21.** A body set up by a local housing authority as a housing management company to exercise management functions of the authority under an agreement approved by the appropriate minister under section 27 of the Housing Act 1985(a).

**22.** The Valuation Tribunal Service established under section 105 of the Local Government Act 2003(b) and the Valuation Tribunal for Wales established under regulation 4 of the Valuation Tribunal for Wales Regulations 2010(c).

**23.** A conservation board established under section 86 of the Countryside and Rights of Way Act 2000(d).

## PART 2

**1.** The Board of Governors of the Museum of London.

**2.** A body (other than a body listed in Part 1 of this Schedule) which is—

- (a) a precepting authority within the meaning of section 69 of the Local Government Finance Act 1992(e) (interpretation),
- (b) a levying body within the meaning of section 74 of the Local Government Finance Act 1988(f) (levies), or
- (c) a body to which section 75 of that Act (special levies) applies.

**3.** A passenger transport executive.

**4.** An institution designated by an order under section 129 of the Education Reform Act 1988(g).

**5.** An entity connected with a local authority listed in paragraphs 1 to 5 of Part 1 of this Schedule where “connected with” has the same meaning as in section 212(6) of the Local Government and Public Involvement in Health Act 2007(h).

**6.** A company under the control of a body listed in paragraphs 6 to 23 of Part 1 of this Schedule where “under the control” has the same meaning as in section 68 or, as the case may be, 73 of the Local Government and Housing Act 1989(i) (except that any direction given by the Secretary of State must be disregarded, and any references to a local authority treated as references to such a body).

**7.** The Public Services Ombudsman for Wales.

**8.** The Serious Organised Crime Agency.

**9.** Transport for London.

**10.** The London Transport Users’ Committee.

**11.** The Cultural Strategy Group for London.

**12.** The Children and Family Court Advisory and Support Service.

**13.** An urban development corporation.

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- (a) 1985 c. 68. Section 27 was substituted by SI 2003/940 and was subsequently amended by SI 2010/844. For the definition of “appropriate minister” see section 27(18).
  - (b) 2003 c. 26. Section 27 was amended by the Local Government and Public Involvement in Health Act 2007 (c.28).
  - (c) SI 2010/713 (W 69)
  - (d) 2000 (c. 37). There are amendments to section 86 which are not relevant.
  - (e) 1992 c.14.
  - (f) 1988 c. 41.
  - (g) 1988 c. 40. Section 129 has been amended by the Further and Higher Education Act 1992 (c. 13); S.I. 2009/1941; and the Education Act 2011 (c. 21).
  - (h) 2007 c. 28. Section 212 was amended by the Police Reform and Social Responsibility Act 2011
  - (i) 1989 c. 42.

## PART 3

1. The following bodies are admission bodies with whom an administering authority may make an admission agreement—

- (a) a body which provides a public service in the United Kingdom which operates otherwise than for the purposes of gain and has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise);
- (b) a body, to the funds of which a Scheme employer contributes;
- (c) a body representative of—
  - (i) any Scheme employers;
  - (ii) local authorities and officers of local authorities; or
  - (iii) officers of local authorities where it is formed for the purpose of consultation on the common interests of local authorities and the discussion of matters relating to local government;
- (d) a body that is providing or will provide a service or assets in connection with the exercise of a function of a Scheme employer as a result of—
  - (i) the transfer of the service or assets by means of a contract or other arrangement,
  - (ii) a direction made under section 15 of the Local Government Act 1999<sup>(a)</sup> (Secretary of State's powers),
  - (iii) directions made under section 497A of the Education Act 1996<sup>(b)</sup>;
- (e) a body which provides a public service in the United Kingdom and is approved by the Secretary of State for the purpose of admission to the Scheme.

2. An approval under paragraph 1(e) may be subject to such conditions as the Secretary of State thinks fit and the Secretary of State may withdraw an approval at any time if such conditions are not met.

3. The Scheme employer, if it is not also the administering authority, must be a party to the admission agreement with a body falling within the description in paragraph 1(d).

4. In the case of an admission body falling within the description in paragraph 1(b), where at the date of the admission agreement the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, the Scheme employer paying contributions (or, if more than one pays contributions, all of them) must guarantee the liability of the body to pay all amounts due from it under these Regulations.

Comment: An equivalent provision needs to be added into the Transitional Provisions and Savings Regulations 2013 to guarantee the liability in respect of pre 1<sup>st</sup> April 2014 benefits.

Comment: I think the rationale for this goes back to the days (pre 6 April 2006 and the impact of the Finance Act 2004) when the Pension Schemes Office / HMRC had rules concerning non-associated bodies. However, those rules have long since gone and the wording of this paragraph should, therefore, be reconsidered. For example, it might be felt to be more important to have the Scheme employers act as guarantor where they are providing more than 50% of the funding? **This is a policy matter that needs reviewing.**

5. If the admission body is exercising the functions of the Scheme employer in connection with more than one contract or other arrangement under paragraph 1(d)(i), the administering authority

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(a) 1999 c. 27; section 15 has been amended by the Local Government and Public Involvement in Health Act 2007 (c. 28) and the Local Government (Wales) Measure 2009.

(b) 1996 c. 56. Section 497A was inserted by the School Standards and Framework Act 1998 (c. 31) and has been amended by S.I. 2010/1158; the Education Act 2002 (c. 32); and the Apprenticeship, Skills, Children and Learning Act 2009 (c. 22).

and the admission body shall enter into a separate admission agreement in respect of each contract or arrangement.

**6.** An admission agreement must require the admission body to carry out, to the satisfaction of the administering authority, and to the satisfaction of the Scheme employer in the case of a body falling within paragraph 1(d)(i), an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up, or liquidation of the admission body.

**7.** Notwithstanding paragraph 6, and subject to paragraph 8, the admission agreement must further provide that where the level of risk identified by the assessment is such as to require it, the admission body shall enter into an indemnity or bond in a form approved by the administering authority with—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(a) to accept deposits or to effect and carry out contracts of general insurance;
- (b) a firm in an EEA state of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act(b), which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule)(c) to accept deposits or to effect and carry out contracts of general insurance; or
- (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.

**8.** Where, for any reason, it is not desirable for an admission body to enter into an indemnity or bond, the admission agreement must provide that the admission body secures a guarantee in a form satisfactory to the administering authority from—

- (a) a person who funds the admission body in whole or in part;
- (b) in the case of an admission body falling within the description in paragraph 1(d), the Scheme employer referred to in that paragraph;
- (c) a person who—
  - (i) owns, or
  - (ii) controls the exercise of the functions of, the admission body; or
- (d) the Secretary of State in the case of an admission body—
  - (i) which is established by or under any enactment, and
  - (ii) where that enactment enables the Secretary of State to make financial provision for that admission body.

**9.** An admission agreement must include—

- (a) provision for it to terminate if the admission body ceases to be such a body;
- (b) a requirement that the admission body notify the administering authority of any matter which may affect its participation in the Scheme;
- (c) a requirement that the admission body notify the administering authority of any actual or proposed change in its status, including a take-over, reconstruction or amalgamation, insolvency, winding up, receivership or liquidation and a material change to the body's business or constitution;
- (d) a right for the administering authority to terminate the agreement in the event of—
  - (i) the insolvency, winding up or liquidation of the admission body,

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(a) 2000 c.8.

(b) Paragraph 5(b) of Schedule 3 was amended by S.I. 2006/3221, and paragraph 5(d) of that Schedule was amended by S.I. 2004/3379.

(c) There are amendments to paragraphs 12 and 15 of the Schedule which are not relevant to these Regulations.

- (ii) a material breach by the admission body of any of its obligations under the admission agreement or these Regulations which has not been remedied within a reasonable time,
- (iii) a failure by the admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the administering authority requiring it to do so.

**10.** An admission agreement must include a requirement that the admission body will not do anything to prejudice the status of the Scheme as a registered scheme.

**11.** When an administering authority makes an admission agreement it must make a copy of the agreement available for public inspection at its offices and must promptly inform the Secretary of State of—

- (a) the date the agreement takes effect;
- (b) the admission body’s name; and
- (c) the name of any Scheme employer that is party to the agreement.

**12.** Where an admission body is such a body by virtue of paragraph 1(d), an admission agreement must include—

- (a) a requirement that only employees of the body who are employed in connection with the provision of the service or assets referred to in that sub-paragraph may be members of the Scheme;
- (b) details of the contract, other arrangement or direction by which the body met the requirements of that sub-paragraph;
- (c) a provision whereby the Scheme employer referred to in that sub-paragraph may set off against any payments due to the body, an amount equal to any overdue employer and employee contributions and other payments (including interest) due from the body under these Regulations;
- (d) a provision requiring the admission body to keep under assessment, to the satisfaction of the bodies mentioned in paragraph 6, the level of risk arising as a result of the matters mentioned in that paragraph;
- (e) a provision requiring copies of notifications due to the administering authority under paragraph 9(b) or (c) to be given to the Scheme employer referred to in that sub-paragraph; and
- (f) a provision requiring the Scheme employer referred to in that sub-paragraph to make a copy of the admission agreement available for public inspection at its offices.

**13.** Where an admission body of the description in paragraph 1(d) undertakes to meet the requirements of these Regulations, the appropriate administering authority must admit to the Scheme the eligible employees of that body.

#### PART 4

<i>Column 1: Person eligible for membership</i>	<i>Column 2: Body deemed to be Scheme employer</i>
Employee of the governing body of a voluntary school where a local authority has, with the consent of the governing body, designated that employee or a class of employees to which that person belongs as being eligible for membership	The local authority referred to in column 1
Employee of the governing body of a foundation school or foundation special school where a local authority has, with the consent of the governing body, designated that employee	The local authority referred to in column 1

or a class of employees to which that person belongs as being eligible for membership	
Employee of the governing body of a technical institute or other similar institution which is for the time being assisted by a local authority under the Education Act 1996(a) where a local authority has, with the consent of the governing body, designated that employee or a class of employees to which that person belongs as being eligible for membership	The local authority referred to in column 1
Employee of the governing body of a federated school where a local authority has, with the consent of the governing body, designated that employee or a class of employees to which that person belongs as being eligible for membership	The local authority referred to in column 1
A person who was an active member of the 2008 Local Government Pension Scheme by virtue of regulation 8A of the Local Government Pension Scheme (Administration) Regulations 2008(b) and who continues in the employment of the Commissioners for Her Majesty's Revenue and Customs.	The London Pension Fund Authority
A coroner	The authority which appointed the coroner
The Mayor of London	The Greater London Authority
A member of the London Assembly	The Greater London Authority
A police and crime commissioner	That police and crime commissioner
A Local Commissioner within the meaning of Part 3 of the Local Government Act 1974(c)	The Commission for Local Administration in England
A member of a passenger transport executive or a director of a subsidiary of a passenger transport executive, where the integrated transport authority for which the executive exercises its functions consents to the designation of that member or director as being eligible for membership	The passenger transport executive

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## SCHEDULE 3

Regulation 53

### Part 1

#### Pension funds

1. The following bodies are required to maintain a pension fund and are administering authorities for the purposes of these Regulations—

- (a) a county council in England;
- (b) a London borough council;
- (c) the Corporation of London;
- (d) Bath and North East Somerset Council;

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(a) 1996 c. 56.

(b) SI 2008/239. Regulation 8A was inserted by SI 2009/447.

(c) 1974 c. 7.

- (e) Bedford Borough Council;
- (f) Bradford District Council;
- (g) Cheshire West and Chester Council;
- (h) East Riding of Yorkshire Council;
- (i) Middlesbrough Borough Council;
- (j) South Tyneside Council;
- (k) Tameside Borough Council;
- (l) Royal Borough of Windsor and Maidenhead Council;
- (m) Wirral Borough Council;
- (n) Wolverhampton City Council;
- (o) the South Yorkshire Pension Authority;
- (p) the Environment Agency;
- (q) the London Pensions Fund Authority;
- (r) Flintshire County Council;
- (s) Carmarthenshire County Council;
- (t) Caernarfonshire and Merionethshire County Council;
- (u) Cardiff County Council;
- (v) Swansea County Council;

~~(w) Flintshire County Council;~~

Comment: deleted this entry as Flintshire CC already appears at entry (r).

~~(x)(w)~~ Gwynedd Council;

~~(y)(x)~~ Powys County Council;

~~(z)(y)~~ Rhonda Cynon Taff County Borough Council;

~~(aa)(z)~~ Torfaen County Borough Council.

## Part 2

### Appropriate Administering Authorities

1. Subject to paragraph 3, the appropriate administering authority for a member of the Scheme is the authority specified in column 2 of the following table for a person of that description.

2. The appropriate administering authority for a former member of the Scheme, or a person entitled to any benefit in respect of a person who is or has been a member of the Scheme, is the same authority as would be the appropriate administering authority for the member in question if that member were still an active member.

3. The Secretary of State may, on application by a Scheme employer, by direction substitute a different administering authority as the appropriate administering authority for a person or class of person.

4. A direction under paragraph 3—

- (a) may only be given after the Secretary of State has consulted any bodies appearing to be affected by a proposed direction, and
- (b) may include provision as to the making of adjustments between funds, the transfer of assets and liabilities, and any other consequential or incidental matters.

5.

<i>Member</i>	<i>Appropriate administering authority</i>
An employee of an administering authority.	That administering authority.

<p>Except where an Scheme employer is listed elsewhere in this table, an employee of a Scheme employer listed in paragraphs 1 to 7, 9, 10, 12, 14, 18, 19, 21, and 23 of Part 1 of Schedule 2, or paragraph 2, 4 or 13 of Part 2 of Schedule 2, which is situated wholly or mainly within the local government area of an administering authority.</p> <p><b>Comment: a superfluous comma has been deleted.</b></p>	That administering authority.
<p>An employee of a Scheme employer listed in paragraphs 1, 8, 9, 10 or 11 of Part 2 of Schedule 2.</p> <p>An employee of the Greater London Authority.</p> <p>An employee of the Commission for Local Administration in England.</p> <p>An employee of the Lee Valley Regional Park Authority.</p> <p>An employee of the Valuation Tribunal Service employed in the London headquarters.</p> <p>An employee of a proprietor of an Academy where immediately before the school achieved Academy status, the appropriate administering authority in relation to that school was the London Pensions Fund Authority.</p>	The London Pensions Fund Authority.
<p>Except where an employee falls within the category of employee for whom this table provides that the London Pensions Fund Authority is the appropriate administering authority, an employee of a proprietor of an Academy.</p>	The administering authority within whose local government area the relevant Academy is located.
<p>An employee of a passenger transport executive.</p>	The same administering authority as is the appropriate administering authority for the integrated transport authority to which the passenger transport authority is accountable.
<p>An employee of a Scheme employer listed in paragraphs 5 or 6 of Part 2 of Schedule 2.</p>	The same administering authority as is the appropriate administering authority for the local authority or body to which the Scheme employer is connected or which it is under the control of.
<p>An employee of the Broads Authority</p>	Norfolk County Council
<p>An employee of an admission body eligible for membership of the Scheme.</p>	The administering authority with which the employer has made the admission agreement.
<p>An employee of the Natural Resources Body for Wales eligible for membership of the Scheme.</p>	The Environment Agency.
<p>An employee of the Children and Family Court Advisory and Support Service</p>	Bradford District Council
<p>An employee of the Public Services Ombudsman for Wales;</p> <p>An employee of the Residuary body for Wales.</p>	Cardiff County Council.
<p>An employee of the National Probation Service</p>	Windsor and Maidenhead Council.

local board for the Thames Valley area.	
An employee of the National Probation Service local board for the South Wales area.	Rhondda, Cynon, Taff County Borough Council.
An employee of the National Probation Service local board for the Dyfed Powys area.	Carmarthenshire Council.

Comment: No fund has been specified for the body mentioned in paragraph 22 of Part 1 of Schedule 2.