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15 August 2016

Dear Vince

Local Government Pension Scheme (LGPS) Amendment Regulations

Thank you for the Department's consultation document inviting comments on changes to the LGPS's regulations.

I respond on behalf of the Local Government Association (LGA) and the Local Government Pensions Committee (LGPC).

The LGA is a politically-led, cross-party membership organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. In total, 435 local authorities are presently members of the LGA. The Local Government Pensions Committee (LGPC) is a committee of councillors constituted by the Local Government Association (LGA), the Welsh Local Government Association (WLGA) and the Convention of Scottish Local Authorities (COSLA). The LGPC considers policy and technical matters affecting the Local Government Pension Scheme (LGPS) in the UK, a scheme which has over 5 million members.

This covering letter sets out the LGA's views on the matters covered in the consultation from a policy perspective. Attached to this letter is an annex that provides our detailed comments on the draft regulations from a technical perspective.

The annex also includes some suggestions for further amendments to the LGPS's regulations which we believe are necessary for the purpose of the effective and efficient administration of the scheme, or which would be highly desirable for those same reasons. Many of those suggestions are already included on the corrections list which you will be aware that we maintain and send over to the Department from time to time. We would welcome a meeting with colleagues at the Department in order to discuss the matters on the correction list and how best to take this list forward in the future.

Fair Deal in the LGPS

The LGA are strongly supportive of the general proposals contained in the consultation document to provide for an individual's continued access to the LGPS when compulsorily transferred from their public sector employment. The principles of the proposed Fair Deal

regulations were a fundamental part of the reformed scheme that was agreed between Government, employees and employers prior to the April 2014 reforms to the LGPS being introduced, and it is positive that we are now one step nearer to this change being implemented.

However, we do have some additional comments we would like to make with regards some aspects of the specific proposals, as detailed below. If it would be useful, we would be very happy to meet with colleagues from the Department to discuss these issues further.

Bodies to which Fair Deal would apply

Pensions protection, as provided for in the wider public sector by HM Treasury Fair Deal guidance, by the 2007 Directions Order for best value authorities in England, and by the 2012 Staff Transfers Direction for local authorities in Wales, is principally intended to protect the pension rights of public sector employees.

However, the draft regulations propose that Fair Deal protection would have to be provided for eligible employees of all LGPS employers, with the exception of the employees of higher education corporations, further education corporations and police and crime commissioners (PCCs). This means that the regulations will cover many non-public sector organisations who participate in the LGPS as a 'community' admission body via an admission agreement with an LGPS fund. Although not directly representing these bodies, requiring them to ensure continued access to the LGPS for transferred staff in their new employment may represent a significant restriction to their flexibility as private organisations and is likely to increase financial pressures on them in the longer term. Indeed, it could increase the risk of such bodies entering liquidation and, as a result, a pensions deficit crystallising that the administering authority is unable to recover.

It also seems inconsistent that while the stated rationale for excluding PCCs from the proposals is that these are not best value authorities and so were not covered by the 2007 Directions Order such rationale has not been extended to LGPS 'community' admission bodies.

Pass-through arrangements

We believe the introduction of Fair Deal arrangements in the LGPS should also include the introduction of mandatory pass-through arrangements i.e. where contractors pay a fixed employer contribution rate for the life of the contract, other than certain costs that would fall to be met by the contractor (such as costs associated with pay awards above the norm). This would provide contractors with more certainty of the costs of pensions provision at the outset of tendering exercises, and potentially open up tendering exercises to smaller organisations who would otherwise be unable to bear the risk that providing a defined benefit pension entails.

The introduction of mandation would also limit the risk to LGPS administering authorities inherent in admitting contractors to the scheme, and could open up potential opportunities for simplifying the admission body application process at some point in the future.

The revocation of the 2007 Directions Order

Paragraph 16 of the consultation document asks for views on pensions protection for individuals who have already transferred out under the Best Value Authorities (Pensions) Direction 2007 and who joined the provider's broadly comparable scheme at that time. The

LGA are keen to ensure that robust pensions protection is provided for these individuals at subsequent re-tenders, and believe this would need to be achieved by ensuring either:

- a) continued access to a scheme broadly comparable to the LGPS, or
- b) access to the LGPS via the admission body route.

Our preference would be that the LGPS's regulations explicitly state that such individuals need to be provided with access to the LGPS at subsequent re-tenders, thus bringing them under the LGPS's Fair Deal arrangements. Accrued rights from the previous scheme could be transferred in on a bulk transfer basis, with the actuaries of the respective schemes agreeing bulk transfer terms and members being given the option of transferring their previous rights into the LGPS on that agreed basis.

If, however, it is determined that such employees cannot be required to be given access to the LGPS at subsequent re-tenders, the 2007 Directions Order should continue to apply to such individuals. The 2007 Directions Order would need to be retained, albeit significantly amended, to achieve this. Failure to provide this minimum level of protection would mean the employees would then only be covered by the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 (as amended by the Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2014). These provide for protection that's considerably less generous than either the 2007 Directions Order or LGPS Fair Deal would provide and it is our view that it would be unfair to provide employees who a) were originally transferred out from a public sector employer, and b) continue to work in the delivery of a public service, such a reduction in their pensions protection.

Current pensions protection provisions in Wales

Pensions protection for employees of Welsh local authorities is currently provided for by the Welsh Authorities Staff Transfers (Pensions) Direction 2012. The consultation document does not refer to this Direction, nor to the current pensions protection system for employees of Welsh local authorities at all.

We would welcome clarification of the Government's planned approach. It is assumed that similar arrangements will be adopted for the 2012 Welsh Direction as are proposed to be adopted in respect of the 2007 Directions Order – i.e. that the 2012 Direction will be revoked and the associated primary legislation will be repealed. The LGA would be supportive of such an approach. However, we would seek clarification as to how re-tenders of contracts that have already been awarded under the 2012 Welsh Direction are planned to be dealt with. Our comments above about re-tenders of contracts that have already been awarded in England under the 2007 Directions Order equally apply to re-tenders of contracts that were awarded under the 2012 Welsh Direction.

Practical concerns

We have some concerns with respect of the day-to-day practicalities of how Fair Deal will work under the regulations as drafted. Our areas of concern are highlighted in the technical annex. If any clarification is needed on the points raised, please do not hesitate to get into touch.

Freedom and Choice – AVC amendments

We welcome the greater flexibility proposed for how members may choose to take their LGPS additional voluntary contributions (AVCs) in future. Whilst we have some concerns with how the regulations, as currently drafted, will work in practice (as detailed further in the

technical annex), the greater flexibility is a positive step, ensuring the LGPS keeps up with the changes that have taken place in the UK pensions scene over the last couple of years.

Early payment of pension for members aged 55 and older

Draft regulation 24 provides for a welcome change that would allow members who left the LGPS with a deferred benefit under the 2007 Benefits Regulations to elect to receive an actuarially reduced pension between the ages of 55 and 59 (inclusive) without requiring their employer's consent. This would bring the provisions of the 2007 Benefit Regulations in line with the 2013 Regulations, where members reaching the age of 55 can already choose to receive an actuarially reduced pension without employer consent being needed. By making this change, all individuals leaving the LGPS on or after 1st April 2008 with a deferred benefit would have this option available to them.

We would strongly support this option being extended to members who left the LGPS prior to 1st April 2008 too. This would require changes to both the 1995 and 1997 Regulations but, as noted in the consultation document, there are good reasons for allowing this. Firstly, as such pensions are paid with actuarial reductions, the change would be cost neutral. Secondly, greater flexibility in how a member may choose to access their pension would be consistent with the Government's Freedom and Choice reforms. And thirdly, it may help to prevent these members from transferring out their pension rights which often results in the payment of a less generous pension benefit.

We note the Department's request for comment on how this would be achieved, given the need to amend the 1995 and 1997 Regulations, and point out that there is precedent of revoked regulations being amended in the past. For example, regulation 17(9) of the LGPS (Transitional Provisions, Savings and Amendments) Regulations 2014 substitutes the definition of 'eligible child' from the 2013 Regulations into each of the 1974, 1986, 1995, 1997 and 2007 (Benefits) Regulations. Further information is contained in the response in the technical annex.

Extension of underpin protections

We have serious reservations about the proposal in draft regulation 25 that would potentially require LGPS funds to provide underpin protection to certain members who have transferred in benefits from other public service pension schemes.

Aside from the fact that these members are being forwardly protected for a type of LGPS membership they never accrued (i.e. pre-April 2014 final salary membership), there are some serious reasons why we are so concerned about this proposal:

- It is being retrospectively imposed on LGPS administering authorities long after the reformed scheme's design and protections have been costed and implemented.
- The individuals transferring into the LGPS make a conscious decision to do so and in the LGPS benefit from a good career average pension scheme. Many of them already benefit from public sector transfer club protections (which are a net cost to the LGPS). Members have not been forced to transfer into the LGPS thereby requiring some form of redress to compensate for any real or perceived loss.
- The protection will have cost implications for the scheme and could potentially make it more likely that the scheme will breach either of the cost control measures that impact upon the LGPS.
- The underpin is only rarely effective as, in the majority of cases, the LGPS career average benefits structure provides a higher pension than the final salary section

would have done. Very few members will see an increase to their pension due to being protected under the underpin.

- At a time of unprecedented workloads in local authority pensions teams, the change will involve significant resource in ascertaining to whom this protection needs to be extended. It is an additional burden that will have very little practical benefit for members to whom the underpin would be extended.
- The proposed amendment would provide the individual with higher protection than they would have had if they had re-joined their former public service pension scheme (without a break of more than 5 years in active membership of a public service pension scheme). Protection within the other public service pension schemes is limited to continued access to a final salary pension scheme and not to the higher of final salary or CARE. Underpin protection gives members the better of the two.
- Most significantly, it is not a protection that is required by the Public Service Pensions Act 2013. Subsection 18(5) of that Act says schemes 'may' provide protections to members who meet certain criteria, but there is no requirement to do so. Additionally, it is clear from subsections (5) to (8) read together that it is up to schemes themselves to set out which individuals should be protected and how this protection should be provided. This extension of the underpin was not agreed by the LGPS's employee and employer representatives at the time of the scheme's reform, and imposing it upon the scheme goes against the principles of collective bargaining which have worked so productively in the LGPS in recent years.

Ultimately, this change would stand to cause significant administrative difficulty for very little gain – we ask the Department to reconsider their approach.

If, however, despite our opposition, the amendment is to be enacted then we would strongly suggest that it is not backdated, as benefits may already have been paid to such members.

Amendments to actuarial guidance

Finally, we note that many of the proposed amendments to the LGPS's regulations would require amendments to be made to the LGPS's actuarial guidance documents too. In acknowledgement of the implementation issues associated with the release of updated actuarial guidance by the Department in April 2016, we would ask that:

- a) the updated pieces of actuarial guidance are issued at the same time as the amending regulations are made and laid, and
- b) suitable guidance is provided for the implementation of the revised actuarial guidance (including detail of transitional arrangements, where necessary).

I hope the above is helpful; if you have any questions, please do not hesitate to contact me.
Yours sincerely



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Annex: Draft regulations

STATUTORY INSTRUMENTS

2016 No.

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Amendment) Regulations 2016

*Made - - - - ****

*Laid before Parliament ****

*Coming into force - - ****

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

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

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

The Secretary of State makes the following Regulations:

Citation, commencement and extent

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

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

Comments: Our view on when specific regulations should have effect is as follows:

Effective from the date the Amendment Regulations come into force

Regulations 3, 4, 5, 11, 15, 20(b), 20(d) except for the definition of Public Sector Transfer Club, 21(b), 24(a), 25(b) (to avoid recalculating benefits for members who have already retired and drawn benefits, with no expectation of an underpin, prior to the date the Amendment Regulations come into force), 26, 29 and 30

Effective from 1 April 2014

Regulations 6, 7, 10 (as we believe the amendment reflects what employers will have been doing in practice since the introduction of the 2014 Scheme), 12, 13, 14, 16 (but regulation 16 could, equally, be effective from the date the Amendment Regulations come into force), 20(c), sub-paragraph (b) in the definition of “revaluation adjustment” in 20(e), 20(f), 21(a), 22, 24(b), 25(a), 27

(8) 2013 c. 25

Effective from 1 April 2015 (i.e. from the date that the new Club rules began to apply to the rest of the members of the Public Sector Transfer Club, although it might be decided that the effective date for the following regulations should be 1 April 2014 being the date the LGPS moved to a CARE Scheme)

Regulations 17, 18, 19, 20(a), the definition of Public Sector Transfer Club in 20(d), subparagraph (a) in the definition of “revaluation adjustment” in 20(e)

Effective from 1 April 2017

Regulations 8, 9 and 28 (the changes connected with benefit options for AVC members). The suggested delay in the effective date until 1 April 2017 is because there needs to be a sufficient period between the date the regulations are made and laid and the date they come into effect. This is to give the AVC providers time to implement processes to assist administering authorities in the new requirements, including making and taxing UFPLS payments direct to members and securing compliance with the Disclosure Regulations concerning statements which must be made about members’ benefit options under the Scheme.

(3) These Regulations extend to England and Wales.

Amendment of the Local Government Pension Scheme Regulations 2013

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

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

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

(a) Part 2 of Schedule 2 (scheme employers) who is designated or who belongs to a class of employees that is designated by that body as being eligible for membership of the Scheme, or

(b) column 1 of the table in Part 4 of Schedule 2,

is deemed to be working in local government service for the purpose of these Regulations.

Comment: paragraph (1A) starts with the words “A person employed by a person specified in-“. Referring to a person employed by a person jars slightly when read and it might be better if the wording was amended to read “A person employed by a body specified in-“.

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

Comment: at the end of (1B) add “and where it does so the person is deemed to be working in local government service for the purpose of these Regulations.” The rationale for this is that the words “local government service” are used throughout the LGPS Regulations 2013 (see, for example, the various references to “local government service” in regulations 30 and 51, and in regulations 102(2) and 103(7), together with references in regulations 7(5) and 7(6) of the Transitional Provisions Regulations 2014) and so, for those regulations to apply

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

to members of admission bodies, such members also need to be deemed to be working in local government service. The amendment to the definition of “local government service” which is being made by regulation 20(b) below will also, in consequence, need a slight amendment (as shown in the comment under regulation 20(b) below).

4.—(1) In regulation 3⁽¹⁰⁾ (active membership) for paragraph (1) substitute—

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

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

(2) After paragraph (1) insert—

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

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

Comment: this regulation sets out a requirement for an admission agreement to be entered into with an employer of a protected transferee i.e. with a protected transferee employer. However, this should not apply to a protected transferee employer which is itself an employer listed in Part 2 of Schedule 2 (as these employers simply have to designate employees, not enter into an admission agreement). Therefore, regulation 3(1B) should be amended to exclude any protected transferee employer that is an employer listed in Part 2 of Schedule 2 from the requirement to enter into an admission agreement.

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

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

(10) There are amendments to regulation 3 which are not relevant to these Regulations.

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

Comments:

- in order to ensure that employees of bodies in Part 4 of Schedule 2 are adequately covered we would suggest that the words “was employed by” are changed to “was employed, or deemed to be employed, by”
 - this regulation provides that a person is only a “protected transferee” if the new employer “does not offer membership of another public service pension scheme”. However, to be more precise, shouldn't the regulation say “does not offer **that person** membership of another public service pension scheme”? Otherwise it could inadvertently be interpreted as meaning that if the employer does not offer membership of another public service pension scheme to the transferred employee there is no protection merely because it does offer such membership to other employees.
 - at a more fundamental level there are a number of scenarios where we would question whether the regulation, as drafted, delivers the policy intention i.e.
 - (i) how does the regulation interact with regulation 4(2)? For example, a person's employment is compulsorily transferred to a Care Trust. Regulation 4(2) says that despite being entitled to membership of the NHS Pension Scheme the person can remain a member of the LGPS if an admission agreement is entered into. Would regulation 3(1C) [compulsory admission agreement] not apply and regulation 4(2) [optional admission agreement] apply instead? Is that the intention?
 - (ii) is it intended that “machinery of government” changes (i.e. where a function / service and the employees employed in that function / service are transferred to another part of the public sector via an Act or other legislative provision) are not covered by regulation 3(1C) (i.e. because they would be offered membership of another public service pension scheme)?
 - (iii) where, for example, an NHS scheme employer bids for and wins a contract to provide public health services the transferred employees would be offered membership of the NHS Pension Scheme. They would not, therefore, be protected transferees because they are offered membership of another public service pension scheme. Is that the policy intention? If, at retender, the contract is then won by a private contractor it would appear that the transferred employees would again not be protected transferees because they were not in, or eligible to be in, the LGPS immediately before their employment was transferred to the private sector contractor. They would also not be covered by the new Fair Deal policy (i.e. Fair Deal for staff pensions: staff transfer from central government – document dated October 2013). Is that the policy intention?
- (3) In paragraph (2) for “by virtue of paragraph 1(d)” substitute “by virtue of regulation 2(1A)(b)”.

General comment: although not consulted upon the opportunity should be taken to correct regulation 3(7)(e). This regulation deals with members for whom administering authorities have to pay a benefit to because a CEP cannot be paid. The regulation is not currently correct as:

- i) there is no CEP in respect of females who paid reduced rate NI, and

- ii) there will be no CEP for members who have no pre 6th April 2016 membership (because contracting out ceased from that date and so there will be no contracted-out NI contributions paid after 5 April 2016).

Thus, an amendment should be made to reflect the current legal position following the ending of contracting-out from 6th April 2016 i.e. amend “paid National Insurance contributions” to “paid **contracted-out** National Insurance contributions”. This is a non-controversial amendment and could, presumably, be made without the need for consultation as it would be made simply to reflect the correct legal position.

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

“Fair Deal in local government

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

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

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

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

Comments:

Regulation 3B needs to be redrafted since, as presently drafted:

- (i) paragraph (1) does not properly reflect the interaction with draft regulation 3(1B) which says that an admission agreement has to be entered into when an “application for a determination is received”. To ensure that a protected transferee employer that has to enter into an admission agreement makes an application, the wording of regulation 3B(1) should be amended from “must enter into an admission agreement” to “must **make an application for, and enter into, an admission agreement**”
- (ii) paragraph (1) requires that **ALL** protected transferee employers must enter into an admission agreement. Clearly, only those protected transferee employers who would be admission bodies need to enter into an admission agreement; those protected transferee employers who are, themselves, employers listed in Part 2 of Schedule 2 do not enter into admission agreements and they should, therefore, be excluded from paragraph (1). Paragraph (3) could then be deleted.

(11) Regulation 3A was inserted by S.I. 2014/1146.

- (iii) in paragraph (4) amend “ A person” to “A body”
- (iv) paragraphs (1) to (4) do not appear to adequately deal with a protected transferee employer who is an employer listed in Part 4 of Schedule 2. This is because an admission agreement is not required where the new employer is deemed to be the employer listed in column 2 of Part 4 of that Schedule (as all of those deemed employers are employers listed in either Part 1 or Part 2 of Schedule 2 i.e. are employers which are not admission bodies). Thus, regulation 3B should be amended to exclude such employers from the requirement to enter into an admission agreement. Additionally, there is nothing in draft regulation 3B which requires that where the body listed in column 1 of Part 4 of Schedule 2 has a discretion over whether to give consent to an employee being designated for membership they **MUST** give that consent in the case of a protected transferee employee and, equally, where the protected transferee employer is a passenger transport executive listed in column 2 of Part 4 of Schedule 2, the passenger transport executive (which is a designation body under Part 2 of Schedule 2) **MUST** designate a protected transferee for membership. An amendment to regulation 3B should be made to provide that in these cases the consent **MUST** be given.

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

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

8. In regulation 17⁽¹²⁾ (additional voluntary contributions)—

(a) omit paragraphs (7) to (10);

(b) in paragraph (12)(e) for “made an election under paragraph (7)(b)(ii)” substitute “made an election to purchase an annuity under regulation 17A (use of additional voluntary contribution benefits)”; and

(c) in paragraph (15) for “an annuity purchased under paragraph (7)(b)(ii) substitute “an annuity purchased under regulation 17A”.

Comments:

- the amendment made to regulation 17(12)(e) does not cover all of the situations we now need to cover (but excluding any scenarios where it would not be appropriate to make a payment to the member’s nominee, personal representatives, etc.). For example, paragraph (12)(e) needs to cover not only a member who has made an election under regulation 17A (use of additional voluntary contribution benefits) to purchase an annuity, but also a member who has made an election to transfer their AVC benefits to one or more registered pension schemes or qualifying recognised overseas pension schemes or take an uncrystallised funds pension lump sum (UFPLS) and who dies before the annuity has been purchased, or the transfer payment has been made, or the UFPLS has been paid. We have noticed, however, that quite a few categories of member who also need to be covered by regulation 17(12) are not currently covered. For example, an amendment would be needed to regulation 17(12)(d) as a Pension Credit member may die before drawing all benefits (i.e. may have taken an

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

UFPLS from their AVC account but left some money in the account and died before drawing the remainder of the money in the account). To deal with such a case the words “drawing benefits” would have to be amended to “drawing all benefits”. Furthermore, regulation 17(12) as drafted does not cover

- (i) an active member who has stopped paying AVCs and who dies in service [they are not covered by the wording of regulation 17(12)(b)], and
- (ii) an active member who has aggregated main scheme benefits from a previous Fund but has left an orphan AVC in that previous Fund, and
- (iii) a pensioner member who deferred taking their AVCs and dies, and
- (iv) a former member who has transferred out main scheme benefits to a different pension scheme but, under Freedom and Choice, has left their AVCs in the LGPS and dies, and
- (v) a deferred pensioner member who has deferred drawing their AVCs and dies

A different approach to regulation 17(12) is, therefore, needed (since to continually expand regulation 17(12) to try to capture every possible scenario does not seem appropriate). A simpler approach would be to completely redraft regulation 17(12) to say something like:

“(12) If a member who has made an election under regulation 17A to use some or all of the AVC benefits as a pension commencement lump sum or to purchase additional pension under the Scheme dies before the election has been put into effect, that election continues to have effect.

(12A) In any other case, the appropriate administering authority shall, at its absolute discretion, decide that any life assurance sum due under the AVC arrangement and the realisable value of any other AVC benefits 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.”

The rationale for taking a different approach in paragraph (12) to that taken in paragraph (12B) is that, in the case of paragraph (12), the member had made a formal election for a particular benefit to be paid under the Scheme regulations which could impact on the level of survivor’s pension payable under the Scheme.

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

“Use of additional voluntary contribution benefits

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

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

Comments:

- amend “qualified” to “qualifying” as per section 169(1)(b) of the Finance Act 2004.
- amend “A member” to “An active or deferred member”. The rationale for this is that we have realised that a separate regulation is needed for pension credit members as the options available to them will depend on whether or not the pension debit member was in receipt of their pension benefits prior to the effective date of the Pension Sharing Order.

- add, at the end of paragraph (2) “in accordance with Part 4ZA of the Pension Schemes Act 1993” as, without this proviso, the regulation would provide a member with a right to a transfer when no overriding right to a transfer exists under the Pension Schemes Act 1993. For example, a member does not have a right under the Pension Schemes Act 1993 to transfer the accrued AVC pot if the member has not ceased payment of AVCs to the scheme or if the member has already drawn part of the AVC pot as a pension or annuity. Regulation 96 of the LGPS Regulations 2013 only provides a right to a transfer where one exists under the Pension Schemes Act 1993 and so regulation 17A should mirror that restriction. It might also be worth considering amending the words “may transfer” to “may make an election to the appropriate administering authority to transfer”. This is because the regulation, as presently drafted, does not specify any process to be followed although, if the reference to Part 4ZA of the Pension Schemes Act 1993 is included in the regulation it is arguable that no process need be specified in the regulation (because the process is set out in Part 4ZA of the Pension Schemes Act 1993).

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

Comments:

- amend “A member” to “An active or deferred member” for the same reason as shown in the comment under paragraph (2).

- amend the words “may take” to “may make one or more elections to the appropriate administering authority to take”. This is because the regulation, as presently drafted, does not specify any process to be followed.

- at the end of paragraph (3) add some additional wording. We did consider adding the words “but subject to the terms on which the AVC provider offers such a lump sum.” However, we concluded that as different AVC providers would offer different terms it would be preferable if a degree of consistency were included within our Regulations to ensure all AVC members were treated the same. We decided that the following words might achieve this aim if added at the end of paragraph (3) – “but subject to the amount being withdrawn from the AVC arrangement and the remaining balance being no less than the minimums set out in guidance issued by the Secretary of State.” For example, the Prudential’s current terms require members to take a minimum of £2,000 as a withdrawal and be left with a minimum of £5,000 following the withdrawal. Leaving the minimum figures to be specified within Secretary of State guidance gives the freedom to keep the figures up to date to match changes in the minimums within the industry. The initial minimum figures, and updates to them, would need to be set to match figures that all of the LGPS AVC providers would be able to accommodate within their terms. DCLG would, from time to time, need to undertake a survey of the AVC providers in order to ascertain these figures.

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

- (a) take AVC benefits wholly or in part as a pension commencement lump sum;
- (b) use some or all of the AVC benefits to purchase additional pension under the Scheme, the amount of which is to be determined by the administering authority in accordance with actuarial guidance issued by the Secretary of State;

- (c) use some or all of the AVC benefits to purchase an annuity from one or more insurance companies (within the meaning of section 275(1) of the Finance Act 2004); or
- (d) transfer some or all of the member's AVC benefits to one or more registered pension schemes or qualified recognised overseas pension schemes.

Comments:

- in the introductory part of paragraph (4) after "who" insert "upon becoming a pensioner member immediately upon ceasing to be an active or deferred member and" for the same reason as shown in the comment under paragraph (2)

- in the introductory part of paragraph (4) after the words "those benefits" add the words "may make an election to the appropriate administering authority to take the whole of the AVC benefits not already taken under paragraph (3) in one or more of the following ways". This is because the regulation, as presently drafted, does not specify the process that should be followed and to ensure that a member drawing AVC benefits at the same time as drawing their main scheme benefits has to draw the whole of any AVC benefits not already drawn under paragraph (3) i.e. the member should not be allowed to use part of their remaining AVC pot under paragraph (4) and defer drawing part to be used later under paragraph (5).

- we accept that it is not necessary, at the end of paragraph (a), to add " , subject to this, when aggregated with the member's commuted lump sum (if any) under regulation 33, not exceeding 25% of the capital value of the member's accrued rights under all local government pension provision in relation to that benefit crystallisation event". This is because any payment made in excess of the 25% maximum would not be a pension commencement lump sum. It would, instead, be an unauthorised payment. Thus, by making reference to a pension commencement lump sum the paragraph achieves the limitation on the maximum that can be drawn as a lump sum.

- in paragraph (d) amend "qualified" to "qualifying" as per section 169(1)(b) of the Finance Act 2004.

- in paragraph (d) delete "some or" because a member only has an overriding right under the Pension Schemes Act 1993 to transfer the whole of their AVC fund

- at the end of paragraph (d), add "in accordance with Part 4ZA of the Pension Schemes Act 1993" as, without this proviso, the regulation would provide a member with a right to a transfer when no overriding right to a transfer exists under the Act. Regulation 96 of the LGPS Regulations 2013 only provides a right to a transfer where one exists under the Pension Schemes Act 1993 and so regulation 17A should mirror that restriction.

- add a new paragraph (f) to cater for members whose level of AVCs has resulted in them overfunding for a Pension Commencement Lump Sum. This will allow them to take the excess as an UFPLS (but this is the only time they can take an UFPS at the point of drawing their main scheme benefits). The new paragraph (f) should read something like:

"(f) take, as an uncrystallised funds pension lump sum, that part of the AVC benefits which has resulted in overfunding (if any) beyond the maximum pension commencement lump sum.";

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

- (a) take up to 25% of the AVC benefits as a pension commencement lump sum;

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

Comments:

- in the introductory part of paragraph (5) after "who" insert "upon becoming a pensioner member immediately upon ceasing to be an active or deferred member and" and after "may" add "except where the AVC benefits are derived from a pension credit" for the same reason as shown in the comment under paragraph (2). Note that this wording will also cover deferred pensioner members who had not drawn AVCs upon first becoming a Tier 3 ill health pensioner.

- in the introductory part of paragraph (5) after the words "that date may" add the words "make one or more elections to the appropriate administering authority to take the AVC benefits not already taken under paragraph (3) in one or more of the following ways". This is because the regulation, as presently drafted, does not specify the process that should be followed and to cover the situation where a member has partly drawn benefits under paragraph (3) and is taking the balance (or part of the balance as an UFPLS) under paragraph (5).

- we accept that it is not necessary, at the end of paragraph (a), to add " , subject to this, when aggregated with the member's commuted lump sum (if any) under regulation 33, not exceeding 25% of the capital value of the member's accrued rights under all local government pension provision in relation to that benefit crystallisation event". This is because any payment made in excess of the 25% maximum would not be a pension commencement lump sum. It would, instead, be an unauthorised payment. Thus, by making reference to a pension commencement lump sum the paragraph achieves the limitation on the maximum that can be drawn as a lump sum. The same argument applies to paragraph (b) in that although it says the member can take AVC benefits "wholly or in part" as one or more uncrystallised funds pension lump sums, this is limited to the amount of the AVC pot that would generate an UFPLS as anything taken above that could not be paid as an UFPLS.

- at the end of paragraph (b) add some additional wording. We did consider adding the words "but subject to the terms on which the AVC provider offers such a lump sum." However, we concluded that as different AVC providers would offer different terms it would be preferable if a degree of consistency were included within our Regulations to ensure all AVC members were treated the same. We decided that the following words might achieve this aim if added at the end of paragraph (b) – "but subject to the amount being withdrawn from the AVC arrangement and the remaining balance being no less than the minimums set out in guidance issued by the Secretary of State." For example, the Prudential's current terms require members to take a minimum of £2,000 as a withdrawal and be left with a minimum of £5,000 following the withdrawal. Leaving the minimum figures to be specified within Secretary of State guidance gives the freedom to keep the figures up to date to match changes in the minimums within the industry. The initial minimum figures, and updates to them, would need to be set to match figures that all of the LGPS AVC providers would be

able to accommodate within their terms. DCLG would, from time to time, need to undertake a survey of the AVC providers in order to ascertain these figures.

- in paragraph (d) amend “qualified” to “qualifying” as per section 169(1)(b) of the Finance Act 2004.

- in paragraph (d) delete “some or” because a member only has an overriding right under the Pension Schemes Act 1993 to transfer the whole of their AVC fund

- at the end of paragraph (d), add “in accordance with Part 4ZA of the Pension Schemes Act 1993” as, without this proviso, the regulation would provide a member with a right to a transfer when no overriding right to a transfer exists under the Act. Regulation 96 of the LGPS Regulations 2013 only provides a right to a transfer where one exists under the Pension Schemes Act 1993 and so regulation 17A should mirror that restriction.

- we are content that members deferring drawing AVCs beyond the date they draw their main scheme benefits should not be given the option of using the AVC pot to purchase additional pension under the Scheme i.e. that the equivalent of paragraph (4)(b) should not be offered.

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

(7) In this regulation—

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

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

There are a number of cases that draft regulation 17A does not cover. These are as follows:

1. Paragraph 2.4 of the current Secretary of State actuarial guidance on flexible retirement (dated 28 April 2016) says that a member with a pre-13th November 2001 AVC contract must cease payment of AVCs under that contract and take all the benefits under that contract at the same time as taking benefits on flexible retirement. Although this is not reflected in paragraph (4) of draft regulation 17A we would not wish it to be as we are happy that paragraphs (4) and (5) of draft regulation 17A should equally apply to a member taking benefits on flexible retirement. The Secretary of State guidance should be amended to reflect this. However, although we are of the view that a member with a pre-13th November 2001 contract should have all the same options under regulation 17A as any other member there are two provisos that would need to be built into the Regulations, namely:
 - if the member draws benefits under paragraph (3) before the date of flexible retirement the option to purchase membership under protected regulation 66(8) lapses

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

- if the member has not utilised paragraph (3) before the date of flexible retirement and does not take the option to purchase membership under protected regulation 66(8) at the date of flexible retirement the option to do so then lapses
2. Regulation 17A does not deal with deferred members who, under Freedom and Choice, have chosen to transfer out their main Scheme benefits but have left behind an orphan AVC pot in the LGPS. These members need to be catered for in regulation 17A and offered the following options:

“A deferred member who only has AVC benefits in the Scheme –

- (a) is subject to paragraph (2) but not to paragraphs (3) to (5)
- (b) may, on or after age 55 and before age 75, make one or more elections to the appropriate administering authority to take the AVC benefits in one or more of the following ways —
 - (i) take up to 25% of the AVC benefits as a pension commencement lump sum;
 - (ii) take AVC benefits wholly or in part as one or more uncrystallised funds pension lump sums but subject to the amount being withdrawn from the AVC arrangement and the remaining balance being no less than the minimums set out in guidance issued by the Secretary of State;
 - (iii) use some or all of the AVC benefits to purchase an annuity from one or more insurance companies (within the meaning of section 275(1) of the Finance Act 2004); or
 - (iv) transfer all of the AVC benefits to one or more registered pension schemes or qualifying recognised overseas pension schemes in accordance with Part 4ZA of the Pension Schemes Act 1993.”

3. Regulation 17A does not deal with the variation on the options needed in respect of pension credit members (including pension credit members who, under the Pension Sharing Order, were only granted a share of the pension debit member’s AVC pot and not part of their main Scheme benefits i.e. the pension credit member only has an ‘orphan’ AVC pot and no main Scheme benefits). The options available to pension credit members depend on whether or not the debit member was in receipt of benefits prior to the effective date of the Pension Sharing Order (as, where that was the case, the pension credit member is not entitled to a pension commencement lump sum or to an uncrystallised funds pension lump sum – see paragraphs 2 and 4A(1)(f) of Schedule 29 to the Finance Act 2004) and pension credit members should not have the right to purchase additional pension under the scheme (or purchase membership under protected regulation 66(8)). The options are, therefore, as follows:

“A pension credit member who only has AVC benefits in the Scheme from a pension credit*–

- (a) is not subject to paragraphs (2) to (5)
- (b) may, before age 75, make an election to the appropriate administering authority to transfer all of the member’s AVC benefits to one or more

registered pension schemes or qualifying recognised overseas pension schemes in accordance with Part IVA of the Pension Schemes Act 1993

- (c) may, on or after age 55 and before age 75, make an election to the appropriate administering authority to take the AVC benefits in one or more of the following ways —
- (i) take up to 25% of the AVC benefits as a pension commencement lump sum provided that, at the effective date of the Pension Sharing Order that gave rise to the pension credit, the pension debit member was not in receipt of benefits to which the Pension Sharing Order relates;
 - (ii) take AVC benefits wholly or in part as one or more uncrystallised funds pension lump sums, subject to the amount being withdrawn from the AVC arrangement and the remaining balance being no less than the minimums set out in guidance issued by the Secretary of State and provided that, at the effective date of the Pension Sharing Order that gave rise to the pension credit, the pension debit member was not in receipt of benefits to which the Pension Sharing Order relates;
 - (iii) use some or all of the AVC benefits to purchase an annuity from one or more insurance companies (within the meaning of section 275(1) of the Finance Act 2004); or
 - (iv) transfer all of the AVC benefits to one or more registered pension schemes or qualifying recognised overseas pension schemes in accordance with Part IVA of the Pension Schemes Act 1993.

[*note: although probably not strictly necessary, the words “from a pension credit” have been included to make it crystal clear that if the member also has AVCs from their own membership of the LGPS, these are not included]

A pension credit member who does not only have AVC benefits in the Scheme from a pension credit —

- (a) is not subject to paragraphs (2) to (5)
- (b) may, before age 75, make an election to the appropriate administering authority to transfer all of the member’s AVC benefits to one or more registered pension schemes or qualifying recognised overseas pension schemes in accordance with Part IVA of the Pension Schemes Act 1993
- (c) may, when aged 55 or over and under the age of 75, make an election to the appropriate administering authority to take AVC benefits wholly or in part as one or more uncrystallised funds pension lump sums, subject to the amount being withdrawn from the AVC arrangement and the remaining balance being no less than the minimums set out in guidance issued by the Secretary of State and provided that, at the effective date of the Pension Sharing Order that gave rise to the pension credit, the pension debit member was not in receipt of benefits to which the Pension Sharing Order relates;.
- (d) may, at the time they start to draw benefits under these Regulations, make an election to the appropriate administering authority to take the AVC benefits in one or more of the following ways —

- (i) take AVC benefits wholly or in part as a pension commencement lump sum provided that, at the effective date of the Pension Sharing Order that gave rise to the pension credit, the pension debit member was not in receipt of benefits to which the Pension Sharing Order relates;
 - (ii) use some or all of the AVC benefits to purchase an annuity from one or more insurance companies (within the meaning of section 275(1) of the Finance Act 2004); or
 - (iii) transfer all of the AVC benefits to one or more registered pension schemes or qualifying recognised overseas pension schemes in accordance with Part IVA of the Pension Schemes Act 1993.
- (e) may, at the time they start to draw benefits under these Regulations, defer taking AVC benefits until reaching the age of 75 and at any time before that date may make one or more elections to the appropriate administering authority to take the AVC benefits in one or more of the following ways —
- (i) take up to 25% of the AVC benefits as a pension commencement lump sum provided that, at the effective date of the Pension Sharing Order that gave rise to the pension credit, the pension debit member was not in receipt of benefits to which the Pension Sharing Order relates;
 - (ii) take AVC benefits wholly or in part as one or more uncrystallised funds pension lump sums, subject to the amount being withdrawn from the AVC arrangement and the remaining balance being no less than the minimums set out in guidance issued by the Secretary of State and provided that, at the effective date of the Pension Sharing Order that gave rise to the pension credit, the pension debit member was not in receipt of benefits to which the Pension Sharing Order relates;
 - (iii) use some or all of the AVC benefits to purchase an annuity from one or more insurance companies (within the meaning of section 275(1) of the Finance Act 2004); or
 - (iv) transfer all of the AVC benefits to one or more registered pension schemes or qualifying recognised overseas pension schemes in accordance with Part IVA of the Pension Schemes Act 1993.”

General – as a result of the insertion of regulation 17A appropriate amendments will need to be made to the references to regulation 17(7)(b)(i) in regulations 25(2)(b), 26(2)(b), 27(2)(b), 33(4)(c), 44(4)(d), 45(4)(d), 45(5)(d), 45(9)(d), 45(10)(d), 47(4)(e), 48(4)(f), 48(5)(f), 48(9)(f), and 48(10)(f). Furthermore, we believe that regulations 44(4)(d), 45(4)(d), 45(5)(d), 45(9)(d), 45(10)(d), 47(4)(e), 48(4)(f), 48(5)(f), 48(9)(f), and 48(10)(f) should have the following words added at the end “which included provision for a survivor’s pension.” This is to reflect paragraphs 2.4 and 3.8 to 3.12 of the Secretary of State actuarial guidance at <http://www.lgpsregs.org/images/SecStateGuidance/Pre-14AVCConversionGuidanceApr2016> in respect of members who commenced paying AVC prior to 1st April 2014. Furthermore, the move to harmonising the treatment of those paying AVCs regardless of whether they commenced payment of AVC pre or post April 2014 means that the Secretary of State guidance at <http://www.lgpsregs.org/images/SecStateGuidance/AVCConversionGuidanceApr2016> will need to be updated to give those who commenced payment of AVCs post 31st March 2014 the choice of whether or not to include a prospective survivor benefit in the amount of additional pension purchased.

10. In regulation 21⁽¹⁴⁾ (assumed pensionable pay)—

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

(b) after paragraph (5) insert—

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

Comment: We accept the need for this amendment but would suggest, for the sake of even-handedness, that it is tweaked to account for those cases where the pensionable pay should be lower i.e. by amending it to read:

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

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

Comments:

In order to ensure that only fees relating to that employment (if the member has more than one) are taken into account and to cater for situations where the member has been in the employment for less than three years we think the regulation should be reworded as follows:

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

*The words “in respect of the fees” have been included to cover cases where a member receives basic pay and fees under a single contract of employment (but see our comment in the paragraph below). In such a case the assumed pensionable pay would be the aggregate of the assumed pensionable pay calculated in the normal way for the basic pay and that calculated under paragraph (5B) for the fees.

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

We fully support the rationale behind the proposed paragraph (5B). It does, however, bring into stark relief an issue over how the duties of returning officer / acting returning officer are to be dealt with under the Regulation. The issue arises due to the fact that the equivalent of regulations 11(2) to (6) of the LGPS (Administration) Regulations 2008 have not been carried forward into the LGPS Regulations 2013. All that exists is regulation 22(2) which requires that separate accounts are held for separate employments. However, it is nearly always the case that the duties of returning officer / acting returning officer are encompassed within a single contract of employment with the main job (e.g. as a Chief Executive). Thus, it would appear that in such cases the regulations have, since 1 April 2014, not required the duties to be treated separately and there would be a single CARE account. This means that the person cannot opt of the scheme in respect of the returning officer / acting returning officer duties without also opting out in respect of the main duties (and vice versa). However, due to regulation 3 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, the member would have to be treated as holding separate employments for the pre 14 membership (but not for the post 14 membership). Not only does this seem a strange outcome but it also begs the question of which of the separate pre 14 employments the post 14 CARE pension should / could be attached to. Would it not be appropriate to re-introduce the equivalent of regulations 11(2) to (6) of the LGPS (Administration) Regulations 2008, as they have done in Scotland – see regulation 102 in the LGPS (Scotland) Regulations 2014.

11. In regulation 22⁽¹⁵⁾ (pension accounts) for paragraph (8) substitute—

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

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

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

Comments:

The amendment made to regulation 22(8), together with the provision concerning optants out, needs to be replicated in regulation 22(7) to ensure consistency of approach. Regulation 22(7) should be amended to read:

“(7) Where an active member with concurrent employments ceases an employment with an entitlement to a deferred benefit (or becomes entitled to deferred benefits in an employment as a consequence of a notice served under regulation 5(2) (ending active membership)), the benefits in the deferred member’s pension account may be aggregated with those in the ongoing active member’s pension account and, if there is more than one such account, the one chosen by the member, if—

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

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

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

Also, although not specifically consulted upon, we still believe that regulations 22(7) and (8) should be amended to provide that the option to retain deferred benefits does not apply where the cessation of the concurrent employment, or the cessation of the employment giving rise to the deferred benefits, occurs because 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.

(i.e. to mirror regulation 16(6) of the Administration Regulations 2008)

As a result of the amendment being made to regulations 22(7) and (8), regulation 103(1)(d) should be deleted.

The Secretary of State actuarial guidance on inter-fund adjustments will need to be updated to reflect the changes being made by the Amendment Regulations.

We also believe that a transitional provision needs to be added to say that any member to whom regulations 22(7) or (8) applied prior to the effective date of the amendments made to them by the Amendment Regulations who:

a) had not notified the appropriate administering authority of their decision within the 12 month period referred to in regulations 22(7) or (8) [prior to their amendment by the Amendment Regulations], and

b) is still within the 12 month period referred to in regulations 22(7) or (8) [prior to their amendment by the Amendment Regulations]

shall have a period of 12 months from the effective date of the amendments to regulations 22(7) and (8) to make an election to aggregate their benefits (or such longer period as the Scheme employer permits).

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

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

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

Comments:

The references to regulations 17A(3) and (5)(b) should be deleted as uncrystallised funds pension lump sums do not count towards the 25% that may be taken as a pension commencement lump sum, though it does count towards the member’s available lifetime allowance at the time of payment. Furthermore, when benefits from an AVC pot are drawn at the same time as the main Scheme benefits they are, technically, a separate benefit crystallisation event and, if drawn in whole or in part as a lump sum, the lump sum would be a pension commencement lump sum. Also, under paragraph 2 of Schedule 29 to the Finance Act 2004 the maximum pension commencement lump sum that can be taken must not exceed the permitted maximum. This is defined as the lower of two amounts. These are:

- the available portion of the member's lump sum allowance - this is an amount equal to 25% of the member's lifetime allowance available at that time, and is calculated on the basis that the member is entitled only to the standard lifetime allowance (see [PTM081000](#)), but where the member's entitlement to the lump sum arose after 5 April 2014 and the member has primary protection or valid enhanced protection at that time and the standard lifetime allowance is less than £1.5 million, use £1.5 million in the calculation instead, and
 - the applicable amount - this represents 25% of the capital value of the benefits coming into payment under the relevant arrangements under the scheme generating the lump sum payment, but ignoring any disqualifying pension credit held
-

To take account of these points regulation 33(1) should be amended by adding at the end “to provide a pension commencement lump sum”.

And regulation 33(2) should be re-written to say:

“(2) The total amount of a member's pension commencement lump sum must include any benefits drawn at the same time from linked* benefit crystallisation events, including those under regulation 17A(4)(a) or (5)(a) (use of additional contribution benefits)”

*this would exclude benefits from pension credit benefits drawn at the same time as these are not linked to the BCE of main scheme benefits.

Regulation 33(3) would need to be amended by adding at the beginning “In order to calculate the maximum pension commencement lump sum,”.

A new paragraph (5) will need to be added:

“(5) In this regulation—

“pension commencement lump sum” has the same meaning as in paragraph 1 of Schedule 29 to the Finance Act 2004;”

As mentioned in the comments on regulation 9 above whether or not a pension credit member can commute pension for lump sum depends on whether or not the debit member was in receipt of benefits prior to the effective date of the Pension Sharing Order (as, where that was the case, the pension credit member is not entitled to a pension commencement lump sum – see paragraph 2 of Schedule 29 to the Finance Act 2004). Regulation 33(4)(a) is not restrictive enough as it allows a pension credit member to commute if the pension debit member's pension is in payment provided the debit member had not commuted any pension for lump sum. Regulation 33(4)(a) should therefore be amended to read:

“(a) a pension credit member where, at the effective date of the Pension Sharing Order that gave rise to the pension credit, the pension debit member was in receipt of benefits to which the Pension Sharing Order relates;”

This is a non-controversial amendment and could, presumably, be made without the need for consultation as it would be made simply to reflect the correct legal position.

A similar amendment is required to regulation 147(3) of the LGPS Regulations in respect of pension credit members whose pension credit was awarded under the LGPS Regulations 1997.

The comments made under regulation 9 above (i.e. the comments regarding the need for additional provisions to cover pension credit members and members with ‘orphan’ AVCs) may result in additional paragraphs being added into regulation 17A. If that is the case then

the references in draft regulation 33(2) to “regulation 17A(4)(a) or (5)(a)” will need to be expanded to encompass the relevant additional paragraphs added into regulation 17A.

One other matter that has recently come to light is that regulation 33(1) only allow the retirement pension to be commuted. Schedule 1 says that “retirement pension” includes earned pension and additional pension but it is not entirely clear whether this includes the revaluation adjustment. It might be helpful, therefore, to add a clarifying amendment to regulation 33(1) i.e. after the words “retirement pension payable” add the words “(including any revaluation adjustment)”.

There is also a connected point that needs to be addressed. Where an active member retires on, say 20 February 2017 and all the paperwork required to process the benefits is received on, say 3 April 2017, that would be the date of the BCE. The member’s benefits would include the Treasury Order revaluation applied at one second after midnight of 31 March 2017 and so the member could, under regulation 33, commute up to 25% of the value of benefits at that BCE. However, if all the necessary paperwork had been received on 26 February 2017 that would be the BCE date and the member would, at that time, only have been able to commute up to 25% of the value of the benefits at that BCE. The subsequent application of the Treasury Order at one second after midnight of 31 March 2017 would constitute a second BCE and so the member should, technically, be given an option to commute up to 25% of the increase in value of the CARE pot resulting from the implementation of the Treasury Order. However, due to the timing of the Treasury Order and the Pension (Increase) Review Order it would be virtually impossible to give the member that option i.e. the PI programme is run after the March payroll has been run, the Treasury Order is not applied until one second after midnight of 31 March and then the April payroll is run which produces a very tight, virtually impossible, timeline i.e. the administering authority would have to apply the Treasury Order, calculate the increase in value, write to the member to give them the option of commuting up to 25% of the increase in value, get the member’s additional commutation decision before the April payroll is closed and then overwrite the PI that had been calculated when the PI programme was run following the March payroll. In order to avoid this we seek an amendment to regulation 33 to provide that the increase in value or a member’s CARE pot derived from the application of a Treasury Order at one second after midnight of the 31 March following the date of cessation of active membership is excluded from the amount of pension that the member can commute under regulation 33. Note that this amendment would also apply to deferred members drawing the deferred pension (i.e. having a BCE) in a Scheme year subsequent to the one in which they ceased to be an active member. Thus an additional exclusion should be added to sub-paragraph (4) of regulation 33 i.e. “(d) the amount by which the member’s account is adjusted by the revaluation adjustment applicable at the beginning of the Scheme year following that in which the member ceased to be an active member.”

The Secretary of State actuarial guidance covering the “limit on additional cash commutation” will need to be amended as a result of the amendment being made to regulation 33.

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

Comment: regulation 48(5)(a) needs to be added to the list of regulations to which the amendment has to be inserted.

General comment: although not consulted upon the opportunity should be taken to amend regulation 50(2) as shown below in order to cover Individual Protection 2014 and, when the Finance Bill 2016 is enacted, Individual Protection 2016.

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

This is a non-controversial amendment and could, presumably, be made without the need for consultation as it would be made simply to reflect the correct legal position.

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

(a) in paragraph (1)⁽¹⁶⁾ at the end add "or entitled to receive an exit credit";

(b) in paragraph (2)(b) after "exit payment due from the exiting employer" insert "or exit credit payable to the exiting employer";

Comment: this means that an exit credit must be paid **even if** the administering authority believe the employer will again have active members in the near future. Is it the policy intention that an exit credit must be paid in such circumstances?

(c) after paragraph (2) insert—

"(2ZA) If an exit credit is payable to an exiting employer the appropriate administering authority must pay the amount payable to that employer within one month of the date when that employer ceases to be a Scheme employer, or such longer time as the administering authority and the exiting employer agree.";

Comment: we believe that, for consistency with regulation 64(5) and to protect the administering authority from any potential future claims from the exiting employer, a further paragraph should be added i.e.

"(X) When an administering authority has paid an exit credit to an exiting employer, no further payments are due from that administering authority in respect of any surplus assets relating to the benefits in respect of any current or former employees of that employer as a result of these Regulations."

(d) in paragraph (7) after the definition of "exiting employer" insert—

"“exit credit” means the amount required to be paid to the exiting employer by the administering authority to meet the excess of assets in the fund relating to that employer over the liabilities specified in paragraph (2)(a).”

Comment: the reference to "(7)" should be amended to "(8)". Also, as reference is specifically made to "paragraph (2)(a)" the reference to "paragraph (2)" in the definition of "exit payment" in paragraph (8) should, for consistency, be amended to "paragraph (2)(a)".

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

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

Comments:

A bracket is missing after the first reference to “(flexible retirement)”.

Although regulation 68(2) is being amended to ensure all the correct cross references are made, an amendment is also needed to regulation 68(3) for the same reason i.e. amend “an award under regulation 31 (award of additional pension)” to “an award under **regulation 15(5) (employer contributions during absences) or regulation 31 (award of additional pension)**”

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

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

Comments:

In some areas, the LGPS works slightly differently to other Club Schemes, the way the Club Memorandum is applied in relation to the LGPS is amended / supplemented by actuarial guidance from the Secretary of State – for example, to cater for the effects of the 85 year rule – see the guidance at

<http://www.lgpsregs.org/images/SecStateGuidance/IndTransferGuidanceApr2016.pdf>

Therefore, add at the end of regulation 96(1A) the words “**as supplemented by actuarial guidance issued by the Secretary of State.**”

Also, as a result of the amendments made to the Pension Schemes Act 1993 by the Pension Schemes Act 2015 and for consistency with the comments already made above under regulation 9, the words “Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993” in regulation 96(1) should be amended to “**Chapter 1 or 2 of Part 4ZA or Chapter II of Part IVA of the Pension Schemes Act 1993**”. Chapters 1 and 2 of Part 4ZA cater, respectively, for those entitled to a deferred benefit and those with 3 or more months membership who are not entitled to a deferred benefit; and Chapter II of Part IVA caters for transfers out for Pension Credit members.

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

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

Comments:

In some areas, the LGPS works slightly differently to other Club Schemes, the way the Club Memorandum is applied in relation to the LGPS is amended / supplemented by actuarial guidance from the Secretary of State – see for example paragraphs 8.1 to 8.5 in the guidance at

<http://www.lgpsregs.org/images/SecStateGuidance/IndTransferGuidanceApr2016.pdf>

Therefore, add at the end of regulation 100(8) the words “**as supplemented by actuarial guidance issued by the Secretary of State.**”

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

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

(a) in the case of a transfer of employment between members of the Public Sector Transfer Club, in accordance with the Club Memorandum; and

(b) in any other case in accordance with actuarial guidance issued by the Secretary of State.”.

Comments: for the reasons given in the comments under regulation 18 above please add at the end of regulation 101(2)(a) the words “as supplemented by actuarial guidance issued by the Secretary of State.” Also, in paragraph (a) amend “a transfer” to “a Club Transfer”. This is because there are transfers that occur between members of the Public Sector Transfer Club which are not treated in accordance with the Club Memorandum because there has been a break between leaving the sending scheme and joining the receiving scheme of more than 5 years. In these cases, although the transfer is between members of the Club, the transfer is treated as a non-Club transfer and so would fall to be treated under paragraph (b), not paragraph (a).

20. In Schedule 1⁽¹⁷⁾ (interpretation)—

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

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

Comment: the above document has already been amended. We would suggest that to make the definition future proof the following words should be added at the end of the definition - “(including any subsequent revisions) or any new version that is issued.”

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

Comments:

Amend “sector” to “Sector”.

To reflect the requirements of paragraph 4.4 of the Club memorandum please add at the end of the definition of “Club Transfer” the words “where the break between ceasing membership of the sending pension scheme and joining the Fund in which the person is an active member when making the application for a Club Transfer is not more than 5 years”. For example, a person leaves the NHS Pension Scheme and immediately joins LGPS Fund A but does not elect for a Club transfer. The person then leaves Fund A and immediately joins LGPS Fund B. The break between leaving the NHS Pension Scheme

(17) There are amendments to Schedule 1 which are not relevant to these Regulations.

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

and joining Fund B is more than 5 years and so it will not be a Club transfer (even though there was not a break of more than 5 years between leaving the NHS Pension Scheme and first joining the LGPS).

(b) for the definition of “local government service” substitute “means employment with a body specified in Part 1 of Schedule 2 (scheme employers)”;

Comment: for the reasons shown under regulation 3 above this definition should be amended by adding at the end “but see regulations 2(1A) and 2(1B).”

(c) in the definition of “partner” omit “in relation to an active member”;

(d) after the definition of “permanently incapable” insert—

““protected transferee” has the meaning given in regulation 3(1C);

“protected transferee employer” means a body which is not a Scheme employer specified in Part 1 of Schedule 2 which becomes the employer of a protected transferee;

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

(e) for the definition of “revaluation adjustment”⁽¹⁹⁾ substitute—

““revaluation adjustment” means—

(a) in the case of a balance transferred under a Club Transfer, the adjustment that would have applied to that balance if it had not been transferred; and

Comment: the amendment we have requested to the definition of “Club Transfer” under (a) above means that the sending scheme in-service revaluation adjustment will then, quite correctly, not apply where the break between the sending scheme and joining the LGPS Fund is more than 5 years.

(b) in any other case the percentage specified as the change in prices in the relevant Treasury order made under section 9(2) of the Public Service Pensions Act 2013 which is to be applied to a sum in a pension account at the beginning of the next scheme year.”;

(f) in the definition of “statutory pay”⁽²⁰⁾ for “statutory maternity, paternity, shared parental or adoption pay” substitute “statutory sick, maternity, paternity, shared parental or adoption pay”.

Comment: the definition of “additional maternity or adoption leave” was deleted from Schedule 1 by SI 2014/3255. This appears to be a mistake given that “additional maternity or adoption leave” is still referred to in the definition of “child-related leave” in Schedule 1. Is our assumption correct, meaning that the definition should be re-instated?

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

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

21. In Schedule 2⁽²¹⁾ (Scheme employers)—

(a) in paragraph 5 of Part 2, for “local authority listed in paragraphs 1 to 5 of Part 1 of this Schedule” substitute “body listed in paragraphs 1 to 5 of Part 1 of this Schedule”;

(b) In Part 3—

(i) after paragraph 1(e) insert—

“(f) a protected transferee employer.”;

Comments:

As mentioned in the comments under regulation 5 above, “protected transferee employers” who are themselves employers listed in Parts 2 or 4 of Schedule 2 do not enter into admission agreements and they should, therefore, be excluded from (f) by adding at the end of (f) “(other than one which is body listed in Parts 2 or 4 of Schedule 2)”

We can understand why paragraph 1(d) needs to be retained as, for example, it would permit an admission agreement where a police and crime commissioner, chief constable or FE / HE corporation outsources a service / function. However, as other employers that outsource would otherwise fall within both paragraph 1(d) and 1(f), paragraph 1(d) should be amended by adding at the end of that paragraph the words “except where paragraph (f) applies”.

Paragraphs 3, 5 and 6 all cross refer to paragraph 1(d). However, with the introduction of paragraph 1(f) they should be amended to also cross refer to paragraph 1(f).

(ii) omit paragraph 11; and

Comments:

We do not believe that paragraph 11 should be deleted. Instead we believe that only the words after “at its offices” should be deleted, meaning that there would still be a responsibility on the administering authority to make a copy of the admission agreement available for public inspection. Furthermore, whilst we agree that the requirement to notify the Secretary of State about an admission agreement should be deleted from paragraph 11, items (a), (b) and (c) in paragraph 11 should be transposed into paragraph 9 i.e. so that paragraph 9 requires the admission agreement to include the date the agreement takes effect, the name of the admission body and the name of any Scheme employer that is a party to the admission agreement.

At the beginning of paragraph 12 the reference to “paragraph 1(d)” should be amended to “paragraphs 1(d) or 1(f)” to reflect the fact that sub-paragraph (f) has been added into paragraph 1.

Also, please either:

- in paragraph 12(a) amend “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” to “a requirement that, in the case of an admission body of the description in paragraph 1(d), only employees of the body who are employed in connection with the provision of the service or assets

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

referred to in that sub-paragraph may be members of the Scheme”. This reflects the wording used in paragraph 1(d).

And then add new paragraph 12(aa) to say:

“(aa) “a requirement that, in the case of an admission body of the description in paragraph 1(f), only employees of the body who are wholly or mainly employed on the delivery of the service or function transferred may be members of the Scheme”. This reflects the wording used in new regulation 3(1C).

OR, which may be a more preferable approach:

- amend paragraphs 1(d) and 12(a) or new regulation 3(1C) to use the same terminology.

Also, to reflect the fact that sub-paragraph (f) has been added into paragraph 1, amend paragraph 13 to read:

“(13) Where –

(a) an admission body of the description in paragraph 1(d) undertakes to meet the requirements of these Regulations, or

(b) and admission body is of the description in paragraph 1(f)

the appropriate administering authority must admit to the Scheme the eligible employees of that body.”

(iii) at the end add—

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

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

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

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

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

(a) after paragraph (5) insert—

“(5A) Notwithstanding paragraph (1)(a), regulations 30(2) and 30A(3)⁽²⁴⁾ of the Benefits Regulations (requirements for member aged between 55 and 60 to obtain consent for early payment of pension) cease to have effect.”

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

(23) S.I. 2014/525.

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

Comments:

The Secretary of State actuarial guidance on the early payment of pension will need to be updated to reflect this amendment.

Also, as a direct result of the amendment, Schedule 2 will need to be amended as follows:

- paragraph 1(1)(a) will need to be amended by adding additional wording at the end so that it reads:
 - (a) regulation 30(1) (choice of early payment of pension) or 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations **if the member was aged 60 or over at the date of making the request;**
- a further sub-paragraph will need to be added i.e.:
 - (aa) regulation 30(1) (choice of early payment of pension) or 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations **if the member is aged 55 or over but aged under 60 at the date of making the request and the former employing authority or, where the former employing authority has ceased to be a Scheme employer, agrees that paragraph 1(3) of this Schedule should apply;**
- in paragraph 1(2) the reference to “paragraph 1(1)(c)” will need to be amended to “paragraph 1(1)(c) **or 1(1)(aa)**”
- in paragraph 2(3) the words “**to the payment of benefits prior to age 60 in the circumstances described in paragraph 1(1)(a) of this Schedule, or**” should be deleted and the words “that paragraph 1(1)(c) of this Schedule should apply” should be amended to “that paragraph 1(1)(c) **or 1(1)(aa)** of this Schedule should apply”

In response to the question posed in paragraph 23 of Chapter 3 of the consultation document we wholly support the extension of the removal of the requirement for employer consent to payment on or after 55 and before age 60 to other Earlier Regulations e.g. the 1995 and 1997 Regulations. We believe this can be achieved by using the same method already utilised in regulations 17(2) and 17(9) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 i.e. by making an amendment to the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 to say that, “Notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations)

- (a) regulation D11(2)(d) of the 1995 Regulations shall have effect with the substitution of the reference to age 60 with a reference to age 55,
- (b) regulation 154(4) of the 1997 Regulations shall have effect with the substitution of the reference to age 60 with a reference to age 55, and
- (c) regulation 31(2) of the 1997 Regulations shall have effect with the substitution of the reference to age 60 with a reference to age 55.” [Note that the reference here to age 55 is deliberate as, although we cannot take away the existing right of the member under regulation 31(2) to make a request, with employer consent, from age 50 the regulation will allow benefits to be drawn without consent from age 55 but still require employer consent for payment on or after age 50 and before age 55]

Items (a) and (b) would need to be inserted as a new regulation within the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

However, as the 85 year rule impacts on item (c) it could be included as paragraph 1(5B) in Schedule 2 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 i.e.

(5B) Notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations) regulation 31(2) of the 1997 Regulations shall have effect with the substitution of the reference to age 60 with a reference to age 55.

Consequential changes would then also be needed to the following paragraphs of Schedule 2

- paragraph 1 would need two additional paragraphs added i.e.:
 - (e) regulation 31(1) (other early leavers: deferred retirement benefits and elections for early payment) of the 1997 Regulations if the member was aged 60 or over at the date of making the request;
 - (f) regulation 31(1) (other early leavers: deferred retirement benefits and elections for early payment) of the 1997 Regulations if the member is aged 55 or over but aged under 60 at the date of making the request and the former employing authority or, where the former employing authority has ceased to be a Scheme employer, agrees that paragraph 1(3) of this Schedule should apply;
- in paragraph 1(2) the reference to “paragraph 1(1)(c)” will need to be amended to “paragraph 1(1)(c), 1(1)(aa) or 1(f)”
- in paragraph 2(3) the words “to the payment of benefits prior to age 60 in the circumstances described in paragraph 1(1)(a) of this Schedule, or” should be deleted and the words “that paragraph 1(1)(c) of this Schedule should apply” should be amended to “that paragraph 1(1)(c), 1(1)(aa) or 1(f) of this Schedule should apply”

(b) at the end of paragraph (6) add “but notwithstanding paragraph (1)(a), the normal pension age in relation to deferred benefits accrued before 1st October 2006 is age 65”.

Comment: We don't think the wording “deferred benefits accrued before 1st October 2006” is quite right and would suggest that it is amended to “deferred benefits in respect of membership that ceased before 1st October 2006”. The rationale for our suggestion is that the existing draft wording could be construed as applying to that part of deferred benefits accrued prior to 1st October 2006 where the member left after that date, whereas the amendment is meant to specifically apply only where the member ceased membership prior to 1st October 2006.

25. In regulation 9 (transfers)—

(a) in paragraph (1)—

- (i) omit “before 1st April 2015”; and
- (ii) at the end add “since ceasing active membership in the scheme from which the transfer payment is received”;

Comments:

- the amendment to paragraph (1) caters for cases where the transfer is from a different public service pension scheme. However, we believe there are cases where, under the

Club rules, the LGPS will have to accept a transfer from a non-public service pension scheme that included final salary benefits in respect of which the LGPS will have to grant pre-14 final salary benefits if the break between leaving the sending Scheme and joining the Fund was not more than 5 years – see paragraphs 1.1b and 4 and section 5 of the Club Memorandum at <http://www.lgpsregs.org/images/OtherGuidance/PSTC-MemoMar2015UpdatedDec2015.pdf>. Regulation 9 will need to be amended to cater for these cases too.

- paragraph (1) provides that where a transfer payment includes a payment in respect of final salary benefits “such payment” shall purchase pre-14 final salary benefits. However, as the words “such payment” could be construed as referring to the “transfer payment” (which might include CARE benefits too) rather than just to that part of the payment that relates to final salary benefits, it would be helpful if the words “such payment” were amended to “that part of the transfer payment that relates to final salary benefits”.

(b) after paragraph (1) insert—

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

Comment: If, despite our strong opposition to this proposed amendment (as elucidated in our covering letter), the amendment is to nonetheless be enacted then it will need to be re-drafted to reflect the ‘double scheme protection’ requirement. We understand that the other public service schemes only provide protection where the member would have been protected in their original public service scheme and in the scheme to which they have transferred their benefits. This is known as ‘double scheme protection’. Furthermore, there are some cases where, despite being eligible to remain in the final salary scheme, individual members of other public service pension schemes have opted to move to the CARE Scheme for future (post-15) accrual. Such members should not be subject to the underpin. The draft amendment makes no reference to these matters.

We would therefore suggest the following revision to take them into account:

“(1A) Regulation 4 (statutory underpin) applies to a person of the description in paragraph (1) if that person –

(a) was, at the date of cessation of membership in the public service pension scheme from which they transferred benefits to the Local Government Pension Scheme, accruing benefits under that scheme’s existing scheme in accordance with section 18(5) of the Public Service Pensions Act 2013, and

(b) would have met the condition in regulation 4(1)(a) if that person had been an active member of the 2008 Scheme in respect of the service in the different public service pension scheme.”.

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

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

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

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

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

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

Comment: If there has been no break in active membership of public service pension schemes of more than 5 years then the membership in respect of the deferred benefits under the Earlier Schemes would, under section 20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 have to provide (pre-14) final salary benefits, not earned pension. This was not reflected in the existing regulation 10(6) and the opportunity should now be taken to build that statutory requirement into the revised regulation i.e. into regulation 10(6A).

The same issue arises in respect of regulation 10(5) and an appropriate amendment should also be made to that regulation.

Furthermore, regulation 10(6) did not contain a time limit within which a member had to make an election. The new regulation 10(6A) imposes a normal 12 month time limit. In consequence, and to remove the open-ended time period that existed under regulation 10(6), a transitional regulation should be added to say that active members who were subject to regulation 10(6) before its deletion by the Amendment Regulations must, if they wish to aggregate their benefits, make an election to do so within 12 months of the effective date of the Amendment Regulations or such longer period as the Scheme employer permits.

The Secretary of State actuarial guidance on inter-fund adjustments will need to be updated to reflect the amendments being made to the Transitional Provisions Regulations 2014.

27. In regulation 14(2) (contributions) after "refund of contributions" insert "(including additional contributions)".

28. In regulation 15 (additional contributions)—

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

(b) for paragraph (1)(d) substitute—

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

(c) after paragraph (2) insert—

"(2A) Regulations 17 and 17A of the 2013 Regulations (additional voluntary contributions) apply to an AVC arrangement entered into before 1st April 2014 as they apply to an

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

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

AVC arrangement entered into on or after that date save that—

Comment: this, we believe, has the effect that regulations 17 and 17A of the 2013 Regulations also apply to members who left prior to 1st April 2014 under the Earlier Schemes (save for the provisions in (a) and (b) below). Is our understanding correct and, if so, is that the policy intention?

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

Comment: a consequential amendment is required to regulation 24(2). The words “Subject to paragraph (4)” should be amended to “Subject to paragraph (4) and regulation 15(2A)(a)”.

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

(d) omit paragraph (4);

Comment: we believe that, for consistency of approach, paragraph (3) should also be deleted (for cases where the member re-joins the LGPS on or after the effective date of the regulation). This would avoid the problems associated with members transferring their main scheme benefits from Fund A to Fund B whilst leaving their AVCs in Fund A. If the member did not wish to transfer their AVC pot from Fund A to Fund B they would, under the Freedom and Choice provisions being introduced by regulation 17A(2) into the LGPS Regulations 2013, now have the choice of transferring their AVC pot elsewhere (whilst still being able to transfer their main LGPS benefits from Fund A to Fund B). For members who, before the effective date of the regulation, had left an orphan AVC in a former Fund (Fund A) when transferring their main scheme benefits to Fund B, that election should remain undisturbed unless and until they re-join the LGPS after a break in employment i.e. a break in employment during which they were not eligible for membership of the LGPS (not just a break in membership as, otherwise someone could simply opt out and then opt back in to achieve a break in membership). At that time the member should be given the option to elect, within 12 months of re-joining the Scheme in the new employment, to transfer the AVC Fund from Fund A.

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

Comment: Paragraph (5) needs an additional provision added to provide that where a member is TUPE transferred to another employer or compulsorily moved to another employer by reason of an Act or SI or compulsorily moved to another Fund by reason of a Direction given by the Secretary of State under paragraph 3 of Part 2 of Schedule 3 to the LGPS Regulations 2013 or a merger of administering authorities then, if the member was, at the point of transfer, paying into an existing AVC arrangement that was entered into prior to 1 April 2014 and continues paying AVCs immediately following the transfer, the AVC arrangement with the new employer or Fund (which is a new AVC arrangement) is treated as if it had been entered into prior to 1 April 2014. This would cover, for example, the multitude of employees in maintained schools who are paying AVCs and whose employment is transferred to the proprietor of an academy.

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

Comment: a consequential amendment is required to paragraph 1(1)(a) of Schedule 2 i.e. add at the end “if the member is aged 60 or over at the date of making the request”.

Transitional Provision

30.—(1) Any admission agreement which subsists at the date these Regulations come into force remains in force and is treated as if it had been the subject of a determination under section 25(5) of the Public Service Pensions Act 2013⁽²⁸⁾. (2) Each administering authority must, within 12 months of the date these Regulations come into force, include in its list published under section 25(9) of the Public Service Pensions Act 2013, details of the persons included in admission agreements to which it is a party, to whom the Scheme relates by virtue of the provision in paragraph (1).

(27) There are amendments to Schedule 2 which are not relevant to these Regulations.

(28) 2013 c. 25.

We consent to the making of these Regulations

Names

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

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

Name

Parliamentary Under Secretary of State

Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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

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

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

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

Regulations 12, 14 and 16 make minor clarifications to provisions in the 2013 Regulations relating to the calculation of pensions. 27

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

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

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

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

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

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

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

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

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

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

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

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

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