



Department for
Communities and
Local Government

Local Government Pension Scheme

Technical consultation on Local Government
Pension Scheme rules

Government response to the consultation



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Introduction

The Local Government Pension Scheme

As part of the Government's reforms of public sector pensions provision, the Local Government Pension Scheme 2013 Regulations (SI 2013/2356] and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525) came into force on 1 April 2014.

As employers and pension administrators have now had day to day experience of applying the Scheme regulations, they have identified some areas in which clarification in the regulations is needed, as well as some drafting improvements. The intention of the consultation was to bring the some of the suggested amendments to the wider Local Government Pension Scheme audience and ask if the amendments were appropriate. Following earlier representation about the regulations governing payments when an employer leaves the scheme, we also asked for views on what further flexibilities might be introduced around exit payments.

During consultation exercises, views from all scheme interested parties were invited on the draft regulations. Details of the consultation and related documents can be found at <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/local-government-pensions>.

We received responses from across the spectrum of organisations involved within the scheme, commenting on the amendments and issues raised, and suggesting further amendments to improve administration of the scheme. We thank those who contributed to responses. While some of the recommendations have been included, it has not been possible to include all the suggested amendments in these regulations, some further work may be necessary on these issues and they may feature in future consultations.

The comments received and the Government's response to the main consultation are summarised beneath the table below.

Summary of main consultation responses

Background

The respondents to the consultation were as follows;

Type of Respondent	Total Number
Local Government bodies	35
Companies (e.g. actuarial, legal or software)	9
Professional associations	8
Trades unions	1
Public Body	7
TOTAL	60

Part 1 – Amendments to Local Government Pension Scheme Regulations

There was broad support for the proposed amendments that improve the drafting and clarity of the regulations. Consultees suggested further amendments which have been made in regard to draft regulations 5, 6, 7, 8, 11, 16, 17, 20, 25, 31 and 33.

Commencement Amending Regulation 1

Regulation 1 specifies that the regulations come into force on 11 April 2015 and take effect from 1 April 2014. At the request of several responses the amendments made by regulations 3, 11 and 15(b) are not retrospective as this could require a member's date of entry to the scheme being changed to their disadvantage in the case of regulation 3, in the case of regulation 11 aggregation of accounts and assets transfers will have taken place since April 2014, and in the case of regulation 15(b) could retrospectively change the amount of death grant that should be paid to the disadvantage of members' survivors.

Start of Active Membership Amending Regulation 3

Regulation 3 clarifies that the day that a person with a contract of 3 months or less joins the scheme is the first day of the payment period following an application to join the scheme.

Death before completing 2 Years Service Amending Regulation 4

In order that survivor benefits can be paid for members who die before completing 2 years of service (the qualifying period), regulation 4 specifies that a member who dies before completing 2 years service, is treated as having completed 2 years service.

Cancellation of a Member's Election to Reduce Contributions Amending Regulation 5

Regulation 5 clarifies that an election to reduce contributions is cancelled when a member receives no pay due to child related leave.

Additional Payments and Reserve Forces Leave Amending Regulation 6

Regulation 6 facilitates the making of additional payments by a member who is on reserved forces leave by making it a requirement that they are given the details of the amount to be paid.

Contributions to Make Up For Absences Amending Regulation 7

Following requests an amendment has been made to give employers a discretion to increase that period of time that a member has to make contributions to make up for absences, as this will ease the burden of administration on both employers and scheme administrators when a member has many short periods of absences.

Amending Regulations 8 and 9

Regulation 8 updates a cross reference to the Occupational and Personal Pensions Schemes (Disclosure of Information) Regulations 2013 that are now the relevant regulations, and also completes the list of types of benefits, the drawing of which requires the member to notify scheme administrators that they are taking the realisable value of their Additional Voluntary Contributions arrangements. Regulation 9 corrects a cross reference.

Assumed Pensionable Pay Amending Regulation 10

Regulation 10 clarifies issues on assumed pensionable pay. It ensures that members who have been on child related leave are not disadvantaged by the use of an assumed pensionable pay amount that is lower than the actual pay they received. In addition, it ensures that survivor benefits that are payable with regard to a member who was on no pay due to absence from work are calculated on assumed pensionable pay rather than actual pay which would be lower. Finally, in cases where pay has been reduced due to absence with the employer's permission or trade dispute these reductions are to be ignored.

Aggregation of Pension Accounts Amending Regulation 11

As well as the issue of optants out who re-join the scheme later, many responses highlighted the administrative problems caused by a member opting out within 12 months of starting a new employment when periods of service had been automatically aggregated at the start of the employment, and requested that regulations reverted to the position in the Local Government Pension Scheme 2008 Regulations where a member had to opt for aggregation rather than it being an automatic process.

It is the Departments view that, as there is no restriction in the regulations for administering authorities to wait until it is certain that the member will not elect to keep benefits separate i.e. for the full 12 months or longer at the discretion of the employer, no amendment to the regulations is necessary. They may aggregate within 12 months if a member dies, if no election has been made to keep benefits separate.

In addition, responses requested clarification on whether the option not to aggregate in cases of a TUPE, or TUPE like, transfer should be removed. The Department will explore further what happens to members' accounts at a practical level, particularly in cases of compulsory change of employment, employer or pension fund, and consider if any regulatory measure is required.

Notice to Elect to take Benefits Amending Regulation 12

A response requested that, to ensure the timely payment of benefits, Regulation 12 clarifies that a member may give notice that they elect to take benefits before the date that they meet the qualifying criteria to make an election. This has been incorporated.

Independent Registered Medical Practitioner Amending Regulation 13

Four responses strongly supported the amendment to Regulation 13 saying that an occupational health practitioner is not precluded from assessing a referral under the 2013 Regulations where a practitioner of the same occupational health provider organisation has already been involved.

Ill health, Death and Survivor Benefits Amending Regulations 13, 14, 15, 16 and 17

Several responses supported the clarification that a reduction in pensionable pay due to a reduction in hours worked can be ignored when, in the opinion of an Independent Registered Medical Practitioner, that reduction is caused by the condition that causes the members death, is not taken into account for the calculation of survivor benefits.

We also sought views about the calculation of a death grant where a member dies with an active as well as deferred pension account. Regulation 15 limits the amount payable where a member dies while an active member but also has deferred, deferred pensioner membership or a pension in payment. In this situation, the death grant would be the higher of the calculation result when the death grant for an active member under the regulations is compared with the death grants payable under the regulations relating to all deferred and pensioner member entitlements.

Survivor Benefits Amending Regulations 18 & 19

These amendments clarify that a survivor benefit calculation should exclude any pension commuted into a lump sum by the deceased member, and also improves cross references.

Amending Regulations 20, 21, 23, 24 and 25

In order to provide clarity and necessary updates to cross references to new documents Regulations 20, 21, and 23 to 25 update references to other documents and makes drafting improvements. In addition, provision is made in regulation 23 for the occasions when the Ministry of Defence makes payments to employers in regard to members on reserve forces leave. This will improve scheme administration for members on reserve forces leave.

Suspension of Exit Payments Amending Regulation 22

Many responses gave views on what further flexibilities would be helpful in the exit payments regime. There was firm support for a period of grace before which an administering authority would be required to call for an exit payment where it was likely that there would be an active member quite soon. Regulation 22 amends regulation 64 of Local Government Pension Scheme Regulations 2013, to permit a Scheme administering authority to suspend the requirement for an exit payment in specific circumstances where the relevant employer is likely to employ an active member within a period of no more than 3 years.

Adjustment of an account following Forfeiture Amending Regulation 26

Regulation 26 clarifies that the amount taken from a member's account following forfeiture is calculated by an actuary and paid to the relevant scheme employer.

Transfer Payments Amending Regulation 27

To improve clarity, Regulation 27 completes the list of categories of members for whom a change in administering authorities triggers a transfer value payment.

Amending Regulation 28

Regulation 28 amends Schedule 1 by adding the definition of a local authority, removing the definition of "Housing Ombudsman Service" as it is no longer required, and ties the "revaluation adjustment" to the changes in prices rather than earnings, to conform to the requirements of the Public Service Pensions Act 2013.

Appropriate Funds Amending Regulations 29 to 32

We asked for confirmation that references to specific local authorities were correct. Several responses asked for amendments to the names of local authorities and these have been accepted.

A response requested that North Wales Fire & Rescue Authority be added as an employer within the Fund maintained by Flintshire County Council to resolve an anomaly that was the result of the 1995/6 reorganisation of Welsh local government. The authority has always been an employer in the Flintshire Fund, but the unamended regulation suggested that this was not the case.

The amended regulations now define which the appropriate administering authority is for combined authorities as defined by an order under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009.

Employer Contributions and No Active Contributing Members Regulation 35

There was positive support for the provision providing that certain outstanding historic liabilities could be called for. The draft provision has been modified to take into account consultation responses to include admitted bodies, add clarity about the relevant fund and when no further payments are required.

We asked whether companies that are wholly owned by employers that are listed in Part 1 of Schedule 2 should also be listed in Part 1 of Schedule 2. Such companies would lose the ability to designate which employees have access to the scheme. Whilst some responses, mainly from pension funds supported this, the majority of responses, particularly from employers and their representative groups, were against this. Therefore we are not pursuing this course of action.

Part 2 – Issues Not Covered By the Regulations

Portability of Additional Voluntary Contribution arrangements

Consultees were asked to comment on the merits of making an amendment that requires an administering authority, when the member moves employment voluntarily or compulsorily, to facilitate the unbroken continuation of a transferring member's Additional Voluntary Contribution contract, by entering into arrangements with the member's original Additional Voluntary Contribution provider

The majority of responses that expressed an opinion stressed the difficulty involved in this, and we will not pursue this at this time.

Ongoing Final Salary Link for deferred pensions

Consultation responses also raised issues about whether the final salary for a future period of active membership is taken into account when calculating retirement benefits when a deferred award made under the 2008 Scheme or earlier schemes is put into payment *and* the member chose to keep the deferred benefits separate from the subsequent period of active membership. Following earlier representations from practitioners, The Department responded in January saying the view was that, in these circumstances, the non aggregated deferred benefit does not retain an ongoing final salary link. This was reported in a Bulletin from the Local Government Association.

<http://www.lgpsregs.org/images/Bulletins/Bulletin122.pdf>