

To : addressees below

26 February 2010

Dear Colleague,

**DRAFT LOCAL GOVERNMENT PENSION SCHEME
(MISCELLANEOUS) REGULATIONS 2010**

1. Further to the letter of 24 December 2009 (attached), I attach the draft SI for further amendments to the Local Government Pension Scheme (LGPS) Regulations.
2. This letter and draft SI should be read in conjunction with the previous letter, and consultees should note the further explanation on some of the provisions now provided.

3. ILL HEALTH RETIREMENT AND RELATED MATTERS

Members of the LGPS Ill Health Monitoring Group (comprising representatives from the LGE, Pension Managers, the PPMA and Local Government Trade Unions) have been meeting with CLG regularly to assess how the new ill health retirement framework, mainly under Regulation 20 of the Benefit Regulations, has been working. These helpful meetings have identified a number of regulatory amendments to the framework, particularly in relation to the 3rd tier, to improve its clarity and effectiveness. These proposed regulatory amendments are set out below and in the attached draft SI:-

**Local Government Pension Scheme (Benefits, Membership and Contributions)
Regulations 2007**
The “Benefits Regulations” (BR)

Regulations 20(1)(b), (2), (3), (4), (5) and (8)(a)(ii)

Since the publication of both the LGPS Statutory Ill Health Guidance and Supplementary Guidance for Clinicians, CLG has continued to receive further representations from stakeholders and clinicians, concerning the on-going issue that occupational health doctors consider that a person's ability to obtain gainful employment will depend also on other factors such as the person's mental and physical abilities in the absence of illness and the availability of jobs which may be influenced, for example, by economic conditions. They remain of the view that the term 'undertaking gainful employment' is a more appropriate term to that of 'obtaining gainful employment'. CLG has looked again at the construction of the

regulations and is now of the view that the Regulations should be amended to reflect this.

Regulation 20(4)

There has been some confusion about whether 3rd tier benefits need to cease after 3 years even if the member had attained normal retirement age within that period. So it has been proposed that this Regulation be amended to include the words “within three years of leaving his employment or normal retirement age, if earlier”.

Regulation 20(7) and 20(7)(a)

There has been some concern that, as currently drafted, BR 20(7) seeks to review all benefits awarded on ill health grounds and CLG has been asked to make it clear that a “review” of benefits should only apply to members in receipt of 3rd tier benefits. Further, it has been noted that there is no mention in Regulations that a review is not required if the member with 3rd tier benefits attains age 65 within 18 months so this Regulation should be amended to reflect these points accordingly.

Regulation 20(8)(b)

Similarly, for clarification purposes Regulation 20(8)(b) it has been proposed that 3rd tier benefits do not stop if the member attains age 65 within the 3 year period.

Regulation 20(11)

Please see the amendment proposed to Regulation 58 of the Administration Regulations below. As it is being proposed that IDRP is to be extended for 3rd tier beneficiaries and, as an appeal might result in the award of a higher level of ill health retirement benefit, it is our view that Regulation 20(11) is no longer needed and should be deleted.

Regulation 20(13)

It was not the intention when BR 20(13) was introduced that the age 45 protection would apply where a member leaves their employment with a LGPS employer with deferred benefits, returns to local government but that employment is terminated on grounds of ill health. So it has been suggested that this regulation be amended so that it applies to a person who was an active member before 1 April 2008, and who has had continuous membership in respect of which their employment is terminated on the grounds of ill health and who has not received any benefits as a result of that membership.

Regulations 23 and 24

It has been proposed that Regulation 23 (death grants: active members) and Regulation 24 (survivor benefits: active members) are amended so that there is protection for a member who reduces their hours of employment as a result of a medical condition which results in early release of ill health benefits, also applies for the calculation of survivor and death benefits. This means that no account shall be

taken of the reduction in hours that is attributable to the condition that results in the death of the member when considering survivor benefits.

Regulation 30A

The LGPS regulations do not permit a member whose 3rd tier benefits have ceased and who becomes a pensioner member with deferred benefits, to access those deferred benefits before age 65. It is considered that this type of member should have the same opportunities to access deferred benefits at age 60 as other deferred members. A new draft provision is proposed to permit a member, whose third tier benefits have been paid and ceased, to subsequently access actuarially reduced retirement benefits at age 60 or before normal retirement age of 65. An actuarial reduction would be applied in accordance with GAD guidance unless the member is entitled to unreduced benefits as a result of other provisions.

Regulation 31(2)

It has been suggested that BR 31(2) is inconsistent with BR 20(5) and that there is a need for consistency. It is proposed that BR 31(2) will have the same terms as BR 20(5).

Local Government Pension Scheme (Administration) Regulations 2008 **The “Administration Regulations” (AR)**

Regulation 50(4)

It has been noted that under BR 31, benefits are payable immediately, whereas AR 50(4) says that benefits are payable from the date the member became permanently incapable. It is the intention that benefits should be payable immediately and it has therefore been proposed that AR 50(4) is amended so that benefits are payable from the date of the application for early release of retirement benefits on the grounds of ill health.

Regulation 56(1)

It has been requested that the same Independent Registered Medical Practitioner who assessed the member for the initial ill health decision, should be able to re-assess the member with 3rd tier benefits at the review. A regulatory change is being proposed to achieve this.

Regulation 56(3)

It has been proposed to amend AR 56(3) to say that the Guidance on ill health retirement issued under this regulation should be regarded by the Independent Registered Medical Practitioners (IRMPs) when carrying out their functions on behalf of employing authorities. This would mean that all parties involved in the assessment process for LGPS ill health retirements would need to have regard to the Guidance.

Regulation 58

There has been some concern that a decision to uplift a 3rd tier to a 2nd tier level of benefits may incur an unauthorised charge on the relevant administering authority. Concern has also been expressed that, as drafted, the regulations allow a member who has received 3rd tier retirement benefits, to ask to have 2nd tier retirement benefits at any time, even when 3rd tier benefits had stopped and many years after the first determination. It has therefore, been suggested that it would be better to re-examine the 3rd tier award to see if an uplifted 2nd tier award should have been made at the outset. A Regulatory change is proposed to amend AR 58 so as to permit a member who has been awarded a 3rd tier retirement benefit, to appeal against a decision to award a 3rd tier benefit, for a period of 42 months (3 years and 6 months) after the date of determination.

4. SCHEME EMPLOYERS

“The Administration Regulations”

Schedule 2

Community Trust Schools

The Education and Inspections Act 2006 included the provision for a foundation school to set up a charitable foundation (or trust) to support the school. It has come to our attention that there is some doubt as to whether Community Trust Schools could be regarded as a scheme employer in the LGPS Regulations. We are considering this point and are minded to include an amending provision to the Administration Regulations in a later version of the Statutory Instrument, subject to comments and if this is found to be necessary. This would enable non-teaching staff employed to do work for the Community Trust rather than at a specific foundation school, to be covered by the Scheme.

Greater London Authority

The Greater London Authority can be treated as a LGPS employer by virtue of paragraph 2 of Part 2 of Schedule 2 of the Administration Regulations. However, it was considered that the GLA should be listed as a scheme employer. It is proposed that the Greater London Authority has been added to those bodies in Part 1 of Schedule 2 of the Administration Regulations.

5. WITHDRAWN PROPOSALS

You will notice that a number of amendments which were proposed in our earlier letter have not been included in the draft SI. These are as follows :

The “Administration Regulations”

Regulation 39

This will be covered later this year in an SI dealing with a number of matters which concern the relationship between administering and employing authorities.

Regulation 74(3)

The Local Government Pension Scheme (Miscellaneous) Regulations 2009, SI 2009 No. 3150 has already dealt with this matter – its Regulation 30 refers.

The “Benefits Regulations”

Regulation 19

This amendment has been included in the Local Government Pension Scheme (Amendment) Regulations 2010 in order to ensure that it is part of an SI to be made and laid, if Ministers agree, by 31 March 2010.

Regulation 21

This proposal has been dropped, because it has been concluded that the current wording of the Regulation is sufficiently clear already.

Regulation 30

It has been concluded that the current Regulation 30, and paragraph (6) in particular, indicate the current position sufficiently clearly. It is unnecessary to amend the 1997 Regulations. However, additional paragraphs (7) and (8) are still being added as indicated in my letter of 24 December 2009.

6. Consultation responses will be fully considered, and some of the provisions in the draft Regulations may also be subject to drafting changes which may in some cases result in completely re-drafted provisions or the omission of proposed amendments where these are considered unnecessary or are otherwise defective. You will also note that, with the exception of the ill-health related provisions, none of the Regulations have been given coming-into-force dates. Our working assumption is that none of the other provisions will be retrospective, but you may wish to make representations if you know of specific cases which could give rise to the necessity for a particular provision to be retrospective. We will give due consideration to each case provided that it is properly justified.

7. As stated in the December letter, any comments should be sent by 18 March 2010 to Philip Perry, Workforce, Pay & Pensions division, Department for Communities & Local Government, Zone 5/G6, Eland House, Bressenden Place, London SW1E 5DU. Electronic responses can be sent to philip.perry@communities.gsi.gov.uk

Yours sincerely

Brian Town

The consultation is addressed to:

The Chief Executive of:

County Councils (England)
District Councils (England)
Metropolitan Borough Councils (England)
Unitary Councils (England)
County and County Borough Councils in Wales
London Borough Councils
South Yorkshire Pension Authority
Tameside Metropolitan Borough Council
Wirral Metropolitan Borough Council
Bradford Metropolitan City Council
South Tyneside Metropolitan Borough Council
Wolverhampton Metropolitan Borough Council
London Pension Fund Authority
Environment Agency

Town Clerk, City of London Corporation
Clerk, South Yorkshire PTA
Clerk, West Midlands PTA

Fire and Rescue Authorities in England and Wales
Police Authorities in England and Wales
Audit Commission
National Probation Service for England and Wales

Local Government Association (LGA)

Employers' Organisation
LGPC

ALACE
PPMA
SOLACE
CIPFA
ALAMA

Association of Colleges
Association of Consulting Actuaries
Association of District Treasurers
Society of County Treasurers
Society of Welsh Treasurers
Society of Metropolitan Treasurers
Society of London Treasurers
Association of Educational Psychologists

NALC
Society of Local Council Clerks

Trades Union Congress	UCATT
UNISON	GMB
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AMICUS	TGWU

Equal Opportunities Commission