

Draft Local Government Pension Scheme (Miscellaneous) Regulations 2012

Title: Review of the Draft Local Government Pension Scheme (Miscellaneous) Regulations 2012

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Status: Final Version

Private & Confidential due to commercial sensitivity

Introduction

The above draft regulations were issued to stakeholders on 5 December 2011 by Communities and Local Government (CLG) and are intended to come into force as soon as possible after the consultation or as indicated in the draft SI. Responses to the draft regulations should be made to DCLG by 27 February 2012.

The current regulatory framework for the LGPS is laid down in the following which have been subject to periodic amendment:

- LGPS (Benefits, Membership & Contributions) Regulations 2007
- LGPS (Administration) Regulations 2008
- LGPS (Transitional Provisions) Regulations 2008
- Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

The consultation covers a wide range of mainly unrelated proposals for amendments to the LGPS although changes made by draft regulations 10, 13, 17, 18, 33 and 34 relate in whole or part to ill-health provisions. A number of the proposals were made in discussions with the Local Government Employers whilst others have been implemented as a result of changes to primary legislation.

Opinions are particularly sought by CLG on:

- whether the wording of the draft Regulations achieves the policy intention
- whether they are properly consistent with existing Regulations
- coming into force dates.

I have examined each change and noted below those with significant effect together with the actions I suggest that need to be taken to implement the change and any anticipated concerns arising from that change.

If you require any further assistance please do not hesitate to contact me on 07585 404440 or email me at Andrew.beedall@capita.co.uk

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Draft Statutory Instrument	Regulations proposed to be Miscellaneous Regulations 2012	Effective date of proposed change	Description of proposed Change	Comment	Suggested action to be taken for Administering Authority and Employing Authority should the draft regulations be enacted
Draft LGPS (misc) Regs 2012					
Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended)					
3	Reg 2	TBC	Amends the definition of 'employing authority' to include technical institutes and federated schools.	Clarification amendment required as a result of SI 2010/2090	No action required
Draft LGPS (misc) Regs 2012					
Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 / 1166 (as amended)					
6	BR8	TBC	Addition of paragraph 5(a) and 5(b) into the definition of Final Pay for the purposes of the Finance Act 2011. 5(a) confirms that final pay includes all pensionable pay in the pension input period even if the member has been promoted in the final pay period. 5(b) excludes any period of employment within the final pay period in which the member was also an active member of another public service pension scheme.	Amendment required bringing the regulations in line with provisions of Finance Act 2011 in relation to Annual Allowance.	No action required
7	BR14a	TBC	Reintroduces the option for members to pay ASBCs to	The effective date of the regulation is to be confirmed and we would	Administering Authority

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			<p>purchase additional survivor benefits in relation to pre 6 April 1988 membership for eligible nominated cohabiting partners. The option previously ceased on 31/03/2011. The option will be restricted to allow elections to be made only within 12 months of the date of nomination of an eligible cohabiting partner.</p>	<p>suggest that the wording is amended to allow members who have nominated their cohabiting partner under BR25 on or after 01/04/2011 to be given the opportunity to purchase ASBCs.</p> <p>GAD guidance is available for calculation of ASBCs but may need amending to take account of the change in indexation of pensions and the reduction in the discount rate.</p>	<p>Updates required to the following: -</p> <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Scheme correspondence, and • Administering Authority & Employing Authority Procedure manual
8	BR18	TBC	<p>Amends the flexible retirement provisions so that a member taking flexible retirement must take all pre 01/04/2008 benefits (including those benefits treated as pre 01/04/2008 benefits) and may take some or all post 31/3/2008 benefits</p>	<p>This is a change to current GAD guidance which allows a member to draw all or none of pre 01/04/2008 benefits (including those benefits treated as pre 01/04/2008 benefits).</p> <p>If replicated in the SI this would require the issue of new GAD guidance.</p> <p>We would suggest that the draft amendment is clarified as the extant Gad Guidance was only issued in August 2011 and this appears to be a change in policy.</p>	<p>Administering Authority</p> <p>Updates required to the following: -</p> <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Scheme correspondence, and • Administering Authority & Employing Authority Procedure manual
9	BR26	TBC	<p>Amends the definition of eligible child from that in the Disability Discrimination Act 1995 to that in the Equalities Act 2010</p>	<p>The Disability Discrimination Act 1995 was revoked by The Equalities Act 2010 making this amendment a statutory requirement.</p>	<p>Administering Authority</p> <p>Updates to reference required to the following: -</p> <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Scheme correspondence, and • Administering Authority & Employing Authority Procedure manual

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					<p>Authority Procedure manual</p>
<p>10 & 14</p>	<p>BR28 & BR33</p>	<p>30/09/2010</p>	<p>Clarification that if the member has paid ARCs, ASBCs or AVCs then these should be taken into account when calculating a children's pension for a deceased active member and for survivor's pensions for a deceased deferred member.</p> <p>A new provision has been added which takes a pension debit, which has been applied to a member's benefits, into account when calculating a children's pension.</p> <p>Also, if the member has reduced hours due to the condition that caused death, the reduction in hours should be ignored when calculating these benefits.</p>	<p>The clarification is generally in line with current administrative practices and replicates for consistency survivor benefits for active members which were provided for in the LGPS (Miscellaneous) Regulations 2010.</p> <p>However, the addition of a new regulation to take a pension debit into account when calculating a children's pension is a change to current practices. This appears to be an error as under extant GAD guidance (issued in November 2011) no children's pension provision is transferred to the Pension Credit member.</p>	<p>No action required unless what we perceive to be an error is actually intentional.</p>
<p>5 & 11 & 12</p>	<p>BR1 & BR30 & BR30A</p>	<p>TBC</p>	<p>When a member requests early payment of deferred benefits before age 60 or at any age on ill health grounds or compassionate grounds, the employer or former employer has discretion to allow payment.</p> <p>This regulation clarifies that if the employer/former employer is no longer a scheme employer, then the discretion is passed to the appropriate Administering</p>	<p>This clarifies the procedure where no employing authority exists and places the responsibility with the appropriate administering authority.</p> <p>In this instance, for requests for payment on ill health grounds the appropriate Administering Authority would have to pay the costs for the IRMP report before they can make a decision.</p> <p>The impact of this change will be dependent on the current procedure</p>	<p>Administering Authority</p> <p>Updates required to the following: -</p> <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Scheme correspondence, and • Administering Authority & Employing Authority Procedure manual, and • Administering Authority discretionary policies

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	<p>BR31 & Administration Regulation (AR) 56</p>	<p>TBC</p>	<p>Authority.</p> <p>Expands entitlement to request early payment of benefits on ill health grounds to include requests from pensioner members with deferred benefits (where Tier 3 ill health benefits have been suspended) providing the condition is unrelated to the condition which gave grounds for the original Tier 3 retirement.</p> <p>The same IRMP may be used to certify retirement under BR31 – ill health from deferred status, as that used under BR20(1)(a) – Tier 3 ill health from active status</p> <p>This regulation also clarifies that if the employer is no longer a scheme employer, then the discretion is passed to the appropriate Administering Authority.</p>	<p>but is expected to be minimal.</p> <p>No comment</p>	<p>Administering Authority</p> <p>Updates required to the following: -</p> <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Administering Authority & Employing Authority Procedure manual, and • Administering Authority discretionary policies
<p>13 & 33</p>		<p>TBC</p>	<p>Extends trivial commutation options to allow members whose total commuted pension is less than the de minimis limit of £2,000 to commute without the need to reference other benefits accrued by the member by allowing commutations with reference to Regulation 164 of the Finance Act 2004 and Regulation 6 of the Registered Pensions Schemes (Authorised Payments) Regulations 2009.</p>	<p>This reduces the administrative burden for commutation of small pensions. However, LGPS 1997 regulations: -</p> <ul style="list-style-type: none"> • 49 - applicable to leavers prior to 01/04/2008, and • 156 - applicable to pension credit members <p>do not appear to have been amended to provide for this change.</p>	<p>Administering Authority</p> <p>Updates required to the following: -</p> <ul style="list-style-type: none"> • Scheme correspondence, and • Administering Authority & Employing Authority Procedure manual
<p>15</p>					

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Draft LGPS
(misc) Regs
2012

Local Government Pension Scheme (Transitional Provisions) Regulations 2008 / 238 (as amended)

17 & 18	TR3 & TR10	30/9/2010	<p>Amendment to allow 85 year rule protections to apply to pre 2008 members with deferred benefits (with suspended Tier 3 benefits) who apply for early payment (on or after age 55) of their benefits. Currently actuarial reductions (excluding compassionate grounds) are based on a pension age of 65 for the entire suspended pension eventually brought into payment, where payment is made prior to age 65.</p>	<p>Requires amendment of the Ill Health FAQs version 3 which currently states, suspended benefits if paid prior to age 65, are reduced and for the appropriate issues of GAD Guidance to be updated with this additional inclusion.</p> <p>The effective date for this change is suggested to be from 30/09/2010 which would suggest that any pensions paid on or after this date, may have been underpaid. To avoid recalculation, we would suggest that the effective date is from a date in the future and not the past.</p>	<p>Administering Authority</p> <p>Updates required to the following: -</p> <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Scheme correspondence, and • Administering Authority & Employing Authority Procedure manual <p>Costs</p> <p>There may be an extra cost to fund if higher benefits are paid to member as a result of this proposed change, especially if the change is back dated.</p>
19	TR Schedule 1	TBC	<p>Removes the extant provision (66(8) of the 1997 regulations) allowing for members who contributed to an IHAVC prior to 13/11/2001, to transfer the IHAVC fund in certain circumstances, into the LGPS to purchase membership.</p> <p>Removes the extant provision (122(6C) and 122(6D) of the 1997 regulations) which provide instruction on transfer credits received by a member who was a member prior to 1 April 2008 should be treated (i.e. pre or post 08 membership dependant on date of transfer).</p>	<p>GAD guidance on both these types of transfers provides detailed guidance on how the membership is treated when calculating entitlement to benefits. In both instances the guidance is not synchronised with the regulations, therefore, this change is welcomed.</p> <p>However, by removing extant regulation 66(8) this would appear to prevent members who have not yet transferred, from transferring their IHAVC fund into the LGPS to purchase membership going forwards. This does not appear to be the overall intention of the change and we would suggest that this change is reviewed.</p>	<p>No action required as the change is intended to clarify existing procedures though, if regulation 66(8) of the 1997 Regulations is removed this will facilitative changes to: -</p> <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Scheme correspondence, and • Administering Authority & Employing Authority Procedure manual, and

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Draft LGPS
(misc) Regs
2012

Local Government Pension Scheme (Administration) Regulations 2008 / 239 (as amended)

LG Discretionary
Comp Regs
2006 - 2
AR6
&
AR7
&
AR Schedule 3

TBC

Requires Transferee Admission Bodies (TABs) and Community Admission Bodies (CABs) to put a bond or indemnity in place to cover liabilities and protect the fund. Going forward a TAB must undertake a risk assessment in the future.

If a bond is not possible the TAB or CAB must secure an indemnity from the sponsoring employer/parent guaranteee.

Where the admitted body is established under an enactment allowing the Secretary of State to make financial provisions, then the Secretary of State must provide the guaranteee.

The changes also places the responsibility on administering authorities to inform the Secretary of State of any admission agreements which have been finalised.

Further changes also require the additional information included within agreements for TABs (set out in schedule 3 of the Administration regulations) to be extended to cover all admission agreements going

Although the draft regulations (and extant regulations) require notification of any new admission agreements to be notified to the Secretary of State this does not always happen. Views are requested on whether this should either be removed or be strengthened by adding a date for compliance or removed altogether.

Overall the changes strengthen the position for each fund by enforcing more stringent covenants which reflect today's environment, though this may prove problematic for some TABs or CABs in securing suitable bonds or indemnity.

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- Review of template admission agreements, and
- Overall process

2 & 3 & 21 & 22 & 41 & 43

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			<p>forward, Stipulates that a separate admission agreement should be entered into for each contract for a TAB even if a sole contractor is responsible for a number of contracts.</p> <p>The above amendments shall not have any effect on the admission agreements entered into prior to the date on which the draft regulations come into force.</p>		
23	AR12	TBC	<p>Extends Regulation 12 to cover NHS partnerships in Wales as well as England by referencing the relevant Welsh Act under which such partnerships are allowed. Membership of the LGPS is allowed for such NHS partnerships despite the member being eligible to join the NHS pension scheme.</p>	<p>No Comment</p>	<p>Action only required if the LGPS fund is affected by this change as follows:</p> <ul style="list-style-type: none"> • Administering Authority Updates required to the following: - <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Scheme correspondence, and • Administering Authority & Employing Authority Procedure manual, and • Employing Authority Updates required to: - <ul style="list-style-type: none"> • New Starter procedures
24	AR18	TBC	<p>Confirms that Additional Paternity Leave should be treated in the same way as Additional Maternity Leave and Additional Adoption Leave.</p>	<p>Complies with the Additional Paternity Leave Regulations 2010 and is in line with current practice</p>	<p>No action required as the change is intended to clarify existing procedures.</p>

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			<p>Also obliges the member paying ASBCs to continue paying full contributions during the period of Additional Maternity Leave, Additional Adoption Leave, or Additional Paternity Leave.</p>		
<p>25 & 26 & 27</p>	<p>AR19 & AR20 & AR21</p>	<p>TBC</p>	<p>Obliges the member paying ASBCs to continue paying full contributions during any period of reserve forces leave, special leave, leave with permission and strike absence in line with how payments are treated in respect of purchasing additional pension or membership.</p>	<p>Necessary as a consequence of draft miscellaneous regulation 7 should it be enacted.</p>	<p>No action required as the change is intended to clarify existing procedures.</p>
<p>28</p>	<p>AR26</p>	<p>TBC</p>	<p>There are two amendments, the:</p> <ul style="list-style-type: none"> • First allows for pensioner members with deferred benefits (i.e. suspended Tier 3 members) to access their IHAVC fund upon payment of retirement benefits, and • Second prevents a member retiring on the grounds of Tier 3 ill health from receiving payment of their IHAVC fund. 	<p>In essence, the amendments simply prevent a member who is retiring on a short-term ill health pension from receiving access to their IHAVC fund. However, the IHAVC fund may be paid when the member eventually retires in full.</p> <p>What is not clear is where the regulatory mechanics are in place to determine how an IHAVC fund is paid where the short-term pension either:</p> <ul style="list-style-type: none"> • Never ceases as a result of the member reaching age 65, or • Uplift from tier 3 to tier 2 ill health pension <p>We suggest that this be clarified with DCLG.</p>	<p>Administering Authority</p> <p>Updates required to the following: -</p> <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Scheme correspondence, and • Administering Authority & Employing Authority Procedure manual
<p>29</p>	<p>AR30</p>		<p>Introduce regulation AR30A</p>	<p>Allows transfer of deferred and</p>	<p>Action will only be required when this</p>

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<p>30 &</p>	<p>New AR30A</p>		<p>which allows employers with both active, deferred and pensioner members (previously only active members could be transferred) in more than one fund to move them into a single fund under the direction of the Secretary of State and with the agreement of the funds and the amalgamating employer(s). The Secretary of State can also direct for financial adjustments between funds (assets or cash) to be made.</p>	<p>pensioner members between funds which was previously not provided for and thus allowing for a clean break. Agreement must be reached between employing authorities and by the Secretary of State. This could provide protection for funds taking on the assets of an employer from another fund where the liabilities of the deferred and pensioner exceed the employers assets held within the originating fund.</p>	<p>arises.</p>
<p>31 & 32</p>	<p>AR32 & AR38</p>		<p>Tightens up regulation allowing an Administering Authority to seek a cessation payment when an employer ceases to be an employer in the fund. It also allows an Administering Authority to review and obtain revised rates and adjustment certificates in between the normal triennial valuation where it has become apparent that the status of an employer has changed or may be due to change. This will give greater scope to reduce any deficit prior to a cessation payment becoming payable.</p>	<p>No comment</p>	<p>No Action required initially, though administering authorities may wish to review their template admission agreements to provide for this expansion</p>
<p>34 (links to draft regs 11</p>	<p>AR66</p>	<p>TBC</p>	<p>Expands the number of mandatory discretions to make</p>	<p>No Comment</p>	<p>Administering Authority</p>

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& 12)			<p>mandatory for all employers to formulate, publish and keep under review a policy on the choice of payment of pension for a pensioner member with deferred benefits (i.e. suspended tier 3 members)</p> <p>In addition, where the former employing authority no longer exists and the responsibility has passed to the appropriate administering authority, the appropriate administering authority must formulate, publish and keep under review such a policy in respect of both deferred members and pensioner members with deferred benefits on or before 31/10/2012</p>		<p>Updates required to: -</p> <ul style="list-style-type: none"> • Discretionary policies <p>Employing Authority</p> <p>Updates required to: -</p> <ul style="list-style-type: none"> • Discretionary policies
			<p>Draft regulation 35, brings forward the date by which the Annual Benefit Statement (ABS) should be issued to within 6 months after the 31 March. Members may also request a statement to be issued within this 6 month period by making a request to the administering authority.</p>	<p>AR68 & New AR68A</p>	<p>35 & 36</p>
			<p>Bringing forward the timescales by which an ABS must be issued is in compliance with the new tax laws governing the annual allowance. Employers and Administering Authorities will need to work extremely closely to ensure that this is possible. To ensure compliance we would suggest that data is validity checked on an ongoing basis rather than at the traditional year-end.</p> <p>We note that the regulations do not seem to make allowance for the fact that the first such statements are not, by law, required to be issued until 30/09/2013</p>	<p>Administering and Employing Authorities</p> <p>To ensure statutory compliance: -</p> <ul style="list-style-type: none"> • Review existing process for checking year-end data, and • Review ABS timetables 	

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			<p>Draft regulation 36, provides the regulatory framework to deduct an Annual Allowance charge from the member's benefits accrued in the LGPS, where the member meets the over-riding legislation requirements.</p>	<p>In order for the administering authority to make such a deduction guidance will need to be provided by the Secretary of State, though we presume that this in turn will be the Government Actuary's Department.</p>	
37	AR83	TBC	<p>Corrects the reference to the Pensions Schemes Act 2004 with the reference Pensions Act 2004.</p>	<p>No comment</p>	<p>No Action required</p>
38 & 39	AR 86 & AR Schedule 1	01/08/2010	<p>Corrects reference to the President of the Institute of Actuaries to the President of the Institute and Faculty of Actuaries. Inserts the definition of Academy within Schedule 1.</p>	<p>No comment</p>	<p>No Action required.</p>
40	AR Schedule 2	22/11/2012	<p>From 22/11/2012 :-</p> <ul style="list-style-type: none"> Reference to a police authority within the Police Act 1996 changes to Police and Crime Commissioners and Chief Constables within the Police Reform and Social Responsibility Act 2010 and 2011 respectively, and Adding Mayoral 	<p>No comment</p>	<p>No Action required.</p>

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42	AR Schedule 4	TBC	<p>Development Corporations</p> <p>Removing Firebuy Ltd and the Standards Board for England.</p> <p>Removing the National College for School Leadership which is to become an executive agency for the Department for Education in April 2012.</p> <p>Provides that an Academy must remain in the fund according to its geographical position irrespective of the location of its proprietor.</p>	No comment	<p>Administering Authority</p> <p>Where an Administering Authority falls into the geographical location of an academy it must make sure that the appropriate admission agreement is established with the proprietor.</p>
44	AR13	Various	<p>Provides transitional provisions to comply with Automatic Enrolment. The effective date will vary for each employer depending on their respective staging date.</p> <p>The regulation determines eligibility to join the LGPS. AR13 (1) has been amended to automatically enrol all members into the LGPS from the date of commencement and AR13 (3 to 6) have been removed.</p> <p>The changes are intended to allow immediate enrolment into the LGPS for all eligible employees from date of commencement.</p>	<p>This regulation applies to all members who are eligible to be members of the LGPS. However, under BR 2(2) a member with a contract of less than 3 months is not eligible for membership of the LGPS.</p> <p>AR13 (3) previously allowed employees who became eligible after their start date (where contracts were extended beyond 3 months) to join from the date they became eligible.</p> <p>The removal of this regulation means that members who are not eligible to join the LGPS on commencement of employment and who later become eligible following an extension to their contract do not have a requirement to be automatically brought into the</p>	<p>Administering Authority</p> <p>Updates required to the following: -</p> <ul style="list-style-type: none"> • Web-site, and • Scheme guides, and • Administering Authority & Employing Authority Procedure manual, and <p>Employing Authorities to ensure statutory compliance: -</p> <ul style="list-style-type: none"> • Review existing process for new starters

