Robert Ellis
Department for Communities and Local Government
Workforce, Pay and Pensions
2nd Floor
Fry Building
2 Marsham Street
London
SW1P 4DF

22nd January 2015

Dear Robert,

The draft LGPS (Amendment) Regulations 2015
Technical consultation on Local Government Pension Scheme rules

Thank you for the Department's consultation document inviting comments on technical changes to the Local Government Pension Scheme rules.

I am responding on behalf of the Local Government Association (LGA) and the Local Government Pensions Committee (LGPC) to the consultation document.

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, 415 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.

Our responses to the draft amendment regulations and to the questions posed in the consultation document are as follows:

Local Government House, Smith Square, London SW1P 3HZ

T 020 7664 3000 **F** 020 7664 3030 **E** info@local.gov.uk

Regulation 1
We do not think regulation 3 should be made retrospective to 1st April 2014 but should have effect from the date the Amendment Regulations come into force (otherwise there could be cases where the member has already been admitted under the current regulations from the date they made their election, not from the first day of the following pay period, and would have to have the contributions deducted for the period between their date of election and the first day of the following pay period refunded).

We are uncertain whether the amendment being made by regulation 11 can be retrospective to 1st April 2014 (rather than only affecting those members who opt out on or after the date the Amendment Regulations come into force). This is because members who opted out between those two dates will not have been informed that they would not be permitted to aggregate should they subsequently wish to re-join the Scheme. If it is possible for the amendment to be made retrospective to 1st April 2014 then a further amendment should be made to cover members who opted out under the equivalent of regulation 5(2) of the LGPS Regulations 2013 in the Earlier Schemes (in order to cover for those who opted out under the 2008 or any other Earlier Schemes). Alternatively, an equivalent of the amendment being made to regulation 22(8) could be made to regulations 10(4) and (6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

Regulations 2 to 4
Agreed.

Regulation 5
At the end of regulation 10(5)(a) replace the word “and” with “or” as sub-paragraph (b) is not conditional on sub-paragraph (a).

Due to the introduction of shared parental leave the revision to regulation 10(5)(b) should be amended to read:
In regulation 10(5) (temporary reduction in contributions) for “sickness or injury” substitute “sickness, injury, ordinary maternity, paternity or adoption leave or shared parental leave during what would have been the ordinary maternity, paternity or adoption leave period.”

Regulation 6
Agreed, but the following additional change is also required to regulation 15(4).

The wording at the end of regulation 15(4) should be amended to read:

“has an arrangement under regulation 16 (additional pension contributions) or is making contributions under regulation 17 (additional voluntary contributions) the employer contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions) or, as appropriate, to a shared cost AVC under regulation 17, remain payable if ~~that~~ the relevant regulation applies.”

This is to cover the position of employer contributions to a SCAVC where a member continues to pay AVCs during the types of leave referred to in regulation 15(4).

Furthermore, regulation 69(1) should have a further sub-paragraph added as follows:

"(e) all amounts received from time to time from the Ministry of Defence in respect of employee and employer contributions for a member on reserve forces service leave."

This is to cover any cases where the MoD pay the contributions to the employer rather than direct to the Fund under regulation 15(3)(b) as we understand the MoD might want to pay the contributions to the employer to hand over to the Fund.

Although not being consulted on, a clarifying amendment should be made to regulation 15(6). This is because there is nothing in the LGPS Regulations 2013 that actually says how the amount of 'lost' pension for absences should be calculated. All there is is an oblique reference to APP within regulation 15(6) and that only refers to a limitation of how much an employer should pay. One can deduce from that that the employee should pay a one third cost based on APP. However, what about an APC to cover pension 'lost' during a strike. There are no employer contributions to an APC in those cases, so regulation 15(6) is not relevant and there is nothing in the regulations saying how the cost of the 'lost' pension should be determined. It has been suggested that regulation 15(6) should be amended to read something like "…..as receiving their pensionable pay for the period of absence from work up to a maximum period of 36 months, or assumed pensionable pay where the amount of pensionable pay cannot be determined". However this might cause some issues in child related leave cases. Let's say that someone is on annual salary only and goes on maternity leave. The employer will know exactly what pay the member would have received during the period of unpaid additional maternity leave, even to the extent of knowing what the pay would have risen to as a result of an increment or pay rise the member would have received had they not been on unpaid additional maternity leave. However, where a person works variable hours, the employer cannot know what the lost pay would have been and so would have to use APP. That figure would be an average of the last 3 months / 12 weeks' pay (and not, as in the annual salary case, the actual pay due) and would not increase by any increment of pay award due during the period of unpaid additional maternity leave (because APP is only increased after two 31st March dates have been passed). So, being too prescriptive in the regulation would not give employers the flexibility needed to be able to deal with such cases. It might be preferable, therefore, for the regulation to say something like "as receiving their pensionable pay for the period of absence from work up to a maximum period of 36 months, calculated in accordance with guidance to be issued by the Secretary of State where the amount of pensionable pay cannot be determined". The Secretary of State guidance can then be written in such a way to give employers the flexibility required. Of course, simply amending regulation 15(6) means that there still wouldn't be anything in the regulations about how the employee contributions should be determined (particularly for strikes). Perhaps that

could be dealt with through the suggested Secretary of State guidance too. Overall, therefore, we think the word “assumed” should be deleted from regulation 15(6) and the words “calculated in accordance with guidance to be issued by the Secretary of State where the amount of pensionable pay cannot readily be determined” should be added at the end of regulation 15(6).

Also, a new sub-paragraph should be added at the end of regulation 16 to say something like “(18) Where the member elects to pay an APC to cover the amount of pension that would otherwise have accrued but for an absence of the type mentioned in regulations 11(4)(b) or 11(4)(c), the amount of pension that would have accrued during that absence shall be calculated on the pensionable pay the member would have received but for the absence or in accordance with guidance to be issued by the Secretary of State where that amount of pensionable pay cannot readily be determined.”

Regulation 7

Agreed. However, there are some further minor corrections needed to regulation 16 as detailed in the immediately preceding paragraph above and the paragraphs below.

A comma needs to be inserted in regulation 16(1) after the words “absence from work)”. This is necessary to make it clear that the proviso in the words from “unless” to the end applies to APCs taken out by members paying contributions under regulation 9, and to members paying contributions under regulation 10 where the APC is to cover a period of absence, and not just to the latter group.

Regulation 16(9)(b): the cross-reference to “paragraph (1)” should be to “paragraph (2)”.

Regulation 16(11): at the end of sub-paragraphs (d), (e) and (f) add “in the employment to which the APC is attached”.

Regulation 16(15): to avoid problems of apportionment of APC contracts for the purposes of the underpin and the 85 year rule, the Technical Group at its meeting on 12th December 2014 decided that if contributions under an APC contract to cover

a) a period of absence from work with no pensionable pay in consequence of a trade dispute,

b) a period of absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave

had not been completed at the time a member ceased to be an active member, the outstanding balance of pension being purchased under the contract should be credited to the pension account and the remaining contributions would be due from the member. If not paid, the contributions would be held as a “debt” against the member and recovered from the member’s benefits when they become payable. It would be helpful if an appropriate amendment to regulation 16(15) could be made to deliver this.

Regulation 8
Agreed.

To correct an inadvertent omission in regulation 17(7), after “or regulation 35(1) (early payment of retirement pension on ill-health grounds: active members)” add “or regulation 38(1) (early payment of retirement pension on ill-health grounds: deferred members).”

We assume that although regulation 17(7)(a) needs to be amended to deliver the HM Treasury policy intention that the tax free lump sum from new (post 31st March 2014) AVC arrangements should be limited to 25% of the value of the AVC pot this has been put on hold pending decisions yet to be taken over how “Freedom and Choice” is to be delivered within the LGPS.

Regulations 9 and 10
Agreed.

Regulation 11

Whilst we agree in principle with the amendment to regulation 22(8) we do not believe it is practicable as presently worded. This is because, if a member with a deferred benefit moves from Fund A to Fund B, Fund B will need to ascertain whether or not the deferred benefit was awarded as a result of opting out of the Scheme in order to determine whether or not the member may aggregate their benefits. In practice it can be even more complicated. Take, for example, a member who opts out of the Scheme with Fund A, subsequently opts back into the Scheme (or is automatically re-enrolled into the Scheme) with Fund A and then moves to Fund B. Fund B would need to ascertain the reasons for the two deferred benefits in Fund A as the member would, under the draft regulation, be permitted to aggregate the deferred benefit from the second period of membership in Fund A but not the deferred benefit from the first period of membership in Fund A.

We think a more practical solution would be to provide that a member who has opted out of the Scheme in an employment with a Scheme employer with an entitlement to a deferred benefit and who, **during a continuous period of employment with that Scheme employer**, either opts back into the Scheme or is automatically re-enrolled into the Scheme, should not be permitted to aggregate the deferred benefit whilst in employment with that Scheme employer which, for this purpose, shall include a Scheme employer to which the member is transferred as a result 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).

However, the member should be permitted to aggregate upon a move to another Scheme employer.

The effect of the above would be that a member who is awarded a deferred benefit upon opting out of the Scheme would not be permitted to aggregate upon re-joining the Scheme during a continuous period of employment with that employer (or an employer to whom they are TUPE transferred). This would ensure that, as the earlier period of membership has not been aggregated, the Scheme employer would not incur a strain on Fund cost in relation to that membership if benefits in respect of the second period of membership become payable on the grounds of redundancy or business efficiency, ill health, or upon early payment prior to age 60 where the employer agrees that the 85 year rule should be applied.

Conversely, it must be recognised that there may nonetheless be some employer costs associated with the regulation as it allows a member with some pre 1st April 2014 membership who has a pay cut or pay restriction to protect their accrued pre 1st April 2014 final salary benefits. For example, a member who suffers a pay cut, say, 4 years before their intended retirement age could opt out of membership and re-join the scheme one month later. The pre 1st April 2014 element of their deferred benefit would be based on their pre-pay cut final pay. Similarly, a member with some pre 1st April 2014 membership who has a pay cut more than 10 years before their intended retirement age could opt out of membership and re-join the scheme one month later. The pre 1st April 2014 element of their deferred benefit would be based on the best average of 3 consecutive years in the last 13 years ending on a 31st March.

Technical amendments are also required to regulation 22(4) to reflect other provisions within the LGPS Regulations 2013 i.e.

- add a new sub-paragraph “(g) the member’s benefits are commuted under regulation 34”, and
- add a new sub-paragraph “(h) the member’s benefits are transferred to another Fund under regulation 103”. This is needed because regulation 22(4)(a) only covers cases where a transfer value payment has been made to another registered pension scheme (i.e. other than the LGPS in England and Wales) – see the definition in Schedule 1 of “transfer value payment”.

We also believe regulations 22(7) and (8) should be amended to mirror regulation 16(6) of the LGPS (Administration) Regulations 2008 i.e. 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, which gives 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.

More importantly, and in response to paragraph 27 of the consultation document, we would seek an amendment to regulation 22(8) to move away from a position of automatic aggregation with the right to elect within 12 months of re-joining the scheme (or such longer period as the Scheme employer allows) to retain separate deferred benefits to a position where the deferred benefits are not automatically aggregated but the member can elect to aggregate by making an election within 12 months of re-joining the scheme (or such longer period as the Scheme employer allows). That would mirror the position under the 2008 Scheme.

When we moved to the 2014 Scheme we took the view that, looking forward to a situation where people might only have benefits in the 2014 Scheme, it would make far more sense to move to a position where benefits were automatically aggregated unless the member made an election within 12 months of re-joining the Scheme (or such longer period as the Scheme employer might allow) to retain separate benefits. Thus, automatic aggregation would be the norm because, in a pure CARE environment, there would be little or no real benefit in retaining separate benefits.

However, we are now realising that this is having a number of consequences that we had not envisaged when making the decision to move to an automatic aggregation approach. The main issue that has arisen is that it is causing problems with the assessment of the pension input amount in a pension input period for annual allowance purposes. A secondary problem is that not all administering authorities are only requesting an Inter-Fund Adjustment when the member has confirmed that they don't want to retain separate benefits or, in the absence of such confirmation, after 12 months has elapsed from the date of re-joining the Scheme. A divergence of approach between administering authorities is causing difficulties e.g. one administering authority might decide to request payment of an Inter-Fund Adjustment after 3 months but the sending administering authority refuses on the grounds that the member has not yet confirmed whether they wish to retain separate benefits and has 12 months to do so. Even if both administering authorities agree to process an Inter-Fund Adjustment after 3 months this could result in the receiving Fund having to unpick membership and repay the Inter-Fund Adjustment received if the member were to subsequently make an election to retain separate benefits within the permitted 12 month deadline. Furthermore, paying an Inter-Fund Adjustment prior to 12 months without an election from the member could cause complications (e.g. if a cash equivalent transfer value had been provided for divorce purposes in the period between the benefits being aggregated and unpicked). However, waiting for a decision for up to 12 months will result in the stockpiling of cases (albeit that, in essence, this is not much different to the position that applied under the 2008 Scheme where cases were not actioned unless / until a member made a positive election to aggregate benefits).

We are, therefore, of the view that, to overcome these issues, it would be better if regulation 22(8) was amended to revert back to the position where members retain separate deferred benefits unless they make an election within 12 months of re-joining the Scheme (or such longer period as the employer might allow) to aggregate. This would be subject to two provisos:

(a) those who became entitled to the deferred benefit as a consequence of a notice served under regulation 5(2) (ending of active membership) or an equivalent regulation in the Earlier Schemes should not be able to elect to aggregate, and
(b) automatic aggregation of a deferred benefit should apply (with no right to elect to retain a separate benefit) if the cessation of the concurrent employment, or the cessation of the employment giving rise to the deferred benefit, occurred because of –

(i) a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations") apply; or

(ii) 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.

Furthermore, it is not clear why, where a member left prior to 1st April 2014 and re-joins the Scheme on or after 1st April 2014 and has not had a continuous break in active membership of a public service pension scheme of more than 5 years, regulation 10(5) and (where the member does not make an election under regulation 5(5) to be treated as if they had been a member on 31st March and 1st April 2014) regulation 10(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 require that the transfer value in respect of the pre 1st April 2014 membership should purchase an amount of earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). We believe it should purchase final salary membership (regardless of whether or not the member makes an election under regulation 5(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 to be treated as if they had been a member on 31st March and 1st April 2014.

The outcome of the above proposals would be as follows:

Scenario A – post-14 only
A1: Active member who has a **deferred refund** from an earlier period of membership or from a concurrent employment that has ceased and which is based on post-31 March 2014 membership only.

Concurrent employment:

> Automatically aggregated with the ongoing active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one ongoing active membership the member must, within 12 months of the date the concurrent employment ceased, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision).

Previous employment:

> Automatically aggregated with the new active pension account or, if there is more than one, with whichever one the member chooses. If

there is more than one new active membership the member must, within 12 months of the date the new active membership commenced, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision).
(Note that the gap between employments cannot be more than 5 years as a deferred refund cannot be held for longer).

A2: Active member who has a **deferred benefit** from an earlier period of membership or from a concurrent employment which has ceased and which is based on post-31 March 2014 membership only.

Concurrent employment:

No automatic aggregation* with the ongoing active pension account but member may, within 12 months of the date the concurrent employment ceased (or such longer period as the employer in relation to the relevant ongoing active membership allows) elect to aggregate** and, if there is more than one ongoing active membership, the member must choose which one it is to be aggregated with.

Previous employment:

No automatic aggregation* with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with.

* Except where TUPE applies
** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

Scenario B – mix of pre-14 and post-14 (without 5 year break)

B1: Active member who has a **deferred refund** from an earlier period of membership, or from the cessation of a concurrent employment, which is based on pre-1 April 2014 **and** post-31 March 2014 membership **and** the member was an active member on both 31 March 2014 and 1 April 2014 **and**, since becoming entitled to the deferred refund, the member **has not** had a break in active membership of a public service pension scheme of more than 5 years.

Concurrent employment:

Automatically aggregated with the ongoing active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one ongoing active membership the member must, within 12 months of the date the concurrent employment ceased,

choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision). The pre-1 April 2014 membership from the concurrent employment that has ceased will entitle the member to a final salary benefit (the membership will be attached to the same ongoing active pension account).

Previous employment:

Automatically aggregated with the new active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one new active membership the member must, within 12 months of the date the new active membership commenced, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision). The pre-1 April 2014 membership from the deferred refund will entitle the member to a final salary benefit (the membership will be attached to the relevant new active pension account).

B2: Active member who has a **deferred benefit** from an earlier period of membership or from the cessation of a concurrent employment which is based on pre-1 April 2014 **and** post-31 March 2014 membership **and** the member was an active member on both 31 March 2014 and 1 April 2014 **and**, since becoming entitled to the deferred benefit, the member **has not** had a break in active membership of a public service pension scheme of more than 5 years.

Concurrent employment:

No automatic aggregation* with the ongoing active pension account but member may, within 12 months of the date the concurrent employment ceased (or such longer period as the employer in relation to the relevant ongoing active membership allows) elect to aggregate** and, if there is more than one ongoing active membership, the member must choose which one it is to be aggregated with. If aggregated, the pre-1 April 2014 membership from the concurrent employment that has ceased will entitle the member to a final salary benefit (with the membership being attached to the same ongoing active pension account as the post 2014 CARE benefits were aggregated with).

Previous employment:

No automatic aggregation* with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with. If aggregated, the pre-1 April 2014 membership from the previous employment will entitle the member to a final salary benefit (with the membership being attached

to the same active pension account as the post 2014 CARE benefits were aggregated with).

* Except where TUPE applies
** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

Scenario C – mix of pre-14 and post-14 (with 5 year break)

C1: Active member who has a **deferred refund** from an earlier period of membership which is based on pre-1 April 2014 **and** post-31 March 2014 membership **and** the member was an active member on both 31 March 2014 and 1 April 2014 **and**, since becoming entitled to the deferred refund, the member **has** had a break in active membership of a public service pension scheme of more than 5 years.

The member is only entitled to a refund of contributions, which should already have been paid.

C2: Active member who has a **deferred benefit** from an earlier period of membership which is based on pre-1 April 2014 **and** post-31 March 2014 membership **and** the member was an active member on both 31 March 2014 and 1 April 2014 **and**, since becoming entitled to the deferred benefit, the member **has** had a break in active membership of a public service pension scheme of more than 5 years.

No automatic aggregation* with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with. If aggregated, the transfer value in respect of pre-1 April 2014 membership from the deferred benefit will purchase an amount of earned pension in the member's relevant active pension account.

* Except where TUPE applies
** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

Scenario D – pre-14 only

D1A: Member left prior to 1 April 2014 with a **deferred refund**, re-joins the Scheme on or after 1 April 2014 and **has not** had a break in active membership of a public service pension scheme of more than 5 years.

Automatically aggregated with the new active pension account or, if there is more than one, with whichever one the member chooses. If

there is more than one new active membership the member must, within 12 months of the date the new active membership commenced, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision). The pre-1 April 2014 membership from the previous employment will entitle the member to a final salary benefit (with the membership being attached to the same active pension account as the post 2014 CARE benefits were aggregated with).

D1B: Member left prior to 1 April 2014 with a **deferred refund**, re-joins the Scheme on or after 1 April 2014 and **has** had a break in active membership of a public service pension scheme of more than 5 years.

Automatically aggregated with the new active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one new active membership the member must, within 12 months of the date the new active membership commenced, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision). The transfer value in respect of the pre-1 April 2014 membership is to be used to purchase an amount of earned pension in the member's relevant active pension account.

D2: Member left prior to 1 April 2014 with a **deferred benefit** and re-joins the Scheme on or after 1 April 2014 **and**, since becoming entitled to the deferred benefit, the member **has not** had a break in active membership of a public service pension scheme of more than 5 years.

No automatic aggregation* with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with. If aggregated, the pre-1 April 2014 membership from the previous employment will entitle the member to a final salary benefit (with the membership being attached to the same active pension account as the post 2014 CARE benefits were aggregated with).

* Except where TUPE applies
** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

D3: Member left prior to 1 April 2014 with a deferred benefit **and** re-joins the Scheme on or after 1 April 2014 **and**, since becoming entitled to the deferred benefit, the member **has had** a break in active membership of a public service pension scheme of more than 5 years.

> No automatic aggregation* with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with. If aggregated, the transfer value in respect of pre-1 April 2014 membership from the deferred benefit will purchase an amount of earned pension in the member's relevant active pension account.

* Except where TUPE applies
** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

Scenario E – re-joiners

E: Any member to whom scenario A to D applied upon first re-joining the Scheme after 31 March 2014 and who then left again post-1 April 2014 and subsequently re-joins again.

If, when scenario C2, D1B or D3 was first applied, the pre-1 April 2014 membership was aggregated and purchased an amount of earned pension in the active account then, upon re-joining the Scheme again at some later date, scenario A will apply to the member and all of the person's membership is to be treated for the purposes of this section of the notes only as if it had all been post-31 March 2014 membership.

In any other case, scenario A, B1, B2 or C2 will apply, as appropriate.

Regulation 12
Agreed.

By virtue of regulation 3(1)(a) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, the regulations listed in Schedule 1 of those Regulations (which includes the LGPS (Administration) Regulations 2008) continue to have effect so that any rights and obligations imposed on any person under the Earlier Schemes are preserved. That would mean regulation 56(1)(b) of the LGPS (Administration) Regulations 2008 continues to have effect in relation to scheme members who ceased membership between 1st April 2008 and 31st March 2014. Therefore, unless DCLG take the view that such an amendment is not necessary in consequence of the Pension Ombudsman's decision in the case of Climie-Somers v Suffolk CC (PO-2246), an equivalent of draft regulation 36(2A) in the LGPS Regulations 2013 should be made to regulation 56(1) of the LGPS (Administration)

Regulations 2008. This would be to make it clear that, for the purposes of regulation 56(1), the Independent Registered Medical Practitioner is not to be treated as having advised, given an opinion on, or otherwise been involved in, a particular case merely because another practitioner from the same occupational health provider has advised, given an opinion on, or otherwise been involved in the case.

Regulation 13 – paragraph (a)

Agreed. However, the wording used has highlighted the lack of precise wording in regulations 36(1)(c) and 39(9)(a) as they do not require that the reduction in working hours has to be wholly or partly as a result of the condition that caused or contributed to the member's ill health retirement.

Also, the words "working reduced hours" in regulation 36(1)(c) should be amended to "working reduced contractual hours" in order to mirror the wording used in regulation 39(9)(a).

Furthermore, we have received a number of queries saying that regulation 39(9) reads as if APP is only to be reduced if the IRMP certifies the reduction in hours is due to illness (and, consequently, is not to be reduced if the IRMP does not certify the reduction in hours is due to illness). We have responded that we read regulation 39(9) to mean that when APP is calculated the authority can take account of the reduction in pay (i.e. take into account the pay the person would have received had they not been working part-time) if the IRMP certifies they were working part-time due to their ill health. However, to overcome the confusion it would be helpful if a clarifying amendment were made to regulation 39(9).

Taking all of the above into account, regulations 36(1)(c) and 39(9)(a) would read as follows:

36(1)(c) where a member has been working reduced contractual hours and had reduced pay as a consequence of the reduction in contractual hours, whether that member was in part time service wholly or partly as a result of the condition that caused or contributed to the member's ill health retirement.

39(9)(a) in calculating assumed pensionable pay in accordance with regulation 21(4) (assumed pensionable pay) no account is taken of any reduction in the pensionable pay the member received if an IRMP has certified that the member was working reduced contractual hours wholly or partly as a result of the condition that caused or contributed to the member's ill health retirement.

Regulation 13 – paragraph (b)

Agreed subject to making the following changes to the draft amendment regulation:

"(5) In the case of an active member who is also a deferred member, pensioner member or deferred pensioner member of the Scheme, no death grant is payable under regulations 43 (death grants: deferred members) or 46 (death grants: pensioner members) unless the aggregate amount that would be payable under those regulations would be higher than the aggregate

amounts payable under this regulation, in which case the amount payable is that higher amount and is payable by the administering authority or administering authorities in whose Fund the deceased member was entitled to the pension or deferred pension."

The rationale behind the changes is:

(i) to make it clear that it is the aggregate of the amounts under regulations 43 and 46 that are compared to the amount payable under regulation 40,

(ii) the amount payable under regulation 40 is the aggregate death in service lump sum (in cases where the member has more than one active membership), and

(iii) to clarify (as administering authorities are taking differing views over the interpretation of the meaning of the regulation) that where the aggregate amounts payable under regulations 43 and 46 are higher than the aggregate amount payable under regulation 40, the Funds in which the member was a pensioner or deferred pensioner are responsible for paying the death grants due under regulations 43 and 46 i.e. it is not the Fund in which the member died that is responsible for paying a death grant equal to the higher amount.

This has a read across to regulation 17(7) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 which should have a similar clarifying amendment made i.e.

"(7) In the case of an active member of the 2014 Scheme who is also a deferred, deferred pensioner or pensioner member of the Earlier Schemes, if the aggregate amount of death grant that would have been payable if regulations 32 and 35 of the Benefits Regulations, or the corresponding provisions under any of the other Earlier Regulations, (death grants: deferred and pensioner members) still applied is higher than the aggregate amount that would be payable under paragraph (6), the death grant payable is that higher amount and is payable by the administering authority or administering authorities in whose Fund the deceased member was entitled to the pension or deferred pension."

Regulations 14 to 16
Agreed.

Regulation 17
Agreed except the reference to "paragraphs (5), (9) and (10)" should be amended to "paragraphs (4), (5), (9), (10) and (12)".

Regulations 18 and 19
Agreed.

Regulation 20
Agreed (but also see comment under regulation 6 above regarding the need for a new sub-paragraph to be added to regulation 69(1)).

Regulation 21
Agreed but it would be helpful if a further amendment could be made too, for the reason set out below. At present the amended regulation 83 would provide that:

If it appears to an administering authority that a person is entitled to payment of benefits under the Scheme but is, by reason of mental disorder or otherwise, incapable of managing his or her affairs—

(a) the authority may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the authority may determine, to be applied for the benefit of the person entitled; and

(b) in so far as the authority does not pay the benefits in that manner, the authority may apply them in such manner as the authority may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

However, we have been made aware of a case where the scheme member is about to be retired on health grounds and is, by reason of mental disorder or otherwise, incapable of managing his or her affairs and the family do not have Enduring Power of Attorney, Lasting Power of Attorney or a Court of Protection Order. It would be helpful if an appropriate amendment could be made to regulation 83 to permit the administering authority to accept a pension application form, commutation election under regulation 33 and Lifetime Allowance declaration, etc. completed by someone else on behalf of the Scheme member.

Regulation 22
Agreed. Also, please amend “Services” to “Service” in regulation 89(4).

Regulation 23
Agreed.

Regulation 24
Agreed (unless the regulations are amended to move to a position of no automatic aggregation of a deferred benefit, as requested under regulation 11 above, in which case the amendment set out in draft regulation 24 will not be required).

Regulation 25 – paragraph (a)

Agreed.

Regulation 25 – paragraph (b)

Agreed.

Regulation 25 – paragraph (c)

Agreed. However, shouldn’t there be a provision in regulation 17(1) to say that an employer may choose to contribute to a SCAVC (i.e. it is an employer

discretion)? Otherwise, it appears from the way the regulation is written that the member can simply make an election to contribute to a SCAVC and, by default, the employer would have to make a contribution. Alternatively, simply amend the definition of SCAVC in Schedule 1 to read "SCAVC means an arrangement established under regulation 17 to which the Scheme employer has chosen to make a contribution in addition to contributions that the active member contributes;"

Regulations 26 and 27

Agreed.

Regulations 28 and 29

Agreed (although we leave individual local authorities and administering authorities to confirm whether the references are in the legally correct form).

Regulation 31

Please amend to regulation 17(13) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 to read:

"(13) Membership for the purposes of paragraphs (10) to (12) includes –

(a) any additional membership referred to in regulations 42(4)(a) to (d) and 42A of the 1997 Regulations (reduction of some surviving spouses' and civil partners' pensions) or equivalent provisions in the 2008 Scheme where –

  (i) the surviving spouse or civil partner was married to or in a civil partnership at any time whilst the deceased was in active membership of the Scheme after 31st March 1972*, or

  (ii) the cohabiting partner was cohabiting with the deceased at any time whilst the deceased was in active membership of the Scheme after 31st March 2008*, and

(b) for the purposes of any survivor pension payable to a cohabitee, any pre 6th April 1988 membership the member had purchased under regulation 14A of the Benefits Regulations and regulation 24B of the Administration Regulations

and, for the purposes of paragraph (12) the reference in regulation 42(4)(a) of the 1997 Regulations to "5th April 1988" shall be amended to "5th April 1978"."

[* Note: cohabiting partner's pensions were not introduced into the LGPS until 1st April 2008, hence the reference to 31st March 2008. Although civil partners' pensions were not introduced until 5th December 2005 there is no need to make a reference to that date as no-one could have been in a civil partnership between 1st April 1972 and 4th December 2005. Similarly, although same sex marriages did not come into existence until 29th March 2014, there is no need to make a reference to that date as no-one could have been in a same sex marriage between 1st April 1972 and 28th March 2014.]

The reasons for the suggested revised wording are as follows:

(a) regulation 17(13) is, by cross referring to paragraphs (10) and (12), clearly meant to ensure that relevant additional membership counts for the purposes of a survivor's benefit following a post leaving marriage, post leaving civil partnership or post leaving cohabitation, thereby ensuring consistency of approach regardless of the type of post leaving partnership. However, the desired result is not achieved by simply referring to regulations 42 and 42A of the LGPS Regulation 1997 (as regulation 42 only refers to relevant additional membership in the context of a post leaving widower's pension) – it does not cover post leaving widowers (who were previously covered by regulation F6 of the LGPS Regulations 1995) or post leaving cohabiting partners who had previously been cohabiting prior to the member ceasing active membership. Making the suggested amendment will ensure that relevant additional membership counts in a consistent way for all types of post leaving partners (as the references to (10) and (12) in regulation 17(13) clearly intend. The reason that I have referred to "or equivalent provisions in the 2008 Scheme" is because, for example, ill health enhancement awarded under the Benefits Regulations should be included but regulation 42(4)(a) of the LGPS Regulations 1997 only mentions ill health enhancement awarded under regulation 28 of the LGPS Regulations 1997. Also, the reason that I have not referred to regulation 42(4)(e) is because that sub-paragraph has been a known error for a number of years given that transferred in membership already counts as post 5th April 1978 or post 5th April 1988 membership by virtue of regulations 122(5) and (6) of the LGPS Regulations 1997, and

(b) it is necessary that regulation 17(13) makes it clear that for the purposes of paragraph (12) the reference in regulation 42(4)(a) of the 1997 Regulations to "5th April 1988" shall be amended to "5th April 1978" (as the pension for the widow of a post leaving opposite sex marriage is based on post 5th April 1978 membership).

Regulation 32

We agree that the greater flexibility outlined in paragraph 22 of the consultation document should be provided to administering authorities thereby giving them the ability to determine the method and timing of recovery of unmet pension liabilities. However, it is not clear to us why new regulation 25A(1)(b) limits this flexibility to only cover employers who were not admission bodies. It seems to us that the flexibility should be extended to cover admission bodies too.

Additionally, new regulation 25A(2) refers to "such contributions". We wonder whether this wording is too limiting, in that some Funds may consider accepting other forms of assets to cover an unmet liability. Perhaps the words "such contributions" should be amended to "such contributions and / or assets".

With regard to paragraph 23 of the consultation document we are of the view that flexibility around exit payments should be permitted where, for example, an exiting employer is likely to again have active members within a relatively

short period of time. It should be left to each administering authority to determine what the period of time to apply in any individual case should be, given that circumstances will vary.

We agree that:

a) to better manage the instances when exit payments might be called for, and

b) to protect transferred staff, and

c) to ensure the LGPS retains a viable active membership base

those bodies covered by paragraphs 5 and 6 of Part 2 of Schedule 2 to the LGPS Regulations 2013 should be moved to Part 1 of Schedule 2 to the LGPS Regulations 2013.

Regulation 33

Amendment (a): Agreed.

Amendment (b): agreed subject to inserting after the word “waive” the words “in whole or in part”.

We would request that the following clarifying amendments are also made to Schedule 2:

- in paragraphs 1(4)(a) and (b), amend “age 60” to “the day before age 60”. This is because paragraphs 1(1)(b) and 1(3) deal with members who have attained age 60 and paragraphs 1(1)(c) and 1(4) deal with members who have not attained age 60. Given that paragraph 1(4) cannot apply to a member who has attained age 60 the actuarial reduction should be for the period to the day before age 60. The Secretary of State actuarial guidance on “Early Payment of Pension” will also need to be amended accordingly e.g. in paragraphs 2.13 and B11.

- in paragraph 2(2), replace the words “and to this paragraph” with the words “and to sub-paragraphs (1) and (1A) of this paragraph”. This is because a written policy is only required on the question of whether or not to waive an actuarial reduction under sub-paragraph (1) or (1A); a policy is not required on whether or not the administering authority may require the employer to pay any resulting strain fund up front under sub-paragraph (3).

- in paragraphs 1(1), 1(3)(b) and 1(4)(b) amend the word “request” to “election”. This is because regulations 30(5) and (6) of the LGPS Regulations 2013 refer to a date of election and regulation 30(1) of the Benefits Regulations 2007 refers to a choice (i.e. an election) made by the member. Benefits are payable from the date of election, not from the date of a request, as the employer might turn down a request (in cases where employer consent is required).

Other corrections to clarify definitions or cater for changes in other legislation

Coroners and Justices Act 2009

In Part 4 of Schedule 2 to the LGPS Regulations 2013 please amend "A coroner" to "A senior or area coroner". This is because Part 1 of Schedule 3 to the Coroners and Justices Act 2009 provides for the appointment of Senior, Area and Assistant Coroners. Paragraph 17 of Part 4 of Schedule 3 to the Coroners and Justices Act 2009 says:

Pensions for senior and area coroners

17

A relevant authority for a coroner area must make provision for the payment of pensions, allowances or gratuities to or in respect of persons who are or have been senior coroners or area coroners for the area.

So it appears that pension provision is not to be made for assistant coroners.

Coroners holding office at the time of the implementation of the 2009 Act under paragraph 3 of Schedule 22 to the 2009 Act were to be considered as the senior coroners for their respective areas. Similarly, anyone who was a deputy coroner or an assistant deputy coroner was to be considered an 'assistant coroner' for the corresponding area.

Public Service Pensions Act 2013

Reg 9(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 is trying to deliver the intention behind paragraph 2 of Schedule 7 to the Public Service Pensions Act 2013 which requires that a transfer shall purchase final salary benefits provided there has been no continuous break of more than 5 years in active membership of a public service pension scheme since leaving the scheme from which the transfer is being received. It would be helpful, therefore, if the following words were added at the end of regulation 9(1) to make the position clear - "since ceasing active membership in the scheme from which the transfer payment is received". Otherwise, as presently drafted, a person who was in a public service pension scheme for, say, 6 months and took a refund, had a 6 year break, joined another public service pension scheme (say the Teachers' Pension Scheme) for a period of time and then moved without a break to the LGPS and requested a transfer from the TPS to the LGPS would not be entitled under regulation 9(1) to have that transferred service counted as pre 2014 final salary membership (because of the earlier 5 year break). This would run counter to the requirement of paragraph 2 of Schedule 7 to the Public Service Pensions Act 2013.

Definition of eligible child

It has been suggested that there needs to be a definition within the definition of "eligible child" in Schedule 1 of the LGPS Regulations 2013 to define what is meant by "natural child". This is because on searching for a legal definition there appear to be a number of variations including the following:

"In the phraseology of the English or American law, natural children are children born out of wedlock, or bastards, and are distinguished from legitimate children; but in the language of the civil law, natural are distinguished from adoptive children, that is, they are the children of the parents spoken of, by natural procreation."

It is interesting to note that it was felt necessary to define "natural children" in section 6 of the Judicial Pensions and Retirement Act 1993, which says:

6 Grant and payment of a children's pension
(8) For the purposes of this section the "natural children" of any person are any children of whom that person is the genetic father or mother.

Perhaps this definition should be included in Schedule 1 of the LGPS Regulations 2013.

Transfer of rights accrued in Additional Voluntary Contribution (AVC) arrangements

Regulation 17(10) of the LGPS Regulations 2013 makes it clear that if the member transfers out their main scheme benefits to another scheme (other than the LGPS in England and Wales), the AVCs must be transferred too. It does not make it clear that the AVCs cannot be transferred out if the main scheme benefits are not transferred out (which regulation 26 of the LGPS (Administration) Regulations 2008 did make clear). We have previously suggested that regulation 17(10) should be amended to read:

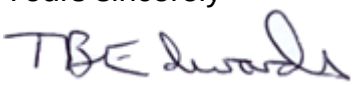
"(10) A member:
(a) must transfer the realisable value in a deferred AVC account to another registered pension scheme or qualified recognised overseas pension scheme if making a transfer under regulation 96 (rights to payment out of pension fund) of the rights in the pension account to which the AVC is attached, and
(b) can only transfer the realisable value in a deferred AVC account to another registered pension scheme or qualified recognised overseas pension scheme if making a transfer under regulation 96 (rights to payment out of pension fund) of the rights in the pension account to which the AVC is attached."

Given that the current AVC provisions are part of the LGPS the above would, in effect, deliver the requirements set out in section 96 of the Pension Schemes Act 1993.

If one of the outcomes from Freedom and Choice is that post 31st March 2014 AVC arrangements become separate from the main scheme, then the proposal set out above would only apply to pre 1st April 2014 AVC arrangements.

With regard to staff who voluntarily or compulsorily move to another LGPS Fund they currently have the right not to transfer their accrued AVC pot to the new Fund's AVC provider. However, if their AVC arrangement is a pre 1st April 2014 arrangement the AVC arrangement with the new Fund will be a post 31st March 2014 arrangement which will mean the member can contribute up to 100% of pensionable pay to the new AVC arrangement but would be limited to a maximum of 25% of the AVC pot as a tax free lump sum. If the member retains their accrued AVC pot with the former Fund they will retain a 100% tax free lump sum provision in relation to the retained AVC pot, but if they transfer it to the AVC provider of the new Fund the tax free lump sum limit will reduce to 25% of the AVC pot. We would wish to see regulations 15(4) and (5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 amended to provide that where a member is TUPE transferred to another Fund or compulsorily moved to another Fund by reason of an Act or SI or 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 then, if the member was, at the point of transfer, paying into an existing AVC arrangement that was entered into prior to 1st April 2014 and continues paying AVCs immediately following the transfer, the AVC arrangement with the new Fund is treated as if it had been entered into prior to 1st April 2014.

Yours sincerely



Senior Pensions Adviser