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Dear Bob

The Draft Local Government Pension Scheme (Administration) Regulations 2007

The LGE is pleased to provide comments on the above draft regulations, as requested in your letter of 14th February 2007.

The draft Administration Regulations are only one part of a three piece jigsaw. At the time of writing, one other part of the jigsaw - the draft Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 – had been issued and the final piece, the Transitional Regulations (which we understand will detail how the pre and post April 2008 benefit structures will interact), had not been issued. Furthermore, large parts of the current LGPS Regulations 1997 have not yet been transposed into either the draft Administration Regulations or the draft Benefits Regulations e.g. provisions covering pension credit and pension debit members, councillor members, regulations 127 to 145 of the 1997 Regulations, various definitions within Schedule 1 of the 1997 Regulations, etc. We do not, therefore, presently have the complete picture available to us and the comments we make below should be seen in that light. It must be recognised that there are inherent dangers in adopting such a fragmented approach to the issue of draft legislation and in condensing the opportunity for comment on such major scheme changes affecting one of the largest schemes in the country.

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Terminology

Throughout the draft regulations cross references are made to Parts or Chapters of Acts using Arabic numerals rather than the Roman numerals used in the relevant Act. For example, see draft regulation 73 which says:

“Chapter 4” means Chapter 4 of Part 4 of that Act (transfer values)

Has there been a change in the naming convention to be used in the headings to Chapters and Parts of Acts? If not, one assumes that in the final version of the Benefits Regulations such references will be changed back to Roman numerals e.g. to:

“Chapter IV” means Chapter IV of Part IV of that Act (transfer values).

Regulation 1 – Citation, commencement and extent

No comments.

Regulation 2 – Interpretation

Amend regulation 2(2) to read “References to members or membership refer to active members or active membership respectively unless otherwise stated.” All references to member within the regulations which relate to members other than active members (e.g. to deferred members, pensioner members, or pension credit members) should specifically state this to be the case. The definition of “Member” in Schedule 1 should then be deleted.

It would be helpful if the wording in regulation 2(3) could be transposed into the definition of an “AVC insurance company” in Schedule 1. Failing that, the words “that Act” in regulation 2(3)(a) should be amended to “the Financial Services and Markets Act 2000”.

Regulation 3 – Application to the Isles of Scilly

No comments.

Regulation 4 – General eligibility for membership: employees of Scheme employers

Delete the word “General” from the heading.

If regulation 9(9) is retained (see later comments on that regulation) then, at the beginning of regulation 4(1) enter “Subject to regulation 9(9)”.

Regulation 5 – Employees of non-Scheme employers: community admission bodies

In regulation 5(2)(f) there needs to be a further bracket added after the words “influence”.

Regulation 6 – Employees of non-Scheme employers: transferee admission bodies

The wording in regulation 6(2) defines a transferee admission body as a body “other than a community admission body”. This would appear to mean that if a service is to be outsourced to a body to which a local authority makes a grant, and would therefore fall within the definition of a “community body”, it would not be possible to use the contractor route to achieve admission. It is appreciated that the body could still be admitted under regulation 5 but that would mean that the decision to admit would rest with the administering authority. Additionally, it is understood that some authorities have difficulties providing guarantees unless they have a specific power to do so, which may not be the case unless regulation 5(4) applies. Regulation 5(4) could also be problematic in itself in that if the body receives funding from two authorities (county and district) but only one authority is involved in the transfer, both authorities would have to stand as guarantors. Unless there is a specific reason for its retention, it might be simpler if the words “other than a community admission body” were deleted from regulation 6(2).

General comment: When the review of the regulations governing admission agreements is completed it would be helpful if regulation 6 could clarify the position of sub-contractors and of subsidiary companies.

Regulation 7 – Admission agreements – further provision

In the heading amend “provision” to “provisions”.

Delete regulation 7(3) as this is no longer a HMRC requirement and renumber all subsequent paragraphs.

It would be helpful if regulation 7 could include a further paragraph as follows:

“An admission agreement may provide that a period of employment by the admission body before the date of the agreement counts as membership of the Scheme.”

Regulation 8 – Further restrictions on eligibility

In regulation 8(1) amend “paragraph (8)” to “paragraph (7)”.

In regulation 8(3) after the words “another occupational pension scheme” insert the words “in relation to that employment” and delete the words after “1993”

in order to recognise that under the Finance Act 2004 a person may be a member of more than one scheme at any given time.

Regulation 8(4) debars from membership of the LGPS any teacher who, due to the provisions of regulation B4(2) of the Teachers' Pensions Regulations 1997, cannot join the Teachers' Pension Scheme (TPS). The Technical Group, at a meeting on 9th January 2001, felt that the LGPS Regulations should be amended to contain a general regulation debarring teachers from membership of the LGPS i.e. to ensure the Scheme does not continue to encounter problems with groups of teachers whom the TPS debars from membership. In any event, regulation 8(4) should be deleted as regulation B4(2) of the Teachers' Pensions Regulations 1997 was revoked from 1st January 2007 by paragraph 3(c) of Schedule 3 to the Teachers' Pensions etc (Reform Amendments) Regulations 2006 [SI 2006/3122].

In the light of potential difficulties with making unauthorised payments after age 75 it would be helpful if the new Scheme only permitted employees to join / remain a member until age 74 ½. Regulation 8(5) would need to be amended accordingly.

In regulation (8)(7)(c) amend "NHS" to "NHS Scheme".

If it is decided that a casual employee must be employed for 3 months or more before becoming eligible for membership of the Scheme, a relevant provision will need to be inserted into regulation 8.

It might also be helpful if regulation 8 contained a further provision along the lines of "A person may not be a member if he does not satisfy the requirements of section 8(1) of the Asylum and Immigration Act 1996".

Regulation 9 – Joining the Scheme

The opportunity should be taken to simplify this regulation as follows:

- (1) A person becomes an active member from the date he first becomes eligible to join the Scheme unless he notifies his employer before that date that he does not wish to become a member.
- (2) Paragraph (1) does not apply to casual employees but a casual employee [employed for a period of 3 months or more] may elect to join the Scheme and become an active member from the first day of the first payment period following receipt of the election by his employing authority .
- (3) A former active member may elect to rejoin the Scheme and becomes a member from the first day of the first payment period following receipt of the election by his employing authority.
- (4) In paragraphs (2) and (3) and in regulation 10(4), a payment period is a period of service to which the employee's wages or salary payment relates.

If it is decided not to simplify the regulation as proposed above, then:

- in regulation 9(2) delete the words “unless he applies to become a member later” as, in practice, it is somewhat pointless, and
- delete regulations 9(6)(c) and 9(9) as these are very rarely monitored by employing authorities

Regulation 10 – Ending of membership

To acknowledge that a person with multiple contracts may cease to be eligible for, or elect out of membership of, the Scheme in respect of some or all employments, amend regulation 10(1), (2), (3) and (4) to:

- (1) A person stops being a member in an employment if he stops being eligible for membership in that employment.
- (2) A person with multiple employments may leave the Scheme in an, some, or all, employments if he wishes and he notifies his employer accordingly in writing.
- (3) A member who gives such a notification stops being a member in the relevant employment(s) from the date the notification specifies.
- (4) But, if a date earlier than the notification or no date is specified, he stops being a member in the relevant employment(s) at the end of the payment period during which notification is given.

Regulation 11 – Contributions during child-related leave

To reflect current practice, and to mirror regulation 12, add new paragraphs (6) and (7) as follows:

“(6) An active member to whom paragraph (5) applies may continue to pay any contributions under regulation [**new 18** (AVCs)] and [**new 24** (SCAVCs)] which he was paying immediately before his leave began.

(7) If an active member goes on maternity, paternity or adoption leave he must continue to make any payments he was making under regulation [**new 16** (AMCs)], under regulation 55 of the 1997 Regulations or under regulations 14 or 15 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 on the pay he would have received but for being on maternity, paternity or adoption leave.”

In consequence, renumber current paragraph (6) to become paragraph (8).

Regulation 11 will also need to be updated to take account of The Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2006 [SI 2006/2014] which I believe have the following effect:

The Ordinary Maternity Leave (OML) and Ordinary Adoption Leave (OAL) period remains at 26 weeks

The Additional Maternity Leave (AML) and Additional Adoption Leave (AAL) period remains as weeks 27 to 52

SMP and adoption pay, for those who qualify, will be extended from 26 to 39 weeks and so will stretch 13 weeks into the AML or AAL period.

The employee, during the OML/AML or OAL/AAL period can carry out up to 10 days work for the employer – referred to as Keeping in Touch (KIT) days. That work is likely to be paid and is likely to bring the pay for the day up to full pay (inclusive of any maternity or adoption pay).

Regulations 11(1) and (2) say that a member who is on maternity or adoption leave must pay standard contributions on any pay received and the service will count.

Regulation 11(4) says that during any period of OML or OAL when the person is in receipt of no pay they shall be deemed to have paid contributions and the service will count.

Regulation 11(5) says that if a person is on AML or AAL and during all or part of that period they are on no pay, they can elect to pay contributions for the unpaid period (so that it can count) and the contributions are based on the pay they were entitled to receive immediately before the unpaid period began.

The KIT days will cause a problem. Let's take an example of a person who goes on maternity leave with entitlement to SMP. Their normal earnings are higher than SMP.

For the first 39 weeks the person is entitled to SMP followed by 13 weeks of unpaid leave. However, the person decides to undertake 9 paid KIT days during the SMP period, the last of those being on the last day of the SMP period, and 1 paid KIT day half way through the 13 weeks of unpaid leave. Under regulations 11(1) and (2) the person would pay contributions on all the pay received in the 39 weeks i.e. on 39 weeks of SMP plus whatever extra pay they received for the 9 KIT days. If the person wished to pay contributions under regulation 11(5) for the last 13 weeks there would be a problem in that for the first 6 weeks and 3 days they would have to pay contributions based on the pay on the last day of paid leave i.e. on full pay (made up of SMP plus the extra pay received because she happened to perform a KIT day on the last day of paid maternity leave). She would pay contributions under regulations 11(1) and (2) on the pay received for the 1 KIT day and would pay contributions on the last 6 weeks and 3 days again on full pay (as she had received full pay on her 1 KIT day which immediately preceded the final period of unpaid leave). If, however, the person had taken all her KIT days in the first 38 weeks she would only have had to pay contributions based on the rate of her SMP if she wished the last 13 weeks to count (as on the last day of paid maternity leave she would only have been in receipt of SMP). It is clearly not the Government's intention to discourage employees from undertaking KIT days and it is therefore somewhat perverse that taking such a day on the last day of paid maternity or adoption leave or during the 13 week period of unpaid leave would result in the person having to pay higher

contributions if they wish the 13 week period to count. The simplest way to avoid this would be to amend regulation 11(5) to say that the contributions for the whole period of unpaid leave would, if the person wanted the service to count, be calculated on the pay on the last day of paid maternity / adoption leave, ignoring any increase in the pay on that day (or any later day during the unpaid period) resulting from KIT pay.

Regulation 12 – Contributions during reserve forces service leave

It appears somewhat perverse that a member whose reserve forces pay is 1p less than his local government pay is deemed to have paid his LGPS contributions but if his reserve forces pay was 1p or 2p more (so that it equals or exceeds his local government pay) he is required to pay contributions on all his reserve forces pay.

It would be fairer, and simpler, if regulations 12(2) and (3) were deleted and regulation 12(4) was amended to read:

“(4) Where paragraph (1) applies he must be treated for the purposes of these Regulations, the Benefits Regulations and regulation 3(6) of the Reserve Forces (Call-out and Recall) (Financial Assistance) Regulations 1997¹ as if he had paid –

- (a) contributions under regulation 3 of the Benefits Regulations, and
- (b) any payments under regulation [**new 16** (AMCs)], under regulation 55 of the 1997 Regulations or under regulations 14 or 15 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997

which he would have been liable to pay if he had continued to be employed in his former employment.”

Regulation 7(5) of the Benefits Regulations would also then need to be amended to read:

“(5) If a member’s final pay period includes reserve forces service leave, his final pay is the amount it would have been if he had continued to be employed in his former employment during the period of that leave.”

The reference in regulation 12(5) to “**new 23**” should be to “**new 24**”.

If the suggested simplification proposed above is not accepted then, after the reference to [**new 16**] in regulations 12(2) and 12(3) insert “under regulation 55 of the 1997 Regulations or under regulations 14 or 15 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997”.

Regulation 13 – Contributions during trade dispute absence

With the introduction of regulation 16 it is questionable whether regulation 13 is required. Should it not be deleted (subject to retaining a reference to the

¹ SI 1997/309

requirement to continue paying any additional contributions mentioned in the second indent of the paragraph below)?

If regulation 13 is retained, it is suggested that the reference in regulation 13(1) to "16%" should be amended to "20%" to tie in with the cost of the new-look LGPS as set out in the Regulatory Impact Assessment for the Benefits Regulations. Also, at the end of regulation 13(1) add "and

- may continue to pay any contributions under regulation [**new 18** (AVCs)] and [**new 24** (SCAVCs)] which he was paying immediately before the trade dispute absence began
- must continue to make any payments he was making under regulation [**new 16** (AMCs)], under regulation 55 of the 1997 Regulations or under regulations 14 or 15 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 on the pay he would have received but for the trade dispute absence."

Regulation 14 – Contributions during absences with permission

At the end of regulation 14(1) add "and must continue to make any payments he was making under regulation [**new 16** (AMCs)], under regulation 55 of the 1997 Regulations or under regulations 14 or 15 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 on the pay he would have received during that period but for his absence."

In order to avoid the ambiguity that currently surrounds regulation 18 of the LGPS Regulations 1997 please amend the words "he may" onwards in regulation 14(2) to:

"he:

- (i) must make contributions, as required under paragraph (1), on the first 30 days,
- (ii) may, beyond the first 30 days, make contributions at the standard contribution rate for the period of the absence, subject to a maximum (including the first 30 days) of 36 months,
- (iii) must continue to make any payments he was making under regulation [**new 16** (AMCs)], under regulation 55 of the 1997 Regulations or under regulations 14 or 15 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 on the pay he would have received but for being on maternity, paternity or adoption leave, and
- (iv) may continue to pay any contributions under regulation [**new 18** (AVCs)] and [**new 24** (SCAVCs)] which he was paying immediately before the absence began."

In consequence of the wording in (ii) above, delete regulation 14(3).

Regulation 15 – Applications to make absence contributions

If the suggestion to add a new paragraph (6) into regulation 11 is accepted (see comments on regulation 11 above) then it will need to be cross-referred to in regulation 15(1).

Regulation 16 – Payment of additional monthly contributions (AMCs)

Delete the word “monthly” from the heading, as not all employees are paid monthly.

Regulation 16(2)(b) does not provide adequate protection for the Funds. Either:

- a) preferably, regulations 16(2)(b) and 17(2) should be deleted, or
- b) if regulation 17(2) is retained, regulation 16(2)(b) should be strengthened along the lines of regulation 55(4) of the LGPS Regulations 1997.

Are the payments under regulation 16(5) to be flat sums or a percentage of pay? If the latter, it is not clear how this will work for part-time employees, variable-time employees, and casual employees.

In regulation 16(6)(a) amend the words “it must notify him” to “it must notify him and his employing authority” (otherwise the employing authority will not know that they should be collecting the contributions).

Regulation 17 – Discontinuance of AMCs

Delete regulation 17(2) – see comments under regulation 16 above. However, if regulation 17(2) is retained:

- after the word “period” insert “as a result of”, and
- delete the word “on” at the opening of sub-paragraphs (a) and (b).

Delete regulations 17(3) to (7) inclusive as a Scheme simplification. However, if not deleted:

- in regulation 17(3) delete “on leaving” and replace with “as a result of leaving”
- it would be more logical if the amount referred to in regulation 17(6) were calculated by GAD, rather than the Fund actuary, in the same way that GAD calculates the amounts due under regulations 16(5), 16(7) and 17(8).

Regulation 18 to 30 – AVCs and SCAVCs

These regulations are too weighty and overly complicated relative to the rest of the Administration Regulations and, in many respects, bear no relationship to how AVCs, SCAVCs and benefits derived from them are arranged and dealt with in practice. The regulations should, therefore, be rewritten and simplified. The following wording, which includes a number of slight variations to the wording of the current draft regulations, might achieve the desired effect:

Payment of additional voluntary contributions (AVCs) [old 60]

18.—(1) An active member may pay contributions under this regulation (“AVCs”) in addition to any other contributions he may pay under regulation [new 16].

(2) Where he wishes to do so, he must first—

- (a) notify his employing authority in writing, and
- (b) in the notification specify—
 - (i) the percentage of his remuneration he wishes to pay or the amount he wishes to pay on his usual pay days;
 - (ii) whether he wishes any of his AVCs to be used to provide benefits payable on his death (“death benefits”); and
 - (iii) if he does, the proportion or amount to be so used.

(3) An active member may—

- (a) vary —
 - (i) the amount of his AVCs, or
 - (ii) the proportion or amount of them to be used to provide death benefits; or
- (b) stop paying AVCs.

(4) Where he wishes to do so, he must first notify his employing authority in writing.

Establishment of shared cost AVC schemes (SCAVCs) [old 67]

19.—(1) An employing authority may decide to establish and maintain arrangements for the purpose of enabling contributions (“SCAVCs”) to be paid by and for active members under this regulation, in addition to the others which may be paid under this Part.

(2) The decision must specify—

- (a) whether all active members in employment under the Scheme with the employing authority are eligible to take part in them and, if not, the conditions of eligibility;
- (b) whether SCAVCs may be used to provide benefits on the death of members (“death benefits”);
- (c) if they may, the proportion or amount that may be so used; and
- (d) the amount of the contributions or percentage of the member’s pay which the authority will pay under the arrangements for members who are themselves paying contributions under them.

Applications to pay SCAVCs [old 68]

20.—(1) If an active member whose employing authority has established arrangements under regulation [new 19] wishes to pay SCAVCs or to vary any SCAVCs he is already paying he must apply to the authority in writing.

(2) The authority must notify the member in writing whether it has accepted or rejected it.

(3) That notification must be given before the expiry of the period of three months beginning with its receipt of his application

(4) A notification of acceptance must specify—

- (a) the amount or percentage of the member’s pay which the authority will pay under the arrangements;
- (b) whether any SCAVCs are to be used to provide death benefits; and
- (c) if so, what proportion or amount of the SCAVCs is to be so used and the nature of any such benefits.

(5) A member may stop paying SCAVCs if he first notifies his employing authority in writing that he wishes to do so.

AVCs and SCAVCs: functions of employing authority [old 62 and 69]

21.—(1) An employing authority must send a member's notification under regulation [new 18(2) or (4) or new 20(5)] and a copy of any notification of acceptance under regulation [new 20(2)] to the appropriate administering authority as soon as possible.

Application and investment of AVCs and SCAVCs [old 70]

22.—(1) Where any AVCs or SCAVCs are to be used to provide death benefits, the appropriate administering authority must make arrangements for those benefits to be provided by an AVC insurance company.

(2) The appropriate administering authority must make arrangements for and AVCs or SCAVCs which are not to be so used to be invested with an AVC insurance company.

(3) The employing authority must, as soon as is practicable, pay to the AVC insurance company the amount of any AVCs or SCAVCs deducted from a member's pay together with any SCAVCs payable by the employing authority under regulation [new 19(2)(d)]

Transfers in from other another AVC scheme

23.—(1) An active member may transfer into his AVC or SCAVC scheme constituted under this Part the accumulated value of any other additional voluntary contributions scheme to which he has subscribed.

(2) A member who wishes to make a transfer under paragraph (4) must first notify his administering authority in writing.

Separate treatment of AVCs and SCAVCs from other contributions [old 84]

24.—(1) The regulations mentioned in paragraph (2) do not apply in relation to benefits under [regulation 29 or 30 of the Benefits Regulations].

(2) Those regulations are—

(a) regulation [new 57] (first instance decisions); and

(b) regulation [corresponding to old 113] (recovery and retention in cases of misconduct).

Regulations 22 (Use of accumulated value of AVCs) and 28 (Termination of SCAVCs) of the draft Administration Regulations should be removed and transposed into regulations 29 and 30 of the Benefits Regulations which should be replaced with the following:

Death benefits: AVCs and SCAVCs

29.- (1) Where an active member to whom regulation 22(1) of the Administration Regulations dies, the administering authority must arrange for the appropriate benefits under that regulation to be paid.

(2) The administering authority at their absolute discretion must arrange for payment to be made in respect of any lump sum death benefit payable under the AVC or SCAVC arrangement or under regulation [new 30(10)] to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

(3) If the total of any payment due under paragraph (2) has not been made before the expiry of two years beginning with his death, the administering authority must arrange for the outstanding sum to be paid to the member's personal representatives.

Use of accumulated value of AVCs or SCAVCs (other than for death benefits)[old 66 and 72]
Regulation 66(8) of the 1997 Regulations is not replicated here as it seems more suitable for Transitional Regulations

30.—(1) This regulation applies where a person who has paid AVCs or SCAVCs during his employment or made a transfer under regulation [**new 22(4)**] —

(a) leaves his employment with the employing authority notified under regulation [**new 18(2)**] or [**new 22(5)**]—

(i) without entitlement to the immediate payment of retirement benefits; or

(ii) with immediate payment of benefits under regulation [**8, 9, 10, 11 or 16 of the Benefits Regulations**];

(b) stops being an active member without leaving that employment; or

(c) becomes entitled to ill-health benefits under regulation [**12 of the Benefits Regulations**].

(2) A person mentioned in paragraph (1)(a)(i) must notify his administering authority in writing that he wishes the accumulated value of the AVCs or SCAVCs invested under regulation [**new 22(2)**] (“the accumulated value”) to be used in one of the permissible ways specified in the notification.

(3) The permissible ways are—

(a) to transfer the accumulated value to another pension arrangement or scheme (other than the Scheme) when making an election under regulation [**new 75**] to transfer his main LGPS benefits;

(b) to transfer the accumulated value to the AVC arrangement operated by his new appropriate administering authority where regulations [**new 84(1) and (2)**] apply; or

(c) to retain the accumulated value with the AVC insurance company (but not where regulations [**new 84(1) and (2)**] apply).

(4) Where paragraph (3)(c) applies, the accumulated value must, subject to paragraph (11), be used to purchase an open market annuity on or after the date that benefits are payable under regulation [**new 16**] of the Benefits Regulations and before the age of 75.

(5) A person mentioned in paragraph (1)(a)(ii) or (c) may notify his administering authority in writing that, subject to paragraph (11), he wishes the accumulated value to be used -

(a) to purchase an open market annuity, or

(b) to provide additional pension for him under the Scheme,

(c) partly to provide such pension for him and partly to provide an annuity, or

(d) to retain the accumulated value with the AVC insurance company.

(6) If he makes an election under paragraphs (5)(b) or (c) to be provided with additional pension under the Scheme, he becomes entitled to such additional pension as is shown as appropriate in guidance issued by the Government Actuary.

(7) If he makes an election under paragraph (5)(a) for an open market annuity, the administering authority must give effect to the member’s wishes about the benefits it provides, so far as is practicable.

(8) If he makes an election under paragraph (5)(d), the accumulated value must be used to purchase an open market annuity before the age of 75.

(9) The appropriate administering authority must make such arrangements as are necessary for the use of the accumulated value in accordance with the members wishes, so far as is practicable.

(10) But if the member dies before age 75 and before paragraphs 3(a), 4, 5(a), 5(b), 5(c) or 8 have been put into effect, the accumulated value must be paid to his personal representatives.

(11) The accumulated value of the AVCs or SCAVCs invested under regulation [**new 22(2)**] (“the accumulated value”)

- (a) must be paid in the form of a lump sum if the benefits under the Scheme are being commuted under regulation 31 (commutation: small pensions) or regulation 32 (commutation: exceptional ill health) of the Benefits Regulations
- (b) may be used to provide benefits in the form of a lump sum if -
 - (i) paragraph (10) applies; or
 - (ii) a refund of AVCS or SCAVCs is payable; or
 - (iii) the member elects in writing to the appropriate administering authority before the Benefit Crystallisation Event to take some or all of the accumulated AVCs / SCAVCs in the form of a lump sum, subject to the lump sum, when aggregated with the capital value of his other benefits under the Scheme and the 1997 Regulations, not exceeding 25% of the capital value of his entitlements as calculated in accordance with regulation 14(3) of the Benefits Regulations.”

It would be helpful if the major AVC providers were consulted on the wording above to ensure it mirrors their practices and meets the requirements of the Finance Act 2004.

Regulation 31 – The pension funds

No comments.

Regulation 32 – Pension funds: governance policy statement

No comments.

Regulation 33 – Survivor’s benefits: deferred members

In regulation 33(1)(b)(ii) insert “the 1995 Regulations,” before “the 1997 Regulations”.

If the earlier suggestions regarding AVCs and SCAVCs are taken on board then, in regulation 33(3), amend “[new 18 to 28]” to “[new 18 to 24]”.

Regulation 34 – Admission agreement funds

No comments.

Regulation 35 – Accounts and audit

In regulation 35(1)(a) amend “the revenue account” to “a summary of the revenue account”.

Paragraph (2) does not sit comfortably within regulation 35 and should perhaps be moved to a new, separate, regulation dealing with Finance Act 2004 matters (see paragraph 11 under “Other matters” at the end of this letter).

Regulation 36 – Pension fund annual report

It might be helpful if regulation 36(1)(d) referred to “the most recent valuation under regulation [new 38]” so as to distinguish this from any interim valuations undertaken;

After regulation 36(1)(c) add a further sub-paragraph (cc) i.e.

“(cc) where a pension administration strategy has been published under regulation [new 67], a report detailing -

- (i) the extent to which, if the pensions administration strategy includes matters referred to in regulation [new 67(2)(b)], the administering authority and the employing authorities have achieved the levels of performance set out in the pensions administration strategy; and
- (ii) such other matters arising from the pensions administration strategy as it considers appropriate;”

In regulation 36(2), amend “on or before 1st October in the year following the year in relation to which it has been prepared” to “on or before the 1st October following the end of the financial year in relation to which it has been prepared”.

Regulation 37 – Funding strategy statement

No comments.

Regulation 38 – Actuarial valuations and certificates

We will leave the Fund actuaries to provide comments (if any) on this regulation.

Regulation 39 – Supply of copies of valuations, certificates etc

No comments.

Regulation 40 – Special circumstances where revised actuarial valuations and certificates must be obtained

Subject to the following two comments we will leave the Fund actuaries to provide comments (if any) on this regulation.

It is not clear what, in regulation 40(2), the words “ceases to have effect” mean. Please could this be clarified? Does an admission agreement cease to have effect:

- a) when there are no more active members, or
- b) when the last benefit to or in respect of any member (active, deferred, pensioner or pension credit member) and to or in respect of the spouse, civil partner, co-habiting partner or dependant has finally been paid?

In regulation 40(3)(a) the reference to “[new 6(2)(a)]” should be amended to “[new 6(2)(a) or (b)]”

Regulation 41 – Employer’s contributions

No comments.

Regulation 42 – Employer’s payments following decision to increase total membership or award additional pension

In regulation 42(2) insert a space between “relates” and “to”.

In regulation 42(4) it would be helpful if after the words “[new 41]” there were added “or an amount”. This is to help overcome the concerns of some actuarial firms about the legality of supplying factors to determine what augmented period may be granted instead of (and actuarially equivalent to) a sum that the employer would otherwise have paid to a person as a termination payment under the Discretionary Compensation Regulations.

In regulation 42(5) amend “paragraph (2)” to “paragraphs (2) or (4)”.

Regulation 42(11) should be deleted (unless regulation 25 of the Benefits Regulations is amended to permit augmentation at, or after, the date of termination, in which case the reference in regulation 42(11) to “or (4) BR” should be amended to “or (5) BR”).

Regulation 43 – Employer’s further payments

In regulation 43(2) insert “10(3),” after the reference to “10(1)”.

Regulation 43 does not specify how or by whom (e.g. the Fund actuary) the extra charges referred to in regulation 43(2) are to be calculated.

Regulation 44 – Payment by employing authorities to appropriate administering authorities

In regulation 44(1)(b) insert “or 16” after “14(2)”.

In regulation 44(3)(b) amend “16(10)” to “16(1)”.

In regulation 44(5) delete the word “annual” so as to permit payments, including one off payments, at any time.

Regulation 45 – Administration costs increased by employing authority’s level of performance

In the heading, and both in the heading to, and throughout, regulation 45, amend the words “administration costs” wherever they occur to “costs” as the

use of the words “administration costs” could lead to VAT complications. For the same reason:

- in paragraph (1) delete the words “to which regulation [**new 44(1)(d)**] refers”;
- in paragraph (2)(b) delete the words “the employing authority’s contribution under regulation [**new 44(1)(d)**] should include an amount” and replace with the words “the employing authority should pay an amount to the Fund as”

If the references to regulation [**new 44(1)(d)**] are not removed, then the word “annual” should be deleted from regulation [**new 44(5)**] so as to permit one off charges to be made.

Regulation 45 refers, throughout, to employing authorities. This is somewhat restrictive (due to the definition in Schedule 1) and the use of “Scheme employer” might provide wider cover. However, as mentioned below in relation to regulation 67 even that would not provide the range of coverage required as it is important that regulation 45 should be written in such a way as to permit the administering authority to charge not just employing authorities or Scheme employers for additional costs incurred, but any other body which interacts with the administering authority. For example, it should be capable of charging costs to schools who undertake their own payroll and / or personnel functions (or who may have outsourced the payroll and / or personnel functions) but which are not employing authorities or Scheme employers as defined under the LGPS Regulations. Obtaining accurate and timely information from these bodies is an area of particular difficulty for a number of administering authorities. The wording of the regulation should, of course, be wide enough to encompass any other type of body (not just schools) that is not an employing authority or Scheme employer and from whom the administering requires accurate and timely information relating to scheme members.

Regulation 45 should also include a provision enabling administering authorities to recharge to employing authorities / Scheme employers and other bodies (see the paragraph above), either in whole or in part as the administering authority determines, any compensation award made by the Pensions Ombudsman against the administering authority and any fines charged to the administering authority by OPRA, by any other regulatory body, or by a Court in consequence of the actions of that employing authority / body.

Regulation 45 should specify that where the employing authority / Scheme employer is also the administering authority, any charge made under regulation 45 against the employing authority / Scheme employer cannot be charged to the Fund.

Finally, in regulation 45(2) it might be appropriate to amend the word “may” to “must”. Thus, where an administering authority exercises its discretion under regulation 45(1) to determine that it has incurred extra costs, then it “must” give written notice under regulation 45(2).

Regulation 46 – Interest

Delete regulations 46(1) and (2) and replace with:

“(1) An administering authority may require an employing authority from which payment of any amount due:

- (a) under sub-paragraphs (a), (b) or (d) of regulation [**new 44(1)**] is overdue from the date determined by the administering authority under that regulation, or
- (b) under regulations [**new 41, 42, 43 or 49**] is overdue by more than one month

to pay interest on that amount”.

Renumber paragraph (3) to become paragraph (2).

Add new paragraph (3) as follows:

“(3) Any interest due on payments made under regulation [**new 84**] shall be calculated in accordance with guidance issued by the Government Actuary.”

Note: The above:

- is to reflect a request made at the Technical Group that there should not be a one month period of grace before interest becomes payable under sub-paragraphs (a), (b) and (d) of regulation [**new 44(1)**]
- reflects that a cross reference to regulation 24 of the Benefits Regulations is not appropriate
- reflects the fact that an Inter Fund Adjustment is not an amount due from an authority and that the interest payable on an IFA is calculated at the rate set out in GAD guidance and not at a rate of one percent above base rate on a day to day basis with three monthly rests. The regulations should simply leave the interest to be calculated in accordance with guidance issued by GAD which currently requires that where the period between leaving and the date the Inter Fund Adjustment is paid is more than 6 months interest should be calculated
 - i) at the rate of 6% with yearly rests for each complete period of a year ending before 1 April 1977 and
 - ii) at the rate of 2.25% with three monthly rests for each complete period of 3 months beginning after 31 March 1977

Regulation 47 – Deduction and recovery of member’s contributions

In regulation 47(1) amend “may” to “must”.

In consequence of the comments made in relation to regulation 12, delete regulations 47(2) and (4) and delete the words “or (2)” in regulation 47(3).

Amend regulation 47(5)(a) to read:

“(a) an employing authority deduct any contributions in error from a person’s pay or from any other sum due to him, and”

In regulation 47(5) amend the cross-reference from “[new 46(2)]” to “[new 46(3)]”.

Regulation 48 – Pension increases and cash equivalents under the Pension Schemes Act 1993

Delete the words “and cash equivalents” from the heading as regulation 48 makes no mention of cash equivalents. The relevant provision on cash equivalents is contained in regulation 75(1).

Regulation 49 – Pension increases under the Pensions (Increase) Acts

No comments.

Regulation 50 – Contributions equivalent premiums

If:

- a) there are to be no refunds of contributions from the Fund (i.e. all repayments relating to leavers/optants out with less than 3 months membership are to be repaid via payroll, with an appropriate NI adjustment), and
- b) CEPs relating to pre 1st April 2008 leavers are to be dealt with via the Transitional Regulations

then this regulation should be deleted.

If, however

- a) there are to be no refunds for such leavers/optants out , neither through the Fund or via payroll, or
- b) there are to be refunds through the Fund, or
- c) CEPs relating to pre 1st April 2008 leavers are to be dealt with via the Administration Regulations

then this regulation should be retained to discharge any CEP liability of £17 or more.

Regulation 51 – Commencement of pensions

Regulation 51(2)(b) permits a deferred beneficiary to defer payment of the deferred benefit beyond his NRD (but no later than age 75²). However, this is the only group of member’s who have the ability to defer drawing their benefits. To ensure consistency, either member’s entitled to benefits under regulations 9 and 11 of the Benefits Regulations should similarly be provided with the ability to defer drawing their benefits or, alternatively, the words “,unless he asks to defer payment,” should be deleted from regulation 51(2)(b). If it is retained, the

² As mentioned elsewhere in this letter it would be helpful if age 75 could be amended to age 74 ½.

regulation needs to specify that the request must be made to the appropriate administering authority.

In regulation 51(3) amend “**19, 20 or 21**” to “**19, 20, 21 or 23**”

Regulation 52 – Interest on late payment of certain benefits

In regulation 52(1) amend “the Benefits Regulations or the 1997 Regulations” to “the Benefits Regulations, the 1997 Regulations or the 1995 Regulations”.

Amend regulation 52(3)(b) to read:

“(b) in the case of a lump sum under regulation 13 of the benefits Regulations, the Benefit Crystallisation Event date;”.

The wording of regulation 52(3)(d) is such that where, for example, a member retires with a small pension and opts at a later date to commute it³, interest is due on the lump sum commutation payment from the day after the member became “entitled to payment of a pension” i.e. from the date when the small pension was first paid. In such a case, however, interest ought only to be paid from the date the pension was commuted if the lump sum commutation payment had not been made within one month of the date of election to commute.

Regulation 52 appears to be deficient in that it does not provide for interest to be payable on the late payment of any accrued Pensions Increase due on a lump sum payment e.g. on a lump sum death grant, on a deferred beneficiary’s lump sum commutation payment, or on the supplemental PI payable on both of the aforementioned under the following Pensions Increase (Review) Order.

Regulation 53 – Payments due in respect of deceased persons

No comments.

Regulation 54 – Non-assignability

Regulations 54(2) and (3) need to be rewritten to reflect current law. This might be achieved by simply making references to:

- sections 91 and 94 of the Pensions Act 1995
- Part II of the Welfare Reform and Pensions Act 1999

Regulation 55 – Treatment of other benefits

It is not certain that this regulation serves any real purpose and it may be more appropriate if it were to be deleted.

³ e.g. a man with a GMP retires at 60 but cannot commute until age 65

Regulation 56 – Interpretation of Part

No comments.

Regulation 57 – First instance decisions

What is the purpose of regulation 57(6)?

Where a Scheme employer has ceased to exist and there is no financially liable successor body, regulation 57 should be amended to empower the administering authority to exercise functions on behalf of that former Scheme employer but, where this entails the exercise of a discretion, only if the exercise of that discretion results in no additional cost to the Fund.

Regulation 58 – First instance decisions: ill-health

Please see the comments submitted on the draft Benefits Regulations regarding the need for the medical certificate to refer to permanent ill health.

Where a Scheme employer has ceased to exist and there is no financially liable successor body, regulation 58 should be amended to empower the administering authority in cases where regulation 16(6) of the Benefits Regulations applies to obtain a certificate of permanent ill health so as to enable, where appropriate, deferred benefits to be put into payment in accordance with the ill health certificate.

Regulation 59 – Notification of first instance decisions

No comments.

Regulation 60 – Applications to resolve disagreements

At the end of regulation 60(1) add “or the administering authority”. This is to make it clear that appeals can be made against decisions taken by an administering authority (in its role as an administering authority and not as an employing authority).

In regulation 60(2)(g) amend “those sub-paragraphs” to “sub-paragraphs (a) to (f)”.

In regulations 60(5) and 60(7)(b) amend “his employing authority” to “his Scheme employer”.

In regulation 60(10) amend “[new 65(1)]” to [new 65(2)]”.

Regulation 61 – Notice of decisions on disagreements

In regulation 61(3)(d) amend “[old 62]” to [new 62]”.

Regulation 62 – Reference of disagreement for reconsideration by appropriate administering authority

In regulation 62(4) add four further sub-paragraphs i.e.

- include the applicant's full name, address and date of birth
- if made by the member or prospective member, or a person claiming to be such, include the person's national insurance number (if any) and the name of his Scheme employer
- if made by a person referred to in regulation [new 60(6)], include the name of his appropriate administering authority
- if made by any other person, include the information referred to in regulation [new 60(7)]

Regulation 63 – Notice of decisions on reconsideration of disagreement

In regulation 63(3)(b) amend "[new 60]" to [new 61]" .

Regulation 64 – Rights of representation

No comments.

Regulation 65 – Appeals by administering authorities

In regulation 65(2) amend "secretary" to "Secretary" .

In regulation 65(8) amend "[new 60] or [new 62]" to [new 61] or [new 63]" .

Regulation 66 – Exchange of information by authorities

No comments.

Regulation 67 – Pension administration strategy

Regulation 67 should permit differential treatment. For example, the administering authority may wish to establish performance levels for its major employing authorities but not for a Town or Parish Council with only one contributor;

Regulation 67 refers, throughout, to employing authorities. This is somewhat restrictive (due to the definition in Schedule 1) and the use of "Scheme employer" might provide wider cover. However, even that would not provide the range of coverage required as it is important that the regulation should encompass any body which interacts with the administering authority. For example, it should be capable of covering schools who undertake their own payroll and / or personnel functions (or who may have outsourced the payroll and / or personnel functions) but which are not employing authorities or Scheme employers as defined under the LGPS Regulations. Obtaining accurate and timely information from these bodies is an area of particular difficulty for a number of

administering authorities and thus extending the wording of regulation 67 to encompass them would be greatly welcomed. The wording of the regulation should, of course, be wide enough to encompass any other type of body (not just schools) that is not an employing authority or Scheme employer and from whom the administering requires accurate and timely information relating to scheme members;

Delete sub-paragraph (2)(f) on account of the proposal to insert sub-paragraph (cc) into regulation [**new 36**] – see above;

In paragraph (6) delete the superfluous “a” after the words “strategy, or”.

Regulation 68 – Statements of policy about exercise of discretionary functions

If regulation 18(3) is deleted (as suggested in the comments on that regulation) then all references to the administering authority throughout regulation 68 should be deleted.

The reference to “**and 24**” in regulation 68(1)(a) should be deleted.

Regulation 69 – Statements of policy concerning communications with members and employers

No comments.

Regulation 70 – Annual benefit statements

The reference in regulation 70(2) to “1st April 2009” should be amended to “1st April 2010” to recognise that the first ABS under the 2008 Scheme will relate to service accrued up to 31st March 2009. Administering authorities would then have until 31st March 2010 to issue that ABS.

Regulation 71 – Information to be supplied by employees

Delete regulation 71(6)(f) as it is no longer possible for an active scheme member to have been subject to the Local Government Superannuation (Administration) Regulations 1938.

Regulation 72 – Provision of information under section 172 of Pensions Act 1995

Insert the word “the” into the heading after the words “172 of”.

Delete regulations 72(5) and (6) – see later comments on regulation 81.

Regulation 73 – Interpretation of Part

Add “Chapter 5” means Chapter 5 of Part 4 of that Act.

Regulation 74 – Application of Chapter 4 etc

The regulation does not specify which member's are entitled to a cash equivalent transfer. Thus, the regulation should start with a new opening paragraph as follows:

(..) Chapters 4 and 5 apply to members of the Scheme regardless of the length of their membership⁴.

Due to the extremely small likelihood of an employee with pre 6th April 1988 membership choosing to opt out of membership of the Scheme and transfer benefits elsewhere, regulation 74(3) should be amended to read:
“(3) Regulation 3 of those Regulations shall not apply.”

Should the words "or a transfer is paid under regulation 84" be added at the end of regulation 74(5)?

In regulation 74(6)(b):

- replace the words "in any case" with the words "in the case of a termination after 31st March 1998 and before 1st April 2008"
- amend "regulation 32(1)" to "regulations 32(1), 32A or 87(4) of the 1997 Regulations"
- at the end add "or concurrent membership".

Add a further sub-paragraph (c) to regulation 74(6) as follows:

“(c) in any case, no election has been made under regulation [**new equivalents of regulations 32(1), 32A or 87(4) of the 1997 Regulations**] to have the service which is terminated aggregated with later or concurrent membership.”

Regulation 75 – Rights to payment out of fund authority's pension fund

Amend regulation 75(1) to read:

“(1) A member may apply for a transfer under Chapters 4 or 5 (as modified by regulation [**new 74(..)**]) and where he does so the amount of any transfer payment due in respect of the member under the relevant Chapter may only be paid by the fund authority from their pension fund if it is a recognised transfer.”⁵

Regulation 76 – Contracting-out requirements affecting transfers out

No comments.

⁴ This is to cover those with less than 3 months membership as Chapter IV covers those with 2 or more years membership and Chapter V covers those with 3 or more months but less than 2 years membership.

⁵ Need the word "recognised" as transfers that are not recognised transfers would be unauthorised payments

Regulation 77 – Bulk transfers (transfers of undertakings etc.)

Amend regulation 77(7)(g) to become 77(7)(h) and insert a new sub-paragraph (g) as follows:

“(g) the Local Government Pension Scheme (Transitional Provisions) Regulations 1997”

If appropriate it might be necessary to add a further sub-paragraph naming the Transitional Regulations 2007.

Regulation 78 – Calculation of amount of transfer payment under regulation 77

No comments.

Regulation 79 - Inward transfers of pension rights

Sections 620 and 621 of the Taxes Act were repealed from 6th April 2006 by the Finance Act 2004, s 326(1), Sch 42, Pt 3; commencement s 326(2) of that Act. For savings and transitional provisions, see, in particular, paragraph 5 of Pt 1 of Schedule 36 to that Act (post-commencement withdrawal of approval).

As discussed at the Technical Group, add a further sub-paragraph to regulation 79(2) as follows:

“(e) a FSAVC scheme”.

Regulation 80 – Right to count credited period

In regulation 80(1) amend “may” to “must”.

Delete regulations 80(5), (6) and (8) and place regulation 80(7) within the Transitional Regulations.

At the end of regulation 80(2)(a) add “and the member had made the request under regulation [**new 79(1)**] before the expiry of 12 months beginning with the date he became an active member” and amend regulation 80(3) to read:

“(3) If paragraph (2) does not apply, the credited period must be calculated in a manner consistent with Chapter 4.”

In regulation 80(9) amend “fund authority” to “administering authority”.

It would be helpful to have an equivalent of the provisions in regulation [**new 77**] to determine service credits resulting from bulk transfers in.

There is still an outstanding issue as to how transfers from Club schemes that still apply an Earnings Cap should be dealt with. An apparent requirement of

continued participation in the Public Sector Transfer Club post 5th April 2006 is that membership transferred from a Club scheme which retains an Earnings Cap and in which the member was (or potentially would have been) subject to the Earnings Cap in that Scheme, should continue to be subject to the Cap in the LGPS. This appears to mean that the LGPS would need to retain a Cap just for capped Club transferred in membership unless the DCLG agree the LGPS membership apportionment method with the Club administrators.

Regulation 80(4) says that in calculating membership credits in respect of non-club transfers in, the period for which allowance for earnings increases must be made runs to the member's NRD in all cases. This implies that in calculating credits, the assumed retirement date should be the NRD of age 65 in all cases. However, it seems reasonable that the method of calculating a credited period for a person who was an active member on 30th September 2006 should reflect the fact that the service credit will (if the principles of regulation 122(6C) of the 1997 Regulations are followed), be treated as membership prior to 31st March 2008. Thus, the period for which allowance for earnings increases should be made in such cases should be as defined in regulation 122(4) of the 1997 Regulations as it stood prior amendment by SI 2006/966. Additionally, regulation 80(4) does not state that an NRD of 65 must be used for all purposes when calculating the service credit, merely for making an allowance for the increase in pay. This means that for other purposes, such as determining whether to apply a conversion factor to the service credit where the member's NRD or, in transitional protection cases, the attainment of the 85 year rule falls after age 60, administering authorities should perform the calculation in accordance with GAD guidance. In other words, the calculation of the service credit for a person who was an active member on 30th September 2006 should be calculated by reference to the earlier of the member's NRD (as defined in regulation 25(3A) of the 197 Regulations before its deletion by SI 2006/966) or the date at or after age 60 when the member would have satisfied the 85 year rule. It would be helpful if this could be made clear in the Regulations.

Regulation 81 – Credited periods for transferring members with mis-sold pension rights

Delete this regulation. By April 2008, twenty years will have elapsed since members were able to opt out of membership of the LGPS and join a personal pension instead. It was always intended that the right to restitution within the LGPS should be time-limited and the introduction of the new-look LGPS from April 2008 would appear to be an appropriate opportunity to bring this provision to a close. Restitution in any outstanding cases would be provided by the personal pension provider making an appropriate increase in the value of the personal pension. Regulation [new 72] would still permit the administering authority to provide relevant details and to charge for doing so.

Regulation 82 – Rights as to service not matched by credited period

This regulation should be deleted as, bearing in mind the provisions of regulation 5 of the Benefits Regulations, it is no longer really necessary. However, there will need to be a saving provision in the Transitional Regulations.

Regulation 83 – Community scheme transferees

Bearing in mind the known problems with arranging such transfers, regulation 83 ought to be deleted (unless there is an overriding legislative requirement to retain this provision).

Regulation 84 – changes of fund

At the end of regulation 84(8) add “but does not apply upon the cessation of one of the concurrent employments.”

As a general point, it would be helpful if the GAD guidance on Inter Fund Adjustments could be updated to provide for them to be calculated on a cash equivalent basis.

Regulation 84 should be amended to include the equivalent of regulation K27 of the 1995 Regulations which provided for transfers between Scotland and England.

Regulation 84(1) should be suitably amended to cover the Inter Fund Adjustments payable upon aggregation of concurrent membership where a person held concurrent employments in different Funds i.e. the wording of regulations 84(1)(a) and (b) will need to be suitably amended and regulation 84(1)(c) should also refer to regulations [corresponding to regulations 32(1), 32A and 87(4) of the 1997 Regulations].

Regulation 84 should not permit an Inter Fund Adjustment to be paid where a GMP is in payment under regulation [corresponding to regulation 36 of the 1997 Regulations].

Also, regulation 84 should specify how Inter Fund Adjustments apply in relation to variable-time employees i.e. it should:

- a) permit an Inter Fund Adjustment to be paid in respect of a variable-time employment if the transfer is to another variable time employment held by the member and with which the membership will be aggregated. In this case the membership would transfer on a day for day basis; and
- b) permit an Inter Fund Adjustment to be paid in respect of a variable-time employment if the transfer is to whole-time or part-time employment held by the member and with which the membership will be aggregated. In this case the membership would transfer on a pro-rata basis using the formula:

$$\text{membership} \times \frac{\text{annual rate of pay in the variable time post}}{\text{whole-time annual rate of pay in new post}}$$

= credited period of membership

Schedule 1

It is difficult to comment on this schedule whilst the Benefit Regulations and the Administration Regulations are still in draft and the Transitional Regulations have not yet been issued.

Schedule 2

In paragraph 5 of Part 1 the reference to:

- "paragraph 3 or 4" should be amended to "paragraph 2 or 3"
- "paragraph 5" should be amended to "paragraph 4"

Delete paragraph 8 of Part 1 (see SI 2007/228).

In Part 2 delete paragraph 13 (see SI 2007/228) and, in paragraph 5, define "A company under the control of a body listed in Part 1 of this Schedule" as per the definition in Schedule 1 of the 1997 Regulations.

Schedule 3

In paragraph 8 delete the words from "and, for these purposes," to the end of that paragraph and add onto the end of 8(b) the words "including a take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of the body's business or constitution."

At the end of paragraph 10(b) amend "time;" to "time); or" and delete paragraph 10(c).

Other matters

1. General

The following provisions in the 1997 Regulations need to be carried forward:

- regulation 12(6)
- regulation 32
- regulation 32A
- regulation 113
- regulation 115
- regulations 127 to 145 (as appropriate)
- regulation 97(11) if it is decided that refunds are still to be paid from the Fund
- Schedule 5
- Schedule 6 and 7 (as appropriate)

2. Pension Credit and Debit Members

The Administration and Benefits Regulations need to include relevant provisions for Pension Credit Members and Pension Debit Members.

3. Councillor Members

The Administration and Benefits Regulations need to include relevant provisions for Councillor Members.

4. Membership

There are no specific regulations detailing how membership counts for various purposes e.g. how, and for what purposes, membership will count where a member aggregates / does not aggregate separate periods of membership – will it, for instance, count towards the 2016 and 2020 “85 year rule” protections; whether that part of aggregated membership which falls before 6.4.78. or 6.4.88. will count for, respectively, post retirement widow’s and widower’s pensions; how and for what purposes old added years and augmented membership will count; whether, and for what purposes, that part of membership in respect of which benefits are drawn on flexible retirement will count and whether any part of benefits not drawn on flexible retirement will retain any 2016 and 2020 “85 year rule” protection; whether overlapping membership count twice; how a pre April 2006 deferred benefit that was subject to the Earnings Cap and is aggregated with post 1st April 2008 membership should be adjusted; etc. In the case of a re-employed pensioner, or a deferred beneficiary who does not aggregate membership, the former membership will have to count towards the three month membership requirement under regulation 5(1)(a) of the Benefits Regulations in order to prevent any unauthorised refunds where the new period of membership lasts for less than three months (assuming, of course, that the Scheme contains a refund provision).

5. Refunds

The letter accompanying the draft Administration Regulations suggests that contributions for members who leave or opt out within 3 months should be refunded by the employer (and not by the Fund). Whilst this may be reasonable in the case of an optant out (who is, of course, still active on the employer’s payroll) we have concerns about this approach in the case of leavers. Firstly, making a refund through payroll may be more difficult (as the person, being a leaver, may no longer be active on the employer’s payroll). Secondly, and more importantly, we are not certain that such an approach would be permitted under the Finance Act 2004 (as the contributions would not have been deducted in error or cancelled by the member during a “cooling-off” period).

6. Abatement and forfeiture

We will leave individual Funds to comment of the proposals to remove the abatement and forfeiture provisions. If abatement is retained the regulations should clarify the position of abatement where re-employment is in Scotland or Northern Ireland.

7. Bona Vacantia

Where a death grant is payable, but there are no known beneficiaries, payment is currently made to the Treasury Solicitor. A number of schemes contain a Bona Vacantia rule which permits the sum to revert to the Fund rather than paying it to the Treasury Solicitor. This would be a welcome amendment to add into the 2007 Regulations.

8. Interest

Although the interest provisions are included in the Administration Regulations the interest payable is nonetheless a benefit and perhaps there should, therefore, be a reference to interest in the Benefit Regulations.

9. Age 75

In the light of potential difficulties with making unauthorised payments after age 75 it would be helpful if the new Scheme only permitted employees to join / remain a member until age 74 ½ and for benefits to be payable from, at the latest, age 74 ½.

10. K1 cases


The Administration Regulations need to reintroduce the provisions dealing with old K1 cases (which were inadvertently not included in the 1997 Regulations). The LGPC Secretariat can supply a paper on the history of the K1 provisions if required.

11. Changes required to reflect the Finance Act 2004

The following points relate to changes necessary to comply with, or which flow from, the Finance Act 2004.

- should the Regulations restrict LGPS contributions (including AVCs) to 100% of taxable earnings received (or that would have been received but for authorised unpaid leave of absence) in relation to each separate LGPS employment? If so, provision will need to be included to permit a refund of excess contributions above 100% and the regulations would need to specify whether or not interest was payable on the excess refunded.
- the Regulations should stipulate that each separate employment and each AVC "pot" are separate "arrangements" for the purposes of the Finance Act 2004.
- consideration needs to be given to those parts of the Guide to Tax Simplification highlighted in yellow (see <http://www.lge.gov.uk/lge/aio/72034>)

Yours sincerely


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