



Department for  
Communities and  
Local Government

# Local Government Pension Scheme 2014

Government Response to the Consultation

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# Introduction

At the June 2010 Budget, the Government invited Lord Hutton of Furness to chair the Independent Public Service Pensions Commission. The purpose of the Commission was to carry out a fundamental structural review of public service pension provision, and to make recommendations on pension arrangements that are “sustainable and affordable in the long term, fair to both the public sector workforce and the taxpayer, and consistent with the fiscal challenges ahead, while protecting accrued rights”.

In November 2011, the Government set out their preferred design for the new NHS, civil service, teachers and local government pension schemes. For the new Local Government Pension Scheme, the Government invited the Local Government Association and main local government trade unions (UNISON, GMB and Unite) to come forward with a specific set of proposals based on the Government’s preferred design within an agreed cost ceiling of 19.5 per cent of future service costs.

In this context, the Local Government Pension Scheme 2014 Project Group was established by the Local Government Association, UNISON, GMB and Unite, with the aim of establishing the main principles and fundamental elements on which the new Scheme would be based. The Government applauds what has proved to be an outstanding collaboration between the leaders of these organisations and their technical experts, to produce the final Local Government Pension Scheme Regulations 2013.

In May 2012, the then Minister for Local Government, Bob Neill, wrote to the Project Group to confirm that he was content for them to proceed to an informal consultation with their respective memberships on the agreed scheme design. The Minister gave an assurance that a favourable outcome would enable the Department to move directly to a statutory consultation to implement the proposals. The consultations resulted in the proposals being supported by 93 per cent of employers, 90 per cent of UNISON members, 95 per cent of GMB members and 84 per cent of Unite members. Details of the new scheme design were given by the Minister for Local Government in a Written Statement to Parliament on 5 November 2012.

Despite the very encouraging level of support for the reforms, the Government still faced an extremely challenging timetable to ensure that Regulations were in place well in advance of the 1 April 2014 start date. It was only possible to make the progress that has been achieved with the excellent technical support of officials from the organisations listed above. Even with this support, it proved necessary to conduct two preliminary consultations between 21 December 2012 and 8 February 2013 and 27 March to 3 May 2013, based on the key elements of the new scheme design. This was necessary in order to ascertain the early views of Local Government Pension Scheme interests, in particular, the software providers who would need to prepare, finalise and test their new systems well before the April 2014 start date. These proved to be very helpful in drafting the final, complete, consultation which took place between 20 June and 2 August 2013. Details of all three consultations and related documents can be found at:

<https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/local-government-pensions> .

During each of the three consultation exercises, views from all scheme interested parties were invited on the draft regulations and lists of separate related questions. The comments received and the Government's response to the main consultation are summarised in the following section.

The main Regulations were made on 12 September 2013 and laid before Parliament on 19 September. Further Regulations on cost management, transitional savings and protection matters and scheme governance are to follow.

# Summary of main consultation responses

Type of Respondent	Total Number	% of Total
Local Government bodies	34	74%
Companies (eg actuarial, legal or software)	5	11%
Professional associations	3	7%
Trades unions	2	4%
Individuals	2	4%
<b>TOTAL</b>	<b>46</b>	<b>100%</b>

## Reg. 3

### Comments

It was requested that specific provision be made to cater for provision of short-term contracts. Detailed regulation was also requested to deal with cases where potential members of the Scheme were already members of another pension scheme.

### Government response

In both cases, the Department was concerned not to over-complicate the Regulations. The problems mentioned can be avoided by the issue of guidance and by administrators taking a practical approach to individual cases.

## Reg. 6

### Comments

Two representations were received to the effect that there should not be a cut-off age of 75 for active Scheme membership. It was argued that such an upper age limit is unfair and penalises those who wish to work on in their advanced years.

### Government response

There is no consensus on this issue – in response to the first consultation we received eleven comments opposing the age 75 limit and eleven comments supporting it. We do not rule out reviewing this matter if there are material developments at some point in the future.

## Reg. 9

### Comments

Three respondents commented that it will be difficult to assess bands for variable time employees at the outset of the financial year and that it would be preferable to set them by contractual rate and adjust later.

### Government response

Detailed instruction on the matter of setting contributions bands is best dealt with in guidance. However paragraph (3) has been retained because it sets down the basic requirement for Scheme employers to inform members of contribution rates.

## **Comments**

Unlike the corresponding provision in the 2008 Scheme, Regulation 9 makes no provision for the tariff table to be adjusted according to cost of living increases.

## **Government response**

At the time the draft regulations were issued for consultation in June 2013, the view was taken that the cost of living escalator should be a feature of the forthcoming amending regulations on cost management. In the light of subsequent discussions with scheme interested parties, Regulation 9(4) and (5) now provides for this adjustment to be made on an annual basis.

## **Reg. 10**

### **Comments**

It was proposed that, in order to reduce administrative inconvenience, 50/50 arrangements should be withheld from individuals on reserve forces service leave. A number of other suggestions were made with regard to the timing of possible moves into and out of 50/50 arrangements.

Three respondents commented that authorities should be informed what information they needed to supply to members who elect for 50/50 arrangements.

It was commented that it should be clarified that TUPE transfers will not cause elections to lapse.

### **Government response**

It would not be equitable to withhold 50/50 options from those on reserve forces leave. Guidance and good administrative practice can be relied on to reduce the administrative burden of the 50/50 system and to set down the information that should be provided to members. It would not be difficult to ensure that a TUPE transfer does not end participation in 50/50 arrangements.

## **Reg. 11**

### **Comments**

Further clarification is required to make it explicit that a member has to be receiving pay in order to accrue pension during certain types of absence.

### **Government response**

Further wording has been added to the final Statutory Instrument in order to clarify the position.

## Reg. 13

### **Comments**

It was questioned whether an employment was really “former” if a member is on leave from it.

### **Government response**

The word “former” has been omitted from the final version.

## Reg. 14

### **Comments**

It was commented that Regulation 14 is no longer necessary, as illness can be covered under Regulation 16 (Additional pension contributions).

### **Government response**

Regulation 14 was retained, as Regulation 16 is optional for members and not everyone will use it.

## Reg 15

### **Comments**

The draft regulations are silent on the information that scheme employers would need to give to members embarking on a period of reserve forces special leave about the amount of employers’ contributions to be paid to the relevant fund by Ministry of Defence.

### **Government response**

Regulation 15(3) now provides for scheme employers to provide scheme members with the relevant information.

## Reg. 16

### **Comments**

23 responses indicated that take-up of additional survivor benefit is extremely low.

Four responses opposed the discontinuation of this benefit option.

It was questioned whether actuarial guidance was necessary to deal with cases where only part-payment had been made for additional pension.

One respondent considered that members would not need to pay additional pension contributions for periods of absence of the types referred to in Regulation 11(4)(a) (including for ill health), as those types would be covered under assumed pensionable pay in Regulation 21. Therefore Regulation 16(1) should be amended to read “a period of absence of the description in Regulation 11(4)(b) or (c)”.



It was queried in respect of optional additional benefits as to whether it is appropriate that they should be treated as paid up in the event of ill health or redundancy.

### **Government response**

In view of the comments received, no provision is being made for additional contributions targeted specifically at additional survivor benefit. The reference to actuarial guidance was retained for cases where this would be necessary.

Paragraph 16(1) has been duly modified as suggested.

The optional additional benefits would be deemed to be paid up in the event of ill health or redundancy.

### **Comments**

To comply with Government policy, the additional pension limit of £6500 should be subject to cost of living increases.

### **Government response**

Regulation 16(6) now provides that the additional pension limit is subject to annual cost of living increases.

## **Reg. 17**

### **Comments**

Two respondents commented that by providing the opportunity for members to circumvent the main scheme commutation provisions to provide an alternative means of acquiring a tax-free lump sum, the removal of the limit fundamentally undermines the objectives of the new scheme design to deliver saving and ensure the long term viability of the scheme.

### **Government response**

To comply with Government policy, changes have been made to both Regulation 17(8) and Regulation 33(4) to ensure that any lump sum amount taken by a member from their AVC pot does not count towards the 25 per cent tax free lump sum allowed in respect of main Scheme benefits.

## **Reg. 18**

### **Comments**

Two authorities commented that the regulations do not cover what will happen where refunds are not claimed or members cannot be traced.

### **Government response**

This is a matter on which administrators can be advised by guidance.

## **Reg. 20**

### **Comments**

Two authorities requested the discretion to offer non-pensionable bonus payments.

One respondent asked for increased clarity over the impact of paragraph (2)(f) in relation to car salary sacrifice schemes.

### **Government response**

Careful consideration was given to the possibility of permitting non-pensionable bonuses, but the Government accepted the consensus view, which was that this could not be justified.

Such specialist areas as salary sacrifice can be dealt with in guidance.

## **Reg. 21**

### **Comments**

Should “assumed pensionable pay” provision be made with regard to “keep in touch” days and similar circumstances?

### **Government response**

The difference made to accrued pension by a member on maternity leave or otherwise returning to work for just the one day and being paid would be very marginal. On balance, making express provision for such marginal eventualities is not considered appropriate.

### **Comments**

Paragraph 2(b) should refer to “ordinary or paid additional child-related leave”  
Is there an option to pay contributions on unpaid child-related leave?

### **Government response**

2(b) now covers any “child-related” leave.

### **Comments**

Regulation 21(5) set out the method of calculating the annual rate of assumed pensionable pay, but based this on the pensionable pay received in the three month period preceding the commencement of the relevant pay period. How would this cope with regular bonus payments that could end up being “double counted”?

### **Government response**

Following discussion with scheme interested parties, Regulation 21(4) now provides that regular bonus payments are to be taken into account over a 12 month period. This will avoid any “double counting”.

### **Comments**

Under 21(7), the assumed pay may be higher as a result of revaluation than the pay the member would have normally received. Is this intended?

### **Government response**

Regulation 21(7) has now been omitted.

## **Reg. 22**

## **Comments**

It was requested that “pension account” should be defined.

Five respondents requested that authorities should be empowered to make adjustments, whilst seven argued that such a power would be open to abuse. (In addition, in response to the general issue of making account adjustments, nine respondents were in support, with nine opposed.)

## **Government response**

“Pension account” is now defined in Schedule 1.

It was accepted that members may find it inequitable if authorities had an open-ended power to make adjustments. It was also concluded that to be consistent with Schedule 7 of the Public Service Pensions Act 2013, aggregation of deferred and active accounts should be automatic unless the member makes an election to opt otherwise.

## **Reg. 23**

### **Comments**

As with Regulations 24 - 29, further information was requested as to how the revaluation adjustment will work in practice. The impact of possible negative inflation was also questioned.

### **Government response**

Detailed advice on revaluation, in particular, the impact on pension credit / debit and the impact of possible negative inflation - will be supplied in guidance.

## **Reg. 26**

### **Comments**

It was pointed out that paragraph (2)(b) makes reference to regulation 17(6)(b)(i), which should be a reference to 17(7)(b)(i).

### **Government response**

The paragraph was modified before the Statutory Instrument was made.

## **Reg. 27**

### **Comments**

It was indicated that whilst paragraph (4) refers to adjustments as a consequence of a matter referred to in regulation 23(6), there should also be reference to regulation 25(5)(a).

### **Government response**

The reference to 25(5)(a) has been included.

## **Reg. 30**

## **Comments**

Three responses argued that further clarity is needed on the age at which the 85 year rule applies.

One response indicated that at 30(4) “entitlement” should read “entitled”.

## **Government response**

The 85 year rule will be dealt with in the Transitional Regulations. Regulation 30(4) has been modified.

## **Reg. 31**

### **Comments**

It was requested that the timing of awards of additional pension should be clarified.

### **Government response**

This can be dealt with in guidance.

## **Reg. 32**

### **Comments**

One response noted that it was fair that a deferred member who is granted ill health benefits should receive them only from the date on which their incapacity was determined. However, they thought it appropriate to have some mechanism to consider those who may have stepped down from employment because of a condition hoping this would allow for treatment but would ultimately have to apply for ill health benefits.

One response disliked the wording “begins on the date of the determination that the member is incapable under that regulation” in sub paragraph (10) as it is not unheard of for an employer to take over a year to refer a request for deferred benefits into payment to an IRMP. The response stated that it should be amended to “the date the member became incapable under that regulation” ie Regulation 38 to align the different guidelines from the different regulations.

### **Government response**

The Department finds that the present wording fulfils the policy intention.

### **Comments**

Two responses supported changing the wording in 32(10) to “date of application” as opposed to “date of determination” provided it could be medically determined, as it was noted that the medical process could be lengthy and the beneficiary should not be penalised due to poor administration.

### **Government response**

The Department finds that the present wording fulfils the policy intention.

### **Comments**

One response agreed with 32(9) as drafted, but only provided there was no wish for the Scheme employer to have any flexibility to backdate the commencement of an ill health pension – particularly where the employer felt the process of considering the member’s application had been unduly prolonged. If a backdating facility was to be included then it should be for the Scheme employer to award tier 2 benefits from date of review decision “or any earlier date the Scheme employer may specify”.

**Government response**

The Department disagrees with the proposal. The current wording should remain.

**Comments**

One response felt that the “review date” in Regulation 32(9) should really be considered by the IRMP as it would be unfair for the member to lose benefits because they delayed replying.

**Government response**

Noted. Any decision is always made by the employer.

## Reg. 33

**Comments**

One response queried why paragraph 33(4)(c) had been added.

**Government response**

33(4)(c) is correct and should prevent individuals aiming to obtain unfair tax advantages by using additional voluntary contributions lump sums to count towards the 25 per cent tax free allowance (see comment on Regulation 17).

## Reg. 35

**Comments**

Three responses expressed concern that the phrase “no reasonable prospect” for the top tier remained absent from the regulations. One of the responses went on further to state that the change of wording in paragraph (4) needed to be applied to paragraphs (5) and (6) to address concerns over lack of clarity.

**Government response**

The phrase “no reasonable prospect” was removed from the regulations as the Department believed that this term and that of “reduced likelihood” were aiming to reach the same point. A subsequent suggestion from medical practitioners stated that sub paragraph (5) should be amended to establish whether a member is “unlikely to be capable of undertaking gainful employment” and has been accepted by the Department for the final Statutory Instrument.

**Comments**

One response suggested that the revised wording in paragraph (4) needed to be adopted throughout the rest of the ill health retirement regulations.

**Government response**

Whilst the comment is noted, the Department has accepted the suggestion that the ill health regulations need to test whether the member was either likely or “unlikely to be capable of undertaking gainful employment ...”.

### **Comments**

One respondent believed that any changes should await the official review of the ill health retirement regulations.

### **Government response**

This is noted, but some amendments were necessary for a smooth transition from a final salary arrangement to that of CARE.

### **Comments**

One response was concerned with the change of wording to the second condition test – as it is not certain if this will result in any overall change in the likelihood of a member qualifying or not. The response recommended that a discussion with representatives of medical practitioners who would take decisions based on this would be welcome. Further, where tier 3 members are uplifted to tier 2 – this should be uplifted to tier 1.

### **Government response**

ALAMA has advised the Department that it supports the new revised wording for sub-paragraph (4) and went on to suggest some consequential changes as a result, which has been accepted. The Department cannot increase the uplift from tier 3 to tier 1 at the current time as the agreement to the reform process included retention of the existing ill health retirement regulatory framework of the Scheme.

### **Comments**

One response supported the revised wording in paragraph (4) and went on to suggest that the regulations should be further amended – particularly at 35(5) to read:- “A member is entitled to tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before normal pension age”.

Equivalent changes would also need to be made at regulations 35(6) and 36-38. This is because some IRMPs, when assessing members for ill health retirement benefits, have concerns over the employment roles that should be considered. The response also noted that the Scheme employer and IRMP should have regard to guidance given by the Secretary of State when carrying out functions – although this should have been flagged up in the Public Service Pensions Act 2013 as a governance requirement.

### **Government response**

The Department agreed to the revised wording, which has been included in the final version of the regulations and notes the governance point.

## **Reg. 36**

### **Comments**

One respondent indicated that as a result of the Department modifying the wording of the second condition test in regulation 35(4), some consequential amendments along the lines of whether the member was “unlikely to be capable of undertaking gainful employment

before normal pension age” needed to be made throughout the rest of the ill health retirement regulations (except regulation 39) for consistency purposes.

### **Government response**

The Department has accepted these consequential changes.

## **Reg. 37**

### **Comments**

One respondent noted that a literal interpretation of regulation 37(8) could mean that a member falling under 37(8) would never be entitled to tier 3 benefits in any future employment and asked whether this is intended.

### **Government response**

A member would only be entitled to one round of tier 3 benefits regardless of future Local Government Pension Scheme employment. This is in keeping with the current Scheme and will need to continue in the new Scheme going forward.

### **Comments**

One response stated that although 37(9) required the Scheme employer to notify the administering authority where they have determined that payment of tier 3 benefits ceases, they should for completeness also advise the former member.

### **Government response**

The Department will consider this as part of the proposed review of the ill health retirement regulatory framework.

### **Comments**

One response stated that as a result of the Department amending the wording of the second ill health condition test in 35(4), some consequential amendments along the lines of whether the member was “unlikely to be capable of undertaking gainful employment before normal pension age” needed to be made throughout the rest of the ill health retirement regulations (except regulation 39) for consistency purposes (ALAMA).

### **Government response**

The Department has accepted the proposed consequential changes.

## **Reg. 38**

### **Comments**

One response indicated that as a result of the Department amending the wording of the second ill health condition test in regulation 35(4), some consequential amendments along the lines of whether the member was “unlikely to be capable of undertaking gainful employment before normal pension age” needed to be made throughout the rest of the ill health retirement regulations (except regulation 39) for consistency purposes.

### **Government response**

The Department has accepted the proposed consequential changes.

## Reg. 39

### **In relation to the consultation question posed on assumed pensionable pay:-**

#### **Comments**

Eight responses supported leaving the current provision unchanged. However, some of the responses went on to state that further consideration should be given to members who remain in part time work (as a result of ill health) in order to reflect that situation; ie some allowance should be made.

Five responses have noted the enhancement assumed pensionable pay provision. However, some of the responses stated that - no protection should be given to a member who reduced their hours and remained in employment rather than taking ill health retirement; - a member should not be in a better position to one who had not taken ill health retirement and had remained in post; and - 39(10)(a) needed clarifying so that assumed pay reflected the position before any reduction in hours.

Three responses did not support the enhancement provision, with some of the responses stating that the ill health enhancement should be calculated on the contractual hours at point of retirement. This would remove the anomaly whereby a member may be able to use higher contractual hours to calculate ill health enhancements when these hours may have only been worked for a short period many years ago. Inequality was another reason why it was disliked.

Fifteen responses strongly supported time-limiting the enhancement assumed pensionable pay protection provision – provided the reduction in hours or grade, or a move to a job with less responsibility, occurred within the period of 3 years continuous membership prior to the ill health retirement (or death in service). This is because HM Treasury has stipulated that protections should only be for temporary and unexpected reductions in pay. If the reduction in hours or grade carried on beyond 3 years it could be argued that it is no longer a temporary reduction in pay and has simply become part of the person's new terms and conditions of employment. Some responses have suggested that the time limit could be as little as one year. Additionally, time limiting the protection eases the disparity between those employees in these circumstances and those employees who move to part time working as a result of health issues but do not take an ill health retirement.

#### **Government response**

The current requirement is to be retained but the Department will consider time-limiting the availability of the protection when it undertakes a review of the ill health retirement regulations in due course.

### **Other comments in relation to the rest of this regulation:-**

#### **Comments**

One response queried whether there had been a change in interpretation of the wording ie from “such reduction in his service as is attributable to the condition causing retirement” to “work in reduced hours as a consequence of ill health”.



### **Government response**

The provisions can no longer refer to “service” in a career average revalued earnings Scheme.

### **Comments**

One respondent considered guidance should be prepared where ill health retirement occurs for a second time, particularly where members need to declare previous benefits. The response also stated that there appears to be no facility to enhance tier 2 benefits when it occurs as a result of a review of a tier 3 benefit, as it only appears that an enhancement can be applied to an active account – this is not the case for a tier 3 review case.

### **Government response**

The requirement to declare earlier awards of ill health retirement benefits will be considered as part of the proposed review of ill health retirement regulations in due course. As regards tier 3/tier 2 uplift arrangements, see regulation 39(8). The account the member has at date of review has to be treated as active, as it is the only way the financial uplift can be applied.

### **Comments**

One respondent said that in respect of the uplift provision, treating the member’s account as active could mean that they get another option to commute under regulation 33.

### **Government response**

This provision deals solely with the uplift of ill health benefits from tier 3 to tier 2 only and should not be seen as securing another opportunity to commute.

## **Reg. 40**

### **Comments**

Three respondents suggested that it is misleading to base death grant on assumed pensionable pay.

### **Government response**

The consultation draft was correct – if there is no formal “assumed pensionable pay”, in practice this should be taken to be normal pay.

## **Reg. 41**

### **Comments**

One response indicated that many members are more comfortable with, and better understand, percentages. It is asked that, to aid in communications and member understanding, wherever possible percentages be adopted.

### **Government response**

This is a matter which could be explained better in scheme guidance for members.

## **Reg. 42**

### **Comments**

One respondent indicated that paragraph (4)(b) provides for a sum equivalent to 1/320<sup>th</sup> of the member's annual assumed pensionable pay for each year or fraction of a year. As written, this implies that the benefit relating to one day, being the appropriate fraction of a year, will be the same as a benefit for a full year.

### **Government response**

The intention is not to provide for benefit relating to a part-year of service, but rather to provide for a "topping-up" relating to the period between the date of the member's death and normal pension age. The consultation draft was therefore correct.

### **Comments**

In respect of members who reduce their hours of work and subsequently die in service, it is suggested that a medical practitioner should ascertain if death has resulted from the same cause as had led to the earlier reduction in hours. If this is the case, it should be reflected in the amount of survivor benefit awarded.

### **Government response**

The Regulations have changed the current position but will be reconsidered as part of the proposed review of the ill-health retirement regulatory framework.

## **Reg. 46**

### **Comments**

Calculating a death grant on the retirement pension after any commutation under Regulation 33 fails to achieve the ten years pension guarantee.

### **Government response**

Regulation 46(4) now provides that the calculation of any death grant is payable on the pre-commutation amount of retirement pension.

## **Reg. 48**

### **Comments**

It was noted that in 48(7), "partner of a deferred member" should read "partner of a pensioner member"

### **Government response**

This has been corrected.

## **Reg. 51**

### **Comments**

31 responses supported the retention of this Regulation on Guaranteed Minimum Pensions. Two responses expressed the view that the Regulation is not needed.

### **Government response**

The Regulation has been retained in the final Statutory Instrument.

## Reg. 53

### **Comments**

Two respondents commented that the Regulation seems to give the pensions board responsibility for more than governance alone, which should not be the policy intention.

Two respondents requested reassurance that the exercise of powers by the Pensions Regulator in relation to this regulation will be in conjunction with the Local Government Pension Scheme Advisory Board.

### **Government response**

The language used accurately reflects the relevant provisions of Section 5 of the Public Service Pensions Act. The Government is confident that a good working relationship will develop between the Scheme Advisory Board and the Pensions Regulator.

## Reg. 54

### **Comments**

24 responses supported the retention of the power to establish separate funds. Some consultees argued that it should be extended – e.g. to allow all academies to be pooled within one separate fund.

Four responses argued that there is no need for such a power.

### **Government response**

It was concluded that the wording used in the consultation draft of the Regulation reflects the consensus view.

## Reg. 57

### **Comments**

Three authorities argued that the requirement to include various details in the annual report is too onerous. For example it was questioned whether it was necessary to require Funds to include the current versions of a number of published statements within the Annual Report. It could be sufficient to include a list of such documents within the report, and a link to the website where the full documents are published. The Scottish regulations contain the same reference but with additional wording “or details of where that statement may be obtained”. The English and Welsh regulations could be amended along similar lines.

One authority argued that in the context of the annual report, it should not be necessary to enforce inclusion of the technical reports which are required by CIPFA.

Two respondents argued that the date to be published could be earlier, especially as the final audit date is 30<sup>th</sup> September.

### **Government response**

It was concluded that there was insufficient weight of evidence to justify changing the position from that outlined at consultation stage.

## Reg. 62

### **Comments**

Three respondents highlighted a potentially significant addition in Regulation 62(6)(d), which states that the Actuary must have regard to “the desirability of securing the long term cost efficiency of the fund”. The Fund Actuary would need to understand the potential implications, as would the Administering Authority and Employers.

It was requested that the Department should consider what should be required in Funds’ published actuarial valuation reports. Employer contribution rates should be split into the assessed cost of future service benefits for the employer’s membership and an adjustment contribution in relation to the past service surplus or deficit calculated for the employer’s notional share of the Fund.

### **Government response**

These are matters which can be dealt with in guidance as necessary. For further clarification, Regulation 62(6)(d) has been amended to comply with the requirements for funded public service pension schemes set out in Section 13 of the Public Service Pensions Act 2013.

## Reg. 63

### **Comments**

It was questioned whether more should be added on cost control mechanisms.

### **Government response**

This is an issue which will be addressed through Government amendments after publication of the Treasury Direction on valuations as required by Section 11(2) of the Public Service Pensions Act 2013.

## Reg. 64

### **Comments**

It was noted that the second line of (5) should say “from that employer”. Comments were also received to the effect that an employer should not be treated as “exiting” if it is accepted that there will be eligible employees in the near future; that regulations should provide for a return of contributions if there is a surplus at the end of an admission agreement; and that there should be flexibility to provide for avoiding the crystallisation of the exit debt.

### **Government response**

Paragraph (5) has been amended. That apart, the draft regulations have not been amended, but the Government continues to be mindful of securing the long-term viability of Funds, whilst protecting the solvency of employers as far as possible. We will continue to work closely with the Association of Consulting Actuaries to achieve this aim.

## Reg. 65

### **Comments**

One respondent questioned whether the 1 April deadline for a revised rates and adjustment certificate to come into force would always be achievable.

### **Government response**

The Government consider that the discipline of a 1 April deadline is an effective mechanism.

## Reg. 67

### **Comments**

It was commented that it is unclear how exit payments over a number of years would be enforced, nor how payments from a guarantor would be enforced.

### **Government response**

The Government envisages the use of normal legal processes as necessary.

### **Comments**

Regulation 67 appears to require employer contributions to be paid during a period of reserve forces special leave even though these are paid to the relevant fund by the Ministry Of Defence.

### **Government response**

This has been corrected. Regulation 67(4) now provides that employer contributions will not be paid during any period of reserve forces special leave.

## Reg. 69

### **Comments**

21 respondents indicated that the list at 69(3) needed further additions, many supporting the Local Government Association's list. Nine respondents felt that the list at 69(3) appeared to be sufficient. One respondent requested the deletion of 69(6).

### **Government response**

A list of the items of information to be supplied by employers to administering authorities (set out at 69(3)) was subsequently agreed with the Local Government Association. Paragraph 69(6) was therefore deleted.

## Reg. 71

### **Comments**

25 responses supported the proposal that one month after due date should constitute "late", with only four in disagreement.

### **Government response**

The deadline of one month from the date specified has been retained. It was also agreed that interest could be required from former, as well as current, Scheme employers.

## **Reg. 74**

### **Comments**

Regulation 74 effectively limits a complaint to persons whose rights or liabilities under the Scheme are affected. Previously, individuals who could evidence a relationship to a Scheme member were also entitled to bring a complaint. Concern was expressed regarding the possible exclusion of persons who only have prospective or contingent rights, persons who are prospective members or beneficiaries and persons trying to establish that they fall to be treated as a member or beneficiary of the Scheme.

### **Government response**

Paragraph (5)(b) makes it clear that the applicant need not be a Scheme member. It is agreed that a review of the Internal Dispute Resolution Procedure arrangement will take place at some stage after the new Scheme comes into operation.

## **Reg. 80**

### **Comments**

The wording of regulation 80 needs to be modified to recognise the separation of the role of administering authority from that of the employer.

### **Government response**

The current wording is satisfactory. As before, the authorities concerned must appreciate that they act in two different roles, as both employers and as administering authorities, and must fulfil both roles as set down in the Regulations.

### **Comments**

The view was expressed that a new regulation 80(3) should be introduced to require that, within one month of each Scheme year end (to facilitate year end reporting and the production of annual benefit statements within the new regulatory timescales), each Scheme employer should send to the administering authority a statement showing, for each employment of each of the Scheme employer's employees who have been active members during the Scheme year, a stipulated list detailing required information.

### **Government response**

A new paragraph 80(3) has been duly introduced, although Scheme employers have been allowed three months to supply the necessary information, rather than one.

### **Comments**

As drafted, the regulation does not give administering authorities the information they need from scheme employers to administer the new CARE scheme and the final salary protection afforded by the Public Service Pensions Act 2013.

### **Government response**

Regulation 80(3) now provides for a comprehensive list of information to be provided by scheme employers. This was agreed following discussions with scheme interested parties.

## Reg. 88

### **Comments**

19 responses indicated satisfaction with the current wording on Pensions Increase. 11 responses requested clarification on the fund which should be used when payment is made.

### **Government response**

In view of the above, the final Regulation remains as per the consultation draft.

## Reg. 89

### **Comments**

One response - it is not clear how Regulation 89 (4)(b) is to be interpreted and paragraph 5 refers to statements being produced in accordance with section 14 of the Public Services Pensions Act 2013 which refers to statements being produced in line with such requirements as Treasury directions may specify. It is unclear if Treasury are close to defining such requirements. Concern was expressed as to whether administrative authorities could reasonably be expected to provide illustrations of potential benefits.

### **Government response**

Both paragraph 4(b) and the reference to Treasury directions have been dropped. The specific requirement to provide illustrations of benefits has been omitted from the final Statutory Instrument, but the existing legislation on this area must be complied with and guidance will be duly provided to authorities.

## Reg. 91

### **Comments**

26 respondents indicated that the basis of the current system of forfeiture should be retained. Three responses supported the alternative view that forfeiture should be dealt with through the courts.

### **Government response**

In view of the above, the basis of the current forfeiture system has been retained.

## Reg. 93

### **Comments**

It was questioned whether, instead of the term "grave misconduct" in Regulation 93, it may be more appropriate to use the term "gross misconduct", which already has an established meaning under employment law.

### **Government response**

In the context of overriding pensions legislation, the term “grave misconduct” is correct.

## Reg. 94

### **Comments**

One respondent questioned Regulation 94(4) and specifically why it should be necessary for the member's former Scheme employer to repay forfeited sums if the member subsequently requests a transfer value or transfers to another Scheme employer. It was considered that this possibility creates unwelcome uncertainty as regards the forfeiture provisions.

### **Government response**

Paragraph 94(4) was duly omitted before the final Statutory Instrument was made.

## Reg. 95

### **Comments**

The future of the Club Transfer system was queried.

### **Government response**

This is a matter which is still under consideration by Government. Once a policy decision has been reached on how the club transfer arrangement is to work in the new public service pension schemes, we will come forward with the necessary amending regulations.

## Reg. 103

### **Comments**

It was suggested that in each case transferring employers should be consulted on the terms offered by the appointed actuaries.

Provision should also be made for transfers within an administering authority.

### **Government response**

The Government remains to be convinced that it would be helpful for employers to be involved in the way suggested.

Express provision is not required for transfers within a single administering authority and there should be no need for separate actuaries to be appointed.

## Schedule 1

### **Comments**

One respondent strongly recommended that automatic enrolment and automatic re-enrolment definitions are updated so that they are subject to sections 4 & 30 of the Act for consistency with Annex D. If this is not changed, it leaves open the potential to need to re-enrol before the end of the transitional period for any large employers with staging dates in 2013. Furthermore, the definition of automatic re-enrolment date in Schedule 1 is confusing, given the use of the words “for those of its eligible jobholders who are not active



members of the Scheme.” This appears contradictory to the Act, as section 5(3) of the Pensions Act 2008 refers to this only being necessary for those eligible jobholders who are not currently in any qualifying scheme, it is therefore recommended that “for those of its eligible jobholders who are not active member’s (sic) of the Scheme” is deleted.

### **Government response**

The definition of “automatic enrolment” is consistent with the primary legislation. Jobholders who are already in a qualifying scheme would not be affected by the Regulations as they would not have an automatic enrolment or re-enrolment date.

### **Comments**

It was argued that the definition of "co-habiting partner should start by saying that "the Administering Authority are satisfied that the person fulfils the following conditions ...". Secondly, the definition of "normal pension age" refers to Schedule 4 to the Pensions Act 1995. However, Schedule 4 has been amended by the Pensions Act 2007 and the Pensions Act 2011. Whilst the wording says "as specified from time to time in Schedule 4" it was suggested that it may be clearer if, instead, the definition said "Schedule 4 as amended".

### **Government response**

The first of the above suggestions has been incorporated in the wording of the final Statutory Instrument. With regard to the second suggestion, it was decided that the wording was already sufficiently clear.

## **Schedule 2**

### **Comments**

Two respondents requested that it be made clearer that responsibility for assessing the risk of the admission body should lie with the administering authority.

One comment was received to the effect that post-1992 universities should be re-classified as Part 2 bodies.

### **Government response**

Paragraph 6 makes it clear that a risk assessment must be carried out to the satisfaction of the administering authority. It was decided that there was insufficient evidence to alter the historic status of post-1992 universities within the Local Government Pension Scheme.

## **Schedule 3**

### **Comments**

It was pointed out that the list of Welsh authorities was incorrect.

### **Government response**

The list of Welsh authorities was corrected before the Statutory Instrument was made.