



Department for
Communities and
Local Government

Transforming Rehabilitation Programme and the Local Government Pension Scheme

Consultation

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The Consultation Process and how to Respond

Basic Information

To:	This consultation is aimed at Local Government Pension Scheme interested parties and, in particular, Probation Trusts and Scheme administering authorities
Body responsible for the consultation:	The Department for Communities and Local Government
Duration:	This is a 8 week consultation which will conclude on 10 February 2014
Enquiries:	For enquiries and to respond to this consultation. Please e-mail Robert.ellis@communities.gsi.gov.uk
How to Respond:	<p>When responding, please ensure you have the words Transforming Rehabilitation and Local Government Pension Scheme.</p> <p>Alternatively you can write to: Local Government Pension Scheme – Transforming Rehabilitation Programme Department for Communities and Local Government 5/F5 Eland House Bressenden Place LONDON SW1E 5DU</p> <p>For more information, please see https://www.gov.uk/government/organisations/department-for-communities-and-local-government</p>

Freedom of information and data protection applicable to consultation

Representative groups are asked to give a summary of the people and organisations they represent and, where relevant, who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Overview

Topic of this consultation:	<p>The Local Government Pension Scheme (Offender Management) Regulations 2014</p> <p>These draft regulations facilitate the continued participation in the Local Government Pension Scheme by employees engaged in the provision of probation services (in the context of the Secretary of State for Justice's Transforming Rehabilitation Reforms) when they are transferred to either the National Probation Service or a Commercial Rehabilitation Company. They provide for the benefits of all probation services employees (past and present) to be administered by one administering authority and for the transfer of all past service liabilities in relation to those employees to that one authority.</p>
Scope of this consultation:	This consultation seeks responses from interested parties on draft regulations to come into force in April 2014.
Geographical scope:	England and Wales.
Impact Assessment:	No Impact Assessment is required as the proposed regulatory measures are intended to preserve the ongoing access to the Local Government Pensions Scheme for staff working in rehabilitation provision when they transfer to a new employer, and the future management of past service liabilities without requiring cessation payments when the Probation Trusts close.

Chapter 1

Introduction

Transforming Rehabilitation Programme

1. In “*Transforming Rehabilitation: A Strategy for Reform*”, the Secretary of State for Justice set out plans to introduce a new system for the management and rehabilitation of offenders in the community across England and Wales. The reforms comprise:
 - the opening up of the provision of probation services to a diverse range of new rehabilitation providers, incentivised through payment by results to reduce reoffending;
 - a new National Probation Service, part of the National Offender Management Service, which will retain certain key functions within the public sector;
 - the extension of supervision after release to nearly all offenders leaving custody; and
 - a new “through the prison gate” resettlement service across England and Wales.
2. The majority of probation services are currently delivered by 35 Probation Trusts under contract to the National Offender Management Service on behalf of the Secretary of State for Justice. Once the Secretary of State's for Justice's reforms are fully implemented, these will be replaced with 21 Community Rehabilitation Companies, which will be owned by private and voluntary sector providers, and the newly formed National Probation Service, which will be in the public sector and part of the National Offender Management Service.
3. The Community Rehabilitation Companies will initially be wholly-owned by the Secretary of State for Justice for a period of approximately six months before being transferred to the private and voluntary sector providers by way of share sales. Following the sale, the Secretary of State for Justice will retain certain rights through a special share in the Community Rehabilitation Company.
4. The Community Rehabilitation Companies will manage the majority of offenders in the community sentenced to community orders, suspended sentence orders and those subject to license conditions or supervision requirements and will deliver innovative rehabilitative support to offenders. The National Probation Service will be a function which sits within the Ministry of Justice and will discharge certain functions, such as providing assistance to courts on sentencing and dealing with high-risk offenders.
5. As part of the reforms, staff will be transferred from the Probation Trusts to the Community Rehabilitation Companies and the National Probation Service under provisions in section 3 of the Offender Management Act 2007. The aim is that the staff will be transferred from 1 April 2014 but this might be subject to change.
6. Ordinarily, National Probation Service staff would become eligible for membership of the Principal Civil Service Pension Scheme. However, staff in the Probation Trusts are currently eligible to join the Local Government Pension Scheme (the **Scheme**). The

Ministry of Justice intends to facilitate continuity in pension provision for transferring staff. .

7. To facilitate this continued pension provision, it is proposed that all Community Rehabilitation Companies and the National Probation Service will participate in one administering authority, the Greater Manchester Pension Fund.
8. The Ministry of Justice's proposals in relation to future pension provision for probation staff will require regulatory amendments to the Local Government Pension Scheme Regulations 2013 and this document commences a period of statutory consultation on those amendments.
9. The Ministry of Justice's proposals for enabling probation service staff currently employed by the Probation Trusts to continue their membership of the Scheme were shared with the Scheme's administering authorities earlier in 2013 on an informal basis. The comments received as a result of this engagement have been incorporated, where appropriate, in the draft regulations set out in this consultation.
10. The Scheme's administering authorities were also invited to put themselves forward to become the single administering authority chosen to administer the probation service liabilities under the Scheme going forward as part of the Ministry of Justice's proposals. When issuing that invitation the administering authorities were given an update on the proposals.
11. There have been discussions and meetings with the GMB and NAPO Unions and the Probation Trust chairmen, and more recently collaborative work on a first draft of the attached regulations with the Local Government Sub-committee of the Association of Consulting Actuaries. This consultation reflects these discussions where possible.
12. Your comments are invited on the set of draft regulations at **Annex A**. It is expected that the regulations will come into force on 1 April 2014.
13. **The closing date for responses on the draft regulations at Annex A and the related questions in Chapter 3 is 10 February 2014.**

Chapter 2

Local Government Pension Scheme (Offender Management) Regulations 2014

1. These Regulations are being made under the Superannuation Act 1972.

Membership in the Scheme

2. The Ministry of Justice wants to ensure that probation service staff who are entitled to membership of the Scheme before they are transferred from a Probation Trust to a Community Rehabilitation Company or the National Probation Service as part of the Transforming Rehabilitation Programme, can continue to participate in (or be eligible for membership of) the Scheme.
3. Tameside Metropolitan Borough Council, as administering authority of the Greater Manchester Pension Fund, will become the single appropriate administering authority for all members employed by the Community Rehabilitation Companies and the National Probation Service. This change is made by **regulation 10**.
4. Each Community Rehabilitation Company will seek admitted body status in the Scheme by way of admission agreement that will allow participation in the Scheme for the employees who transfer to the Community Rehabilitation Company as part of the Transforming Rehabilitation Programme.
5. The Secretary of State for Justice will be named as a scheme employer in respect of civil servants discharging probation services as part of the National Probation Service. It will be made clear that such civil servants will be eligible for membership in the Scheme, and not the Principal Civil Service Pension Scheme. This will also be reflected in employees' contracts of employment and the transfer scheme which transfers staff under the Offender Management Act 2007. This change is made by **regulations 3, 4, 8 and 9**.
6. It is proposed that a Community Rehabilitation Company will procure that any subcontractor of the probation services becomes an admitted body in the Scheme by way of an admission agreement to allow continued entitlement to membership in the Scheme for any employees who transfer as part of the Transforming Rehabilitation Programme to a Community Rehabilitation Company and who are subsequently transferred to a subcontractor.

Past service liabilities

7. As part of the reforms, the Probation Trusts will cease to participate in the Scheme and will be wound up following the transfer of staff to the Community Rehabilitation Companies and the National Probation Service. It is intended that the probation trust listing in the Scheme regulations will be removed when appropriate to do so.

8. The responsibility for funding the past service liabilities of the active members transferring as part of the Transforming Rehabilitation Programme to a Community Rehabilitation Company or the National Probation Service will transfer to the member's new employer (either a Community Rehabilitation Company or the National Probation Service). No exit payment will become due from a Probation Trust. This change is made by **regulations 5 and 7**.
9. The past service liabilities in relation to all former probation service employees who were previously employed by the Probation Trusts, including deferred members, deferred pensioner members and pensioner members of the previous schemes (the 1995 Scheme, the 1997 Scheme and the 2008 Scheme), will become the responsibility of the National Probation Service. The National Probation Service, as part of the Ministry of Justice, will continue to fund these benefits on an on-going basis and no immediate exit payment will become due from the Probation Trusts in relation to those liabilities. This change is made by **regulations 3 and 5**.
10. To facilitate this, the following steps are required:
 - a) the Secretary of State for Justice will be deemed to be the scheme employer for these former probation service employees;
 - b) all past service liabilities in relation to these former employees and an appropriate share of the assets will be transferred from the member's current administering authority to the Greater Manchester Pension Fund, for funding by the National Probation Service; and
 - c) the Greater Manchester Pension Fund will become the new administering authority for the members concerned.

See **regulations 3, 7, 10. and 11**.

11. The draft regulations set out the arrangements for the transfer of assets and liabilities from the current administering authorities of the current Probation Trusts to the Greater Manchester Pension Fund. See **regulation 7**.
12. The draft regulations provide for a standardised mechanism for the transfer of assets, liabilities and information to the Greater Manchester Pension Fund from the current administering authorities and a proposed timescale in which the transfer should take place. Actuarial guidance issued by the Secretary of State under Regulation 2(3) of the Local Government Pension Scheme Regulations 2013 will set out the formula to be used to ascertain the assets to be transferred. A draft of that guidance is attached at Annex B. Feedback from earlier discussions, mentioned in Chapter 1, suggested that there should be a clear process for calculating the assets that should transfer to avoid uncertainty and prolonged negotiations. The aim of the draft regulations is to facilitate agreement, but to impose long stop dates if agreement cannot be reached.
13. These changes are made by **regulations 6, 7 and 11**.

Cessation of participation by a Community Rehabilitation Company

14. In the event that a Community Rehabilitation Company ceases to employ active members in the Scheme who originally transferred as part of the Transforming Rehabilitation Programme (for example, because the probation services are transferred to another body), a mechanism is proposed in the draft regulations so that:
- a) the responsibility for the future funding of any deferred and pensioner liabilities in relation to the original transferring employees at the time of an onward transfer of the services will be transferred to the National Probation Service; and
 - b) the responsibility for funding the past service liabilities in relation to the employees who are still engaged in the provision of probation services and who transfer to the new service provider employer, will transfer to that new service provider for future funding. This will limit the circumstances in which an exit payment will become due from the exiting employer.
15. This change is made by **regulation 3** in relation to the liabilities that pass to the National Probation Service and **regulation 5** in relation to the circumstances in which an exit payment will, or will not, arise.

Secretary of State for Justice Guarantee

16. The Secretary of State for Justice will provide a guarantee to Tameside Metropolitan Borough Council as the administering authority for the Greater Manchester Pension Fund in respect of the Community Rehabilitation Companies' (and any subcontractors') participation in the Greater Manchester Pension Fund and their funding obligations. The Guarantee will cover the Community Rehabilitation Companies' (and any subcontractors') liabilities to contribute to the Scheme in respect of the benefits for the employees transferring as part of the Transforming Rehabilitation Programme in the event of the insolvency of the Community Rehabilitation Company (or a subcontractor) when contributions are outstanding.
17. A bond, indemnity or guarantee is required from an admission body by an administering authority under the Local Government Pension Scheme 2013 Regulations. **Regulation 9** amends these regulations to allow a guarantee from the Secretary of State for Justice in relation to the obligations of a provider of probation services.
18. The National Probation Service is a division of the National Offender Management Service which is an executive agency under the Secretary of State for Justice. For this reason there is no proposal for the Secretary of State for Justice to guarantee the liabilities that will become the responsibility of the National Probation Service, as he would be guaranteeing liabilities for which he is already liable as a primary obligation.

Chapter 3

Questions for Consultation

Taking into consideration the information set out above and in the annexes, the Department would be particularly interested in your views in response to the following questions.

1. Are there any other categories of member who are or who have been engaged in the provision of probation services that are missing from Regulation 3 i.e. in relation to whom responsibility should be transferring to the Secretary of State.
2. Are there any additional transitional provisions required to facilitate the pensions aspects of the Transforming Rehabilitation Programme as they relate to the Local Government Pension Scheme? In particular, the draft regulations set out a process whereby the future funding of liabilities relating to deferred and pensioner members who were previously employed by the Probation Trusts (and their predecessor probation boards) will be transferred to the responsibility of the National Probation Service? Do the draft regulations achieve their aim?
3. Do the regulations and proposed actuarial guidance provide sufficient detail and guidance for the transfer of assets and liabilities from the funds of the current administering authorities to the Greater Manchester Pension Fund?
4. Do the regulations strike the right balance between flexibility and prescription in relation to the mechanics of agreeing the transfer share and payment date?
5. Do you have any comments on the timescales for reaching agreement on, and achieving the transfer of assets and liabilities set out in the draft regulations and the proposed interest chargeable in the event that a transfer is not made in accordance with payment dates agreed or notified under the regulations?
6. Will any of the changes made by the draft regulations have any unintended consequences?

Annex A Draft Regulations

Draft Regulations prepared for the purposes of consultation

STATUTORY INSTRUMENTS

2014 No. xxxx

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Offender Management) Regulations 2014

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of and Schedule 3 to the Superannuation Act 1972⁽¹⁾

In accordance with section 7(5) of that Act, the Secretary of State has consulted such associations of local authorities as appeared to the Secretary of State to be concerned; the local authorities with whom consultation appeared to the Secretary of State to be desirable; and such representatives of other persons likely to be affected by the Regulations as appeared to the Secretary of State to be appropriate.

The Secretary of State makes the following Regulations:

Citation, commencement and extent

1.—(1) These regulations may be cited as the Local Government Pension Scheme (Offender Management) Regulations 2014.

(2) These Regulations come in to force on [coming into force date].

(3) These Regulations extend to England and Wales⁽²⁾.

⁽¹⁾ 1972 c.11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7).

⁽²⁾ The Secretary of State's functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c.46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

Amendment of the Local Government Pension Scheme Regulations 2013

2.—(1) The Local Government Pension Scheme Regulations 2013⁽³⁾ (“the 2013 Regulations”) are amended in accordance with regulations 3 to 10.

3. After regulation 3 insert—

“Civil servants etc engaged in probation provision

3A.—(1) A person who meets Condition A and Condition B shall for the purposes of these Regulations be deemed to be in the employment of the Secretary of State.

(2) Condition A is that the person is employed in the civil service of the State.

(3) Condition B is that the person is engaged in probation provision within the meaning of section 2 of the Offender Management Act 2007 (responsibility for ensuring provision of probation services)⁽⁴⁾.

(4) Upon and following the transfer of the responsibilities for probation provision from a probation trust to another person as a result of changes to arrangements made for the provision of probation services under section 3 of the Offender Management Act 2007 (power to make arrangements for the provision of probation services) any provision of these Regulations which confers a function on a body by virtue of having been a member's employer shall have effect as if the Secretary of State was the employer of a person to whom paragraph (5) applies.

(5) This paragraph applies to—

- (a) any deferred member, deferred pensioner member or pensioner member of a local government pension scheme by virtue of employment with a probation trust (or with a predecessor local probation board or probation committee) which ended before the transfer of the responsibilities referred to in paragraph (4);
- (b) any member who becomes a deferred member, deferred pensioner member or pensioner member after the transfer of responsibilities referred to in paragraph (4) above who is a member of the Scheme by virtue of employment with a Scheme employer engaged in the provision of probation services (but only in respect of periods of employment whilst the member was engaged in the provision of probation services or periods of membership which have been aggregated with such periods) and:
 - (i) either that employment was continuous with the same Scheme employer or it was compulsorily transferred on one or more occasions to another Scheme employer engaged in the provision of probation services;
 - (ii) the admission agreement under which that member was participating in the Scheme has terminated or the Scheme employer that last employed the member has ceased to be a Scheme employer engaged in the provision of probation services in relation to that employment; and
 - (iii) the member was in the employment of a Scheme employer engaged in the provision of probation services at a time when that employer was in the ownership of the Secretary of State; or
- (c) a survivor member or pension credit member who is entitled to a survivor's pension or a children's pension or a pension credit (as the case may be) by virtue of the membership of the Scheme of a person to whom paragraph 5(a) or paragraph 5(b) applies.
- (d) a person specified in arrangements made under section 3 of the Offender Management Act 2007 as a person to whom this paragraph applies, or a person who would have been so specified if that person had remained in the employment of a body to which the arrangements apply.

(6) For the purposes of this regulation—

“probation trust” means a trust established under section 5 of the Offender Management Act 2007; and

⁽³⁾ SI. 2013/2356
⁽⁴⁾ 2007 c.21

“a local government pension scheme” means the Scheme or any of the Earlier Schemes within the meaning of regulation 1(5) of the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013.

4. In Regulation 4 after paragraph (3) insert—

“(4) Paragraph (1)(a) does not apply to a person who is eligible to join the Scheme by reason of employment described in regulation 3A(1) if—

- (a) the person is designated, or belongs to a class of employees that is designated as eligible for membership of the Scheme pursuant to regulation 3(1)(b); and
- (b) the person is not an active member of any other public service pension scheme in relation to that employment”

5. In regulation 64 (special circumstances where revised actuarial valuations and certificates must be obtained) after paragraph (8) insert—

“(9) Paragraph (10) applies—

- (a) where the exiting employer is a probation trust established under section 5 of the Offender Management Act 2007 and the liabilities of the fund in respect of benefits due to the probation trust’s current and former employees (or those of its predecessor local probation boards) have been or are to be transferred to another person or persons as a result of changes to arrangements made for the provision of probation services under section 3 of that Act (power to make arrangements for the provision of probation services); or
- (b) in any other case where the exiting employer is engaged in the provision of probation services, but only to the extent provided for under the relevant admission agreement, in relation to any liabilities of the fund in respect of benefits due to the current and former employees of the exiting employer which have been or are to be, with effect from the day following the exit date, transferred to one or more other Scheme employers as a result of changes to arrangements made for the provision of probation services.

(10) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.”

6. In regulation 103 (changes of administering authority)—

- (a) in paragraph (1) after “(7)” insert “and (8)”;
- (b) after paragraph (7) insert —

“(8) This regulation does not apply where a member’s administering authority has changed in the circumstances described in regulation 104(1) (change of administering authority in connection with probation service arrangements).”.

7. After regulation 103 (changes of administering authority) insert—

“Change of administering authority in connection with probation service arrangements

104.—(1) This regulation applies where in connection with changes to arrangements made for the provision of probation services under section 3 of the Management of Offenders Act 2007 (power to make arrangements for the provision of probation services) the staff of a probation trust are transferred to another person or persons and—

- (a) an administering authority becomes a member’s appropriate administering authority (“the new authority”); and
- (b) immediately before it does so, another authority was that member’s appropriate administering authority (“the former authority”),

(and it is not material for these purposes whether the member in question was in the employment of the probation trust at the date of the transfer).

(2) Within 30 days of the transfer date—

- (a) the transferring member’s former employer and (where applicable) the transferring member’s new employer must supply the former authority and the new authority with such information as may be

necessary for them to perform their functions under these Regulations in respect of the transferring members under the Scheme;

- (b) the former authority must supply the new authority with such information as may be necessary for the new authority to perform its functions under these Regulations in respect of the transferring members under the Scheme.

(3) With effect from the transfer date the liability to pay benefits under the Scheme to and in respect of the transferring members shall transfer to the new authority and each former authority must make a transfer payment from its pension fund to the pension fund of the new authority in respect of the transfer share determined in accordance with actuarial guidance issued by the Secretary of State by agreement between an actuary appointed by the former authority and an actuary appointed by the new authority.

(4) Where the actuaries cannot agree the transfer share or any other matter that needs to be agreed in order to implement the provisions of this Regulation (assuming for this purpose that the payment date is the transfer date) on or before the agreement date—

- (a) the matter shall be referred to a third actuary, chosen by agreement between the actuaries or in default of agreement by the President of the Institute and Faculty of Actuaries; and
- (b) that actuary's determination shall be final.

(5) The transfer payment shall be made in such manner (namely as to the proportion of cash and other permitted assets that will comprise the transfer payment and whether the transfer payment is paid in one or more instalments) as the new authority shall reasonably require.

(6) The transfer payment from each former authority must be paid on the payment date.

(7) Where agreement cannot be reached in relation to the payment date on or before the later of (a) the agreement date and (b) 30 days after the date on which the transfer share has been determined by agreement under paragraph (3) or by an actuary's determination under paragraph (4), the new authority must notify the former authority of the date or dates, which shall be no later than the final payment date, and the date or dates so notified shall become the payment date.

(8) If a transfer payment is not made in accordance with paragraph (6) or (7), the new authority may require the former authority to pay interest on the amount that falls due and is not so paid.

(9) Interest payable under paragraph (8) is to be calculated at 3 per cent per annum on a day-to-day basis from the date payment is due to the date of actual payment, compounded with three-monthly rests.

(10) When the transfer payment has been made in full and any adjustments made in accordance with actuarial guidance issued by the Secretary of State —

- (a) no other payment or transfer of assets shall be made from the pension fund of the former authority by reason of membership covered by the transfer payment;
- (b) the former authority shall have no liability to make any benefit payments or to receive contributions for any period prior to or subsequent to the transfer date in respect of a transferring member other than as provided for under arrangements made under paragraph (12);
- (c) except where arrangements under paragraph (12) provide otherwise, any payment made or income received by the former authority in respect of a transferring member after the transfer date shall be reimbursed by or paid to the new authority (as the case may be) within 45 days of receipt or payment by the former authority.

(11) The former authority shall provide such assistance and further information in its possession (or to which it has access) as the new authority may reasonably require in relation to the calculation and administration of benefits payable to and in respect of the transferring members under the Scheme subject to reimbursement by the new authority of the former authority's reasonable costs for doing so.

(12) The new authority and the former authority may agree such arrangements as may be necessary for the former authority to continue making benefit payments to or in respect of the transferring members for a period after the transfer date until the new authority is able to make such payments itself (such agreement not to be unreasonably withheld by the former authority).

(13) The former authority and new authority must cooperate in order to—

- (a) permit members to continue to make AVCs and SCAVCs so far as possible, on similar terms as they were doing prior to the transfer date; and

- (b) procure the transfer of the transferring members' accumulated AVCs and SCAVCs (including investment returns thereon) to the new authority.

(14) For the purposes of this regulation and save where the context otherwise requires—

“agreement date” means the date which falls 120 days after the date on which the administering authorities have been notified in writing of the transfer of staff, or the date the information described in paragraph (2) has been received, whichever is the later;

“final payment date” means the date that is 12 months after the later of the date on which the former authority has been notified in writing of the transfer of staff and the date the information described in paragraph (2) has been received;

“a local government pension scheme” means the Scheme or any of the Earlier Schemes within the meaning of regulation 1(5) of the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013;

“member” includes deferred members, deferred pensioner members and pensioner members of a local government pension scheme and those entitled through them, including pension credit members;

“payment date” means the date or dates agreed between the former authority and the new authority for the making of the transfer payment to the new authority or the date or dates notified to the former authority in accordance with paragraph (7) where agreement cannot be reached;

“permitted assets” means liquid, transferable holdings of pooled vehicles which track market capitalisation weighted indices;

“transfer date” is the date on which the new pension fund becomes the member's appropriate fund;

“transferring members” are the employees and former employees (and those entitled through them, including pension credit members) of a probation trust (or its predecessor local probation boards) who are the subject of the changes of Scheme employer and appropriate administering authority referred to in paragraph (1);

“transfer payment” means a transfer of cash in British pounds sterling or permitted assets equal in value to the transfer share;

“transfer share” means the value of the assets allocated to the actual and potential liabilities payable from the pension fund of a former authority in respect of the benefits that have accrued to or in respect of transferring members as at the transfer date (whether that accrual arose before the commencement of these Regulations or afterwards), adjusted to the relevant payment date or dates, calculated in accordance with actuarial guidance issued by the Secretary of State;

“probation trust” means a probation trust established under section 5 of the Offender Management Act 2007”;

8. In Part 2 of Schedule 2 (Scheme employers) after paragraph 13 insert—

“(14) The Secretary of State, in respect of persons specified in regulation 3A(1) (civil servants engaged in probation provision).”.

9. In Part 3 of Schedule 2 in paragraph 8—

- (a) at the end of sub-paragraph (d) insert—

“or

- (iii) which is a provider of probation services under section 3 of the Offender Management Act 2007 (power to make arrangements for the provision of probation services) or a person with whom such a provider has made arrangements under subsection (3)(c) of that section.

10. In the table in Part 2 of Schedule 3—

- (a) in the column headed “Member” after the final entry insert the following entries —

“A person deemed to be in the employment of the Secretary of State by regulation 3A(1).” and

“A person to whom regulation 3A(5) applies.”

- (b) in the column headed “Appropriate administering authority”, next to the entries inserted by paragraph (a), insert “Tameside Metropolitan Borough Council”

Transitional provisions

11.—(1) For the purposes of the issue of actuarial guidance by the Secretary of State pursuant to regulation 104(3) of the 2013 Regulations (change of administering authority in connection with probation service arrangements) the fact that any consultation with the Government Actuary’s Department was carried out before that provision was inserted into those Regulations is to be disregarded in determining whether there has been compliance with the requirement under regulation 2(3) of those Regulations (introductory) to engage in such consultation.

(2) Paragraph (3) applies to any person of the description in regulation 3A(5) of the 2013 Regulations (civil servants etc engaged in probation provision) who has not been a member of the scheme constituted by those Regulations in relation to benefits accrued under the Earlier Schemes.

(3) Where this paragraph applies to a person, any such benefits accrued by or in respect of that person are payable by the administering authority which is the appropriate administering authority for persons in the employment of the Secretary of State in the Secretary of State’s deemed capacity as employer of that person.

(4) Where paragraph (3) applies to a person—

- (a) regulation 3A(5) of the 2013 Regulations applies in relation to functions conferred on a body under the Earlier Regulations by virtue of having been a member’s employer as it applies to functions conferred by the 2013 Regulations; and
- (b) regulation 19(1) of the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013 (appropriate funds) does not apply in relation to that person.

(5) Where a body has any rights or obligations under regulation 104 of the 2013 Regulations (change of administering authority in connection with probation service arrangements) in relation to functions under the 2013 Regulations, those obligations apply equally in respect of functions under the Earlier Regulations.

(6) In this regulation “the Earlier Schemes” and “the Earlier Regulations” have the same meaning as in regulation 1(5) of the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013 (interpretation).

Signed by authority of the Secretary of State for Communities and Local Government

Date

Parliamentary Under Secretary of State
Department for Communities and Local Government

1 Background

- 1.1 As part of the Ministry of Justice's Transforming Rehabilitation Programme, probation staff (the "transferring staff") across 35 Probation Trusts will be transferred into one of 21 Community Rehabilitation Companies (CRCs) or the newly formed National Probation Service (NPS).
- 1.2 Whilst employed by the Probation Trusts, the transferring staff were eligible for LGPS membership in one of 35 different LGPS funds. Following the transfer of employment, the transferring staff will retain LGPS membership, which will be delivered through participation in the Greater Manchester Pension Fund (the "GMPF") of the LGPS by the CRCs and the NPS.
- 1.3 All past service liabilities in relation to probation staff (both current and former staff) employed by the Probation Trusts, and prior to them the local probation boards, will be transferred from 34 different LGPS funds to the GMPF. (GMPF will retain responsibility for the probation service liabilities that it already has.)
- 1.4 The assets attributable to the probation service past service liabilities ("the transfer share") will be transferred from the 34 ceding LGPS funds to the GMPF. This Guidance sets out the basis for determining the value of this transfer share.

2 Calculation of the transfer share

2.1 The transfer share shall be calculated according to the formula—

$$\{A \times (1 + \text{return}) + \sum (B_t - C_t) \times (1 + \text{return}_t)\} \times (1 - \text{transact})$$

Where—

- "A" is the market value of the assets allocated to the liabilities relating to the transferring members as at the date of the previous triennial funding valuation based on a mid-price valuation;
- "B_t" is the total of any contributions paid by or in respect of the transferring members plus any other income received in respect of the transferring members during any quarter.t or part.quarter, assumed to be uniformly distributed over quarter.t or part.quarter. For any quarter.t or part.quarter following the transfer date, B_t is NIL.
- "C_t" is the total of any benefits paid to or in respect of the transferring members plus any expenditure in respect of the transferring members during quarter.t or part.quarter, assumed to be uniformly distributed over quarter.t or part.quarter. For any quarter.t or part.quarter following the transfer date, C_t is NIL.
- "quarter.t" is any full quarter between the last valuation date and the payment date. Quarter end dates are defined as 30 June, 30 September, 31 December and 31 March.
- "part.quarter" is any period from the most recent quarter end prior to the payment date to the payment date such that $\sum \text{quarter.t} + \text{part.quarter}$ is the time elapsed between the last valuation date and the payment date.
- "return" is the relevant cumulative actual investment return of the former fund from the last valuation date to the payment date.
- "return.t" is the relevant cumulative actual investment return of the former fund for the period from the mid-point of quarter.t or part.quarter to the payment date, where the calculation assumes cash flows are uniformly distributed and so uses the square root of the actual return in quarter.t or part.quarter.
- "transact" is an allowance for the costs of making the transfer payment in British pounds sterling cash (and not in liquid transferable holdings of pooled vehicles which track market capitalisation weighted indices) of [0.2%] of the cash portion of the transfer payment.

2.2 Where a transfer payment is to be made in instalments on differing payment dates the calculation carried out in accordance with paragraph 2.1 and paragraph 2.4, refreshed in accordance with paragraph 2.6, must be by reference to the relevant payment dates.

2.3 For the avoidance of doubt, references to the benefits payable in respect of the transferring members includes the benefits payable to and in respect of those transferring members under the Scheme, the 1995 Scheme, the 1997 Scheme and the 2008 Scheme.

- 2.4 Where the relevant actual investment return for the former fund for any quarter.t or part. quarter, or for the purposes of calculating the return in the formula in paragraph 2.1, is not available prior to the payment date, an overall market index return constructed using the following component asset class weightings and associated total return indices, or such other component asset class weightings as may be agreed between the former authority and the GMPF based on the investment strategy of the former fund in respect of the assets attributable to the transferring members, shall be substituted for the purpose of calculating the transfer share pending the calculation to be carried out under paragraph 2.6:
- 25% UK Equity - based upon the FTSE UK All Share Total Return
 - 40% Overseas Equity - based upon the FTSE All-World ex UK Total Return
 - 15% Fixed Interest - based upon the FTSE UK Gilts over 15 years Total Return
 - 5% Index-Linked - based upon the FTSE UK Gilts Index-Linked over 15 years Total Return
 - 10% Property - based upon the IPD UK Index All Property monthly Total Return
 - 5% Cash - based upon the BoE Base Rate
- 2.5 For the purpose of the calculation in paragraph 2.1 any contribution or benefit in respect of AVCs or SCAVCs is ignored.
- 2.6 After the transfer payment has been made by a former authority following the calculation of the transfer share in accordance with paragraphs 2.1 to 2.5 above and once the relevant actual investment return (“return”) for the former fund for the period from the last valuation date to the end of the last complete quarter prior to the relevant payment date or dates is known, the transfer share calculation must be adjusted using the relevant actual investment return instead of the return set out in paragraph 2.4 for the period from the last valuation date to the end of the last complete quarter prior to the relevant payment date or dates (with the overall market index return referred to in paragraph 2.4 applicable only in respect of the period from the end of the last complete quarter prior to the relevant payment date or dates until close of the London markets on the last trading day prior to the relevant payment date or date) (the “refreshed calculation”). The refreshed calculation must be agreed between the actuary appointed by the former fund and the actuary appointed by the GMPF. Any shortfall or excess in the transfer payment that was received by the GMPF following the calculation of the transfer share in accordance with paragraphs 2.1 to 2.5 must be paid by the former fund to the GMPF (in the case of a shortfall) or by the GMPF to the former fund (in the case of an excess) following the refreshed calculation, within [20 days] of the refreshed calculation having been agreed between the actuaries.
- 2.7 The procedure specified in regulation 104(4) of the Regulations applies in the event that the actuaries to the GMPF and former authority cannot agree on any aspect of the calculation of the transfer share or the refreshed calculation.
- 2.8 The actuary appointed by the former authority shall certify to the actuary appointed by the GMPF that the assets allocated to the liabilities relating to the transferring members for the purpose of “A” in the formula in paragraph 2.1 of this guidance represent a fair share of the assets of the former fund (acting equitably as between all of the Scheme employers participating in the former fund).

Appendix – Definitions

This Appendix sets out definitions for a number of terms which are used in this Guidance.

- “former authority” has the meaning given to it in Regulation 104(1)(b) of the Regulations;
- “former fund” is the pension fund that was a member’s appropriate fund prior to the transfer date;
- “last valuation date” is the date of the last actuarial valuation of the assets and liabilities of the former fund, namely 31 March 2013;
- “payment date” means the date or dates agreed between the former authority and the GMPF for the making of the transfer payment to the GMPF and failing agreement the dates notified by the GMPF to the former authority in accordance with Regulation 104(7) of the Regulations;
- “Regulations” means the Local Government Pension Scheme Regulations 2013
- “Scheme” means the Local Government Pension Scheme constituted by the Regulations;
- “transfer date” is the date on which the new pension fund becomes the member’s appropriate fund
- “transfer payment” means a transfer of cash in British pounds sterling and/or liquid, transferable holdings of pooled vehicles which track market capitalisation weighted indices equal in value to the transfer share contemplated by Regulation 104 of the Regulations, in one or more instalments
- “transfer share” means the value of the assets allocated to the actual and potential liabilities payable from the pension fund of a former authority in respect of the benefits that have accrued to transferring members as at the transfer date, adjusted to the relevant payment date, calculated in accordance with this Guidance;
- “transferring members” are the employees and former employees (and those entitled through them, including pension credit members) of a probation trust (or its predecessor local probation boards) who are the subject of the changes of Scheme employer or deemed Scheme employer and appropriate administering authority referred to in Regulation 104(1) of the Regulations;
- “the 1995 Scheme” means the occupational pension scheme constituted by the Local Government Pension Scheme Regulations 1995;
- “the 1997 Scheme” means the occupational pension scheme constituted by the Local Government Pension Scheme Regulations 1997;
- “the 2008 Scheme” means the occupational pension scheme constituted by the Local Government Pension Scheme (Administration) Regulations 2008, the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and the Local Government Pension Scheme (Transitional Provisions) Regulations 2008.