

**CITY AND COUNTY OF CARDIFF
DINAS A SIR CAERDYDD**

Employment Conditions Committee: 20 February 2007

**Joint Report of Chief Executive and Chief Financial Services
Officer/Section 151 Officer**

Statutory Consultation on Changes to the Local Government Pension Scheme

Background

1. The Department for Communities and Local Government (DCLG) has issued draft regulations for consultation which define the new Local Government Pension Scheme that will operate from 1 April 2008. The deadline for responses to their statutory consultation exercise is 28 February 2007.
2. The purpose of this report is to present a draft response to the consultation exercise on behalf of the Council. The draft regulations shown at Appendix B list a range of amendments to the LGPS. As some of these are minor in nature this report focuses on the most significant issues which the Council may wish to comment on in its response.

Issues

Tiered employee contributions

3. Under the existing Local Government Pension Regulations 1997 (as amended), LGPS members currently have an employee contribution rate of 6% of pay. Under the new regulations, a system of tiered employee contributions will be introduced based on Full Time Equivalent pay. Scheme members will pay 5.5% on their first £12,000 p.a. of pay and 7.5% on the excess over £12,000. The table illustrates the effective contribution rate for members in different salary bands.

FTE Salary	Effective Contribution Rate
£5,000	5.5%
£10,000	5.5%
£15,000	5.9%
£20,000	6.3%
£25,000	6.5%
£30,000	6.7%
£40,000	6.9%
£50,000	7.0%
£75,000	7.2%

4. The Department for Communities and Local Government have stated that they wish to introduce tiered employee contribution rates so as to encourage membership amongst the lower paid. However, there are various problems with their proposals which have been highlighted in the Council's draft response:

- The change in contribution rate from 6% to 5.5% for prospective members on low salaries is unlikely to lead to a significant increase in membership of the LGPS;
- As the Scale 1 salary in the Council is currently £11,193, all members will pay an element of their contributions at the rate of 7.5% within a few years, unless the £12,000 limit is index-linked. If the intention is for lower paid staff to pay contributions of 5.5% this fact suggests that the £12,000 threshold is too high. The government should produce evidence to support why the threshold should be set at a particular level.
- The regulations do not give any assurances on how or when the threshold of £12,000 will be amended in the future to take account of wage inflation.
- The tiered contribution rates must be calculated on Full Time Equivalent pay. For part time staff this means their contribution rate is assessed on the Full Time Equivalent rather than their actual pay. Therefore part timers earning less than £12,000 may still pay an element of their contributions at the rate of 7.5%. This would appear to be discriminatory against part-time members, as full time staff earning less than £12,000 would only pay 5.5%. We therefore believe that tiered contributions, if introduced, should be based on gross pay.
- The system will be difficult to administer both in terms of payroll deductions and data recording by the pension section.
- Given the salary structure of the Council's members, it is clear that men will pay higher contributions than women and that older members will pay higher contributions than younger members. This could lead to discrimination cases and runs counter to the main objective of LGPS reform which was to produce an 'equality-proofed LGPS'.

Benefit accrual rate

5. Under the current scheme, members accrue annual pension benefits at the rate of 1/80 of their final salary for every year of service. In addition members receive an automatic lump sum of three times their annual pension. The new scheme will accrue benefits at the rate of 1/60 of final salary but with no automatic lump sum. Under separate regulations introduced in 2006, members can opt to receive a lump sum by commuting (i.e. 'giving up') £1 of annual pension for every £12 of lump sum which is received. In monetary terms the value of benefits under the new scheme are broadly equivalent to those of the existing scheme as the loss of the lump sum is compensated through a higher accrual rate for the annual pension.
6. As noted in the draft response, this proposal does not have any major advantages over maintaining the current scheme. During an informal consultation exercise by DCLG in 2006 there was no support for this approach amongst local authorities, many of which preferred maintaining the current 1/80 scheme. Members would receive little extra benefit under the new scheme, and there is no significant change in the cost to employers. However, the change in accrual rate will lead to complications in terms of pension administration and actuarial valuations.
7. The removal of the automatic lump sum also leads to a difficult choice for individuals approaching retirement. The decision on whether or not to elect to take a lump sum is not a simple one and may require the expense of independent financial advice.
8. The commutation rate of 12:1 for those who elect to take a lump sum has been adopted by several other public sector pension schemes. However, the use of a single rate for all members is difficult to justify without further evidence. For example, someone who retires at 60 will be able to take a lump sum of a similar relative value to someone taking a lump sum at age 70, even though the younger retiree is likely to claim their annual pension for a much longer period. There is also indirect gender

discrimination as men tend to receive their annual pensions for a shorter period than women which should be reflected by the use of different commutation rates.

Three tier ill-health retirement

9. Regulation 27 of the current LGPS regulations allows employers to grant ill-health retirement where a member leaves ‘by reason of being permanently incapable of discharging efficiently the duties of that employment’. The employer must also consider the report of an appointed medical practitioner when granting ill-health retirement. Ill-health retirees are currently entitled to the immediate payment of their accrued benefits, plus an enhancement to membership based on their length of service.
10. Employers therefore have no discretion on the granting of ill-health retirement under the current scheme – a member either meets the criteria to receive ill-health benefits or they don’t. The introduction of more flexibility as to what benefits can be paid and under what circumstances is something that many employers would welcome.
11. The proposed regulations will introduce a three tier ill-health retirement scheme which will pay varying amounts of benefits dependent on the likely length of the illness:
 - i. for those Scheme members judged to be unable to perform local government employment duties but able immediately to undertake gainful employment – accrued rights only;
 - ii. for those unable to undertake gainful employment within a reasonable period, but likely to be able to do so before normal retirement age – accrued rights and augmentation of 25% of prospective service to normal retirement age; and
 - iii. for those unable to undertake gainful employment before normal retirement age – accrued rights and augmentation of 50% of prospective service to normal retirement age
12. There are potential problems with the proposed scheme which have been highlighted in the draft response:
 - It is sometimes difficult to receive clear medical opinions under the current scheme as the medical practitioner needs to assess the member’s current health and predict their health at age 65. However, the current scheme is absolute in that a member either is or isn’t permanently incapable of their duties. The proposed scheme will ask medical practitioners and employers to make decisions on how long the ill-health condition is likely to persist. It will therefore be even more difficult to make judgements under the new scheme and it seems likely that there will be a rise in appeal cases where members feel they should be placed in a higher tier of ill-health. This could be costly both in terms of the payment of higher pension enhancements as well as any compensation awards.
 - The regulations do not state whether employers should monitor any subsequent changes to the health of ill-health retirees. It is also not clear whether the pension fund should stop paying the pension if their health improves or if the top tier cases take up any form of employment.
 - Under the existing regulations, ill-health retirees receive an enhancement which clearly rewards past service to the employer. In contrast, the new scheme pays an enhancement which is linked to the future service with the employer which may never have come about. The new scheme therefore does not link the benefits a member receives to the contribution an employee has made to the employer. In addition, average total membership periods in the LGPS have been falling and the national average is now around 6 years. Rewarding staff for any potential future service in excess of this average would be difficult to justify.

- The objective of the LGPS is to accrue pensions for payment at normal retirement age. However, the proposed regulations incorporate a wider variety of ill-health retirement scenarios which diverge from this primary aim. It would be more straightforward to operate a completely separate ill-health scheme specifically designed for that purpose which employers can contribute towards. This would have the advantage that all ill-health leavers could receive the same benefits whereas at the moment only LGPS members can receive ill-health pensions.
- Ill health retirement was originally introduced to help those members who would not be able to earn any form of income before normal retirement age. Under the new scheme it is possible for members to claim ill-health retirement while still being able to work. For example, it is possible for someone to qualify for the lowest tier of ill-health retirement but to immediately take up employment elsewhere. For the second tier, the regulations also do not define the 'reasonable period' during which a member cannot work. Members could potentially receive a 25% enhancement to their pension for the rest of their lives while only being out of work for a relatively short period.

Proposals

13. It is proposed that the draft response attached at Appendix C, including any amendments decided by the committee, is issued to DCLG in response to their statutory consultation exercise before their deadline of 28 February 2007.

Advice

14. This report has been prepared in consultation with relevant Corporate Directors and reflects their advice. It contains all the information necessary to allow Members to arrive at a reasonable view, taking into account the following advice.

Legal Implications

15. Functions relating to local government pensions are a Council function and this Committee (being a Council Committee) has delegated power from the Council to respond to the consultation on this issue.

Financial Implications

16. As the draft regulations have not yet become effective there are no immediate financial implications. If the proposals listed in the body of the report were enacted they would not lead to an increase in direct costs to the Council as the strain of funding additional ill-health retirements and the higher accrual rate would be met by the Pension Fund. However, any strain on the Pension Fund would eventually be reflected in higher employer contribution rates being set for the Council in future years. It is difficult to estimate whether contribution rates will rise to accommodate the new proposals as some of the additional costs will be offset against savings achieved by allowing members to commute their annual pension into a lump sum. The DCLG have indicated that they believe their proposals are largely cost neutral and this statement appears reasonable.

Human Resource Implications

17. These are set out in the body of the report.

Trade Union Comments

18. The Trade Unions welcomed the proposal to respond to the government's consultation exercise on the new-look LGPS. Although the aims of the new regulations appeared reasonable they did not feel that all the proposed changes were in the best interests of scheme members. In particular, the proposal for a tiered employee contribution rate was clearly unfair to part-time staff in its current form. The new regulations also appeared complicated and would be time consuming to administer.

RECOMMENDATION

19. It is recommended that:-
- (i) this Committee note the proposed draft new LGPS regulations which it is proposed will come into effect from 1 April 2008.
- (ii) this Committee approve the draft response to DCLG's statutory consultation exercise for issue prior to the deadline of 28 February 2007.

BYRON DAVIES
CHIEF EXECUTIVE

CHRISTINE SALTER
CHIEF FINANCIAL SERVICES OFFICER

The following appendices are attached:

- Appendix A – Letter from DCLG announcing consultation on draft regulations
- Appendix B – Draft Statutory Instrument - The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007
- Appendix C – Draft letter in response to DCLG's consultation exercise

Addressees at Annex C

Brian Town
Local Government and Firefighters'
Pension Schemes

Zone 2/F7
Ashdown House
123 Victoria Street
London SW1E 6DE

Direct line: 020 7944 6015
Fax: 020 7944 6019

Web sites: www.communities.gov.uk

22 December 2006

Dear Colleague

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007

With Ministers' agreement, I enclose draft regulations which propose a new-look benefit structure for the Local Government Pension Scheme (the LGPS) in England and Wales.

The Government's overall objectives for the LGPS are set out in the Statement made to Parliament on 23 November by Phil Woolas MP, Minister for Local Government, which marked the start of the statutory consultation exercise, to introduce a regulatory framework to provide a new-look LGPS with effect from 1 April 2008. The closing date for comments is **28 February 2007**.

Objectives for LGPS reform

The Government has undertaken to ensure that measures to reform the Scheme are affordable, viable and fair to the taxpayers who guarantee the Scheme's statutory pension promise. Ministers have confirmed that it remains essential that the Scheme should also be as flexible and accessible as possible, for both employees and employers, so that it can provide a modern, equality-proofed range of defined benefits, both now and in the future.

It remains a significant objective also to achieve an equitable balance between the level of pension benefits provided by the scheme, and the actual cost of provision from all stakeholders' points of view, including tax payers.

Accordingly, the Government's intentions seek to maintain stability in the costs of the Scheme, and to ensure an equitable benefit/cost balance between all stakeholders and ensure that no additional costs are imposed on council tax payers.

Draft Regulatory Proposals for a new-look LGPS

The statutory consultation exercise on the Government's proposed reforms of the Local Government Pension Scheme formally began on 23 November 2006. Within that timetable all consultees are able to consider the proposals. The publication of these draft regulations does not in any way affect the ability of stakeholders to discuss ways forward. No final decisions can or will be made until the consultation exercise is completed and responses to it have been given proper consideration by Ministers.

The enclosed draft regulations (at A) give effect to the 23 November statement and illustrate how the reforms will operate. Subject to the outcomes of the consultation exercise, the regulations will be brought forward for the necessary Parliamentary making and laying process. It remains Ministers' intentions to have the new Scheme provisions in place for April 2007 and fully operational from 1 April 2008.

Since the initial announcement, the opportunity has been taken to refine and clarify a number of items within the consultation package and seen discussions among key stakeholders begin on others as part of the on-going consultation process.

Ministers believe that the consultation proposals represent a good deal for the membership which achieve the important objectives of affordability, viability and fairness to tax payers. The intention remains to ensure the Scheme's long term sustainability for all existing Scheme members and those who will be attracted to join it.

Scope of the draft regulations

As now set out, the draft Regulations provide the following new-look LGPS benefit structure:-

1. Access to the Scheme for employees of bodies listed in the Administration Regulations
2. Members in post on 31 March 2008 who continue in membership will automatically have benefits accruing under the 2007 Regulations from 1 April 2008.
3. Definition of pensionable pay from which contributions are deducted (brought forward from the 1997 Regulations)
4. Setting of employee contribution rates at 5.5% on first £12,000 and 7.5% of excess over £12,000. (illustrations of how this impacts on different pay bands are as estimated below

FTE Salary	Contribution Rate
£5,000	5.5%
£10,000	5.5%
£15,000	5.9%
£20,000	6.3%
£25,000	6.5%
£30,000	6.7%
£40,000	6.9%
£50,000	7.0%
£75,000	7.2%

5. Pension accruing at 1/60th payable when retiring from active membership at

- (i) normal retirement age – with uplift of rights if not taken at 65 – but no later than day before 75th birthday
- (ii) an earlier age either through individual choice or with agreement of employer, which includes facility flexible retirement
- (iii) age 55 or later as a result of redundancy – with protection of age 50 for current members until 2010
- (iv) departure on grounds of ill health, and

- for those Scheme members judged to be unable to perform local government employment duties but able immediately to undertake gainful employment¹ – accrued rights only;
- for those unable to undertake gainful employment on cessation, but likely to be able to do so before normal retirement age – accrued rights and augmentation of 25% of prospective service to normal retirement age; and
- for those unable to undertake gainful employment before normal retirement age – accrued rights and augmentation of 50% of prospective service to normal retirement age

Such enhancements on grounds of ill-health are to be no less favourable than under the 1997 Regulations.

6. These benefits under (5) will be calculated on a new definition of pensionable pay to be used in calculation of benefits permitting an average of three consecutive years in the last ten years of membership

7. Facility to take up to 25% of the capital value of pension rights at the point of a benefit crystallisation event.

8. Lump sum death benefit of three times actual salary if active member dies

9. Survivor benefits, accruing at 1/160th for spouses, civil register partners, co-habiting partners and children

10. Provision for calculating pre 2008 rights by reference to actual salary at date of leaving or retirement whichever is later

11. Provision to add benefits as calculated under 5 and 9, to be paid as one pension at the point of a benefit crystallisation event.

12. Rights relating to deferred members in terms of access to benefits as under 4(i), (ii) and (iv) above

13. Right to death benefit relating to both pre and post 2008 membership

14. Rights of pensioners to receive index linked pensions

15. The facility to pay post retirement death benefits

16. The capacity for employers to augment membership or annual pension

17. The facility for members to purchase extra Scheme pension in steps of £250 per year up to a maximum of £5,000

18. The continuing facility to have Scheme AVC providers

20. Cost sharing mechanism to be established by 31 March 2009.

¹During the remainder of the consultation period, interested parties may wish to consider these elements on the basis that any adjustments will have a repercussive effect on the total cost of provision. Consultees' views on the most appropriate way of defining "gainful employment" are invited.

Transfer Arrangements

The protections provided in the extant Scheme Regulations, following the final removal of the rule of 85 with effect from 1 October 2006, are to be available in the new-look LGPS from 1 April 2008. All existing Scheme members who are not eligible for these protections beyond 31 March 2008 will automatically become members of the new-look Scheme on 1 April 2008. Their service up to, and including, 31 March 2008, at the 1/80 and 3/80 rate, will be banked. Eventually, these accrued rights will be calculated against actual final salary at the later date of leaving or retiring. From 1 April 2008 their new benefits in the new Scheme will accrue separately at the rate of 1/60th.

Consultees will be aware that a comprehensive range of protections were introduced into the existing LGPS with effect from 1 October 2006. These are affordable and legal and recognise the position of older Scheme members in particular. There are no plans to re-visit the decisions taken regarding these in the existing LGPS. It is proposed that for those existing members who retain rule of 85 protections from 1 April 2008 their accrual from that date will be on same terms as that available to all other Scheme members. The GAD advice first published in April 2005 about accrual beyond age 60 will continue to apply in the new Scheme.

In the department's letter of 23 November, details were given of the total benchmark cost of future accruals for both existing and future members. Until the proposed benefit package was determined, and decisions taken on the approach to be taken regarding the switch from the current to the new pension arrangements (in particular for those covered by transitional protection), it was not possible to finalise transfer and transitional protection costs. However, this can now be confirmed as being some 0.2% of payroll, going forward from 1 April 2008. This amount is part of the savings achieved by the final removal of the rule of 85 from the LGPS.

Scheme Updates

The 23 November also announced the launch of *Pension Changes*, an information leaflet produced by Communities and Local Government, and a response forum both available to download from our website www.communities.gov.uk/lgps. In the two weeks since the launch over 50 "notes" have been submitted to the site and there have been over 21,000 hits on the site. We will continue to manage this forum and post further developmental details, including some specific examples of comparative pension positions as between existing LGPS membership and the new-look proposal.

Policy Review Group

Proposals are also now being finalised to invite potential members to join the Group. Some initial principles regarding cost-sharing will need to be considered quite early in these discussions. Invitations will be sent out in the New Year.

The Local Government Pension Scheme (Administration) Regulations 2007

As the Minister also confirmed in the announcement given to Parliament on 23 November, we are consulting on a second statutory instrument.

The attached draft (at B) sets out the scope of these regulations and, in particular, describes the new elements that were carried forward from the work of the Scheme Administration Group (paragraph 16.5 of “Where Next?” refers).

In general terms, the 2007 Administration Regulations will comprise all those provisions of the extant 1997 Regulations, less those pertaining to the provisions on benefits and entitlements which now feature in the attached 2007 Benefit Regulations. In addition to the carry-over of existing provisions, the draft Administration Regulations include new sections on pension administration strategy documents; governance pension fund annual reports and ill-health retirement guidance. These elements are described in more detail in the attached annex.

At this stage, the draft SI contains only the new elements described in the attached annex, together with the provisions carried over from the extant 1997 Regulations that are necessary to put the new provisions in a proper context. Work is well under way in preparing a complete draft SI for consultation and this will be issued to all interested parties at the earliest possible opportunity. The closing date for comments on it will be 28 February 2007.

Next Steps

The new-look Scheme is programmed to be fully operational from 1 April 2008. To achieve this in a satisfactory and informed way, the Government’s timetable and programme of reform requires the new regulations to be in place for 1 April 2007.

Contacts

For enquiries on the content of this letter and the Ministerial Statement, please e-mail Charlotte Hine-Haycock Charlotte.Hine-Haycock@communities.gsi.gov.uk or Nicola Rochester Nicola.Rochester@communities.gsi.gov.uk or telephone 020 7944 6016 in the first instance. For enquiries on the proposed consultation exercise on new administration regulations please e-mail Margaret Dunleavy Margaret.Dunleavy@communities.gsi.gov.uk or telephone 020 7944 6012 in the first instance.

Yours sincerely

Brian Town

STATUTORY INSTRUMENTS

2007 No. 0000

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007

<i>Made</i>	- - - -	<i>xxth xx 2007</i>
<i>Laid before Parliament</i>		<i>xxth xx 2007</i>
<i>Coming into force</i>	- -	<i>1st April 2008</i>

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(a).

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

The Secretary of State makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.

(2) These Regulations apply in relation to England and Wales(b).

(3) These Regulations shall come into force on 1st April 2008.

(4) In these Regulations—

“the 1986 Regulations” means the Local Government Superannuation Regulations 1986(c);

“the 1995 Regulations” means the Local Government Pension Scheme Regulations 1995(d);

“the 1997 Regulations” means the Local Government Pension Scheme Regulations 1997(e);

“the 1997 Scheme” means the occupational pension scheme constituted by the 1997 Regulations;

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2007(a);

(a) 1972 c. 11.

(b) 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 (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).

(c) S.I. 1986/24; amended by other instruments listed in Schedule M5 to the Local Government Pension Scheme Regulations 1995 which revoke all the 1986 Regulations except for Parts K and L. Part K was amended by S.I. 1995/1497.

(d) S.I. 1995/1019.

(e) S.I. 1997/1612.

“part-time employee” means an employee whose contract of employment provides—

- (a) that he is such an employee for the Scheme, or
- (b) who is neither a whole-time employee nor a variable-time employee;

“the Scheme” means the Local Government Pension Scheme 2008 constituted by these Regulations, the Administration Regulations and the Transitional Regulations;

“the Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions) Regulations 2007^(b)

“variable-time employee” means an employee whose contract of employment provides that he is such an employee for the Scheme and—

- (c) whose pay is calculated by reference to his duties (rather than necessarily by reference to the number of hours he has worked), or
- (d) whose duties only have to be performed on an occasional basis; and

“whole-time employee” means an employee whose contract of employment provides—

- (e) that he is such an employee for the Scheme, or
- (f) that his contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis.

Active members

2.—(1) An employee of a body listed in Part 1 of the Local Government Pension Scheme (Administration) Regulations 2007 is an active member of the Scheme unless he has elected otherwise in accordance with regulation XX of those Regulations.

(2) An active member of the 1997 Scheme is an active member of the Scheme for as long as he continues in Local Government Pension Scheme employment.

Contributions payable by active members

3.—(1) Each active member shall make contributions to the Scheme at the standard contribution rate on his pay in each employment in which he is an active member.

(2) Subject to paragraph (3), the standard contribution rate is 5.5% on the first £12,000 of his pensionable pay and 7.5% on any amount by which his pensionable pay exceeds that sum.

(3) Where a member is a part-time employee, his contributions shall be calculated by multiplying the contributions he would have paid had he been a full-time employee (calculated in accordance with paragraph (2)) by the proportion that the number of his weekly hours bears to the number of weekly hours that he would have worked had he been a full-time employee.

Meaning of “pay”

4.—(1) An employee’s pay is the total of—

- (a) all the salary, wages, fees and other payments paid to him for his own use in respect of his employment; and
- (b) any other payment or benefit specified in his contract of employment as being a pensionable emolument.

(2) But an employee’s pay does not include—

- (a) payments for non-contractual overtime;
- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;

(a) S.I.2007/XXXX..

(b) S.I. 2007/XXXX.

- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate his contract of employment;
- (e) any payment as an inducement not to terminate his employment before the payment is made;
- (f) any amount treated as money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision;
- (g) in the case of an employee or former employee of the Commission for New Towns, any payment made under any scheme relating to the termination of the employment of employees by the Commission in respect of the completion before a specified date of specified functions; or
- (h) a payment made in consequence of a School Achievement Award under the scheme established by the Secretary of State known as the School Achievement Award Scheme.

(3) Where—

- (a) a member's contribution under regulation C2 or C3 of the 1986 regulations for a period including 31st December 1992 was based on pay which for the 1986 regulations as then in force included an amount representing the money value to him of the provision of a motor vehicle or an amount in lieu of such provision and immediately before 1st April 1998 his remuneration for the 1995 regulations included such an amount, or
- (b) immediately before 1st April 1998 his remuneration for the 1995 regulations included an amount in lieu of the provision of a motor vehicle as referred to in paragraph 7(2)(b) of Schedule C2 to the 1995 regulations,

then his pay includes such an amount.

(4) But paragraph (2)(f) shall cease to apply if—

- (a) he leaves employment with the employing authority who were employing him on—
 - (i) 31st December 1992; or
 - (ii) where appropriate under the provisions of paragraph 7 of Schedule C2 to the 1995 regulations, on 2nd May 1995;
 - (iii) otherwise than as a result of a transfer to another Scheme employer which is beyond his control; or
- (b) he is neither provided with a motor vehicle nor receives an amount representing the money value to him of the provision of such a vehicle.

(5) No sum may be taken into account in calculating pay unless income tax liability has been determined on it.

Benefits

5.—(1) Membership of the Scheme only entitles the member to benefits under these Regulations if—

- (a) his total membership is at least three months; or
- (b) a transfer value is credited to him.

(2) But paragraph (1) does not apply to benefits in respect of a member under regulation 15 (death grants: active members), regulation 19 (survivor benefits: active members), or regulation 23 (children's pensions).

Calculations

6.—(1) The amount of any benefit payable as a result of a person's membership is generally calculated by multiplying his final pay by the appropriate multiplier.

(2) Unless another multiplier is indicated, the appropriate multiplier for a pension is the member's total membership/60.

Final pay

7.—(1) A member's final pay for an employment is his pay for as much of the final pay period as he is entitled to count as active membership in local government employment.

(2) A member's final pay period is the year ending with the day on which he stops being an active member.

(3) In the case of part-time employment, the final pay is the pay that would have been paid for a single comparable whole-time employment.

(4) Any reduction or suspension of a member's pay during the final pay period because of his absence from work owing to illness or injury must be disregarded.

(5) If a member's final pay period includes reserve forces service leave, his final pay is—

- (a) in a case where he has paid contributions under regulation XX of the Administration Regulations, the amount it would have been if his reserve forces pay were pay received in his former local government employment, or
- (b) otherwise, the amount it would have been if he had continued to be employed in his former employment during the period of that leave.

(6) For the purposes of these regulations, a member's final pay for any period of maternity, paternity or adoption absence during the final pay period in respect of which he pays or is treated as paying contributions is the pay he would have received had he not been absent.

(7) If a member is absent from work for any other reason during his final pay period, he is only to be treated for these regulations as having received the pay he would otherwise have received if he has made the appropriate contributions under regulation XX of the Administration Regulations for the period he is absent.

(8) If a member is only entitled to count part of the year specified in paragraph (2) as a period of active membership in relation to the employment which he ceases to hold, his final pay is his pay during that part multiplied by 365 and divided by the number of days in that part.

(9) Final pay does not include any pension in payment.

(10) But a member may elect to have his final pay calculated as the average of his annual pay in any three consecutive years—

- (a) in the period of ten years ending with the last day he was an active member; and
- (b) ending with a day of which that last day is an anniversary .

(11) And the average referred to in paragraph (10) is increased as if it were a pension to which the Pensions (Increase) Act 1971 applies.

Retirement benefits

8.—(1) If a member who has attained his normal retirement age retires from a local government employment he is entitled to immediate payment of retirement pension without reduction.

(2) The normal retirement date ("NRD") of a member is his 65th birthday.

Retirement after the normal retirement date

9.—(1) A member who, with the consent of his employing authority, remains in service after his 65th birthday is entitled to a pension when he retires from service.

(2) His pension rights accrued at that date, and any rights accruing between that date and the date of his retirement or his 75th birthday, whichever is earlier, shall be enhanced as shown in guidance issued by the Government Actuary.

(3) The pension is payable immediately on retirement.

(4) But they must begin to be paid not later than the day before the member's 75th birthday even if he has not retired.

Flexible retirement

10.—(1) A member who has attained the age of 55 and who, with his employer's consent, reduces the hours he works, or the grade in which he is employed, may elect in writing to the appropriate administering authority to receive all or part of his retirement benefits, and those benefits may be paid to him notwithstanding that he has not retired from that employment.

(2) If the payment of benefits referred to in paragraph (1) takes effect before the member's 65th birthday, the benefits payable are reduced in accordance with guidance issued by the Government Actuary.

(3) But the employer may choose to waive, in whole or in part, any such reduction.

(4) Where the employer so chooses, it shall pay to the fund the cost incurred as a result of such waiver as calculated by the fund's actuary.

(5) Any benefits paid following an election under paragraph (1) are not subject to abatement under regulation XX of the Administration Regulations in respect of any subsequent employment with the person who is his employer at the date of his election.

(6) In the case of a person who is a member on 31st March 2008, and who makes an election before 31st March 2010, paragraph (1) applies as if "aged 50" were substituted for "aged 55".

Early leavers: inefficiency and redundancy

11.—(1) Where—

- (a) a member is redundant; or
- (b) his employing authority has decided that, on the grounds of his limited efficiency, it is in the employing authority's interest that he should leave their employment; and
- (c) in either case, the member has attained the age of 55,

the authority may determine, subject to paragraph (2), to pay him his retirement benefits immediately.

(2) Before making a determination under paragraph (1), an employing authority shall consider whether to reduce the member's retirement benefits having regard to any guidance issued by the Government Actuary.

(3) In the case of a person who is a member on 31st March 2008, and who makes an election before 31st March 2010, paragraph (1) applies as if "aged 50" were substituted for "aged 55".

Early leavers: ill-health

12.—(1) If an employing authority determines that a member who leaves local government employment on the grounds of ill-health has a reduced likelihood of obtaining gainful employment (whether in local government or otherwise) before his NRD, they shall pay him benefits under this regulation.

(2) If the authority determine that there is no reasonable prospect of his obtaining gainful employment before his NRD, his benefits are increased—

- (a) as if the date on which he left local government employment were his NRD; and
- (b) by adding to his reckonable service at that date 50% of the period between that date and his actual NRD.

(3) If the authority determine that, although he cannot obtain gainful employment within a reasonable period of leaving local government employment, but that it is likely that he will be able to obtain gainful employment before his NRD, his benefits are increased—

- (a) as if the date on which he left local government employment were his NRD; and
- (b) by adding to his reckonable service at that date 25% of the period between that date and his actual NRD.

(4) But if the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is less than the period that would have been added had regulation 28 of the 1997 Regulations applied, then his benefits are increased by adding the latter period.

(5) If the authority determine that it is likely that, although he is unable to effectively perform his local government employment duties, he will nevertheless be able to obtain gainful employment within a reasonable period of leaving local government employment, he is treated as if the date on which he left local government employment were his NRD.

(6) Before making a determination under this regulation, an authority shall consider a report from a medical practitioner.

Election for lump sum in lieu of pension

13.—(1) A member in respect of whom a benefit crystallisation event occurs on or after 1st April 2008 may elect in writing to the appropriate administering authority before any benefits become payable to commute his pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered up to a maximum of 25% of the capital value of his pension entitlement.

(2) In paragraph (1), the capital value of a member's pension entitlement is the aggregate of the capital values of his entitlements under the Scheme and the 1997 Scheme.

(3) A member and any of his dependants shall not be entitled, under any provision of these regulations, to receive benefits the capital value of which exceeds his lifetime allowance increased, where applicable, by his primary protection or enhanced protection.

(4) In this regulation, "lifetime allowance", "primary protection" and "enhanced protection" are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004(a).

(5) Any calculation of the increased retirement grant payable as a result of an election under paragraph (1) shall be carried out in accordance with guidance issued by the Government Actuary.

Limit on total amount of benefits

14.—(1) A member and any dependent of his shall not be entitled, under any provision of these Regulations, to receive benefits the capital value of which exceeds his lifetime allowance increased, where applicable, by his primary protection or his enhanced protection.

(2) In this regulation, "lifetime allowance", "primary protection" and "enhanced protection" are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004(b).

(3) Any calculation of the capital value of a member's benefits is to be carried out in accordance with guidance issued by the Government Actuary.

Death grants: active members

15.—(1) If an active member dies, a death grant is payable.

(2) The administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

(3) The death grant is his reckonable pay multiplied by 3.

(4) But in calculating death grant in respect of a part-time or variable-time employee, actual pay in part-time or variable-time employment is to be used.

(a) 2004 c. 12.

(b) 2004 c. 12.

(5) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with his death, they must pay an amount equal to the shortfall to the member's personal representatives.

Elections for early payment of pension

16.—(1) If a member leaves a local government employment (or is treated for these regulations as if he had done so) before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he is aged 55 or more he may elect to receive payment of them immediately.

(2) An election made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6)).

(3) If the member elects, he is entitled to a pension payable immediately.

(4) His pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary.

(5) A member's employing authority may determine on compassionate grounds that his retirement pension and grant should not be reduced under paragraph (4).

(6) Subject to paragraph (7), if a member who has left a local government employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body—

(a) he may elect to receive payment of the retirement benefits immediately, whatever his age, and

(b) paragraphs (2) and (4) do not apply.

(7) If a member does not elect for immediate payment under this regulation, he is entitled to receive a pension without reduction, payable from his NRD.

(8) In the case of a person who is a member on 31st March 2008, and who makes an election before 31st March 2010, paragraph (1) applies as if "aged 50" were substituted for "aged 55".

Death grants: deferred members

17.—(1) If a deferred member dies, a death grant is payable.

(2) The administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

(3) The death grant is his retirement pension (aggregating his entitlements under the Scheme and the 1997 Scheme) multiplied by 5.

Death grants: pensioner members

18.—(1) If a deferred member dies, a death grant is payable.

(2) The administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

(3) The death grant is his pension multiplied by 10, but the amount so calculated is reduced by the amounts of any retirement pension paid to him.

Survivor benefits: active members

19.—(1) If a member dies leaving a surviving spouse, cohabiting partner or civil partner, that person is entitled to a pension.

(2) If the deceased's total membership was at least three months, the pension is calculated by multiplying his total membership, augmented by any provision of these Regulations, by his final salary and divided by 160.

(3) If the deceased was an active member with a total membership of less than three months or a deferred member, the multiplier for the pension is the deceased's total membership/160.

(4) But in the case of a surviving cohabiting partner or civil partner, only the deceased's membership after 6th April 1988 is taken into account for calculating the pension.

(5) If there is more than one surviving spouse, they become jointly entitled under paragraph (1).

Survivor benefits: pensioners

20.—(1) If a pensioner member dies leaving a surviving spouse, cohabiting partner or civil partner, that person is entitled to a pension.

(2) The pension is calculated by multiplying his total membership by his final salary and divided by 160.

(3) But in the case of a surviving cohabiting partner or civil partner, only the deceased's membership after 6th April 1988 is taken into account for calculating the pension.

(4) If there is more than one surviving spouse, they become jointly entitled under paragraph (1).

Survivor's benefits: deferred members

21.—(1) If a deferred member dies leaving a surviving spouse, cohabiting partner or civil partner, that person is entitled to a pension.

(2) The pension is calculated by multiplying his total membership by his final salary and divided by 160.

(3) But in the case of a surviving cohabiting partner or civil partner, only the deceased's membership after 6th April 1988 is taken into account for calculating the pension.

(4) If there is more than one surviving spouse, they become jointly entitled under paragraph (1).

Meaning of "eligible child"

22.—(1) The eligible child of a deceased member is—

- (a) the deceased's legitimate or adopted child, or
- (b) a child who was wholly or mainly dependent on the deceased at the time of his death or, where the child is born after the member's death, who would have been so dependent if he had been born before or on the date of the member's death,

but does not include a child who was born on or after the first anniversary of the date of the deceased's death.

(2) A person only counts as a child if—

- (a) he is aged under 17,
- (b) he is aged under 23 and since he became 17 he has been engaged continuously in full-time education or in training for a trade, profession or vocation, or
- (c) he is physically or mentally handicapped and became so when a child within paragraph (a) or (b).

(3) If an appropriate administering authority wish, they may treat education or training as continuous despite a break.

Children's pensions

23.—(1) If a member dies leaving one or more eligible children, they are entitled to a children's pension.

- (2) The pension is payable from the death.
- (3) An eligible child ceases to be entitled to a pension when he ceases to be a child within regulation 22.
- (4) If the deceased was an active member, the pension is the appropriate fraction of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 12 (early leavers: ill-health).
- (5) If the deceased was a deferred member, the pension is the appropriate fraction of the amount of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 8 (retirement benefits).
- (6) If the deceased was a pensioner member, the pension is the appropriate fraction of his retirement pension.
- (7) The appropriate fractions are—
 - (a) where there is one eligible child, one-quarter,
 - (b) where there is more than one eligible child, one-half, which is apportioned among them.

Pension increases under the Pensions (Increase) Acts

24.Where a pension to which the Pensions (Increase) Act 1971 applies is payable out of an appropriate fund, any increase under that Act or the Pensions Increase Act 1974 must be paid from that fund.

Power of employing authority to increase total membership

25.—(1) An employing authority may resolve to increase the total membership of an active member.

(2) A member's total additional membership (including additional membership in respect of different employments) must not exceed—

- (a) 10 years; or
- (b) the period by which the member's total membership falls short of the total membership the member will have if he continues as an active member until he is 65,

whichever is the shortest.

Power of employing authority to award additional pension

26.—(1) An employing authority may resolve to award a person additional pension of £250 a year or multiples thereof.

(2) Additional pension may be paid in addition to any increase of total membership resolved to be made under regulation 25.

Election in respect of additional pension

27.A member may elect to pay additional contributions in order to be credited with additional pension of £250 a year or multiples thereof to a maximum of £5000.

Elections to pay AVCs

28.A member who has elected to pay contributions under regulation XX of the Administration Regulations ("AVCs") in addition to any other contributions he may pay under these Regulations is entitled to additional benefits in accordance with regulations 29 and 30.

Death benefits: AVCs

29.—(1) If a member elects for any of his AVCs to be used to provide death benefits, the appropriate administering authority must make arrangements for those benefits to be provided under a pension policy with an AVC insurance company.

(2) The policy must provide for the appropriate administering authority to pay the company the same amounts as the AVCs to be so used within one month after the member's usual pay day.

(3) The policy must reflect the restrictions on AVCs and the provisions which apply under these Regulations.

(4) In entering into the pension policy the administering authority must give effect to the member's wishes about the benefits it provides, so far as is practicable.

(5) But the benefits must be money purchase benefits and their value reasonable considering the contributions paid.

Retirement benefits: AVCs

30.—(1) The appropriate administering authority must invest any AVCs which are not to be used to provide death benefits with an approved AVC body.

(2) When a member who has paid AVCs during his employment leaves his employment with the employer who was his employing authority when he elected under regulation 27 to pay them, the appropriate administering authority must use the accumulated value of the contributions invested under paragraph (1) for the provision of additional pension benefits under a pension policy at any time prior to the 75th birthday of the member.

(3) But if the member dies before the policy is entered into, the accumulated value is payable to his personal representatives.

(4) In entering into the pension policy the administering authority must give effect to the member's wishes about the benefits it provides, so far as is practicable.

(5) The benefits must be money purchase benefits and their value reasonable considering the accumulated value.

(6) The AVCs may only be used to provide benefits in the form of a lump sum if—

- (a) all the pension benefits payable to or in respect of the member under the Scheme are being commuted under regulation 31 (commutation of small pensions), and
- (b) the annual rate referred to in that regulation is not exceeded by aggregating with them the additional pension benefits provided by the pension policy entered into under paragraph (2).

Commutation: small pensions

31. A lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act may be paid in accordance with the rules relating to the payment of such benefits under the Finance Act 2004.

Commutation: exceptional ill-health

32.—(1) If, when a retirement pension first becomes payable to a member, the appropriate administering authority are satisfied that his life expectancy is less than one year, they may pay him a lump sum equal to five times the amount of his retirement pension.

(2) Such a payment discharges the authority's liability for that pension and for any lump sum death grant calculated by reference to that pension under the Scheme.

Guidance on future costs

33. Administering and employing authorities shall have regard to guidance to be issued by the Secretary of State, before 31st March 2009, as to the manner in which the costs of the Scheme will be met after 31st March 2010.

Signed by authority of the Secretary of State

Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations...

DRAFT

My Ref:
Your Ref:

Date

Ms Charlotte Hine-Haycock
DCLG
Zone 2/7F
Ashdown House
123 Victoria Street
London SW1E 6DE

Dear Ms Hine -Haycock

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007

1. Please see below the response of Cardiff County Council to the above consultation.
2. The draft regulations propose a range of policies for the new look LGPS. As many of these regulations are similar to the existing regulations, or do not lead to significant concerns, our comments below have been restricted to the most significant changes to the scheme.

Tiered employee contributions

3. The Council would like to highlight the following problems with the proposal to introduce tiered contributions:
 - The change in contribution rate from 6% to 5.5% for prospective members on low salaries is unlikely to lead to a significant increase in membership of the LGPS;
 - As the Scale 1 salary in the Council is currently £11,193, all members will pay an element of their contributions at the rate of 7.5% within a few years, unless the £12,000 limit is index-linked. If the intention is for lower paid staff to pay contributions of 5.5% this fact suggests that the £12,000 threshold is too high. The government should produce evidence to support why the threshold should be set at a particular level.
 - The regulations do not give any assurances on how or when the threshold of £12,000 will be amended in the future to take account of wage inflation.
 - The tiered contribution rates must be calculated on Full Time Equivalent pay. For part time staff this means their contribution rate is assessed on the Full Time Equivalent rather than their actual pay. Therefore part timers earning less than £12,000 may still pay an element of their contributions at the rate of 7.5%. This would appear to be discriminatory against part-time members as full time staff earning less than £12,000 would only pay 5.5%. We therefore

believe that tiered contributions, if introduced, should be based on gross pay.

- The system will be difficult to administer both in terms of payroll deductions and data recording by the pension section.
- Given the salary structure of the Council's members, it is clear that men will pay higher contributions than women and that older members will pay higher contributions than younger members. This could lead to discrimination cases and runs counter to the main objective of LGPS reform which was to produce an equality-proofed LGPS.

Benefit accrual rate

4. The proposal to move to a 1/60 accrual rate does not have any major advantages over maintaining the current scheme. During an informal consultation exercise by DCLG in 2006 there was no support for this approach amongst local authorities, many of which preferred maintaining the current 1/80 scheme. Members would receive little extra benefit under the new scheme, and there is no significant change in the cost to employers. However, the change in accrual rate will lead to complications in terms of pension administration and actuarial valuations.
5. The removal of the automatic lump sum also leads to a difficult choice for individuals approaching retirement. The decision on whether or not to elect to take a lump sum is not a simple one and may require the expense of independent financial advice.
6. The commutation rate of 12:1 for those who elect to take a lump sum has been adopted by several other public sector pension schemes. However, the use of a single rate for all members is difficult to justify without further evidence. For example, someone who retires at 60 will be able to take a lump sum of a similar relative value to someone taking a lump sum at age 70, even though the younger retiree is likely to claim their annual pension for a much longer period. There is also indirect gender discrimination as men tend to receive their annual pensions for a shorter period than women which should be reflected by the use of different commutation rates.

Three tier ill-health retirement

7. There are potential problems with the proposed scheme which DCLG should consider further:
 - It is sometimes difficult to receive clear medical opinions under the current scheme as the medical practitioner needs to assess the member's current health and predict their health at age 65. However, the current scheme is absolute in that a member either is or isn't permanently incapable of their duties. The proposed scheme will ask medical practitioners and employers to make decisions on how long the ill-health condition is likely to persist. It will therefore be even more difficult to make judgements under the new scheme and it seems likely that there will be a rise in appeal cases where members feel they should be placed in a higher tier of ill-health. This could be costly both in terms of the payment of higher pension enhancements as well as any compensation awards.

- The regulations do not state whether employers should monitor any subsequent changes to the health of ill-health retirees. It is also not clear whether the pension fund should stop paying the pension if their health improves or if the top tier cases take up any form of employment.
- Under the existing regulations, ill-health retirees receive an enhancement which clearly rewards past service to the employer. In contrast, the new scheme pays an enhancement which is linked to the future service with the employer which may never have come about. The new scheme therefore does not link the benefits a member receives to the contribution an employee has made to the employer. In addition, average total membership periods in the LGPS have been falling and the national average is now around 6 years. Rewarding staff for any potential future service in excess of this average would be difficult to justify.
- The objective of the LGPS is to accrue pensions for payment at normal retirement age. However, the proposed regulations incorporate a wider variety of ill-health retirement scenarios which diverge from this primary aim. It would be more straightforward to operate a completely separate ill-health scheme specifically designed for that purpose which employers can contribute towards. This would have the advantage that all ill-health leavers could receive benefits whereas at the moment only LGPS members can receive ill-health pensions.
- Ill health retirement was originally introduced to help those members who would not be able to earn any form of income before normal retirement age. Under the new scheme it is possible for members to claim ill-health retirement while still being able to work. For example, it is possible for someone to qualify for the lowest tier of ill-health retirement but to immediately take up employment elsewhere. For the second tier, the regulations also do not define the 'reasonable period' during which a member cannot work. Members could potentially receive a 25% enhancement to their pension for the rest of their lives while only being out of work for a relatively short period.

Yours sincerely

Christine Salter
Chief Financial Services Officer