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## **Consultation Response – The Local Government Pension Scheme – Technical consultation on LGPS rules**

LGSS is a shared service provider of the Local Government Pension Scheme (LGPS) to both Cambridgeshire and Northamptonshire Pension Funds. This response represents the views for Cambridgeshire Pension Fund.

### **Proposed Amendments to the LGPS Regulations 2013** **Active membership**

Draft regulation 3 – The wording does provide the clarification intended.

Draft regulation 4 – The wording does provide the clarification intended.

### **Temporary reduction in contributions**

Draft regulation 5 - The wording does provide the clarification intended.

### **Employer contributions during absences**

Draft regulation 6 – The wording does provide the clarification intended.

### **Additional Pension Contributions**

Draft regulation 7 – The flexibility for an employer to extend the time limit for an election will be useful, and the wording does provide this.

### **Additional Voluntary Contributions**

Draft regulation 8 – The wording does update the reference appropriately.

### **Exclusion of rights to return of contributions**

Draft regulation 9 – The wording does update the reference appropriately.

### **Assumed Pensionable Pay**

Draft regulation 10 – The wording does deliver the stated intention of ensuring that in the calculation of assumed pensionable pay, members are not disadvantaged as a result of reductions in pay during absences when they were not in receipt of pensionable pay. The correction of the reference in relation to the calculation of ill health pension amounts and the addition of references to survivor benefits for partners and children of active members have all been made appropriately.

### **Disallowing automatic aggregation for members who have opted out**

Draft regulation 11 – The wording does deliver the bald intention stated, however it is not clear why this provision would be appropriate, i.e. why the distinction between a deferred benefit awarded to a member because they had opted out of membership and one awarded because the member had left their pensionable employment? There is no reference to the disallowance only applying if the member again becomes an active member in the same employment, so presumably would apply in any new employment also.

Aside from these comments, whether automatic aggregation is actually the most appropriate way of dealing with the matter of aggregation, given the potential for issues relating to Annual Allowance calculations is addressed later in this consultation response.

### **Role of the Independent Registered Medical Practitioner**

Draft regulation 12 – It is noted that the proposed amendment is in response to a Deputy Ombudsman determination (Ref PO-678). A subsequent determination by the Pensions Ombudsman (Ref PO-2246) has, it would appear, clarified the position as it states in section 47 “I would not say that a properly instructed physician working for the same organisation as a physician who has previously advised automatically loses independence as a result”. The view in this subsequent determination accords with both our and the Department for Communities and Local Government’s view and, whilst the proposed amendment may be seen as academic in light of this, our view is that making it provides absolute clarity in the legislation itself which would be helpful.

### **Draft Grants: Active members**

Draft regulation 13 – The proposed amendment in 13(a) is consistent with the ill health pension provisions. That in 13(b) seeks to clarify that in relation to an active member who is also a deferred member, pensioner member or a deferred pensioner member, a single death grant is payable and the amount payable is equal to the highest of the individual death grants.

### **Death and Survivor benefits**

Draft regulation 14 and 15 - The proposed amendments are consistent with the ill health pension provisions.

Draft regulation 16 and 17 – The intention stated in Chapter 2 paragraph 14 in relation to deferred pensioner members, i.e. those who die between when their Tier 3 ill health pension is discontinued and when payment of their pension resumes at a later date seems rather confused:

“a survivor benefit calculation should exclude any amount of pension commuted into a lump sum by the deceased member”.

Draft Regulation 16 would result in Regulation 44(8) reading as follows:

“This regulation applies to deferred pensioner members as it applies to deferred members with the modification that for the purposes of paragraphs (4) and (5) the amount of pension the member would have been entitled to draw assumed that there had been no commutation under regulation 33 (election for lump sum instead of pension).”

Again, this seems rather confused.

If the intention, as we believe is appropriate and consistent with the equivalent provisions for pensioner members, is that the survivors pension should be unaffected by a members election to commute part of their own pension under Regulation 33 in order to receive a lump sum payment, then we would suggest that the amendment be reworded to:

“with the modification that for the purposes of paragraphs (4) and (5) if commutation under Regulation 33 (election for lump sum instead of pension) has taken place, the amount of pension the member would have been entitled to draw be assessed as if there had been no such commutation”.

If this is accepted, the wording of the amendment in draft Regulation 17 would be revised to:

“with the modification that for the purposes of paragraphs (4), (5), (9) and (10) if commutation under Regulation 33 (election for lump sum instead of pension) has taken place, the amount of pension the member would have been entitled to draw be assessed as if there had been no such commutation”.

If the revision to the wording is not deemed necessary, in Draft Regulation 17 the reference to “paragraphs (5), (9) and (10)” should still be amended to include paragraph (4), i.e. “paragraphs (4), (5), (9) and (10)”.

### **General corrections to references and terminology etc**

Draft regulation 18 to 22 – The amendments proposed are appropriate.

### **Adjustment of accounts following forfeiture etc**

Draft regulation 23 - The wording does provide the clarification intended.

### **Changes of administering authority**

Draft regulation 24 - The wording does provide the clarification intended, however please see the comments later in this consultation response regarding whether automatic aggregation is actually the most appropriate way of dealing with the matter of aggregation.

## **Schedule 1**

Draft regulation 25:

Sub paragraph (a) – the omission is appropriate.

Sub paragraph (b) – in the definition of ‘local authority’ should there also be reference to a city council and a metropolitan borough council or are these technically covered by the terms used? Also, there is a reference in Schedule 2 Part 2 to “a local authority listed in paragraphs 1 to 5 of Part 1 of this Schedule”; paragraphs 1 to 5 referred to include the following:

“1. In England, a county council, a district council, a London borough council, the Greater London Authority, the Common Council of the City of London and the Council of the Isles of Scilly.

2. In Wales, a county council or a county borough council.

3. A joint board, body or committee appointed under any Act or statutory order or statutory scheme, of which all the constituent authorities are councils of a description in paragraph 1 or 2 or a combination of such councils.

4. A Mayoral development corporation within the meaning of section 198 of the Localism Act 2011.

5. A fire and rescue authority within the meaning of the Fire and Rescue Services Act 2004.”

Does this necessitate either an amendment to the defined term ‘local authority’ or to the reference in Schedule 2 Part 2?

Sub paragraph (c) – the correction to SCAVC is appropriate.

## **Schedules 2 and 3**

Draft regulation 26 - The wording does update the legislative reference appropriately to cater for further combined authorities being established in the future.

Draft regulation 27 - The revision in the reference to 24 from 23 is appropriate.

Draft regulations 28 and 29 - The revisions appear appropriate.

General comment – there are no amendments to be made in respect of the administering authority of Cambridgeshire County Council or the local authorities within the county of Cambridgeshire.

## **Proposed Amendments to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014**

Draft regulation 31 - The wording does meet the stated intention of extending the additional membership to be counted for survivor benefit calculations.

## **Employer contributions and no active contributing members**

Draft regulation 32 – It is our view that the funds should be able to collect contributions to reduce/eliminate outstanding liabilities for an employer where there are no remaining active members. The rates and adjustments certificate should not be a barrier to collecting such contributions. However, for designating or admission bodies with an open admission agreement and remaining eligible members, greater flexibilities should be extended with regards to over what length of time to recover any outstanding liabilities on the exit of the final active member. A further

consideration may need to be addressed on how often a cessation valuation should be conducted after the exit of the most recent last member. Cessation valuations are based on assumptions at one point in time. If a lengthy period for collection of a deficit is set it may be that end of that period the amount collected may be insufficient, or indeed in excess of the amount required.

Question raised in paragraph 24; *“To better manage the instances when exit payments might be called for, views are sought on whether companies that are wholly owned by employers that are listed in Part 1 of schedule 2 employer, should also be listed in Part 1 of Schedule 2, and therefore lose the ability to designate which employees have access to the scheme”.*

The Pensions Fund would agree that companies wholly owned by employers listed in Part 1 of Schedule 2 should also be listed in Part 1 of Schedule 2, thus losing the flexibility to designate which employees have access to the Scheme.

Employers listed in Part 1 of Schedule 2 are increasingly electing for alternative delivery models that include wholly owned companies. Such a change is putting at risk the ongoing viability of the Local Government Pension Scheme itself, particularly as this group of scheme employers includes the actual Councils fulfilling the role of administering authority. The danger is that continuation under the current regulations could lead the LGPS becoming an effectively closed scheme and new public sector workers receiving considerably reduced pension rights.

### **Waiving of early payment reductions**

Draft regulation 33 – The wording does clarify the distinction between the grounds for an employer determining to waive early payment reductions for flexible retirement and other types of retirement (i.e. no requirement for ‘compassionate grounds’ for flexible retirement case determinations).

### **Issues not covered by the draft regulations**

#### **Transfer of rights accrued in AVC arrangements**

Whilst it would be of the benefit to a member who is moving from one administering authority to another and be able to continue with their pre-existing AVC arrangement, it is the actual administration of this which will become problematic.

There are multiple Local Government Pension Scheme AVC providers on the market. Allowing a member to continue paying AVCs to a provider where there is no arrangement in place with the new administering authority, would require that administering authority to set up that arrangement. This would not only impact on the administrative arrangements for the Local Government Pension Scheme but also for its scheme employers. Operating multiple AVC providers will be burdensome.

It goes without saying that if there was only LGPS AVC provider available this would not be an issue for either the administering authority or for the member.

## **Ongoing final salary link for deferred pensions**

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

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

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

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

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

- (i) a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations") apply; or
- (ii) a transfer which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

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

The outcome of the above proposals would be as follows:

#### Scenario A – post-14 only

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

#### Concurrent employment:

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

#### Previous employment:

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

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

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

Concurrent employment:

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

Previous employment:

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

\* Except where TUPE applies

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

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

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

Concurrent employment:

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

Previous employment:



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

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

Concurrent employment:

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

Previous employment:

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

\* Except where TUPE applies

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

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

C1: Active member who has a deferred refund from an earlier period of membership which is based on pre-1 April 2014 and post-31 March 2014 membership and the member was an active member on both 31 March 2014 and 1 April 2014 and, since

becoming entitled to the deferred refund, the member has had a break in active membership of a public service pension scheme of more than 5 years.

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

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

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

\* Except where TUPE applies

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

#### Scenario D – pre-14 only

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

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

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

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

purchase an amount of earned pension in the member's relevant active pension account.

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

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

\* Except where TUPE applies

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

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

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

\* Except where TUPE applies

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

#### Scenario E – re-joiners

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

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

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

Yours sincerely

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