

# Public Document Pack

## NOTICE OF MEETING



# BERKSHIRE PENSION BOARD

will meet on

**THURSDAY, 28TH JULY, 2016**

**At 12.30 pm**

in the

**MINSTER COURT - 22-30 YORK ROAD MAIDENHEAD,**

TO: MEMBERS OF THE BERKSHIRE PENSION BOARD

SCHEME EMPLOYER REPRESENTATIVES: ALAN CROSS, ALAN NASH, BILLY WEBSTER (CHAIRMAN) (SUBSTITUTES: SURJIT NAGRA, TERRY BALDWIN, ANDY WALKER).

SCHEME MEMBER REPRESENTATIVES: INDERPAL DHAK, PETER SOUTHWELL, TONY PETTITT.

Karen Shepherd - Democratic Services Manager – Issued 20/07/2016

Members of the Press and Public are welcome to attend Part I of this meeting. The agenda is available on the Council's web site at [www.rbwm.gov.uk](http://www.rbwm.gov.uk) or contact the Panel Administrator

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## AGENDA

### PART I

<u>ITEM</u>	<u>SUBJECT</u>	<u>PAGE NO</u>
1.	<u>APOLOGIES</u> To receive any apologies for absence.	-
2.	<u>DECLARATION OF INTEREST</u> To receive any declarations of interest.	7 - 8
3.	<u>MINUTES</u> To approve the Part I minutes of the meeting held on 28 <sup>th</sup> April 2016.	9 - 14
4.	<u>SCHEME AND REGULATORY UPDATE</u> To consider the update.	15 - 44
5.	<u>INVESTMENT FUND POOLING UPDATE</u> To receive an update on Fund Pooling.	Verbal
6.	<u>PENSION PANEL MINUTES</u> To note the minutes of the Berkshire Pension Panel.	To Follow
7.	<u>UPDATED TERMS OF REFERENCE</u> To discuss the terms of reference.	45 - 54
8.	<u>MEMBERSHIP</u> To consider Board Membership.	Verbal
9.	<u>APPROACH TO TRAINING</u> To discuss Board member training.	Verbal
10.	<u>CHANGES TO AGENDA AND MEETINGS</u> To discuss changes to future meetings.	Verbal
11.	<u>PROPOSED WORK PROGRAMME</u> To consider the work programme.	55 - 56
12.	<u>NEW OR AMENDED RISKS</u> To receive an update on risks.	Verbal

13.	<u>IDENTIFIED OR REGISTERED BREACHES</u>	Verbal
14.	<u>AUDIT RESPONSE TO CODE OF PRACTICE</u>	Verbal
15.	<u>ANY OTHER BUSINESS</u>	Verbal
16.	<p><u>LOCAL GOVERNMENT ACT 1972 - EXCLUSION OF THE PUBLIC</u></p> <p><b>To consider passing the following resolution:-</b></p> <p><b>“That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the remainder of the meeting whilst discussion takes place on items on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 1-7 of part I of Schedule 12A of the Act”</b></p>	

**PART II**

<u>ITEM</u>	<u>SUBJECT</u>	<u>PAGE NO</u>
17.	<u>INVESTMENT GROUP MINUTES</u>  To note the minutes of the Investment Working Group.  <b><i>(Not for publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Governmet Act 1972)</i></b>	57 - 62
18.	<u>PENSION FUND PANEL MINUTES</u>  To note the Part II minutes.	To Follow



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## MEMBERS' GUIDANCE NOTE

### DECLARING INTERESTS IN MEETINGS

#### **DISCLOSABLE PECUNIARY INTERESTS (DPIs)**

DPIs include:

- Any employment, office, trade, profession or vocation carried on for profit or gain.
- Any payment or provision of any other financial benefit made in respect of any expenses occurred in carrying out member duties or election expenses.
- Any contract under which goods and services are to be provided/works to be executed which has not been fully discharged.
- Any beneficial interest in land within the area of the relevant authority.
- Any license to occupy land in the area of the relevant authority for a month or longer.
- Any tenancy where the landlord is the relevant authority, and the tenant is a body in which the relevant person has a beneficial interest.
- Any beneficial interest in securities of a body where
  - a) that body has a piece of business or land in the area of the relevant authority, and
  - b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body **or** (ii) the total nominal value of the shares of any one class belonging to the relevant person exceeds one hundredth of the total issued share capital of that class.

#### **PREJUDICIAL INTERESTS**

This is an interest which a reasonable fair minded and informed member of the public would reasonably believe is so significant that it harms or impairs your ability to judge the public interest. That is, your decision making is influenced by your interest that you are not able to impartially consider only relevant issues.

#### **DECLARING INTERESTS**

If you have not disclosed your interest in the register, you **must make** the declaration of interest at the beginning of the meeting, or as soon as you are aware that you have a DPI or Prejudicial Interest. If you have already disclosed the interest in your Register of Interests you are still required to disclose this in the meeting if it relates to the matter being discussed. A member with a DPI or Prejudicial Interest **may make representations at the start of the item but must not take part in discussion or vote at a meeting.** The term 'discussion' has been taken to mean a discussion by the members of the committee or other body determining the issue. You should notify Democratic Services before the meeting of your intention to speak. In order to avoid any accusations of taking part in the discussion or vote, you must move to the public area, having made your representations.

If you have any queries then you should obtain advice from the Legal or Democratic Services Officer before participating in the meeting.

If the interest declared has not been entered on to your Register of Interests, you must notify the Monitoring Officer in writing within the next 28 days following the meeting.

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# Agenda Item 3

## BERKSHIRE PENSION BOARD

THURSDAY, 28 APRIL 2016

Present: Scheme Employer Representatives: Alan Cross, Billy Webster (substitute: Surjit Nagra).

Scheme Member Representatives: Peter Southwell and Tony Pettitt.

Also in attendance: Cllr Glenn Dennis (Reading)

Officers: Kevin Taylor and David Cook

### APPOINTMENT OF CHAIRMAN

Billy Webster was appointed as chairman and Tony Pettitt was appointed as the Vice-Chairman.

The Chairman thanked Mr Pearce for his work as Chairman and guiding the Board during its first year of existence.

### APOLOGIES

Apologies for absence were received from Inderpal Dhak, Terry Baldwin and Alan Nash.

### DECLARATIONS OF INTEREST

There were no declarations of interest received.

### MINUTES

The minutes of the meeting on 22<sup>nd</sup> February 2016 were approved as a true and correct record subject to on page 11, review of the Pension Panel meeting, employees be replaced with employers.

### PENSION BOARD MEETINGS ACTION TRACKING SCHEDULE

The Board considered the report that informed of the establishment of an action tracker schedule monitoring actions identified at previous meetings.

In response to questions it was agreed to add a target date and status to the tracker. The actions attributed to the previous chairman would need to be changed and it was agreed that the Chairman and Deputy Fund Manager would meet to discuss the tracker and how to report actions arising from the minutes.

**Resolved unanimously: That the report be noted and that the Chairman and Deputy Fund Manager discuss amendments and actions arising from minutes.**

### SCHEME, LEGAL AND REGULATORY UPDATE

The Board considered the report which was a standing item providing an update on current scheme and regulatory issues regarding the LGPS.

Current issues highlighted in the report were:

- Public Sector Exit Gap. Expected to be introduced in October 2016 and would restrict payments to £95k with some employer discretion.
- Public Sector Exit Payment Recovery Regulations. Item linked to the exit gap and was regarding recovering over payments and payments if the employee is re-employed.
- Pooled Investments. It was noted that the Berkshire Pension Fund was in negotiations to join the Local Pensions Partnership (LPP).

The Chairman requested that future links to consultations be circulated to the Board and it was noted that there had been a good response the consultations listed in the report.

It was requested that details of the LPP, how they fund their investments and what the new structure would look like if we joined be circulated to the Board when available and have as a future agenda item.

It was noted that 100% of the Fund would be invested with Berkshire retaining its own investment strategy and the LPP implementing it.

**Resolved unanimously: That the current LGPS issues be noted.**

## REVIEW OF BERKSHIRE PENSION FUND PANEL MEETING OF 11 APRIL 2016

The Board considered the minutes and agenda of the Berkshire Pension Panel meeting of 11<sup>th</sup> April 2016. The Board were asked to email any issues / questions they wished raised at this meeting; none were received.

The agenda item also contained the Stewardship Report that deals with the stewardship of the Pension Fund for the period 1 December 2015 to 31 January 2016. Section 2.2 showed Scheme Employers with the additional text showing new employers since last report. Future reports will show employers who have left since last reporting. It was noted that Woodley Age Concern had gone into receivership and officers were working with the receiver to claim any outstanding payments and the cessation deficit payment.

With regards to notices of unsatisfactory performance it was noted that since RBWM had started using I-Connect the transfer of data was much better and there were ongoing discussions with other authorities regarding implementation. To aid employers meet their obligations officers would be introducing a performance dashboard and looking at introducing quarterly meetings.

It was agreed that going forward the report would benefit from having the number of employees each employer had, reference section 2.2 table 4.

The Board noted the report.

## RISK REGISTER

The Board considered the Funds Risk Register and were asked if they wished to review it at every meeting or by exception.

The Chairman replied that the register was owned by the administering authority but the Board should maintain an overview to ensure risks are being managed, he felt the report should be viewed quarterly showing changes between reporting cycles.

The Board were informed that the report was currently reviewed by the Berkshire Pension Fund Panel on a quarterly basis but this may change to every 6 months as they were meeting more frequently to discuss Pooling.

The previous Board Chairman had emailed the following comments on the Risk Register:

'Pension Board failure - my considered professional opinion is this risk has now increased and will continue until the LPB is led by and has access to independent specialist advice and technical expertise separate from the advisory machinery of the BPF. The Government proposals for converting all schools to academies is a new risk as is future Government intervention on investing in UK infrastructure and divesting from specific countries or sectors of the global economy.'

The Risk Register was noted.

### TRAINING UPDATE

Board Members were requested to update their training logs and identify future training needs. A training log for each member to complete was attached as appendix A and would be held on the website for transparency.

It was noted that the logs would need to be updated on a regular basis and would be emailed to members before being published.

It was agreed to send a reminder to Board members regarding their responsibilities to complete the log.

### PENSION FUND BUSINESS PLAN 2016-17

The Board considered the report that presented the Pension Fund Business Plan for 2016/17 and medium term strategy as approved by the Pension Fund Panel on 11<sup>th</sup> April 2016.

The Board felt that for next year it would be useful to see a draft version of the report before being approved so they could feed into the strategy, it was felt that the Risk Register should be added as an appendix and it would have benefited having additional information on the workforce of the Fund. It was also recommended that it should be a five year plan.

It was questioned why the Plan linked to the RBWM Strategic Plan and the Board were informed that this was because they were the administering authority of the Fund with the Pension Panel comprising of RBWM elected Members. The Chairman questioned the inclusion of RBWM's visions and objectives as they did not relate to the Fund.

**Resolved unanimously: That the Board noted the Business Plan.**

### PENSION FUND EXTERNAL AUDIT PLAN 2016-17

The Board considered the RBWM External Audit Plan and was informed that although not specific to the Fund there were elements relating to it within the report. It was noted that KPMG would be reviewing longevity hedging.

The Chairman referred to the comments made by his predecessor and a draft letter he had circulated regarding contacting the new RBWM S151 officer and cc the Chair of the Pensions Panel regarding how the annual reports and financial statements of the Fund were prepared and audited in 2016.

**Resolved unanimously: That the report be noted.**

### PENSION FUND COMPLIANCE WITH TPR GOVERNANCE AND ADMINISTRATION SURVEY 2015

The Board were informed that they had previously reviewed the results of a survey undertaken by the Pensions Regulator regarding governance and administration of LGPS at a national level. Although the Berkshire Pension Fund did not take part in the survey the Board had asked officers to review how compliant we were with the requirements set out in the survey.

With regards to record keeping the Chairman asked if we had policies dealing with this as we were recording as being compliant. The Board were informed that policies were in place and published on the Funds website and Board members were welcome to spend time in the office to see what we did and achieved.

The Chairman reported that the review showed that if tested we would be shown to be compliant with the questions asked by the survey. Moving forward it was important that the Board be reassured that compliance is maintained.

**Resolved unanimously: That the report be noted.**

#### PENSION FUND COMPLIANCE WITH TPR CODE OF PRACTICE NO. 14

The Board considered the report that provided an update on work being undertaken to ensure compliance with the Pensions Regulator's Code of Practice No. 14. The Board noted the requested that they ask internal audit to undertake a review of compliance and draft terms of reference of the review were circulated to the Board.

**Resolved unanimously: That the Board recommended that internal audit undertakes an independent review of compliance with the Pensions Regulator's Code of Practice No. 14.**

#### PENSION FUND COMMUNICATION STRATEGY

The Board were informed that Regulation 61 of the Local Government Pension Scheme Regulations 2013 referred to 'Statements of policy concerning communications with members and Scheme employers'. An Administering Authority was required to prepare, maintain and publish a written statement setting out its policy concerning communications with members, representatives of members, prospective members and Scheme employers.

The report contained the Funds communication strategy and members were informed that it was published on the website. The Funds communication strategy was effective and updates on activities were provided to the Panel via the Stewardship Report.

**Resolved unanimously: That the report be noted.**

#### PENSION BOARD ANNUAL REPORT 2016

The Board were informed that they needed to produce an annual report and consideration on headline items was required. The Chairman mentioned that his predecessor had provided an overview of this and he asked Board members to email him any ideas. It was recommended that comments from the previous Chairman be included with the new Chairman adding additional comments.

#### PENSION BOARD KEY PERFORMANCE INDICATORS

The Board were asked to consider and email any comments on if the Board should have its own set of key performance indicators (KPI). It was questioned if other Pension Board had KPI's.

PENSION BOARD WORK PLAN AND FORWARD LOOK OF PENSION BOARD BUSINESS

The Chairman reported that he would be meeting with the Deputy Pension Fund Manager to discuss the future Board items and standing items on future agendas. In response to questions he informed that the Board's Terms of Reference and membership should be reviewed annually.

HOW DID WE DO

The Chairman reported that updates and progress had been discussed throughout the agenda and he thanked the Deputy Pension Fund Manager for all his work over the last year. Foundations had been set for progress over the coming year.

It was recommended that there be fewer agenda items but more in depth reviews and that there was a need to have a better working relationship with the Panel. The Chairman agreed that a lot of the work undertaken could be done via email.

DATES OF FUTURE MEETINGS

It was noted that the Board would next meet at 12.30 on 28<sup>th</sup> July 2016 and 24<sup>th</sup> November 2016.

LOCAL GOVERNMENT ACT 1972 - EXCLUSION OF THE PUBLIC

**RESOLVED: That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the remainder of the meeting whilst discussion takes place on items 5-8 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 3 of part I of Schedule 12A of the Act.**

The meeting, which began at 10.30 am, finished at 1.15 pm

CHAIRMAN.....

DATE.....

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## LGPS: CONSULTATION

### BRIEFING NOTE ON PROPOSED CHANGES TO THE 2013 REGULATIONS

The draft 'Local Government Pension Scheme (Amendment) Regulations 2016' introduce the 'Fair Deal for Staff Pensions' for staff in the LGPS who are compulsorily transferred to another service provider.

Currently, such staff can retain membership of the LGPS through a tripartite admission agreement between the transferring scheme employer, the new service provider and RBWM as the administering authority to the Royal County of Berkshire Pension Fund (RCBPF) although the new service provider can, as an alternative, offer membership of a broadly comparable pension scheme to the transferring staff.

In Local Government, the 'Best Value Staff Transfers (Pensions Direction) 2007' currently sets out the level of pension protection afforded to employees of English best value authorities where the provision of services are 'outsourced'. It is intended that this Direction will be revoked.

As currently drafted, the amendment regulations will align with Schedule 1 of the Public Service Pensions Act 2013, and will provide pension protection for all employees who are eligible for membership of the LGPS and who are compulsorily transferred from local authorities or other scheme employers listed in the 2013 Regulations. This includes those employees who are designated as eligible employees of other bodies that participate in the Scheme through an admission agreement.

New terms will be introduced into the pension regulations:

- Protected transferee: an employee of a current Scheme employer who is compulsorily transferred to an independent service provider who does not offer a public service pension scheme. A protected transferee remains such a member for so long as they remain wholly or mainly employed on the delivery of the service or function transferred.
- Protected transferee employer: an employer who is obliged to participate in the LGPS for those protected transferees they received as part of a compulsory transfer. These can be profit-making or non-profit making employers. It is envisaged that such an employer could transfer staff into another protected transferee employer.

Independent service providers will be obliged to enter into an admission agreement so that the protected transferee can retain their eligibility for the LGPS. The costs of providing a local government pension to transferring staff should be clearly set out in tender documentation. All bidding organisations would be under the same pension obligations.

Protected transferee employers will be required to have a bond, indemnity or guarantee in place in order to mitigate against any risk of the employer falling into insolvency or failing to meet their pension obligations both during their participation in the Pension Fund and at the point that their participation ceases.

The 'New Fair Deal' rules will not apply to admission bodies that currently participate in the Scheme having been admitted under the 'Best Value Directive'. Such Scheme employers, and indeed new service providers, at the point of retender of those services already 'outsourced', will continue to have the right to seek admitted body status but it is not proposed that they will be required to do so.

This is because the staff were previously transferred under the 'Best Value Directive' and no longer employees of a Scheme employer.

### **Conclusion**

In conclusion it would seem that 'Fair Deal' forces an independent service provider to become a 'protected transferee employer' of the Scheme thereby protecting the pension rights of staff who are compulsorily transferred by a Scheme employer. Independent service providers who do not offer a public service pension scheme must protect membership of the LGPS for those staff that they receive from a Scheme employer and will no longer be able to offer a broadly comparable pension scheme as an alternative.

This does have the effect of streamlining the whole process of admitting employers to the Pension Fund. However, experience shows that when services are 'outsourced' by local authorities (best value authorities) the independent service provider seeks admitted body status to the Fund as they cannot provide a broadly equivalent pension scheme as an alternative. The biggest impact of these changes to the regulations will, therefore, be felt by those Scheme employers who are not deemed to be best value authorities.

Under 'Fair Deal' the independent service provider must become a 'protected transferee employer', as opposed to having the choice of becoming an 'admitted body'. However, the employer will still be required to have a bond, indemnity or guarantee in place as part of an 'admission agreement' and so in practice there would appear to be very little, if any, difference in the way that these scheme employer admissions will be handled as a result of these changes in regulation.

What is clear is that Scheme employers who are considering 'outsourcing' services must ensure that they include details of the pension implications at the point of issuing tender documentation.

Prepared by Kevin Taylor  
Deputy Pension Fund Manager  
6 June 2016





Department for  
Communities and  
Local Government

## Local Government Pension Scheme

### Consultation : Local Government Pension Scheme Regulations



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# The Consultation Process and how to Respond

## Scope of the consultation

<p><b>Topic of this consultation:</b></p>	<p>The Local Government Pension Scheme (Amendment) Regulations 2016</p> <p>These draft regulations amend the Local Government Pension Scheme Regulations 2013 (SI/2356), and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI/525) in order to provide clarifications that have been requested by practitioners and improve the operation of the regulations.</p> <p>They introduce the Fair Deal for Staff Pensions for staff in the Local Government Pension Scheme who are compulsorily transferred to another service provider. The Treasury 'Fair Deal for Staff Pensions' policy issued in October 2013<sup>1</sup> sets out new requirements for securing pension protection for staff transferring out of the public sector. This consultation seeks comments on proposals to ensure that local government and participating employers in the Local Government Pension Scheme, provide the appropriate level of pension provision as set out in the new Fair Deal guidance.</p>
<p><b>Scope of this consultation:</b></p>	<p>Section 21 of the Public Service Pensions Act 2013 requires consultation with parties that may be affected by the scheme regulations. This consultation seeks responses from interested parties on amendments to Local Government Pension Scheme Regulations 2013 and the Local Government Pensions Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 which came into force on 1 April 2014.</p>
<p><b>Geographical scope:</b></p>	<p>England and Wales.</p>
<p><b>Impact Assessment:</b></p>	<p>No impact assessment is needed because the affect of these amendments are outside the scope of the Better Regulation Framework. While the provisions relating to the Fair Deal may require private, voluntary and charitable organisations to become employers in the Scheme if they secure contracts that involve local government service delivery, Fair Deal does not compel businesses to enter into contracts that would involve the transfer of Scheme members.</p> <p>The Impact Assessment<sup>2</sup> for the Public Service Pensions Bill (which became the Public Service Pensions Act 2013) addressed the issue of Fair Deal, and it concluded that 'By offering transferred staff the right to remain members of the public service scheme private, voluntary and social enterprise providers will no longer be required to take on the risks of their own defined benefit pension schemes. The new schemes will be more affordable than the cost of equivalent provision purchased in the market. This may increase competition for public service contracts for smaller organisations.'</p> <p>These regulations also introduce additional ways in which a scheme member can access their Additional Voluntary Contribution 'pots', as part of the</p>

1

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262490/PU1571\\_Fair\\_Deal\\_for\\_staf\\_pensi\\_ons.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262490/PU1571_Fair_Deal_for_staf_pensi_ons.pdf)

2

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205841/Public\\_Sector\\_Pensions\\_impact\\_analysis.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205841/Public_Sector_Pensions_impact_analysis.pdf)

	<p>Government's 'Freedom and Choice in Pensions' policy This has no affect on the member's employer, whether they are in the private, charity or voluntary sectors. The Impact Assessment<sup>3</sup> for the Pension Scheme Bill (which became the Pension Scheme Act 2015) addressed the issues around the additional flexibilities for Defined Contribution benefits.</p> <p>Equalities</p> <p>Under section 149 of the Equality Act 2010, the Department is required to give due regard to the impact of any policy decisions that it enacts on persons with protected characteristics. The protected characteristics are:</p> <ul style="list-style-type: none"> <li>• Age;</li> <li>• Disability;</li> <li>• Gender Reassignment;</li> <li>• Pregnancy and Maternity;</li> <li>• Race;</li> <li>• Religion or belief;</li> <li>• Sex;</li> <li>• Sexual Orientation; and</li> <li>• Marriage and Civil Partnership (but only in respect of the first aim of the Equality Duty: eliminating unlawful discrimination).</li> </ul> <p>The general public sector equality duty requires public authorities to have 'due regard' to the need to:</p> <p>a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;</p> <p>b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and</p> <p>c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</p> <p>None of the policies or amendments proposed in this consultation would adversely impact on a protected group, and all of the protected groups and people not in a protected group will benefit from the amendments equally.</p> <p>The introduction of 'Fair Deal' will result in fewer scheme members leaving public service pensions schemes, including the Local Government Scheme. HM Treasury published a central Equalities Impact Assessment for the Public Service Pensions Act 2013<sup>4</sup>. In addition the Department published an Equalities Impact Assessment for the scheme as a whole.<sup>5</sup></p>
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**Basic Information**

<b>To:</b>	This consultation is aimed at Local Government Pension Scheme interested parties. The department publishes a list of bodies that it would normally expect to consult <sup>6</sup>
<b>Body/bodies</b>	The Secretary of State for Communities and Local Government

<sup>3</sup> <http://www.parliament.uk/documents/impact-assessments/IA14-13A.pdf>

<sup>4</sup> <http://www.parliament.uk/documents/impact-assessments/IA12-024.pdf>

<sup>5</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/244257/Local\\_Government\\_Pension\\_scheme\\_-\\_Equality\\_Statement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244257/Local_Government_Pension_scheme_-_Equality_Statement.pdf)

<sup>6</sup> <https://www.gov.uk/government/publications/local-government-pension-scheme-regulations-information-on-who-should-be-consulted/local-government-pension-scheme-regulations-information-on-persons-to-be-consulted>

<b>responsible for the consultation:</b>	
<b>Duration:</b>	This is a 12 week consultation which starts on 27 May and will conclude on 20 August
<b>Enquiries:</b>	For enquiries and to respond to this consultation, please e-mail  Vincent.kiddell@communities.gsi.gov.uk
<b>How to respond:</b>	When responding, please ensure you have the words Local Government Pension Scheme Amendment Regulations or Fair Deal in your reply.  Alternatively you can write to: Vincent Kiddell Workforce, Pay and Pensions Department for Communities and Local Government SE Quarter Fry Building 2 Marsham Street London SW1P 4DF  For more information, please see <a href="https://www.gov.uk/government/organisations/department-for-communities-and-local-government">https://www.gov.uk/government/organisations/department-for-communities-and-local-government</a>
<b>Additional ways to become involved:</b>	As this is a largely technical issue with specialist interests following discussions with those affected, this will be a purely written exercise
<b>After the consultation:</b>	The Government's response will be published along side the substantive amending regulations
<b>Compatibility with the Consultation Principles:</b>	This consultation complies with the Cabinet Office's consultation principles.

#### Background

<b>Getting to this stage:</b>	Following the implementation of the reforms of the Local Government Pension Scheme from 1 April 2014, work has continued with practitioners to identify areas in the regulations that require clarification and correction. These amending regulations are the product of that work and contain other policy developments such as provisions as a result of the Pension Schemes Act 2015 and measures relating to Fair Deal.
<b>Previous engagement:</b>	There continues to be regular engagement with the Local Government Association and other Scheme practitioners, to identify amendments needed including a meeting with business, trades unions and the LGA on the Fair Deal provisions.

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

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

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

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

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

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact CLG Consultation Co-ordinator.

Department for Communities and Local Government  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF  
or by e-mail to: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)

# Chapter 1

## Introduction

1. The Secretary of State for Communities and Local Government is consulting on these proposed regulations which will be made under the powers conferred by sections 1 and 3 of, and Schedule 3 to, the Public Service Pensions Act 2013. Under Section 3(5) of the 2013 Act, the Regulations require the consent of HM Treasury before being made. Draft regulations 3 to 22 amend the Local Government Pension Scheme Regulations 2013 (“the 2013 Scheme Regulations”), and draft regulations 24 to 29 amend the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) regulations 2014 (“the Transitional Regulations”).
2. The provisions contained in the draft regulations take into account the day to day experience of applying the 2013 Regulations since 1 April 2014 where areas for clarification have been sought or a change in approach has been requested. Recent Government policies have been taken into account such as Freedom and Choice in Pensions and the reformed way of delivering the Fair Deal policy. These draft regulations revise existing provisions to add clarity and address other issues raised as part of good stewardship of the regulatory framework of the Scheme created by the 2013 Regulations (“the Scheme”).
3. Your comments are invited on the set of draft regulations at **Annex A**
4. **The closing date for responses on the draft regulations at Annex A, and the related questions in Chapter 3 is 20 August 2016.**



# Chapter 2

## The 'Fair Deal' proposals

1. Fair Deal for Staff Pensions sets out how pension issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. The Government announced in December 2011 that the Fair Deal policy, introduced in 1999, was to be retained but delivered in a different way. Staff transferring from the public sector will have continued access to their public service pension scheme rather than being offered a broadly comparable private pension scheme, as was previously the case.
2. The Treasury published its revised guidance, Fair Deal for Staff Pensions: staff transfers from central Government, in October 2013. It covers central Government departments and their agencies, the NHS, schools that are not local authority maintained, academies, and any other parts of the public sector under the control of Ministers where staff are eligible to be members of a public service pension scheme.
3. In local government, the Best Value Staff Transfers (Pensions Direction) 2007 sets out the current level of pension protection for employees of English best value authorities (and Welsh police authorities) where the provision of services are contracted out, and staff transferred under TUPE to an independent provider. The Pensions Direction ensures that the employee has the right to acquire pension benefits that are the same as or count as being broadly comparable to or better than those that he had as an employee of the authority. It is now proposed that the 2013 Regulations will contain provisions to permit all transferring members to remain in the Scheme. The Pensions Direction will be revoked in due course and the associated primary legislation will be repealed.
4. When considering how best to implement the reformed Fair Deal in the Local Government Pension Scheme, account was taken of the existing admitted body regulatory framework which has been operating for over 15 years. The admitted body status framework includes safeguards to protect other employers in the Scheme by requiring appropriate risk assessments and the need for a bond, indemnity or guarantee where risks are identified. Admitted bodies are required to pay the appropriate amounts to the Scheme to meet the pensions that accrue for the members they employ. In view of this, the draft regulations build on admitted body status. **However, if there are better ways to adopt the reformed Fair Deal in local government, consultees are invited to recommend an alternative approach and say why they consider this to be preferable.**
5. Employees who would be covered by these draft regulations are those eligible for the Scheme and compulsorily transferred from local authorities and other employers listed on the face of the 2013 Regulations. This includes those employees who are designated as eligible and employees of other bodies that participate in the Scheme through an admission agreement (admitted bodies).

### **Higher and Further Education Institutions and other exempt bodies**

6. Fair Deal does not apply to higher and further education institutions, which are classified as private sector bodies, as the Fair Deal policy applies to transfers from the public sector. Police and Crime Commissioner are not required to adopt Fair Deal, as they are not best value authorities like a Police Authority. A PCC would not be precluded from adopting the principles of Fair Deal should they wish to.

### **Introducing a protected transferee and a protected transferee employer**

7. The category of person covered by Fair Deal is an employee of a current Scheme employer referred to in paragraphs 5 and who is compulsorily transferred to an independent service provider who does not offer a public service pension scheme. This category of member will be a 'protected transferee' and would remain so as long as that member remains wholly or mainly employed on the delivery of the service or function transferred.
8. The regulations introduce a new category of Scheme employer, a 'protected transferee employer' who is obliged to participate in the Scheme under the 2013 Regulations for those staff they receive that are 'protected transferees'. These employers will, generally, be providing a service or function under contract with a Scheme employer and can be profit-making bodies as well as not-for-profit or voluntary organisations.
9. It is envisaged that a 'protected transferee employer' can itself transfer staff to a new provider and these staff would also be regarded as 'protected transferees'. The original 'protected transferee employer' will be regarded as a Scheme employer for these purposes as will the receiving second 'protected transferee employer'.

### **Admitted body status**

10. Admitted body status arrangements have been a feature of the Scheme for many years and is the means for independent service providers to become employers in the Scheme. The 2013 Regulations will be amended to align more closely with the provisions in the Public Service Pensions Act 2013 ("the 2013 Act") dealing with eligibility for membership of a public service pension scheme. For local government, a person will be eligible for membership if actually employed in local government service; if deemed by the regulations to be employed in local government service; or if, despite not being employed in local government service, is subject to a "determination" under section 25(5) of the 2013 Act.
11. A determination under section 25(5) of the 2013 Act is made when an administering authority enters into an admission agreement with an independent provider of services. Alignment of the 2013 Regulations with the provisions in the 2013 Act will require no changes to the existing process for entering into admission agreements and no alteration to the status of any existing admission agreements.
12. Under the proposed regulations, independent service providers will be obliged to enter into an admission agreement so that the protected transferee can retain their eligibility for the Scheme. The costs of providing a local government pension to transferring staff should be clearly set out in the tender documentation. Those seeking to provide public services or functions for the first time will be obliged to offer membership of the Scheme for staff they receive under the compulsory transfer but all bidding organisations would be under the same pension obligations.

13. There are already provisions in the Scheme to mitigate the risks of participating employers falling into insolvency or simply failing to meet their financial obligations under the Scheme Regulations which could have the effect of requiring other employers sharing the debt left by the failing body or, ultimately, financial pressures on local tax payers. The risk assessment regime is provided for in the 2013 Regulations in Schedule 2, Part 3, paragraphs 6 – 8 and, if the level of risk identified by the assessment based on actuarial advice requires it, the protected transferee employer would have to provide a bond, indemnity or a guarantee. This will apply to a ‘protected transferee employer’ as it would apply to any admission body and provides a proportionate means to mitigate any risks identified and this is permitted by section 25(8) of the 2013 Act.
14. The provisions dealing with ceasing participation in the Scheme, for example when a contract ends, would apply to this category of Scheme employer as it does to other employers in the Scheme. This means that when the amounts needed to meet all liabilities falling to the exiting employer cannot be made by the assets held in the administering authority’s pension fund, an exit payment must be paid to that administering authority to address the shortfall.

**Retenders of contracts involving members who were previously transferred out to a new provider and joined the provider’s broadly comparable pension scheme**

15. A member who has moved out of the Scheme under an earlier transfer may still be in that provider’s broadly comparable pension arrangement permitted under the Best Value Authorities (Pensions) Direction 2007 (see paragraph 3 above) and retains the Pensions Direction protections when a contract is retendered. The Treasury code: Fair Deal for Staff Pensions states that contracting authorities should (where this is compatible with their obligations under the Public Contracts Regulations 2006) require bidders to provide them with access to the appropriate public service scheme. The legal position is not the same for local government as it would require explicit statutory powers to achieve this. The draft regulations do not include a requirement that, at retender, the formerly transferred member becomes a protected transferee member and the successful bidder becomes a protected transferee employer. This is because the individual is not being transferred out of the public sector at that point as they are employed by the current external provider. It will remain the case that new providers at a retender can access the Scheme should they wish to by seeking admitted body status but it is not proposed that they will be required to do so.
16. **Views are sought on whether this is the right approach.** If consultees recommend an alternative approach, they are asked to say why that approach should be considered and how that might be achieved from a practical perspective eg how would accrued rights transfer from the provider’s Scheme to the Local Government Pension Scheme?

**Publishing lists of members participating in the Scheme**

17. Section 25(5) of the 2013 Act, requires the publication of a list of persons to whom the Scheme relates and the list must be kept up to date. This does not require publication of the names of individual members of the Scheme but would be a list of the determinations that have been made under that section (that is to say admission agreements entered into). The draft Regulations delegate the obligations to publish this list to the relevant administering authority. The provision in the 2013 Regulations in Schedule 2, Part 3,

paragraph 11 (which requires individual notification of admission agreements to the Secretary of State) is no longer required and will be removed.

# Chapter 3

## Changes to the 2013 Scheme Regulations

1. We are also consulting on specific draft regulations that would provide members with more options for using their Additional Voluntary Contributions in the Scheme following the introduction of the Government's policy 'Freedom and Choice in Pensions'. Other draft regulations deal with how the Scheme operates within the Public Sector Transfer Club, while there are a number of draft amending regulations that are intended to improve the administration of the Scheme.

### **Local Government Service and Fair Deal – Draft Regulations 3 to 5**

2. Draft Regulation 3 would amend Regulation 2 of the Local Government Pension Scheme Regulations 2013, to deem certain categories of person to be in local government service for the purposes of the Regulations, aligning the Scheme with Schedule 1 of the Public Service Pensions Act 2013, and requiring contractors who have entered into arrangements to deliver local government service to be admitted to the Scheme.
3. Draft Regulation 4 proposes an amendment to Regulation 3 (active membership) by broadening the categories of persons eligible to be an active member of the Scheme in an employment, to include a member deemed to be or potentially eligible for membership if they are a protected transferee as a result of a compulsory transfer to a new provider. It delegates the function of making a determination under section 25(5) of the Act to administering authorities. The requirement to publish, and keep up to date, a list under section 25(9) of the Act is delegated to administering authorities.
4. Draft Regulation 5 proposes a new Regulation 3B requiring a protected transferee employer and the appropriate administering authority to enter into an admission agreement with the relevant administering authority, when the admission agreement comes into effect and who should be included in the admission agreement.

### **Temporary Reduction in Contributions- Draft Regulation 6**

5. A member may elect to pay contributions at half the rate specified in the 2013 regulations, and accrue earned pension at half the normal rate. It is proposed that Regulation 10(5)(a) is amended to make it clear that a member's election to pay reduced contributions is cancelled due to either the automatic re-enrolment process, or going on to no pay as a result of sickness or injury, rather than both those conditions having to be met.

### **Contributions During absence from work - Draft Regulation 7**

6. Regulation 11(4) specifies that a member remains an active member whilst absent from work on child related leave, reserve forces service leave, leave due to illness,

injury or a trade dispute, or leave with permission from their employer. It is proposed that the words after paragraph (c) will be deleted as they are unnecessary.

### **Additional Voluntary Contributions (AVC) - Draft Regulation 8 & 9**

7. In order to meet the aims of the Government's pension reform 'Freedom and Choice in Pensions'<sup>7</sup>, it is proposed to amend regulation 17 and introduce new Regulation 17A, setting out a new set of options for accessing benefits accrued through the Scheme's additional voluntary contribution arrangements. A member who has accrued benefits under these arrangements may, depending on when they access those benefits, use them for one or more lump sums, to purchase additional pension, to purchase an annuity, or transfer the benefits into another appropriate pension arrangement.

### **Assumed Pensionable Pay- Draft Regulation 10**

8. The current method of calculating assumed pensionable pay can produce anomalous results for a member whose pay varies over time. The amount of ill health pension payable to a member, or the amount of death grant payable to their survivor, is currently dependant on how much pay they received in the 12 weeks or 3 months before their death or illness. In some cases, where the member's pay was relatively high in that period then the value of the benefit to be paid will be inappropriately high but, in other cases, including those where the member was not in receipt of pay or on reduced pay due to any of the specified absences, the benefits due to them will be inappropriately low and potentially nil. Regulation 21 is, therefore, being amended to allow the employer the discretion to use a different pensionable pay figure that more closely reflects the normal pay of the member over longer periods of time, resulting in a more equitable rate of ill health pensions and death grant.
9. In addition, a new paragraph (5B) is proposed in regulation 21 which provides that returning officer fees are averaged over a three year period. Currently, the calculation for death grant and ill-health pension does not take into account returning officer fees that were received more than 3 months before their death, illness or injury. However, if they do receive fees in the 3 months before their death, illness or injury then the current assumed pensionable pay calculation will result in a disproportionately large benefit. Therefore, we are proposing that returning officer fees are averaged over a period of 3 years, as this will result in death grants and ill-health pensions that more accurately reflect the member's pay.

### **Pension Accounts- Draft Regulation 11**

10. Currently, when a member with a deferred pension account becomes an active member again, the two accounts are automatically aggregated and the member has 12 months to opt to separate the former deferred account from the new active

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332714/pensions\\_response\\_online.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf)

account. This has proved to be complex to administer and to allocate earned pension into the correct tax year as the 12 month option period can mean decisions are made outside specific tax years. To remedy the position, it is proposed that Regulation 22(8) is amended to give the member the option to aggregate their deferred and active pension accounts within 12 months of becoming an active member. This prevents situations occurring where automatically aggregated pensions accounts have to be disaggregated and follows the policy in the 2008 Scheme which worked more smoothly.

### **Retirement Benefits - Draft Regulation 12**

11. Currently, regulation 30(7)(b) has the unintended consequence of requiring that a member with both deferred and active pensions accounts has to take benefits relating to both accounts where employment is terminated due to redundancy or business efficiency and the member is required to take retirement benefits because they are aged over 55. It is proposed to amend this requirement so that the member is required to take only benefits from the active pension account in those circumstances.

### **Election for Lump Sum instead of pension – Draft Regulation 13**

12. As a consequence of the introduction of new Regulation 17A referred to in paragraph 7, it is proposed to amend Regulation 33 so that all lump sum payments are taken into account when identifying the limit on taking benefits in the form of a lump sum.

### **Survivor Benefits - Draft Regulation 14**

13. Regulations 39(1)(a) and (2)(a) provide that a tier 1 or 2 ill health pension that a member may receive is based on the earned pension that the member would have received had they continued in work until normal pension age. It is proposed that regulations 47(4)(a), 48(4)(a), 48(5)(a), 48(9)(a) and 48(10)(a) are amended so that the amount of pension that a surviving partner or child of a member who was in receipt of a tier 1 or 2 pension before death is based on the pension the member received rather than on the amount of pay that the member earned before award of the ill health pension.

### **Special Circumstances Where Revised Actuarial Valuations and Certificates Must Be Obtained - Draft Regulation 15**

14. It is proposed to amend Regulation 64 to allow for exit credits to be paid to employers that no longer have active members in a pensions fund which was not previously provided for. This will give more flexibility for administering authorities to manage liabilities when employers leave the Scheme.

### **Employer's Further Payments - Draft Regulation 16**

15. To complete the list of circumstances when an administering authority can require an employer to make payments in addition to regular employer contributions, it is proposed to amend regulation 68(2) to include occasions when a member takes

early retirement and the employer has waived the actuarial reduction to the member's benefits that would otherwise have been made.

### **Rights to payments out of the pension fund, and inward transfers of pension rights – Draft regulations 17 & 18**

16. The Public Sector Transfer Club allows easier movement of staff mainly within the public sector, by making sure that employees receive broadly equivalent credits when they transfer their pensionable service to their new scheme. As the Scheme participates in the Club, it is proposed to amend regulation 96 so that the relevant administering authority calculates the transfer in accordance with provisions in the Club Memorandum, during both the transfer out and the transfer in of the accrued rights.

### **Effect of acceptance of a transfer value – draft regulation 19**

17. Where there has been an inward transfer of pension rights, Regulation 101 is being amended to require that the amount of earned pension is calculated either in accordance with the Club Memorandum if the transfer is under the Public Sector Transfer Club and in any other case, in accordance with actuarial guidance issued by the Secretary of State.

### **Interpretation – Draft Regulation 20**

18. The proposed amendments to Schedule 1 introduce the necessary definitions relating to the Public Sector Transfer Club and associated revaluation arrangements, and a protected transferee and protected transferee employer. In addition, the definition of statutory pay is amended to include statutory sick pay, and the definition of partner is no longer restricted to partners of active members.

### **Scheme employers - Draft Regulation 21**

19. Paragraph 5 of Part 2 of Schedule 2 refers to 'An entity connected with a local authority listed in paragraphs 1 to 5 of [Part 1 of this Schedule](#)'. However joint boards, bodies and committees and Mayoral development corporations are not local authorities, so the proposed amendment corrects the position.

20. The proposed amendment to Part 3 of Schedule 2 is intended to put beyond doubt that administering authorities are able to agree that an admission agreement can have retrospective effect. Also, it is proposed that administering authorities are no longer required to inform the Secretary of State when they enter into admission agreements, this will no longer be necessary as draft regulation 4 requires administering authorities to publish a list of admission agreements that they have entered into.

### **Pension funds Draft Regulation 22**

21. A reference to 'the local authority or local authorities' is removed from the table in Part 2 of Schedule 3, as this is no longer needed following the amendment to paragraph 5 of Part 2 of Schedule 2 (see Draft regulation 20).



## **Amendments to the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014**

### **Membership before 1<sup>st</sup> April 2014 - Draft Regulation 24**

22. Draft Regulation 24 proposes to remove the need for an employer or former employer to give their consent when a member aged between 55 and 60 wishes to have early payment of benefits under Regulations 30(2) and 30A (3) of the 2007 Benefits Regulations. As these benefits will be actuarially reduced there is no cost to the employer, and the proposal gives the member more options about how to access their benefits which is in line with the Government's Freedom and Choice in Pensions policy
23. **Consultees are invited to comment on whether the Regulations should be further amended to remove the requirement for employer's consent for members aged between 55 and 60 with deferred benefits under earlier revoked regulations and how that might be achieved.**
24. It is also proposed to amend regulation 3 to specify that the normal pension age for deferred benefits accrued before 1 October 2006 is age 65. Without such an amendment, a member would be in a better position under the 2013 Scheme Regulations than he would have been had the 2007 Benefits and Contribution Regulations remained in force, and that was not the intention.

### **Transfers - Draft Regulation 25**

25. Regulation 4 of the Transitional Regulations describes the person to whom the statutory underpin applies. The proposed amendment to Transitional Regulation 9 establishes that a person to whom the underpin applies and has any protected benefits accrued under another public service pension scheme, is treated as if the person had been an active member of the 2008 Scheme. This will ensure that the member is in a no worse position under the 2014 Scheme than they would have been had the member joined the final salary arrangement under the 2008 Scheme.

### **Interfund Adjustments etc. - Draft Regulation 26**

26. It is proposed to amend Regulation 10 to give a member, with deferred benefits accrued before 1 April 2014 and who became a member of the 2014 Scheme on a date after 1<sup>st</sup> April 2014, 12 months, or such longer period as the employer permits, to elect to receive a transfer value payment in relation to the deferred benefits into their active pension account. This would be consistent with regulation 22 of the 2013 Regulations, and regulation 5(5) of the Transitional Regulations.

### **Contributions - Draft Regulation 27**

27. Contributions returned to members under regulation 18 of the 2013 Regulations should include additional contributions made under Earlier Schemes that have been aggregated into an active account. It is proposed to amend regulation 14(2) to make this clear.

### **Additional Contributions – Draft Regulation 28**

28. It is the intention that the additional options for taking benefits accrued by making additional voluntary contributions as detailed in draft regulations 7 and 8 above, are replicated for benefits accrued by additional contributions made before 1 April 2014. It is proposed that Regulation 15 is amended to achieve that.

### **Rule of 85 - Draft Regulation 29**

29. As specified in paragraph 4 of Schedule 2, members whose age plus length of membership in the Scheme (and Earlier Schemes) is equal to 85 years or more, may receive unreduced benefits when taking retirement benefits early. To ensure consistency with members between the ages of 55 and 59 who take early retirement under regulation 30(5) of the 2013 Regulations, members between the ages of 55 and 59 who choose to take early pension under regulations 30(1) or 30A of the Local Government Pension Scheme (Benefits, Membership and Contributions) 2007, may also benefit from the 'rule of 85' with their employer's consent.

### **Transitional Provisions- Draft Regulation 30**

30. This Regulation makes it clear that admission agreements that continue when these regulations come into force are deemed to be a determination under section 25 (5) of the Public Service Pensions Act 2013 and each administering authority has 12 months to publish a list of admissions agreements that they have entered into at the time that these regulations come into force.

# Annex A: Draft regulations

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## STATUTORY INSTRUMENTS

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2016 No.

### PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

# The Local Government Pension Scheme (Amendment) Regulations 2016

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

These Regulations are made in exercise of the powers conferred by sections 1, 3 and 25 of, and Schedule 3 to the Public Service Pensions Act 2013<sup>(8)</sup>.

In accordance with section 21 of that Act, the Secretary of State has consulted the representatives of such persons as appeared to the Secretary of State to be likely to be affected by these Regulations.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

The Secretary of State makes the following Regulations:

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations 2016.

(2) These Regulations come into force on [xxx] but have effect as follows [xxx].

(3) These Regulations extend to England and Wales.

#### **Amendment of the Local Government Pension Scheme Regulations 2013**

2. The Local Government Pension Scheme Regulations 2013<sup>(9)</sup> are amended in accordance with regulations 3 to 22.

3. In Regulation 2 (introductory) after paragraph (1) insert—

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<sup>(8)</sup> 2013 c. 25

<sup>(9)</sup> S.I. 2013/2356; those Regulations have been amended by S.I. 2014/44, S.I. 2014/525, S.I. 2014/1146, S.I. 2015/57 and S.I. 2015/755.

“(1A) A person employed by a person specified in—

- (a) Part 2 of Schedule 2 (scheme employers) who is designated or who belongs to a class of employees that is designated by that body as being eligible for membership of the Scheme, or
  - (b) column 1 of the table in Part 4 of Schedule 2,
- is deemed to be working in local government service for the purpose of these Regulations.

(1B) The Scheme may potentially relate to a person employed by an admission body.”.

4.—(1) In regulation 3<sup>(10)</sup> (active membership) for paragraph (1) substitute—

“(1) Subject to regulation 4 (restriction on eligibility for active membership), a person is eligible to be an active member of the Scheme—

- (a) if working in local government service;
- (b) if deemed by regulation 2(1A) (introductory: deemed local government service) to be working in local government service;
- (c) if—
  - (i) by virtue of regulation 2(1B) (introductory: potential eligibility for membership) the Scheme may potentially relate to that person;
  - (ii) a determination under section 25(5) of the Public Service Pensions Act 2013 has been made in respect of that person; and
  - (iii) that person’s employer has designated that person, or a class of employees to which that person belongs as being eligible for membership of the Scheme.”.

(2) After paragraph (1) insert—

“(1A) The functions of making a determination under section 25(5) of the Public Service Pensions Act 2014 (“a determination”), in relation to persons of the description in regulation 2(1B) and of publishing a list under section 25(9) of that Act of the persons to whom the Scheme relates by virtue of a determination, are delegated to administering authorities.

(1B) An administering authority must make a determination and accordingly enter into an admission agreement with the employer of a person, where an application for a determination is received in relation to a person who is or who is to become a protected transferee.

(1C) A protected transferee for the purposes of these Regulations is an active member or a person who is eligible to be an active member and who was employed by—

- (a) a Scheme employer specified in Parts 1 or 2 of Schedule 2 (Scheme employers) other than a person within paragraphs 6, 7 or 14 of Part 1 of that Schedule 2 (police and further or higher education employers); or
- (b) an admission body,

immediately before that person’s employment was compulsorily transferred to a different employer who does not offer membership of another public service pension scheme, for so long as that person remains wholly or mainly employed on the delivery of the service or function transferred.”.

(3) In paragraph (2) for “by virtue of paragraph 1(d)” substitute “by virtue of regulation 2(1A)(b)”.

5.—(1) After regulation 3A<sup>(11)</sup> (civil servants etc engaged in probation provision) insert the following regulation—

#### “Fair Deal in local government

3B.—(1) A protected transferee employer must enter into an admission agreement with the administering authority which was the appropriate administering authority for the protected transferees immediately before the transfer of their employment.

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<sup>(10)</sup> There are amendments to regulation 3 which are not relevant to these Regulations.

<sup>(11)</sup> Regulation 3A was inserted by S.I. 2014/1146.

(2) The admission agreement mentioned in paragraph (1) must take effect from the date of the transfer of employment of the protected transferees and must relate to all of the protected transferees.

(3) A person who would be a protected transferee but for the fact that the person's new employer is a person listed in Part 2 of Schedule 2 (scheme employers who can designate employees as eligible for membership) is deemed to be a protected transferee for the purposes of this regulation.

(4) A person listed in Part 2 of Schedule 2 which following a compulsory transfer of employment, becomes the employer of a protected transferee, must designate that person, or a class of employee that includes that person, as being eligible for membership of the Scheme from the date of the transfer of employment.”.

6. In regulation 10(5) (temporary reduction in contributions) at the end of sub-paragraph (a) for “and” substitute “or”.

7. In regulation 11(4) (contributions during absence from work) omit the words after sub-paragraph (c).

8. In regulation 17<sup>(12)</sup> (additional voluntary contributions)—

(a) omit paragraphs (7) to (10);

(b) in paragraph (12)(e) for “made an election under paragraph (7)(b)(ii)” substitute “made an election to purchase an annuity under regulation 17A (use of additional voluntary contribution benefits)”; and

(c) in paragraph (15) for “an annuity purchased under paragraph (7)(b)(ii) substitute “an annuity purchased under regulation 17A”.

9. After regulation 17 (additional voluntary contributions) insert—

#### **“Use of additional voluntary contribution benefits**

**17A.**—(1) This regulation sets out the ways in which the realisable value in an AVC arrangement under regulation 17 (additional voluntary contributions) (“AVC benefits”) may be taken.

(2) A member under the age of 75 may transfer the whole of that member's AVC benefits to one or more registered pension schemes or qualified recognised overseas pension schemes.

(3) A member aged 55 or over and under the age of 75 may take AVC benefits wholly or in part as one or more uncrystallised funds pension lump sums.

(4) A member who starts to draw benefits under these Regulations may at the time of drawing those benefits—

(a) take AVC benefits wholly or in part as a pension commencement lump sum;

(b) use some or all of the AVC benefits to purchase additional pension under the Scheme, the amount of which is to be determined by the administering authority in accordance with actuarial guidance issued by the Secretary of State;

(c) use some or all of the AVC benefits to purchase an annuity from one or more insurance companies (within the meaning of section 275(1) of the Finance Act 2004); or

(d) transfer some or all of the member's AVC benefits to one or more registered pension schemes or qualified recognised overseas pension schemes.

(5) A member who starts to draw benefits under these Regulations may defer taking AVC benefits until reaching the age of 75 and at any time before that date may—

(a) take up to 25% of the AVC benefits as a pension commencement lump sum;

(b) take AVC benefits wholly or in part as one or more uncrystallised funds pension lump sums;

(c) use some or all of the AVC benefits to purchase an annuity from one or more insurance companies (within the meaning of section 275(1) of the Finance Act 2004); or

(d) transfer some or all of the member's AVC benefits to one or more registered pension schemes or qualified recognised overseas pension schemes.

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<sup>(12)</sup> Regulation 17 was amended by S.I. 2015/755.

(6) If a member reaches the age of 75 without having taken all AVC benefits accrued, those benefits must be paid to the member in such lawful manner as the member requests or if no request is made, in such manner as the administering authority considers reasonable.

(7) In this regulation—

“pension commencement lump sum” has the same meaning as in paragraph 1 of Schedule 29 to the Finance Act 2004<sup>(13)</sup>; and

“uncrystallised funds pension lump sum” has the same meaning as in paragraph 4A of that Schedule.”.

**10.** In regulation 21<sup>(14)</sup> (assumed pensionable pay)—

(a) in paragraph (4), for “The annual rate of assumed pensionable pay” substitute “Subject to paragraphs (5A) and (5B), the annual rate of assumed pensionable pay”; and

(b) after paragraph (5) insert—

“(5A) Where the pensionable pay received by a member during the period specified in paragraph (4)(a)(i) or (4)(b)(i) was in the opinion of the Scheme employer, materially lower than that member normally received, for the purposes of this regulation the Scheme employer may substitute for the pensionable pay the member received, a higher level of pensionable pay to reflect the level of pensionable pay that the member would normally have received.

(5B) Where any pensionable pay that has been received by a member includes fees of the kind listed in regulation 20(2)(j)(i) to (iv) (returning officer fees), for the purposes of this regulation the annual rate of pensionable pay relating to those fees for the period specified in paragraph (4)(a)(i) or (4)(b)(i) is the annual average of that pay during the three years preceding the date the ill-health retirement or death occurred.”.

**11.** In regulation 22<sup>(15)</sup> (pension accounts) for paragraph (8) substitute—

“(8) Where a deferred member again becomes an active member (other than where a member becomes entitled to deferred benefits as a consequence of a notice served under regulation 5(2) (ending active membership)), the benefits in the deferred member’s pension account may be aggregated with those in the active member’s pension account if—

(a) within 12 months of the active member’s pension account being opened; or

(b) such longer time as the Scheme employer in relation to that active member’s pension account permits,

the member makes an election to the appropriate administering authority to aggregate those accounts.”.

**12.** In regulation 30(7)(b) (retirement benefits) for “that employment” substitute “that active member’s pension account”.

**13.** In regulation 33 (election for lump sum instead of pension) for paragraph (2) substitute—

“(2) But the total amount of a member’s commuted sum must not exceed 25% of the capital value of the member’s accrued rights under all local government pension provision in relation to that benefit crystallisation event including those under regulation 17A(3), (4)(a), (5)(a) or (5)(b) (use of additional contribution benefits).”.

**14.** In regulations 47(4)(a), 48(4)(a), 48(9)(a) and 48(10)(a) (survivor benefits: partners and children of pensioner members) after the words “earned pension” insert “(including any amount added under regulations 39(1)(a) or 39(2)(a) (enhancement of member’s Tier 1 and Tier 2 benefits))”.

**15.** In regulation 64 (special circumstances where revised actuarial valuations and certificates must be obtained)—

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<sup>(13)</sup> Schedule 29 has been amended by the Finance Acts 2005, 2006, 2007, 2011, 2013 and 2014 and S.I. 2006/572; Paragraph 4A (which inserts the definition of uncrystallised funds pension lump sum) was inserted by the Taxation of Pensions Act 2014 (c.30).

<sup>(14)</sup> Regulation 21 was amended by S.I. 2015/755.

<sup>(15)</sup> Regulation 22 was amended by S.I. 2015/755.

- (a) in paragraph (1)<sup>(16)</sup> at the end add “or entitled to receive an exit credit”;
- (b) in paragraph (2)(b) after “exit payment due from the exiting employer” insert “or exit credit payable to the exiting employer”;
- (c) after paragraph (2) insert—
 

“(2ZA) If an exit credit is payable to an exiting employer the appropriate administering authority must pay the amount payable to that employer within one month of the date when that employer ceases to be a Scheme employer, or such longer time as the administering authority and the exiting employer agree.”;
- (d) in paragraph (7) after the definition of “exiting employer” insert—
 

““exit credit” means the amount required to be paid to the exiting employer by the administering authority to meet the excess of assets in the fund relating to that employer over the liabilities specified in paragraph (2)(a).”.

**16.** In regulation 68(2) (employer’s further payments) for “regulation 30(6) (flexible retirement or (7) (early leavers on grounds of redundancy or business efficiency)” substitute “regulation 30(5) (early retirement), (6) (flexible retirement) or (7) (early leavers on grounds of redundancy or business efficiency)”.

**17.** In regulation 96 (rights to payments out of pension fund) after paragraph (1) insert—

“(1A) Where a transfer under paragraph (1) is a Club Transfer, the administering authority must comply with the provisions in the Club Memorandum in relation to that transfer.”.

**18.** In regulation 100 (inward transfers of pension rights), at the end insert—

“(8) Where a relevant transfer is a Club Transfer, the administering authority must comply with the provisions in the Club Memorandum in relation to that transfer.”.

**19.** In regulation 101 (effect of acceptance of transfer value) for paragraph (2) substitute—

“(2) The calculation of the appropriate amount of earned pension for the purposes of paragraph (1) is—

- (a) in the case of a transfer of employment between members of the Public Sector Transfer Club, in accordance with the Club Memorandum; and
- (b) in any other case in accordance with actuarial guidance issued by the Secretary of State.”.

**20.** In Schedule 1<sup>(17)</sup> (interpretation)—

- (a) after the definition of “children’s pension” insert—

““Club Memorandum” means the memorandum published by the Cabinet Office under the title “The Public Sector Transfer Club – memorandum by the Cabinet Office” issued in March 2015 but effective from 1st April 2015<sup>(18)</sup>;

“Club Transfer” means a transfer of employment between members of the Public sector Transfer Club;

- (b) for the definition of “local government service” substitute “means employment with a body specified in Part 1 of Schedule 2 (scheme employers)”;
- (c) in the definition of “partner” omit “in relation to an active member”;
- (d) after the definition of “permanently incapable” insert—
 

““protected transferee” has the meaning given in regulation 3(1C);

“protected transferee employer” means a body which is not a Scheme employer specified in Part 1 of Schedule 2 which becomes the employer of a protected transferee;

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<sup>(16)</sup> Regulation 64(1) was substituted by S.I. 2015/755.

<sup>(17)</sup> There are amendments to Schedule 1 which are not relevant to these Regulations.

<sup>(18)</sup> The Club Memorandum is published on the Cabinet Office website and can be accessed at the following address <http://www.civilservicepensionscheme.org.uk/media/95083/club-memorandum-march-2015.pdf>; a hard copy may be obtained from [xxx].

“Public Sector Transfer Club” means the arrangements approved by the Secretary of State and detailed in the Club Memorandum as providing reciprocal arrangements between the Scheme and other registered occupational pension schemes for making and receiving transfer value payments;”;

(e) for the definition of “revaluation adjustment”<sup>(19)</sup> substitute—

““revaluation adjustment” means—

(a) in the case of a balance transferred under a Club Transfer, the adjustment that would have applied to that balance if it had not been transferred; and

(b) in any other case the percentage specified as the change in prices in the relevant Treasury order made under section 9(2) of the Public Service Pensions Act 2013 which is to be applied to a sum in a pension account at the beginning of the next scheme year.”;

(f) in the definition of “statutory pay”<sup>(20)</sup> for “statutory maternity, paternity, shared parental or adoption pay” substitute “statutory sick, maternity, paternity, shared parental or adoption pay”.

**21.** In Schedule 2<sup>(21)</sup> (Scheme employers)—

(a) in paragraph 5 of Part 2, for “local authority listed in paragraphs 1 to 5 of Part 1 of this Schedule” substitute “body listed in paragraphs 1 to 5 of Part 1 of this Schedule”;

(b) In Part 3—

(i) after paragraph 1(e) insert—

“(f) a protected transferee employer.”;

(ii) omit paragraph 11; and

(iii) at the end add—

“**14.** An admission agreement may take effect on a date before it is executed.”.

**22.** In the table in Part 2 of Schedule 3<sup>(22)</sup> (pension funds), in the 7th row (relating to an employee of a Scheme employer listed in paragraphs 5 or 6 of Part 2 of Schedule 2), in column 2 omit the words “the local authority or authorities, or”.

### **Amendment of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014**

**23.** The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014<sup>(23)</sup> are amended in accordance with regulations 24 to 29.

**24.** In regulation 3 (membership before 1st April 2014)—

(a) after paragraph (5) insert—

“(5A) Notwithstanding paragraph (1)(a), regulations 30(2) and 30A(3)<sup>(24)</sup> of the Benefits Regulations (requirements for member aged between 55 and 60 to obtain consent for early payment of pension) cease to have effect.”

(b) at the end of paragraph (6) add “but notwithstanding paragraph (1)(a), the normal pension age in relation to deferred benefits accrued before 1st October 2006 is age 65”.

**25.** In regulation 9 (transfers)—

(a) in paragraph (1)—

(i) omit “before 1st April 2015”; and

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<sup>(19)</sup> The definition of “revaluation adjustment” was amended by S.I. 2015/755.

<sup>(20)</sup> The definition of “statutory pay” was amended by S.I. 2014/3255.

<sup>(21)</sup> Schedule 2 was amended by S.I. 2014/1146 and 2015/755.

<sup>(22)</sup> The table in part 2 of Schedule 3 was amended by S.I. 2014/1012, 2014/1146 and 2015/755.

<sup>(23)</sup> S.I. 2014/525.

<sup>(24)</sup> Regulation 30A was inserted by S.I. 2010/2090.



(ii) at the end add “since ceasing active membership in the scheme from which the transfer payment is received”;

(b) after paragraph (1) insert—

“(1A) Regulation 4 (statutory underpin) applies to a person of the description in paragraph (1) as if that person had been an active member of the 2008 Scheme in respect of the service in the different public service pension scheme.”.

**26.** In regulation 10 (interfund adjustments etc) for paragraph (6) substitute—

“(6A) A member with deferred benefits relating to the Earlier Schemes, who did not become a member of the 2014 Scheme by virtue of regulation 5(1) of these Regulations (membership of the 2014 Scheme), but who subsequently becomes an active member of the 2014 Scheme may—

(a) within 12 months of the active member’s pension account being opened, or

(b) such longer time as the Scheme employer permits,

elect to receive a transfer value payment in relation to the deferred benefits to be credited to the active member’s account to purchase earned pension in accordance with actuarial guidance issued by the Secretary of State.

(6B) Where the appropriate administering authority in relation to the active member’s pension account mentioned in paragraph (6A) (“the current authority”) is different to the administering authority which is the appropriate administering authority in relation to the deferred benefits (“the previous authority”), the previous authority must make the transfer value payment to the current authority.”.

**27.** In regulation 14(2) (contributions) after “refund of contributions” insert “(including additional contributions)”.

**28.** In regulation 15 (additional contributions)—

(a) omit paragraph (1)(b);

(b) for paragraph (1)(d) substitute—

“(d) regulation 14 (election in respect of additional pension) and 14A<sup>(25)</sup> (election to pay additional contributions: survivor benefits) of the Benefits Regulations and regulations 23, 24, 24A and 24B of the Administration Regulations<sup>(26)</sup> (payment, discontinuance and use of additional contributions) as they apply to a member who has elected before 1<sup>st</sup> April 2014 to pay additional contributions under those regulations.”.

(c) after paragraph (2) insert—

“(2A) Regulations 17 and 17A of the 2013 Regulations (additional voluntary contributions) apply to an AVC arrangement entered into before 1st April 2014 as they apply to an AVC arrangement entered into on or after that date save that—

(a) the normal pension age in an AVC arrangement entered into before 1st April 2014 is the normal retirement age under the 2008 Scheme; and

(b) regulation 66(8) of the 1997 Regulations (persons making elections in relation to AVCs prior to 13th November 2001) continues to have effect in relation to persons of the description in that regulation.”;

(d) omit paragraph (4);

(e) in paragraph (5) for “paragraph (4)” substitute “paragraph (2A)”.

**29.** In Schedule 2 (rule of 85) in paragraph 1(1)(c)<sup>(27)</sup> after “of the 2013 Regulations” insert “, or regulations 30(1) (choice of early pension) or 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations,”.

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<sup>(25)</sup> Regulation 14A was inserted by S.I. 2009/3150 and was amended by S.I. 2010/2090 and S.I. 2012/1989.

<sup>(26)</sup> Regulations 24A and 24B were inserted by S.I. 2009/3150.

<sup>(27)</sup> There are amendments to Schedule 2 which are not relevant to these Regulations.

## Transitional Provision

**30.**—(1) Any admission agreement which subsists at the date these Regulations come into force remains in force and is treated as if it had been the subject of a determination under section 25(5) of the Public Service Pensions Act 2013<sup>(28)</sup>.

(2) Each administering authority must, within 12 months of the date these Regulations come into force, include in its list published under section 25(9) of the Public Service Pensions Act 2013, details of the persons included in admission agreements to which it is a party, to whom the Scheme relates by virtue of the provision in paragraph (1).

We consent to the making of these Regulations

Date *Names*  
Two of the Lords Commissioners of Her Majesty's Treasury

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

*Name*  
Parliamentary Under Secretary of State  
Department for Communities and Local Government

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”) and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (“the Transitional Regulations”). Both sets of regulations came substantively into effect on 1st April 2014 and the amendments in these Regulations mostly take effect from that date. Section 3(3)(b) of the Public Service Pensions Act 2013 provides that scheme regulations may make retrospective provision.

Regulations 3 to 5 implement the Government’s “Fair Deal” policy for local government workers with the effect that members of the Local Government Pension Scheme who are compulsorily transferred to another employer retain the right to membership of the Scheme. Amendments are made to the 2013 Scheme to align the categories of person eligible for membership more closely with the regime contained in section 25 of the Public Service Pensions Act. Regulations 21(b) and (c) and 22(b)(i) make consequential amendments to the admission body regime.

Regulations 6 and 7 make minor clarifications to provisions in the 2013 Regulations relating to contributions.

Regulations 8 and 9 introduce flexibilities into the manner in which AVC benefits may be taken.

Regulation 10 permits employers to adopt a higher reference figure for the calculation of assumed pensionable pay where it would otherwise be unfairly low and identifies how irregularly- received income from fees for acting as a returning officer are to be included in calculation of assumed pensionable pay.

Regulation 11 changes the default position as regards aggregation of benefits when a former member of the Scheme resumes active membership.

Regulations 12, 14 and 16 make minor clarifications to provisions in the 2013 Regulations relating to the calculation of pensions.

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<sup>(28)</sup> 2013 c. 25.

Regulation 13 makes changes consequential to the introduction of a new regulation 17A into the 2013 Regulations and clarifies that all lump sum payments are taken into account when identifying the limit on taking benefits in the form of a lump sum.

Regulation 15 makes provision for employers to receive credit for any surplus assets in a fund upon ceasing to be a Scheme employer.

Regulations 17 to 19 and 20(a) make provision for the Scheme to comply with its membership obligations of the Public Sector Transfer Club.

Regulation 20(c) amends the definition of “partner” and regulation 20(f) provides for statutory sick pay to come within the definition of “statutory pay”.

Regulation 21(b) clarifies that an admission agreement may be backdated and removes the requirement for details of admission agreements to be sent to the Secretary of State.

Regulation 22 amends provisions in Schedule 3 (pension funds) to clarify which is the appropriate administering authority for employees of entities wholly owned by bodies listed in paragraphs 1 to 5 of Part 1 of Schedule 2.

Regulation 24 amends the Transitional Regulations to remove the requirement for persons aged between age 55 and 60 to obtain their employer’s consent to draw benefits early.

Regulation 25 ensures that members of other public service pension schemes who are entitled to transitional protection under those schemes and who are continuing to accrue final salary benefits can obtain final salary benefits within the Local Government Pension Scheme if they transfer those benefits in and can benefit from the statutory underpin.

Regulation 26 introduces a 12 month time limit (which is capable of extension by the employer) if a former member of the Earlier Schemes takes up active membership of the Scheme and wishes to aggregate the benefits.

Regulation 27 clarifies that the term “contributions” includes additional contributions when used in regulation 14 of the Transitional Regulations.

Regulation 28 has the effect that the administration of AVC benefits is carried out under the provisions in regulation 17 of the 2013 Regulations irrespective of when the AVC arrangement was established.

Regulation 29 makes an amendment to the provisions in Schedule 2 to the Transitional Regulations (“the rule of 85”) consequential to the amendment made by regulation 20, which removes the requirement for employer consent for members aged between 55 and 60 to draw benefits.

Regulation 30 is a transitional provision giving administering authorities 12 months to include details of existing admission agreements in their notices of details of persons to whom the Scheme relates by virtue of a determination under section 25(5) of the Public Service Pensions Act 2013.

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## TERMS OF REFERENCE FOR PENSION BOARD MEMBERS

### 1 *Introduction*

This document sets out the Terms of Reference of the local Pension Board of the Royal Borough of Windsor & Maidenhead (the 'Administering Authority') a scheme manager as defined under Section 4 of the Public Service Pensions Act 2013. The local Pension Board is established in accordance with Section 5 of that Act and under regulation 106 of the Local Government Pension Scheme Regulations 2013 (as amended).

The Pension Board is established by the Administering Authority and operates independently of the Pension Fund Panel and Pension Fund Advisory Panel. Relevant information about its creation and operation are contained in these Terms of Reference.

The Pension Board is not a committee constituted under Section 101 of the Local Government Act 1972 and therefore no general duties, responsibilities or powers assigned to such committees or to any sub-committees or officers under the constitution, standing orders or scheme of delegation of the Administering Authority apply to the Board unless expressly included in this document.

The Pension Board has been constituted separately to the Pension Fund Panel and the Pension Fund Advisory Panel and regulation 106(2) of the Local Government Pension Scheme Regulations 2013 (as amended) does not apply.

### 2 *Interpretation*

The following terms have the meanings as outlined below:

<b>'the Act'</b>	The Public Service Pensions Act 2013.
<b>'the Administering Authority'</b>	means the Royal Borough of Windsor & Maidenhead.
<b>'the Code'</b>	means the Pension Regulator's Code of Practice No. 14, governance and administration of public service pension schemes.
<b>'the Pension Fund'</b>	means the Royal County of Berkshire Pension Fund managed and administered by the Administering Authority.
<b>'the Pension Fund Panel'</b>	means the 'committee' who has delegated decision making powers for the Pension Fund in accordance with Section 101 of the Local Government Act 1972.
<b>'the Regulations'</b>	means the Local Government Pension Scheme Regulations 2013 (as amended), the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations

2014 (as amended) including any earlier regulations as defined in these regulations to the extent that they remain applicable and the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (as amended).

**‘Relevant legislation’**

means relevant overriding legislation as well as the Pension Regulator’s Codes of Practice as they apply to the Administering Authority and the Pension Board notwithstanding that the Codes of Practice are not legislation.

**‘the Scheme’**

means the Local Government Pension Scheme in England and Wales.

### **3 Statement of Purpose**

The purpose of the Pension Board is to assist the Administering Authority in its role as a scheme manager of the Scheme. Such assistance is to:

- a) Secure compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme and requirements imposed by the Pension Regulator in relation to the Scheme; and
- b) To ensure the effective and efficient governance and administration of the Scheme.

### **4 Duties of the Pension Board**

The Pension Board should at all times act in a reasonable manner in the conduct of its purpose. In support of this duty, Pension Board members should be subject to and abide by the code of conduct for Pension Board members.

### **5 Establishment**

The Pension Board is established in accordance with the Administering Authority’s Constitution as approved at a meeting of the Constitution Sub-Committee on 20 February 2015. Subsequent to its establishment the Pension Board may establish sub-committees.

### **6 Membership**

In accordance with section 5(4)(c) of the Public Service Pensions Act 2013 the Pension Board is required to include employer representatives and member representatives in equal numbers.

The Pension Board shall consist of: ~~an Independent Chairperson (who does not have voting rights) and 6 voting members, as follows elected for a period of 12 months by a majority vote of the Board members as described below:~~

3 Scheme Member Representatives; ~~and~~ and

3 Scheme Employer Representatives; and  
1 Adviser from the Administering Authority.

These representatives shall normally be selected annually from the nominees obtained by the Administering Authority, by a majority vote by the Board members. Where a majority decision is not obtained, the Chairperson shall have the casting vote.

Members in all categories will only be appointed to the Pensions Board if they meet the knowledge and skills requirements set out in the relevant regulations and guidance, or commit to doing so within three months of the appointment date.

The Member and Employer Representatives shall have voting rights, while re shall be other representatives, where as required from time to time, who are not entitled to vote.

For clarity, “Scheme Employer Representatives” means persons appointed to the Board for the purpose of representing Scheme employers for the Scheme and “Scheme Member Representatives” means persons appointed to the Board for the purpose of representing members of the Scheme.

Members of the Pension Board will commit to attending all scheduled meetings. Attendance records will be maintained (and published) in line with a schedule set out in Appendix 4 of this handbook.

A chairperson and vice chairperson will be elected annually by a majority vote by the Board members. Where a majority decision is not obtained, the outgoing Chairperson shall have the casting vote.

## **7 Scheme Member Representatives**

Scheme member representatives will be appointed from the overall scheme membership including active, deferred and retired members, following a transparent recruitment process open to all Scheme members and approved by the Administering Authority.

They should be able to demonstrate their capacity to attend and complete the necessary preparation for meetings and participate in training as required.

## **8 Scheme Employer Representatives**

Scheme employer representatives shall be office holders or senior employees of the employers with active members. It is expected that the majority of scheme employer representatives will come from the 6 Unitary Authorities in Berkshire as they represent the majority of the Scheme membership. No officer responsible for the discharge of any function of the Administering Authority under the Regulations may serve as a member of the Pension Board.

Scheme employer representatives should be able to demonstrate their capacity to attend and complete the necessary preparation for meetings and participate in training as required.

## **9 Substitutes**

Substitutes may be appointed, and must be named and must undertake the same training as full members. They will be sought as part of the recruitment process for scheme employer and member representation.

## **10 Ending Representation**

Persons appointed to the Pensions Board can be removed on grounds of non-attendance, breach of code, non-participation of training or where they become ineligible.

## **9 Appointment of Chair**

An Independent Chair shall be appointed for the Pension Board for a term of 12 months by a majority vote of the Board members, by the Administering Authority but shall count as an ‘other’ member and therefore does not have voting rights. In this respect the term independent means having no pre-existing employment, financial or other material interest in either the Administering Authority or any Scheme employer in the Pension Fund or not being a member (active, deferred or retired) of the Local Government Pension Scheme in Berkshire.

## **1140 Duties of the Chair**

The Chair to the Pension Board:

- a) Shall ensure the Pension Board delivers its purpose as set out in these Terms of Reference;
- b) Shall ensure that meetings are productive and effective and that opportunity is provided for the views of all members to be expressed and considered; and
- c) Shall seek to reach consensus and ensure that decisions are properly put to a vote when it cannot be reached. Instances of failure to reach a consensus position will be recorded and published.

## **124 Notification of Appointments**

When appointments to the Pension Board have been made the Administering Authority shall publish the names of the Pension Board members, the process followed in the appointment together with the way in which the appointments support the effective delivery of the purpose of the Pension Board.

## **132 Terms of Office**

The term of office for Pension Board members is initially 1 year.

Extensions to terms of office may be made ~~by the Administering Authority~~ with the agreement of the Pension Board.

Pension Board membership may be terminated prior to the end of the term of office due to:

- a) A Scheme member representative appointed on the basis of their membership of the Scheme no longer being a member of the LGPS in Berkshire;
- b) A Scheme member representative no longer being a Scheme member or a representative of the body on which their appointment relied;
- c) A Scheme employer representative no longer holding the office or employment or being a member of the body on which their appointment relied;
- d) A Pension Board member no longer being able to demonstrate to the Administering Authority their capacity to attend and prepare for meetings and to participate in required training;
- e) The representative being withdrawn by the nominating body and a replacement identified;
- f) A Pension Board member has a conflict of interest which cannot be managed in accordance with the Pension Board's conflict policy;
- g) A Pension Board member who is an officer of the Administering Authority becomes responsible for the discharge of any function of the Administering Authority under the Regulations.



### **143 Conflicts of Interest**

All members of the Pension Board must declare to the Administering Authority on appointment and at any such time as their circumstances change, any potential conflicts of interest arising as a result of their position on the Pension Board.

A conflict of interest is defined as a financial or other interest which is likely to prejudice a person's exercise of functions as a member of the Pension Board. It does not include a financial or other interest arising merely by virtue of that person being a member of the Scheme.

On appointment to the Pension Board and following any subsequent declaration of a potential conflict by a Pension Board member, the Administering Authority shall ensure that any potential conflict is effectively managed in line with both the internal procedures of the Pension Board's conflict policy and the requirements of the Code.

### **154 Knowledge and Understanding (including Training)**

Knowledge and understanding must be considered in light of the role of the Pension Board to assist the Administering Authority in line with the requirements outlined in paragraph 3 above. The Pension Board shall establish and maintain a Knowledge and Understanding Policy and Framework to address the knowledge and understanding requirements that apply to Pension Board members under the Act. That policy and framework shall set out the degree of knowledge and understanding required as well as how the knowledge and understanding is acquired, reviewed and updated.

Pension Board members shall attend and participate in training arranged in order to meet and maintain the requirements set out in the Pension Board's knowledge and understanding policy and framework.

Pension Board members shall participate in such personal training needs analysis or other processes that are put in place in order to ensure that they maintain the required level of knowledge and understanding to carry out their role on the Pension Board.

### **165 Meetings**

The Pension Board will meet [at least biannually and up to](#) 4 times each year.

Meetings shall normally take place between [normal office hours the hours of 10.00 and 14.00](#) at the offices of the Royal County of Berkshire Pension Fund.

As part of each meeting the Board will decide the need or otherwise for non-members to be invited to future meetings of the Board to give advice or guidance on matters arising from issues raised during the course of Pension Board meetings.

The Chair of the Pension Board with the consent of the Pension Board membership may call additional meetings. Urgent business of the Pension Board between meetings may, in exceptional circumstances, be conducted via communication between members of the Pension Board including telephone conferencing and emails.

### **176 Quorum**

A meeting is only quorate when at least 50% of the -Scheme member and Scheme employer representatives are present with at least one member being present from each group. For actions to be agreed the Chairperson [or Vice Chairperson](#) must be in attendance. A meeting that becomes inquorate may continue but any decisions will be non-binding.

## **187 Sub-groups**

There may be occasion to undertake sub-group meetings to complete a specific piece of work, or where data or preparation needs to be undertaken by a specific section of the Board. Any formed sub-groups will report to the main Pension Board who will agree and lead on the strategic direction of the activity being undertaken.

## **198 Board Administration**

An officer employed in the Democratic Services department of the Administering Authority shall provide all secretarial services to the Pension Board.

The Chairperson of the Pension Board will agree an agenda prior to each meeting which, along with supporting papers, will be issued at least 10 working days (where practicable) in advance of the meeting except in the case of matters of emergency.

Each Pension Board member will provide an email address for circulation of all Pension Board documents all of which be provided electronically wherever possible and only in paper format upon request.

Draft minutes of each meeting including all actions and agreements will be recorded and circulated to all Pension Board members within 10 working days (where practicable) after the meeting. These draft minutes will be subject to formal agreement by the Pension Board at their next meeting. Any decisions made by the Pension Board should be noted in the minutes and in addition where the Pension Board was unable to reach a decision such occasions should also be noted in the minutes.

The minutes may with the agreement of the Pension Board, be edited to exclude items on the grounds that they would either involve the likely disclosure of exempt information as specified in Part 1 of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act and/or they represent data covered by the Data Protection Act 1998.

The Pension Board Chairperson shall ensure that Pension Board members meet and maintain the knowledge and understanding as determined in the Pension Board's Knowledge and Understanding Policy and Framework and other guidance and legislation.

The Pension Board Chairperson shall arrange such advice as is required by the Pension Board subject to such conditions as are listed in these Terms of Reference for use of the budget set for the Pension Board.

The Pension Board Chairperson shall ensure an attendance record is maintained along with advising the Administering Authority on allowances and expenses to be paid under these terms.

The Pension Board Secretary shall liaise with the Pension Board Chairperson and the Administering Authority on the requirements of the Pension Board, including advance notice for officers to attend and arranging dates and times of Pension Board meetings.

## **2019 Public access to Pension Board meetings and information**

The Pension Board meetings are open to the general public (unless there is an exemption under relevant legislation which would preclude part (or all) of the meeting from being open to the general public).

The following will be entitled to attend Pension Board meetings in an observer capacity:

- a) Members of the Pension Fund Panel or Pension Fund Advisory Panel;

- b) Any person requested to attend by the Pension Board.

Any such attendees will be permitted to speak at the discretion of the Chairperson

In accordance with the Act the Administering Authority shall publish information about the Pension Board to include:

- a) The names of Pension Board members and their contact details;
- b) The representation of Scheme employers and Scheme members on the Pension Board;
- c) The role of the Pension Board;
- d) These Terms of Reference.

The Administering Authority shall also publish other information about the Pension Board including:

- a) Agendas and minutes;
- b) Training and attendance logs;
- c) An annual report on the work of the Pension Board to be included in the Pension Fund's own annual report.

All or some of this information may be published using the following means or other means as considered appropriate from time to time:

- a) On the Pension Fund's own website;
- b) As part of the Pension Fund's Annual Report and Accounts;
- c) As part of the Governance Compliance Statement.

Information may be excluded on the grounds that it would either involve the likely disclosure of exempt information as specified in Part 1 of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act and/or they represent data covered by the Data Protection Act 1998.

### **2120 Expenses and Allowances**

The Pension Fund may meet the expenses of the Pension Board with the administering authority's policy on expenses. ~~The Chair to the Pension Board will be remunerated on a time spent basis.~~

### **221 Budget**

The Pension Board is to be provided with adequate resources to fulfil its role. In doing so the budget for the Pension Board will be met from the Pension Fund. The Pension Board will seek approval from the Administering Authority for any items of expenditure over and above the normal expenses and allowances set out in paragraph 2120 above.

The Pension Board will access all shared information and have certain resources made available through the Berkshire Pension Fund website as maintained and facilitated by the scheme manager.

## **232 Reporting**

The Pension Board should in the first instance report its requests, recommendations or concerns to the Pension Fund Panel. In support of this any member of the Pension Board may attend a meeting of the Pension Fund Panel as an observer.

The Pension Board should report any concerns over a decision made by the Pension Fund Panel to the Pension Fund Panel subject to the agreement of at least 50% of voting Pension Board members providing that all voting members are present. If not all voting members are present then the agreement should be of all voting members who are present where the meeting remains quorate.

On receipt of a report from the Pension Board setting out concerns over a decision they have made, the Pension Fund Panel should, within a reasonable period, consider and respond to the Pension Board.

Where the Pension Board is not satisfied with the response received it may request that a notice of its concern be placed on the Pension Fund's website and in the Pension Fund's annual report.

Where the Pension Board is satisfied that there has been a breach of regulation which has been reported to the Pension Fund Panel and has not been rectified within a reasonable period of time it is under an obligation to escalate the breach.

The appropriate internal route for escalation is to the Monitoring Officer [of the Administering Authority](#).

The Pension Board may report concerns to the LGPS Scheme Advisory Board for consideration subsequent to, but not instead of, using the appropriate internal route for escalation.

## **243 Core functions**

The first function of the Pension Board is to assist the Administering Authority in securing compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme and requirements imposed by the Pensions Regulator in relation to the Scheme. Within this extent of this core function the Pension Board may determine the areas that it wishes to consider including, but not restricted to:

- a) Review regular compliance monitoring reports which shall include reports to and decisions made under the Regulations by the Pension Fund Panel;
- b) Review management, administrative and governance processes and procedures in order to ensure they remain compliant with the Regulations, relevant legislation and in particular the Code;
- c) Review the compliance of Scheme employers with their duties under the Regulations and relevant legislation;
- d) Assist with the development of and continually review such documentation as is required by the Regulations including the Governance Compliance Statement, Funding Strategy Statement and Statement of Investment Principles;
- e) Assist with the development of and continually review Scheme member and Scheme employer communications as required by the Regulations and relevant legislation;

- f) Monitor complaints and performance on the administration and governance of the Scheme;
- g) Assist with the application of the Internal Disputes Resolution Procedures;
- h) Review the complete and proper exercise of Pensions Ombudsman cases;
- i) Review the implementation of revised policies and procedures following changes to the Scheme;
- j) Review the arrangements for the training of Pension Board members and those elected members and officers with delegated responsibilities for management and administration of the Scheme;
- k) Review the complete and proper exercise of Scheme employer and Administering Authority discretions;
- l) Review the outcome of internal and external audit reports;
- m) Review draft accounts and Pension Fund annual report;
- n) Review the compliance of particular cases, projects or processes on request of the Pension Fund Panel;
- o) Any other area within the statement of purpose (i.e. assisting the Administering Authority) the Pension Board deems appropriate.

The second core function of the Pension Board is to ensure the effective and efficient governance and administration of the Scheme. Within this extent of this core function the Pension Board may determine the areas it wishes to consider including but not restricted to:

- a) Assist with the development of improved customer services;
- b) Monitor the performance of administration, governance and investments against key performance targets and indicators;
- c) Review the effectiveness of processes for the appointment of advisors and suppliers to the Administering Authority;
- d) Monitor investment costs including custodian and transaction costs;
- e) Monitor internal and external audit reports;
- f) Review the risk register as it relates to the Scheme manager function of the Administering Authority;
- g) Assist with the development of improved management, administration and governance structures and policies;
- h) Review the outcome of actuarial reporting and valuations;

- i) Assist in the development and monitoring of process improvements on request from the Pension Fund Panel;
- j) Assist in the development of asset voting and engagement processes and compliance with the UK Stewardship Code;
- k) Any other area within the statement of purpose (i.e. ensuring effective and efficient governance of the Scheme) the Pension Board deems appropriate.

In support of its core functions the Pension Board may make a request for information to the Pension Fund Panel with regard to any aspect of the Administering Authority’s function. Any such request should be reasonably complied with in both scope and timing.

In support of its core functions the Pension Board may make recommendations to the Pension Fund Panel which should be considered and a response made to the Pension Board on the outcome within a reasonable period of time.

**254 Review of Terms of Reference**

These Terms of Reference shall be reviewed on each material change to those parts of the Regulations and statutory guidance covering local Pension Boards and may be amended, varied or modified in writing after consultation and agreement by Board members. They will be reviewed annually to ensure continuing regulatory compliance and ongoing development of the Board members.

..... Date:  
 Signed on behalf of the Administering Authority  
 (Cllr. John Lenton – Chairman to the Berkshire Pension Fund Panel and Advisory Panel)

..... Date:  
 Signed on behalf of the Pension Board  
 ([Howard Pearce](#) – [Independent Billy Webster](#) - Chairman of the Pension Board)

## Pernsions Board Work Plan 2016-17

Headline	Area of Work	Action	Date
Good Governance	Communication	Publishing information about the board	Aug
		Communicating information to members	Aug
		Review communications policy	Aug
	Risk Management	Ensure that risks are managed and there are adequate internal controls	Feb
		Managing Risks	Feb
	Conflicts of Interest	Managing conflicts of interest	Nov
		Review the conflict of interests policy	Nov
	Dispute Resolution	Resolving disputes and reporting certain breaches of the law	Nov
		Reporting Breaches of the Law	Nov
	Membership	Review terms of reference annually and retain compliance with regulations	May
		Review annually to ensure appropriate numbers, experience and representation	May
		Ensure members undertake personal leaning needs analysis periodically to develop an individualised training plan	May
		Monitor knowledge and understanding (and training) to ensure it is appropriate to enable members to exercise their functions	May
	Investments	Cash management policy	Nov
		Funding strategy statement	Nov
		Investment principles	Nov
	General	Business Plan	Feb
		Service Level Agreement	Feb
		Pension Administration Strategy	Feb
	Fund Administration	Data Quality	Keep records and ensure the quality of member data
Employer Covenants and Contributions		Ensure the correct contributions are paid to the scheme	Aug
		Review Employer Covenants to ensure they are being met	Aug
Fund Performance		Review the Annual Report and Accounts to monitor performance and determine value for money	May
		Review investment performance against intestment strategy	May
Other Business	Wealth fund and Pooling	Monitor progress and benefits for BPF	Ongoing
	Valuation	Monitor the plan for valuations of fund and likely outcomes for BPF	Ongoing

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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