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Dear Philip,

Draft Local Government Pension Scheme (Benefits, Membership and Contributions) (Amendment) Regulations 2011

I am pleased to respond to the Department's consultation letter of 24 December 2010.

I have no comment to make on the draft regulations other than in respect of regulation 4. That regulation proposes to substitute the word "membership" for the word "pay" in regulation 23 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007. However, that amendment is not required. The word "pay" should be retained in that regulation as the death grant is calculated by reference to the member's pay, not membership.

I note that a number of other potential amendments to the regulations that the LGE suggested in LGPC Bulletin 74 have not been included in the draft amendment regulations. However, I understand that it is the Department's intention to consult on some or all of these in a subsequent draft statutory instrument. These include:

- regulation 12(4) of the LGPS (Administration) Regulations 2008 says "A person may not become a member after the day before his 75th birthday". To be consistent with the rest of the regulations it should say "A person may not become a member *on or* after the day before his 75th birthday"
- regulation 14A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 includes a deadline of 31 March 2011 for elections to pay additional contributions to uprate pre 6 April 1988 membership for the purposes of calculating a nominated co-habiting partner's survivor pension. However, this would debar any member with pre 6 April 1988 membership who enters into a co-habiting partnership after 31 March 2011 from being able to make an election to uprate their pre 6 April 1988 membership. It might also prevent those who have entered into a co-habiting partnership after 1 April 2009 from making such an election, as they will not be in a position to nominate a co-habiting partner for 2 years from the date they began co-habiting (and the date the 2 year period ends would fall after 31 March 2011). The LGPC has suggested, therefore, that it would be helpful if the following words were

- added to the end of regulation 14A(2) “or within 12 months of the date of a nomination being made under regulation 25, whichever is the later”
- regulations 18(8), 19(4), 20(5)(b), 21(2)(b) and 21(5)(b) of the LGPS (Administration) Regulations 2008 should be amended to refer to ASBCs
 - the reference to “regulation 20(7)” in regulation 56(1A) of the LGPS (Administration) Regulations 2008 should be amended to read “regulations 20(7) or 20(11)” in order to permit an IRMP who was previously involved in an ill health case to advise on the same case where a ill-health certificate is required as part of a decision to move a member from ill health tier 3 to tier 2
 - the wording of regulation 20(11A) needs to be amended to simply debar any ill health enhancement if a member is retired under tier 1 or tier 2 and has previously received a tier 1 or tier 2 ill health pension or has received an enhanced ill health pension under the LGPS Regulations 1997 or earlier regulations
 - the equivalents of amended regulation 24(2) and regulation 24(2A) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 should be inserted into regulation 28 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (children’s pensions following death in service of an active member)
 - should the equivalent of the provisos included in regulation 24(2)(b) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 be added to regulations 33 and 36 of the LGPS (Benefits, Membership and Contributions) Regulations 2007?
 - for consistency with the requirement for employers to have a published policy on the early payment of benefits before age 60 under regulation 30 of the LGPS (Benefits, Membership and Contributions) Regulations 2007, regulation 66 of the LGPS (Administration) Regulations 2008 ought to be amended to provide that an employer should have a written policy on the exercise of its discretion under regulation 30A of the LGPS (Benefits, Membership and Contributions) Regulations 2007

Yours sincerely



Terry Edwards
Head of Pensions