

To : addressees below

24 December 2010

Dear Colleague,

**DRAFT LOCAL GOVERNMENT PENSION SCHEME (BENEFITS, MEMBERSHIP AND CONTRIBUTIONS) (AMENDMENT) REGULATIONS 2011**

1. I attach the above draft SI making further amendments to the Local Government Pension Scheme (LGPS) Regulations.
2. This SI makes a small number of minor technical or clarificatory amendments to ill-health related provisions in the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (“the Benefits Regulations”). These have been necessitated by an error in the recent Local Government Pension Scheme (Miscellaneous) Regulations 2010, (“the Miscellaneous Regulations”), which has been highlighted by the Joint Committee on Statutory Instruments (JCSI).
3. One of the most important aims of the Miscellaneous Regulations was to meet the concerns of independent medical practitioners who were of the view that they were unable, as then required by the Regulations, to assess employees as regards their *likelihood of obtaining gainful employment* in the future – rather, they could only assess their *capability of undertaking* gainful employment.
4. One of the paragraphs requiring amendment in order to achieve this modification, Benefits Regulation 20(4), deals with “third-tier ill-health”. It was intended that only the start of this paragraph be suitably amended. Unfortunately, however, due to a drafting error, the new wording on capability replaced not just the start of 20(4) but the whole paragraph. The effect of this error is to make 20(4) inoperable.
5. Four other minor clarifying amendments on ill-health would also seem to be sensible, given that the opportunity has arisen, and are therefore also included in the consultation draft:
  - a) In Benefits Regulation 20(11)(aa), reference is now made to paragraph 8 as a whole rather than paragraph 8(b). The effect of this is to not restrict the opportunity of a review for a possible uplift to Tier Two to only those individuals whose benefits have been stopped after three years, but to also include those in gainful employment and those assessed as capable of undertaking gainful employment at the review. The rationale behind the introduction of the possibility of an uplift was that it was accepted that, in some instances, a member’s condition could deteriorate.

b) The term “qualified in occupational health medicine” is inserted in Benefits Regulation 20 (14) together with its meaning in order to correct the fault in the original amendment.

c) In both Benefits Regulation 23(4A) and 24(2A), to aid clarity the word “pay” is being replaced by the word “membership”, thus avoiding any possible confusion over whether the Regulations are referring to the rate of pay for the post or the individual’s take-home pay.

d) The definition of “qualified in occupational health medicine” is being removed from 31(3) purely because it is unnecessary, as the definition given at 20(14) is sufficient.

6. Any comments should be sent by 28 January 2011 to Philip Perry, Workforce, Pay & Pensions division, Department for Communities & Local Government, Zone 5/G6, Eland House, Bressenden Place, London SW1E 5DU. Electronic responses can be sent to [philip.perry@communities.gsi.gov.uk](mailto:philip.perry@communities.gsi.gov.uk)

Yours sincerely

**Lynda Jones**

**The consultation is addressed to:**

The Chief Executive of:

County Councils (England)  
District Councils (England)  
Metropolitan Borough Councils (England)  
Unitary Councils (England)  
County and County Borough Councils in Wales  
London Borough Councils  
South Yorkshire Pension Authority  
Tameside Metropolitan Borough Council  
Wirral Metropolitan Borough Council  
Bradford Metropolitan City Council  
South Tyneside Metropolitan Borough Council  
Wolverhampton Metropolitan Borough Council  
London Pension Fund Authority  
Environment Agency

Town Clerk, City of London Corporation  
Clerk, South Yorkshire PTA  
Clerk, West Midlands PTA

Fire and Rescue Authorities in England and Wales  
Police Authorities in England and Wales  
Audit Commission

National Probation Service for England and Wales

Local Government Association (LGA)

Employers' Organisation  
LGPC

ALACE  
PPMA  
SOLACE  
CIPFA  
ALAMA

Association of Colleges  
Association of Consulting Actuaries  
Association of District Treasurers  
Society of County Treasurers  
Society of Welsh Treasurers  
Society of Metropolitan Treasurers  
Society of London Treasurers  
Association of Educational Psychologists

NALC  
Society of Local Council Clerks

Trades Union Congress	UCATT
UNISON	GMB
NAEIA	NAPO
AMICUS	TGWU

Equal Opportunities Commission