



Department for  
Communities and  
Local Government

# Local Government Pension Scheme 2014

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

Government Response to the Consultation

March 2014

Department for Communities and Local Government

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March 2014

ISBN: 978-1-4098-4177-7

# Introduction

At the June 2010 Budget, the Government invited Lord Hutton of Furness to chair the Independent Public Service Pensions Commission. The purpose of the Commission was to carry out a fundamental structural review of public service pension provision, and to make recommendations on pension arrangements that are “sustainable and affordable in the long term, fair to both the public sector workforce and the taxpayer, and consistent with the fiscal challenges ahead, while protecting accrued rights”.

In November 2011, the Government set out their preferred design for the new NHS, civil service, teachers and local government pension schemes. For the new Local Government Pension Scheme, the Government invited the Local Government Association and main local government trade unions (UNISON, GMB and Unite) to come forward with a specific set of proposals based on the Government’s preferred design within an agreed cost ceiling of 19.5 per cent of future service costs.

In this context, the Local Government Pension Scheme 2014 Project Group was established by the Local Government Association, UNISON, GMB and Unite, with the aim of establishing the main principles and fundamental elements on which the new Scheme would be based. The Government applauds what has proved to be an outstanding collaboration between the leaders of these organisations and their technical experts, to produce the final Local Government Pension Scheme Regulations 2013. The main Regulations were made on 12 September 2013, laid before Parliament on 19 September and come into effect on 1 April 2014.

Alongside the main 2013 Regulations, it was also necessary to introduce transitional provisions preserving the benefits already accrued by members under the existing Schemes and giving effect to the various protections afforded by the Public Service Pensions Act 2013, in particular, to ensure that members within 10 years of their normal retirement age on 31st March 2012 do not suffer any detriment.

The consultation exercise ran between 27 March 2013 and 24 May. During the consultation exercise, views from all scheme interested parties were invited on the draft regulations. Details of the consultation and related documents can be found at <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/local-government-pensions>.

The consultation papers were sent to the Welsh Assembly, the chief executives of all principal local authorities in England and Wales; the Local Government Association; all local government trade unions; the five main treasurer bodies in England and Wales; the Trades Unions Congress; the Government Actuary’s Department and eleven separate representative bodies, including the Association of Consulting Actuaries, the Chartered Institute of Public Finance and Accountancy and the Association of Local Authority Medical Advisers.

Since January 2012, the Department has chaired regular meetings with members of a Project Board representing local authority employers and local government trade unions. A smaller, technical group chaired by the Department was established to work up draft

regulations. The same group assisted the Department in analysing and reaching conclusions on consultation responses. A further ongoing process of consultation via this group and other interested parties dealing with issues flowing from the Public Service Pensions Act and other technical points ran from July 2013, with a revised version more consistent with the final version made available on 18 September 2013. Work with this group assisted in the Government's response to comments made during the various consultation exercises and helped resolve a number of issues surrounding new policy principles and extent of special protections.

By the end of 2013, a decision on the outcome of the statutory consultation on the proposal to exclude councillors and other locally elected office holders had not been made. With introduction of the new Scheme only three months away, a "near-final" version of the draft regulations was circulated to key interested parties, including the 89 pension fund managers in England and Wales, for information only. A second, more complete version of the regulations was circulated to software providers and the 89 pension fund authorities on 31 January 2014.

Circulation of the draft regulations at these stages ensured that Scheme actuaries; software providers; payroll providers and pension administrators were fully conversant with drafting changes introduced in response to the earlier consultation exercise.

The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 were made on 5 March 2014 and laid before Parliament on 10 March. Further Regulations on cost management and scheme governance are to follow.

The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 deal with the replacement of the 2008 scheme established by the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (S.I. 2007 No 1166) and the Local Government Pension Scheme (Administration) Regulations 2008 (S.I. 2008 No 239).

The comments received and the Government's response to the main consultation are summarised beneath the table below.

# Summary of main consultation responses

Type of Respondent	Total Number	% of Total
Local Government bodies	26	74
Companies (eg actuarial, legal or software)	4	11
Professional associations	2	6
Trades unions	1	3
Private employers	2	6
<b>TOTAL</b>	<b>35</b>	<b>100%</b>

## Regulations 1 & 2

### Comments

One response noted that in 1(5), reference should be made to the “Pension Schemes Act 1993”, not “Pensions Scheme Act 1993”.

### Government response

The reference has now been altered accordingly and is in 1(6).

## Regulation 3

### Comments

Four respondents suggested that the reference to “retirement pension” in 3(2) should include any lump sum.

### Government response

The reference has now been suitably altered.

### Comments

Reference to the 1997 Scheme should be included as well as to the 2008 Scheme.

### Government response

There is now a more general reference to “earlier Schemes”.

### Comments

Two respondents suggested that all payments after 1 April 2014 should be treated under the 2014 Scheme.

### Government response

This would seem to be inequitable – the set of Regulations to be used depends on when the work in question is carried out.

**Comments**

Further detail is required on the maintenance of the final salary link.

**Government response**

Paragraphs (6) and (7) now set down how aggregation can result in the retention of the link.

**Comments**

The status of extant pre-1/4/2014 actuarial guidance needs to be stipulated.

**Government response**

It is now made clear in new paragraph (12) that such guidance should be regarded as issuing from the Secretary of State, giving it the same status as actuarial guidance for the 2014 Scheme.

**Comments**

A number of administering authorities are concerned that they appear to be losing their powers of abatement.

**Government response**

It is now set down in new paragraph (13) that the powers of abatement, as located in Regulations 70 and 71 of the Administration Regulations, continue to be in force as regards pensions deriving from the Earlier Schemes.

## Regulation 4

**Comments**

The underpin should only protect individuals who are active members on both 31 March 2012 and 1 April 2012.

**Government response**

A modification to this effect has been made to the instrument.

**Comments**

It was suggested that in (1) the sub-paragraphs should be linked by the word "and".

**Government response**

This suggestion has been incorporated into the final instrument.

**Comments**

Three respondents argued that breaks in service should only be disqualifying if they are after 1/4/14.

**Government response**

It has been clarified that only a continuous break after 31/3/12 of more than five years is disqualifying.

**Comments**

It was suggested that “normal retirement age” will always be earliest.

**Government response**

The instrument has been altered accordingly.

**Comments**

Two respondents were concerned that in draft sub-paragraph (5)(a) the effect of non-disqualifying breaks was not detailed.

**Government response**

It is now made clear – in 4(5)(a)(i) – that periods when the member is not an active member are excluded.

**Comments**

The effect of absences from work on underpin calculations had not been taken into account.

**Government response**

Paragraphs (5) and (6) have been expanded to take account of absences.

**Comments**

Four respondents suggested that it will be difficult for authorities to ascertain if individuals have been in another public service scheme.

**Government response**

This is a procedural matter which it would not be suitable to detail in the Regulations. Authorities could require members to give written proof of membership if they consider it to be appropriate.

**Comments**

Nine respondents suggested that the underpin should be framed so that it assists individuals who retire either before or after age 65.

**Government response**

This will, in effect, be the position, although the underpin is not necessary for those who retire over age 65.

**Comments**

It was suggested that early retirement for Environment Agency employees is not detailed.

**Government response**

The current normal retirement age for Environment Agency (and any other) employees with their “own” early retirement age should be protected for pre-1/4/14 membership. This is achieved by the reference in 4(2) to “the normal retirement age applicable to a member”. In addition, new Regulation 24 now makes specific provision for such “special cases”.

## Regulation 5

### **Comments**

The word “aggregate” should be avoided in describing the continuation of active membership on 1 April 2014.

### **Government response**

It is agreed that pension “aggregation” has a generally accepted meaning and has therefore been omitted from Regulation 5.

### **Comments**

Two respondents requested that it should be clarified that 5(2) applies to each individual employment.

### **Government response**

This clarification has been placed in paragraph 5(1) of the final instrument.

### **Comments**

It was suggested that it should be clarified that 5(2) includes the potential for previous opt-outs and staff on contracts of less than three months who have been issued with a postponement notice to join the Scheme on 1/4/14.

### **Government response**

It is unnecessary for this to be stipulated – regulation 3 of the main Regulations applies.

### **Comments**

The final paragraph should be modified in order to cover employers which are admission bodies.

### **Government response**

This modification has now been made to the instrument.

## Regulation 6

### **Comments**

It was suggested that in 6(1) “after 1<sup>st</sup> April 2014” should be amended to “after 31<sup>st</sup> March 2014”.

### **Government response**

The wording has been suitably changed.

## Regulation 7

### **Comments**

Three respondents argued that the qualifying requirements should be amended, so that if a member had qualified for deferred benefit in the 2008 Scheme this should apply to their entire benefits. However, otherwise the matter should be determined in accordance with 2014 Scheme provisions (applied to all service).

### **Government response**

It was decided that such members should have alternative options, as indicated in the final instrument.

### **Comments**

It was suggested that deferred members with less than two years membership of the earlier Schemes should have the option of a refund.

### **Government response**

An option along these lines has been included in the final Regulations.

## Regulation 8

### **Comments**

Fourteen respondents considered that the 2014 definition of pensionable pay (which includes non-contractual overtime) should not apply to pre-2014 benefits. This would greatly increase costs.

### **Government response**

It should indeed not apply. The wording used in the Regulations does not suggest this to be the case.

### **Comments**

It was pointed out that, in (3), "paragraph 6" should read "paragraph 5".

### **Government response**

As a result of re-drafting, it is now appropriate to refer to paragraph (4).

## Regulation 9

### **Comments**

Two respondents suggested that the system of transfers should be based on the date that the transfer is offered to the member, rather than the date of the member's decision.

### **Government response**

The date that the member makes an election for the transfer payment to proceed is considered to be the most appropriate date to use.

**Comments**

It was suggested that it is difficult for authorities to ascertain the evidence regarding membership of other schemes.

**Government response**

Authorities can if they wish oblige the individuals concerned to supply written proof.

**Comments**

Two respondents indicated that individuals transferred in from other public service schemes during 1/4/14 – 31/3/15 should be allowed to keep their final-salary pension in respect of this period.

**Government response**

The final instrument permits this to occur.

## Regulation 10

**Comments**

It is necessary to cater for deferred refund members.

**Government response**

A suitable reference has been added to (1)(b).

**Comments**

The phrase “who elects to aggregate” should be omitted from paragraph (1)(d), because “aggregation” of 2014 Scheme with Earlier Scheme benefits is automatic.

**Government response**

This suggestion is reflected in the final version of the instrument.

**Comments**

Four respondents argued that introducing the concept of a five – year break would create further complexity.

**Government response**

It has not proved possible to avoid such “complexity”. If any break was regarded as disqualifying, however short, this would be regarded as inequitable treatment of the members concerned.

**Comments**

Concern was expressed that it is unclear if there can be more than one break if total is less than five years. It was suggested that the break should be “continuous”.

**Government response**

As they would not have had a continuous break of more than five years, such a member would not be prevented from enjoying the entitlement set out at paragraph (2).

## Regulation 11

### Comments

It was suggested that there needs to be an awareness that retirement at 55+ could result in strain costs unless there is appropriate actuarial action or employer discretion.

### Government response

The new Scheme will be closely monitored in case rising costs demand actuarial remedy.

### Comments

An additional paragraph should be added to deal with members who have certain “additional benefits” and who are taking flexible retirement.

### Government response

The necessary additional paragraph has been added to the final instrument.

### Comments

There should be a reference to paragraph 30(7) of the 2013 Regulations.

### Government response

There is a reference to Regulation 30 as a whole.

## Regulation 12

### Comments

One respondent suggested that the use of the certificate under paragraph 5\* should be time-limited to six months to ensure there was no doubt over the interpretation of the ill health criteria going forward, as it was noted that the wording between the two Schemes differed slightly.

### Government response

Although the wording differs between the two Schemes, the intention remains the same. Therefore, there is no need to time-limit the certificate. (\* Paragraph (5) is now paragraph (6) on finalised instrument).

### Comments

There was one query as to whether the age 45 protection needed to be carried over into the new Scheme given the better enhancement/accrual rate. The respondent further stated that, whilst they noted the deeming paragraph in respect of a tier 3 retiree, they believed that where the member applied for an early retirement on ill health grounds in the new Scheme, (particularly where their tier 3 benefit had been previously suspended) the incapability or permanency test would be to state pension age and not to age 65 which seemed wrong and clarification was sought. Additionally, still in respect of a tier 3, the respondent queried how a tier 2 calculation would be performed in the new Scheme – where an uplift had been awarded and there is no Career Average Revalued Earnings pension - ie is it right that the 25% enhancement is to state pension age rather than 65?

### **Government response**

The age 45 protection needs to be carried over into the new Scheme in order to comply with the Written Ministerial Statement published last November. As regards the second point, the original deeming tier 3 paragraph has been modified so that where a member had received tier 3 benefits under the 2008 Benefits Regulations, any adjustment to those benefits would continue to be done under those regulations.

### **Comments**

Two respondents sought clarity regarding enhancements for members, who had an ill health retirement under the 2008 Scheme, who subsequently became active members and then took another ill health retirement. It was noted that the draft regulations only covered those members who were awarded the original ill health retirement under the 2014 Scheme. It was noted that the capping arrangement should apply to members in both Schemes.

### **Government response**

Members with some sort of Ill Health Retirement under the 2008 Scheme are already dealt with in Regulation 12(2) and (3) ie broadly providing that what the Department regards as tier 1 or tier 2 benefits under the 2008 Regulations is treated as tier 1 or tier 2 benefits respectively under the 2013 Regulations. Any enhancement already received would be deducted from any future enhancement.

### **Comments**

One respondent noted that this regulation provided an “enhanced” protection as the membership granted under this protection would be on a 1/49<sup>th</sup> accrual, whereas the membership under the 1997 regulations was at the equivalent of a 1/64<sup>th</sup> accrual and when protection was given under the 2008 Scheme was at a 1/60<sup>th</sup> accrual.

### **Government response**

The Department believes the protections for those aged 45 or over at 31 March 2008 should be retained as provided for under the 2008 Scheme to avoid any situation whereby the member might have been disadvantaged had a comparison with benefits under the 1997 Regulations not been made. This can be justified on the basis of the small and reducing numbers involved.

### **Comments**

A suggestion was made that (1)(b)(ii) is reworded, as the original version was incorrect, as it would appear to have provided that the final salary link also applies to the post 31 March 2014 benefits, even if the member was not within 10 years of Normal Retirement Age at 1 April 2012.

### **Government response**

The Department noted the comment made, but has changed the wording in the paragraph since the consultation to reflect the accrual rate to be used in the calculation instead - as the original wording was thought to be already covered in sub paragraph (b).

## **Comments**

There was a query as to whether there was a need to include a deeming tier 3 paragraph.

## **Government response**

The Department believes that it is necessary to provide for this and has modified the original tier 3 deeming paragraph to stipulate that where tier 3 benefits were awarded under the 2008 Scheme regulations, any adjustments to those benefits, eg such as an uplift to tier 2, would need to be dealt with under the Benefits Regulations. Additionally, the Department has also taken the opportunity to include a new provision within Regulation 12 to confirm that where a member who has received tier 3 benefits under the 2008 regulations the member cannot receive tier 3 benefits again under the 2013 Regulations. The policy aim is that only one period of tier 3 can be awarded.

## **Comments**

There was a query on paragraph (5) as to whether specific regulation numbers should be incorporated instead of saying "under the 2008 Scheme".

## **Government response**

The Department disagreed. It believes the generic approach works well. Paragraph (5) of the consultation draft now features as paragraph (6) on the finalised instrument.

## **Comments**

There was a query on paragraph (6) as to whether it needed extending to include ill health pensions awarded under the 1974 and 1986 regulations.

## **Government response**

The Department agreed with the suggestion and has modified the wording to refer instead to "Earlier Schemes" (which in this particular case excludes the 2008 Scheme). Paragraph (6) has now become paragraph (7) on the finalised instrument.

# Regulation 13

## **Comments**

It was suggested that the Regulation on lump sum commutation should be expanded to include a reference to possible actuarial reduction.

## **Government response**

The necessary additional wording has been added.

# Regulation 14

## **Comments**

In order to ensure that payroll systems can deal with deductions appropriately, payments made after 31 March 2014 should be made at the contribution rate which is current at the date of payment.

**Government response**

It would be inequitable to comply with the above suggestion - payment should be made at the rate applicable to the time at which the work was carried out.

**Comments**

An additional paragraph should be inserted to ensure that members are not entitled to a refund if they had transferred membership from another scheme that did not permit refunds.

**Government response**

Such refunds would not in any case be permitted. An additional paragraph is not therefore necessary.

## Regulation 15

**Comments**

Concern was expressed that members should be allowed to complete existing arrangements for the various types of additional contribution. It was felt that the replacement of such arrangements with the purchase of other types of benefit could never be wholly satisfactory, because members may not be awarded precisely what they had intended to secure when the contract was entered into. Two respondents argued that added years contracts should continue in full, with arrangements for remaining costs to be paid.

**Government response**

Before it was made the instrument was altered to permit the completion of existing contracts. Regulation 15(1) refers.

**Comments**

Three respondents argued against the use of historic actuarial factors.

**Government response**

It has been concluded that, even though a new Scheme is being introduced, for existing contracts such use of historic factors is equitable.

## Regulation 17

### **Comments**

The Regulation should cater for deferred pensioner members.

### **Government response**

A suitable addition has been made at paragraph (7).

### **Comments**

It should be clarified that the new definition of “co-habiting partner” should be used for the purposes of eligibility under the 2008 Scheme.

### **Government response**

A suitable modification has been made to the Regulation.

### **Comments**

Eligibility for survivor benefits should be extended and defined, particularly in response to The Marriage (Same Sex Couples) Act making such marriages lawful in England and Wales.

### **Government response**

Paragraphs 10 - 11 now take account of this point. As a matter of Government policy, it has been decided that for survivorship benefits purposes, the survivor of a married same sex couple should be treated in the same way as the survivor of a civil partnership. Survivor benefits following death in active membership is calculated in the same way for all eligible survivors. There are, however, different provisions for survivor benefits where a marriage takes place after active membership ceases where only membership from 1988 is taken into account for a widower and 1978 for a widow. This is to prevent abuse of the system by so-called “deathbed marriages”. Thus if a man who retired in 1986 with 40 years service were to marry in 2013 and then die shortly afterwards, his widow would only benefit from survivor benefits for 8 years between 1978 and 1986 rather than the full 40 years. Regulation 17 continues these provisions and includes survivor benefits in respect of same sex marriages and civil partnerships where these take place after the deceased had left active membership.

## Regulation 18

The Regulation on interest on late payment has been omitted from the final draft of the instrument. Any necessary interest should be calculated under the appropriate set of main Regulations. Regulation 18 in the final instrument introduces Schedule 2 which makes provision in connection with the so-called “85 year rule”.

## Regulation 24

### **Comments**

There should be particular provision for those members who transferred to the Local Government Pension Scheme from other Schemes prior to 1 April 2014 and who were given protection as regards their earlier retirement age.

### **Government response**

This additional Regulation has been added to the instrument to deal with such special cases.

## Regulation 25

### **Comments**

There should be an additional Regulation to detail the effect of Pensions Increase, a matter previously dealt with by Regulation 38 of the Benefits Regulations.

### **Government response**

A suitable Regulation has accordingly been added to the final instrument.

## Regulation 26

### **Comments**

A separate consultation in England on pensions for councillors and other local elected office holders was held between March and May 2013. Details of the consultation exercise and the response can be found in the paper "Taxpayer-funded pensions for councillors and other elected local office holders" at

<https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/local-government-pensions>

## Schedule 1

### **Comments**

One respondent argued that amending legislation to the main 2008 Regulations should be listed as revoked. It was also suggested that it should be made clear that the revocations do not apply to members who left under the 1997 and 2008 regulations.

### **Government response**

The amendments to the main 2008 Regulations have now been listed as revoked. It is not necessary to make it clear that the revocations do not apply to members who leave prior to 1 April 2014, because there is any case clear legal understanding that this would not be the case.

## Schedule 2

### **Comments**

Three respondents argued that there would be a significant cost in respect of those individuals with “Rule of 85 Protection” who will be accruing pension at a 49<sup>th</sup>s accrual rate.

### **Government response**

It would be inequitable to remove the “Rule of 85 protection”.

### **Comments**

Following the above comments on the “Rule of 85” during the formal consultation, there was considerable discussion between the Local Government Association, trades unions and the Department concerning the appropriate age at which the members concerned should be permitted to take full advantage of the “Rule of 85” allowing retirement on a full pension.

### **Government response**

It was agreed during the discussions that whilst members leaving aged 55 – 60 should normally expect an actuarial reduction, the employer should have the power, on compassionate grounds, to waive such a reduction. This echoes the power in Regulation 30 of the Benefits Regulations.

### **Comments**

When a member takes all or part of their benefits on flexible retirement, it is queried whether the Rule of 85 applies to any subsequent benefits paid.

### **Government response**

The position has now been made clearer in paragraph 1(d).