ASSOCIATION OF LOCAL AUTHORITY CHIEF EXECUTIVES AND SENIOR MANAGERS (ALACE)

Consultation Response on Draft Local Pension Scheme Regulations Amendments

1. ALACE (the Association of Local Authority Chief Executives and Senior Managers) is a registered trade union whose approximately 300 members comprise heads of paid service and other senior managers in local authorities throughout the UK, and other agency chief executives associated with local government. The Council of ALACE forms the staff side of the Joint Negotiating Committee for Chief Executives, the body responsible for the salary and terms and conditions of employment for chief executives. The Association also represents the interests of its members in responding to draft legislation and regulations which affect the roles of the head of paid service and other senior officers, together with issues such as pensions legislation and the reorganisation of local government. ALACE welcomes the opportunity to respond to the current consultation document published on 27th May 2016, and – in overall terms – also welcomes the proposals.
2. ***Chapter 2: The Fair Deal Proposals.*** It is ALACE's assumption that the rationale for these proposals – building on the long-established 'same or broadly comparable' pensions principle for TUPE-transferred LGPS members – is that where transferred employees, now in the private sector, are not within an admitted body contract and thereby in continuing LGPS membership, they should be given the right to remain in the LGPS. This gives the employees the assurance of continuity in accruing benefits in a funded and statute-backed pension scheme. It also is likely to give their employers a means of securing like-for-like pension provision for their employees at a cost lower than they can otherwise obtain.
3. Well-publicised concerns over the pensions liabilities at BHS and the Port Talbot Steel Works have made the general public better aware of these issues. They no doubt better appreciate the near-prohibitive cost for private employers of matching funded final salary schemes, and the risks for the many schemes that are relatively small and do not engage market scrutiny and the sympathy of Ministers in the same way. TUPE-transferred employees are aware that if their new pension scheme, perhaps many years hence, goes into deficit they will inevitably incur benefits losses that are unlikely to be paralleled in the public sector schemes (and particularly in those like the LGPS that have strong funding). ALACE accordingly applauds the introduction of provisions that enable former local government transferees to protect against this risk as of right,

providing of course that the actuarially appropriate employer and employee contributions are maintained in payment.

4. It may appear to current 'Fair Deal' employees that there is no material difference for them, whether they retain LGPS membership in the current manner or by acquiring the newly proposed rights. (Indeed, it seems that without such a difference future reform may seek to merge the two situations.) Nevertheless, the draft Regulations appear to be silent on two potentially discriminatory situations, which ALACE calls on the Government to address.
5. The first is where TUPE-transferred employees are currently not LGPS members, but instead are members of a 'same or broadly comparable alternative' pension scheme. They will be "deemed to be working in local government service for the purpose of these Regulations" and so eligible for LGPS membership, but the draft appears not to provide for the implications of leaving the alternative scheme should they wish to do so. Unless statute gives the right, they cannot (if under 55) withdraw pension funds at all, and only then subject to limitations and tax implications. Continuous service deemed retrospectively to be local government service will not be rendered continuous for LGPS purposes. Whatever rights they have accrued in the alternative pension scheme will remain frozen there. The practical difficulties of transferring from an alternative private scheme are acknowledged in paragraph 16 of the current paper. The only way of achieving this seems to be by giving a right to obtain a transfer value, and then allowing that valuation sum to be ported to the LGPS to buy additional reckonable LGPS service.
6. The second situation, following on from the first, involves any vulnerability of those broadly comparable pension schemes (and Scheme employers) in the longer term. Both current and retired employees know that if an admitted body Scheme employer becomes insolvent, the relevant pension fund will make up the benefit entitlements of those affected: there is a duty to do so. This will not be the case with alternative pension schemes, and rescue by the Pension Protection Fund will mean benefits reductions for those involved. While those still working have the opportunity to avoid this risk, at least so far as their total accrual of LGPS service is concerned, those already retired, but retired from employments that would now have been within the ambit of the Fair Deal provisions, will not have that opportunity.
7. Paragraph 6 of the consultation paper discloses two further discriminatory situations, which ALACE also believes should be addressed. First, Fair Deal is not to apply to higher and further education institutions, because they are classified as private sector bodies despite their history and a continuing significant dependence on public funds. While not strictly a local government matter now, employees within these institutions who remain in LGPS membership do so because of the historical local government connection and background of their jobs. It seems manifestly unfair that, because of subsequent reclassification and reconfiguring of these institutions, any employees who are TUPE-transferred away from them will not be able to claim continuing LGPS

membership *as of right*. The class of persons affected is not open-ended, because of course they are by definition already in LGPS membership.

8. The second discriminatory situation is that of employees of police and crime commissioners. A commissioner is defined by section 1(2) of the Police Reform and Social Responsibility Act 2011 as a 'corporation sole' – so not a local authority – but is nevertheless declared to be a Scheme employer by paragraph 6 of Part I of schedule 2 to the Local Government Pension Scheme Regulations 2013, S.I. No. 2356. Commissioners' staffs – some of whom are represented by ALACE – are distinguished from police force civilian staffs by section 102(3) and (4) of the 2011 Act. Again, as in the case of higher and further education bodies, this denial of being able to claim continuing LGPS membership *as of right* seems unjust for the relatively small numbers of employees involved. Nor can the argument that commissioners are private sector bodies apply, since they are clearly public sector, and the pretext in paragraph 6 of the consultation paper that "they are not best value authorities like a Police Authority" is specious. Best value requirements have nothing to do with eligibility for LGPS membership, and taking that into account would, in the case of the proper exercise of a public sector discretion, amount to an irrelevant consideration.
9. ***Chapter 3: Changes to the 2013 Scheme Regulations.*** ALACE has no additional comments to make (taking into account what is already stated in relation to the Fair Deal proposals above) on **draft regulations 3 to 5, 6 and 7.**
10. **Draft regulations 8 and 9.** ALACE welcomes additional flexibility in the operation and draw-down of AVCs, and acknowledges that this will be regarded as a useful corollary to the Government's general widening of the rules on accessing of pension assets.
11. In relation to **draft regulation 10**, inserting a new regulation 21(5B) into the 2013 Regulations relating to the three-year averaging of returning officer fees in cases of death in service or ill-health retirement, a question arises about the inter-relation of this provision (which in itself ALACE endorses) with the existing rule in regulation 11(2) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Benefits Regulations 2007, S.I. No. 1166. This allows a retiring returning officer employee, with employer consent, instead of averaging over three years up to the date of finishing, to opt for a different three-year period ending on 31st March within the ten years immediately preceding the date of finishing. This provision was continued in effect in relation to pre-2014 service by regulation 3 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, S.I. No. 525, and the amendments to regulation 3 now proposed do not affect this particular provision. There seems no reason why, if they wish, a returning officer dying in service now or taking ill-health retirement should not (if necessary through their personal representatives) continue to have the option of seeking employer consent for a more advantageous period running from 2006-07 or

later. The drafting of the proposed regulation 21(5B) appears to deny that option, but without abrogating the existing provision. ALACE asks for the drafting to be re-considered.

12. **Draft regulation 11.** ALACE recognises that disaggregation is complex. It must, however, be recognised that a typical career now involves much more mobility between sectors and short-term employment than was once the case, so that separate periods of LGPS membership are likely to become more frequent. The introduction of career averaging has altered the imperative for past service to be aggregated in order to receive the full benefit of final salary terms. Nevertheless, if the LGPS member option is to be changed from opting for disaggregation to opting for aggregation, there should be an additional provision requiring the relevant pensions authority to notify the returning member in writing of the opportunity to opt for aggregation, and summarising its meaning.
13. **Draft regulations 12-23.** ALACE has no observations on these.
14. **Draft regulation 24.** ALACE welcomes the removal of this requirement for employer consent set out in paragraph 22, and does not in the current climate object to the proposal in paragraph 24, although there seems to have been some dilution of the degree of accrued rights protection held out at the time of the introduction of the 2008 Scheme. ALACE further considers that whether to remove the need for employer consent for deferred benefit members now aged between 55 and 60 depends on the actuarial practice that would be adopted. On the assumption that early payment would involve proportionate benefit abatement, additional flexibility for former employees to receive pension benefits would be welcomed.
15. **Draft regulations 25-28.** ALACE has no observations on these.
16. **Draft regulation 25.** ALACE welcomes any additional flexibility here.
17. **Draft regulation 30.** ALACE has no observations on this.

18. **Summary of ALACE Response.** While overall welcoming the proposed draft Regulations, ALACE seeks –

(i) Paragraph 5 above: a means for current employees of transferring into the LGPS as of right the value of assets in a private pension scheme in the TUPE-transfer circumstances referred to there.

(ii) Paragraph 7 above: equivalent Fair Deal pension rights for higher and further education employees who remain in LGPS membership for historical reasons, but are denied those rights because their employments are currently defined as within the private sector.

(iii) Paragraph 8 above: equivalent Fair Deal pension rights for employees of police and crime commissioners, who are already defined as LGPS employers.

(iv) Paragraph 11 above: the opportunity of seeking employer consent for a more advantageous three-year averaging period for returning officers who either die in service or take ill-health retirement.

(v) Paragraph 12 above: a requirement for a relevant pensions authority to notify a returning LGPS member in writing of the opportunity to opt for aggregation, and summarising its meaning.

(vi) Paragraph 14 above: additional flexibility for those deferred benefit members now aged between 55 and 60 who are willing to accept the actuarial reduction required.

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