

2.0 LEGISLATION AND REGULATION

As a statutory public service pension scheme the LGPS and therefore the Royal County of Berkshire Pension Fund, has a different legal status compared with trust based schemes in the private sector. Although those making decisions relating to the Pension Fund are required, in many ways, to act as if they were trustees in terms of their duty of care, they are subject to a different legal framework and are not trustees in the strict legal sense.

2.1 *A potted history of the LGPS regulations*

The Local Government Pension Scheme (LGPS) has its roots in the 19th century when in 1844 a scheme was drawn up for the London Poor Law Commissioners but it was not until the Superannuation (Union Officers) Act 1864 that the scheme found a 'legal' status.

The Poor Law Officer Superannuation Act 1896 followed but it was the Local Government and Other Officers' Superannuation Act 1922 that gave local authorities the power to provide pensions for certain of their employees.

The Local Government Superannuation Act 1937 (effective from 1 April 1939) developed the scheme further. The Local Government Superannuation Act 1953 provided for the Local Government Superannuation (Benefits) Regulations 1954 (effective from 1 April 1950).

The Local Government Pension Scheme (LGPS) as we broadly know it today was established under [section 7 of the Superannuation Act 1972](#)¹ (although of course changes have been made to the LGPS in line with The Public Service Pensions Act 2013).

The [Local Government Superannuation Scheme Regulations 1974 \(SI 1974 No. 520\)](#)² came into force on 1 April 1974 as a result of the 1972 Act. There have been many principle regulations issued since and even more amending and miscellaneous regulations but for the purposes of this section of the handbook the principle regulations and how they determine the role and responsibility of administering authorities are set out below.

On 1 March 1986 the [Local Government Superannuation Regulations 1986 \(SI 1986 No. 24\)](#)³ came into force, Schedule 1 of which defined an 'administering authority' as "a body required to maintain a superannuation fund under these Regulations". Regulation P1(a) provided that superannuation funds maintained before 1 March 1986 under the LGSS Regulations 1974 to 1984 by every county council (e.g. Berkshire County Council) shall be maintained by those bodies for the purposes of these Regulations.

The 1986 Regulations were replaced by the [Local Government Pension Scheme Regulations 1995 \(SI 1995 No. 1019\)](#)⁴ effective from 2 May 1995. Regulation L1 provided for the continuation of existing superannuation funds but altered the terminology to 'pension funds' due to the statutory regulations being re-named the Local Government **Pension** Scheme Regulations as opposed to the Local Government **Superannuation** Scheme Regulations.

The 1995 Regulations were quickly replaced by the [Local Government Pension Scheme Regulations 1997 \(SI 1997 No. 1612\)](#)⁵ which came into force on 1 April 1998. Regulation 73

¹ <http://www.legislation.gov.uk/ukpga/1972/11/crossheading/persons-employed-in-local-government-service-etc>

² <http://www.legislation.gov.uk/uksi/1974/520/contents/made>

³ <http://www.legislation.gov.uk/uksi/1986/24/contents/made>

⁴ <http://www.legislation.gov.uk/uksi/1995/1019/contents/made>

⁵ <http://www.legislation.gov.uk/uksi/1995/1019/contents/made>

provided that the bodies responsible for maintaining pension funds for the Scheme immediately before 1 April 1998 must continue to maintain them unless the fund is vested in a different body by or under an enactment.

[The Berkshire \(Structural Change\) Order 1996 \(SI 1996 No. 1879\)](#)⁶ wound up and dissolved Berkshire County Council (the, until then, administering authority to the Royal County of Berkshire Pension Fund). Section 7 of the Order provided that the superannuation fund maintained by the County Council by virtue of regulations made under section 7 of the Superannuation Act together with all rights and liabilities in respect of the fund shall vest in the council of the Royal Borough of Windsor & Maidenhead. As a result of this Order the Royal Borough of Windsor & Maidenhead was listed in Schedule 5, Part III, Section B of the LGPS Regulations 1997 as the administering authority responsible for members affected by local government reorganisation and employed by the following employing authorities: Bracknell Forest Borough Council (*now known as Bracknell Forest Council*); Newbury District Council (*now known as West Berkshire Council*); Reading Borough Council; Slough Borough Council; Wokingham District Council (*now known as Wokingham Borough Council*).

The 1997 Regulations were replaced by three sets of regulations effective from 1 April 2008. These regulations were called the [Local Government Pension Scheme \(Benefits, Membership and Contributions\) Regulations 2007 \(SI 2007 No. 1166\)](#)⁷ the [Local Government Pension Scheme \(Administration\) Regulations 2008 \(SI 2008 No. 239\)](#)⁸ and the [Local Government Pension Scheme \(Transitional Provisions\) Regulations 2008 \(SI 2008 No. 238\)](#)⁹. Parts of these regulations are still in force despite the Scheme amendments made from 1 April 2014.

The main rules now governing the LGPS were laid before Parliament by the Secretary State in September 2013 with those rules covering the protections under the 2008 scheme regulations for those members in the Scheme before the changes took effect on 1 April 2014 being laid before Parliament on 10 March 2014.

Therefore, with effect from 1 April 2014 the Local Government Pension Scheme is now regulated, in the main, by two new statutory instruments:

1. [The Local Government Pension Scheme Regulations 2013 \(SI 2013 No. 2356\)](#)¹⁰ (hereinafter sometimes referred to as 'the Scheme Regulations'); and
2. [The Local Government Pension Scheme \(Transitional Provisions, Savings and Amendment\) Regulations 2014 \(SI 2014 No. 525\)](#)¹¹ (hereinafter sometimes referred to as 'the Transitional Regulations').

In addition a third pre-existing statutory instrument governs how the Pension Fund should be managed and invested:

3. [The Local Government Pension Scheme \(Management and Investment of Funds\) Regulations 2009 \(SI 2009 No. 3093\)](#)¹² as amended by
4. [The Local Government Pension Scheme \(Management and Investment of Funds\) \(Amendment\) Regulation 2013 \(SI 2013 No. 410\)](#)¹³ (hereinafter sometimes referred to as 'the Investment Regulations').

⁶ <http://www.legislation.gov.uk/uksi/1995/1019/contents/made>

⁷ <http://www.legislation.gov.uk/uksi/2007/1166/contents/made>

⁸ <http://www.legislation.gov.uk/uksi/2008/239/contents/made>

⁹ <http://www.legislation.gov.uk/uksi/2008/238/contents/made>

¹⁰ <http://www.legislation.gov.uk/uksi/2013/2356/contents/made>

¹¹ <http://www.legislation.gov.uk/uksi/2014/525/contents/made>

¹² <http://www.legislation.gov.uk/uksi/2009/3093/contents/made>

¹³ <http://www.legislation.gov.uk/uksi/2013/410/contents/made>

Part 2 of the Scheme Regulations is entitled *Administration - Administering authorities*. [Regulation 53](#)¹⁴ (scheme managers) sets out the role of an administering authority and paragraph 1 of that regulation states that “the bodies listed in [Part 1 of Schedule 3](#)¹⁵, referred to in these Regulations as “administering authorities”, must maintain a pension fund for the Scheme”. In sub-paragraph (L) of [Schedule 3](#)¹⁶ the Royal Borough of Windsor and Maidenhead Council is listed as being an administering authority and although not actually specified, the administering authority for the county of Berkshire.

[Paragraph 2 of Regulation 53](#)¹⁷ goes on to state “an administering authority is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate administering authority under these Regulations”.

The Royal Borough of Windsor and Maidenhead as the administering authority to the Royal County of Berkshire Pension Fund has delegated its function as administering authority to the Pension Fund Panel, in accordance with Part 5 Section A of the Council’s Constitution and so, therefore, it is the Pension Fund Panel which acts as the scheme manager (as referred to in [Regulation 53](#))¹⁸ for the Pension Fund.

Paragraph 4 of Regulation 53 has been deleted by [The Local Government Pension Scheme \(Amendment\) \(Governance\) Regulations 2015 \(SI 2015 No. 57\)](#)¹⁹. These amendment regulations insert a number of additional regulations to the Local Government Pension Scheme Regulations 2013 with regard to Scheme governance, specifically matters concerning the establishment and membership of local Pension Boards and the role of the National Scheme Advisory Board.

[Regulation 106](#)²⁰ deals with the establishment of a Pension Board (a local Pension Board) which from 1 April 2015 is responsible for assisting the administering authority:

- a) *to secure compliance with:*
 - (i) *these Regulations;*
 - (ii) *any other legislation relating to the governance and administration of the Scheme, and*
 - (iii) *requirements imposed by the Pensions Regulator in relation to the Scheme; and*
- b) *to ensure the effective and efficient governance and administration of the Scheme.*

The Pension Fund Panel has agreed the terms under which the Pension Board should operate and so the structure of the arrangements for management and administration of the LGPS in Berkshire has now been established and further details can be found in section 5.0 of this handbook.

2.2 A brief guide to benefits

As can be seen from this potted history of the Scheme, the LGPS regulations have been amended many times over the years. (It is worth noting that for any scheme member to receive benefits in respect of any of the regulations identified they must have been a member of the Scheme during the period to which the regulations relate). The following briefly sets out the various ways in which benefits can currently be calculated.

¹⁴ <http://www.lgpsregs.org/index.php/administering-authorities>

¹⁵ <http://www.lgpsregs.org/index.php/schedule-3>

¹⁶ <http://www.lgpsregs.org/index.php/schedule-3>

¹⁷ <http://www.lgpsregs.org/index.php/administering-authorities>

¹⁸ <http://www.lgpsregs.org/index.php/administering-authorities>

¹⁹ <http://www.legislation.gov.uk/ukxi/2015/57/contents/made>

²⁰ <http://www.legislation.gov.uk/ukxi/2015/57/regulation/9/made>

Membership before 1st April 2008 – the 1/80th Scheme

All membership built up before 1st April 2008 provides an annual pension equal to 1/80th of final pay for each whole year and part year of membership. An automatic retirement grant (lump sum) equal to 3/80^{ths} of final pay is payable in addition to the annual pension.

Membership from 1st April 2008 to 31st March 2014 - the 1/60th Scheme

All membership built up between 1st April 2008 and 31st March 2014 provides an annual pension equal to 1/60th of final pay for each whole year and part year of membership. No automatic retirement grant (lump sum) is paid although a scheme member can elect to convert part of their annual pension into tax-free cash.

Membership from 1st April 2014 – the 1/49th Scheme

All membership of the 'MAIN' section of the Scheme built up from 1st April 2014 provides a pension equal to 1/49th of actual pensionable pay received in each whole year and part year of membership. No automatic retirement grant (lump sum) is paid although a scheme member can elect to convert part of their annual pension into tax-free cash.

Membership from 1st April 2014 – the 1/98th Scheme

All membership of the '50/50' section of the Scheme built up from 1st April 2014 provides a pension equal to 1/98th of actual pensionable pay received in each whole year and part year of membership. No automatic retirement grant (lump sum) is paid although a scheme member can elect to convert part of their annual pension into tax-free cash.

Of course this is a very simplistic view of how benefits are built up. Certain scheme members retain certain protections afforded to them by previous regulations when changes are made and so some of the complexities surrounding the calculation of benefits will be covered throughout this handbook.

2.3 Administering authority decisions and discretions

Under current scheme regulations there are many occasions where the administering authority has certain discretion as to how the regulations should be applied and is required to take decisions or make policies so as to be consistent in the approach taken.

The following table identifies the regulations where the administering authority has discretion as to how those regulations should be applied. **A policy statement is available from the Pension Fund website.**

Table 3 – Administering authority decisions

No.	Regulation	Administering Authority Discretion
1	LGPS13: 3(5) & Sch. 2, Part 3, para. 1	Whether to agree to an admission agreement with a body applying to become an admission body other than where a body as defined in paragraph 1(d) must be admitted providing they undertake the requirements of the regulations.
2	LGPS13: 16(1)	Whether the administering authority deems it inappropriate for a scheme member to pay APCs over a period of time due to the contribution being very small.
3	LGPS13: 16(10)	Whether to require a scheme member to have a medical (at their own expense) in order to satisfy the administering authority of their reasonably good health before agreeing to the scheme member's application to pay APCs/SCAPCs (Shared Cost Additional Voluntary Contributions)
4	LGPS13: 17(12)	To whom any AVC fund should be paid upon the scheme member's death.

5	LGPS13: 22(3)(c)	Pension accounts to be kept in a form as considered appropriate.
6	LGPS13: 32(7)	Whether to extend beyond three months the time limits within which a scheme member must give notice of the wish to draw benefits before normal pension age or upon flexible retirement.
7	LGPS13: 34(1)	Whether to commute the payment of a small pension into a trivial commutation lump sum within the meaning of section 164 of the Finance Act 2004.
8	LGPS13: 36(3)	Whether to approve or not a scheme employer's choice of Independent Registered Medical Practitioner (IRMP).
9	LGPS13: 38(3)	Whether a deferred member of a former employer that no longer exists meets the criteria for release of deferred benefits due to permanent ill health and the likelihood of not obtaining gainful employment before normal pension age or within three years, whichever is sooner.
10	LGPS13: 38(6)	Whether a suspended tier-3 ill health pension should be reinstated upon request from a deferred pensioner member of a former employer that no longer exists where that member is unlikely to be capable of undertaking gainful employment before normal pension age.
11	LGPS13: 40(2), 43(2), 46(2) & TP14: 17(5) to (8)	To whom a death grant should be paid following the death of a scheme member.
12	LGPS13: 49(1)(c)	To determine the benefit payable to a scheme member, in the absence of an election from the scheme member, where the scheme member is entitled to a benefit under 2 or more of the regulations in respect of the same period of membership.
13	LGPS13: 54(1)	Whether to establish an "admission agreement fund" in addition to the "main fund".
14	LGPS13: 59(1) & (2)	Whether to produce and publish a written pension administration strategy and the matters to be included.
15	LGPS13: 64(4)	Whether to obtain a revised rates and adjustment certificate from the pension fund Actuary where it is considered that a scheme employer will become an exiting employer.
16	LGPS13: 65	Whether to obtain a revised rates and adjustment certificate from the pension fund Actuary following amendments to the scheme regulations by the Secretary of State as a result of a valuation under regulation 63 (aggregate scheme costs).
17	LGPS13: 68(2)	To require a scheme employer to make a strain (capital) cost payment to the pension fund in all cases where a scheme employer's decision results in the immediate release of a scheme member's benefits because of flexible retirement, redundancy or retirement due to business efficiency.
18	LGPS13: 69(1)	To consider the frequency that payments of contributions should be made to the pension fund by scheme employers and whether scheme employers should make a contribution towards to the cost of administration.
19	LGPS13: 69(4)	To consider the form and frequency of information required from a scheme employer to support the payment of contributions.
20	LGPS13: 70 & TP14: 22(2)	Whether to recover sums from a scheme employer where additional costs have been incurred because of the scheme employer's unsatisfactory level of performance.
21	LGPS13: 71(1)	Whether to charge interest on payments received from a scheme employer later than prescribed in the pension administration service level agreement or the pension administration strategy.

22	LGPS13: 76(4)	To determine the procedure to be followed at stage 2 of the IDRPs and the manner in which the exercise of those procedures should be undertaken.
23	LGPS13: 79(2)	Whether to appeal to the Secretary of State against a scheme employer's decision, or lack of decision, on a question arising under regulation 72 of LGPS13 (first instance decisions).
24	LGPS13: 80(1)(b) & TP14: 22(1)	To specify the format in which information supplied by a scheme employer is provided to the administering authority.
25	LGPS13: 82(2)	Whether to pay out the whole or part of a death grant due from the pension fund without the need to obtain grant of probate or letters of administration where the value does not exceed the amount specified in section 6 of the Administration of Estates (Small Payments) Act 1965.
26	LGPS13: 83	Whether, where a person (other than an eligible child) appears to be incapable of managing their affairs by reason of mental disorder or otherwise, to make payment of benefits to another person.
27	LGPS13: 89(5)	To consider the date to which annual benefit statements are to be calculated.
28	LGPS13: 98(1)(b)	Whether to agree to bulk transfer payments where two or more scheme members' membership ends on their joining a different registered pension scheme.
29	LGPS13: 98(4)(a)	Whether to determine that the amount set aside for a bulk transfer should be in cash or in assets or both.
30	LGPS13: 100(6)	Whether to extend the normal time limit for acceptance of a transfer value beyond 12 months from date scheme member joined the LGPS.
31	LGPS13: 100(7)	Whether to allow the transfer of pension rights into the pension fund.
32	LGPS13: 106(6)	To determine the procedures applicable to a local pension board.
33	LGPS13: 107(1)	To determine the membership of the local pension board and the manner in which members may be appointed and removed.
34	LGPS13: 108(1)	To determine the method by which to confirm that a member of the pension board does not have a conflict of interest.
35	LGPS13: Sch. 1 & TP14: 17(9)	In accordance with definition of eligible child determine whether to treat a child as being in continuous education or vocational training despite a break.
36	LGPS13: Sch.1 & TP14: 17(9)(b)	In accordance with definition of cohabiting partner determine the evidence required to confirm financial dependence of a cohabiting partner on a scheme member or financial interdependence of cohabiting partner and scheme member.
37	LGPS13: Sch. 2, Part 3, para. 9(d)	To determine the right to terminate an admission agreement under circumstances listed in regulation.
38	LGPS13: Sch. 2, Part 3, para 12(a)	To consider definition of the term "employed in connection with the provision of the service or assets".
39	TP14: 3(6), 4(6)(c), 8(4), 10(2)(a), 17(2)(b) & B07: 10(2)	In respect of a scheme member who retains a right to have the use of the average of 3 years pay for final pay purposes, to determine, should the member die before making an election, whether to make that election on behalf of the deceased scheme member.
40	TP14: 3(6), 4(6)(c), 8(4), 10(2)(a), 17(2)(b) & T08: Sch. 1 & LGPS97: 23(9)	In respect of a scheme member who retains a certificate of protection of pension benefits under former regulations, to determine, should the member die before making an election as to the use of that certificate, whether to make an election on behalf of the deceased scheme member.

41	TP14: 10(9)	In the absence of an election from a scheme member within 12 months of ceasing a concurrent employment, to determine, where the scheme member has more than one on-going employment, to which pension account the ceasing employment benefits should be aggregated.
42	TP14: 12(6)	Whether to use a certificate produced by an IRMP under the LGPS2008 for the purposes of making an ill health determination under the LGPS2013 in respect of a scheme employer that no longer exists.
43	TP14: 15(1)(c) & T08: Sch. 1 & LGPS97: 83(5)	Whether to extend the time period for capitalisation of ongoing added years contracts still in force under previous regulations.
44	TP14: 15(1)(d) & A08: 28(2)	Whether to charge a scheme member for the provision of an estimate of additional pension that would be provided for by the scheme in return for the transfer of in house AVC funds (where the arrangement was entered into before 1 April 2014).
45	TP14: Sch. 2, para. 2(5)	Whether to require a strain (capital) cost to be paid “up front” by a scheme employer following their decision to waiver any actuarial reduction to benefits under the 85-year rule.

2.4 References

In the above table the statutory references relate to the following regulations where indicated:

LGPS13: [The Local Government Pension Scheme Regulations 2013 \(S.I. 2013 No. 2356\)](#)²¹

TP14: [The Local Government Pension Scheme \(Transitional Provisions, Savings and Amendment\) Regulations 2014 \(SI 2014 No. 525\)](#)²²

A08: [Local Government Pension Scheme \(Administration\) Regulations 2008 \(SI 2008 No. 239\)](#)²³

LGPS97: [Local Government Pension Scheme Regulations 1997 \(SI 1997 No. 1612\)](#)²⁴

B07: [Local Government Pension Scheme \(Benefits, Membership and Contributions\) Regulations 2007 \(SI 2007 No. 1166\)](#)²⁵

T08: [Local Government Pension Scheme \(Transitional Provisions\) Regulations 2008 \(SI 2008 No. 238\)](#)²⁶

²¹ <http://www.legislation.gov.uk/uksi/2013/2356/contents/made>

²² <http://www.legislation.gov.uk/uksi/2014/525/contents/made>

²³ <http://www.legislation.gov.uk/uksi/2008/239/contents/made>

²⁴ <http://www.legislation.gov.uk/uksi/1997/1612/contents/made>

²⁵ <http://www.legislation.gov.uk/uksi/2007/1166/contents/made>

²⁶ <http://www.legislation.gov.uk/uksi/2008/238/contents/made>

