

PENSIONS COMMITTEE

2 November 2020

REPORT TITLE:	LGPS UPDATE
REPORT OF:	DIRECTOR OF PENSIONS

REPORT SUMMARY

This report covers the long-awaited HM Treasury (HMT) response to the consultation on 'Restricting Exit Payments in the Public Sector' and the publication of draft regulations, issued on 22 July 2020.

In addition, the report covers the related Ministry of Housing, Communities and Local Government (MHCLG) consultation – 'Reforming Local Government Exit Pay', issued on 7 September 2020. This consultation requests feedback and comments on the proposed reforms to Local Government regulations, in order to meet overarching government policy to limit exit payments to a maximum of £95k for public sector employees.

The report also provides an update on a further interim response on proposals set out in the consultation dated 8 May 2019, 'Changes to Local Valuation Cycle and The Management of Employer Risk'.

Finally, the report raises awareness of the Written Ministerial statement on survivor benefits payable from public service pensions in response to an Employment Tribunal relating to the Teachers' Pension Scheme. The case concerns the lower survivor benefits paid to a widower of a female scheme member compared to those paid to a same sex survivor

RECOMMENDATION

That Members note the report and the resource implications in administering imminent changes to the regulations.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION

- 1.1 There is a requirement for Members of the Pension Committee to be kept up to date with legislative developments as part of their decision-making role.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Not relevant for this report.

3.0 BACKGROUND INFORMATION

HM Treasury Response to £95k public sector exit cap consultation

- 3.1 HMT has published its response to the consultation issued last year, seeking to cap public sector exit payments at a value of £95,000, along with the draft regulations; 'The Restriction of Public Sector Exit Payments Regulations 2020'.

<https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector>

- 3.2 The regulations will affect LGPS members in England and Wales who currently qualify for an unreduced pension because of redundancy or efficiency retirement. The regulations include a list of employers who will be covered by the cap.

- 3.3 There are a few key points to highlight in the response as follows:

- The government has decided to no longer proceed with a staged approach. The cap will now apply across all the public sector when implemented to ensure value for money as soon as possible.
- HMT has confirmed that employer funded early access to pensions (strain cost) will be within scope of the exit payment although the cap will not apply to all employers in Funds as it currently stands.
- The government is committed to strong governance and that any exceptions process for the cap not to apply will be fit for purpose and not cause any unnecessary delays.
- Whilst there is no current plans to uprate the £95k cap each year the government has committed to "making decisions on the level of the cap with reference to full contextual factors" and any change can be implemented through secondary legislation.

- 3.4 Under current LGPS provisions, members whose employment is terminated on redundancy or efficiency grounds must access their pension benefits. In cases where the cap is breached, then the member may have to take a reduced pension.

Consequently, MHCLG is looking at options to introduce choice to allow members in this position to opt for a deferred pension instead.

- 3.5 GAD has produced draft factors and strain cost guidance for administrators to calculate the pension strain for retirements on both redundancy and efficiency grounds so that the cap can be applied equally to members across the LGPS.

The government are expecting employment contracts, compensation schemes, and pension schemes to be changed to accommodate the £95k exit cap.

- 3.6 The Restriction of Public Sector Exit Payment Regulations 2020 were agreed in the House of Commons on 30 September. The Statutory Instrument is now expected to be signed imminently with regulations then coming into force 21 days later.

- 3.7 The LGA is seeking urgent clarification from Government as to:

- the position for exits agreed before the legislation takes effect, but where the date of leaving is after the regulations come into force
- the position if the HM Treasury regulations come into effect before MHCLG can introduce the necessary changes to the LGPS regulations.

We expect more details to emerge shortly with regard to updated guidance and HMT Directions to implement the new exit payment regulations,

MHCLG CONSULTATION – Reforming Local Government Exit Pay

- 3.8 On 7 September MHCLG released the above-named consultation which will have far-reaching implications for employers and members employed by public sector bodies within the LGPS. The consultation can be accessed from the following link:

<https://www.gov.uk/government/consultations/reforming-local-government-exit-pay>

- 3.9 The reforms apply to all employers set out in the overarching HMT Regulations who are designated as public sector and are the responsibility of the UK government. The reforms will not affect employees of employers outside of the public sector. The proposals will radically change severance packages and impact workforce planning as the provisions go much further than the overarching public sector exit regulations and affect all members regardless of the £95k exit payment cap.

Summary of Proposals

- 3.10 The consultation sets out the following proposed approach:

- A general reform of redundancy payments, to involve a maximum of three week's pay per year of service, an overall ceiling of 15 months' pay and a maximum salary of £80,000 p.a. which can be used in the calculation.
- Inclusion of pension strain in the overall payment cap of £95k

- A waiver process to allow for relaxation of the £95,000 cap in exceptional circumstances, requiring ratification of full council and approval of the business case by MHCLG
- Strain costs and the related pension enhancements will be reduced by the value of any statutory redundancy payments which the employee will receive in cash.
- In general, the making of discretionary redundancy payments over the statutory redundancy payment will not be allowed in cases where a strain cost is paid.

Impact on Members

- 3.11 Within the proposals there are a number of options of how members can access the redundancy packages which in the main lead to significantly reduced payments and complexity for a member.

Impact on Funds and Employers

- 3.12 The issues for Funds and employers are wide ranging, as the proposals will affect governance arrangements, retirement processes, information flows calculations and communications with both employees and employers. The practicalities of implementation are extremely onerous from the Fund's perspective.
- 3.13 The consultation is open until 9 November and the Fund will respond from a LGPS perspective. The Fund has communicated the need for employers to respond to the consultation in regard the impact on severance packages and future workforce planning.

Interim Consultation Response - Changes to the Local Valuation Cycle & the Management of Employer Risk

- 3.14 MHCLG has published a further interim response to the above consultation and issued amendment regulations effective from 23 September.

These grant administering authorities and employers the flexibilities to review employer contributions under the following scenarios:

- Where there has been a significant change to the liabilities of an employer (this is more structural changes as opposed to changes in discount rate).
 - Where there has been a significant change in the employer's covenant (it is not clear if this would be on the basis of affordability, long term financial strength or both).
 - At the request of the employer (who would need to pay the costs) and subject to the two conditions above.
- 3.15 The trigger to amend contributions is therefore not related to changes in market conditions. Whilst a review of contributions may take place for an employer, it does

not mean that contributions would subsequently be changed by the Fund, as all factors will be considered during the review.

- 3.16 The amendment regulations also permit the administering authority to agree a repayment schedule for an exit payment with employers who wish to leave the scheme but need to spread the payment.
- 3.17 There is also provision to enter into Deferred Debt Agreements with an employer to enable them to continue paying deficit contributions without any active members; but only where the Fund is confident that the employer would fully meet its obligations.
- 3.18 We are waiting for statutory guidance from MHCLG for the Funding Strategy Statement (FSS) which is expected to be high-level just covering the Regulations and further guidance from the SAB, which will contain more examples of how the regulations will work in practice. The Fund will have to develop a policy on these matters which will be consulted on with employers and incorporated into a future ratified FSS.

SURVIVOR BENEFITS FOR OPPOSITE SEX WIDOWERS PENSIONS

- 3.19 On 20 July, HMT issued a statement confirming that, following a successful case against the Teachers' Pension Scheme (TPS), known as the "Godwin Case", historical widowers' pensions in the public sector pension schemes discriminated against male members.

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-07-20/HCWS397/>

Departments responsible for the administration of affected schemes will consult on and take forward changes as soon as possible.

- 3.20 For the LGPS, this will affect surviving widowers where their deceased spouse left prior to April 1998. In some cases, this will lead to an increase in the widowers' pension in payment. In other cases (where the member left prior to April 1988) this will lead to a new widower record needing to be set-up, as previously there was no widowers pension entitlement.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are none arising from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 There are none arising from this report.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The local government exit pay reforms and options available to employees will need to be carefully communicated as members of the LGPS are likely to seek guidance around their various retirement options with an impact on the administration team's

resources. In many cases there will be tension between the accessibility of the up-front redundancy cash and the longer-term pension enhancement.

- 6.2 Employers will need to be categorised into those affected by the £95,000 exit payment cap and those unaffected and severance policies updated.
- 6.3 The need to re-visit hundreds, perhaps thousands of historical deferred and pensioner records in relation to the restatement of survivor pension entitlements will only add to the governance and administration burden Funds are facing on the back of the proposed McCloud remedy (covered as a separate agenda item) and the implementation of the exit cap.
- 6.4 The Fund's actuary, Mercer, has undertaken analysis as to the materiality of the change in widowers' benefits and has concluded that the cost is on average less than 0.1% of liabilities with a value of circa £9m.

7.0 RELEVANT RISKS

- 7.1 There are none arising from this report.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 The relevant consultations are set out in this report.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.
- 9.2 MHCLG and HMT undertake equality impact assessments with regard to the statutory reform of the public sector pension schemes and LGPS.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 There are none arising from this report.

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APPENDICES

BACKGROUND PAPERS

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
<p>The LGPS Update is a standing agenda item on Pensions Committee</p>	