

## **WIRRAL COUNCIL**

### **PENSIONS COMMITTEE**

**14 JANUARY 2009**

### **REPORT OF THE DIRECTOR OF FINANCE**

#### **LGPS REFORM UPDATE**

##### **1. EXECUTIVE SUMMARY**

- 1.1. This report informs Members of progress with the production of regulations and other guidance by the Department for Communities and Local Government (DCLG) in connection with the introduction of the revised LGPS from 1 April 2008.
- 1.2 Members are requested to agree that a technical response be submitted on the Draft Miscellaneous Regulations.

##### **2. BACKGROUND**

- 2.1 The Pensions Committee last considered progress in implementing the new regulations as part of the reform of the LGPS, on 17 November 2008 (Minute 55 refers).
- 2.2 The DCLG circulated a set of draft LGPS (Miscellaneous) Regulations 2009, on 28 November 2008 (Appendix 1 attached).

These Miscellaneous Regulations will amend four sets of Regulations, which currently provide the overall regulatory framework for the LGPS in England and Wales, as follows:

- one regulation amends the 1997 Regulations
- seven regulations amend the Benefits Regulations
- one regulation amends the Transitional Regulations
- ten regulations amend the Administration Regulations

There are a further five regulations which update the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, bringing them up to date by replacing references to the 1997 Regulations with references to the Benefits Regulations or the Administration Regulations as appropriate

- 2.3 The amendments are necessary to make some corrections and cross-references, to clarify detailed aspects of the extant provisions, to restore minor omitted aspects of the 1997 Scheme, to provide clearer definitions, to revise the Scheme consequent to taxation changes and to introduce some new provisions.

- 2.4 Under the draft proposals Regulation 12 allows authorities to convert pensioner members' "compensatory added years" into "augmented service". This amendment should promote effective administration, with the value of payments received by the member remaining unaltered;

**Regulation 11** adjusts the circumstances in which a member may choose to have the average of any three consecutive years' pensionable pay within their final ten used as the basis for their pension, rather than using the final year's pay;

The draft regulation still fails to properly protect members who suffer a restriction rather than an actual reduction in their pensionable pay and requires further redrafting.

Currently only membership accrued after 5 April 1988 is taken into account in calculating survivor benefits for civil partners or nominated cohabiting partners.

**Regulations 13 and 20 - 22** establish the framework for members to make additional payments so that periods of their pre-1988 service are counted as regards survivor benefits for such partners, further promoting equality in this area;

**Regulation 23** makes it clear that "other money purchase schemes" may be paid by a member into their additional voluntary contribution arrangements;

This proposal is contrary to the policy previously agreed by the Local Government Employers organisation, as it will enable members to take more tax free cash from Free Standing AVCs and reduce the potential savings to employers from employees commuting Scheme pension to lump sum at £1 to £12.

- 2.5 The DCLG has also invited comments on the aggregation of LGPS membership. The most immediately relevant Regulations in this area are Regulation 16 of the Administration Regulations and **Regulation 4** of the Transitional Regulations. Under **Regulation 16** deferred LGPS members may, within the first 12 months of any new local government employment, choose to aggregate only their immediately previous period of membership.

However, Regulation 4 omits this stipulation, permitting deferred members simply to aggregate membership of the "1997 Scheme" within 12 months of resuming active membership. The current Regulations do not deal with deferred members who have deferred benefits under the 1995 Regulations or under any earlier LGPS Regulations, nor do they deal with individuals who were entitled to a refund under the 1997 Regulations and who, on resuming local government employment on 1 April 2008 or later, wish to use their "frozen refund" to buy LGPS membership.

The DCLG is aware that some authorities are allowing members to aggregate any of their previous periods of service, not just the one that was immediately previous. It could be argued that this policy supports equality, as women seem to be more likely to choose to move into lower-paid employment at some stage of their career.

DCLG therefore welcome comments on:

- whether the regulations should be amended in the interests of equality
- whether they need to be amended to improve the overall clarity of the provisions on aggregation.
- Comments on the draft regulations are requested by 20 February 2009.

### **III Health Regulations**

- 2.6 The required statutory guidance on ill health and promised model certificates has now been issued by the DCLG and is the subject of a separate report to this Committee.

An Ill Health Monitoring Group established by the DCLG has continued to meet on a number of occasions to consider the collection of required data to test the operation of the new ill health regime and to recommend any further changes to the regulations that are necessary.

#### **Government Actuary's Department (GAD) Guidance**

- 2.7 The DCLG has circulated further guidance issued by the GAD on dealing with cash equivalent transfers for pensioners undergoing divorce and pensions sharing and updated guidance on transfers out and transfers in.

Final guidance on dealing with the tax implications for high earners and the HM Revenue & Customs protections available to such scheme members is still awaited. MPF is taking steps to remind eligible members of the April 2009 deadline to apply for protection available under the 2004 Finance Act.

### **3. OTHER OUTSTANDING MATTERS**

#### **Pensions Administration Strategy**

- 3.1. The expected guidance from DCLG on drawing up a Pensions Administration Strategy Plan to formalise administrative arrangements and service standards between the Pension Fund and participating employers has still not been published.

#### **Cost Sharing Mechanism**

- 3.2. The DCLG has circulated on 27 November 2008 draft regulations for consultation which will establish the framework for future cost sharing and illustrations of how it may operate in practice. The closing date for responses to the consultation is 23 January 2009. The matter is the subject of a separate report to this Committee. Meetings of the LGPS Policy Review Group are continuing, to discuss various issues including agreement on the details of how the cost sharing mechanism will operate.

## **85 Year Rule Protection**

- 3.3. The outcome of the consultation on extension of full “85 Year Rule” protection to those who would satisfy the requirements by 31 March 2020 rather than 31 March 2016 is still awaited from DCLG. In the meantime tapering protection has been applied in accordance with the Regulations for those members who would not have satisfied the 85 year rule until the period 1 April 2016 to 31 March 2020.

## **COUNCILLORS PENSIONS**

- 3.4. The new regulations still do not deal with arrangements for councillors pensions and provision remains subject to the 1997 Regulations.

The DCLG had confirmed that it expected to publish a response to the issues raised by the report by the Councillors Commission and begin to consult on proposals for future pensions arrangements for elected Members. To date no response has been published. The results of the Local Government Employers Organisation (LGE) survey into which councils have offered membership of the LGPS to councillors and take up are still awaited.

## **4. ADMITTED BODY STATUS REVIEW**

- 4.1. Following the informal consultation exercise undertaken in April this year the DCLG published a report on 2 October 2008 setting out its key findings from the consultation.

Final proposals are still to be formulated by DCLG which will be the subject of a future statutory consultation in advance of changes to the regulations.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 A number of the outstanding issues referred to in this report may well have implications on future funding, including future ill health costs, the final costs of “85 Year Rule” protection depending on whether full protection is extended to 2020 and actual yields from employee contributions and take up of the pension to lump sum commutation option if the change proposed to Regulation 23 is made.
- 5.2 At the Policy Review Group Meeting on 14 October 2008 the Government Actuary’s Department presented a paper on the potential actuarial assumptions to be adopted within a “dry run” modelling exercise in autumn 2008 based on data provided by Funds (including Merseyside). The outcome of this exercise will be reported back to the Policy Review Group early in 2009.
- 5.3 It will not be until the 31 March 2010 actuarial valuation, after which time the cost sharing mechanism will be implemented, that the long term future costs of the revised LGPS are likely to become clear.

**6. STAFFING IMPLICATIONS**

6.1. There are none directly arising from this report.

**7. EQUAL OPPORTUNITY IMPLICATIONS**

7.1. There are none arising from this report.

**8. COMMUNITY SAFETY IMPLICATIONS**

8.1. There are none arising from this report.

**9. HUMAN RIGHTS IMPLICATIONS**

9.1. There are none arising from this report.

**10. LOCAL AGENDA 21 IMPLICATIONS**

10.1. There are none arising from this report.

**11. PLANNING IMPLICATIONS**

11.1. There are none arising from this report.

**12. MEMBER SUPPORT IMPLICATIONS**

12.1. There are none arising from this report.

**13. BACKGROUND PAPERS**

13.1. DCLG letter dated 28 November 2008 – Draft LGPS Miscellaneous Regulations 2009.

**14. RECOMMENDATION**

14.1 That Members agree that a technical response be submitted on the Draft Miscellaneous Regulations.

IAN COLEMAN  
DIRECTOR OF FINANCE