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## **DRAFT LOCAL GOVERNMENT PENSION SCHEME (MISCELLANEOUS) REGULATIONS 2012**

I refer to the consultation document dated 5 December 2012 in regard to draft regulatory changes to the Local Government Pension Scheme. I submit the following response on behalf of the Wirral Borough Council in its capacity as the Administering Authority of the Merseyside Pension Fund (MPF).

MPF believes that many of the amendments proposed are making required improvements to ensure equitable treatment of all membership categories. The technical amendments, definitions and corrective references which aid compliance with associated statutory legislation are positive and assist in the implementation of Scheme provision.

MPF regards most of the proposed changes as necessary but would like to draw attention to the following technical issues:

### **1/ Amendments of the LGPS (Benefits, Membership and Contributions) Regulations 2007**

**Regulation 6** amends regulation 8 –

defines reference to “that employment” relating to the final pay period. In addition to the exclusion provided under regulation 12 (1) of the Administration Regulations, specific reference to regulation 11 is required together with regulation 18 of the BMC regs; to clarify that pay from both concurrent employments and benefits drawn under flexible employment is also excluded.

**Regulation 8** amends regulation 18 –

to provide definitive clarification that all benefits relating to pre 2008 service must be drawn on flexible retirement. This contradicts extant GAD guidance which states under paragraph 2.2 “members can elect to take all or none of their benefits relating to pre- 2008 service” and will require subsequent revision.

**Regulation 10** amends regulation 28 (children's pensions: active members) –

the reference under (a) (i) is surplus to requirement as provisions mentioned are in respect of pension debits which do not apply to children's pensions.

Paragraph (b) As children's pensions for actives are calculated by reference to whole time equivalent pay, the word “pay” should be substituted for “membership” to achieve the desired intent and to ensure consistency with the calculation of survivor benefits.

**Regulation 14** amends regulation 33 (survivor benefits: deferred members) –

part (c) would appear contrary to the status of a deferred member by virtue of being deferred and not actively employed at the date of death.

However, if the intent is to provide equal treatment for all member types, in this particular circumstance it would require the IRMP to assess whether the cause of the death is associated with the reason for the previous reduction in hours.

This could prove administratively arduous due to the latency period between the reduction in hours, termination of employment and death – it will also be reliant upon the availability and quality of employer documentation re: the underlying reason for the change in hours.

Additionally, as pension is calculated on a whole time equivalence basis, the word “pay” should be substituted for “membership” to achieve the desired intent.

## 2/ **Amendments of the LGPS (Transitional Provisions) Regulations 2008**

**Regulation 19** - omits saved provisions relating to the transfer-in of pension rights, determining service credit awards for late transfers, or for transfers with accompanying aggregation of local government to be treated as part A membership.

In conjunction with the proposed changes, version 4 of the applicable GAD guidance for incoming club transfers will need amendment. In order to reflect the removed provisions, the guidance needs to state that “the service credit is to be based solely on PA65 and expressed as 60th benefits with commutation option attached”.

## 3/ **Amendments of the LGPS (Administration) Regulations 2008**

**Regulation 21** amends regulation 6 (transferee admission agreements) –

The proposed clarification that a Transferee Admission Body should enter into separate admission agreement in respect of different contracts with the same employer is a sensible proposition.

However, an exception may be required to cater for the outsourcing of Local Authority school contracts. Although, non-teaching staff are deemed Local Authority employees for pension purposes, the individual schools take out separate contracts with the contractor. In these cases there can be one admission agreement which covers numerous contract dates with a number of individual schools. All of the employees are designated in the admission agreement as being eligible to be members of LGPS and the Local Authority signs the admission as the ultimate guarantor.

The flexibility to enter into a single admission agreement with contractors securing multiple catering/cleaning contracts with schools (maintained by the same local education authority) should be retained. This would avoid the costs of repeated small termination payment calculations having to be undertaken and avoid unnecessary legal and actuarial costs falling on to administering authorities and employers.

**Regulation 22** amends regulation 7 (admission agreements) –

MPF supports the suggestion that all new Community and Transferee Admission bodies must provide a realisable guarantee to mitigate the risk of financial loss to the Fund, Scheme Employers and the taxpayer.

However, the proposed change to create a prescriptive, mandatory measure compelling new admitted bodies to enter into a bond or indemnity or provide an alternative parent company guarantee is too restrictive.

Whilst bonds would increase financial security and limit the incidence of bodies exiting the Fund leaving unrecoverable debt, some bodies may struggle to secure a bond or the cost may be prohibitive.

The same objective to ensure all scheme stakeholders are protected from the increased risk of unfunded liabilities in respect of insolvent admitted bodies could be achieved through alternative measures such as legal charges over assets or more stringent funding strategies. This is reasonable and common practice in Funds.

For example, MPF has developed a strong and robust funding framework in relation to admitted bodies and continues to review its strategy and views the introduction of clear policies around risk management as necessary. Funds should be afforded the flexibility to enter into alternative arrangements, reflecting local circumstances and to ensure there is no retrograde legislation to established funding policy frameworks.

It is of paramount importance if the body provides a parent company guarantee that due diligence is performed to ascertain the strength of the employer covenant to safeguard the Fund for the remaining scheme employers. The proposal replaces the existing requirement for risk assessments to be undertaken by the letting authority for transferee admission applications which could save time and actuarial fees.

However, the financial requirement would need to be clearly stated at the tender stage of the contract and could, for smaller contracts, be seen as anti-competitive. It could also lead to more contractors taking the comparative pension route instead of maintaining membership of the LGPS - leading to the erosion of the active membership and further reducing the ongoing viability of the Scheme.

In the current uncertain market conditions, the abrupt termination of a contract may lead to a deficit exceeding that of the in place Bond

(guarantee). If no risk assessment has taken place by the letting authority, then the contractor may not be in financial position to meet the deficit costs – ultimately, these costs would be met by the taxpayer.

Part 7 (6) – MPF supports the retention of the requirement to inform the Secretary of State of new admission agreements – to deliver transparency and improved governance of the LGPS. Ideally the information should be shared electronically (by secure means) thus reducing the costs and resources in administration (on both sides).

It would be cumbersome to forward hard copy documentation and would suggest a three month deadline from completion of the legal agreements to communicate the relevant information to the Secretary of State.

**Regulation 30** : appropriate Funds: special circumstances –

At present the LGPS does not cater adequately for cross Fund amalgamations. This can lead to operational tensions between Funds and actuaries regarding responsibility and “ownership” for active members going forward; perhaps more specifically, where the responsibility lies for funding any residual deferred and pensioner liabilities remaining in the former Fund.

MPF supports this proposed amendment for the Secretary of State to make a direction to support the agreement of amalgamating funds and believe it will remove the key pension problems, such ventures can create and avoid any costs associated with the crystallisation of any past service deficit.

Actuarial and legal fees should also be reduced as there should be less cause for disagreement between the employer, Funds or actuaries.

**Regulation 32** amends regulation 38 (revised actuarial certificates) –

MPF fully supports the proposal to seek cessation debts from all scheme employers, including scheduled bodies. The opportunity to hold more frequent actuarial reviews of employer contributions (following a substantial change to an employer’s circumstances) is a welcomed and long overdue change. This will enable Funds to manage closing employer’s liabilities on a proactive transparent basis, mitigating some of the risk to non-recovery of accrued deficits.

**Regulation 33** amends regulation 56 (first instance determinations: ill health) –

The amendment suggests that the reference to regulation 31 (4) covers both deferred members and pensioner members with deferred benefits, allowing the IRMP to have previously given an opinion. The reference requires revision to clause 31(1) (b) to clarify that the amendment only applies to pensioner members with deferred benefits. Paragraph 1A

would also need to be re-defined including points 1(b) to deliver the required intent.

**Regulation 35** (Annual Benefit Statements) –

The requirement to produce annual benefit statements by 30 September is extremely challenging as Funds are reliant upon the receipt of timely, accurate data from many scheme employers.

MPF, like many Funds, operates an annual reconciliation of member data and employer/employee contributions. In producing Annual Benefit Statements, MPF prints and distributes on a bulk basis in order to maximise cost-savings on production and postage.

Operationally, such high volume production and distribution of statements for all active members would require data reconciliation work to be completed in August. For both Funds and employers alike, this means the bulk of the work would take place during the main "holiday season" – making responses to queries and quality control checks troublesome and problematic. In regard to Academies, there is an increased likelihood that the organisation will actually be closed during the reconciliation period.

MPF is aware of its responsibility in regards compliance with the new tax regime – specially, issuing pension statements to members who have exceeded the Annual Allowance in the given year. However, whilst the recent reduction in the annual tax allowance has been substantial, it still affects only a relatively small number of LGPS members.

Additionally, members' pay used to determine the bulk annual benefit statements process is based on assumed notional pay for the relevant year whereas for annual tax allowance purposes accurate pensionable earnings for the input period is essential.

MPF has planned to meet the reporting requirements of the new tax regime by operationally targeting those members most likely to exceed the allowance; work with employers and then inform those members appropriately at the earliest opportunity re: their tax exposure. This could be done in advance of the 30 September date, if flexibility for Funds to produce Annual Benefit Statements at a later date was maintained.

**Regulation 42** amends Schedule 4 (appropriate funds) –

MPF believes the proposed amendment to clarify the appropriate Fund within the geographical area where the Academy is located is necessary.

Although it is likely this suggestion may not be well received by individual academy trusts, given that they pay the same employer rate into the Teachers' scheme regardless of where the academy is located but will be required to pay different rates into the LGPS.



**Regulation 44** (automatic enrolment) –

If the requirement for automatic entry continues on the basis that an individual requires a contract of at least three months or for casual employees to have stated mutuality of obligation, then a regulatory change may afford some clarity. Specifically, a change should be made that explicitly instructs employing authorities that all employees are to be automatically enrolled into the LGPS at the point that their contract is extended beyond three months.

To comply with the statutory requirements set down in the Pension Act 2008 and its associated secondary legislation in relation to employees with contracts of less than three months paragraph 3 and 5 of regulation 13 should be amended enabling employees of admission bodies to opt to backdate membership to the commencement of their employment at the point they are automatically enrolled.

**4/ Conclusion**

MPF believes that the amendments being put for consideration are progressive and help in the continual development and modernisation of the Scheme.

One further area we would like to see included is the removal of the need for Councils to make a positive decision whether to offer LGPS membership to their elected members. Consequently this will remove the inequity of only allowing certain members access depending on the jurisdiction of the respective Council.

Merseyside Pension Fund is also concerned at the delay in bringing councillors within the scope of the 2008 Scheme including the ability to nominate cohabiting partners for survivor's benefits.

Yours sincerely



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