



LGPS Regulations 2013
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Please ask for: Yvonne Caddock

Date: 5 February 2013

CONSULTATION RESPONSE: DRAFT REGULATIONS LGPS 2014 [membership, contributions & benefits]

Wirral Council is responsible for the administration of the Merseyside Pension Fund which is part of the Local Government Pension Scheme (LGPS). The Merseyside Pension Fund deals with the LGPS pension administration and investments on behalf of the 5 Merseyside District Councils, and over 130 other employers on Merseyside and elsewhere throughout the UK.

The Fund has over 46,000 active contributing members, 43,500 pensioners and 31,500 deferred pensioners. It is responsible for the investment and accounting for a pension fund of £5.2 billion.

With reference to the consultation issued on 21 December 2012 in regard to the initial draft regulations on the membership, contributions and benefits aspect of LGPS reform from 1 April 2014, I submit the following response on behalf of Wirral Borough Council in its capacity as the Administering Authority of the Merseyside Pension Fund (MPF) regarding the regulations that need amendment to deliver what we consider to be the desired intent.

1/ GENERAL COMMENT ON THE DRAFT REGULATIONS

It is important to recognise that the draft regulations currently presented only represent part of the Regulatory Framework required to effectively administer the LGPS from April 2014. Administering Authorities cannot provide a cohesive insight into all the facets of operational practice until the relevant inter-dependent legislation of administration and transitional provision is published.

The focus of this response relates to required amendments to facilitate compliance with auto-enrolment legislation and the interactions with the new 50:50 arrangement. The issue with regard to "age 75" restrictions features highly in relation to equality and the disparity between possible benefit awards due to overarching provisions within the Finance Act 2004.

The ill health regulations do not appear to be revised from the current provisions. It is the Fund's opinion that a full review should take place at a separate juncture to consider ambiguous terminology, the conflict between ALAMA guidance and HMRC definitions, plus the various impracticalities of administering Tier 3 ill-health awards.

The concept of ARCS carried forward into the new Scheme as MARCS are an unnecessary and unwelcome provision, unlike additional voluntary contributions (AVCs). The basic additional pension is taxable and the contract is inflexible, whereas AVC's are tax efficient offering a tax free lump sum and flexible contribution rates. As such ARCS have proved to be disappointing and from implementation in 2008 have attracted only 20 subscribers from over 46,000 contributing members. It is unlikely that a similar arrangement will prove any more attractive in the new Scheme.

2/ REGULATION 3, PARA 5 – MEMBERSHIP & AUTO-ENROLMENT

It is necessary to include references to "in an employment" and "that employment" to provide definitive clarity that each employment has to be considered separately when assessing eligibility of Scheme participation; both on a contractual basis and under auto-enrolment provisions.

Paragraph 5(b) - Specific reference to Section 16 of the Pension Act 2008 is required to comply with the intention of the overriding provision to enrol eligible jobholders at an employer's automatic or re-enrolment date; as opposed to all employees regardless of the status / categorisation of the employees as defined within the Act.

3/ REGULATION 4 – MEMBERSHIP TO CONTINUE POST AGE 75

In response to the request for views of allowing members over 75 into the LGPS, there should be a consistent approach across all the main public service pension schemes, directed via the HM Treasury's Official Committee on Occupational Pensions (MOCOP).

However, there appears to be a number of issues in relation to the benefits of membership for the over 75 employee, in fact these lead to a two tier set of entitlement. Firstly will a member over age 75 be eligible to receive a death-in-service grant? Secondly, the cost of continuing participation will be greater due to the restriction of tax on contributions under current HMRC regulations.

From purely a funding perspective an increasing elderly active membership may lead to the payment of a greater number of death-in-service grants; increasing financial pressures, the costs of which Funds may need to mitigate by introducing a medical requirement beyond age 75.

The costed savings made when members commute their pension into a single lump sum at a rate of £12 of lump sum for every £1 per annum of pension usually represents a saving in the scheme's favour but if this provision is extended to the over 75's this will obviously result in a further cost burden.

4/ REGULATION 5, PARA 5 – OPTANT OUTS WITHIN TWO YEARS

The two year limit, as stated in the draft regulations, should be replaced by a three month timeframe for those members who opt-out of the LGPS after three months to be treated as not having been an active member.

As currently drafted, the reference to two years would seem to preclude the administering authority from repaying contributions (a refund) in accordance with Regulation 18. It would appear practicable to retain the current three month timeframe for employers to refund contributions and adjust pay and tax through payroll; with refunds payable by the Fund for that period of three months to two years.

5/ REGULATION 9 – CONTRIBUTIONS BY MEMBERS’

The suggested criteria to determine the materiality test on rebasing contribution rates during the course of a financial year, solely in relation to revisions to contracts of employment, is too restrictive.

It would appear fairer and within the Government’s policy objective for costs to be recalibrated between the LGPS stakeholders. As such the employer’s require the ability to reassess the contribution rate if pensionable pay alters significantly due to an increase or decrease in working hours or in respect of overtime - without being reliant upon a corresponding change to a the member’s terms and conditions

6/ REGULATION 10 – TEMPORARY REDUCTION IN CONTRIBUTIONS

Regulation 10(1) stipulates that only an active member can elect to pay reduced contributions. The current wording would imply that someone wishing to make this election would only be able to do so following one full day of pension accrual within the main section of the Scheme benefits.

We would strongly advocate re-wording this regulation in order for a member to make their election to pay lower contributions from their ‘date of entry’ to avoid onerous duplication of both payroll and operational procedures and to reduce complexities for the member.

It is necessary to include references to disparate employments within Regulation 10(2) to demonstrate that a member with multiple employments can elect for the 50:50 sub-section in one, some or all of their employments. In addition, reference to Regulation 14 needs inserting to clarify that the purchased strike should be 50% of the appropriate cost envelope as determined by GAD and not in accordance with Regulation 9.

Regulation 10(5)(a) requires redrafting to clarify that it is the employers automatic re-enrolment date as opposed to the members automatic re-enrolment date to enable the 50:50 election to be cancelled and for all members to be subsequently moved to the main Scheme. A specific reference to Section 5 of the Pension Act 2008 is needed to permit all categories of employees to be re-enrolled into the main Scheme and not only eligible jobholders.

7/ REGULATION 14 – CONTRIBUTIONS DURING TRADE DISPUTE ABSENCE

Regulation 14(1) should refer to the current cost envelope of 19.5% for the new Scheme as agreed by the Government rather than the historical 16% contribution figure that has been carried forward from previous legislation.

8/ REGULATION 18, PARA 4 – RIGHTS TO RETURN OF CONTRIBUTIONS

As currently drafted regulation 18(4) does not permit refunds to be claimed after a year of ceasing employment, with no further provision to indicate how to treat unclaimed contributions. An amendment is required to provide that a member can defer payment for up to one year with an automatic refund thereafter.

9/ REGULATION 20 – MEANING OF PENSIONABLE PAY

The listed exclusion in relation to pensionable pay is silent on the treatment of the monetary value of motor vehicles. It is not apparent whether it is now the intention to allow lease cars and pay in lieu of lease cars to be pensionable or whether this will feature as a saved provision within the revised Transitional Regulations.

10/ REGULATION 27 – FLEXIBLE RETIREMENT ACCOUNTS

The introduction of the new benefit design provides an opportune time to simplify the current flexible retirement provisions. This could be achieved by prescribing that all of the benefits accrued up to the point of flexible retirement should be drawn by the member i.e. there should be no option for a member to take only part of their accrued benefits.

This would mean that Regulation 27 could be deleted as there would be no requirement to establish a separate Flexible Retirement Pension Account.

11/ REGULATION 29 - PENSION CREDIT ACCOUNTS

This provision requires amendment to clarify that Pension Sharing Orders can be made against deferred members and pensioner members and not solely against active members.

In addition, the reference to the capital value of the active members account to which the credit member is entitled to receive is both confusing and misleading. A pension credit member is awarded a proportion of the debited pension, which is then adjusted in accordance with the sex and age of the credit member to generate a separate pension credit account; it does not replicate the amounts deducted from the debited member.

12/ REGULATION 33 –ELECTION FOR LUMP SUM INSTEAD OF PENSION

The current regulations contain a clause to state that conversion must take place after any early retirement reduction is applied. However no such similar clause is contained within this regulation. Is the intention still the same? Within the text in chapter 2 to accompany regulation 25, post reduction conversion is implied; whereas regulations 25 and 26, themselves, imply pre-reduction conversion.

13/ REGULATIONS 41, 44 AND 47 – SURVIVORS PENSIONS – NOMINATED PARTNERS

The definition of a nominated cohabiting partner (NCP) is missing from this regulation. Comments are requested as to whether administrators would welcome a less onerous system. The existing prescribed conditions to qualify for a cohabiting partner's pension should still apply in the 2014 Scheme and that the member should still be required to make an election to nominate a cohabiting partner to receive a pension. However, some simplifications can be made to the conditions, particularly to the two year limit that exists, stating that elections cannot be signed until all conditions have been met for two years.

To simplify matters the member should be able to sign a declaration at any time. The proof that the conditions have been met for two years does not have to be given until the point of the member's death.

14/ REGULATIONS 43(4) and 46(4):

These regulations state that the administering authority discretion expires within two years from the date of death. The current regulations provide an alternative limit, being within two years of the date the administering authority could have reasonably known about the death, which is not included here. The wording needs amending here to cater for cases where we are not informed of the member's death for a period which maybe years. There is wording provided for this under the Finance Act 2004 and is already contained in the existing Benefits Regulations 32(4)(b) and 35(4)(b).

15/ REGULATION 46 – DEATH GRANTS & PENSIONER MEMBERS

Under the current and proposed regulations, no Death Grant is payable once the member attained age 75, this leads to an inequitable and inconsistent treatment of members simply based on their age.

As a member can now remain in the Scheme past age 65, but the payment of a death grant cannot be paid once the member exceeds age 75, the so called 'ten year guarantee' of pension due less pension paid is not strictly true for all members. In actuality, the "ten year guarantee" is in fact a reducing balance based on age.

The draft regulations appear silent on this existing and seriously inequitable issue.

16/ REGULATION 54 – NO DOUBLE ENTITLEMENT

In our opinion this regulation is an example of what might be seen as a lost opportunity to remove obsolete provisions from the 2014 regulations. No eventuality can lead to double benefit entitlement in respect of one period of employment that we are aware of, thus we would support removing this regulation.

17/ REGULATION 56 – TAX

Regulation 56 as drafted does not provide clear guidance on the responsibilities that an administering authority faces given the many payments subject to taxation made within a given financial year. This regulation refers to tax but only references the Finance Act 2004. It would appear more appropriate when quoting the overriding legislation to refer to any updates or amendments that have occurred since the draft LGPS 2014 Regulations.

18/ COUNCILLOR SCHEME

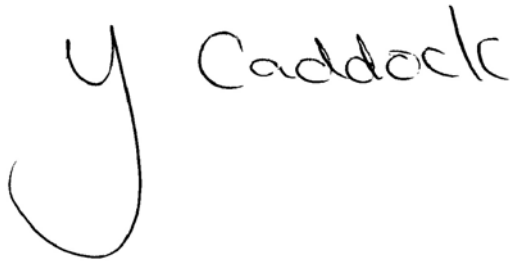
Although the intention to remove access for councillors from the LGPS from 2014 will be subject to a separate consultation shortly, Annex E refers to a Ministerial Statement and the proposals to permit continued access to the Scheme for elected mayors.

As mayors currently only have access to the Councillor scheme further amendment to the draft membership, contributions and benefits regulations will be required to allow Mayors into the main LGPS Scheme from April 2014 - including provision for the transition of accrued membership.

In the event of councillors retaining their right to remain as members of the LGPS it is essential that the regulations governing their entitlements mirrors the benefit structure and definitions as prescribed by the LGPS 2014 Regulations. In essence, this will simplify administration of Councillors' pensions and avoid further complexity of administering two Career Average benefit structures.

In conclusion, these are the points made by MPF as an administering authority on what information is available within this one set of draft regulations. We have an expectation of being able to provide further feedback via consultation once all parts of the Regulatory Framework are in place.

Yours sincerely

A handwritten signature in black ink. The first letter 'Y' is large and stylized, with a long vertical stroke that curves at the bottom. The name 'Caddock' is written in a cursive, handwritten style to the right of the 'Y'.

Yvonne Caddock,
Principal Pension Officer

cc. Jeff Houston, Director of Pensions – LGA