

WIRRAL COUNCIL

PENSIONS COMMITTEE

24 JUNE 2013

SUBJECT:	LGPS UPDATE
WARDS AFFECTED:	ALL
REPORT OF:	STRATEGIC DIRECTOR OF TRANSFORMATION AND RESOURCES
RESPONSIBLE PORTFOLIO HOLDER:	
KEY DECISION	NO

1.0 EXECUTIVE SUMMARY

- 1.1 This report updates Members on the technical responses from MPF to the second round of Statutory Consultations in regard the new LGPS from 1 April 2014.
- 1.2 In addition, the report summarises the draft Miscellaneous Amendments Regulations 2013 in relation to the current Scheme and also an overview of the intended national communication strategy to promote understanding of the new Scheme.
- 1.3 It also covers the enactment of the Public Service Pension Act 2013 and MPF's response to the recent DWP consultation on Automatic Enrolment simplification.

2.0 BACKGROUND AND KEY ISSUES

Reform of the LGPS – The 2014 Project

- 2.1 Members previously considered the Fund's formal response to the first consultation on the main elements of the new Scheme at the last committee meeting on 25 March 2013 (minute 79 refers).
- 2.2 On 28 March the DCLG published a further three part consultation:
 - Part A: a second issue of the main Scheme elements from April 2014;
 - Part B: transitional provisions to protect members' previous pension entitlement on the introduction of the new Scheme
 - Part C: relates to miscellaneous amendments to the current Scheme regulations.
- 2.3 The consultation closing date for Part A was 3 May 2013 and 24 May 2013 for both Part B and C. MPF submitted formal responses within the prescribed deadlines after seeking the approval of the Chair of the Pension Committee. The respective responses are attached as Appendices 1 & 2.

Consultation - Part A: Draft Main Scheme Regulations 2013

- 2.4 The focus of the response related to the provisions that lacked clarity within the draft Regulations and a consideration of the technical and operational practicalities; including administrative ease and areas of inequitable treatment of the Fund's diverse membership.

In acknowledgment of the increasing complexity resulting from the statutory protection of accrued pension rights, the underlying theme taken by MPF is that simplification should be sought where possible. This will assist funds and employers in both operational delivery and in communicating the continuing value of Scheme participation to the membership.

- 2.5 The consultation also requested comments on outstanding policy issues within the main Scheme regulations and this formed the main part of the MPF response (Appendix 1). Specifically the main issues of contention relate to the disparate revaluation of specific pension accounts and the requirement for Certificates of Protection within a CARE scheme - these issues are summarised as:

2.6 Revaluation

A fundamental component of a Career Average scheme relates to the revaluation of active pension accounts. The use of a single index for all categories of pension accounts would provide transparency with regard to the growth in value and this was advocated in the MPF response.

The use of a separate index for active accounts in accordance with Treasury Orders as opposed to the use of the Pension Increase (Review) Order for deferred and pensioner accounts may lead to inequitable treatment of members - as there is the potential that the value of Pension Increase Orders may exceed Treasury Orders.

This mismatch of approach will complicate the decision process for re-employed members considering the merits of aggregating previous benefits

2.7 Certificate of Protection

The design of a Career Average scheme does not generally lend itself to the former concept of a 'Certificate of Protection' in circumstances of reduced pay.

In the current Final Salary arrangement, a reduction in pay can retrospectively reduce the value of a member's accrued pension – that may go back decades. The new career average arrangement means that there is an annual pension accrual based on their contributions and pensionable pay earned; this is then banked going forward and unaffected by future changes to pay.

However, there is a case to protect future pension accrual in circumstances where a member reduces pay due to an illness that ultimately leads to an ill health retirement or death.

Consultation - Part B: Draft Transitional Provisions & Savings Regulations

- 2.8 MPF responded with the opinion that, in the main, the Transitional Provisions achieve the intended objective of protecting members' previous pension entitlements (Appendix 2)

However, there are a number of areas within the draft Regulations that appear ambiguous, that may lead to misunderstandings and ultimately erroneous benefit payments. This could result in increased employer costs or increased administration costs for MPF. The main issues are summarised as:

- 2.9 Regulation 4 – Statutory Underpin

The general consensus within the LGPS is that the Statutory underpin was intended to ensure that no member within 10 years of age 65 as at 1 April 2012 is worse off under the new Scheme provisions. This means that those members who would see a change in their pension age in that period will get a pension at least equal to that which they would have received in the current Scheme.

The wording of the regulation is unclear with regard to the applicable underpin date as, although the current Scheme's normal retirement age is 65, members may access unreduced benefits from age 60 if they qualify under the '85 Year Rule'.

If it is the intention to set the underpin date at age 65 this would disadvantage members who qualify for an early release of unreduced benefits from age 60.

- 2.10 Regulation 23 – Councillor Pensions

Although there is a separate consultation on the subject of councillor pensions, it would appear that in the event of councillors retaining their right to participate to the LGPS it is the intention for future benefit entitlements to remain under the former 1997 Regulations.

MPF reiterated its opinion provided to earlier consultations that to simplify operational requirements and reduce administration costs the future benefit structure of councillor pensions should mirror the provisions within the main scheme.

Furthermore, if it is deemed that councillor access to the Scheme should cease, provisions will be required to deal with the payment of deferred benefits, particularly in circumstances of attainment of normal retirement age when remaining as an elected office holder.

- 2.11 Regulation 25 Calculation of Final Pay

Members who were active on 31 March 2014 are afforded the benefit of a protected 'Final Pensionable Pay' which, as currently drafted, allows pre-2014 benefits to be calculated using the definition of pensionable pay under the 2014 scheme if it is of a higher value.

The post-2014 salary will result in a higher figure for many members as it includes 'non-contractual' overtime and provides the opportunity for members to inflate their

'Final Pensionable Pay' pay prior to retirement - leading to a windfall gain rather than a preservation of previous benefit entitlements.

Consequently if this is the policy intent and not a drafting error, this measure would place significant cost pressures on employer budgets - pension liabilities will increase as will employer funding deficits and the associated deficit recovery contributions.

Consultation - Part C: Draft Miscellaneous Amendment Regulations

2.12 These provisions make amendments to the current LGPS Benefits and Administration Regulations as part of the ongoing stewardship of the 2008 Scheme. The key comments made in the response relate to the amendments on entry provisions and Actuarial Certificates.

2.13 Regulation 6 – Joining the Scheme

It is recognised that this provision ensures that the LGPS satisfies the criteria as a qualifying scheme, as defined within the 2008 Pension Act and it will affect all employers who employ staff on employment contracts of less than three months.

This amendment removes the exclusion of employees with a contract of less than three months from being automatically enrolled into the Scheme upon the member's automatic enrolment or re-enrolment date.

However, this change of admitting such members to the Scheme will result in burdensome administration for both employers and funds. It may therefore be practical for employers to issue postponement notices to the affected employees until they have been employed for three months by virtue of a contract extension.

2.14 Regulation 7 – Revised Actuarial Certificates

The amendment deals with employer terminations and it introduces the definition of an exiting employer to clarify that cessation provisions apply to all employers within the Scheme. It also defines the framework for recovering exit debts

The proposed changes explicitly enable the Administering Authority to spread debts over a reasonable period where the debt falls to another Scheme employer.

MPF commented that it would be prudent to also permit the exiting employer to spread the debts assessed at termination to mitigate the risk of unrecoverable debt falling to back on the Fund.

Regulatory Framework for April 2014 – outstanding regulations

2.15 As part of the ongoing creation of the regulatory framework for the new Scheme, a further set of regulations are expected shortly, covering the areas of Governance and Cost Management.

There will also be regulations to cover the outstanding LGPS Administration items, which are required prior to implementation of the new Scheme.

LGPS 2014 – Member Communications

- 2.16 The LGA is collaboratively working with funds and Trade Unions on creating communication resources for members on the new Scheme. MPF has representatives on the main working party and also individual sub-groups tasked with specific areas of communication work.

The communication strategy has been drafted over the past three months and there are plans to provide a suite of topic based leaflets and videos. There also plans to develop and deliver a 'Benefit Modeller' to act as an educational tool for members with their understanding of the new Scheme.

- 2.17 As part of the shared services arrangement with the LGA, MPF has arranged for the first of a series of short videos to be accessed on the LGPS 2014 website.

"This is a short lively graphics based video with music and is intended to engage scheme members and introduce them to the high level changes being made from next April."

- 2.18 Further short topic based videos are also planned to be available later this year to cover:
- When can I retire/take my benefits?
 - How is my pension worked out/pension accounts?
 - Contribution Flexibility – including 50/50 option
 - If you joined the LGPS before 1 April 2014

It is also intended to produce a promotional video solely covering the new Scheme provisions for new members.

The Public Service Pension Act 2013

2.19 The Public Service Pension Bill received Royal Assent on 25 April 2013 providing the framework for the forthcoming changes to public sector pension schemes, with the key implications for the LGPS can be summarised as:

- provides for scheme regulations to be made within a common framework and establishes new Career Average Revalued Earning schemes across public sector schemes.
- links the normal retirement age to State Pension age;
- develops a new governance framework and introduces new terms including the
 - Responsible Authority (the Secretary of State for Communities and Local Government),
 - Scheme Manager (the Administering Authority),
 - Pension Board (assisting the Scheme Manager at a local level)
 - Scheme Advisory Board (providing advice to the Responsible Authority and the Pension Boards)
- requires a cost control mechanism to keep the ongoing cost of the schemes within defined margins with steps outlining action to be taken.

2.20 Auto-Enrolment

The DWP published a consultation on 25 March 2013 with a closing date of 7 May 2013. This consultation proposed a series of technical changes to simplify the Automatic Enrolment legislation and the subsequent administration processes for employers.

The MPF response is attached as Appendix 3 and supports the proposal to provide easements for employers who go beyond the minimum statutory requirements.

Specifically, for those employers who automatically enrol all of their staff into a qualifying occupational pension scheme such as the LGPS, a national scheme exemption under the Auto-Enrolment legislation would remove the administrative burden of employers continually monitoring the 'age and earnings of employees who have actively chosen not to be a member of the LGPS'.

3.0 RELEVANT RISKS

- 3.1 Paragraph 2.11 makes reference to what is believed to be a drafting error in defining protected 'Final Pensionable Pay'. If the definition as currently drafted is carried through into the final regulations it will impose substantial extra liabilities and funding costs for some employers.

If, as it has been suggested across the LGPS as a whole, non-contractual overtime were to represent 1% to 2% of pensionable pay then past service deficits could increase by c.£50m to c.£100m within the Merseyside Fund; with some employers being significantly more affected than others.

- 3.2 There is a risk that due to the increasing complexity being built into the Scheme (as a consequence of the disparate benefit protections in relation to membership previously accrued) it will become challenging to persuade members of the relative merits of remaining in the Scheme which is fundamental to the ongoing funding of the LGPS.
- 3.3 There is a risk that the complexities within the regulations will make it impractical to get the systems in place to administer the new Scheme, requiring manual intervention to ensure continuity of effective service levels.

4.0 OTHER OPTIONS CONSIDERED

- 4.1 No other options have been considered.

5.0 CONSULTATION

- 5.1 There has been no consultation undertaken or proposed for this report.

It is important that MPF responds to the statutory consultations that will lead to revised regulations and a reformed LGPS, particularly when relating to Governance, Cost Control and Administration, as it is crucial to ensure the scheme is well-run and affordable in the long term.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 6.1 There are none arising from this report.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 7.1 MPF needs to initiate a formal strategic change programme to overhaul current administration arrangements, resources and communications; in recognition of the fundamental change of introducing a Career Average benefit pension arrangement complete with ongoing protections to the pre-2014 Final Salary benefits.
- 7.2 The increased complexity of administration and data provision from employers will require MPF to strengthen its Quality Control activities and develop an appropriately resourced Quality Assurance programme.

7.3 The introduction of protected accrued benefit promises with the associated disparate pensionable pay definitions will introduce additional operational costs and resource issues for both employers and MPF.

7.4 Employers would see a saving in operational payroll costs if the Auto-Enrolment easement is brought in by the DWP (paragraph 2.20) – they would no longer need to monitor employees in the intervening period between the date that the employee opted-out of contractual enrolment and the employer's re-enrolment date,

8.0 LEGAL IMPLICATIONS

8.1 There are none arising from this report.

9.0 EQUALITIES IMPLICATIONS

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

The reforms to the LGPS have already been assessed by Government with regard to equality.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 None arising from this report

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 None arising from this report

12.0 RECOMMENDATION/S

12.1 That Members note the report.

13.0 REASON/S FOR RECOMMENDATION/S

13.1 There is a requirement for Members of the Pension Committee to be kept up to date with legislative developments to carry out their decision making role in order to enable them to make informed decisions.

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APPENDICES

- 1 MPF submission dated 3 May 2013 to DCLG Consultation on Draft LGPS 2013 Regulations
- 2 MPF submission dated 24 May 2013 to DCLG Consultation on Draft Transitional Provisions and Draft Miscellaneous Amendment Regulations 2013
- 3 MPF submission dated 3 May 2013 to DWP Consultation on Technical Changes To Automatic Enrolment

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
The LGPS update is a standing item on the Pensions Committee agenda.	