



LGPS Regulations 2013
Department for Communities & Local Government
Zone 5/G6
Elland House
Bressenden Place
London, SW1E 5DU

Direct Line: 0151 242-1390

Please ask for: Yvonne Caddock

Date: 3 May 2013

Dear Mr Perry

CONSULTATION RESPONSE: DRAFT REGULATIONS LGPS 2013

[PART A: draft regulations & related Annex B policy issues]

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 £5.6 billion.

I would be grateful if you would consider the following comments in relation to the Local Government Pensions Scheme consultation launched on 27 March 2013. This response is specific to **Part A** of the three-part document, specifically the draft regulations and the connected "outstanding policy issues" in **Annex B**. A further response will be submitted on Part B and Part C by the secondary deadline of 24 May.

A - GENERAL COMMENTS ON THE "OUTSTANDING POLICY ISSUES"

1/ AGGREGATION

The Fund welcomes the re-introduction of a two year vesting period, reducing liabilities and avoiding the need to administer lots of small value deferred accounts along with the attendant costs. For example, the requirement to issue annual benefit statements to members with small value deferred pensions.

For members who have more than two years membership in a former employment, who are then subsequently re-employed, we believe the right to continue to aggregate pension accounts at the member's choice within the existing 12 month option period should be retained, as opposed to automatic aggregation.

Members need to retain the opportunity to consider the financial implications of aggregation and compulsory aggregation could be detrimental in certain circumstances. For instance,

- where members have pre-2014 membership with a break of more than 5 years, the final salary link and any 85 year rule protection would be lost on aggregation;
- in circumstances of breaks of less than 5 years, the pay in the new employment might be less than that applied to the former deferred benefit, resulting in the member receiving a reduced pension at retirement;
- losing the ability to draw deferred benefits in respect of pre-2014 membership at a different time to the new employment.

Conversely where a member has less than two years membership and becomes an active member of the scheme, therefore prohibiting a refund, it would be necessary to automatically aggregate the deferred refund account with the active account as provided within regulation 19 (1) (a) and (d) of the draft provisions.

2/ ASSUMED PENSIONABLE PAY (APP)

The requirement to calculate a number of pay figures for each member places significant burdens on both employers and pension administrators when seeking to calculate the value of pre-2014 membership and future accruals.

In view of the complex administrative requirements, there is significant merit in simplifying the method of determining 'Assumed Pensionable Pay'.

This could be achieved by removing the requirements as defined within regulation 21(5) and substituting with **"contractual pay at the date of the event, adjusted by the average non-contractual overtime over either the last 12 weeks or the previous scheme year"**.

This would in our view represent the fairest option as it would deliver the closest match for expected pay levels and simplest in terms of data collection for all interested parties.

3/ PERIODS OF REDUCED OR UNPAID ABSENCE

To ameliorate the complexities within the assessment of pensionable pay, the Fund in theory supports the use of ARCs as an alternative method of making up any deficit for a period of absence. This would avoid the need for 'Assumed Pensionable Pay' to be determined for the period, as the amount of pension for the year has been purchased via the ARC.

However, as the cost of an ARC is dependent on age and gender, weighted against older members, this option could be viewed as an inequitable method of covering the loss of pension accrual during absence.

4/ REVALUATION

As an intrinsic component of the CARE scheme relates to the revaluation of active pension accounts, the use of a single index for both active and deferred accounts would provide transparency in relation to the growth of pension benefits. This is particularly important in regard to re-employed members making informed decisions on the relative value of aggregating previous benefits.

We fear that the use of a separate indexation of active member's pension accrual as defined within the draft provisions and supported by the draft Public Service Pension Bill, would lead to the inequitable treatment of member pension rights.

In addition, the potential for different revaluation rates in the event of negative revaluations will also result in even further confusion when members need to consider their options regarding aggregation.

The concept of apportionment of increases for the first and last year of service would appear equitable, however, the method of application needs to be clear and comprehensively cover all accruals.

5/ NPA-SPA LINK

The revised definition of normal pension age and its alignment to the Pensions Act 1995 introduces the concept of individual member retirement ages. The definition appears to deliver the desired intent of the Public Service Pension Bill, to facilitate variations to retirement ages for accrued benefits in conjunction with future revisions to state pension age.

However, as written this would not permit the LGPS to have any flexibility in regard to any observed longevity change within its membership.

6/ SURVIVOR PENSIONS

The regulations appear to cover all eventualities for payment of survivor pensions. However, we believe it is necessary to address the inequality in relation to survivor benefits in respect of members who enter into a post-retirement marriage compared to a post-retirement civil partnership. This could be achieved by providing survivor pensions based on all membership for post-retirement marriages as currently afforded to a post-retirement civil partnership.

7/ EMPLOYER CONTRIBUTIONS

It is noted that provisions for the payment of employers' contributions, reflecting the valuation process and cessation of employer's participation will be covered within the draft Governance and Administration Regulations.

The provisions within these regulations that require employers to pay additional contributions over the certified rate are;

Regulation 30(5) to cover early payment strain costs on redundancy

Regulation 30(6) in respect of waiver of actuarial reductions

Regulation 16 and **31**, to cover the cost of any discretionary award of additional pension to a member.

8/ CERTIFICATES OF PROTECTION

The design of a CARE scheme where pension accrual is determined annually, based on contributions and pensionable pay earned within the scheme year, does not generally lend itself to the former concept of a 'Certificate of Protection' in circumstances of reduced pay.

The previous rationale for issuing certificates under a final salary scheme was because contributions had been paid on the pre-reduced salary with the expectation that benefits at retirement would be calculated on a comparable or higher final salary. Under a CARE arrangement, this is no longer appropriate as pension accrual will be 'banked' going forward on the pay earned within the scheme year at the associated contribution level.

We do note that the draft Transitional Provisions and Savings regulations have continued provision for the protection of final pay for pre-2014 benefits under regulation 8 to 11 of the 2008 Benefit Regulations, where a pay restriction has occurred. Certificate of Protections awarded under the 1997 regulations were carried forward into the 2008 scheme and may still be valid until 31 March 2018.

We believe there is justification to protect a future pension accrual in circumstances where a member reduces pay due to an illness that ultimately leads to an ill health retirement or death. Without some form of 'protection' the required benefits to be paid would be based on the 'restricted' pay level.

However, it could be argued in the interests of scheme participation, that members have assumed their retirement income whilst working for an employer, and if their future pay is restricted then some form of 'employee protection' may be required.

Consequently, if 'Certificates of Protection' were re-introduced as a general provision, the actual cost of protection to employers would be limited as the certificate will only apply to future pension accrual during the period of a valid certificate and not for all past service.

9/ INTEREST

Given the current financial situation facing the Public Sector, and in light of the continued affordability pressures that have driven scheme reform, it would appear imprudent to continue to pay interest above the Bank of England base rate.

10/ PENSION ACCOUNT ADJUSTMENTS

If 'Certificates of Protection' are re-introduced as a provision within the 2014 scheme, it would be necessary to include the requirement for subsequent adjustments to pension accounts if the certificate is used to recalculate pension values.

Pension Account Adjustments may also be required to recover monetary obligations under forfeiture/recovery provisions and outstanding employee contributions that may be identified in the event of unforeseen circumstances.

11/ AVCs

The redefinition of the relationship between the administering authority and the AVC provider as an “arrangement” as opposed to a “scheme” is a sensible approach to avoid the likelihood of HMRC reducing the current entitlement to access tax free cash from 100% to 25% of the AVC pot at retirement.

MPF welcomes the alignment of the 50% limit on AVC contributions to each pay period to remove any misconceptions by members and employers of the ability to contribute 50% of the annual pensionable pay when contracts commence part way through a scheme year or as intermittent payments.

It should be noted that due to changes to pensionable pay the amount of pay may vary significantly in different pay periods and where the AVC deduction is expressed as a flat sum, there is the possibility of payments exceeding the limit which will require employers to proactively monitor payment schedules.

However, as the realisable value of the AVC fund can be taken as a cash sum - within HMRC limits - the 50% restriction also prevents members circumventing the main scheme commutation provisions to provide a tax free sum. Commutation within the main scheme provides employer savings as it reduces the ongoing liabilities of providing the pension provision.

Conversely, if it is the desired intent to remove the 50% limit, the incidence of members contributing in excess of that limit is likely to be low; any excessive pension growth will be subject to charges under the reduced Annual Allowance tax provisions.

It would be of benefit if the link between AVC pots and the main scheme benefits was strengthened to ensure orphaned AVC pots are avoided. The requirement to link the AVC with other LGPS funds at retirement is administratively time consuming and in some cases limits the member’s options at retirement.

MPF supports the change to allow the value of AVCs, on the death of a member, to be paid at the discretion of the Administering Authority - either for the benefit of the member’s nominee or personal representative.

To provide a consistent approach with main scheme benefits, AVCs transferred from the LGPS in Scotland/Northern Ireland should be transferred into the member’s active pension account.

12/ Pensions Increase

Our preference, for the purposes of clarity and good housekeeping within these regulations, would be for the Pensions (Increase) Act references to be carried forward into the new Local Government Pension Scheme Regulations 2013.

B - COMMENTS ON THE "PART A: DRAFT REGULATIONS"

The provisions that appear to require amendment to deliver clarity to ensure the timely effective administration of the LGPS are as follows;

Regulation 10 – Temporary Reduction in contributions

Regulation 10 (5) requires redrafting to demonstrate a member in the 50/50 section will not have an "automatic enrolment date" in relation to that employment because they are already an active member of the scheme in the employment.

The provision should refer to the "automatic re-enrolment date" as defined in Schedule 1 which relates to the date the employer has chosen as its re-enrolment date and is not member specific which will allow all members in the 50/50 section to be placed into the full section regardless of the categorisation of workers under the 2008 Pension Act.

Regulation 14 – Contributions during Trade Dispute Absence

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

Regulation 21 – Assumed Pensionable Pay

Regulation 21(7) provides for revaluation of the 'Assumed Pensionable Pay' that a member is treated as receiving, but if the amount relates to the last 12 weeks' pay figure then it will not be necessary to increase the pay until the member remains on reduced or no pay for a period that crosses two scheme year ends.

Regulation 32 – Commencement of Pensions

Regulation 32(9) specifies the commencement date for payment of an ill health pension from deferred status is the date the member is certified as being permanently incapable by an IRMP. This could be deemed to apply to a retrospective date to the request and is contrary to the current approach under regulation 31 of the 2007 Benefits Regulations to assess eligibility from the date of application.

Regulation 35 Ill Health: Active Members

The requirement that a member's employment must be 'terminated by an employing authority' prevents employees who voluntarily resign due to permanent ill health being entitled to a pension under this provision.

Regulation 37 Ill Health Tier 3 Reviews

At the 18 month review of a Tier 3 ill-health award or upon a members request, the uplift is restricted to a Tier 2 – consequently, regulations 37(7)(ii) and 37(10)(ii) are superfluous as they relate specifically to the definition of a Tier 1 award.

SCHEDULE 2 , PART 3

Regulation 4 requires a scheme employer that provides funding which equates to 50% or less of an admission body's total revenue to act as a guarantor; but the necessity to indemnify the body would appear more appropriate in circumstances where the Scheme employer is providing more than 50% of the funding.

Regulation 5 - the proposed clarification carried forward from 2008 Administration Regulations that a Transferee Admission Body should enter into separate admission agreement in respect of different contracts with the same employer is a sensible position statement.

However, an exception may be required to cater for the outsourcing of contracts that cover multiple local authority schools within the same letting authority. Although the 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 different 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

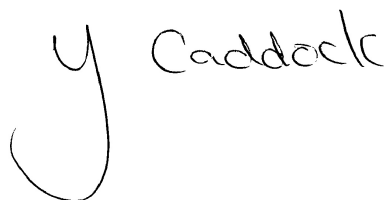
It is administratively burdensome and costly for all parties concerned to draw up separate agreements with numerous schools when the contractor has secured a framework contract with the local authority permitting a number of schools to engage the services. In practice the schools enter into individual arrangements at different dates under the original contract but the regulation as currently worded requires separate admission agreements to include each school and the local authority

C - CONCLUSION

The increased complexity due to the protection of accrued benefit promises and the revised benefit design will require a more in-depth quality assurance regime with significant additional operational costs and resource issues for both employers and administering authorities.

As such there is a consensus of opinion amongst administrators that any potential for simplification should be sought to ease the burden on administering the LGPS and assist with the mammoth task of explaining and communicating the benefits of the scheme to members and employers.

Yours sincerely

A handwritten signature in black ink that reads "Yvonne Caddock". The signature is written in a cursive style, with the first letter 'Y' being particularly large and stylized.

Yvonne Caddock

Principal Pensions Officer

cc. Jeff Houston, Director of Pensions - LGA