



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

Direct Line: 0151 242-1390

Please ask for: Yvonne Caddock

Date: 24 May 2013

Dear Mr Perry

CONSULTATION RESPONSE

PART B: Draft Transitional Provisions & Savings Regulations PART C: Draft Miscellaneous Amendments Regulations

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 covers **Part B** and **Part C** of the three-part document.

B: DRAFT LGPS (TRANSITIONAL PROVISIONS & SAVINGS) REGULATIONS 2013

The objectives to both protect member pension entitlements secured under the former regulations and to facilitate the seamless introduction of the 2014 benefit structure have generally been achieved. The focus of this response draws attention to the following areas of ambiguity or exclusion within the regulations that may lead to misunderstanding and erroneous benefit payments which would result in increased administration costs on Funds.

1/ REGULATION 2 – REVOCATION OF REGULATIONS

In compliance with the Public Service Pension Bill, Regulation 2(2) prohibits any further accrual of membership within the 2008 Scheme apart from members who are covered under the 'statutory underpin' that is created by these Transitional Provisions.

However, flexibility may be required to permit members who are compulsorily transferred to the LGPS from other Public Service Schemes (also with retained final salary rights) to be awarded actuarially equivalent benefits within the 2008 Scheme - thus maintaining the final salary link in respect of their former accrued benefits.

Similarly, in accordance with schedule 7 of the Public Service Pension Bill, should the same flexibility defined above be afforded to members who are active on 31 March 2014 and utilise the option to transfer former retained rights from a Public Service Scheme? This flexibility would be on the condition that there had been no disqualifying break of more than 5 years in the member's public sector employment.

It would improve clarity and administrative ease if regulation 2(2) could directly reference the exception clauses within the later provisions, specifically on the further accrual under the 2008 Scheme post April 2014.

As it is the broad intention that no further membership should accrue in the 2008 Scheme post April 2014, it would appear that 'Added Years Contracts' could not continue beyond 31 March 2014, unless the member is protected by the 'statutory underpin'.

As contracts taken out before 1 October 2006 affect the application of the '85 Year Rule', it could be considered equitable for the member to be provided with the option to buy-out the balance of the contract via a single capitalised payment or spreading that capitalised payment over a set period of time.

2/ REGULATION 3 – MEMBERSHIP BEFORE 1 APRIL 2014

The regulations now necessitate that in all cases other than 'flexible retirement' members must draw all of their aggregated retirement benefits at the same time. Regulation 3(4) attempts to ensure that the correct actuarial adjustments are applied to different tranches of benefits which have different retirement ages.

As drafted it is not clear that it delivers the desired intent in regard to the application of actuarial reductions. Specifically, if a member draws their pension prior to age 65 with reduction to their 2008 benefits, Regulation 3(4) appears to have no effect, as it automatically follows that the post 2014 membership would also be subject to reduction - although potentially at different percentage rates.

Conversely the clause correctly applies in circumstances where a late retirement uplift is payable in relation to pre-2008 Scheme benefits, but is not applicable to the post 2014 benefits because of a later State Pension age.

3/ REGULATION 4 – STATUTORY UNDERPIN

It is the consensus within the LGPS that the 'statutory underpin' is considered to apply to **all members** who are within 10 years of normal retirement on 1 April 2012 - which broadly covers members aged 55 or over at that date, with Learning Skills staff afforded the protection from age 50.

Regulation 4(2) defines the underpin date as the normal retirement age under the 2008 scheme which is ambiguous due to the inclusion of the reference 'to that member'. Although normal retirement age is 65 in the 2008 scheme, individual members may access unreduced benefits from age 60 if they qualify under the '85

Year Rule'. Is the intention of the regulation to ensure that members with existing retained rights under the 2008 scheme enjoy protection from their earliest retirement date which could be age 60?

For the avoidance of doubt, it would therefore assist administering authorities if the applicable underpin date could be clarified as either being age 65 or as the members earliest retirement age in accordance with the '85 Year Rule'.

If the underpin date is set at the scheme normal retirement age of 65 this would disadvantage members who qualify for early release of unreduced benefits under the '85 Year Rule'.

The requirements in Regulation 4(3) to establish a 'disqualifying break' of Public Sector service seems quite onerous for administering authorities. It would need Funds to ascertain whether the member was contributing to another public service pension scheme during a break of LGPS service. Given that this protection only applies to a small proportion of the overall membership, it would appear reasonable to remove this provision in the interest of administration easement and cost saving.

Regulation 4(6) sets out the method of calculating the 'statutory underpin' but is silent on the application of any underpin in relation to dependant benefits.

4/ REGULATION 5 – MEMBERSHIP OF THE 2014 SCHEME

To ensure inclusive treatment of all eligible members Regulation 5(2) needs to include the potential for previous opt outs and staff employed on contracts of less than three months who have been issued with a postponement notice to elect to join the scheme on 1 April 2014.

5/ REGULATION 9 – TRANSFER PAYMENTS

In respect of a member who joined the LGPS prior to 31 March 2014:

If a non-Club transfer is completed within 12 months of their commencement date, the application of the relevant date as drafted within Regulation 9(3) is dichotomous to calculating the transfer credit in accordance with GAD guidance and the allocation of pension accrual within the 2008 or 2014 Scheme.

System suppliers would need to develop an interim solution to accommodate the application of the relevant date as intended - ensuring the correct use of appropriate factor tables in accordance with GAD guidance. However, previous experience suggests that this complexity may only be remedied by manual calculation which would bring an additional administrative cost to Funds.

It is also unclear how the LGPS can participate within the Public Sector transfer club in respect of membership from April 2014 to April 2015. This is due to the LGPS moving from Final Salary 12 months in advance of the other Schemes.

6/ REGULATION 12 – ILL HEALTH RETIREMENT

The main Draft LGPS Regulations contain restrictions in respect of a subsequent enhancement award, where a member has received an earlier ill health pension – Regulation 39(6), (7),(8).

A similar restriction where a member has received an earlier ill health pension under the 2008 Scheme appears to have been omitted from the transitional regulations.

7/ REGULATION 15 – ADDITIONAL CONTRIBUTIONS

Regulation 15(3) stipulates that members who subsequently enter into a MARC contract from 1 April 2014 following the systematic termination of an ARC contract are afforded protection to commence the new contract using the member's age and actuarial factors applied at the date of the original contract.

Clarification is therefore required to establish whether it is the intention to use historic actuarial tables in these circumstances or revised 2014 scheme related tables. If historic tables are to be used it would appear to render the previous contract termination futile.

8/ REGULATION 18 - INTEREST

MPF maintains the opinion provided within **Part A** of the consultation that due to affordability pressures driving scheme reform, it would appear imprudent to continue to pay interest above the Bank of England base rate.

9/ 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 reiterates that in order to simplify operational requirements and reduce administration costs that 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.

10/ 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 has the inclusion of 'non-contractual' overtime. Particularly this is of concern for those employers where 'non-contractual' overtime is a key part of the pay structure, but it also gives the opportunity for members to inflate their 'Final Pensionable Pay' prior to retirement - resulting in a windfall gain rather than a preservation of previous benefit entitlement.

Consequently if this is not a drafting error, then this 'higher of' condition in Regulation 25(3) would place significant pressure on employer budgets as their liabilities will increase, as will their funding deficits and the required deficit recovery contributions.

C: DRAFT LGPS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

In recognition that these provisions make amendments to the LGPS Benefits & Administration Regulations as part of the ongoing stewardship of the 2008 Scheme, MPF make the following comments:

11/ REGULATION 3 – COMMUTATION OF SMALL PAYMENTS

MPF welcomes the inclusion of the 'de minimums rule' enabling administering authorities to compound small pension entitlement into a single lump sum payment capped at £2,000. This measure will remove the requirement for administrators to check that HMRC limits have not been breached due to the member compounding an earlier pension from another registered pension scheme.

This will also be operationally cost effective to the administering authority as there will no longer be the requirement to maintain payroll records for small monthly pension payments. An additional benefit is the earlier crystallisation of liabilities in the Fund.

12/ REGULATION 6 – AUTO-ENROLMENT PROVISION

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.

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 will affect all employers who employ staff on contract of employment of less than three months.

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.

13/ REGULATION 7 – REVISED ACTUARIAL CERTIFICATES

Regulation 7 amends the existing provisions dealing with employer terminations and introduces the definition of an exiting employer to clarify that the cessation provisions apply to all employers.

The proposed changes also explicitly enable the administering authority to spread the exit payment over a reasonable period where the exit debt falls to another employer within the Fund.

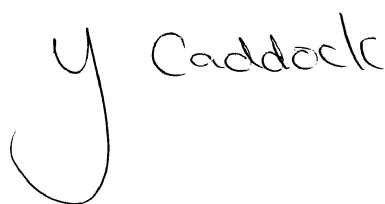
However, it would be prudent to also explicitly permit the exiting employer to spread the debt. This provision is not included in paragraph 2 and although it is included in paragraph 4, the circumstances stated only appear to relate to debt assessed prior to the employer's exit from the Scheme.

CONCLUSION

The Fund recognises the necessity and value in protecting the accrued benefits of the existing LGPS membership. However, the increased complexity will require a more in-depth quality assurance regime to manage the many nuances of transitional provisions. Ultimately, the operational management of this complexity will manifest as significant additional costs over the coming years, for both MPF and its participating employers.

It is within this context that MPF suggest that serious consideration should be given to the consolidation of all aspects of administration into the same set of Regulations. The current direction of consultation indicates that aspects of administration will be within each set of Statutory Instruments that govern the LGPS.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'Y' followed by the name 'Caddock' in a cursive script.

Yvonne Caddock

Principal Pensions Officer