



LGPS 2014 Consultation
Department for Communities & Local Government
Zone 5/G6
Elland House
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Please ask for: Yvonne Caddock

Date: 2 August 2013

Dear Mr Perry

CONSULTATION RESPONSE: DRAFT REGULATIONS LGPS 2013

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 44,500 active contributing members, 44,700 pensioners and 34,500 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 third period of statutory consultation on the new Local Government Pension Scheme. This response specifically highlights provisions within the draft regulations that appear ambiguous under **Annex A** and provides a view on the connected questions posed in **Chapter 2** and **Annex B**.

1/ Comments on Annex A: Draft Regulations

(Part 1) Membership, contributions and benefits.

The provisions that appear to require further amendment in order to provide clarity and ensure the desired intent of the regulations is consistently delivered by employers and administering authorities are as follows:

- **Regulation 10 – Temporary Reduction in Contributions**

10(5)(a) - The reference to member should be removed as the provision should merely 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.

This will allow all members in the 50/50 section to be moved into the main scheme despite being a non-eligible jobholder or an entitled worker as defined under the 2008 Pension Act.

An additional paragraph prescribing that an election to pay reduced contributions would not lapse if the member's employment is subject to a TUPE transfer would avoid inconsistency of application amongst administrators.

In a similar vein if it is the intention that the employer should continue to pay the full employer contribution as opposed to 50% of the employer rate a definitive clause within this provision would clarify the position.

- **Regulation 12 - Contributions during child-related leave**

If it is the intention that unpaid additional child related leave is not included within the circumstances in which pension accrual is calculated using assumed pensionable pay, then the regulation is silent in respect of unpaid additional child related leave and the ability to purchase additional pension contributions ("APCs") by virtue of regulation 16.

- **Regulation 15 – Employer contribution during absences**

This is a welcome provision to specify employer's responsibilities with regard to contributions during employee's absences and provides a clear steer for administration purposes.

However, clause (4) should not include the reference to child related leave as this precludes members on unpaid child-related leave electing to purchase "APCs".

As drafted this provision suggests that employer's must meet two-thirds of the cost of all arrangements and does not appear to deliver the desired intent of an employer having a discretionary policy in selected circumstances.

- **Regulation 17 – Additional voluntary contributions**

MPF notes the removal of the 50% limit of pensionable pay but fears this may encourage the practice of 'recycling tax-relieved pension savings' immediately prior to retirement. By providing the opportunity for member's to circumvent the main scheme commutation provisions to provide an alternative means of acquiring a tax-free lump sum, it would ultimately mean employers would incur further costs to provide future pension benefits.

The removal of the 50% limit fundamentally undermines the objectives of the new scheme design to deliver saving and ensure the long term viability of the scheme.

As there is escalating concern in regard the continuing benefit of higher-rate tax relief for pension saving - this provision will provoke further opposition to continued generous tax relief for the higher earner.

Clause 12 - allows the value of AVCs, on the death of a member, to be paid at the discretion of the Administering Authority along with other death gratuities from the main scheme. This change is acknowledged as it provides a common sense approach and simplifies practicalities for both administrators and beneficiaries.

- **Regulation 18 – Rights to return of contributions**

Clause 6 - is inconsistent with provisions relating to death gratuities, as payments of contributions upon death are paid to the estate as opposed to the member's nominee or personal representative at the discretion of the Administering Authority.

- **Regulation 21 – Assumed Pensionable Pay**

Clause 2(b) needs to include a reference to ordinary or paid additional child-related leave to define the specific circumstances for assumed pensionable pay to apply under this provision - if it remains the intention that unpaid additional child related leave is to be excluded from the automatic uplift to pay.

- **Regulation 32 - Commencement of Pensions**

We acknowledge the amendment to clause 10 as suggested in our previous response now stipulates that the payment of an ill health pension from deferred status will commence from the date of determination as opposed to the date the member became incapable of work as prescribed in the previous draft regulations.

- **Regulation 39 – Calculation of ill-health pension amounts**

Clause 10 may need to include a reference to a specific time period for a reduction in pay to be treated as assumed pensionable pay when calculating the member's ill health pension including enhanced pension adjustments. This would be in support to our comments below in regard Question 2 in Chapter 2.

- **Regulation 40- Death Grants: active members**

Clause 3 needs to include a reference to pensionable pay to cover situations where the member had not been receiving reduced pay immediately before death - to clarify that the calculation of the death grant is only based on assumed pensionable pay in the relevant circumstances in accordance with regulation 21(5).

The reference to pensionable pay should also be included within regulation 41(4) (b), 42 (4) (b), 42 (5) (b), 42 (9) (b) and 42 (10) (b).

Part 2 – Administration

- **Regulation 64 – Special circumstances where revised actuarial valuations and certificates must be obtained**

In circumstances where surpluses occur at the closure of an admission agreement it would present a more balanced position if the regulations provided for a return of contributions, as bodies are required to meet any deficit upon termination.

Clause 6 could be amended to give administering authorities greater flexibility to amend employer contributions in specific circumstances eg, a material change in membership or higher than expected salary or pension increases between triennial valuations by invoking the power to obtain a revised rates and adjustment certificate without the employers consent.

Schedule 2 Part 3

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, when the contractor has secured a framework contract with the local authority permitting a number of schools to engage the services over a prescribed period, the requirement to draw up separate agreements with each school would lead to administrative inefficiencies. Although the non-teaching staffs are deemed local authority employees for pension purposes, the individual schools take out separate contracts with the contractor.

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.

In line with MPF's former comments it would be practical for the regulations to permit that there can be one admission agreement, which covers numerous contract dates with different schools and the same local authority.

Existing LGPS 2007 Admin Regulation 7(8)

Furthermore, the provision which allows admission agreements to not be restricted to a geographical area has not been carried forward to the draft provisions. This regulation allows employers wishing to offer the LGPS choice as to the preferred authority to administer the scheme for their employees.

2/ Response to questions in Chapter 2 of the Consultation Document

Q1. Is the Department right in saying that the take up of additional survivor benefits is extremely low? [Regulation 16]

Since 2008, the Fund has 17 members who have entered into an ARC contract to purchase additional survivor benefits from an active membership base of over 44,500.

Q2. Should there be enhancement in this way given that there would be no equivalent protection for a member who remained in part-time work rather than taking ill-health retirement? [Regulation 39]

There should be enhancement but only if the reduction in hours or grade, or a move to a job with less responsibility, occurred within the period of 3 years continuous membership prior to the ill health retirement or death in service.

The 3 year limit is recommended as HM Treasury have stipulated that protections should only be for temporary and unexpected reductions in pay. The 3 year limit also draws a parallel with the 3 year limit for temporary Tier 3 benefits. If the reduction in hours or grade (or a move to a job with less responsibility) carries on beyond 3 years then there is a reasonable argument that it is no longer a temporary reduction in pay and has simply become part of the person's new terms and conditions of employment.

Q3. Comments are requested as to whether this regulation should be retained or if it would be sufficient to rely on the overriding legislation. [Regulation 51]

Section 13 of the Pension Schemes Act 1993 requires the Scheme rules to specify when the GMP is to be paid and when the GMP can be postponed and therefore regulation 51 should be retained in the Regulations.

Q4. Is there a need to provide for separate admission agreement funds to be established in the new Scheme? [Regulation 54]

MPF supports the LGA view that the facility provided by this regulation should not only be retained but be extended so that the administering authority can establish separate Funds for any types of Scheme employer (not just admission bodies).

This would enable administering authorities to establish separate Funds in order to ensure liabilities are ring-fenced to the employers within the relevant Fund should one of them cease to participate leaving a deficit. This would allow the deficit to be spread across only the employers participating in that Fund, rather than being spread across all employers.

Q5. Is the list of statement items shown at regulation 69(3) complete? If not, could you please describe what needs to be included. [Regulation 69]

We understand that LGA is submitting a comprehensive response to this question with the proposal to introduce additional statutory requirements within regulation 80(3) for employers to submit further information in the form of a 'closure statement' – the purpose to assist administering authorities in reconciling payments remitted at year end and to facilitate the timely issuing of annual benefit statements and pension saving statements.

However, the LGA'S suggested submission date of three months from the end of the Scheme year is impractically short for administering authorities, as it is simply aligned to HMRC requirements in relation to pension saving statements.

Fund's would be unable to deal with the amount of associated reconciliation and data quality work with employers during the 'holiday season' if this timeframe is imposed. Equally, this three month timeframe will not fit with our Actuary's timetable for undertaking triennial valuations.

MPF would strongly suggest a one month timeframe from the end of the Scheme year for employers to submit a 'closure statement'.

Q6. Should we include provision for interest to be paid on the late payment by scheme employers? If so, what period would constitute "late"? [Regulation 70]

Yes, the ability in regulation 71 to charge employers interest for late employer payments (including those due under regulation 70) should be retained. The period that constitutes "late" is already defined in regulation 71 and is satisfactory.

However, it is unclear whether this provision permits the addition of late payment interest to the exit debt when an employer exits the scheme. Regulation 64 makes it clear that the debt must be calculated as at the exit date but the calculations are often carried out some months after the exit date.

Common practice is for interest in line with the valuation discount rate to be added to the exit debt but it would be preferable if the regulations clarified whether the interest should be applied in accordance with regulation 71.

Q7. Should the new regulations set out what Fund should pay in the case where the administering authority has more than one Fund? [Regulation 88]

Where there is more than one Fund as a result of regulation 54, then it would appear a sensible approach to include provision within regulation 88 to prescribe the appropriate Fund which is responsible for meeting increases for guaranteed minimum pensions.

It may also be necessary to extend this provision to include any other payments in accordance with the regulations.

Q8. Do you think the current forfeiture provisions which have been carried forward into these draft regulations work well, or would you prefer it all to be dealt with by the courts with the removal of the role of the Secretary of State? [Regulation 91]

The requirement for the Secretary of State to be included in cases in relation to forfeiture following convictions for serious employment-related offences should be maintained to facilitate a timely and informed process and to avoid a dilution of power and any complications that may arise from a court judgement.

Given the rarity of these cases with Regulation 93 providing the usual mechanism for recovery and the statutory nature of the Scheme it would seem appropriate that the Secretary of State retains authority in forfeiture cases.

3/ Response to questions in Annex B of the Consultation Document

Q1. Assumed Pensionable Pay

We do not believe there are any other cases that currently merit an extension of the list of circumstances under regulation 21(2) in which APP should be applied.

Q2. Club Transfers

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

To meet the requirements of the Public Service Bill It would appear necessary during this period for the 2013 Transitional provisions to provide flexibility to allow members who are active on or after 31 March 2014 who transfer in service from a public sector scheme without having a disqualifying break of more than 5 years to receive actuarially equivalent benefits within the 2008 scheme maintaining the final salary link.

Transfers from the LGPS in relation to post 2014 membership could be based on the cash equivalent value of the pension pot converted to membership within the receiving scheme and adjusted accordingly to reflect that the service credit would be linked to final salary at retirement.

Q3. Former scheme employers

As presently worded, the draft regulations provide that it shall be for the administering authority to make a decision on a discretion that could have been taken by a former employer that has ceased to be a Scheme employer.

The alternative to this arrangement would be for a defunct employer to be asked to make a decision on a former employee of a former pension scheme, this seems unrealistic as it would incur costs and time with no compulsion to respond.

Q4. Employers' contributions to be no less than employees' contributions

We agree that the contribution rate paid by employers must always be at least that set by the Fund actuary and that the total employer rate (future and past service) should never be less than the total yield set for employees.

Q5. Adjustment of pension accounts

On balance MPF believes that there should not be a general power allowing administering authorities to make "any other adjustment" to a pension account that they consider to be appropriate. Such a power could be open to misuse. If situations arise where a new type of adjustment is required this should be added to the appropriate regulation via an amending Statutory Instrument.

4/ Conclusion

MPF is of the general opinion that the Draft Local Government Pension Scheme Regulations 2013 meet the requirement of providing clear direction for the successful administration of the Scheme post April 2014.

We await the further updates and expected second consultation on the Transitional Provisions & Savings Regulations.

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 large and prominent.

Yvonne Caddock

Principal Pensions Officer

cc. Jeff Houston, Director of Pensions - LGA