

PENSION FUND COMMITTEE – 16 MARCH 2012

CHANGES TO THE LOCAL GOVERNMENT PENSION SCHEME

Report by the Assistant Chief Executive and Chief Financial Officer

Introduction

1. At its December 2011 meeting, this Committee agreed a response to the Government's consultation on increases to employee contributions to be effective from April 2012. This consultation was seen as part one to a two part process to reform the Local Government Pension Scheme following the fundamental review of all public sector pension schemes by Lord Hutton.
2. This report sets out the latest position on LGPS reform, as well as setting out the key details of the officer response to a separate consultation on a number of technical changes to the current regulations.

LGPS Reform

3. Shortly after the December Committee meeting and the submission of this Committee's consultation response to the employee contribution changes, the Local Government Association and representatives of the local government Unions (Unison, GMB and Unite) issued a joint statement. This statement set out a set of jointly agreed principles to form the basis of further negotiations to deliver a single set of reforms to the LGPS.
4. This jointly agreed statement of Heads of Agreement was subsequently endorsed by the Secretary of State for Communities and Local Government as the basis for future work. He therefore confirmed that he would take no action as a consequence of the consultation on employee contribution changes whilst the process to implement the Heads of Agreement was progressing satisfactorily.
5. The Heads of Agreement include 10 principles in respect of new scheme design and a further 7 principles in respect of future management and governance. It also set out a clear timetable to enable the reforms to be implemented with effect from April 2014, a year earlier than the previous target.
6. The principles were based on the previous framework set out by Government Ministers. The key principles covered in the Heads of Agreement include:

- A single solution, with regulations in place by March 2013, to allow the impact to be included in the 2013 Valuation work, and full implementation from April 2014
 - The single solution to be on the basis of career average revalued earnings
 - If the financial constraints set by Treasury can be met by scheme redesign, then zero contribution increases for all or the vast majority of scheme members is acceptable
 - Some element of choice (around contributions and benefit levels) to be introduced to support the recruitment and retention of scheme members
 - Retention of flexible retirement arrangements between the ages of 55 and 75, with benefits adjusted around a normal pension age linked to the state pension age.
 - The retention of admission body status to protect scheme members out-sourced from current scheme employers
 - Cost efficiencies to be explored through more effective procurement and provision of both administration and investment services.
 - Cost sharing mechanisms to include both a collar and cap on future employer contribution rates to ensure employers neither unduly reduce their contributions, nor face excess increases.
 - Focus on negotiated solutions between stakeholders rather than Government regulation to address issues where employer cap/collar set to be breached.
7. The Heads of Agreement set out the “big ticket” issues which need early resolution as contribution rates, accrual rates, revaluation rates, protections, employer cap/collar levels and the cost sharing mechanism.
 8. A project group of key stakeholders including officials from the lead unions, the Local Government Association and the Department for Communities and Local Government has been established and has been meeting weekly since the beginning of January. Unite initially withdrew from the discussions, but subsequently re-joined the project meetings.
 9. All parties are seeking to agree proposals on the big ticket items, which they can issue for consultation with their members by April 2012. It is then hoped that the statutory consultation on the regulatory changes can begin in September/October 2012 to enable the final regulations to be laid in Parliament and agreed by March 2013.
 10. Agreement by March 2013 is seen as critical, so that the Actuaries can base the 2013 Valuation exercises for each fund on the basis of the new look scheme, so that cost savings can be delivered from April 2014 when the valuation results are effective.
 11. This timetable would also provide a full year to ensure the new look scheme can be properly communicated to all current and potential scheme members, and also allow sufficient time for the development and implementation of any system changes.

12. In the event that it appears the timetable will not be met, or that agreement will not be possible, the Government have retained the right to impose employee contribution increases following on from the suspended consultation. Similarly the Unions have retained the ability to call for further industrial action.

Draft Local Government Pension Scheme (Miscellaneous) Regulations 2012

13. On 5 December 2011, the Government issued a consultation letter on a series of miscellaneous changes to the current regulations. The consultation closed on 27 February 2012. Given the timescale and operational/technical nature of many of the proposed changes, Officers responded directly to the consultation. A copy of that response is included at Annex 1 to this report.
14. Officers were happy to support many of the proposed changes which were seen as either a necessary technical change (e.g. where references to other statute needed to be updated), helpful clarifications or tidying up inconsistencies. These changes covered:
- Survivor benefits for co-habiting partners, and for members during periods of leave
 - Flexible retirement
 - Deferred benefit decisions where the scheme employer no longer exists
 - Trivial Pensions
 - Annual allowance payments
 - Ill-health retirements
15. There were three areas where Officers supported the principle behind the proposed change but were concerned that the current wording did not deliver the intended result. The first of these was Regulation 6 where the definition of “that employment” intended to clarify the period over which final salary should be determined was seen to create further confusion. In particular the definition referred to continuous employment within local government employment, which would suggest you could go back to a period of employment with a previous employer, as long as there was no break in local government employment.
16. The second area of concern regarded regulations 29/30 and the ability to allow a substitute Fund to be nominated where employers merged, or operated in a different geographical area. Officers were concerned that the proposed wording was not sufficiently flexible to support all the latest structural changes being examined in the public sector – e.g. the sharing of staff across more than one District Council without formal merger or the cessation of each distinct Council. Officers were also concerned that the flexibility was not to be provided to Academies.
17. The third area of concern was regulation 32 which aimed to clarify the ability of the Administering Authority to require cessation valuations and payments. Again the concern was that the proposed wording was not sufficiently flexible

to reflect the new ways of working across the country and the fact that scheme employers could continue to exist in their own right, but have no active members.

18. There were also three areas where the Officer response disagreed with the principle of the proposed changes. The first of these was the mandatory requirement under regulation 21 to set up a separate admission agreement for each separate service contract held by a transferee admission body. This would limit the flexibility for the Administering Authority, Scheme Employer and Admission Body to manage deficits arising on a temporary basis (particularly those reflecting falls in asset values following poor market performance). This would work against the statutory objective of maintaining as near stable contribution rates as possible. There was also likely to be increased administrative effort required where employees worked across more than one contract.
19. Officers were also opposed to the changes proposed in regulation 22 which made the inclusion of a bond or indemnity mandatory in future admission agreements. The Authority has for a number of years managed the pension risks through pass through arrangements set out in service contracts. Mandating the requirement for a bond or indemnity would add cost and time to the outsourcing process and act as a disincentive to employers looking to deliver the Government objective of increasing plurality of service provision.
20. Officers were also opposed to regulation 42 which required academies to belong to the pension fund of their former maintaining authority. This appears to work against the Government's programme of setting up umbrella and multi-academy trusts which would often work across administering authority boundaries.

RECOMMENDATION

21. **The Pension Fund Committee is RECOMMENDED to note the latest position on the reform of the LGPS, and the consultation response submitted by officers on the draft LGPS (Miscellaneous) Regulations 2012.**

Sue Scane
Assistant Chief Executive and Chief Financial Officer

Background papers: Consultation Letter from DCLG dated 5 December 2011
Various papers from The New LGPS 2014 Project Website

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February 2012

Annex 1 – Consultation Response

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Sent by email to philip.perry@communities.gsi.gov.uk

This matter is being dealt with by Sean Collins
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06 March 2012
Direct Line: 01865 797190

Dear Philip

Draft Local Government Pension Scheme (Miscellaneous) Regulations 2012

I am writing on behalf of the Oxfordshire Pension Fund Committee in response to your consultation letter of 5 December 2011. Due to the timings of the Committee meetings it has not been possible for the Committee to consider this matter in advance of your deadline. For ease of reference I have responded following the format of your consultation letter.

Amendments to the Benefit Regulations

Regulation 6 – we are not sure this provides the clarification you were seeking. In particular the phrase “a continuous period of employment in local government employment” fails to make clear whether the employment is with one or more local government employers. We have recently had an IDR complaint where the scheme member had spent less than a year as a member of the Oxfordshire Fund. He argued that his pension benefits at Oxfordshire should be calculated on his final 12 months’ pay, which included an element of higher pay earned during his previous employment within local government, but outside Oxfordshire. Oxfordshire argued that “that employment” within the regulations meant with a single employer and so we could not take into account pay at a previous employer. The wording of the proposed new regulation would suggest that as the employment in local government was continuous, the final pay should in fact include an element in respect of the time spent with the previous employer. We would be grateful for further wording to clarify your intention here.

Regulation 7 – we support the proposed change to enable members to elect to purchase additional survivor benefits within 12 months of the nomination of a co-habiting partner.

Regulation 8 – we support the proposed change to clarify the position on flexible retirement, and that a member has freedom to choose what element of their post 2008 benefits they take, and that they are required to take their full pre 2008 benefits.

Regulations 9, 10 and 14 – these are seen as necessary technical changes

Regulations 11 and 12 – we support the proposed change to make the Administering Authority responsible for employer decisions re deferred benefits where the former employer has ceased to be a scheme employer. Only issue is definition of when an employer ceases to be a scheme employer (see also comments on regulation 30 and 32 below). Where bodies are scheme employers under Schedule 2 of the Administration Regulations, the fact that they have no active members is not seen to cease their status as scheme employers. As new models of working develop e.g. District Council's working in partnership without former merger, there is an increased likelihood of scheme employers with no active members.

Regulation 15 – we support the change to reduce the number of small pension payments through increased opportunity to commute accrued rights to a single lump sum payment.

Amendments to the Transitional Regulations

Regulation 19 – is seen as a necessary technical amendment.

Amendment to the Administration Regulations

Regulation 21 – we have concerns about the proposed change to ensure each service contract with a transferee admission body must be covered by a separate admission agreement. To make such a position mandatory may create administrative issues where employees work on one or more contracts, as well as reducing the flexibility of the Administering Authority, the sponsoring employer and the Transferee Admission Body to manage pension deficits stemming from temporary factors – e.g. where the first contract ends at the time where market values have fallen and as such assets allocated to the transferee admission body have dropped significantly below liabilities, the financial future of the admission body may be threatened by the requirement to meet a cessation valuation. Where the admission agreement covers all contracts with a single employer, there is flexibility to recover any deficit over a longer period, enabling contribution rates to be kept more stable to the benefit of both the admission body and the sponsoring employer, without any undue risk to the Pension Fund.

Regulation 22 – we do not support the proposal to make it a mandatory requirement to have an indemnity or bond in place for all transferee and community admission bodies. In recent years, employers within Oxfordshire,

notably the County Council but also District Councils have sought to remove the majority of pension risk from service contracts through pass through arrangements. The requirement for an indemnity or bond has therefore seen to be unnecessary. To now make an indemnity or bond a mandatory requirement will run counter to these measures, and add cost to the out-sourcing process. These costs include the costs of calculating bond values, the cost of finding willing financial institutions to provide the bond and the cost of the bond itself. The measure will therefore make the outsourcing process less attractive to both scheme employers and potential contractors, and therefore runs directly against the Government objective to establish plurality of provision and improve both effectiveness and efficiency of service provision. The existing regulatory position requiring proper consideration of risk is seen as the appropriate approach to current ways of working. The Oxfordshire Pension Fund Committee in its consideration of this issue previously have felt that the requirement to have a bond, and the associated costs of obtaining and maintaining this bond are likely to create the financial circumstances where employers face administration or the threat of a winding up order, to the detriment of the Pension Fund and local community.

Regulation 23 – this is seen as a necessary technical amendment

Regulation 24 - we support the proposed change to ensure consistency between additional paternity leave and the current arrangements for maternity or adoption leave.

Regulation 25, 26 and 27 – we support the changes to ensure consistency of additional survivor benefit contributions during different types of leave.

Regulations 29 and 30 – we support the principle behind this proposed change but are concerned whether the current wording is sufficiently flexible to cover the full range of new working models currently being delivered. Linked to Regulation 11 and 12 above and 32 below, we are concerned that current moves by District Councils to share staff without a formal merger of the distinct Councils is not covered by the proposed wording of these new regulations (e.g West Oxford District Council and Cherwell District Council both have partnership arrangements with a District Council outside the Oxfordshire Fund. We do not believe pension fund arrangements should act as an inhibitor to further developments in such arrangements). We are also concerned about the exclusion of Academies from the proposed new regulation, particularly as this is an area where joint working across administering authority boundaries is growing. Where successful secondary academies sponsor new primary academies across an administering authority border, it does not appear sensible to force the two academies under a single umbrella body to be required to be members of separate pension funds. We would wish to see the wording amended to allow greater flexibility in such arrangements, with decisions on specific fund membership allowed where agreed by all parties, and referred to the Secretary of State for direction in cases of dispute.

Regulation 31 – is seen as a necessary technical change.

Regulation 32 – we support the principle behind this proposed change to tighten up the arrangements where an employer ceases to be an employer in the fund. As stated above, our concern is that the definition of where an employer ceases to be a scheme employer is not sufficiently tight to cover the new structural arrangements being set up today. Linked to Regulation 30 above, there is a need to protect Pension Funds from situations where a scheme employer under Schedule 2 makes arrangements to reduce active membership to nil through new arrangements with another employer. Ideally where the employees retain LGPS membership under a second employer (whether within the first fund or a substituted fund) and pension deficit should follow the employees rather than creating a cessation valuation.

Regulation 34 – we support the proposed change to require administering authorities to publish a policy on early payment of deferred benefits, consistent with the proposed change in regulations 11 and 12 above.

Regulations 35 and 36 – we support these proposed changes to support the changes introduced in the annual allowance, and the ability of the member to ask the Fund to pay any subsequent tax bill, funded by a reduction in their accrued pension rights.

Regulations 37, 38, 39 and 40 – are seen as necessary technical amendments.

Regulation 41 – we support the change to ensure consistency in approach to transferee and community admission bodies, subject to the comments under regulation 22 above.

Regulation 42 – we believe that the proposal to require each academy school to belong to the administering fund of its former maintaining authority is inconsistent with the Government's academy programme, and the development of Umbrella and Multi-Academy Trusts which will support schools in more than one administering authority area. We believe greater flexibility is required here as set out under regulation 30 above.

Regulation 43 – we support the proposal to ensure existing admission agreements are not retrospectively impacted by proposed changes above.

Auto-enrolment – we are concerned about the current inconsistencies between the Pensions Act 2008 and the LGPS Regulations in terms of the admission of casual employees and agency staff, the difference in vesting period, and the rules regarding opting out before your first day of employment. We believe that given the view that the Pension Act requirements will prevail, the LGPS Regulations should be amended to ensure consistency and to minimise the confusion of scheme members who may be misled where they refer to the LGPS guidance documentation (particularly during the period of transition where the rules will apply inconsistently depending on whether each employer has reached its staging date.

Ill-Health Changes

We support all the proposed changes to clarify or bring consistency to issues surrounding ill-health retirements.

We thank you for the opportunity to comment on the draft Regulations, and we hope that you find our comments useful in making the decisions about the final Regulations.

Yours sincerely

Sean Collins
Service Manager (Pensions, Insurance and Money Management)