



Committee and date
Pensions Committee

30 June 2009

10am

Item

13

Public

Paper

F

LOCAL GOVERNMENT PENSION SCHEME REGULATIONS UPDATE.

Responsible Officer Debbie Sharp

Email: debbie.sharp@shropshire.gov.uk

Telephone: (01743) 252192

Summary

This report updates the committee on changes to and developments in the Local Government Pension Scheme (LGPS) Regulations.

Recommendations

- A. To note the report

Report

Background

1. The LGPS is a statutory scheme governed by legislation laid down by parliament.
2. Currently the administration rules are covered in 3 sets of legislation:
 - i. The LGPS (Administration) Regulations 2008 (as amended)
 - ii. The LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended)
 - iii. The Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (as amended)
3. The investment rules are covered in:

- i. The Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (as amended).

Recent Developments

4. The LGPS (Administration) Regulations 2008 were amended on 1st April. Several minor amendments did not affect this Fund directly however amendments to the regulation which permits certain employees to join the LGPS even though they are entitled to be members of the NHS scheme did. Former employees of the Council who were transferred to the Commission for Social Care Inspection can still remain in our Fund even though they have now transferred to the Care Quality Commission.
5. The LGPS (Amendment) Regulations 2009 [SI 2009/1025] came into force on 15 May 2009. The regulations:
 - i. revoke regulation 40 (guidance on future costs) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007;
 - ii. insert a new regulation 36A into the Local Government Pension Scheme (Administration) Regulations 2008 which requires administering authorities to have regard to guidance about how the costs of the Local Government Pension Scheme will be met in future years. In order for the Secretary of State to produce that guidance, administering authorities are required to produce to the Secretary of State by 31 August 2010 (and triennially thereafter) the data supplied to their own fund actuary to carry out the triennial actuarial valuation. The Government Actuary will use that data to produce by 31 October 2010 (and triennially thereafter) an actuarial valuation, a valuation report and an overall cost certificate which will help to inform the Policy Review Group in its deliberations on costs sharing and aid the Secretary of State in the production of the necessary guidance on how the future costs of the Scheme are to be met; and
 - iii. insert a new regulation 38A into the Local Government Pension Scheme (Administration) Regulations 2008, which requires administering authorities to consider whether the rates and adjustment certificate for their Fund should be revised to take account of any amendment the Secretary of State makes to the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 as a result of cost sharing.
6. Prior to the above regulations being issued, CLG wrote to interested parties (on 23 April 2009) to explain the purpose of the regulations, the need for employers to provide administering authorities with end of year data in a timely manner, and to forewarn administering authorities that they would be requesting Funds to submit experience data (i.e. movements analysis) for the years 2007/08 and 2008/09 to GAD by 30

June 2009. This data request has now been delayed due to the complex nature of the data required and the software provider is hoping to produce reports for the funds to run to pass to the CLG.

7. CLG have also issued a letter and consultation, dated 13 May 2009, inviting the views of interested parties on how best to extend the current high standards of member and other non-elected stakeholders' participation and active involvement in the governance of the Scheme and how future improvements could be made in the interests of all stakeholders. The closing date for responses is 30 September 2009.

LGPS – Liabilities of Former Employers

8. A recent Court of Appeal case has implications for the LGPS. In a decision dated on 7 April 2009, the Court of Appeal ruled in [South Tyneside MBC v The Lord Chancellor and Secretary of State for Justice and Another](#) that former employing authorities with no active members are not liable to make good any funding deficit in respect of their deferred and pensioner members.
9. The Court of Appeal had to decide whether or not the Northumbria Magistrates' Courts Committee (and, consequently, the Lord Chancellor's department) had a liability under the LGPS Regulations 1997 to make good any deficit in the funding of benefits in the Tyne and Wear Pension Fund for the deferred and pensioner members of the abolished committees.
10. Having considered "the exasperating opacity of the regulations" the Court of Appeal resolved that only employers with active members of the LGPS had a liability to contribute to a LGPS fund under the LGPS Regulations 1997 and that no mechanism existed within those regulations for former employers with no active members to be charged with liabilities for their deferred or pensioner members. Thus, as the Northumbria Magistrates' Courts' Committee had no active members of the Tyne and Wear Pension Fund, there was no liability for the Committee nor, subsequently, the Lord Chancellor, to make payments to the Tyne and Wear Pension Fund for liabilities in respect of the deferred and pensioner members. The Court of Appeal held that the liability for the former employees' benefits falls on the employers who currently have active members in the Fund and have the responsibility for maintaining the solvency of the fund.
11. Although the Court of Appeal's decision was made in relation to the provisions of LGPS Regulations 1997, the corresponding provisions of the LGPS (Administration) Regulations 2008 are essentially the same. The Court of Appeal's decision, therefore, remains relevant for the new LGPS.
12. In cases where an Act, or Statutory Instrument made under an Act, has not specified that the pension liability transfers to a new body, and unless the LGPS Regulations are amended to close the loophole, the

decision has significant implications for Administering Authorities of, and employers participating in, those LGPS funds that have non-admission agreements employing authorities with deferred and pensioner members but no active members. The Shropshire Fund have none at present.

13. Note, however, that there are provisions within the current LGPS Regulations for an Administering Authority to obtain an actuarial valuation and revised rates and adjustments certificate where an admission agreement ceases to have effect.

CLG Consultation - Amendment of Accounts and Audit Regulations 2003 (SI 2003/533)

14. CLG issued a letter dated 30 March 2009 which announced a consultation on proposed amendments to the above regulations. At present, the regulations only require relevant public bodies¹ (that have expenditure or income in excess of £1 million per year) to disclose, when producing their annual statement of accounts, the number of staff earning over £50,000 a year in £10,000 bandings. The proposed amendments would break this down to £5,000 bandings and extend the reporting requirements to include additional information about the remuneration of senior employees. This would include information on salary, bonuses, additional payments, benefits in kind, compensation or ex-gratia payments, and pension entitlements.
15. CLG are seeking views on:
 - a. whether the proposed extent and focus of remuneration reporting, when presented together, will fulfil the objective of providing a true and fair view of each senior employee's package of benefits
 - b. whether there would be any barriers or costs to collecting and reporting the information in published annual accounts
 - c. how the term "senior" should be defined in the regulations and whether it should encompass those whose position may not be permanent e.g. interim managers, consultants, etc.
16. whether the reduction to £5,000 bandings is appropriate.
17. Comments have been passed to the accounting team of the implications these changes would have for the Pensions Team.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

NA

Human Rights Act Appraisal

The information contained in this report are compatible with the Human Rights Act 1998.

Environmental Appraisal

Impossible to quantify.

Risk Management Appraisal

The impact of proposed regulation changes are reviewed and any risk management implications identified.

Community / Consultations Appraisal

N/A

Cabinet Member

N/A

Local Member

N/A

Appendices

N/A