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Dear Philip,

Consultation – Local Government Pension Scheme Regulations 2013 and Outstanding Policy Issues - Annex A and B

This letter sets out a response from Shropshire Council acting as administering authority to the Shropshire County Pension Fund, to the second consultation issued on 27th March 2013. In preparing this response the Council has taken into account information from the Fund actuary, Mercer Ltd and draft comments from the LGA. This response, as with the response earlier this year, is submitted on behalf of the Shropshire County Pension Fund Pension Committee and has been agreed by the scheme Administrator but not the Pension Committee (which would be usual) as the five week consultation period has not allowed.

It is noted that this consultation still focuses on the core elements of the new Scheme, in particular, provisions relating to membership, contributions and benefits, which need to be on the statute book to allow our Fund Actuary to take account of the new scheme in the current valuation and for Employers' payroll providers and our IT providers to ensure that their systems can accommodate the changes required.

We look forward to receiving the consultation covering the governance, cost control and scheme administration shortly. We note that these regulations are being made under the Superannuation Act 1972 and that further regulatory amendments will be needed to comply with the Public Service Pension Act and arising from the outstanding Policy issues.

Annex A, Comments on the Draft Regulations:

- Regulation 3 – Membership – As raised previously the confusion here around how the LGPS interacts with automatic enrolment has not been addressed. The issue surrounding the transitional period does not appear to be addressed, unlike the amendments to the current Regulations in Annex D of this consultation.
- Regulation 5 – Previous comments still stand - Ending active membership – This needs amending so that it can be administered more easily. The current drafting will create unnecessary problems for employers. Suggest “at the earliest opportunity after which notice has been given” be used.

- Reg 9 – Contributions – Actual pay for variable time employees may not be known at commencement for accurate assessment of correct bandings, this still needs to be addressed or guidance issued for employers for consistency.
- Regulation 10 – Previous comments still stand - Temporary reduction in contributions (50/50 option) - states that an employing authority of any member shall provide "...information about the effects on that member's likely benefits consequent to that election". This would mean an illustration be provided by the employing authority to each member each time an election is made? It would be more practical to do this at each annual benefit statement. Guidance needs to be provided to ensure that this is dealt with consistently across the whole LGPS. This should cover precisely what an employer would need to provide. Also reference is made to a "member's automatic enrolment date" - should this refer to an employer's date under the legislation? Also it must be ensured that the contribution rate payable by the Employer is covered in the Administration regulations.
- Reg 13 – There seems to be the need for clarification of how the pay the member would have received would be determined. Also there is reference to former employment – does the employer break employment? If so what happens should the member die or attain NRA? Suggest an equivalent to the 2008 regs needs adding.
- Reg 14 – Contributions during trade dispute absence – 16% used from current scheme should this be changed to the 19.5% the cost envelope of the new scheme?
- Reg 16 & 17 – LGA has commented in detail on these regulation and we support those comments.
- Reg 21 – This regulation does seem to raise problems for employers. We support the issues raised by LGA. And have commented on the policy issue later.
- Reg 22 – 29 – Pension Accounts – Need to ensure rules on aggregation are taken into account when finalised.
- Reg 30 – As drafted this regulation does not cater for all categories of members. It is suggested that LGA recommendations are accepted.
- Reg 33 – The Regulation still refers to actuarial guidance issued by the Secretary of State - should this not refer to HMRC guidance also?
- Reg 39 - In the draft, there appears to be no facility (in regulation 39) to enhance Tier 2 benefits when it occurs as a result of a review of a Tier 3 benefit. This is because it only appears that an enhancement can be applied to an "active account" ie not the case for a Tier 3 review case. This issue still exists in terms of the enhancement that would apply for Tier 3 converting to a Tier 2.

The new Regulation includes various considerations for cases where ill health retirements may occur for the second time. Clear and consistent guidance of approach is needed and it may present practical issues (eg questions for employers to ask new employees on their joining to ascertain whether they would need to declare their previous benefits) on information gathering for the employer and the Funds.

- Reg 43 – 48- Pension increase issues need to be addressed together with the accrual rate, which seems to be incorrect. This has also been picked up by LGA who have provided worked examples.
- Schedule 1 – It is noted that the definitions included in Schedule 1 covering automatic enrolment and automatic re-enrolment are now correctly referenced to sections 3 & 5 of the Pensions Act 2008. However, the issue surrounding the transitional period does not appear to be addressed, unlike the amendments to the current Regulations in Annex D. See comments on Reg 3.

Could the automatic enrolment and automatic re-enrolment definitions be updated so that they are subject to sections 4 & 30 of that Act for consistency with Annex D? If not it leaves open the potential to need to re-enrol before the end of the transitional period for several of our scheme employers who have staging dates in 2013. Furthermore, the definition of automatic re-enrolment date in Schedule 1 is confusing, given the use of the words “for those of its eligible jobholders who are not active member’s of the Scheme”. This appears contradictory to the Act, as section 5(3) of the Pensions Act 2008 refers to this only being necessary for those eligible jobholders who are not currently in any qualifying scheme, deleting “for those of its eligible jobholders who are not active member’s of the Scheme” would correct this.

- Schedule 2 – Part 1 - under Schedule 2, Part 1 (item 14) “post 1992” universities are continued to be captured by the Scheme Employer clauses. The pressure to re-classify Post 1992 universities to a less stringent Part 2 body (where such organisations will then be afforded the choice) continues to mount.
- Schedule 2 – Part 3 – Regarding paragraph 4 it is preferable to minimise risk to other employers within a fund but the wording of up to 50% seems to need changing if kept to more than.

Annex B, comments on outstanding Policy issues:

- Aggregation

Members motivation, when deciding whether or not to aggregate, will be driven by the different revaluation types for deferred and active accounts and for qualifying service/eligibility purposes. If the in-service *revaluation adjustment* set by HM Treasury is at a higher level than the *index rate adjustment* then aggregation is likely to be more desirable to members. The converse also applies however this is not expected to be the case for the LGPS.

One area that should be considered more carefully is for future outsourcings and compulsory TUPE transfers. Under current (Administration) Regulations TUPE transfers lead to an auto-aggregation of benefits. It is appreciated that we have not yet had sight of the corresponding draft legislation under the 2014 scheme, but this is one area where the auto-aggregation issue should be given further consideration.

- Assumed Pensionable Pay

Some of the options would be an administrative challenge for practitioners. On the grounds of both fairness to the member and relative simplicity, the third option seems sensible; changing the calculation of APP to contractual pay at the date of event. It is questionable whether it should be adjusted for non-contractual overtime either over the last 12 weeks or the previous scheme year as the overtime may not have been available during the APP period and using it would

provide a benefit greater than that due. The administration of this must be kept simple for scheme employers and for the software providers to accommodate within payroll systems.

- Periods of Reduced or Unpaid Absence

As in APP a practical and simple process (as far as possible) should be adopted. This appears to be a public sector contract of employment issue and any approach should be consistent across the sector.

To simplify administration for employers, where members have a choice associated with the reduced / unpaid leave, the corresponding period/proportion of service could be deemed to not be pensionable. If members do not have a choice, eg reserve forces service etc, it should continue to count as pensionable service.

- Revaluation

The clear definitions of “revaluation adjustment” being the annual CPI (Sept to Sept) and “index rate adjustment” being the figures from the 1971 PI Act do help to understand the Regulations. The draft regulations do seem to raise some uncertainty for cases where members change their status during a Scheme year. This includes active to deferred, and active to retirement and depending on the intention, could lead to anomalies in benefit amounts according to different leaving dates. I understand LGA are providing examples to illustrate the issues more clearly.

- NPA/SPA Link

Linking the NPA definition to the State Pension Age as defined in overriding legislation (subject to a minimum of 65) within Schedule 4 to the Pension Act 1995 should achieve the desired result. This is consistent with the definition put forward in the Public Service Pensions Act.

- Survivor Pensions

All circumstances seem to have been covered.

- Employer Contributions

Fundamentally, a facility should be included for employer contributions to be paid in respect of any event for which a benefit “cost” will be incurred, or where a decision has been taken to enhance member’s benefits that is not covered by the normal scheme design. This could include an employer-funded MARC/MASARC. Any contributions required should be assessed having regard to actuarial advice in the normal way.

- Certificates of Protection

At a basic level Certificates of Protection within a CARE scheme design should be unnecessary. The fundamental concept is for benefits to be accrued according to members’ “career” average salaries during their active service. It is appreciated however that there could be fairness issues associated with certain benefits (eg reductions in pay due to illness that ultimately leads to an ill health retirement or death) where through no fault of the member, benefits would be reduced. The original “protected” pay should be referenced when calculating ill health / survivor enhancements through either a Certificate of Protection or Assumed Pensionable Pay.

- Interest

There is an opportunity to simplify this regulation. It could simply reference the interest rate to the Bank of England Base Rate which is clearly publicised on a monthly basis (+ 1%) subject to a floor of 0%. The approach drafted seems overly complex.

- Pension Account Adjustments

We would support increasing the flexibility available, by including an enabling power to adjust an account owing to any non-specific reasonable circumstances. The Pension Account should have the ability to collect further contributions for any adjustment that carries a cost to the Fund.

- AVC's

We are supportive of the position advanced by consultation, with the following comments.

- AVCs transferred from the LGPS in Scotland or Northern Ireland, should be transferred in to member's AVC pots, not the active accounts.
- Administering orphan AVC pots is not really a problem for us. Linking the AVC pot to the main account would mainly help the insurer.
- The incidence of members contributing more than 50% is likely to be low, in which case we have no objection to it being removed. HMRC annual limits being much lower now limits ability to pay too much into them tax free anyway.

- 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.

- Definitions

Automatic enrolment and automatic re-enrolment definitions should be updated so that they are subject to sections 4 & 30 of that Act for consistency with Annex D. If this is not changed, it leaves open the potential to need to re-enrol before the end of the transitional period for any large employers with staging dates in 2013. Furthermore, the definition of automatic re-enrolment date is confusing, given the use of the words "for those of its eligible jobholders who are not active member's of the Scheme. This appears contradictory to the Act, as section 5(3) of the Pensions Act 2008 refers to this only being necessary for those eligible jobholders who are *not* currently in *any* qualifying scheme, this could be changed to "for those of its eligible jobholders who are not active member's of the Scheme".

I hope you find the above comments useful.

Yours sincerely



Debbie Sharp
Pensions Manager