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 LGPS Regulations 2013
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Date: 24th May 2013
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Dear Philip,

Consultation –Transitional Provisions and Miscellaneous Amendments Regulations

This letter sets out a response from Shropshire Council acting as administering authority to the Shropshire County Pension Fund, to the second part of the 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 to the first part of this consultation, 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).

Comments are made on the specific Transitional regulations below however as regulation 25, Final Pay, is at the end of the list we do wish to raise here the significance of our comments. For members satisfying the “Protected Final Pensionable Pay” criteria (those who were active on the scheme change date, have aggregated benefits and have no disqualifying break), the higher of:

- a) the member’s pensionable pay using the 2008 definition, or
- b) that using the post 2014 definition

would apply to pre-2014 benefits.

This is potentially a major funding cost issue for our employers where non-contractual overtime pay represents a significant part of their overall payroll (as this is included in the post 2014 pay definition but not the 2008 pay definition). For these employers, this would lead to a potentially significant increase to past service liabilities and therefore funding deficits. The extent of this would depend on the level of pay and total liabilities. This will be a key issue for certain employers; one that we believe should be resisted.

Also regarding the well reported ‘no worse off’ protection for members within 10 years of retirement at 2012 it is noted as currently drafted the fundamental protection in retirement age applies to pre-2014 service, but only to a limited extent to post-2014 service. In particular, there is some protection for those members who benefit from the previously protected Rule of 85 provisions, but not for members not covered by the Rule of 85. There is in fact a one-off “benefit test” only, carried out at a single age, rather than a preservation of the entire benefit package or of the ‘value’ of the previous package. An example highlighted by our Actuary is:

A 51 year old joined the LGPS in 2007 (i.e. ineligible for the Rule of 85) who would have been over 55 in 2012 (so eligible for the Underpin), and their SPA would be 66 (in 2023). If they were to then retire at age 66, the Underpin test checks the benefit level at age 65, but makes no allowance for them receiving benefits one year later.

Transitional Provisions Annex C:

- Regulation 3 – Membership before 1st April 2014 – “retirement pension” should be retirement benefit as this still includes 1997 scheme benefits and these still provide a pension and lumpsum and it is assumed the lumpsum also needs actuarial reduction.
- Regulation 4 – Statutory Underpin - This seems to cover only those members aged 55 or over as at 1 April 2012, and who retire on or after age 65 (the 2008 Normal Retirement Age) 65). For retirements occurring after age 65, the Statutory Underpin assessment is still calculated at age 65 based on a notional calculation of “assumed benefits” compared to an “underpin amount”. A number of scenarios are excluded from this underpin/top-up mechanism (e.g. early retirement, and leaving service before age 65). It would be hoped that the system providers can accommodate the need for three benefit calculations to assess the underpin. Clarification will be required on how to deal with Pension Debits and or annual allowance tax charges when calculating the assumed benefits amount and the underpin.

All members covered by the Rule of 85 Transitional Protection from the 2008 changes would continue to benefit from these protections under the new scheme. This aspect is carried through within the Schedule 2 provisions. However, it does appear to create unusual circumstances for certain sections of the membership depending on their own individual circumstances. Certain members seem to benefit from one or more of the protections, whereas others enjoy none. If the Regulations as drafted are intended, then there is going to be a communication, governance and administration challenge the start to:

- i) guide members through these complex arrangements,
- ii) ensure the processes/systems are sufficiently updated to perform these tests and
- iii) ensure the tests are fit for purpose. .

- Reg 5 – Membership of the 2014 Scheme - Enables all members (excluding those who should not for legitimate reasons) become members of the 2014 Scheme however the wording could be clearer in cases where members have multiple employments.
- Reg 7 – Qualifying service for the 2014 Scheme - Regulation 7 (4) opens up an element of choice to members that may be an administrative challenge. Where a member had 1 month service in the 2008 Scheme and 5 months in the 2014 Scheme the service does not qualify for a deferred benefit in either scheme, but this regulation is opening up the possibility to do so. It would be better stated that if a member had qualified for a deferred benefit in the 2008 Scheme then this should apply to his entire benefits, and otherwise it should be determined in accordance with the 2014 Scheme provisions (applied to the combined service). The LGA comments regarding this regulation are also fully supported.
- Reg 9 – Transfer Payments – Recommend changing the reference to relevant date as LGA suggest to ‘option’ to remove administration confusion.

- Reg 10 – Interfund Adjustments – Opens up the possibility of different treatment for transfers that have taken place within or outside the 5 year window. This increases complexity for us. It is recommended that reference is included to include reference to inter – fund and intra-fund transfers.
- Reg 12 – Ill Health Retirement – This increases protection as enhancement will now be at a 1/49th.
- Reg 14 – Contributions – Good communication to employers and then care will be needed by them for the transition of such members (e.g. those with a period of absence) spanning the scheme change date.
- Reg 15 – Additional Contributions – Full support is given to the points raised by LGA on this regulation. An exercise will be needed before 31 March 2014 to restart an additional benefit under the new scheme using assumptions that were used at the commencement of the original benefit. We will require the Government Actuary to move swiftly to ensure that the appropriate processes and guidances are in place by 1 April 2014 to allow us to put these in place.
- Reg 17 – Survivor Benefits - Adjustments also need to be made to cover cases who do accrue rights in the 2014 scheme but do not aggregate them with rights from the earlier Schemes.
- Reg 22 – It is noted that systems and administrative processes will need to be adjusted to reflect that for pension sharing debits, these will be applied evenly across all 1997, 2008 and 2014 Schemes, but credits will only be applied to the 2014 Scheme.
- Reg 23-Councillor Pensions – It is noted that this regulation may need to be revisited depending on the outcome of the current consultation on the future of councillor’s pensions.
- Reg 25 – Calculation of final pay – It is recommended that this regulation is revisited as the higher of the two definitions has a potentially significant effect on past service benefits, liabilities and therefore deficits for certain employers. This goes well beyond what we understood was agreed by the LGPS 2014 Project and we suggest clarity is urgently sought as to the policy intention here.
- Schedule 2 – Carry forward of the existing Rule of 85 early retirement protections into the new scheme - This represents a significant benefit cost for those protected members where they will accrue the 49ths scheme benefits with the earlier retirement age. The only retirement age protection in the post 2014 Scheme is that relating to the Rule of 85.
Unless members enjoy this protection, then members’ pre 2014 NPA will be 65, and their post 2014 would be their SPA. No rights to retire unreduced will be carried forward unless members benefit from the Rule of 85 protection under the 2008 changes.

Miscellaneous Amendment Regulations Annex D:

We have nothing to add to the draft.

I hope you find the above comments useful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Debbie Sharp', with a stylized flourish at the end.

Debbie Sharp
Pensions Manager