

## Technical Consultation on Local Government Pension Scheme Rules

Following the initial period of operation of the 2014 Local Government Pension Scheme (LGPS) in England and Wales, the Department for Communities and Local Government (DCLG) has issued a technical consultation in order to tidy up and clarify certain regulations, to introduce some new provisions to the Scheme and to seek views on a number of issues.

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Administering authorities may wish to check that they have operated the various provisions of the LGPS in line with the clarifications and corrections now being provided and consider the action they will take where practice has differed.

The consultation attaches the LGPS (Amendment) Regulations 2015 and will affect the LGPS Regulations 2013 and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014. It closes on 30 January 2015.

In this briefing note we take a look at the consultation, comment on the questions posed by DCLG and provide some suggestions for further regulatory changes that we believe would be useful to enhance the practicalities of operating the LGPS to deal with the collection of deficits following the cessation of participating employers.

### A bit of spring cleaning

The draft LGPS (Amendment) Regulations 2015 correct and clarify certain regulations, cross reference others and generally provide a tidy up following the initial period of operation of the 2014 Scheme. A number of these are in response to the requests of those operating and using the regulations following their day to day experience of doing so. As such they should provide greater efficiency and enhance their ease of use, as well as ensuring that the LGPS is applied and provides benefits as intended. It is likely that further amendments will follow in the future to continue the process. The changes are not expected to affect the actual operation of the LGPS itself or the benefits payable.

DCLG request comments on the draft regulations and explain in chapter two of the consultation document the amendments made. They cover a wide range of the provisions of the LGPS and all appear sensible and to accord with our understanding of how the LGPS was intended to work, or to update references to other legislation or organisations where they have changed; although we will comment in our response on a couple of draft regulations which may not quite match the stated intention. Administering and local authorities should note that, in particular, DCLG would like them to confirm or correct the names of the authorities listed to ensure that they are included in the regulations in their legally correct form.

It should also be noted that the LGPS (Amendment) Regulations 2015 will amend the 2013 LGPS Regulations and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 with effect from 1 April 2014. Administering authorities may wish to check that they have operated the various provisions of the LGPS in line with the clarifications and corrections now being provided and consider the action they will take where practice has differed.

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In our August 2014 briefing note 'Cessation Valuations and Contribution Certificates... some tweaks required?' (available on our [website](#)) we noted that this would be a helpful addition to the regulations and we are pleased to see it now included.

The consultation also alerts to a change being made to the LGPS Regulations 1997 under the Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order (No. 2) 2014 to provide that no account will be taken of a change in gender for calculating survivor benefits in respect of a marriage that took place before a certificate under the Gender Recognition Act 2004 was issued and which continued until the member died.

### Some new provisions

Chapter two of the consultation document also details a number of new or enhanced provisions that the LGPS (Amendment) Regulations 2015 will introduce. Again, a number of these are minor and will enhance and smooth the practical operation of the LGPS by requiring, for example, employers to inform members on reserve forces leave of the contributions they are to pay rather than providing the information from which they can calculate it, and enabling the employer to extend beyond 30 days, if they so decide, the period in which members can elect to make additional contributions following an absence from work.

### Recovering outstanding liabilities from former Scheme employers

However, the new provision that particularly catches our eye is a long awaited provision to deal with the collection of deficits from scheduled and designated employers who have not paid an exit payment having ceased prior to the introduction of cessation valuations for their category of employer.

In our August 2014 briefing note 'Cessation Valuations and Contribution Certificates... some tweaks required?' (available on our [website](#)) we noted that this would be a helpful addition to the regulations and we are pleased to see it now included. This will assist many administering authorities in dealing with their previously ceased non-admitted body employers in accordance with the regulations. At present there are a number of drafting issues with the proposed regulation that we understand will be resolved in the final regulations. These will make clear that the regulation will apply within each Fund rather than across the Scheme, so that it is clear that it can be applied where one Fund has no actives remaining and a deficit, even if the employer has a member in another Fund, and to remove the erroneous reference to scheme employers in the 2014 Scheme.

### Views sought

#### Timing of cessation valuations – relaxation of last active member rule

In our cessation briefing note we also called for a relaxation of the requirement to carry out a cessation valuation upon the last active member leaving the LGPS, in order to provide flexibility where an employer may have a short break between active members.

We are pleased to see the consultation now seeking views on whether this should be included in the regulations and if so how long the period without actives should be.

We would suggest that such a relaxation should be included in the regulations as it is useful for short gaps between actives and for employers with fluctuating membership such as parish councils, but that it should be subject to agreement of the administering authority as it may not be appropriate in all cases.

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This would be an ideal time to make provision for another issue raised in our cessation briefing note; the ability for administering authorities to make flexible payment plans with ceasing employers.

Subject to consideration of each case, this facility could ease the operation of the LGPS and avoid unnecessary administration expenses, crystallisation of deficits and potential related cash flow difficulties for employers, while balancing the ability to seek an immediate cessation payment where that is the better option for the Fund in order to maximise monies receivable.

If this relaxation is included in the regulations we would suggest that the draft regulation detailed above which would allow the collection of cash only contributions from ceased employers be moved to the main 2013 Regulations and extended to cover (kept as covering) the 2014 Scheme and extended to include the ability to collect cash only deficit contributions from an employer who has been allowed a limited break between active membership without the need for a cessation valuation to be carried out. This would ensure that deficits continue to be paid and reduced in the interim period.

» *If Funds would like to see this relaxation and the ability to collect cash contributions in these circumstances included in the regulations, then they should say so in their consultation response to demonstrate to DCLG the level of support for them.*

### **Where the regulations could be improved where there are no active members - flexible cessation plans**

The consultation also asks if other regulations could be improved where there are no active contributing members. As well as tidying up current regulation 64 to clarify that it applies to an employer with no actives in one Fund even if they have an active in another in the same way as mentioned above, we would suggest that this would be an ideal time to make provision for another issue raised in our cessation briefing note; the ability for administering authorities to make flexible payment plans with ceasing employers. Such plans, subject, for example, to assessment of the exiting employer's covenant, obtaining security where possible, the agreement of the administering and if applicable letting authority, and the signing of a legal agreement, could enable administering authorities to revalue the employers remaining liabilities and deficit from time to time and to adjust the level of cash contributions for investment and demographic experience for example. The provision for this is not currently in the 2013 LGPS Regulations which allows only for the spreading of the exit payment calculated at the point of cessation, nor is it included in the draft regulations now under consultation. We understand that it may be possible to include this provision within the LGPS via, for example, an administering authority discretion should administering authorities wish to see it included.

» *If Funds would like to see this ability included in the regulations, then they should say so in their consultation response to demonstrate to DCLG the level of support for it.*

### **Change of status for wholly owned employers**

Views are also sought on whether companies wholly owned by Schedule 2 Part 1 employers (scheduled bodies) should also be Schedule 2 Part 1 bodies rather than Part 2 bodies, thereby removing the ability to designate which employees can join the LGPS; the object of the discussion being to better manage when exit payments may be called for. We anticipate that the discussion around this point will, in practice, cover the wider policy issue of which employers should be required to compulsorily enter employees into the LGPS.

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We would suggest that if the regulations are not changed, that a requirement for the scheduled body wholly owning the employer to meet any uncollectable deficit upon that employer ceasing be formerly added to the regulations.

Arguably, with the exception of the requirement for a letting authority to meet any unrecoverable deficit of a Schedule 2 Part 3 1(d) employer (formerly known as a transferee admission body), the current situation is no different from that of if the scheduled body simply contracted out the work. We would suggest that if the regulations are not changed, that a requirement for the scheduled body wholly owning the employer to meet any uncollectable deficit upon that employer ceasing be formerly added to the regulations.

### **Transfer of accrued additional voluntary contribution (AVC) rights**

Moving onto chapter three of the consultation document, comments are sought on two issues not covered by the draft regulations. The first of these covers a proposal for regulatory change to deal with the issue of members with AVC arrangements being disadvantaged if they effectively have to end their current arrangements following a transfer of employer. The aim is to provide provision to ensure that members who are paying AVCs and who change employer can continue with their existing AVC contract.

While we are a little confused by the wording of the consultation at this point, it would seem that the proposal to require administering authorities to enter in to AVC arrangements with the transferring members AVC provider, where not the same as their own, could resolve the problem if the requirements also include that the AVC contract be treated as a continuing contract despite the change of Fund. It would also seem, however, that the proposal may not be entirely welcomed by the receiving administering authorities who may then have to deal with increased administration and a greater range of providers, although for the ceding administering authority it may ease administration by reducing the number of orphan AVCs. Funds may wish to consider this one carefully in formulating their consultation response.

### **Ongoing final salary link for deferred pensions**

The second issue concerns the ongoing final salary link for deferred pensioners who return to active membership within five years. DCLG is seeking the views of administrators on how the information the administrator of the deferred benefit requires from the administrator of the active membership should be managed and if regulation is required to support that. The aim is to ensure that previous public sector pension benefits are calculated using correct pensionable pay amounts.

This issue has been the subject of much discussion up and down the country and the many practical problems of operating the LGPS with the final salary link explored, not least being the ability to reliably find out, in the first place, if a new joiner has a deferred benefit elsewhere. We understand that discussions have been taking place in an attempt to remove the salary link from the LGPS in which case this problem may cease to exist. In the meantime, a central facility being developed for collating basic member details from each Fund may assist in identifying when a deferred member has re-joined elsewhere and be a good starting point for identifying which administering authorities should be conversing with each other, so long as all administering authorities choose or are compelled to participate. If extended, it may even resolve the issue across all public sector schemes. Whether the salary link remains or not, this central facility can also assist Funds with early notification of deaths and assist in the application of death grant regulations to avoid the inadvertent payment of more than one grant where membership is in more than one Fund.

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If you would like to see these provisions added to the regulations, it is suggested that you include support for them in your response to the consultation.

## Next Steps

As mentioned above, the consultation closes on 30 January. Responses should be submitted to DCLG. We have suggested some areas above where the regulations could be enhanced, with three which, subject to proper controls, could assist Funds in dealing with employers who have ceased to actively participate in their Fund either permanently or for a short period only and in recovering deficits. These have the aim as the consultation requests to better protect local tax payers where there is a risk that they will have to foot the bill for employers who leave the scheme. Working across many LGPS Funds we believe that our suggestions reflect the type of provisions that Funds would like to have available and as ever remain ready to be corrected should that not be the case.

» *If you would like to see these provisions added to the regulations, it is suggested that you include support for them in your response to the consultation. Please contact Annemarie as detailed below if you would like to receive a WORD copy of our briefing note to enable some simple cutting and pasting.*

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Our Public Sector Actuarial and Benefits Consultancy Teams are available to provide advice and assistance to clients on this and other issues. You can contact us via the following:

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