Somerset County Council
Pensions Committee

Proposed Changes to LGPS Regulations

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Executive Portfolio Holder:	Not applicable
Division and Local Member:	Not applicable

1. Background

1.1 There are a number of strands of new regulations at various stages of development or implementation within the LGPS, these are:

- the period review of the cost of public sector pensions;
- the review of the Fair Deal provisions that govern the protections afforded to staff when they TUPE between employers; and
- the review of the length of the actuarial cycle and related changes.

2. Review of the cost of the LGPS

2.1 Under the public service pension framework, the costs of the pension schemes are periodically assessed to ensure the reforms remain affordable and sustainable.

2.2 In the LGPS there are two mechanisms used to do this:

- The Employer Cost Cap (ECC), which currently stands at 14.6%
- The Future Service Cost (FSC), which currently stands at 19.5%. The FSC is operated by the LGPS Scheme Advisory Board (SAB) and includes employer and member contributions at a ratio of 2:1 (13% employers' contributions and 6.5% relating to members).

2.3 If the total employer contribution rate changes by 2% or more in either direction, changes are required in order to bring the Scheme cost back into line with the target rate.

3.0 The Proposed Changes

3.1 A recent review by the Government Actuary Department (GAD) determined that the costs of the LGPS are now below the target rate. To address this, the SAB has proposed the following improvements to the Scheme, which are due to be implemented on 1st April 2019:

- Removal of Tier 3 Ill Health;

- Minimum Death-in-Service lump sum of £75,000 per member (not employment);

- Enhanced Early Retirement factors for all active members from 1st April 2019 to be applied to all service;

- Revised member contribution rates and bandings, which take account of varying tax relief:

  a) a 2.75% contribution rate for salaries between £0 and £12,850
  b) an expansion of Band 2, which will now include salaries between £12,501 and £22,500, and a contribution rate reduction from 5.8% to 4.4%
  c) an expansion of the 6.8% contribution band from £45,200 to £53,500

3.2 The proposals take into consideration the change in the annual revaluation of CARE (Career Average Revalued Earnings) benefits to CPIH (Consumer Price Index including owner occupiers' housing costs), as opposed to CPI (Consumer Price Index) announced in the October 2018 budget.

3.3 It is expected that the proposals will result in an increase to the average employer future service rate across the scheme of approximately 0.9% of payroll costs. However, the impact on individual employers will vary and will be dependent on the 2019 valuation process.

4. The McCloud Case

4.1 A short consultation on the above regulation changes was expected during February; however, the decision to implement the proposed changes has been delayed, pending the outcome of the McCloud case.

4.2 The McCloud case concerns the transitional protections given to scheme members, who in 2012 were within 10 years of their normal retirement age, in the judges and firefighters schemes as part of public service pensions reform. Tapered protections were provided for those 3-4 years younger. On 20th December 2018 the Court of Appeal found that these protections were unlawful on the grounds of age discrimination and could not be justified.

4.3 If the protections are deemed to be unlawful, then those members who are found to have been discriminated against will need to be offered appropriate remedies to ensure they are placed in an equivalent position to the protected members. Such remedies will need to be ‘upwards’ - that is the benefits of unprotected members will need to be raised rather than the benefits of protected members being reduced.

4.4 Protections were applied to all members within 10 years of retirement in all public service schemes, with the form that protection took varying from scheme to scheme. Although the case only relates directly to two schemes it is anticipated that the principles of the outcome could be accepted as applying to all public service schemes.

4.5. The Government has applied to the Supreme Court for permission to appeal the decision. Normally a decision on whether to grant permission is received within 3 months of the application, and we expect to receive an update by mid-April 2019.

5. Review of Fair Deal

5.1 The Ministry of Housing, Communities and Local Government (MHCLG) released a consultation in May 2016 regarding the introduction of greater pension protection for employees of LGPS employers who are compulsorily transferred to service providers.

5.2 The 2016 consultation proposed that, in line with the Government’s Fair Deal guidance of October 2013, most LGPS members in this position should have continued access to the LGPS with the new service provider.

5.3 A further consultation regarding Fair Deal will be running from 10th January to 4th April 2019, which takes into consideration some of the concerns raised in the initial consultation.

6. Consultation on proposed changes to Fair Deal

6.1 The latest consultation is requesting views on the following proposals:

- Amendments that would require service providers to offer LGPS membership to individuals who have been compulsorily transferred from an LGPS employer, removing the option of offering a broadly comparable scheme.
- Automatic transfer of LGPS assets and liabilities when employers in the scheme are involved in a merger or takeover.

6.2 It is also proposed that all LGPS scheme employers will be considered as Fair Deal employers with the exception of:

- further education corporations, sixth form college corporations and higher education corporations (i.e. post-1992 universities)

- admission bodies

6.3 Contractors who provide services to the organisations listed above will continue to provide access to the LGPS for transferred staff via an admission agreement with the pension fund (subject to meeting requirements and with the agreement of the contracting employer); however, there would be no obligation for them to do so under the scheme regulations.

6.4 A Fair Deal employer must ensure that protected transferees are given access to the LGPS for as long they remain a protected transferee and have an entitlement to membership of the scheme.

6.5 Transitional arrangements will cover those staff who have already been outsourced, in order for them to become protected transferees if and when services are re-tendered.

6.6 The consultation also proposes that service providers do not necessarily need to become admission bodies to participate in the LGPS. Instead, employers could be given 'deemed employer' status, a classification of employer which already exists within LGPS regulations.

6.7 For an employee of a deemed employer, the scheme employer in the LGPS would not be their employer under employment law. For example, the deemed employer of a voluntary school is the associated local authority.

6.8 The LGPS Scheme Advisory Board (SAB) will issue guidance to assist employers under Fair Deal with service contracts and to help protect them from potential risks.

6.9 The admission body route will remain an option so that Fair Deal employers can decide if they wish for a service provider to become a full scheme employer in the LGPS. This approach may be more appropriate for larger, longer term contracts where it is more fitting for a service provider to have full employer responsibilities under the LGPS regulations.

6.10 The draft regulations include an additional paragraph within part 3 of schedule 2 of the LGPS Regulations 2013, confirming that admission agreements may contain details of the risk sharing arrangements agreed between the Fair Deal employer and the service provider. We anticipate that advice issued by the SAB will contain further details regarding the risk sharing provisions that may be included within admission agreements.

7. Conclusion on Fair Deal changes

7.1 The Fair Deal proposals are intended to strengthen the pension protections that apply following an outsourcing and it is expected that all transferred staff of relevant LGPS employers will benefit equally from the new provisions.

8. Consultation on actuarial cycles and related matters

8.1 The MHCLG released a consultation in early May which is mostly regarding the length of actuarial cycles within the LGPS but contains some other provisions, covering wider areas. The full consultation is available on the following link:

https://www.gov.uk/government/consultations/local-government-pension-scheme-changes-to-the-local-valuation-cycle-and-management-of-employer-risk

8.2 The specific areas covered by the consultation are:

- amendments to the local fund valuations from the current 3 year (triennial) to a 4-year (quadrennial) cycle
- a number of measures aimed at mitigating the risks of moving from a triennial to a quadrennial cycle
- proposals for flexibility on exit payments
- proposals for further policy changes to exit credits
- proposals for changes to the employers required to offer local government pension scheme membership

8.3 The consultation closes on 31st July 2019

9. Actuarial Cycles

9.1 MHCLG is proposing to move the LGPS to 4 yearly actuarial valuation cycles as apposed the to current tri-annual reviews to align the LGPS cost management valuation and local LGPS valuations are aligned from 31 March 2024 onwards.

9.2 To align the 2 valuations in 2024 it would be necessary to either have a 5 year first cycle or a 3 year and 2 year cycle until 2024 and then 4 yearly thereafter.

9.3 To help administering authorities and employers to cope with the longer actuarial cycles it is proposed to change the regulations to allow interim valuations to be undertaken at the discretion of the administering authority. It is proposed that the trigger points for interim valuations would be subject to statutory guidance and would probably be reflected in each Fund's Funding Strategy Statement.

10. Exit payments

10.1 When the last active member of an employee ceases to be active the regulations require a cessation valuation to be undertaken by the Fund's actuary which results in the employer either paying up any deficit or receiving any funding surplus.

10.2 MHCLG is proposing to change the regulations to allow employers more flexibility in how and when any deficit is paid for rather than the current situation where the employer is required to meet the full sum immediately.

10.3 There are also some proposed changes to how surpluses are paid to employers on cessation. The payment of surpluses on exit is a relatively new provision and so MHCLG is looking to clear up some un-intended consequences that have come to light.

11. Further education establishments

11.1 The final area of the MHCLG consultation is a proposal to remove the requirement for further education, higher education and sixth form college corporations in England to offer new employees access to the LGPS.

12. Conclusion

12.1 The Committee is asked to note the report.

13. Background Papers

13.1 None