



<b>PENSIONS COMMITTEE</b> 30 April 2013	

<b>Subject Heading:</b>	LGPS 2014 consultation on scheme regulations
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<b>Policy context:</b>	Local Government Pension Scheme 2014
<b>Financial summary:</b>	There are no costs implicit in responding to the consultation, .

**The subject matter of this report deals with the following Council Objectives**

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

**SUMMARY**

The report is to advise Committee of the period of statutory consultation on pension reform legislation covering the Local Government Pension Scheme 2014, focusing on the core elements relating to membership, contributions and benefits, and to seek approval to the following recommendations.

## **RECOMMENDATIONS**

- 1 Members note the detail of the consultation which is in 3 parts, with the response date for Part A being 3 May 2013, and Part B and C being 24 May 2013;
- 2 Members approve the responses to Part A regulations set out as Appendix A;
- 3 Members delegate the approval of responses to Parts B and C to the Lead Officer, Andrew Blake-Herbert, and the Pensions Committee Chair, Councillor Wallis at a later date.

## **REPORT DETAIL**

- 1.1 Following the Government's acceptance of the Lord Hutton report on pensions reform, several initiatives have been instigated under Workplace Pensions Reform. A revised Local Government Pension Scheme is being introduced on 1 April 2014, with all active members of the current scheme being transferred automatically into the new scheme.
- 1.2 New sets of regulations are being drafted and the current consultation is amending several definitions, clarifying regulations in places and simplifying them in others.
- 1.3 There are also 2 further sets of regulations under consultation, Part B and Part C which cover Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013 and Local Government Pension Scheme (Miscellaneous Amendments) Regulations 2013 which are changes to the 2008 scheme. These have the response date of 24 May 2013.
- 1.4 The Councils Pensions Programme Officer has read the consultation document and examined the proposed changes to the 2014 scheme regulations to formulate the response to the consultation.

## **IMPLICATIONS AND RISKS**

### **Financial implications and risks:**

There is no additional financial implication in approving the proposed Havering report to the consultation document. The purpose of Havering's response is to support the proposed changes. Financial implications due to the change of scheme itself have been identified in earlier reports to committee.

There is minimal risk in the event that the final regulations are flawed, leaving the Council vulnerable in its administration of the LGPS. Amendment regulations have historically been regularly produced to clarify ambiguity although concise consultation with adequate response should minimise this risk.

Disseminating information on the new scheme to all scheme members, managers and employers in the Havering Pension fund will be an essential but onerous task, and must be delivered in a timely manner, with cost implications being kept to an absolute minimum. A realistic estimate of costs is not currently available but is considered manageable. Such costs are borne by the pension fund

**Legal implications and risks:**

The LGPS regulations are a statutory instrument and therefore the administration of the Council scheme will have to comply with them.

**Human Resources implications and risks:**

There will be an ongoing change in processes and procedures to ensure that the required legislation is delivered and built into working practices. Cascading information on the new scheme to all scheme members, managers and employers in the Havering Pension fund will be essential, and will need to be delivered in a concise and timely manner.

**Equalities implications and risks:**

Since the Amendment Regulations, October 2012, all non teaching employees have the right to join the Local Government Pension Scheme (LGPS). All non teaching employees with a contract of 3 months or more are already automatically enrolled in the LGPS. All non teaching employees with contracts of less than 3 months (including casuals) may now elect to join the LGPS.

**BACKGROUND PAPERS**

The Draft Local Government Pension Scheme Regulations 2013 and the Guidance notes issued with them.

Havering is proposing to respond to all items of detail.

## APPENDIX A

# Part A: Local Government Pension Scheme Regulations 2013

## a) Membership, contributions and benefits Preliminary Provisions

**Regulations 1 and 2** are unchanged.

### Membership

**Regulation 3** has been modified since the consultation draft. Paragraphs 3(3) and 3(4) have been altered to satisfy the requirements of the Pensions Regulator, so that individuals with contracts of less than three months become subject to the system of auto-enrolment. There is a new 3(8) detailing periods which do not count as qualifying service.

**Regulation 4** has the additional phrase “In an employment” in paragraph (1). This phrase has been added to a number of regulations to signify that each employment / membership is for most purposes treated separately.

**Regulation 5** has been modified. In particular paragraph (5) makes it clear that those individuals who cease membership before having been a member for three months should be treated as never having been an active member. Their contributions would be returned.

**Regulation 6** includes minor modifications for the sake of clarification.

**Regulation 7** is unchanged except for an addition making it clear that an individual could be in the same, as well as different, categories of membership in respect of different employments.

**Regulation 8** includes a minor alteration to the definition of “pension credit member”.

### Contributions

**Regulation 9** includes a new “Band” column in the contribution table, for ease of reference. The types of absence to be disregarded for the purposes of band-setting are now specified.

**Regulation 10** includes a number of modifications, the most important of which is that the use of “assumed pensionable pay” need not mean that an individual has to cease paying 50% contributions.

**Regulations 11 and 12** have been subjected to minor re-wording for the sake of clarity, and, as requested by respondents to the consultation, now deal with contributions which are made following a members’ decision to do so.

**Regulation 13** on reserve forces service leave has a new paragraph (2) to explain the member’s contribution levels.

**Regulation 14** is unchanged.

**Regulation 15** details a member's obligations to make contributions during absences with the employer's permission. New wording has been added to deal with the first 30 days of absence.

**Regulation 16's** provisions on additional regular contributions have been clarified. In particular, it is now made clear that the maximum sum, £5,000, to be credited to an individual's pension account is an aggregate amount, not an annual amount.

**Regulation 17** on Additional Voluntary Contributions (AVCs) has been augmented to give further necessary detail. In particular, it is set down that it should be specified what proportion of the contributions should be used to provide life assurance payable on death in service.

**Regulation 18** has been modified to improve clarity. In paragraph (1) the reference to paragraph 3(5) has been replaced by one to 3(6), dealing with an error highlighted by a number of consultation respondents.

**Regulation 19**, on the right to return of contributions, has a new reference to ceasing active membership which replaces the original reference to leaving an employment.

**Regulation 20** lists exclusions to the definition of pensionable pay. There is now one additional exclusion in paragraph (f), which concerns payments related to the provision of a motor vehicle.

**Regulation 21** deals with the concept of assumed pensionable pay (APP). A number of important modifications have been made:

- "child-related leave" is redefined
- as requested, "absence with permission" is included
- it is made clear that certain lump sums are excluded
- it is made clear that assumed pensionable pay is re-valued annually. (but see **Regulation 39(9) below**)

The former Regulation 21 (3) has been removed and the need for an IRMP opinion where there has been a reduction in pay as a result of an ill health condition and that reduction is ignored, is now found at 36 (1) (c) which firmly links the need for IRMP certification with the ill health retirement assessment process.

## **Pension accounts**

This section of the Regulations details the new system of pension accounts which will ensure that each member accumulates pension by means of the Career Average Revalued Earnings System.

**Regulation 22** sets down the different types of pension account. An additional category is added to the consultation draft, a deferred refund account for individuals who have contributed to the Scheme for between three months and two years. This account does not in itself give a right to Scheme benefits, but it can be retained as a starting point for future accrual in the Scheme or transfer elsewhere.

**Regulation 23** has been the subject of modification. It has been made clear that contributions relate to the year in which they are paid to the Fund concerned, rather than to the year in which the salary was earned. There are further modifications relating to taxation and the methodology for dealing with the final part-year of active membership.

**Regulation 24** is modified to set down further provision for deferred refund accounts. Options for the future of such accounts are set down in paragraph (12).

**Regulation 25** deals with retirement pension accounts. The new draft stipulates that due account should be taken of the effect of additional pension and pension sharing orders.

**Regulation 26** has been rearranged for clarity. It is made clear that retirement pension accounts must take due account of pension adjustment.

**Regulation 27** continues the facility for members to take flexible retirement. There is additional wording to ensure that due account is taken of additional pension and pension adjustment.

**Regulation 28** - this provision requires a retirement pension account to be closed when Tier 3 benefits stop and a deferred pensioner account to be opened showing the amount of accrued pension transferred from the retirement pension account.

**Regulation 29** has in two respects been corrected from the original draft. The mis-leading reference to capital value has been dropped and it is no longer stipulated that only active members could be subject to pension sharing orders. Both of these alterations result from consultation responses.

## **Benefits**

**Regulation 30** setting the parameters within which retirement benefits can be taken, has been modified slightly for clarity. In particular, it is now stipulated, in paragraph (4), that individuals taking flexible retirement can take all of the benefits they have accrued under the 2014 Scheme.

**Regulation 31** has been modified and now sets down the process by which additional pension should be credited to a particular account.

**Regulation 32** has been expanded to set down the timescale under which a member must give notice to indicate a wish to take flexible retirement.

**Regulation 33**, continuing the facility for members to receive a lump sum in lieu of part of their pension, has been suitably modified to improve clarity. It is now made clear, in paragraph (4), that the commutation option is not open to pension credit members or to deferred pensioner members.

**Regulation 34** has been expanded very slightly to make it clear that, if trivial commutation takes place, no survivor benefit is available in respect of the member concerned.

### **Ill-health retirement**

Responses to the December 2012 consultation have been taken into account in Regulations 35 - 39:

**Regulation 35** has been updated to clarify, but not change, the criteria under which retirement benefits can be released on ill health grounds. In particular, it had been noted that 35 (4) and 35 (5) were broadly the same and so they have been revised to make it clear that 35 (4) deals with the 2<sup>nd</sup> part of the eligibility criteria and 35 (5) deal with Tier 1 benefits. Regulation 35 (6) has been further clarified and 35 (7) now reads 'before normal retirement age if earlier'.

**Regulation 36** this sets out the role of the Independent Registered Medical Practitioner and remains broadly as in the earlier consultation draft but 36 (1) (b) has been revised, and 36 (1) (c) includes the requirement for certification by an IRMP regarding reduced working hours and pay as a result of an ill health condition.

**Regulation 36(4)** requires employing authorities and the IRMP to have regard to guidance given by the Secretary of State. The guidance explains terms such as 'reduced likelihood' and the guidance will be updated to take into account the changes made as a result of both the LGPS (Miscellaneous) Regulations 2012 and the LGPS 2013 Regulations. Practitioners can advise if there should be other ill health related definitions in Schedule 1.

**Regulation 37** changes from the December 2012 draft are:  
'Employing' has been included before 'authority' at 37 (4), (5), (6), (7) and (10).

**Regulation 37(4)** – the provision better explains how an employer determines whether employment is gainful employment if the Tier 3 member has returned to work.

**Regulation 37(7)** – is revised to better explain what decisions can be taken at the review.

**Regulation 37(10)** – clarifies the test to be applied for an uplift to Tier 2 benefits.

**Regulation 38** the criteria for release of benefits at 38 (3) is now the same test for both a deferred and deferred pensioner member. There is no change to the amount of benefits payable.

**Regulation 39** in light of recent discussions and replies from practitioners, this regulation sets out in a clearer way how the enhancements should be calculated. Also, 39 (6), (7) and (8) deal with the restriction on any enhancements in subsequent ill health retirement (this is currently provided for in Benefits Regulation 20 (11A)).

**Regulation 39(9)** provides for the reduction in pensionable pay to be ignored where the reduction was linked to ill health or infirmity of mind or body and an IRMP certifies to this effect.

### **Survivor benefits**

**Regulations 40, 43 and 46** provide the power for administering authorities to pay death grants to individuals affected by the death of an LGPS member.

The Regulations now make due allowance in cases where it was not possible for the administering authority to be aware of the member's death at the time. Regulation 40 has also been altered to make it clear that no account should be taken of certain pay reductions in calculating the death grant.

**Regulations 41, 42, 44, 45, 47 and 48** provide the power for administering authorities to pay survivor benefit to partners and / or to qualifying children following the death of an LGPS member. These Regulations have been modified compared to the original draft, in order to make clearer the various methods of calculation in each type of case.

## **b) Administration**

**Regulation 49** obliges administering authorities to pay interest on payments due in respect of members. There is one alteration compared to the original draft, making it clear that the interest provisions do not apply to payments arising from Additional Voluntary Contributions.

**Regulations 50 - 54** are unchanged from the original draft.

**Regulation 55** is unchanged from the original draft, except that paragraph 55(4) becomes new **Regulation 56**.

## **c) Schedule 1**

Definitions are now provided for the list of phrases set down in the original draft.

## **d) Schedule 2, Part 1**

Following representations received from the Department for Education and from two local authorities, the definition of "academy" at paragraph 20 has been modified.

## **e) Schedule 2, Part 2**

This Part is unchanged from the original draft.



## **f) Schedule 2, Part 3**

**Paragraphs 1 and 7** are modified to improve clarity.

**Paragraph 4** - In the case of an admission body falling within the description in paragraph 1(b), where at the date of the admission agreement the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, the Scheme employer paying contributions (or, if more than one pays contributions, all of them) must guarantee the liability of the body to pay all amounts due from it under these Regulations.

Can consultees state if this provision is still required?

**Paragraph 6** is refined in light of comments.

**Paragraph 13** mirrors current Administration Regulation 6(10) and (11) are re-introduced in light of comments.

## **g) Schedule 2, Part 4**

This Part is unchanged from the original draft.

### **Response:**

Having reviewed all the regulation amendments, It is the opinion of this Council that the proposed regulation changes are actioned and that they satisfy the intention of what the changes were intended to do

Having also considered f) Schedule 2, Part 3, paragraph 4 this Council cannot see that this provision is still required.