



PENSIONS COMMITTEE 17 December 2013	REPORT

Subject Heading:	The Local Government Pension Scheme (Miscellaneous) Regulations 2012
CMT Lead	Andrew Blake-Herbert
Report Author and contact details:	Contact: Karen Balam Designation: Transactional Manager Telephone: (01708) 432271 E-mail Address: Karen.balam@havering.gov.uk
Policy context:	LGPS Regulations
Financial summary:	There is no material, direct financial implications for the Fund arising from this report.

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

This report advises Members of the changes that have been made to the regulations governing the Local Government Pension Scheme (LGPS) by the Local Government Pension Scheme (Miscellaneous) Regulations 2012.

The Local Government Pension Scheme (Miscellaneous) Regulations 2012 were made on 27 July 2012 and came into force from 1 October 2012.

The Miscellaneous Regulations amended regulations as follows:

- 13 regulations amended the Benefits Regulations
- 4 regulations amended the Transitional Regulations
- 22 regulations amended the Administration Regulations

RECOMMENDATIONS

1. Members note the changes contained in the Miscellaneous Regulations.
2. Members note that a further paper will be brought back to Committee with a draft Administering Authority discretion policy on Early Release of Benefits for deferred scheme members where a scheme employer is no longer an active body and there is no successor.
3. Members agree that an Administering Authority discretion policy for applications from deferred members and suspended Tier 3 ill health members aged between 55 and 60 who are wishing to opt for early payment will be brought to Committee at the next meeting. That the policy should be based upon applications being considered individually and a decision made on the merits of each case, and that normally applications will only be approved where there will be no cost falling upon other employers in the Fund.
4. Members agree that a further paper be brought back to Committee with a draft policy on accepting guarantee agreements, together with a draft 'Guarantee Admission Agreement'.
5. Members agree a policy that prospective admission bodies must be prepared to meet the actuarial costs and administrative costs incurred by the Fund in assessing the required bond or indemnity, delivering the administration service in processing admission agreements, assessing guarantors, reviewing bond and indemnity levels and triennial valuation.
6. Members agree a policy that a bond or indemnity that is satisfactory to the Fund, or if so agreed by the Pension Committee, a guarantee, must be in place before the admission agreement is made.

7. Members agree a policy that the admission agreement may cease at the discretion of the Committee if:
 - A replacement bond or indemnity that is satisfactory to the Pensions Committee is not in place at the time the existing bond or indemnity expires
 - If a guarantee is not in place at the point when the existing guarantee is reviewed.
8. Members agree a policy of accepting open, nominated or closed admission agreements. Such a policy will ensure compliance with regulations and clarify operational procedures.

REPORT DETAIL

Introduction

1. The Miscellaneous Regulations came into force on 1 October 2012 but there was a provision made in Regulation 1 for various sub-sections within the regulations to have effect from different dates.

The Miscellaneous Regulations affect the following legislation:

- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006;
 - The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007;
 - The Local Government Pension Scheme (Transitional Provisions) Regulations 2008; and
 - The second set of regulations, the Local Government Pensions Scheme (Administration) Regulations 2008.
2. The Miscellaneous Regulations covered a wide range of mainly unrelated amendments to the Local Government Pensions Scheme Regulations. Whilst some amendments were necessary to remove old provisions and align with legislative changes (automatic enrolment), there were some key changes to the provisions relating to admission agreements in particular.
 3. The report highlights some key changes which are discussed in the body of the report, with other changes listed in Appendix A. The key changes arising from the Miscellaneous Regulations 2012 that will require policy change decisions are discussed in detail within the report which are:-
 - Early release of benefits;
 - Third tier ill health pension; and
 - Changes to admission agreements.

The proposed changes relating to closed or open admission agreements do not arise from the Miscellaneous Regulations 2012 changes.

4. The Funding Strategy Statement will need to be reviewed in line with the regulatory changes to ensure that any future approved Funding Strategy Statement is fully compliant with the regulations.
5. The proposed policy changes relating to admitted bodies will be set out in a new guidance document to be produced for scheme employers. The guidance document will ensure all policies relating to the process for admission to the London Borough of Havering pension scheme are clearly set out, which will aid regulatory compliance by scheme employers and improve administrative procedures.
6. All Administering Authority discretionary policies will be published on the pension website, <http://www.yourpension.org.uk/handr> and updated for new discretion policies and policy revisions as they arise.

Early Release of Benefits

7. These regulations require the administering authority to introduce a discretionary policy for instances where a scheme member wishes to apply for the early release of their deferred benefits but their former employer is no longer an active scheme employer, and there is no successor body. A draft policy will be developed and brought back to Members for the next Committee meeting, the policy will be based on the premise that no costs will fall upon other employers in the Fund, unless there are special factors that justify a departure from this policy.

Third-tier ill Health Pensions

8. Previously when someone was awarded a third-tier (temporary) ill-health pension and this pension was stopped, if that individual wanted to bring their benefits back into payment they would suffer full early retirement reductions even if they have enough pensionable service to meet the 'rule of 85'. The Miscellaneous Regulations corrected this unintended unfairness.
9. Deferred and suspended third-tier ill health retirement members who were aged between 55 and 60 and who wished to opt for early payment were required to obtain the permission of their previous employer. If the employer no longer exists then the member's request could not be considered. To address this, the regulations will now allow the administering authority to exercise the employer discretion where the member's former employer has ceased to be a Scheme employer.
10. To facilitate this, employers will be required to publish their policy for dealing with applications from deferred members and suspended third-tier ill health members aged between 55 and 60 who are wishing to opt for early payments. Administering authorities will also need to have a policy, as they will be required to deal with applications where the member's employer no longer exist.

11. When considering its policy the Committee will need to take into account that the early retirement reductions applying where a member is allowed to access their benefits early may not fully address the cost of allowing early payment. In this case the residual cost will fall back on the other employers in the Fund. Subject to Members approval, a policy will be developed based on the approach that every case will be considered upon its merits but applications will normally only be approved where there is no cost to the employer or other Scheme employers in the Fund.
12. The existing power to bring a deferred benefit into payment where the member is now suffering permanent ill health is extended to cover suspended third-tier ill health cases, providing that the member is permanently incapable of any gainful employment.

Changes to admission agreements

13. The amendments made through the Miscellaneous Regulations will apply to admission agreements entered into after 1 October 2012 and there are a number of changes to regulations 6 and 7 of the Local Government Pension Scheme (Administration) Regulations 008. Admission agreements made before this date are not affected by the amendments.
14. In the case of potential transferee admission bodies, the letting authority has been required to take actuarial guidance on the potential costs that would arise if the transferee body's admission ceased in circumstances where that body could not address those costs. The letting authority is liable for any pension costs that cannot be recovered from the transferee body and so they decide on the level of bond required, this has normally been accepted by the Committee at the highest bond level to minimise risk to the Fund.
15. The Miscellaneous Regulations require that all new transferee and community admissions entered into on or after 1st October 2012 should have an indemnity or bond, which is the normal practice of the Committee.
16. If, however, for any reason it is not desirable that an admission body be required to enter into an indemnity or bond than a guarantee can be provided but only by:
 - A person who funds the admission body in whole or in part,
 - A person who owns or controls the exercise of the functions of the admission body, or
 - The Secretary of State where an admission body is established under an enactment and the enactment empowers the Secretary of State to make financial provisions for the admission body.
17. It is not clear whether the decision on this requirement is made by the admission body or the administering authority. This will need to be specified in the admission agreement but it is presumed to be a decision of the administering authority. The letting authority will clearly have an interest in the proposed transferee admission body using the means of security which adds the least cost to the provision of the services, particularly Academies who tender for catering services. However where

the letting authority is not also the administering authority it may be more difficult for the admission body to persuade the pension fund to accept a guarantee in place of a bond or indemnity.

18. The Pension Committee, as administering authority, will need to consider what their policy and procedure will be in relation to guarantees, particularly what their requirements will be and what methods of assessment will be required to ensure the Committee is satisfied that the guarantors are able to afford the commitment. Further work will be undertaken to come back to Committee with options.
19. In addition, the Miscellaneous Regulations required that the prospective admission body carries out the assessment, taking account of actuarial advice, of the level of risk exposure arising on insolvency, winding up or liquidation. The assessment must, however, be to the satisfaction of the administering authority, and in the case of a transferee admission body, the letting authority.
20. The Miscellaneous Regulations go on to require that “where the level of risk identified by the assessment is sufficient to require it” the admission body will need to enter into an indemnity or bond to the required value. The existing limitations on who can provide an indemnity or bond are retained.
21. The new requirements, which are substantially different from the previous provisions, will cause a significant increase in the work involved in admitting new bodies.
22. The Miscellaneous Regulations do not require that the prospective admission body obtain their actuarial valuation from the Fund Actuary. It is likely that some will use other actuaries whose methodologies and assumptions differ from those of the Fund Actuary.
23. In order to ensure that the assessment is acceptable, the Fund will also still have to obtain advice from the Fund Actuary. It would be an unacceptable loss of cash from the Fund and an impact on existing employers if the costs of obtaining actuarial advice in order to satisfy itself with regards to the assessments were not passed on to the prospective admission body. It is, therefore, recommended that the Committee agrees a policy that prospective admission bodies must be prepared to meet the actuarial costs of the Fund’s assessment. In addition to this, the costs of bond and indemnity reviews, assessment of guarantee bodies and additional administrative support should also be passed on to admission bodies rather than met from other employers in the Fund. It should be noted that the triennial valuation is considered to be a fund requirement and not an employer cost. The fund will pick up the cost of the triennial valuation costs.
24. Actuarial assessments carried out by other firms of actuaries, or by the Fund Actuary if the admission body has specified different assumptions, are likely to result in very different outcomes from the figures calculated by the Fund Actuary using the assumptions from the last triennial valuation (or even the current triennial valuation).

25. There is a risk that the potential admission body's assessment is materially different from the assessment calculated by the Fund Actuary. The prospective admission body may not be willing to accept a higher figure calculated by the Fund Actuary and any ensuing dispute could delay admission. Further, the admission body may dispute that the level of risk is sufficient to require them to put in place a bond or indemnity.
26. The Regulations require that the assessment is to be carried out to the satisfaction of the administering authority. It will be necessary for the Committee to ensure that it is satisfied with the value of bond in place and that the position of other employers in the Fund is protected.
27. Issues over bond value could emerge at the stage that bonds are reassessed, even where they were originally successfully agreed. If an issue arises over bond value when the admission is in place the only sanction the Fund will have, if the admission body refuses to renew the bond or indemnity, or is unwilling to put in place a bond or indemnity of adequate value, is to terminate the admission.
28. Letting Authorities may have to review their contract terms and conditions to ensure that this situation is included as a breach of contract, although ceasing contracts during the agreed period of operation would definitely create major service provision continuity issues and Administering Authorities could be placed in conflict with their service provision and Pension Fund responsibilities. If an admission agreement is terminated early there will be additional costs to obtain closing valuations, difficulties may arise in collecting any deficits and administration work and costs for the Fund will increase.
29. A further change in the Regulations also requires a separate admission agreement to be in place where a transferee admission body is performing functions of a scheme employer in more than one contract (for contracts entered into from 1 October 2012). This is so it is clear when separate admission agreements are entered and to make sure that there is an obligation on the contractor to make a cessation payment when one contract ends. The start and end dates of different contracts will not be the same and there may otherwise be no obligation on the contractor to make a cessation payment where the existing admission agreement would continue by virtue of another contract.

Open or closed agreements

Admission agreements may be open, nominated or closed.

30. The status of open, restricted or closed admission agreements has not changed within the 2012 regulation changes, but currently the Pension Committee seeks to agree admission for only closed agreements. A policy of the Pension Committee requiring a closed agreement does not comply with the Pension Administration regulations. An employer guide to aid bodies seeking admitted body status is currently being produced. In order to ensure the guidance document complies with the Regulations this issue is being brought to the attention of the Committee.

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An admitted body guidance document will aid overall compliance by all scheme employers with the regulations.

31. An open agreement potentially allows any employee of the contractor involved in the provision of the outsourced services (and only the outsourced services) to become a member of the Scheme i.e. new recruits the contractor employs in the provision of the outsourced service.
32. A nominated agreement allows a specified group of employees, named in the admission agreement, eligibility to become a member of the Scheme at any time.
33. A closed agreement relates only to a fixed group of employees. Only those employees who transferred to the contractor from the outsourcing employer can remain or be members of the Scheme. This would include staff not currently in the Scheme at the contract start date but who would retain the right to join the Scheme once they are transferred.
34. A review of the Administration Regulations indicates that the decision whether an admission agreement is open or closed rests with the admission body and not with the administering authority. This is for the following reasons: -
 - Transferee admission bodies are defined in Regulation 6(2)(a) of the Regulations.
 - Regulation 6(11) provides that where the admission body agrees to meet the requirements of Regulation 6 and Regulation 7 and the scheme employer agrees to meet the requirements of regulation 6 (i.e. to be a party to the admission agreement) the administering authority must admit to the Scheme the eligible employees of the transferee admission body designated by that body (i.e. designated by the admission body). Regulation 6(12) provides that only employees employed in connection with the provision of a service are eligible to be designated.
 - Regulation 7(2) provides that “A person employed by a community admission body or an eligible person employed by a transferee admission body may only be a member if the person, or class of employees to which the person belongs, is designated in the admission agreement by the body as being eligible for membership of the Scheme.”
 - Paragraph 5 of Schedule 3 (contents of admission agreements requires the admission body to give an undertaking and warranty that all its employees who are members of the scheme are employed in the provision of the service (the warranty will relate to employees admitted at the date of the agreement and the undertaking will relate to employees admitted at a future date.
35. Taking these provisions together it is clear that future employees providing the service are eligible to be designated as members of the pension scheme. Whether they are in fact able to join the scheme will depend on whether their employer designates them, or designates the class of employees to which they belong, for admission to the scheme. The administering authority has no discretion in this matter as it must admit eligible employees designated by the admission body.

36. The consequence of this is that although the Pensions Committee may have a policy only to accept CLOSED admission agreements, this policy cannot be enforced as it does not comply with the obligations of administering authorities under the regulations. There may be financial and other reasons why admission bodies might prefer Closed agreements, but this is entirely a matter for the admission body and not a matter for the council.

37. The impact of the review of the regulations regarding closed or open agreements and the Pension Committee current policy is that Members will be asked to revise the current policy to be in line with regulations. The policy and impact of accepting open admission agreements will need to be included in any future revised Funding Strategy Statement.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no financial implications arising directly from this report. As noted in the report, employer contributions to be paid by admitted bodies are determined by the Fund's actuary.

A bond or indemnity covers the level of risk arising on premature termination of the provision of service or assets provided by the body by reason of insolvency, winding up or liquidation.

There are risks to the letting authority and the fund if the bond levels are not reviewed in line with employee and legislative changes, this risk is being managed by putting in place a timescale for bond reviews and ensure this is included in the admission agreements.

The fund also faces risk if the admitted body is unable to meet any fund deficit's at the end of a contract. This risk is going to be managed by putting in place regular reviews of admitted body risks and their employer rates. Any costs not met from the bond or indemnity would need to be met from the letting authority.

The risk of non payment of contributions, which would have a cashflow impact, is actively managed by the Pension Administration team on a monthly basis with appropriate escalation for non compliance. This risk is reported in the Pension Fund Annual Report.

The risk of a contractor failing to secure a bond is managed by ensuring all employers are aware of their responsibility to notify the Pension Team at the outset of a contracting exercise. The risk to the fund is managed by deferring the pension benefits of any transferring employees where admission agreement and bond agreements are not complied with. This does result in a cashflow loss to the fund which cannot be managed.

Legal implications and risks:

The legal implications and risks resulting from the implementation of the Local Government Pension Scheme (Miscellaneous) Regulations 2012 are fully set out in the body of this report.

Human Resources implications and risks:

Admitted body status will allow transferring staff continued membership eligibility of the LGPS.

Where the service transfer relates to employees of the London Borough of Havering, full consultation is undertaken with affected staff and the recognised trade unions in line with TUPE requirements. In respect of other service transfers the current employing body is responsible for undertaking the equivalent consultation.

Equalities implications and risks:

The Miscellaneous Regulations cover a wide range of amendments to the Local Government Pensions Scheme Regulations. The key legislative changes are related to the following areas:

Automatic Enrolment

As of October 2012, all eligible employees working for employers in the pension scheme are automatically admitted as a member of the Scheme unless they choose to opt-out.

Since the Amendment Regulations, October 2012, all non teaching employees have the right to join the 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.

This provision has widened up the pool of staff members who are eligible to join the LGPS to include employees on temporary contracts, thereby ensuring a more inclusive and fairer approach to the workforce.

Early Release of Benefits and Third-tier ill Health Pensions

It is envisaged that the above outlined legal changes will ensure a fairer, more consistent and transparent approach to staff members subject to the above provisions. Relevant policies and procedures will need to be put in place to ensure compliance with legislation.

Changes to admission agreements and Open or closed agreements

The Council is required to comply with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (the Direction) when entering into initial and subsequent contracts for the provision of services which were previously provided by the authority's employees.

While the Council must admit to the LGPS the eligible employees of the transferee admission body, the decision to allow an open or closed scheme is made by the transferee admission body and the Council cannot influence its decision.

If a transferee admission body decides to opt in for a close scheme, staff members employed directly by that body to deliver an outsourced function, will not be able to access the public service pension scheme, and will be potentially be disadvantaged in terms of pension rights when compared with their colleagues employed by the private contractor as a result of compulsory transfer from the Council.

New policies and procedures arising from the Miscellaneous Regulations

When developing relevant policies and procedures to reflect the legal changes and provisions outlined above, due regard must be paid to employee groups with protected characteristics, and the impact from those changes must be fully considered as part of the Council's Equality Analysis process.

BACKGROUND PAPERS

The Local Government Pension Scheme Regulations (various) and the Guidance notes issued with them.

**Other Local Government Pension Scheme (Miscellaneous) Regulations 2012
Changes Summary**

- Additional Survivor Benefit extended to 31 March 2013
- Flexible Retirement – the regulations make it clear that individuals taking flexible retirement (drawing their pension benefits while continuing to work for their current employer) are not obliged to draw any of their post 31 March 2008 benefits.
- Closure Valuations – Administering authorities have been granted new powers to obtain actuarial valuations and revised rates and adjustment certificates in instances where an employing authority ceases, or the administering authority believes that they will cease, to be a scheme employer. Previously this option only applied to admission bodies.
- Allows employees with a contract of employment that is for less than 3 months the option to join the LGPS.
- Provides that employees cannot complete a form to opt-out of membership of the LGPS before their employment commences.
- Changes the final pay calculation for those members who cease active membership on or after 1 October 2012 to include pensionable pay from membership of the LGPS with a previous employer.
- Amends the definition of an eligible child to cross reference to the Equality Act 2010.
- Provides for children's pensions to take into account any additional contributions made by the deceased member and also ignores any reduction in the deceased's membership that resulted from a reduction in hours due to the member's ill health (as determined by an Independent Registered Medical Practitioner).
- Allows a police and crime commissioner, and a chief constable to become a scheme employer from 22 November 2012.
- Where an employing authority is required to contribute to more than one LGPS fund or merges or amalgamates with another employing authority in a different fund or moves its main place of business to a different geographical area, the Secretary of State can, on or after 1 October 2012 and upon application from the employing authority, decide whether to issue a direction substituting one fund for another.
- Allows LGPS fund to pay the annual allowance tax charge following a request to do so from a member, with a consequential reduction in the member's benefits. This amendment has been backdated to 6 April 2011.
- Requires administering authorities to issue an annual benefit statement to each of its active, deferred and pension credit members by no later than 6 months after the end of the tax year to which the statement relates.
- Clarifies that the LGPS fund for an academy is the one within whose local government area the academy is located except in cases where the London Pension Fund Authority (LPFA) was the administering authority prior to conversion as in such cases the LPFA remains the appropriate fund for the academy.

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- A significant further change means that the requirement for a risk assessment and potentially a bond now applies equally to community admission bodies as to transferee admission bodies. This will be a further cost and potential hurdle to third sector providers who wish to provide services to the public sector and offer staff access to the Local Government Pension Scheme (LGPS).
- Regulation 38 of the LGPS Administration Regulations dealing with the special circumstances when revised actuarial valuations and certificates must be obtained is amended so as to apply to all employing authorities, not just admission bodies, who cease to be Scheme employers. A valuation must be undertaken, on the date the employing authority ceases to be a Scheme employer, of the liabilities of the fund in respect of the employing authority's current and former employees and a revised rates and adjustment certificate is to be provided.

In addition there is a further amendment which updates the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. This now requires a local authority's policy statement (relating to the exercise of their discretion to base redundancy pay on actual pay and/or to award a compensation payment of up to a maximum of 104 weeks pay) to include employees of both technical institutes and federated schools.