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Our ref: RB / Technical / administration regs
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Dear Bob

The draft Local Government Pension Scheme (Administration) Regulations 2007 (the Draft Regulations)

I refer to your letter of 14th February 2007 and the enclosed Draft Regulations. Thank you for the opportunity to comment upon these proposals.

This response reflects the views of South Tyneside Council in its role of administering authority to the Tyne and Wear Pension Fund. Consequently, this response primarily addresses administrative and technical issues.

My comments follow the order of the Draft Regulations.

Part 1

Interpretation – Reg. 2(3)(a)

This should specify that the Act referred to is the Financial Services and Markets Act 2000.

Part 2

General eligibility for membership: employees of Scheme employers - Reg. 4

The regulatory requirements in respect of active members are split between Regulation 2 of the Draft Benefits, Membership and Contributions Regulations and Regulation 4 of the Draft Regulations but the cross referencing in Regulation 2 does not correspond to the Draft Regulations. In our view where provisions are fundamentally linked then those provisions should appear together within the LGPS regulations. All the information on any particular matter should be kept together wherever possible, as this will assist those who have to consult the regulations and make for more accurate interpretation. It is also likely to prove to be more efficient when statutory revisions become necessary.

Employees of non-Scheme employers: community admission bodies - Reg. 5(2)(g)

At the end of this provision there is currently a reference to a body "as described in section 69 of the Local Government and Housing Act 1989 as if references in that section to a local authority were references to the listed Scheme employer."

Has this reference covering "Companies subject to local authority influence" been superseded? Is it the intention that we should refer to clause 25 of Part 1 of Schedule 2 of the Draft Regulations and the replaced Section 27 of the Housing Act 1985 when deciding upon the appropriate Scheme employer?

Joining the Scheme - Regulation 9

Regulation 9 states that "A person who wishes to become an active member must apply in writing to his employer or future employer". Regulation 2(1) of the Draft Benefits, Membership and Contributions Regulations states that employees of bodies listed in Part 1 of the Draft Regulations are automatically members unless they have elected otherwise. As noted previously, there is a problem with the cross referencing in that Part 1 would appear to be a reference to Schedule 2 Part 1 of the Draft Regulations.

Once again we have grave concerns that splitting the provisions governing a particular matter, in this case member admission to the LGPS, across different sets of regulations will cause major difficulties for many LGPS employers and will inevitably lead to confusion, errors, additional work for both employers and administering authorities, and, in some cases, members suffering unnecessary and permanent disadvantage. For example, if through confusion or error a person is not admitted at the correct time this may seriously impact on their eventual transfer in outcome.

We believe there is an overwhelming case for moving away from the proposed approach of four separate sets of regulations and returning to the tried, trusted and effective approach of a single, comprehensive, set of regulations.

Periods of membership: "total membership" - Regulation 9 of the current regulations, and Excluded membership - Regulation 10 of the current regulations, and High Earners – Regulation 11A of the current regulations

We are disappointed that the definitions and provisions covering current Regulations 9, 10 and 11A have not been supplied. We expected that that the provisions regarding the counting of membership would be included within the Draft Regulations but it appears from your Annex B that you are in some doubt as to where the provisions with regard to current Regulations 9 and 10 will appear. With regard Regulation 11a, the treatment of membership and rights of high earners who are subject to the earnings cap at 5th April 2006 is not covered.

There needs to be clarification of how membership counts for all purposes under the new Scheme. In particular we need to understand how membership will count for calculations involving pre-2008 service and for full or part benefits on flexible retirement.

Leaving the scheme – proposed removal of refund provisions – Regulations 87 and 88 of the current regulations

We support the approach you have set out in your covering letter whereby the right to receive a refund of contributions for those scheme members who leave the scheme within three months of joining is removed. In such circumstances the contributions paid will be regarded as an incorrect deduction of salary. To achieve this we suggest that draft Regulation 10 be amended as follows: -

Regulation 10 - Ending of Membership

- (1) A person may leave the Scheme if he wishes and stops being a member if he stops being eligible for membership.
- (2) A member who ceases LGPS employment or leaves the Scheme by reason of a written option to his employer, ceases to be a member from the date of cessation or on the date the written option specifies.
- (3) But, if the date specified is earlier than the notification or no date is specified, he ceases to be a member at the end of the payment period during which the notification is given.
- (4) Where the period of membership to the date of cessation or the date of leaving the scheme is less than three months, he must be treated as not having been a member in that period.
- (5) Where the circumstances set out in (4) apply any contributions made by the member should be returned to him as an incorrect deduction from salary.
- (6) A person who is a member and is an employee of a transferee admission body is treated for the purposes of these Regulations and the Benefit Regulations as leaving a local government employment when he ceases

to be employed in connection with the provision of the service or assets under regulation XX by virtue of which he became eligible to join the scheme.

- (7) If the amount under regulation 5 has not been repaid before the expiry of the period of one month beginning with the date of deduction, the appropriate body must pay him interest on that amount calculated as provided in regulation 46, the due date being the date of deduction.

If it is decided to adopt the above approach then a further decision needs to be made regarding whether the approach will always apply or whether the approach will be varied in cases of concurrency, possible transfer, fraud and grave misconduct. On balance we would support a single standard approach.

Part 3

Contributions - General comments

Members' contribution rates and the provisions covering the "meaning of pay" are set out in the Draft Benefits, Membership and Contributions Regulations, but the majority of the provisions governing leave of absence, maternity, paternity, armed forces and strike etc. are held in these Draft Regulations. Once again, employers will need to refer to two sets of regulations, with the increased likelihood of confusion, errors and extra work to subsequently put things right.

Can we please have a single set of regulations, with all the necessary definitions placed in Schedule 1 of those regulations?

Contributions during child-related leave - Regulation 11

Agreed but subject to the inclusion of appropriate definitions.

Contributions during reserve forces service leave - Regulation 12

The current arrangement to reckon membership during reserve forces leave is difficult to justify and uneven in its application. Some members pay nothing because the forces pay is a penny less than their local government pay whilst others are required to pay standard contributions based on their local government pay even when their forces pay is equal to or a penny more than the local government pay.

The treatment of contributions to reckon periods of absence should be standardised. As with other absences, it should be based on contributions at the standard contribution rate on the pay the member would have received during that period but for their reserve forces leave. This would fit in with the rest of the leave provisions and be more equitable.

We note that the requirement to pay Added Years contributions has not been included. This will still be needed, as there will still be many current Added Year contracts in progress after April 2008, although it could be included in the awaited Draft Transitional Provisions Regulations. A provision for payments of added years during Reserve Forces Service leave should be included within Regulation 12 to prevent payment being overlooked. The definitions for ["relevant reserve forces service", "reserve forces pay", "reserve forces service leave" are noted as having the same meaning as in Schedule 1 to 1997 Regulations –presumably these definitions will be transferred into Schedule 1 of the Draft Regulations.

In Regulation (7)(c) provision is made for payment of benefits if, during reserve forces leave, the member "becomes incapable for health reasons of working efficiently in local government employment". This definition differs from the terms contained in either Regulations 12 or 16 of the Draft Benefits, Membership and Contributions Regulations. We feel it would be better if the medical practitioner should first be asked to certify whether the member is permanently incapable of carrying out the duties of his post and secondly whether this incapacity extends to any other employment. Upon these criteria would depend the amount of enhanced membership to be awarded.

If it is decided not to take up this basis for the ill-health award then we strongly suggest that you at least harmonise the differing ground rules for ill-health retirement already made in these and the Draft Benefits, Membership and Contributions Regulations.

Contributions during absences with permission - Regulation 14

The wording of this regulation should be amended to reflect the fact that contributions must be paid for any such absence up to and including 30 days. The member should then have the option of paying to count the balance in

excess of 30 days up to 36 months i.e. they must make contributions in respect the first 30 days and may make contributions in respect of the remainder of the relevant period, subject to a maximum of 36 months.

Payment of additional monthly contributions (AMCs) - Regulation 16

As noted in our comments on Regulation 12, the phasing out of contracts for Added Years and their replacement with the purchase of blocs of pension should be accompanied by provision to allow continuation of contributions in respect of Added Years contracts that will still be current when the new scheme commences. This includes contribution payments during leave of absence, payment of capital sums on redundancy/efficiency, treatment of contracts as paid up on ill-health retirement and reckoning of years in full on completion of the contract, etc. As noted earlier, logically such provision should be contained within the Draft Transitional Provisions Regulations.

On the subject of obtaining the administering authority's consent to commence AMCs, what grounds, apart from any medical concerns, would warrant a refusal? We would prefer that administering authority consent be limited to where the applicant's medical state suggests a risk of selection against the LGPS. However, if the discretion is to be set wider than a non-discriminatory policy should be required. There should be a requirement that this is published, and it should set out the circumstances in which an application will be agreed or refused.

Discontinuance of AMCs - Regulation 17

Regulation 17(4) refers to redundancy as including efficiency and joint appointments. However Draft Benefits, Membership and Contributions Regulation 11 makes no reference to the payment of benefits on the termination of a joint appointment. Regulation 11 needs to be amended to include joint appointments.

In the case of a flexible retirement involving full or part payment of benefits, Regulation 17 needs to define whether, if the member does not choose to cease AMC payments and take a proportionate addition under regulation 17(8), the contract will remain in force until the end of the original payment period.

Additional voluntary contributions (AVCs) - Regulation 18

Regulation 18 (7) says "any other additional voluntary contributions scheme to which he has subscribed" may be transferred into the member's In House AVC fund. This will allow members to transfer their FSAVC funds into the In-House AVC fund – is this intended?

Use of accumulated AVC's - Regulation 22

This Regulation covers the treatment of AVCs that are post-12th November 2001 contracts. It involves normal, ill health, early and redundancy/efficiency retirements. As noted earlier, Regulation 11 of the Draft Benefits, Membership and Contributions Regulations allows for payment of benefits on redundancy and efficiency grounds. However, cessations of joint appointments are not included. This needs to be addressed.

When S.I. 2008/2006 removed the AVC payment by lump sum barrier in regulations 64(6) and 66(6) and GAD guidance was issued showing methods of dealing with AVC lump sums when calculating MAXLS etc., members could use their AVC funds to maximise cash payments.

However Regulation 22 requires that, on retirement under the appropriate clauses, AVC funds will provide additional pension in £250 blocs up to a maximum of £5000, calculated in accordance with GAD tables. Consequently, any lump sum can only be provided if the member commutes pension to lump sum using the 12:1 commutation rate.

Recently, a working party set up by the actuarial profession looked into the options of pension scheme members and in particular the actuarial advice required in setting commutation terms. It looked at the necessary information that should be made available to members presented with the option to commute for cash. The focus of the working party on commutation, we are informed, arose due to the DWP's work on new arrangements for transfers and since transfers represent benefits in the form of cash, an interesting comparison could and would be made. The well-publicised HMRC capitalisation ratio of £20 cash for each £1 of pension will inform these comparisons

Having a low end commutation rate of 12:1 as the only source from which to acquire cash in the new scheme, will mean that employers and administrators will have to ensure that the information on commutation, especially the true value of pension being given up, is full and accurate to avoid future problems. In particular, we see issues regarding how future changes in mortality assumptions can be factored in to these calculations. We expect that current AVC payers who took their AVC out after April 2006 will be horrified by the change of

approach and we expect that some will argue that they were mis-sold the product. We also expect that the change will be the “kiss of death” for new AVC contracts.

Incidentally, is it proposed that the GAD guidance for AVCs will be amended?

Part 4

Employer’s further payments - Regulation 43

The reference to Regulation 11 does not allow additional payments to be made by employers in respect of cessation of a joint appointment. This needs to be rectified.

Payment by employing authorities to appropriate administering authorities – Regulation 44

Regulation 44(3)(b) says “which employees are paying contributions under regulation [new 16(10), 18(1) or 24(1)];”. The reference to 16(10) appears to be an error and should read 16(1).

Part 5

Pension increases under the Pensions (Increase) Acts - Regulation 49

We are unable to comment until a draft of Regulation 49 (and/or the Draft Transitional Provisions Regulations) is made available.

Part 6

First instance decisions: ill-health - Regulation 58

As you will have noted from earlier correspondence, we have major reservations regarding the proposed approaches where a member is suffering significant ill health. The provisions contained in Regulations 12(1) to (6) of the Draft Benefits, Membership and Contributions Regulations differ fundamentally from the approach taken in Regulation 16 (6) of the Draft Benefits, Membership and Contributions Regulations, since the latter requires the certification of permanent incapacity. Additionally, Regulation 12(7)(c) of the Draft Regulations (covering contributions during reserve forces service leave) contains a further variation in that it allows the reckoning of forces leave as LGPS membership “should the member become incapable for health reasons of working efficiently in local government employment”

The difficulty with Regulation 58 of the Draft Regulations arises from the confusion that will be faced by the medical practitioner in dealing with the different circumstances. Medical practitioners are likely to have issues with a position where a member with multiple employments is referred and the medical practitioner is required to take a different approach when dealing with the member’s current employment as compared to an earlier, deferred entitlement even though he is dealing with the same incapacity. Members will also find these differing approaches inequitable and appeals and challenges are bound to result.

As noted earlier, we would much prefer any award of payment on grounds of ill health to be based upon the member’s permanent incapacity to carry out his own or other similar duties and we ask that Regulations 12 and 16 of the Draft Benefits, Membership and Contributions Regulations and Regulation 58(1) of the Draft Regulations be amended to reflect this.

Part 7

Annual benefit statements - Regulation 70

The definition of NRD in the Regulation 8 of the Draft Benefits, Membership and Contributions Regulations is the 65th birthday. For the purposes of active member benefit statements it is defined in the Draft Regulations’ Schedule 1 as having the same meaning as Regulation 25(3) of the 1997 Regulations. As it currently stands Regulation 25(3) of the 1997 Regulations gives NRD as “his 65th birthday”.

Therefore we presume that we must look to the Draft Transitional Provisions Regulations to encompass the full range of retirement dates held in old Regulation 31 and 25(3) and (3A) and in order that we are able to cater for the rule of 85 or age 60 with an aggregate of 25 years when dealing with pre- and post-2008 membership and former awards. If this presumption is incorrect then the Draft Regulations will need to be amended.

Part 8

Interpretation of Part - Regulation 73

Regulation 73 says "Chapter 4" means Chapter 4 of Part 4 of that Act (transfer values) - the section of the Act referred to are designated by roman numerals. I presume the correct designation, Chapter IV of Part IV, will be substituted to prevent legal technicality issues.

Assuming that it is the intention that the LGPS continues to participate in the Public Service Transfer Club then the term "club scheme" will be need to be defined within the Draft Regulations.

Rights as to service not matched by credited period - Regulation 82

In Regulation 82 (1) to (4) the excess service over and above the credited transfer membership only counts as "qualifying" or "entitlement" membership, indicating whether or not a member is entitled to receive a given benefit but not used in the calculation of that benefit. We presume that the Draft Transitional Provisions Regulations will contain the required provisions to allow the excess to be used to calculate the date the rule of 85 is attained for percentage reduction purposes. If not then the Draft Regulations need to address this.

For pre-April 1998 members the period used by a previous contracted out employer to calculate the transfer value, if it is in excess of the transfer credit, can also be used as a "qualifying or entitlement" period when calculating whether service at age 60 aggregates to 25 years or over and whether percentage reduction is applicable. Again we presume this to be included in the Draft Transitional Provisions Regulations.

Forfeiture

This Council has never had a case where the provisions of Regulations 111 and 112 of the 1997 Regulations could apply. We are of the opinion that the circumstances in which a forfeiture under Regulation 111 could apply are so restrictive that it is extremely unlikely that Regulation 111 could in practice actually be used. We therefore support the removal of these provisions from the LGPS regulations.

I hope the above comments will be of some help in your deliberations.

Yours sincerely

Dave Smith
Pensions Manager