

The Local Government Pensions Committee
Secretary: Mike Walker

CIRCULAR

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No. 180 – FEBRUARY 2006

COMMENTS ON THE DRAFT LGPS (AMENDMENT) (NO.3) REGULATIONS 2005

Purpose of this Circular

1. This Circular has been issued to provide authorities with an overview of the submission which the LGPC Secretariat is preparing in response to the draft Local Government Pension Scheme (Amendment) (No.3) Regulations 2005.

Comments on the draft Local Government Pension Scheme (Amendment) (No.3) Regulations 2005

2. A very detailed technical response on the draft regulations and on the changes necessary to comply with the Finance Act 2004 is in the process of being drawn up by the LGPC Secretariat and will be submitted to the ODPM by their deadline of 28 February 2006. However, in order to cover the main aspects of the draft regulations from a policy perspective it is hoped that the following table will be of assistance to authorities in England and Wales in drawing up their own response to the draft regulations.

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INVESTOR IN PEOPLE

Main proposals (operative from 6 April 2006 unless a different date is indicated below)	Our general view
Employees and eligible councillors will be able to join and remain in the scheme up till their 75 th birthday (whereas the current limit is age 65 for employees and 70 for councillors)	Agree in principle, subject to age 75 not creating other major scheme benefit design problems under the new tax regime
The current 15% limit on employees contributions should be removed and employees should be able to pay up to 100% of their pay into the pension scheme with full tax relief	Agree that the 15% limit should be removed, although we have some concerns over raising the limit to 100% (e.g. see later comment on added years)
Benefits will have to be paid by age 75 and benefits for employees who defer drawing benefits beyond age 65 should be actuarially increased (i.e. just as benefits drawn before age 65 may be subject to an actuarial reduction to reflect the fact that they will be paid for longer, benefits drawn after age 65 will be actuarially increased to reflect the fact that they will be paid for a lesser period of time)	Agree in principle, subject to age 75 not creating other major scheme benefit design problems under the new tax regime
The earliest age that benefits may be paid on the grounds of redundancy or efficiency, or at which an employer can agree to the early release of pension benefits, remains as age 50 (but will have to increase to 55 by 2010)	We are relaxed about the date of change although we would have preferred the age to be raised to 55 for new starters from 1 April 2006
Flexible retirement should be permitted at or after age 60, linked to a reduction in hours or grade agreed by the employer, and the employer should be able to waive, in whole or in part, any actuarial reduction that would have been applied to the early payment of those benefits.	Agree, although we would want employers to also be able to agree to flexible retirement on or after age 50 and before age 60, subject to the full "strain on Fund" cost being paid to the Fund
The ability for retirees to convert some or all of their scheme lump sum into additional pension should be removed	Agree, as retaining the provision has the potential to add to Fund costs.
Scheme members drawing benefits on or after 6 April 2006 will be able to commute some of their pension to receive a bigger lump sum. For each £1 of annual pension surrendered, the member will receive a lump sum of £12. Retirees will be able to take up to 25% of the capital value of their pension benefits in the form of a	Agree

lump sum. This change helps to recoup the cost of the revocation of the changes to the Scheme that had been planned to come into effect in April 2005	
The 85 year rule is to be removed in respect of benefits accruing after 30 September 2006	Accept
Members should be able to nominate an individual retirement date falling on or after age 60 and before age 65 and make extra contributions to offset any reduction to benefits paid on that date. If the member carries on working beyond the nominated date, there could be an actuarial increase in the benefits purchased by the additional contributions.	Agree in principle, although much more thought needs to be given to how this would work in practice and how it would apply to councillors
Transitional protections should apply to older members who will be aged 60 or over by 31 March 2013 (although the exact form of the protections and who they apply to is still open for discussion)	Agree, provided that whatever transitional protections are eventually agreed, the cost to employers is no more than what it would have been under the revoked April 2005 regulations
<p>The existing limits on benefits are to be removed and the new HM Revenue and Customs rules will apply. In essence these provide for Annual and Lifetime Allowances of, in 2006/07, £215,000 and £1.5 million respectively (unless the member has opted for Primary or Enhanced Lifetime Allowance protection). If the value of benefits in a year (other than the final year) increases by more than the Annual Allowance a tax charge arises on the excess; similarly, if the total value of a member's pension benefits, when paid, exceeds the Lifetime Allowance (or the Primary or Enhanced Lifetime Allowance) there will be a tax charge on the excess.</p> <p>Consideration is still being given to</p> <ul style="list-style-type: none"> - how benefits in excess of the Lifetime Allowance will be dealt with in the LGPS and - how to deal equitably with the pension rights of those members who joined the LGPS on or after 1 June 1989 who are currently subject to the Earnings Cap of £105,600. 	Agree, subject to the outcome of the ODPM's further consultation letters of 1 st and 3 rd February 2006 on the HMRC changes.

<p>The period for which a member has had contributions waived or reduced should not count unless the employee pays the relevant contributions</p>	<p>Disagree. The period for which contributions have not been paid already counts as a period of membership (it is the period at the beginning of membership, usually from age 18-20, that does not currently count). So, the period already counts. However, employers should be able to decide whether or not the employee should be asked to make the relevant contributions in respect of the period that contributions were waived or reduced.</p>
<p>The contribution rate that employees who go on strike should pay if they wish the strike days to count as pensionable service should be the standard employees contribution rate plus the common employers' future service contribution rate as specified in the Fund's last valuation report (rather than a set rate of 16% as currently specified in the LGPS Regulations)</p>	<p>Agree as it represents a truer reflection of cost.</p>
<p>The ability for a member to provide a survivor benefit over and above the standard spouse's, civil partner's or children's pensions by surrendering a part of his / her pension in favour of spouse, civil partner or dependant (payable should they survive the member) should be removed</p>	<p>Agree, on the grounds that other alternatives are available under the new tax regime governing pension arrangements</p>
<p>Children's pensions coming into payment after 5 April 2006 will, for those who carry on in full time education or training for a trade, profession or calling beyond age 17, have to cease by age 23 (even if they carry on in full time education, etc beyond that age)</p>	<p>Agree, as this is a requirement of the Finance Act 2004</p>
<p>The amount of augmented membership that an employer may, in future, grant to a scheme member should be subject to a single limit of 6 2/3rd years. The existing compensatory added years limits under the Discretionary Compensation Regulations are not presently being amended</p>	<p>Agree</p>

The maximum number of added years that a scheme member should, in the future, be able to purchase should be limited to 6 2/3 rd years	Agree, subject to adequate protection being built in to protect Funds if employees are permitted to contribute up to 100% of salary into the pension scheme.
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3. Apart from the above and the detailed regulatory comments which the LGPC Secretariat will be submitting to the ODPM, there is one key point we wish to make about the draft regulations. The flexibilities for employees set out in the draft regulations are proposed to come into effect from 6 April 2006 whereas removal of the 85 year rule is not proposed to occur until 1 October 2006. This potentially leaves employers a hostage to fortune. If the unions were to successfully lodge a legal challenge against the removal of the 85 year rule, or if the Government does not go ahead with its removal, employers would be left in a position of having a scheme offering extra flexibilities for scheme members from April 2006 without the corresponding removal of the 85 year rule. Although the possibility of this may be slight we strongly suggest that the introduction of flexibilities (other than the flexibility of permitting commutation of pension into lump sum which is needed to help recoup the cost of revocation of the April 2005 changes) should be deferred until the 85 year rule is removed (i.e. planned for October 2006).

Actions for administering authorities

4. Administering authorities in England and Wales should either:
- copy this Circular to employers in their Fund (other than to Local Authorities to whom this Circular has already been sent direct), or
 - bring the Circular to the attention of employers by directing them to the Circular on the LGPC website at: <http://www.lg-employers.gov.uk/pensions/circulars.html>, or
 - bring relevant information contained in this Circular to the notice of employers via their normal information routes.
5. Administering authorities in Scotland may wish to take similar action in order to keep employers in their Fund apprised of matters in England and Wales.

Terry Edwards
Assistant Director (Pensions)
February 2006

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