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## LGPS England and Wales - regulation update

### 1. Key points to note

- LGPS (Miscellaneous Amendment) Regulations 2018 update
- Exit credits update
- MHCLG consult on strengthening pension protection in the LGPS
- LGPS factor review
- Consultation on exit payment reforms expected
- LGPC respond to pensions dashboards consultation

### 2. Decisions

- The Committee is asked to note the contents of the report.

### 3. Summary

#### **LGPS (Miscellaneous Amendment) Regulations 2018**

The above [regulations](#) came into force on 10 January 2019 with some provisions having an earlier effective date. The regulations amend the LGPS 2013 Regulations and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

On 4 February the LGPC secretariat published a [commentary](#) for administering authorities on the impact of the regulation changes. The main changes are:

#### **General power for the secretary of state to issue statutory guidance**

- MHCLG may issue guidance on administration and management of the scheme
- MHCLG must consult with persons they consider to be 'appropriate' before preparing new or amending existing guidance
- The purpose of the guidance is to clarify the content of regulations and maintain consistency of interpretation between administering authorities.

#### **Surviving partners' benefits**

- Changes to survivor benefits aim to address the [Walker v Innospec judgment](#) by providing that survivors of registered civil partnerships or same sex marriages will be provided with benefits that replicate those provided to widows
- LGPS Administering authorities must re-visit calculations of pensions paid to surviving civil partners and same sex spouses and pay any additional amounts due, plus interest
- MHCLG plan to issue statutory guidance setting out the action to be taken in respect of any transfer out payments paid, trivial commutation payments paid and potentially interfund transfer payments where the payment would be affected by the amendment regulations.

On 10 March, the LGPC secretariat, working with the national Communications Working Group produced a leaflet to assist administering authorities communicate the changes to members.

### **Exit credits**

The LGPS (Amendment) Regulations 2018 introduced the requirement to pay an exit credit to exiting employers where, at the exit date, an employer's assets in the fund exceed the liabilities. The requirement applies to exits on or after 14 May 2018.

The Secretariat is aware that the payment of exit credits is causing issues for administering authorities, particularly where:

- a side contractual agreement is in place providing that no exit payment is payable by the employer in the event that there is an exit debt payable upon exit ie a pass through arrangement
- service providers are no longer looking to extend contracts at the end of their term where an exit credit payment is payable. Instead they seek to terminate the contract and re-bid.

MHCLG have confirmed they will consult on a retrospective change to the regulations to provide that, where an employer bears no risk, this can be taken into account in the calculation of an exit credit payment.

### **Fair Deal**

On 10 January 2019, MHCLG opened a consultation on '[Fair Deal – strengthening pension protection](#)' in the LGPS.

The consultation contains proposals to strengthen the pension protections that apply when an employee of a LGPS employer is compulsorily transferred to the employment of a service provider. The proposed amendments to the LGPS Regulations 2013 would, in most cases, give transferred staff a continued right to membership of the LGPS and introduces the notion of a 'deemed' employer. These changes are intended to bring the LGPS in line with the government's October 2013 [Fair Deal guidance](#) that applies in relation to transfers from central government.

The consultation closed on 4 April 2019. The LGPC's [response](#) is available to view on the consultation page of [www.lgpsregs.org](http://www.lgpsregs.org). The national LGPS Technical Group also submitted [a response](#).

### **LGPS factor review**

MHCLG in conjunction with GAD are currently undertaking a review of the actuarial guidance in relation to the LGPS. The review takes into account the change to the SCAPE discount rate.

As part of the review, on 28 March MHCLG issued a short, [technical consultation](#) on changes to the late retirement actuarial guidance. MHCLG have stated that although they do not normally consult on the content of actuarial guidance notes, they are doing so in this instance because they are proposing a significant change to the methodology by which late retirement factors are calculated.

The proposed change to methodology removes the 'cliff edge' when factors change.

## **Exit payment reform**

We understand that HM Treasury plan to issue a further consultation on the exit cap imminently. Background information to the exit cap is provided below:

- the Government first consulted on introducing an exit cap in July 2015 - <https://www.gov.uk/government/consultations/consultation-on-a-public-sector-exit-payment-cap>
- under the exit payment cap proposals, where an individual leaves a public sector employment, the total exit payments that their employer can make in respect of that exit will be capped at £95k.
- the primary legislation that provides for the introduction of the cap is contained in the Enterprise Act 2016.
- the exit payments that count towards the cap will include the strain cost payable in respect of a LGPS pension coming into payment early - for instance, where a scheme member aged 55 or over is made redundant and has an entitlement to the immediate payment of an unreduced pension.
- after the introduction of the cap, where the payment of an LGPS strain payment would cause the cap to be breached, the amount that the employer will be able to pay to the pension fund will be limited. The original proposals stated that in such cases, the individual's retirement pension would by default be put into payment at a reduced rate to reflect the reduced amount that their employer has paid to the pension fund.
- the original consultation included a power for full council to waive the cap subject to Treasury directions (to be published).
- under the Act, HM Treasury have the power to make regulations to increase the cap from the current level in the future.

## Implementation timescales

We understand the Government intend to undertake another consultation (12 week) on the regulations that will govern the exit payment cap and that this is due to be issued imminently. The regulations that would bring the exit payment cap into effect are subject to the affirmative resolution procedure and must therefore be passed by resolutions of both Houses of Parliament in order to come into force.

## Devolution

The proposed policy extends to England alone, but the consultation document stated that the Scottish government, Welsh government and Northern Ireland Executive should determine if and how they want to take forward similar arrangements in relation to their own jurisdictions.

## Implications for LGPS calculations

It is likely that a universal calculation of strain cost will be required across all public sector pension schemes in order to implement this policy.

## **Pensions dashboards consultation**

At the last meeting, we confirmed that on 3 December 2018, the government published a [consultation](#) to explore the options for the delivery of online pensions dashboards. The consultation closed on 28 January 2019.

The LGPC's [response](#) to the consultation raised concerns about cyber security and about the data that will be available on the dashboard. The LGA are pushing for a

late onboarding date for public sector schemes, but early participation in discussions deciding on the data and workings of the dashboard.

Contact officer: Lorraine Bennett  
Job title: Senior Pensions Adviser  
Phone no: 020 7187 7374  
E-mail: [lorraine.bennett@local.gov.uk](mailto:lorraine.bennett@local.gov.uk)