

Report title	Regulatory Update	
Originating service	Governance and Corporate Services (Pensions)	
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Recommendation for noting:

The Pension Board is asked to note:

1. The updates to the current regulatory environment within the LGPS.

1.0 Purpose

1.1 To provide the Local Pensions Board with an update on key developments currently impacting the regulatory environment in which the Fund operates.

2.0 Regulatory Updates

2.1 McCloud

2.1.1 On 16 July 2020, MHCLG released their consultation to the McCloud remedy for the LGPS in England and Wales, this is a 12-week consultation which closed on 8 October 2020. The key feature of the proposed remedy is that the final salary scheme underpin, is to be extended to include all members, in respect of service up to 31 March 2022, thereby eradicating the age discrimination created by the changes to the scheme in 2014.

2.1.2 The Fund's consultation response was circulated to all employers a week before the deadline and posted on the Fund's website.

2.1.3 Key points of the remedy proposed within the consultation are outlined below;

- The scope for the application of the underpin has been amended to remove an age-related element and apply retrospectively.
- The underpin will be calculated under a two-stage process, with amendment of benefits for any members impacted not taking place until crystallisation date.
- There are pensions taxation implications in the event of the new underpin resulting in a member's actual benefits exceeding annual allowance.
- An underpin calculation will be required for death in service and survivor benefits.
- Aggregations of member benefits will be re-opened for a twelve-month period.

2.1.4 Initial scoping undertaken by the Fund suggests that around 23% of our membership (c75,000) (which includes active, deferred, transferred out and pensioner members) will be in scope of the remedy. This means that for these members, there will be a requirement for the Fund to calculate the revised LGPS underpin to test and ensure there is no detrimental effect. However, in order to do this, the Fund's employers will be required to provide the necessary data (additional working hours and pay data) to enable the calculation to be undertaken. Work is being undertaken at a national level to develop a standard data template and enable, as far as possible, a more standard approach across the Scheme.

2.2 Public Sector Exit Payments (£95k) Cap and connected legislation

2.2.1 Government first announced plans to cap exit payments in the public sector in 2015 with the underlying objective to reduce public expenditure by placing a financial limit on the termination payments of public sector employees. The exit cap is set at a total of £95,000 and includes in the definition of 'exit payments' redundancy payments (including

statutory redundancy payments), severance payments, pension strain costs and other payments made as a consequence of termination of employment.

- 2.2.2 Following consultation, the Restriction of Public Sector Exit Payments Regulations 2020 passed through Parliament this month and are now expected to come into effect during October. Supporting directions and statutory guidance to enable implementation are (at time of writing) still to be published. The short timescale for implementation has caused concern amongst the public sector with little or no notice for individuals, employers and pension funds to prepare for the changes (which includes a need to amend administration software systems to enable the amended calculation of benefits where necessary as a result of the limit). Further, concerns about the exit payments capturing long serving, average salaried workers do not appear to have been included in the considerations on drafting the regulations and due to the nature of Local Government Pension Schemes and rules governing the protections of pensions through TUPE, there is also the added complexity of the exit payment regulations not applying (in full or in part) to all Fund employers (as not all are public sector organisations).
- 2.2.3 To add to the complexity of the exit payment regulations, running alongside the implementation of the payment restrictions is existing legislation governing the local government pension scheme which provides for a statutory entitlement to full benefits for a member who is made redundant from age 55. These conflict with the restrictions in the exit payment regulations with no clear indication on which takes precedence.
- 2.2.4 MHCLG are in the process of consulting on Local Government exit pay reform which would seek to remedy the conflict in the two regulations by affording options to members on exit which could include deferring pension benefits or taking an actuarially reduced benefit at the point of redundancy.
- 2.2.5 The issue being for LGPS Funds (and their employers) is that the exit pay reform regulations will not come into effect before the exit payment regulations do, and there will be a period of time where the exit payment regulations may prevent employers from making strain costs on exits (to pay for the pension benefits to the members are entitled) but when members will be statutorily required to receive (and the Fund required to pay) full benefits.
- 2.2.6 The Fund is aware that The Scheme Advisory Board has sought to obtain legal advice on these issues and is awaiting further guidance on how they will be administered.

2.3 **Employer Flexibilities Regulations**

- 2.3.1 On 26 August 2020 MHCLG published their response to proposals on review of employer contributions and flexibility on exit payments. Regulations have also been published and came into force on 23 September 2020 with supporting MHCLG guidance expected to follow shortly.
- 2.3.2 The response centres around two key areas, potential review of employer contributions and the spreading of exit payments upon the cessation of a participating employer within the Scheme. On the former the response proposes regulatory change to enable

Administering Authorities the power to review employer contributions in between statutory actuarial valuations in the event of one of the following;

- A significant change in the level of liabilities of an employer.
- A significant change in the covenant of a participating employer.
- An employer may request a review of contributions from the Fund.

2.3.3 The Fund are currently awaiting guidance to clarify and confirm expectations for the use of these flexibilities within the LGPS but noting individual administering authorities will be required to develop their own policy as part of the Funding Strategy Statement (FSS) and consult ahead of implementation.

2.4 **The Pensions Regulators 2020 – 21 Corporate Plan**

2.4.1 The Pensions Regulators (tPR) 2020 – 21 Corporate Plan has been revised in order to respond to the challenges presented by the Covid-19 pandemic and reflect how the pension's landscape has changed. Although priorities have shifted to reflect areas of industry facing most acute challenges, tPR have noted that the plan demonstrates its desire to and ongoing commitment to 'tighten its regulatory grip' through its clear, quick and tough approach.

2.5 **Good Governance Review**

2.5.1 The Scheme's Advisory Board's Good Governance review is ongoing. Phase 3 of the review was discussed at the Scheme Advisory Board meeting on 3 February 2020 and an implementation group was established. However, due to the ongoing Covid-19 pandemic the implementation group was subsequently stood down. Work is now continuing on stage to recommendations and papers are due to be discussed at the Scheme Advisory Board meeting on 2 November 2020.

3.0 **Financial implications**

3.1 Further consideration may need to be given to the Fund Budget depending on the nature of change requirements for implementing regulatory change. There is the potential for cost pressures on the Fund.

3.2 The changes to be brought in by Regulatory change have the potential to impact Fund resource considerably and its ability to delivery services to target. Consideration is underway as to the potential resource implications and need.

4.0 **Legal implications**

4.1 Changes to legislation and statutory guidance are detailed in the report. Failure by the Fund to comply with legislation and/or statutory guidance can result in enforcement action and fine from both the Pension Regulator and the Courts via judicial review.

5.0 Equalities implications

5.1 There are no equalities implications.

6.0 Environmental implications

6.1 There are no environmental implications.

7.0 Human resources implications

7.1 There are no human resources implications.

8.0 Corporate landlord implications

8.1 There are no corporate landlord implications.

9.0 Schedule of background papers

- 9.1 McCloud Consultation; <https://www.gov.uk/government/consultations/consultation-on-the-proposed-response-to-mccloud>
- 9.2 Restricting Exit Payments Consultation: <https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector>
- 9.3 The Restriction of Public Sector Exit Payments Regulations 2020: <https://www.legislation.gov.uk/ukdsi/2020/9780348210170>
- 9.4 Reforming Local Government Exit Pay Consultation; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916615/Reforming_local_government_exit_pay_consultation.pdf
- 9.5 Partial Government Response; review of employer contributions and flexibility on exit payments: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/911792/Government_response_Exit_payments_and_review_employer_contributions.pdf
- 9.6 The Local Government Pension Scheme (Amendment) (No.2) Regulations 2020; <https://www.legislation.gov.uk/uksi/2020/893/regulation/1/made>
- 9.7 The Pensions Regulator Corporate Plan: <https://www.thepensionsregulator.gov.uk/en/document-library/corporate-information/corporate-plans/corporate-plan-2020-21>
- 9.8 Hymans Good Governance in the LGPS; <https://www.hymans.co.uk/insights/research-and-publications/publication/good-governance-in-the-lgps-phase-2-report/>

10.0 Schedule of Appendices

10.1 None.