

Pensions Board

26 January 2021

Report title	Regulatory Update	
Originating service	Pension Services	
Accountable employee	Rachel Howe	Head of Governance and Corporate Services
	Tel	01902 55 2091
	Email	Rachel.Howe@wolverhampton.gov.uk
Report to be/has been considered by	Rachel Brothwood	Director of Pensions
	Tel	01902 55 1715
	Email	Rachel.Brothwood@wolverhampton.gov.uk

Recommendation for noting:

The Pensions Board is asked to note:

1. Changes to the regulatory environment which impact on the administration of 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 Employer Flexibilities Regulations

- 2.1.1 In the October Regulatory Update report the Fund provided background to the Employer Flexibilities proposals which came into effect on the 23 September 2020. At the time of reporting MHCLG and the LGPS Scheme Advisory Board were in the process of preparing accompanying guidance, to provide further clarity on intended process and points for consideration by Administration Authorities and employers with regards to application of the amended regulations. Both parties have now issued guidance for consultation and the Fund awaits issue of final guidance to inform and confirm funding policy development.
- 2.1.2 The Fund are in the process of considering potential amendments to the Funding Strategy Statement (FSS) based upon the core principles of this regulatory change and subject to final guidance referenced above. Proposed changes to the FSS will be shared with employers through consultation (planned for the first quarter of 2021) ahead of the FSS being presented to the Pensions Committee for approval.

2.2 Exit Payment (£95k) Cap

- 2.2.1 As also detailed in the October Regulatory update, the Government first announced plans to cap exit payments in the public sector in 2015. On 10 April 2019 HMT launched a consultation on draft regulations, guidance and directions to implement the cap. The underlying objective of the proposal was to seek to reduce public expenditure by placing a financial limit on the exit payments of public sector employees.
- 2.2.2 The Restriction of Public Sector Exit Payments Regulations 2020 were made effective by Her Majesty's Treasury (HMT) on 4 November 2020, with associated amendments required to the LGPS Regulations as prescribed by MHCLG eagerly awaited.
- 2.2.3 On 7 September 2020 MHCLG published a consultation, Reforming Local Government Exit Pay, which sought views on proposed changes to the LGPS regulations. The Fund provided a response to the consultation which closed 9 November 2020, in its capacity as Administering Authority, and a copy is available on our website.
- 2.2.4 The Local Government Association (LGA) has published an Information Guide for employers, which includes a step by step guide and flowchart for reference when employers process any future retirements.
- 2.2.5 In consultation with the Chair and Vice Chair of Pensions Committee, noting the conflict between the HMT and LGPS Regulations, the legal advice received by the Fund and the letter from the Minister to all Administering Authorities, Officers have agreed an interim

approach to address any retirement cases caught by the Exit Payment Cap ahead of changes to the LGPS Regulations. Amendments have been made to administration processes to assist employers review and assess cases in line with HMT regulations effective from 4 November 2020.

2.2.6 The position will be kept under review, noting in particular the risk that members' benefits will need to be revisited, strain costs recovered from employers retrospectively, restrictions on which may result in a funding strain for review as part of the 2022 actuarial valuation.

2.2.7 Although ultimately an employer responsibility, to support our participating employers the Fund has produced a special Employer Briefing Note. Key elements of this briefing note were:

- To update on the emerging regulation and guidance
- Outline potential implications for members and employers
- Share important information on changes to the Fund's retirement and estimate procedures
- Action for employers (including a supporting flowchart)

3.0 Financial implications

3.1 The regulatory change introduced has financial and funding implications for the Fund and participating employers alike inasmuch as it introduces flexibilities around future participation and funding of the LGPS and also matters for consideration by employers when making decisions around restructuring and redundancies.

4.0 Legal implications

4.1 The changes to be introduced as part of the Employer Flexibilities legislation will need to be suitably documented legally and due consideration given to the clauses within to capture the relevant terms.

4.2 The Exit Payment Cap has legal implications inasmuch as there is an apparent gap between the HMT and MHCLG Regulations, with Administering Authorities required to make a decision on the processing of pension benefits subject to the Cap during the intervening period. The decisions made may be subject to legal challenge.

5.0 Equalities implications

5.1 There are no direct equalities implications arising from this report.

6.0 Environmental implications

6.1 There are no direct environmental implications arising from this report.

7.0 Human resources implications

7.1 There are no direct human resources implications arising from this report.

8.0 Corporate landlord implications

8.1 There are no direct corporate landlord implications arising from this report.

9.0 Schedule of background papers

9.1 Restricting Exit Payments Consultation:

<https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector>

9.2 The Restriction of Public Sector Exit Payments Regulations 2020:

<https://www.legislation.gov.uk/ukdsi/2020/9780348210170>

9.3 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

9.4 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

9.5 The Local Government Pension Scheme (Amendment) (No.2) Regulations 2020;

<https://www.legislation.gov.uk/uksi/2020/893/regulation/1/made>

9.6 Minister's letter to Administering Authorities in relation to the Public Sector Exit Payment Regulations 2020 – October 2020

<http://lgpsboard.org/images/PDF/letters/MHCLGtoLAs.pdf>

10.0 Schedule of appendices

10.1 None.