

REPORT OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

Fair Deal Consultation	Classification Public	Enclosures: None
	Ward(s) affected ALL	
Pensions Committee 27th June 2016		

1. INTRODUCTION

- 1.1 This report provides Committee with details of the consultation on the draft Regulations to amend the Local Government Pension Scheme Regulations 2013 (SI/2356) which came into force on 1 April 2014. The Local Government Pension Scheme (Amendment) Regulations 2016 will introduce the 'Fair Deal for Staff Pensions' for those staff in the Local Government Pension Scheme who are compulsorily transferred to an external service provider. §1

2. RECOMMENDATIONS

- 2.1 **The Pensions Committee is recommended to**

- **Note the report**
- **Agree to respond to consultation with the draft to be cleared by the Chair of the Committee and Group Director, Finance and Corporate Services**

3. RELATED DECISIONS

3.1 None

4. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

4.1 The Local Government Pension Scheme Regulations 2013, Schedule 2, Part 3 sets out in detail the bodies with whom an administering authority may make an admission agreement thus permitting external service providers access the LGPS for TUPE'd staff. It also details the contractual obligations of being a scheme employer (admitted body), and the associated guarantees that must be in place to protect the Fund.

4.2 The consultation introduces draft Regulations and a new category of Scheme employer, a 'protected transferee employer' who will be obliged to participate in the LGPS for staff transferring to an external service provider via a TUPE transfer. The costs of providing a local government pension to transferring staff should be clearly set out in tender documentation.

4.3 Amendments to the regulations will result in fewer scheme members leaving the LGPS but impact on the risks and controls of the Fund, with greater scrutiny of bidders when contracts are tendered, and closer monitoring of the financial strength of same through the life of the contract. The Fund will also need to be mindful of the impact of the potential increase in the number of 'risk pass-through' arrangements and the higher risk associated with increased employers in the Fund.

5. COMMENTS OF THE DIRECTOR, LEGAL

5.1 The Best Value Staff Transfers (Pensions Direction) 2007 sets out the current level of pension protections for employees of English best value authorities where the provision of services are contracted out, and staff are transferred under TUPE to an independent provider. The Direction ensures that the employee has the right to acquire pension benefits that are the same as, or count as being broadly comparable to or better than, those had they remained an employee of the authority.

5.2 The draft Local Government Pension Scheme (Amendment) Regulations 2016 will introduce a new category of Scheme employer, a 'protected transferee employer' who will be obliged to participate in the LGPS for those staff that transfer to them under a TUPE. There will no longer be the option for external providers to offer a broadly comparable scheme.

5.3 The Pensions Committee, acting in their capacity of the Trustees of the Pension Fund, receive regular updates on changes to the Regulations and consultations to assist the Committee in ensuring that it fulfils its regulatory obligations under the Local Government Pension Scheme Regulation.

5.4 There are no immediate legal implications arising from this report.

6. BACKGROUND

- 6.1 Fair Deal for Staff Pensions sets out how pension issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. The Government announced in December 2011 that the Fair Deal policy, introduced in 1999, was to be retained but delivered in a different way. Staff transferring from the public sector will have continued access to their public service pension scheme rather than being offered a broadly comparable private pension scheme, as was previously the case.
- 6.2 The Treasury published its revised guidance, Fair Deal for Staff Pensions: staff transfers from central Government, in October 2013. It covers central Government departments and their agencies, the NHS, schools that are not local authority maintained, academies, and any other parts of the public sector under the control of Ministers where staff are eligible to be members of a public service pension scheme.
- 6.3 However, the 2013 policy did not cover staff employed by local government, as the Best Value Staff Transfers (Pensions Direction) 2007 sets out the current level of pension protection for employees of English best value authorities (and Welsh police authorities) where the provision of services are contracted out, and staff transferred under TUPE to an independent provider. The Pensions Direction ensures that the employee has the right to acquire pension benefits that are the same as, or count as being broadly comparable to or better than, those had they remained an employee of the authority. Employer contribution rates to these schemes are generally lower than those applicable to LGPS admitted bodies.
- 6.4 It is now proposed that the 2013 Regulations will contain provisions to permit all transferring members to remain in the Scheme. The Pensions Direction will be revoked in due course and the associated primary legislation will be repealed. Note, Fair Deal does not apply to higher and further education institutions, as these are classified as private sector bodies.
- 6.5 The consultation seeks comments on proposals to ensure that local government and participating employers in the Local Government Pension Scheme, provide the appropriate level of pension provision as set out in the new Fair Deal guidance. Comments are invited on the draft Regulations by 20 August 2016.

7. CONSULTATION/PROPOSALS

- 7.1 On 27 May 2016, the Government launched a 12 week consultation on a number of important changes to the Local Government Pension Scheme in England and Wales. The Local Government Pension Scheme (Amendment) Regulations 2016 introduce the Fair Deal for Staff Pensions for those staff in the Local Government Pension Scheme who are compulsorily transferred to another service provider, and a number of other amendments to the 2013 Regulations to provide clarification or a change in approach for practitioners.

- 7.2 Currently the Best Value Staff Transfers (Pensions Direction) 2007 sets out the current level of pension protection for employees of English best value authorities (and Welsh police authorities), where the provision of services are contracted out, and staff transferred under TUPE to an independent provider. Under the Pensions Direction, the transferred employee has the right to acquire pension benefits that are the same as, or count as being broadly comparable to or better than, those that they had as an employee of the authority. Entry for service providers to the LGPS is via Admitted Body status arrangements and this has been operating in the Scheme for over 15 years.
- 7.3 When considering how best to implement the reformed Fair Deal, account was taken of the existing admitted body regulatory framework, which includes safeguards to protect other employers in the Scheme by requiring appropriate risk assessments and the need for a bond, indemnity or guarantee where risks are identified. Admitted bodies are required to pay the appropriate amounts to the Scheme to meet the pensions that accrue for the members they employ. In view of this, the draft regulations build on admitted body status.
- 7.4 The draft Regulations introduce a new category of Scheme employer, a **'protected transferee employer'** who will be obliged to participate in the Scheme under the 2013 Regulations for those staff they receive via a TUPE transfer. The costs of providing a local government pension to transferring staff should be clearly set out in tender documentation. Those seeking to provide public services or functions for the first time, will be obliged to offer membership of the Scheme for staff they receive under the compulsory transfer, but all bidding organisations would be under the same pension obligations.
- 7.5 The 2013 Regulations will be amended to align more closely with the provisions in the Public Service Pensions Act 2013 ("the 2013 Act") and will require no changes to the existing process for entering into admission agreements, and no alteration to the status of any existing admission agreements.
- 7.6 Employees who would be covered by the draft regulations are employees of a current Scheme employer and who is compulsorily transferred to an independent service provider who does not offer a public service pension scheme. This category of member will be a **'protected transferee'** and would remain so as long as that member remains wholly or mainly employed on the delivery of the service or function transferred. For local government, a person will be eligible for membership if actually employed in local government service; if deemed by the regulations to be employed in local government service; or if, despite not being employed in local government service, is subject to a "determination" under section 25(5) of the 2013 Act.
- 7.7 It is envisaged that a **'protected transferee employer'** can itself transfer staff to a new provider, and these staff would also be regarded as **'protected transferees'**. The original **'protected transferee employer'** will be regarded as a Scheme employer for these purposes, as will the receiving **second 'protected transferee employer'**. There are no proposed changes to the provisions for dealing with ceasing participation in the Scheme when a contract ends, therefore if all liabilities of the exiting employer cannot be met by the assets held in the administering authority's pension fund, an exit payment must be paid to that administering authority to address the shortfall.

7.8 For scheme members who have already moved out of the LGPS under an earlier TUPE transfer arrangement that may be in the new service provider's broadly comparable scheme as permitted under the Best Value Authorities (Pensions) Direction 2007, will still retain the Pensions Direction protections when the contract is retendered. The proposals in the draft regulations do not include a requirement that, at retender, the formerly transferred member becomes a protected transferee member and the successful bidder becomes a protected transferee employer. This is because the individual is not being transferred out of the public sector at that point as they are employed by the current external provider. It will remain the case that new providers at a retender can access the LGPS should they wish to by seeking admitted body status, but it is not proposed that they will be required to do so.

7.9 Section 25(5) of the Public Service Pensions 2013 Act, requires the publication of a list of persons to whom the LGPS relates and the list must be kept up to date. This does not require publication of the names of individual members of the Scheme, but a list of the admission agreements entered into. The proposal in draft Regulations delegate the obligations to publish this list to the relevant administering authority. The provision in the 2013 Regulations in Schedule 2, Part 3, 12 paragraph 11 which requires individual notification of admission agreements to the Secretary of State is no longer required and will be removed.

8. IMPACT OF THE PROPOSED AMENDMENTS

8.1 The Impact Assessment for the Public Service Pensions Bill which introduced the new Fair Deal stated: *"By offering transferred staff the right to remain members of the public service scheme private, voluntary and social enterprise providers will no longer be required to take on the risks of their own defined benefit pension schemes."* Meaning they will no longer be required to offer transferred employees access to a broadly comparable scheme, as they must access the LGPS via Admitted Body status or 'protected transferee employer' as is the new terminology.

8.2 However, knowledgeable contractors seek to protect themselves against employee, investment and funding risks in the LGPS, by negotiating a risk pass-through agreement in the contract for the outsourcing project. Contractors are likely to take a more cautious view when tendering for local authority contracts if a satisfactory pass-through arrangement cannot be agreed. This could well result in higher costs to authorities and lower competition for these contracts going forward.

8.3 With the introduction of Fair Deal, it will result in fewer scheme members leaving the LGPS and having an effect on cash-flow, liabilities and longevity of the Fund. There will also clearly be challenges for the administering authority in ensuring:

- employers fully understand their obligations to the LGPS and employees
- the full employer cost of LGPS participation is included in all tender documentation
- suitably robust bonds/indemnities/guarantors are in place from the outset.

Ian Williams
Group Director, Finance & Resources

Report Originating Officers: Julie Stacey ☎020-8356 3565
Financial Considerations: Michael Honeysett ☎020-8356 3332
Legal Comments: Stephen Rix ☎020-8356 6122

BACKGROUND PAPERS

None