

Private & Confidential

Kimberly Linge,
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Dear Kimberly,

Response to Consultation

We are pleased to provide our response to the above consultation, issued by SPPA on 6 November 2017. We have limited our comments to the specific issues highlighted in the Annex A to this consultation, based on our understanding that substantively the main body of the Regulations remain unchanged from those already in place.

Specific comments

We note that throughout Annex A cross-references are made to the current Regulations, but these do not always translate to the draft Regulations under consideration. This has at times made it difficult to follow through the amendments being suggested. There are also a number of instances, which we have highlighted below, where the actual drafting changes appear not to have been included within the draft Regulations. This has made it impossible to comment on the extent to which any drafting will meet the policy intent.

Please see our specific comments below on the specific changes referred to in Annex A.

Draft Regulation 3 – Active membership

We have no specific comment to make regarding this proposed amendment.

Draft Regulation 17 - AVCs and Freedom & Choice

We understand the intention is to confirm changes already outlined by the Scottish Ministers introducing freedom and choice flexibilities to the scheme's in-house AVC arrangement. We understand that this is a complex area, introducing a number of complex and potentially arduous additional administration requirements to administrators.

We believe that a recent attempt to introduce similar changes to the Scheme in England & Wales may well be on the back-burner, due to the difficulties in overcoming these complexities.

In terms of the Scottish amendments it is unfortunate that the specific draft amendments referred to in Annex A appear not to have been included within the draft Regulations. As a result it is difficult to comment on the extent to which what is being proposed provides a workable solution on this matter within the Regulations. Before any changes are confirmed, therefore, it may be advisable to issue the specific proposed amendments to interested parties, enabling them to comment on that detail.

Draft Regulation 21 - Assumed pensionable pay and Returning Officers

We believe the changes being suggested will provide a welcome discretion for employers in assessing assumed pensionable pay as an amount that better reflects actual pay received prior to reduction. This comment is subject to the actual wording of any change.

Draft Regulation 29 - Retirement benefits

We see this as another welcome amendment, breaking the link that currently exists requiring a member with both active and deferred pension accounts to take both when made redundant from the active role. Sadly the actual change appears not to have been incorporated into the drafting.

Draft Regulation 32 - Election for lump sum instead of pension

This change links to the proposed changes regarding AVCs as a result of freedom & choice, which as previously stated have unfortunately not been included in the draft regulation document. Sadly the specific change appears not to have been made to the drafting of regulation 32 either. We assume that the reference to amending Regulation 33 should read Regulation 32.

Draft Regulations 45 & 46 - Survivor benefits

We appreciate the need for the changes being introduced to various regulations associated with survivor benefits (regulations 45 and 46) confirming that those benefits take account of any enhancements resulting from tier 1 or tier 2 ill health awards where they apply. We believe, however, that a corresponding change is also required to draft regulation 46(5)(a) too.

Draft Regulation 48 – Limit on Total Amount of Benefits

We have no specific comments in relation to the changes being suggested in relation to this provision. This comment is subject to the actual wording of any change.

Draft Regulation 54 – Accounts and Audit

We have no specific comments in relation to the changes being suggested in relation to this provision.

Draft Regulation 62 - treatment of exiting employers

The changes proposed to Regulation 62 introduce some significant changes where employers leave the LGPS, although we believe some important detail still needs to be addressed. In particular:

- If taken forward Administering Authorities will be able to issue a 'suspension notice' on cessation, which pushes back the date when an employer has to pay its final exit costs. While on a suspension notice, the Fund can continue to charge deficit recovery payments to the employer. Unlike the corresponding provision in England & Wales, there appears to be no maximum 3 year time limit set for the period of a suspension notice. Is this intentional, or is consideration being given to introduce a maximum period of the notice?

- While there are many advantages to employers (e.g. market timing for a full exit, spreading costs and waiting for their liabilities to dwindle before settling), it is less clear what advantages this brings the Fund. Arguments could include extracting more value from employers (that may have otherwise been pushed into insolvency by the exit cost), less risk of bad publicity (e.g. an exit cost pushing a children's charity into insolvency) and greater regulatory flexibility around managing cessations.
- Employers with a surplus on cessation may now be given a refund or a 'pension credit'. This makes the pension risks to employers more balanced. However, careful consideration will need to be given to the tax implications of paying a pension credit which we do not believe have been thoroughly considered at this stage (in the private sector these repayments are charged a penal tax rate of 35%).

Any additional tools to manage employers leaving the LGPS are welcome. However there are still some areas that remain unclear - e.g. is the Fund expected to seek security? What happens when a suspension is rescinded – is a fresh cessation valuation carried out? Is interest applied to any 'pension credit' refund? Can contributions be updated to reflect experience during the suspension period?

We do not think it is appropriate for the administering authority, rather than the actuary, to set contributions during the suspension period, given that the actuary has responsibility for setting contribution rates under other circumstances.

Draft Regulation 94 – Rights to payments out of the pension fund, inward transfers of pension rights

While this amendment is reasonable we can see no explicit changes to the current wording of Regulation 94 reflecting any change to what is already in place.

Draft Regulation 99 – Effect of acceptance of a transfer value

As far as we can tell the current Regulations already require this and no specific changes are being suggested to what is already required.

We would be pleased to discuss any of the above comments if required.

Yours sincerely



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