

Private & Confidential

Local Government Workforce and Pay Team,
Ministry for Housing, Communities and Local Government
2nd Floor
Fry Building
2 Marsham Street
London SW1P 4D

18 December 2020

Dear Sir/Madam

Consultation response: The Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020

Hymans Robertson LLP is pleased to provide its response to MHCLG's consultation on the above topic. The Annex to this letter sets out our comments on the draft regulations contained in the consultation.

About Hymans Robertson LLP

Hymans Robertson has grown up with the LGPS. The firm was founded to provide advice to the LGPS in 1921, just as the first Funds were being created. Whilst our business has developed over the decades, working with the public sector remains at the heart of what we do.

We have a specialist public sector actuarial team, which employs over 60 people exclusively advising on the LGPS. Alongside our actuaries there is a team of governance, administration and project consultants providing advice to our LGPS clients on benefits matters such as these, plus a team of 15 investment consultants.

We have previously responded to the consultation on reforming local government exit pay where we have set out our wider views. This response is limited to comments on the technical drafting of these regulations.

Yours faithfully

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Regulation 2

The words “retirements benefits” should read “retirement benefits”.

The regulation should refer to “XI of the 1996 Act” in order to be consistent with the drafting of the Act and avoid confusion. The same applies where it appears in regulation 8 of these regulations.

The intention of this regulation appears to be that pension strain costs payable are reduced by the value of any statutory redundancy payments. If so, is the reference to pension strain generated under regulation 30(5) required? We are not aware of circumstances in which a member could voluntarily leave and receive benefits under Regulation 30(5) and also qualify for a redundancy payment. The same point applies to the reference to flexible retirement.

If it is the case that the reference to 30(5) should be included then it should be noted that, in itself, 30(5) would not generate a pension strain since benefits are paid fully reduced. Only if an employer chooses to waive reductions under 30(8) is a strain cost generated.

Regulation 3

This regulation requires that “The relevant Scheme member may elect to pay to the administering authority an amount in respect of all or part of the amount by which the extra charge is reduced under regulation 3 of the 2020 Regulations”.

However, regulation 3 of the 2020 Regulations merely requires that the exit cap is not breached. It does not refer to the reduction of any “extra charge”.

In fact, given the content of Regulation 4, it is not entirely clear why Regulation 3 is needed.

Regulation 4

The timescale for a member to pay any outstanding pension strain cost and receive unreduced benefits is different from regulation 3.

Both regulations 3 and 4 provide a mechanism for a member to pay outstanding strain cost when they are affected by the £95k cap. However, there is no mechanism for a member who is not capped but who has their pension strain amount reduced by their redundancy payment under regulation 2 to make good any shortfall. This point will need to be addressed.

Regulation 5

The text inserted to the LGPS Regulations 2013 by this regulation refers to “The Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020”. The full name of the statutory instrument is added twice into regulation 30 of the LGPS Regulations 2013. This is quite unwieldy. It is more typical for the SI to be given a shorter name and defined within the LGPS regulations. For example, this SI could be “The compensation Regulations”.

Regulation 7

The first part of regulation 7 needs to be numbered as “1”.

What would then be 7 (1)(b)(2) reads;

eligible to be a relevant Scheme member (whether or not the person is such a member) or would be so eligible but for the giving of a notification under regulation 5(2) of the 2013 Regulations (ending active membership) [emphasis added]

The italicised phrase seems unnecessary since it implies that an individual who has opted out of active membership of the scheme is not eligible. However, a member who has opted out under 5(2) can at any point while still in employment elect to rejoin the Scheme i.e. is still eligible.

Regulation 9

9(2) requires that the employer must determine whether to pay compensation no later than three months before the date of termination. This suggests that it is not possible for an employer to grant compensation within 3 months of eventual date of termination. This is not practical, given that many workers will have notice periods of less than three months, meaning they are effectively excluded from receiving compensation payments.

9(6) should refer to regulation 8 (power to increase statutory redundancy payments) rather than to regulation 9.

9(7) is designed to inflation link the £80,000 pay cap upon which compensation payments are subject to. But it appears to increase the limit according to when the individual's own pay period falls. If the 1 April falls into a different pay period for different members then they will have different capped salary limits. It would be fairer to have a single day, say 1 April, on which the cap is increased for everyone.

9(9) refers to “compensation under regulation 10 of these Regulations”. However, regulation 10 refers to the payment of retirement benefits, not the payment of compensation.

Regulation 10

It would be preferable for details about LGPS benefits payable to be contained within the LGPS Regulations. It is more consistent and logical to have all pension benefits covered in a single set of regulations. Also, there are references within the LGPS Regulations 2013 to benefits paid under “these regulations” i.e. the 2013 regulations. If redundancy benefits were to be paid under the Restriction of Exit Payment Regulations then they would no longer be payable under “these [the LGPS] regulations”. There is likely to be significant piece of work cross referencing various LGPS regulations to the Restriction of Exit Payment Regulations.

The proposed approach also means that if there are future changes that impact on benefits paid under the LGPS regulations then there will be a need to also amend the Restriction of Exit Payment Regulations.

The regulation states that a member “may” take payment of benefits. We assume that if a member does not actively make a choice then they are awarded a deferred benefit. If this is correct, it might be helpful to make this explicit.

Regulation 15

This regulation is designed to provide transitional protection for members. However, it appears to only disapply changes made under the LGPS Regulations 2013 and not the changes that apply under the Restriction of Exit Payment Regulations. This would mean that members would still be subject to the restrictions on compensation set out in these regulations as well as the requirement to reduce pension strain by the value of a statutory redundancy pay under regulation 2.