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Sixty second summary

Management of employer risk regulations – what does this mean for LGPS employers?

New LGPS regulations will be formally introduced in England and Wales from 23 September to

- allow employer contributions to be reviewed outside formal valuations and;
- provide more flexibility around employer cessation arrangements.

These regulations formally give more flexibility to employers participating in the LGPS. This summary will help you understand how these new regulations can help you.

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On 26 August, MHCLG published a partial response to the May 2019 consultation, "Changes to the local valuation cycle and management of employer risk". The response notes the need for new regulations to allow administering authorities and employers to be able to manage and mitigate risks arising from the COVID-19 pandemic.

Following the response being published the new regulations have quickly been made and are due to come into force from 23 September 2020 via the snappily named Local Government Pension Scheme (Amendment) (No. 2) Regulations 2020.

The new regulations focus on three key areas. We consider below what this means for employers participating in the LGPS:

1. Review of employer contributions

The consultation has acknowledged that employers' circumstances may change between valuations, for example due to a "change in covenant strength or workforce composition, or local government reorganisation."

The Government has concluded that the power to review contributions should be available in respect of **all employers**. Regulation amendments have therefore been made to allow administering authorities to review employer contributions where there has been a **"significant change"** to the liabilities or covenant of an employer. There is also the provision for employers to **request** a recalculation of the contribution rate.

If you are considering requesting a review of your contributions in the Fund, it may be helpful to:

1. Consult the Funding Strategy Statement of the Fund you participate in to check what the Fund's updated policy is on reviewing contributions.
2. Arrange a discussion with the Fund regarding your contribution rate and proposals for the change in rate. You should be prepared to justify any need to change contributions and it would be helpful to prepare any evidence which shows a change in circumstances since the last valuation at which contributions were set.

The consultation response notes that market volatility, and changes to asset values, would not be a proper basis for a change in contributions outside a full valuation. Nonetheless, we recognise that changes to pension surplus or deficit due to market conditions can affect covenant and may trigger a review of contributions. Similarly, a significant change in workforce may mean a review of contributions is appropriate.

Funds will currently be considering their policy on the circumstances under which contributions would be revised between valuations. If you feel your circumstances have changed significantly, we can help you understand how your Fund's policy may apply to you and provide support in your request to the Fund.

2. Spreading exit payments

While there is nothing in the current regulations to allow exit or cessation debt payments to be spread after exit, it is fairly common practice by Administering Authorities, at their discretion.

The Government has recognised the need to amend regulations to allow administering authorities the ability to spread exit payments over a period which it “considers reasonable”.

This should be a welcome change for employers as there can often be a significant “walk away” price for employers in the form of a cessation debt if they leave the Fund. These new Regulations provide more options for an employer looking to manage their future LGPS costs through an exit from the Fund.

What does this mean for employers?

- If you are approaching cessation, you might consider asking the Fund to provide an indicative cessation amount.

- If the indicative cessation position shows a deficit and is of an amount that you think you would be unable to pay in a one-off exit payment, you should consider engaging with the Fund to explore your options regarding a payment plan for the cessation debt.

- Be prepared to consider and agree with the Fund a suitable time period in which you think you could pay the debt over and be able to provide justification for this. We can provide support with your Fund communication.

3. Deferred Debt Agreements (DDAs)

The new regulations also introduce “deferred employer” status and deferred debt arrangements (“DDAs”) within the LGPS for exiting employers. This allows an employer to cease future benefit accrual for all employees, while remaining a member of the Fund. Any funding deficit would be repaid through secondary contributions which are certified at formal valuations. The DDA must set out the “specified period” over which this arrangement will run and the termination events.

It is likely that a Fund will consider the following when entering into a DDA with an employer:

- consider all the evidence available and “use judgement and local knowledge”
- monitor the DDA carefully (including at valuations) to ensure it is on track to meet its funding target
- put in place recovery plans where shortfalls are identified.

What does this mean for employers?

- Employers nearing cessation with few members can gain some comfort from knowing they do not necessarily have to cease and pay any potential exit payment at a point when their last active member leaves (which will allow them more time to better plan any exit from the Fund).

- Employers should be prepared to discuss with Funds any desire to enter into a DDA by becoming a “deferred employer” in the Fund. They should understand how the Fund’s policy on this would influence the contributions they would be required to pay and also how they would eventually exit the Fund.

Timeline and guidance

While many funds are already practising some of the above areas, these will now be covered formally in new regulations from 23 September. The consultation response also notes MHCLG’s intention to develop guidance on the use of the new powers by working with the Scheme Advisory Board and CIPFA.

Next steps

Given the new regulations are to come into force later this month, you might wish to consider how these new regulations could help you if you are nearing cessation or if your circumstances have changed since the last formal valuation which may warrant a change in contributions.

Should you be interested in carrying out a review of your options in the LGPS, the Employer Services team at Hymans Robertson can provide advice and consultancy services to help you understand your future options.

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