

WILTSHIRE PENSION FUND COMMITTEE
27 February 2008

UPDATE ON NEW LOCAL GOVERNMENT PENSION SCHEME

Purpose of the Report

1. The purpose of this report is to:
 - a) update Members on the current position regarding the implementation of the 'new-look' Local Government Pension Scheme (LGPS) from April 2008 and the steps being taken to inform Scheme members and Fund employers about it;
 - b) inform Members about the Minister for Local Government John Healey's recent written statement about the proposed extension of protections under the so-called "Rule of 85" provisions; and
 - c) inform Members about Wiltshire Pension Fund's formal response to the Department of Communities and Local Government (CLG) consultation on the proposed ill-health provisions in the new scheme (Appendix).

Background

2. This Committee received a paper at its 6 September 2007 meeting which updated Members on the position at that time regarding the final regulations for the new LGPS from 1 April 2008. Members also noted the risks around timely implementation of the new scheme and called for further updates.
3. Since then a number of draft technical regulations have been received and consultations have taken place. The most significant change is the proposed ill-health provisions in the new scheme. The CLG's deadline for responses to these proposals ended on 12 January 2008.
4. At the September 2007 meeting, the Committee approved a response to CLG on the terms of a formal proposal to extend the "Rule of 85" protection, which allows Scheme members to retire before 65 with full benefits if they satisfy the rule. The proposal was to extend that protection from those who will be 60 before 1 April 2016 to those aged 60 before 1 April 2020. The response opposed any extension of protection beyond the scope already in place.

Main Considerations for the Committee & Risk Assessment

"New Look" LGPS 1 April 2008

5. The regulatory framework for the new scheme has still to be finalised by CLG. At the time of writing, various sets of regulations in relation to the new scheme have still to be laid before Parliament, but this expected to happen in the next few weeks.
6. The pensions administration system used by the Wiltshire Fund (AXISe) is used by the majority of local authority pension funds. Heywood (the software provider) has undertaken to have most of the necessary developments delivered to clients for implementation on 1 April 2008. However, with the delay in finalising the regulations

outlined above, there are some developments that will not be in place in time for the pensions team to be able to process a number of new scheme benefits and they will have to resort to manual procedures. Heywood has said that these further developments may not be made available until later in the summer.

7. Irrespective of the delays, CLG has urged administering authorities to proceed with communicating the main provisions of the scheme to members and employers. The Wiltshire Fund has recently appointed a new Communications Manager, who is playing a major role in achieving that objective. To date there have been news updates about the new scheme on the Fund's website and a series of "road shows" for both employers and employees is being delivered at various venues throughout the County. Every active member of the Scheme will also receive a comparison chart of the current and new schemes with their annual benefit statement.

Rule of 85 Protection Consultation

8. The formal consultation exercise on proposals to extend full protection to benefits taken early under the "Rule of 85" for Scheme members aged 60 before April 2020 ended on 1 October 2007. The Minister for Local Government, John Healey, made a written Statement to Parliament on 13 December 2007, saying he would defer making a final decision until he had received the outcome of a further costing exercise, based on data provided from the 2007 rounds of actuarial valuations of LGPS funds.

New-look LGPS: Ill-health proposals

9. The regulations currently in place for the new scheme in relation to ill-health retirement provide that where a person is permanently incapable of their own local government job, there are 2 tiers of potential enhancement:
 - a) Tier 1 The employee must be judged to have no "reasonable prospect" of obtaining any "gainful employment" (ie. paid work for 30 hours or more per week for at least 12 months) before age 65. These people will gain full benefits as if they have worked to age 65.
 - b) Tier 2 The employee must be judged to be incapable of obtaining "gainful employment" within "a reasonable period" (CLG suggest 12 months), but who is likely to be capable of obtaining such employment before age 65. These people will receive an enhancement equal to 25% of their remaining membership to age 65.
10. However, on 21 November 2007 CLG issued a consultation letter on proposals for a possible third tier of ill-health provision for employees judged "permanently incapable" of their local government employment, but are judged to be capable of "gainful employment" within "a reasonable period". In brief, the proposal is to award a benefit, payable from the Fund equal to their accrued benefits at retirement, which would only be suspended if "gainful employment" were obtained.
11. The same consultation also contained a proposal to reduce the qualifying period of scheme membership for ill-health benefits from 2 years to 3 months. This is fair and consistent with the provisions for employees with 2 or more years' scheme membership, but if the service addition for first and second tiers were applied to employees with less than 2 years' membership the employee could gain a significant benefit very quickly, without having contributed hardly any contributions.
12. Because of the timing of the consultation, a response was drafted and shared with the Vice-Chairperson of this Committee prior to being sent to CLG on 11 January 2008. The

response opposed the introduction of a benefit payable from the pension fund for life, suspended only if “gainful employment” were obtained, and suggested instead a shorter-term benefit of no longer than 2 years’ duration. The response also welcomed the extension of ill-health provisions to employees with less than 2 years’ membership, but argued for retaining the 2 years’ qualification for enhancement of service.

Environmental Impact of the Proposals

13. There are no known environmental impacts.

Financial Implications

14. As reported previously, the additional cost of extending the already agreed “Rule of 85” protection from 2016 to 2020 has previously been estimated by the Government Actuary nationally as an additional £350-£400m, which equates to 0.1% of pensionable pay, or about £25m annually for 20 years. Very roughly, this implies a cost to Wiltshire Scheme employers of around £250k per annum. It remains to be seen what the results of the latest costing exercise commissioned by the Minister will reveal.

15. The proposal for the third tier of ill-health benefits payable from the pension fund is likely to apply to a significant number of people and involve a similar cost of 0.1% of payroll, according to the CLG’s own estimate.

Proposals

16. The Committee is asked to:

- a) note the risks associated with the delay in finalising the new scheme regulations for pension staff and administration systems in time for implementation on 1 April 2008;
- b) note the Minister’s written Statement on Rule of 85 protection; and
- c) note the response to the Department for Communities and Local Government on the proposed ill-health provisions, attached as the Appendix.

SANDRA SCHOFIELD
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Unpublished documents relied upon in the production of this report: None

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APPENDIX

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Date: 11 January 2008

Dear Mrs. Jones,

**Local Government Pension Scheme (Benefits, Membership and Contributions)
Regulations 2007: Third tier ill-health provision**

I write with reference to your letter of 21 November 2008 inviting comments on proposals for a third tier of ill-health provision in the new-look LGPS from 1st April 2008. This response is sent on behalf of the Wiltshire Pension Fund Committee.

Before considering the proposals in detail, firstly we would offer the general observation that, for any system to work effectively from an administrative point of view it must be made as simple as possible. The more complex and ill-defined the arrangements, the greater will be the likelihood of appeals and additional associated costs.

Secondly, it is disappointing to note that the earlier proposal for the 3rd tier benefit to be paid from the employer's revenue account has been abandoned in favour of payment being made out of the Pension Fund and the onus of undertaking a review placed instead on the Administering Authority.

Draft proposals

Turning to the detailed proposals in Annex A, we would offer the following comments.

As proposed in paragraph 3(b), the third tier benefit is payable if the employee is certified by the independent registered medical practitioner (IOHP) to be capable of 'gainful employment' within a 'reasonable period' of terminating their local government employment. It is suggested in paragraph 3(d) that a reasonable period would be 1 year and 'gainful employment' has been defined as 30 hours per week for a period of at least 12 months.

It is our view that a 'reasonable period' would be 2 years. This allows a reasonable period for any medical treatment to run its course and would increase the number of cases falling into tier 3, rather than tier 2, thereby helping to keep within the 'cost envelope'. We also believe that the 3rd tier benefit should be a short-term benefit payable for a maximum of 2 years only. If, during that time, the ex-employee obtains gainful employment, they should be required to notify the Administering Authority paying the benefit, as would a pensioner under regulation 110(2) of the LGPS Regulations 1997 who is re-employed in local government, and the

benefit would be suspended, as proposed in paragraph 3(c). Should the person neglect to notify the Administering Authority, any overpayment of benefit could be recovered as a simple contract debt.

If, at the end of 2 years gainful employment has not been obtained, the payment should cease at that time anyway, with leave for the person to appeal if they believe that they are not capable of gainful employment because, for example, their condition had worsened. The former employer would then refer the question back to the IOHP. If he/she agreed with the ex-employee, the person would then be entitled to 2nd tier, or conceivably even 1st tier benefits, but these should not be retrospective.

The current definition of 'gainful employment' in regulation 20(8) of the benefit regulations should be reconsidered. Although we appreciate that it may raise issues of equality, we believe it could be objectively justified that a definition of 30 hours per week is over-generous in the case of part-timers whose relevant local government employment was less than 30 hours per week. 'Gainful employment' should therefore be redefined as "paid employment where the hours in each week are not less than the contractual hours at termination of his former local government employment for a period of not less than 12 months." This is fair and reasonable and will apply to more cases which again will help to reduce costs.

We support the proposals in paragraphs 3(e) and (f) to treat the person as a pensioner member with suspended benefits without the option to aggregate the two periods if re-employed in local government.

Other proposed changes to Regulation 20

We agree with the proposal in paragraph 3(h) that the ill-health provisions should apply to employees with at least 3 months' membership instead of 2 years, but the membership enhancements in regulation 20(2) and (3) relating to the 1st and 2nd tiers respectively should be restricted to those with 2 years' membership, otherwise it is likely that employees who are not scheme members will, when faced with the imminent prospect of their employment being terminated by reason of ill-health, opt into the scheme and, if they can achieve 3 months' membership before their employment is terminated, qualify for a disproportionate amount of benefit.

We do appreciate, however, that this would introduce the additional complexity of a 4th tier covering employees with 3 months but less than 2 years' membership who are found to be incapable of 'gainful employment' within the 'reasonable period' of 2 years suggested above. They would be entitled to accrued benefits, payable for life, but without enhancement.

We believe that the proposed underpin in paragraph 3(i) to apply to current Scheme members who will be 45 or over on 31st March 2008 is over-generous, given that the benefit accrual rate in the new-look LGPS is N/60's, not N/80's.

If the intention is that such members should not be worse off, then instead of referring to the period of membership that would have been added under regulation 28 of the 1997 Regulations, reference should instead be made to the amount of benefit they would have received under those Regulations.

In paragraph 3(j) regarding the proposed clarification of regulation 20(6), we believe that for the words, "within a reasonable time", should be substituted "within 2 years".

Summary

The main points of the Wiltshire Pension Fund's response may be summarised as follows:

- The 3rd tier ill-health provision should be a short-term benefit for a maximum of 2 years.
- If, at the end of the 2 years, the person believes they are not capable of 'gainful employment', the question should be referred to the IOHP and if he/she so certifies, the person should be reallocated to tier 2 or 1, but with no retrospection.
- Where 'gainful employment' is obtained within 2 years, the benefit should be suspended.
- The person should be treated as a pensioner member with suspended pension and should not be able to aggregate membership if re-employed in local government.
- 'Gainful employment' should be redefined as being not less than the contractual hours at termination of the relevant local government employment.
- The qualification membership period for ill-health benefits should be reduced from 2 years to 3 months, but the 2 years' membership should be retained for enhancement.
- The 'no-worsening' underpin for current Scheme members should be related to the amount of benefit they would have received under the 1997 Regulations, rather than the enhancement.

I trust you find these comments helpful.

Yours sincerely,

Sandra Schofield
Chief Financial Officer