



Business Services Association
130 Fleet Street,
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BSA - The Business Services Association

Local government pension scheme regulations consultation response

August 2016

The BSA appreciates the opportunity to respond to this consultation on local government pension scheme regulations. The discussion on the inclusion of the principles of Fair Deal into the legislative structure of the LGPS is welcomed and our comments below are intended to address the issues most affecting BSA members and to assist in obtaining clarity from the outset in the regulations.

Chapter 2: The 'Fair Deal' proposals

Specific issues

- **Funding arrangements:** We would welcome further input from DCLG to the contracting and administering authorities, of how the funding arrangements will work. For example, if the admitted body route is being forced upon contractors there is no guidance on how any risk sharing of costs should be split between the letting authority and the contractor (as there was in the 2009, non-statutory, guidance issued by DCLG). There is also no direction or advisory provision on how increase or decrease of costs during and at the end of the contract are calculated and split between the various parties. Both of these issues are efficiently dealt with in the unfunded public sector pension schemes (albeit we recognise there are different issues to consider between funded and unfunded arrangements). The impact of Fair Deal in the unfunded arrangements means all bidders are bidding on the same basis with the same risk basis which means pensions are effectively removed from the bid assessment process. The current drafting doesn't appear to go as far as this and could result in bidders including different pension costs (especially if it is a second generation transfer) which could undermine the principle of providing best value services.

Indeed, by making the admitted body route mandatory this could actually result in the contractors negotiating position being weakened, and result in more cautious pricing being made (as the contractor remains to have very little, if any, control of the running of the LGPS and the risks taken).

- **Guarantee bond requirements:** More clarity and consistency in the actuarial approach to determining the amount of any guarantee bond required (Chapter 2 paragraph 13 of the consultation) would be welcomed. The LGPS Regulations require an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of service by reason of insolvency, winding up or liquidation of the admission body.

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Historically this has been calculated based on the additional strain on the fund that would be caused by the redundancy of those LGPS members over age 55. However more recently we have seen examples of actuarial valuations also including an assessment of additional risks for adverse market movements (e.g. investment under-performance or falls in government bond yields). This has a massive impact on the size of the bond, for example a recent LGPS admission agreement for 6 employees with a fully funded initial asset value of £1,121k had a bond requirement assessed for redundancy risk at £19k but then for market related risk at £272k (80-85% probability that any deficit would be covered), £520k (90-95% probability) and £767k (98% probability). This is hugely disproportionate to the value of the fund and size of the contract.

- **Pension valuation basis:** A much more frequent risk that is rarely ever satisfactorily addressed upfront in the ITT is the pension valuation basis to be adopted on expiry or termination of the contract (Chapter 2 paragraph 14 of the consultation document). The LGPS standard Admission Agreement has generic wording allowing the exit valuation to be carried out of such basis as the scheme actuary recommends. Clearly if the opening pension position was fully funded on an ongoing basis then it is not fair or reasonable to potentially expose the contractor to have to fully fund the closing pension position on a more onerous cessation basis. In the absence of this requirement in the LGPS Regulations, it should be a standard contractual protection in the contract T&C's so that the contractor is responsible for funding any deficit on termination based on an ongoing valuation basis but the Scheme Employer (being the contracting authority) is responsible for the excess deficit if calculated on any other basis. We generally find that this is a time consuming and difficult negotiation post contract award.
- **Pension information at tender:** Information is often difficult to come by when it comes to the pensions tendering process; information for employment purposes has to be provided 28 days before any transfer but this is often too late for complex (and even straightforward) pension transfers. However, we would welcome a similar sanction for the non-provision of pension information by the transferor as applies in the employment arena. Some form of statutory guidance supporting the proposed new regulations would be welcomed to cover the issuance at the invitation to tender stage of:
 - information as to who is eligible for continued LGPS entitlement;
 - information on the level of employer contribution rate which will be payable as an admitted body;
 - Amount of guarantee bond required; and
 - the initial funding position offered by the contracting authority at the time of the ITT and the actuarial basis on which it will be funded should be clearly set out i.e. ongoing or cessation basis.

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Proposed approach

If there are better ways to adopt the reformed Fair Deal in local government, consultees are invited to recommend an alternative approach and say why they consider this to be preferable. (Chapter 2 - paragraph 4)

In our view, if the issues identified in this response can be addressed either by amendments to the draft regulations or by the issuance of some form of statutory guidance (similar to the Best Value Authorities Staff Transfer (Pensions) Direction 2007), then the approach appears to be the best way to adopt the reformed Fair Deal in local government.

Views are sought on whether this is the right approach (Chapter 2 - paragraph 16)

As set out above, we view the approach proposed as a very large step in the right direction but consistency is needed in the supply of information and the approach adopted by different administering authorities and their actuarial advisers. We would welcome, as set out above, some guidance on issues such as risk sharing and funding to authorities from DCLG (on a statutory basis, in the prescribed contents of an admission agreement) and, where appropriate, from the Institute and Faculty of Actuaries (perhaps through the Actuaries' Code) on funding and consistency issues.

Chapter 3: Changes to the 2013 Scheme Regulations

Local Government Service and Fair Deal - Draft Regulations 3 to 5

- We are concerned that the drafting of the regulations could significantly expand the number of LGPS members in scope for LGPS membership under the new provisions. Under the Best Value Authorities Staff Transfers (Pensions) Direction 2007 ("Best Value"), "transferring employees" and "transferring original employees" are specifically defined to include only employees who transfer from the contracting authority (in the case of a first generation transfer) or employees who originally transferred from the contracting authority and who are transferring on to a new contractor under a subsequent contract (where service is unbroken).

However, the proposed definition of a "protected transferee" under draft regulation 3(1C) (contained in regulation 4 of the draft regulations) is much wider than this including non-authority employees who may have been admitted to the LGPS after the original transfer date by virtue of an open admission agreement. This potentially increases the costs for both the contracting authority in identifying the "non-transferring original employees" who are eligible for LGPS membership under the incumbent contractor and the bidders who may have to price contingent liabilities for employees who have never been authority employees but who are (or are eligible to be, members of the LGPS.

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- Regulation 4 of the Amendment Regulations which introduces new regulation 3(1B) provides that an administering authority must make a determination to admit an employee's employer "...where an application for a determination is received...". It is not clear from whom the application is made; if it is an application from the employee then this could require an employer to become an admission body simply on the application by a member. We suggest that the words "by a protected transferee employer" be added following the words "...where an application..."
- Regulation 5 of the Amendment Regulations introduces a new regulation 3B which requires a protected transferee employer to enter in to an admission agreement "...immediately before the transfer...". It is not clear how this requirement is meant to work with new paragraph 14 of the Regulations. We suggest the words "or such other time as may be agreed between the protected transferee employer and the transferee-ing Scheme employer may agree."

Contributions During absence from work - Draft Regulation 7

This change does not require an employee to have qualifying "pay" to meet the requirements of the Regulations.

Additional Voluntary Contributions (AVC) - Draft Regulation 8 & 9

Regulation 9 of the Amendment Regulations introduces new regulation 17A which does not tie in easily with the previous benefit regime for pre-2008 benefits. We suggest the words "Subject to regulation 33(2)" are added at the beginning of new regulation 17A(4)(a).

Special Circumstances Where Revised Actuarial Valuations and Certificates Must Be Obtained - Draft Regulation 15

We welcome these changes which could now encourage protected transferee employers to enter in to funding arrangements which may not require indemnity bonds or guarantees by putting more conservative funding arrangements in place on the understanding that exit credits can be returned to the admission body.

Employer's Further Payments - Draft Regulation 16

This change is very wide and we suggest that the wording "where the Scheme employer has waived the actuarial reduction" be added after the words "...regulation 30(6) (early retirement)...".

Scheme employers - Draft Regulation 21

The proposals to clarify the position on the backdating admission agreements is welcome.

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Appendix - List of BSA Members

Full Members:

Accenture Plc
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Amey Plc
ARAMARK Ltd
Atos
Balfour Beatty Plc
Bellrock Ltd
Berendsen Plc
Bouygues Energies and Services
British Telecommunications Plc
Capita Plc
Carillion Plc
Compass Group Plc
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Maximus UK Ltd
Mitie Group Plc
NSL
OCS Group UK Ltd
Optum Health Solutions UK Ltd
PeoplePlus
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