Draft Regulations: Admission Bodies

Avon Pension Fund have already written to DCLG pointing out that, following the Miscellaneous Regulations, the regulations relating to admission bodies are defective in a number of key areas; it is unfortunate that the same defects are inherent in the draft 2013 regulations. **We see no logical reason why, if it is agreed that defects exist, they should be perpetuated in the new regulations.**

Although the Fund's view is that it would be preferable to have separate provisions relating to transferee admission bodies and community admission bodies, this appears to be no longer a matter for discussion. However the current drive for economies from partnership working arrangements does put some doubt on whether all types of arrangements can be fully satisfied to all stakeholders satisfaction under the regulations as proposed..

There are two distinctive types of admission bodies one that provides a community service and the other one that provides a specific type of service under a specific contract. They need to be looked at separately to ensure that pension funding is protected and that the necessary guarantees are in place.

There needs to be a mechanism to provide more co-ordination between the main contracts and LGPS to ensure that all possible contractual partnerships are covered within the regulations and that the correct provisions are in place to safeguard the fund

It should not be possible for an employer to enter in a contractual agreement without consideration of all their pension obligations

The key objective now must be, within the new framework, to try to have regulations which are coherent, and, consistent with operational realities.

Schedule 2 Part 3 Proposed changes

For the purposes of this part of the annex the response set out by Terry Edwards [LGA] has been used as this gives the platform to show our comments at the respective regulations.

Blue/green wording	Terry has added or amended and the in
Red wording	explains Terry's rationale behind the changes.

Grey sections **APF proposals for changing the regulations on Admission Bodies are added in the**.

PART 1

General comment: What has happened to Admin regs 5(2)(f), (g),and 5(6)? Have they been deliberately not carried forward? If so, what is the rationale?

1. The following bodies are admission bodies with whom an administering authority may make an admission agreement —

Comment: Wording in blue added as, otherwise, an employee of a body listed in paragraph 1 could seek to claim access to the Scheme under regulation 3(1)(c) even where no admission agreement is actually in place.

At the outset there is an important point of principle which needs to be clarified. **It is clearly not true that bodies 1 (a) to (c) are admission bodies since they would only become admission bodies if they applied to be so**. Then there is the question of whether, if pension funds receive an application from a body which fulfils the criteria set out in paragraph 1 and also satisfies the remaining conditions set out in the new regulations, there are any circumstances in which this application can be rejected. In the case of transferee admission bodies we have the possibility of a bond being in place but, more importantly, the outsourcing Scheme employer stands as the ultimate guarantor. In the case of community admission bodies, there is unlikely to be a bond and pension funds will invariably secure protection through guarantors. In the case of a potential guarantor under paragraph 8 (a) (which we should assume would not always be a Scheme employer), it is possible that "a person who funds the admission body in whole or in part" might not have the financial strength to be acceptable as a guarantor.

Therefore while, in the majority of circumstances, there is no logical reason why an application should be rejected, we believe that pension funds should continue to have the power to reject applications where they are not satisfied that the necessary degree of protection is forthcoming.

However, if paragraph 8(a) were to read "a Scheme employer who funds the admission body in whole or in part", then the power to reject would probably not be necessary.

(a) a body which provides a public service in the United Kingdom which operates otherwise than for the purposes of gain and has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise).

(b) a body, to the funds of which a Scheme employer contributes;

(c) a body representative of –

(i) any Scheme employers ~~or employees of Scheme employers~~;

(ii) local authorities;

(iii) local authorities and officers of local authorities; or

(iv) officers of local authorities where it is formed for the purpose of consultation on the common interests of local authorities and the discussion of matters relating to local government.

Comment: revised wording above mirrors that in reg 5(2)(c) of the Admin Regs 2008. The reason for reverting back to that wording and striking through the more general words "or employees of Scheme employers" is that those more general words are too all encompassing and would, for example, allow Trade Unions to apply for membership of the LGPS (which the wording in the 2008 Scheme would not).

(d) a body that is providing or will provide a service or assets in connection with the exercise of a function of a Scheme employer as a result of—

(i) the transfer of the service or assets by means of a contract or other arrangement,

(ii) a direction made under section 15 of the Local Government Act 1999 (Secretary of State's powers),

(iii) directions made under section 497A of the Education Act 1996;

(e) a body which provides a public service in the United Kingdom and is approved by the Secretary of State for the purpose of admission to the Scheme.

Comment: superfluous full stop deleted.

The concept of controlled entities as set out in Part 2 of Schedule 2 (item 6) should be abolished and any such body should only be entitled to join local authority pension funds as an admitted body. In this way it would be the subject of a guarantee, which at the present time it is not. If the controlling Scheme employer was not prepared to provide a guarantee the body would not be admitted. This change should be effected by including an additional category under paragraph 1 of Part 3 of Schedule 2, as follows:-
"A body under the control of a Scheme employer listed in paragraphs 6 to 23 of Part 1 of this Schedule (where "under the control" has the same meaning as in Section 68 or, as the case may be, 73 of the Local Government and Housing Act 1989……)"

However, the reality is that such a body would already qualify under categories (a), (b) or (c).

2. An approval under paragraph 1(e) may be subject to such conditions as the Secretary of State thinks fit and the Secretary of State may withdraw an approval at any time if such conditions are not met.

3. The Scheme employer, if it is not also the administering authority, must be a party to the admission agreement with a body falling within the description in paragraph 1(d).

4. In the case of an admission body falling within the description in paragraph 1(b), where at the date of the admission agreement the contributions paid to the body by one or more Scheme employers equal in total 50% or less ~~than~~ of the total amount it receives from all sources, the Scheme employer paying contributions (or, if more than one pays contributions, all of them) must guarantee the liability of the body to pay all amounts due from it under these Regulations.

Paragraph 4 should be deleted. Nobody to my knowledge has been able to justify this provision but it is now effectively superseded by paragraph 8. In short, if paragraph 4 was intended to protect pension funds, this protection is now provided by paragraph 8

Comment: I've never wholly understood the rationale behind this paragraph. Isn't it more important to have the Scheme employers act as guarantor where they are providing more than 50% of the funding? I think this is a policy matter that needs reviewing.

5. If the admission body is exercising the functions of the Scheme employer in connection with more than one contract or other arrangement under paragraph 1(d)(i), the administering authority and the admission body shall enter into a separate admission agreement in respect of each contract or arrangement.

6. An admission agreement must require the admission body to carry out, to the satisfaction of the administering authority, and to the satisfaction of the Scheme employer in the case of a body falling within paragraph 1(d)(i), an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up, or liquidation of the admission body.

Comment: the Scheme employer letting the contract should have to be satisfied too as, ultimately, liability would fall back on them if anything went amiss.

Paragraph 6 is in greatest need of revision as there are a number of reasons why this paragraph is defective, viz.

A risk assessment is required **before** an admission agreement is put in place.

The risk assessment should be commissioned **by the beneficiary** not the admission body. The beneficiary is the administering authority in the case of bodies admitted under paragraphs 1(a), 1(b) and 1 (c) and the Scheme employer in the case of transferee admission bodies. The question of who pays for the risk assessment is irrelevant and will depend on the circumstances of the admission.

The assessment should be carried out to the satisfaction of the Scheme employer in the case of bodies admitted under paragraph 1(d).

In our opinion the paragraph should be re-worded as follows:-

"In the case of bodies admitted under paragraphs 1(a), 1(b) and 1(c) the administering authority must obtain an actuarial assessment to enable it to determine the potential liability for which that body may become responsible during the period of the admission agreement. In the case of bodies admitted under paragraph 1(d), an actuarial assessment should be commissioned by the Scheme employer where appropriate".

It should be emphasised that a risk assessment carried out by an actuary does not identify the "level of risk"; for this to be the case an assessment would need to be made of the creditworthiness of the admission body and this does not normally come within the scope of an actuarial assessment. The reason for the insertion of the words "where appropriate" allows for the fact that, in some cases, a decision will have been taken upfront not to transfer the pension risk to the admission body. It will be noted that there is no reference to an admission agreement in this revised wording because the actuarial assessment is a fait accompli by the time the admission agreement comes to be signed. We would also make the point that, as a general principle, it should not be necessary to use the admission agreement as a means of enforcing compliance with the regulations.

7. Notwithstanding paragraph 6, and subject to paragraph 8, the admission agreement must further provide that where the level of risk identified by the assessment is such as to require it, the admission body shall enter into an indemnity or bond in an approved form with—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect and carry out contracts of general insurance;

(b) an EEA firm of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or

(c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.

Comments:

- words in blue added to counteract the word "must" in paragraph 7
- how are the words "in an approved form" to be defined? Approved by whom? Will there be a definition included in Schedule 1?.

If Paragraph 6 is changed then Paragraph 7 should then read

"Where, subject to paragraph 6, the administering authority or Scheme employer decides that the admission body should enter into an indemnity or bond, this should be in an approved form with-

……"

"Subject to paragraph 6" means that the administering authority or Scheme employer will have taken into account the results of the actuarial assessment when deciding whether there should be a bond or not (although other factors will also have to be taken into account). We will need a definition of "an approved form" under the Interpretation section in Schedule 1.

8. Where, for any reason, it is not desirable for an admission body to enter into an indemnity or bond, the admission agreement must provide that the admission body secures a guarantee in a form satisfactory to the administering authority from—

(a) a person who funds the admission body in whole or in part;

If paragraph 8(a) should read "a Scheme employer who funds the admission body in whole or in part", then the power to veto would probably not be necessary.

(b) in the case of an admission body falling within the description in paragraph 1(d), the Scheme employer referred to in that paragraph;

(c) a person who—

(i) owns, or

(ii) controls the exercise of the functions of,

the admission body; or

(d) the Secretary of State in the case of an admission body—

(i) which is established by or under any enactment, and

(ii) where that enactment enables the Secretary of State to make financial provision for that admission body.

9. An admission agreement must include—

(a) provision for it to terminate if the admission body ceases to be such a body;

(b) a requirement that the admission body notify the administering authority of any matter which may affect its participation in the scheme;

Comment: amend "the scheme" to "the Scheme" as per draft regulation 2(1)

(c) a requirement that the admission body notify the administering authority of any actual or proposed change in its status, including a take-over, reconstruction or amalgamation, insolvency, winding up, receivership or liquidation and a material change to the body's business or constitution;

(d) a right for the administering authority to terminate the agreement in the event of—

(i) the insolvency, winding up or liquidation of the admission body,

(ii) a material breach by the admission body of any of its obligations under the admission agreement or these Regulations which has not been remedied within a reasonable time,

(iii) a failure by the admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the administering authority requiring it to do so.

10. An admission agreement must include a requirement that the admission body will not do anything to prejudice the status of the Scheme as a registered scheme.

11. When an administering authority makes an admission agreement it must make a copy of the agreement available for public inspection at its offices and must promptly inform the Secretary of State of—

(a) the date the agreement takes effect;

(b) the admission body's name; and

(c) the name of any Scheme employer that is party to the agreement.

12. Where an admission body is such a body by virtue of paragraph 1(d), an admission agreement must include—

(a) a requirement that only employees of the body who are employed in connection with the provision of the service or assets referred to in that sub-paragraph may be members of the Scheme;

(b) details of the contract, other arrangement or direction by which the body met the requirements of that sub-paragraph;

(c) a provision whereby the Scheme employer referred to in that sub-paragraph may set off against any payments due to the body, an amount equal to any overdue employer and employee contributions and other payments (including interest) due from the body under these Regulations;

Comment: Would it be appropriate to add at the end of paragraph (c) "or due from any other body to which the body has sub-contracted work to which the payments relate and where that other body is also an admission body" to cover cases where the main contractor sub-contracts work to a sub-contractor who also joins the LGPS as an admission body but the payments from the Scheme employer are all paid to the main contractor? This would enable the Scheme employer to recover from the payments due to the main contractor any sums due to the Fund from the sub-contractor. At the present time the only way this can be dealt with is via the contract with the main contractor. The view might be taken that this is a matter for the contract and not for the admission agreement.

(d) a provision requiring the admission body to keep under assessment, to the satisfaction of the bodies mentioned in paragraph 6, the level of risk arising as a result of the matters mentioned in that paragraph ~~6~~;

Comment: added the wording in blue to tie up better with the requirements of paragraph 6.

(e) a provision requiring copies of notifications due to the administering authority under paragraph 9(b) or (c) to be given to the Scheme employer referred to in that sub-paragraph; and

(f) a provision requiring the Scheme employer referred to in that sub-paragraph to make a copy of the admission agreement available for public inspection at its offices.

Comment: Paragraph (f) only covers admission agreements that are the result of an outsourcing. What about normal admission agreements (community admission bodies)? Para 11 of Schedule 3 to the Admin Regs 2008 required that the admission agreement for such bodies should be available for public inspection, in its final form, at the offices of the administering authority.

13. Comment: Surely we need to insert a paragraph 13 requiring the administering authority to enter into an admission agreement if the letting authority and the contractor wish to do so and agree to comply with the conditions in Part 3 (and the Secretary of State gives approval where necessary) i.e. we need the equivalent of Admin Regs 6(10) and (11). In the absence of such a paragraph the administering authority could exercise a power of veto and not agree to enter into the admission agreement.

A Regulation 13 as set out above should be inserted to ensure no power of veto