

Avon Pension Fund

Local Government Pension Scheme

Post: Avon Pension Fund, Bath & North East Somerset Council,
Lewis House, Manvers Street, Bath, BA1 1JG

Web: www.avonpensionfund.org.uk

Email: avonpensionfund@bathnes.gov.uk

Tel: 01225 477000

Fax: 01225 395258



LGF Reform and Pensions Team
Benefits Consultation
Ministry for Housing, Communities and Local Government
2nd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

Enquiries to : Alan South
Our Reference : Pen/ Technical
Telephone: 01225 395283
Email: alan_south@bathnes.gov.uk

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Dear Sir/Madam

Local Government Pension Scheme LGPS Consultation: Technical Amendments to Benefits

I refer to the Policy Consultation issued in October 2018 which asked for comments on proposed changes to the LGPS regulations.

I respond on behalf of Bath and North East Somerset Council administrators of the Avon Pension Fund (APF). The Fund has membership of 36,500 actives, 43,000 deferred beneficiaries and 30,750 pensioners [incl. dependants].

The consultation covers two main areas; the first is issuing further amendment regulations, and the other sets out a solution to resolve matters that occur from time to time without having to wait until regulations can be changed.

The Regulation Amendments

These are both required to ensure that the LGPS regulations are consistent with the recent court decisions on survivor benefits and also a technical amendment to rectify an unexpected consequence that arose when amendments were made to the regulations in May 2018.

Survivor Benefits

As a result of the decision in Walker v Innospec, the Government has decided that all public service pension schemes should implement changes to provide that survivors of registered civil partnerships or same-sex marriage will be provided with benefits that replicate those provided to widows instead of widowers.

It also acknowledges that the only category of member who does not come under this condition is all males who survive their female spouse. It does not, at present, intend to change this, quoting a potential cost of £2.8bn.

Therefore, there, remains an equality that will probably be challenged by someone in the future and if successful would mean that rectifying survivor benefits would need to be done twice and involve a greater number of people. Some individuals who may enjoy the benefits of a more comfortable living standard may not live to get the additional benefit.

Question One - Do you agree with this approach?

Avon Pension Fund – Partially supports, the LGPS needs to be brought in line with the court decision but consideration should be given to equalising survivors benefits in all cases.

Technical Amendment:

Early access to benefits for deferred members of 1995 Scheme

The amendments made earlier this year have created a situation whereby members who left active membership of the LGPS prior to 1 April 1998 and who were aged between 55 and 60 are likely to have lost the option to elect for early payment of benefits. It therefore intended to amend the regulations again to fully achieve the initial policy aim, which is to allow all deferred members over the age of 55 to draw down their pensions early, with the appropriate actuarial reduction.

However the draft regulations do not achieve the same position for early draw down as the other later regulations, as there is still the requirement that the member must not be in local government employment when the option to draw down is made.

Question Three - Do you agree with this approach?

Avon Pension Fund - Supports this amendment but to fully obtain a similar condition to the other later leavers the reference to 'Local Government Employment' should be removed

N.B A key point here is that when legislation is being drafted, stakeholders are consulted before actual regulations are made to reduce the likelihood of such unintentional consequences occurring.

Power to issue statutory guidance

As result of the Brewster and Elmes cases it became apparent that the MHCLG could not issue statutory guidance on the matter as any such view had no legal force as the Secretary of State had no power to issue statutory guidance in this area.

Accordingly it is possible for funds to reach different and inconsistent conclusions about to the entitlements of beneficiaries in identical positions.

This is contrary to the Government's view that the LGPS is a single scheme administered locally. It was always our intention that equivalent members' benefits should be the same everywhere. These issues are sensitive and to avoid funds taking different approaches, the government proposes to create a power to issue statutory guidance on the operation of the scheme's rules.

This situation was also highlighted when statutory guidance could not be given for the unintended consequences of the recent amendment regulations where funds had to decide whether or not to adopt the Department's intention statement pending further regulation changes.

Another area where it would have been useful in issuing guidance is in respect of the outcomes arising from the GMP reconciliation exercise where funds have been left to make certain decisions that will not be uniform across the scheme.

Question Two - Do you agree with this approach?

The options are

- a) Give power to issue statutory guidance on the operation of the scheme's rules to deliver greater standardisation of approach, in particular on how the interpretative duties under the Human Rights Act are met.

Pro - reduces uncertainty which is better for stakeholders

Con - potentially could give Department power to change policy without full legal changes through regulations

- b) to amend the rules of the scheme in relation to each judgment as it is made.

Pro - would safeguard against Department having potentially unlimited power without regulations

Con - less flexible to inevitable changes in position as case law and LGPS regulations develop.

requires a greater call on Parliamentary time.

Avon Pension Fund – Partially supports, there should be the power to issue statutory guidance but this should be restricted to avoid policy changes to the LGPS which should be actioned through the scheme regulations. All guidance should be in consultation with Scheme Advisory Board.

I hope that these comments are useful but please let me know if any further clarification is required

Yours sincerely

**Alan South
Technical Manager
Avon Pension Fund**