

Subject	Employer Flexibilities	Status	For Publication
Report to	Authority	Date	21 st January 2021
Report of	Director		
Equality Impact Assessment	Not Required	Attached	No
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1 **Purpose of the Report**

- 1.1 To secure agreement in principle to the implementation of the new employer flexibilities and to the initiation of a consultation process with employers.
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2 **Recommendations**

- 2.1 Members are recommended to:
- a. **Agree in principle that the Authority should implement the employer flexibilities provided under the LGPS Regulations**
 - b. **Agree to initiate a consultation process with employers on the way in which the flexibilities should be implemented**
 - c. **Agree to initiate consultation on changes to the least risk basis for calculating termination payments**
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3 **Link to Corporate Objectives**

- 3.1 This report links to the delivery of the following corporate objectives:

Customer Focus

To design our services around the needs of our customers (whether scheme members or employers).

Listening to our stakeholders

To ensure that stakeholders' views are heard within our decision making processes.

Effective and Transparent Governance

To uphold effective governance showing prudence and propriety at all times.

Undertaking consultation with stakeholders on the way in which the new employer flexibilities are implemented reflects both the requirements of the Regulations and a transparent approach to the exercise of the Authority's responsibilities while ensuring effective engagement with stakeholders.

4 Implications for the Corporate Risk Register

- 4.1 The actions outlined in this report relate to the risks identified in the corporate risk register around regulatory compliance and also the risks around employer affordability. The intention of the flexibilities now provided within the LGPS regulations is to support both administering authorities and employers in managing these risks.

5 Background and Options

- 5.1 As previously reported to the Authority the Government has made the Local Government Pension Scheme (Amendment) No. 2 Regulations 2020. These provide administering authorities with a number of new tools in relation to the management of employer risk and the facilitation of scheme exits. The statutory guidance from the Ministry of Housing and Local Government and the Scheme Advisory Board guidance both make clear that the decision on whether or not to utilise these powers is one for administering authorities to make and that in doing so they should consider the views of employers and other stakeholders. In addition having decided to utilise these powers new policies will need to be incorporated into the Funding Strategy Statement, and there is a statutory requirement to consult on such changes.
- 5.2 The regulations introduce a number of flexibilities and this report considers whether the Authority should, in principle, seek to adopt them. Using these new flexibilities creates a situation where the Authority is making individual judgement based decisions which could be open to legal challenge in a more obvious way than has previously been the case. It is, therefore, important that the policies and procedures implemented ensure consistent and reasonable treatment of all employers.

Reassessment of Contributions between Valuations

- 5.3 The first new flexibility relates to the ability of the Authority or an employer to initiate a reassessment of contributions between formal actuarial valuations. This seems likely to be a particularly useful addition should, as has previously been proposed (but not yet enacted), the period between formal valuations is extended to four years. This power is not intended to give licence to reassess contributions in response to every movement in the value of the Fund's investments, rather it is intended to allow a prompt response to changes in circumstances affecting an employer which could have a significant impact on the value of their liabilities and hence contribution rates or on the employer's ability to meet their obligations. Examples might include:
- Restructuring of a council due to a move to unitary status.
 - Restructuring of a Multi-Academy Trust for example due to the individual academies that make it up or a change in how its rate is assessed across its academies.
 - A significant outsourcing or transfer of staff to another employer (not necessarily within the Fund).
 - Significant changes to the membership of an employer, for example due to redundancies, significant salary awards, ill health retirements, large number of withdrawals or the loss of a significant contract or income stream.
 - A material change to the strength of an employer's covenant.
- 5.4 In general terms it is desirable to re-set contribution rates in circumstances such as these at as early a point as possible to ensure that employer's contributions do not diverge from the plan set at each tri-ennial valuation to meet liabilities over an

appropriate timescale. Thus it seems sensible to include use of this flexibility within the Authority's range of available tools. In order to implement this flexibility the Authority will need to set policies which ensure consideration of the following:

- Define when a change is significant enough to justify the undertaking of a reassessment of contributions. For example an employer losing 5% of its workforce as a result of a loss of a contract is unlikely to be significant but the loss of 50% of its workforce would be significant. Any change in membership would need to be assessed in terms of the size of the employer..
- At what points in time during the valuation cycle it will be appropriate to carry out such reassessments. For example it would not seem sensible to initiate a reassessment a few months prior to the formal valuation.
- Which party will bear the costs associated with a reassessment
- The nature of the assumptions and membership data which can be used in the reassessment.
- The data to be provided by the employer

5.5 Making clear statements of policy in regard to all of these issues is intended to ensure that the Authority is seen to behave reasonably and to treat all employers equally. Employers will also be aware in advance of the factors which the Authority will consider in coming to decisions in regard to the use of these powers.

Debt Spreading Arrangements (DSA) and Deferred Debt Agreements (DDA)

5.6 These provisions are intended to make it easier to manage the exit of employers from the Local Government Pension Scheme. Currently some smaller employers such as charities are effectively trapped in the Scheme because the termination payment which becomes due when they decide to exit would effectively bankrupt them while they also struggle with the affordability of contributions. These provisions will not result in all these cases being addressed but they will allow some progress to be made with these issues and again provide a wider set of tools to address these situations.

5.7 The two different approaches are intended to provide options which will be appropriate to different employer circumstances. The first (the debt spreading arrangement - DSA) can be seen as a means of paying a traditional termination payment by instalments and is suitable for employers with no active members who wish to exit. The second, the deferred debt arrangement (DDA), may be suitable for employers who wish to exit but for affordability reasons do not wish to crystallise a termination debt. Again the Authority's policies will need to reflect consideration of the following::

- The circumstances where it will be prepared to consider the different types of arrangement and any criteria which it might apply for example in assessing employer covenant to determine the appropriateness of a particular arrangement,
- How the exercise of employer discretions should be handled where one of these agreements is in place.
- Processes for consulting any guarantors.
- The way any costs incurred by the Authority in making such arrangements will be dealt with.
- The framework within which the Authority will agree the timescales for the spreading of debt.

Methodology for Calculating Termination Payments

- 5.8 Intrinsically linked to these issues but not driven by the new flexibilities is a need to review the methodology used for calculating termination payments. This is currently based on using gilt yields as the discount rate within the calculation. Members will be aware that since the global financial crisis quantitative easing has impaired the functioning of the gilt market resulting in artificially low gilt yields. This results in termination payments which are significantly higher than might appear reasonable, even allowing for the fact that such payments should be calculated on a minimum risk basis. This means that some smaller employers who have developed significant surpluses in the Fund when assessed on an ongoing funding basis remain unable to afford an exit which would be a logical route for all parties involved. Such a situation is undesirable, although clearly the Authority needs to protect the interests of other employers by ensuring that any exit is sufficiently funded. This means that the discount rate for such payments must, in order to be on a minimum risk basis, be less than the discount rate used in the actuarial valuation. Beyond that there are a number of options available. As any change to the minimum risk basis would require a change to the Funding Strategy Statement it is necessary to consult employers on such a change, hence its inclusion here.

Consultation Process

- 5.9 At this stage it is proposed that the Authority resolve that it is minded to implement the various employer flexibilities and changes to the way in which termination payments are calculated. Officers will then, in consultation with the Fund Actuary and having regard to both the Statutory Guidance and the guidance from the Scheme Advisory Board, develop policies on which employers will be consulted with a revised Funding Strategy Statement being brought back to the June meeting for approval. Given the significance of these changes as well as the traditional method of sending the proposals to all employers one or two video conferences will be held to encourage engagement on these issues with employers.

Conclusion

- 5.10 The additional employer flexibilities provided by the revised LGPS regulations provide potentially valuable additional tools for the Authority to manage various aspects of employer risk and it makes sense to seek to implement them as soon as practical.

6 Implications

- 6.1 The proposals outlined in this report have the following implications:

Financial	There are no direct financial implications arising from the proposals in this report. However, as indicated the Authority will need to develop clear and transparent policies around cost recovery where the employer flexibilities are used.
Human Resources	None
ICT	None
Legal	The Authority is looking to put in place a clear policy framework which minimises the risk for its decisions to be challenged by ensuring that it acts reasonably and treats each case on its merits. It is likely that the Authority will need to secure legal advice at various stages of any case being considered particularly in relation to the drafting of

	appropriate legal agreements in relation to the new exit flexibilities.
Procurement	None

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Director

Background Papers	
Document	Place of Inspection
The Local Government Pension Scheme (Amendment)(No2) Regulations 2020	https://www.legislation.gov.uk/ukxi/2020/893/regulation/3/made
Statutory Guidance on Employer Flexibilities	Available from the Director SYPA Floor 8 Gateway Plaza
Scheme Advisory Board Guidance on Employer Flexibilities	Available from the Director SYPA Floor 8 Gateway Plaza