Local Government Finance Stewardship
Department for Levelling Up, Housing and Communities
Email to: lgpensions@levellingup.gov.uk

24 February 2023

Consultation: The Annual revaluation date change in the Local Government Pension Scheme (LGPS)

Thank you for your consultation seeking views on the consultation covering the Annual revaluation date change in the LGPS and the draft LGPS (Amendment) Regulations 2023 ('the Regulations').

I respond on behalf of the Local Government Association (LGA) and the Local Government Pension Committee (LGPC) in respect of the Local Government Pension Scheme (LGPS).

The LGA is a politically led, cross-party membership organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. 331 councils in England including district, county, metropolitan, unitary, London boroughs and the City of London are members of the LGA. There are 22 Welsh unitary authorities in membership via the Welsh Local Government Association (WLGA). The LGPC is a committee of councillors constituted by the LGA, the WLGA and the Convention of Scottish Local Authorities (COSLA). The LGPC considers policy and technical matters affecting the Local Government Pension Scheme (LGPS).

I hope the content is helpful. Please do not hesitate to contact me if you have any questions about this response.

Yours faithfully

Joanne Donnelly
Head of Pensions

Actuarial guidance

The regulations continue to repeatedly refer to annual revaluation being applied in accordance with actuarial guidance provided by the Secretary of State, even though there is no such guidance. As this wording has been retained, we assume the Department now intends to issue this much needed guidance. Revaluation is a complex area that requires more clarification than can be provided in the regulations.

General technical comments

Issue 1: when a member ceases active membership on 31 March the regulations do not provide for revaluation to be applied in the scheme year before leaving. This is because the member is leaving active membership in one scheme year but changing status in the next year.

Example 1: A member leaves active membership on 31 March 2024 and becomes deferred on 1 April 2024:

Regulation 24 provides that the active pension account must be closed and a deferred pension account opened. The deferred pension account must specify the opening balance in that account, which is the amount of pension the member has accrued. Regulation 24(4)(a) provides that the amount of pension accrued includes the opening balance for the member's last active Scheme year. However, the opening balance does not include revaluation which will now be applied on 6 April 2023. Therefore, there is no mechanism to apply a revaluation adjustment to the opening balance of 1 April 2023 when the deferred account is opened.

Regulation 24(4B) applies the revaluation adjustment due on 6 April 2024 - this applies to the balance of the pension account at the end of 31 March 2024.

This issue is replicated in regulations 25 and 27, when retirement and flexible retirement pension accounts are opened from active status.

Issue 2: A similar issue has now been created when a member leaves active membership on 5 April.

Example 2: A member leaves active membership on 5 April 2024 and becomes a deferred member on 6 April 2024.

It is not clear whether the member is covered by Regulation 24(4A) (because they became deferred on 6 April) or regulation 24(4B) (because their last day of active membership was 5 April). There is a risk that the member in this example would miss out on the revaluation due on 6 April 2024.

This issue is replicated in regulations 25 and 27, when retirement and flexible retirement pension accounts are opened from active status.

Recommendation

We recommend that regulations 24(4A), 24(4B), 24(7), 25(4A), 25(6) and 27(5) make reference to the 'member's last day of active membership' (or 'the member's notional last day of active membership' for 27(5)) instead of, as the case may be, when the member:

- ceased to be an active member and became a deferred member
- became a deferred member
- became entitled to immediate payment
- became a pensioner member.

If this recommendation is taken forward, consequential amendments will need to be made to regulations:

- 43 (Death grants: deferred, pension credit and deferred pensioner members),
- 44 (Survivor benefits: partners of deferred and deferred pensioner members),
- 45 (Survivor benefits: children of deferred members),
- 46 (death grants: pensioner members),
- 47 (Survivor benefits: partners of pensioner members), and
- 48 (Survivor benefits: children of pensioner members).

There is a similar issue when applying regulations 41(5) (Survivor benefits: partners of active members) and 42(12) (Survivor benefits: children of active members) where the member died on 31 March. This is because the survivor pension account is opened on the day after death.

Regulations 26 (Retirement pension accounts) and 28 (Deferred member pensioner accounts)

Regulations 26 and 28 do not reference revaluation adjustment. We have an outstanding query concerning this existing issue with the regulations. Please see page 28 of the [LGA regulation queries] document. We have included the relevant extract below for your convenience. Resolution of this query will now need to take account of the change in the revaluation date from 1 April to 6 April.

Deferred, deferred pensioner and pension credit members, deferred pensioner member accounts

Regulations 44(5) and 45(12) provide that if a member ceases to be an active member, becomes a deferred member and dies all within the same Scheme year, the survivor accounts are credited with a proportion of the revaluation adjustment that the member would have received at the beginning of the Scheme year following cessation of active membership. Unfortunately, the regulations overlook the need to have the same provision in regulation 26 to deal with cases where a member ceases to be an active member, becomes a deferred member and starts to draw pension all within the same Scheme year. Thus, an additional paragraph is needed in regulation 26. Similarly, regulation 28 needs an additional paragraph to deal with cases where a member ceases to be an active member, becomes a Tier 3 pensioner member and has the Tier 3 pension stopped all within the same Scheme year.

Club transfers

If these proposals are taken forward, revaluation will apply on different dates in different public service pension schemes. Care will be needed to ensure that a member transferring career average benefits from one scheme to another does not miss out on revaluation, nor do they benefit from double indexation.

If a transfer value is calculated between 1 April and 5 April, the member could receive indexation twice if the sending scheme applies revaluation on 1 April and the receiving scheme on 6 April. They may miss out on revaluation for a year if the sending scheme applies revaluation on 6 April and the receiving scheme on 1 April.

We do not believe that this issue necessitates any changes to the LGPS regulations. Changes may be required to the public sector transfer club memorandum to ensure fair and consistent outcomes for transferring members.

Questions raised in the consultation

Question 1. Do you agree or disagree that the annual revaluation date should change from 1 April to 6 April? Please explain why.

We agree in principle with the change; however, we do not agree with the timing.

We agree that changing the date of annual revaluation from 1 to 6 April on the basis that inflation should not be taken into account when measuring pension growth for the annual allowance. The change will prevent many members exceeding the annual allowance due to the spike in CPI this year.

However, this issue has existed since the pension input period (PIP) was aligned with the tax year in 2016/17, so could have been rectified at a much earlier date.

Introducing the change at a time when administering authorities' resources are already over-stretched is particularly unwelcome. Administering authorities are currently dealing with many challenges including the McCloud remedy, the introduction of pensions dashboards and the new single code from the Pensions Regulator. Recruitment and retention remains an issue in the sector, with the average vacancy rate being around 10 per cent.

In addition, consulting on a policy change that will take effect seven weeks from the start of a two-week consultation is very challenging for administering authorities and software suppliers. Pension software suppliers have already confirmed it will not be possible to adapt their systems in time for 1 April 2023. This means administering authorities will need to undertake manual calculations, which are labour intensive and subject to human error.

Also, a two-week consultation does not give enough time for respondents to provide a considered response.

Question 2. Do you agree that the policy aim for regulation 21 is delivered through the draft regulations?

Yes, we agree the policy aim for regulation 21 is delivered through the draft regulations, but please see our answer to question eight.

Question 3. Do you agree that the policy aim for regulation 23 is delivered through the draft regulations?

Yes, we agree the policy aim for regulation 23 is delivered through the draft regulations.

Question 4. Do you agree that the policy aim for regulations 24 and 25 is delivered through the draft regulations?

We agree that the policy aim for regulations 24 and 25 is delivered through the draft regulations, other than where the member's last day of active membership is 31 March or 5 April. We have set out the issue and a recommendation for resolving it in the general technical comments section of this response.

We understand the intention is for 'the revaluation date' to be the next 6 April. We suggest this is made clearer to remove any doubt. We recommend changes to inserted regulations 24(4B) and 25(4A) to make it clear that 'the revaluation date' is the next 6 April following the end of active membership.

Question 5. Do you agree that the policy aim for regulation 27 is delivered through the draft regulations?

Not for the cases listed below:

- where the member's notional last day of active membership is 31 March or 5 April. We have set out the issue and a recommendation for resolving it in the general technical comments section of this response.

- amendment regulation 3(4)(a) amends regulation 27(5). The amendment uses the phrase 'a flexible retirement pensioner member'. This is not defined or used elsewhere in the regulations. We suggest changing this to 'entitled to that pension.'

Question 6. Do you agree that the policy aim for regulations 41, 42, 44, 45, 47 and 48 is delivered through the draft regulations?

- There is an existing issue where the date of death falls between 1 April and the next pensions increase date. The regulations appear to indicate that pensions increase will not be applied on the pension increase date immediately following the date of death. We suggest deleting the following wording in regulation 44(6)(b) 'opening' and 'for the following scheme year'. This suggestion applies equally to regulations 45(13)(b), 47(6)(b) and 48(13)(b).

  Example: Member leaves active membership on 31 August 2022 and dies on 1 April 2023. Survivor benefits are payable from 2 April 2023. Amendment regulation 6(1)(a) inserts new regulation 44(4A). This applies a revaluation adjustment in the survivor account on 6 April 2023, deemed to apply from the date of death. However, regulation 44(6)(b) states that it is the opening balance in the member's survivor account for the ‘following’ scheme year to which pensions increase is applied. The balance for the survivor’s following scheme year is that on 1 April 2024 and not the balance on the date of death. This means that pensions increase due on 10 April 2023 is missed.

- amendment regulations 4(1)(a), 4(2)(a), 5(1)(a), 6(1)(a), 6(2)(a), 6(2)(b), 6(2)(c), 6(2)(d), 7(1), 7(2)(a), 7(3)(a), 7(3)(b), 7(3)(c) and 7(3)(d) insert the following wording into the regulations ‘the pension is deemed to include the revaluation adjustment due at the next revaluation date’. As the member died before the next revaluation date, the revaluation adjustment will not be due on the member’s notional pension / actual pension – it will be due to the survivor. We suggest changing the wording to ‘the pension is deemed to include the revaluation adjustment that would have been due at the next revaluation date.’

- amendment regulation 6(2)(e)(ii) amends regulation 45(12). The amendment regulation says, ‘the Scheme year in which the member became a pensioner member’. Regulation 45 covers children of deceased deferred members. We suggest the wording refers to the scheme year in which the survivor account was opened.

- amendment regulation 6(2)(g) inserts a new regulation paragraph (14) in regulation 45; this should be changed to either (13A) or (15) as a paragraph (14) already exists.

- amendment regulation 7(2)(f) refers to ‘(13(a)’. This should be changed to ‘(13)(a)’.

Question 7. Do you agree that the policy aim for regulation 43 and 46 is delivered through the draft regulations?

- amendment regulations 4(1)(a), 4(2)(a), 5(1)(a), 6(1)(a), 6(2)(a), 6(2)(b), 6(2)(c), 6(2)(d), 7(1), 7(2)(a), 7(3)(a), 7(3)(b), 7(3)(c) and 7(3)(d) insert the following wording into the regulations ‘the pension is deemed to include the revaluation adjustment due at the next revaluation date’. As the member died before the next revaluation date, the revaluation adjustment will not be due on the member’s notional pension / actual pension – it will be due to the survivor. We suggest changing the wording to ‘the pension is deemed to include the revaluation adjustment that would have been due at the next revaluation date.’

- amendment regulation 5(1)(b) inserts ‘and paragraph (3A) does not apply’ at the end of regulation 43(5). To ensure the full stop is in the right place, the wording should be inserted before “.”

- amendment Regulation 7(1) inserts new regulation 46(6). The regulation says

‘…payable in accordance with paragraph (3) (but not for the purposes of a death grant derived from a pension credit payable in accordance with paragraph (4)), if the member-’. For simplicity, we suggest changing this to ‘For the purposes of paragraph (3), if the member-’. The revised wording also ensures that pension credit death grants are not covered by regulation 46(6), as these death grants are calculated under paragraph (4).

Question 8. Do you agree that amending the definition of “revaluation adjustment” and the new definition of “revaluation date” in Schedule 1 delivers the policy aim?

We agree the policy aim is delivered regarding the amendment to the definition of ‘revaluation adjustment’ in Schedule. However, there is an existing issue with the definition not reading clearly within the context of regulation 21(6) – assumed pensionable pay (APP). We recommend that a specific definition of ‘revaluation adjustment’ for the purpose of regulation 21(6) is added to regulation 21.

The definition in schedule 1 refers to an amount applied to a “pension account”, this does not happen when applying a revaluation adjustment to APP.

Our suggestion also makes clear that the percentage to be applied on the first day of the second scheme year in which the APP applies is the percentage that would apply to CARE balances on the next 6 April, rather than the percentage that applied to CARE balances on the previous 6 April.

Question 9. Are there any further considerations and evidence that you think DLUHC should take into account when assessing any equality issues or adverse impacts arising as a result of the proposed changes? Please explain and provide evidence where appropriate.

None that we are aware of.