



Department for
Communities and
Local Government

Transforming Rehabilitation Programme and the Local Government Pension Scheme

Government response to the Consultation

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Introduction

1. In “*Transforming Rehabilitation: A Strategy for Reform*”, the Secretary of State for Justice set out plans to introduce a new system for the management and rehabilitation of offenders in the community across England and Wales. The majority of probation services are currently delivered by 35 Probation Trusts under contract to the National Offender Management Service on behalf of the Secretary of State for Justice. Once the Secretary of State for Justice’s reforms are fully implemented, these will be closed and replaced with 21 Community Rehabilitation Companies which will be owned by private and voluntary sector providers, and the newly formed National Probation Service, which will be in the public sector and part of the National Offender Management Service.
2. On 16 December 2013, the Department for Communities and Local Government published *Transforming Rehabilitation Programme and the Local Government Pension Scheme*, which set out amendments to the Local Government Pension Scheme Regulations 2013 to facilitate the continued participation in the Local Government Pension Scheme (the **Scheme**) by employees engaged in the provision of probation services. The Regulations provide for the benefits of all probation service employees (past and present) to be administered by one administering authority and for the transfer of all past service liabilities in relation to those employees to that one authority.
3. The consultation ran for 8 weeks and closed on 10 February 2014. A copy of the paper can be found at: <https://www.gov.uk/government/consultations/transforming-rehabilitation-programme-and-the-local-government-pension-scheme>
4. This document summarises the responses to the consultation.

Summary of main consultation responses

Local Government Pension Scheme (Offender management) Regulations 2014

Fourteen organisations responded to the consultation; nine Scheme Administrators, three independent companies, one employer representative body, and one staff representative body.

Please note that the references in brackets are to the relevant provision in the Local Government Pension Scheme Regulations 2013 (2013 Regulations).

Question 1: Are there any other categories of member who are or who have been engaged in the provision of probation services that are missing from Regulation 3 i.e. in relation to whom responsibility should be transferring to the Secretary of State?

Comments

Two respondents were concerned that not all residual probation liabilities are included with the transfer of deferred and pensioner liabilities moving to the National Probation Service. The respondent requested an amendment to the Statutory Instrument to cover probation liabilities, that were left in the fund 13 years ago, and which are currently being covered by employers who have no responsibility for the probation service.

Government Response

All outstanding Probation Trust liabilities relating to deferred and pensioner members are transferring to the National Probation Service. Most predecessor probation board liabilities should have transferred to the Probation Trusts. In relation to those liabilities which are not currently the responsibility of a Probation Trust, liabilities will transfer unless those liabilities have been the subject of an exit payment in the past. The Regulations permit the Secretary of State to specify that Regulation 3A (and Regulation 104) applies to other persons engaged, either currently or in the past, in the provision of probation services. Subcontractors of the Probation Trusts that have since ceased participation in the Scheme will not be covered unless the employees were transferred from the subcontractor back to the Probation Trust and the Probation Trust took responsibility for their past service liabilities.

Comments

Two respondents requested that preserved refund members be included within the categories of member covered by regulation 3.

Government Response

Regulations 3A(5)(a) and 104(3) have been amended to make it clear that preserved refund entitlements will become the responsibility of the Greater Manchester Pension Fund.

Question 2: Are there any additional transitional provisions required to facilitate the pensions aspects of the Transforming Rehabilitation Programme as they relate to the Local Government Pension Scheme? In particular, the draft regulations set out a

process whereby the future funding of liabilities relating to deferred and pensioner members who were previously employed by the Probation Trusts (and their predecessor probation boards) will be transferred to the responsibility of the National Probation Service? Do the draft regulations achieve their aim?

Comments

Five respondents suggested that the regulations were deficient in dealing with how costs could be recovered by transferring funds from the Greater Manchester Pension Fund or the Secretary of State.

Government Response

The mechanics set out in the Regulations for achieving an orderly transfer of assets and liabilities between Scheme funds are designed to minimise the need for incurring costs, over and above the costs usually incurred in effecting bulk transfers of benefits. Administering Authorities have been informed that they can recover any 'reasonable' costs associated with the migration of data and assets to the Greater Manchester Pension Fund.

Comments

One respondent suggested that any delays in finalising the transfer date would lead to administrative complications around End of Year processing and the production of Annual Benefit Statements, causing significant cost.

Government Response

This issue has been ameliorated by the deferral of the transfer date from 1 April to 1 June 2014. In any event The Greater Manchester Pension Fund will undertake year end activity for active members for the 2013/14 financial year, as well as Annual Benefit Statements for these members. For deferred members it is expected that ceding funds will have processed Pension Increases for 2013/14, but that the Greater Manchester Pension Fund will distribute Annual Benefit Statements.

Question 3: Do the regulations and proposed actuarial guidance provide sufficient detail and guidance for the transfer of assets and liabilities from the funds of the current administering authorities to the Greater Manchester Pension Fund?

Comments

Four respondents suggested that it was unfair that the 'permitted assets' in relation to the transfer payment should be restricted to a narrow range of pooled vehicles which track market capitalisation weighted indices

Government Response

The regulations were drafted to ensure an efficient transfer and so no changes have been made. Any such changes would significantly increase the complexity of the transfers, costs and timescales. Given that the percentage of liabilities transferring from each administering authority is relatively small (of between 1.1% and 10.7%) it is not anticipated that this should be a significant issue for any administering authority in practice.

Comments

Two respondents noted that it was not clear if the return applied under paragraph 2.1 of the actuarial guidance was gross or net of investment expenses (excluding transaction costs). It should reference net returns as calculated by the transferring Fund. In addition, under paragraph 2.6 an appropriate deduction for expenses should be made after applying the indexed returns as agreed between the existing fund and the Greater Manchester Pension Fund. They proposed that this be formalised in an Actuary's Letter which would be supplemental to the actuarial guidance provided by Secretary of State.

Government Response

The actuarial guidance has been amended to reflect the fact that returns net of investment manager fees are to be included where these are applicable. A 0.3% per annum allowance for fees will be applied to gross return figures only.

Comments

Two respondents noted that paragraph 2.4 of the actuarial guidance referred to the use of the IPD UK Index All Property Monthly Total Return. Given that this index is only published monthly, it was suggested that an index which is published daily such as the FTSE All UK Property (Gross asset value) total return index was more appropriate for use in the calculation.

Governments Response

The IPD UK Index All Property Monthly Total Return is the most appropriate index for this calculation and will ensure a consistent approach across all transfers. The FTSE All UK Property (Gross asset value) total return index would not be preferable because, over short periods, it correlates more with equity markets than property markets.

Comments

One respondent noted the "refreshed calculation" in paragraph 2.6 of the actuarial guidance and that they would expect this to include any refinements to the data provided on cash flows and potentially membership categorisation changes identified e.g. if members were omitted or incorrectly allocated to the Probation employers. Whilst some due diligence would be expected, this is likely to only be finalised once the records are transferred.

Government Response

Data on cash flows before June 2014 has to be received by 1 July 2014 and there are then 120 days to agree the "Transfer Share as at 1 June". The drafting aims to keep the process as straightforward and efficient as possible. It was intended to provide finality to the "Transfer Share as at 1 June" and leave only roll forward calculations to be undertaken, expediting the transfer process.

Question 4: Do the regulations strike the right balance between flexibility and prescription in relation to the mechanics of agreeing the transfer share and payment date?

Comments

Five respondents commented on the transaction cost allowance specified in the actuarial guidance. The allowance for transaction costs is shown as 0.2% of the proportion of the transfer share paid in cash. It was suggested that transaction costs were likely to vary in liquidating assets and therefore it should be possible to vary the transaction cost allowance of 0.2% by agreement between the transferring fund and the Greater Manchester Pension Fund. There was also the suggestion of a default figure only being used if agreement could not be reached.

Government Response

The Statutory Instrument and the actuarial guidance have been drafted on the basis of ensuring certainty and simplicity and in light of the fact that no provision is usually made for transaction costs on bulk transfers. The intention is for a standard, pragmatic approach to be implemented for all Administering Authorities and to avoid long-running negotiations and disputes. The 0.2% figure was reached after taking actuarial advice. If provisions were made for negotiations over transaction costs, this would extend the transfer timelines and the complexity of the transfer process. There would also be difficulties associated with verifying what transaction costs were actually incurred and this would give funds little incentive to minimise such costs.

Comments

Two respondents noted that the calculation of the investment return for periods when the actual return is not available appeared to provide for two options using associated asset class indices. Whilst this does provide some flexibility, it may also be more appropriate to assume that the return is based on the market movement of the assets to be transferred.

Government Response

The actuarial guidance provides an appropriate balance of certainty and flexibility for all parties involved.

Comments

One respondent requested flexibility in the actuarial guidance, to improve, where possible, the accuracy of the transfer share calculation. They requested that daily, weekly or monthly, rather than quarterly, time series be used for the calculation if available. Similarly, it was requested that significant investment cash flows be accounted for, particularly across periods when there is a strong move in asset prices, as this is when the maximum error can arise.

Government Response

The actuarial guidance has been amended to refer to a monthly rather than quarterly basis as requested. Calculations of actual investment returns routinely allow for significant investment cash flows.

Question 5: Do you have any comments on the timescales for reaching agreement on, and achieving the transfer of assets and liabilities set out in the draft regulations and the proposed interest chargeable in the event that a transfer is not made in accordance with payment dates agreed or notified under the regulations?

Comments

Six respondents questioned the penalty interest charge of 3% per annum to be applied if the payment date cannot be agreed and the contingency dates under regulation 104(7) are breached.

Government Response

The penalty interest provision has been amended and will now only be charged if payment is not made within three months of the payment date. The penalty charge is included to encourage cooperation and ensure efficiency in the transfer process.

Comments

One respondent commented that for the liquid aspect of a transfer, the timescales were workable and the interest rate proportionate. However, where complex liquidation of assets is required to maintain equity between the classes of stakeholders, the relevant processes could be protracted.

Government Response

The regulations were drafted to ensure an efficient transfer. The penalty interest provision has been amended and will now only be charged if payment is not made within three months of the payment date. The penalty charge is included to encourage cooperation and ensure efficiency in the transfer process.

General comments

Detailed drafting points were made by a number of respondents many of which were incorporated. Also a number of questions were asked and these also lead to clarificatory amendments to the regulations, for example making it clear that relevant deferred and pensioner liabilities will be transferring to the Greater Manchester Pension Fund for ongoing funding by the Secretary of State for Justice (through the National Probation Service) and that liabilities in relation to former employees of Probation Committees are transferring to the Greater Manchester Pension Fund. It is also confirmed that the Rule of 85 protections will be retained and that transferring employees who are eligible to join the Scheme but who have not yet done so or who have opted out of membership, will retain their right to join under the Staff Transfer Scheme. However new probation staff, and members re-joining a Community Rehabilitation Company having left employment voluntarily, will not have an automatic right to access the Scheme.

A number of respondents raised an issue in relation to the transfer of Additional Voluntary Contribution funds. In light of this the regulations require that administering authorities and the Greater Manchester Pension Fund cooperate to allow members to continue contributing to their current arrangements if they wish to (see Regulation 104(13)).

Other questions were raised that were more relevant to the competition and award of contracts to the private and voluntary sector bidders. These are being responded to in the course of that process.