

LOCAL GOVERNMENT PENSION SCHEME RULE OF 85 PROTECTIONS – RESPONSE TO STATUTORY CONSULTATION

PORTFOLIO RESPONSIBILITY: CORPORATE AND CUSTOMER SERVICES AND HUMAN RESOURCES

CABINET

20TH SEPTEMBER, 2007

Wards Affected

None

Purpose

To endorse the proposed response to the statutory consultation being undertaken by the Communities and Local Government (CLG) Department to extend the current protections in place for the Local Government Pension Scheme (LGPS) in England and Wales. This would affect older Scheme members following the removal of the rule of 85 with effect from 1st October, 2006.

Key Decision

This is not a Key Decision.

Recommendation

THAT the response to the statutory consultation be endorsed.

Reasons

To provide a prompt and comprehensive response to the statutory consultation exercise in order to influence the proposals and ensure that Herefordshire Council retains a LGPS that is affordable to Herefordshire, as well as remaining valued by current and prospective employees.

Considerations

1. Prior to 1st October 2006 provisions within the Local Government Pension Scheme (LGPS) allowed members who voluntarily retired before age 65 to take unreduced benefits if their combined age and calendar length of membership (both in whole years) added up to 85. This was known as the "85 year rule".
2. The Local Government Pension Scheme (Amendment) and (Amendment No.2) Regulations 2006 provided for the phasing out of the "85 year rule" from 1 October 2006. Transitional protection was provided for older members who would be aged 60 or over by 31 March 2013. Further protection was agreed following industrial action in March 2006.

Further information on the subject of this report is available from David Johnson Head of Human Resources on (01432) 383055

3. The current protections provide that LGPS members who are 60 on or before 31 March 2016 will be able to retire at 60 with an unreduced pension if they qualify for the 85 year rule. Those who are 60 between 1 April 2016 and 31 March 2020 will have their benefits reduced on a tapered basis.
4. CLG carried out an informal consultation with Scheme stakeholders between 16 May and 13 June 2007 on alternatives to the current protections. In light of the responses received, the Minister for Local Government, Phil Woolas, then announced a twelve week statutory consultation exercise to consider providing full, rather than tapered, protection to 2020. The deadline for response to the statutory consultation is 1 October 2007.
5. To meet the Government's longstanding policy on affordability, the costs of implementing any amendments must be made from elsewhere in the Scheme. Consultees have been asked to express a preference for a specific way of offsetting the costs of extending transitional protection. Ministers have confirmed that, if no statutory and agreed means of providing the increased protections emerge from the consultation, the present level of tapered protections will remain.
6. Following a judicial review the High Court has judged that the 85 year rule is discriminatory on the grounds of age. Any increase to the existing protections would therefore need to be objectively justified.

Cost estimates

7. The cost of the existing levels of protection have been calculated at £50 million a year over 20 years (in real earnings terms).
8. The Government Actuary's Department has estimated that the capital cost of removing the current level of tapered protections between 2016 and 2020 is £0.35 billion - £0.4 billion. This equates to 0.1% of payroll or an estimated £25 million annually, for 20 years and would increase the total cost of protection to £75 million per year. The costs for individual administering authorities will vary depending on the number of Scheme members who qualify and their age and service characteristics.
9. Worcestershire pensions administering authority have confirmed that members of the fund attaining age 60 within the current tapered protection period amount to 12% of total membership. Of those members 27% will satisfy the rule of 85. If tapering was removed and full protections up to 2020 were applied there would be an increase in costs to the pension fund and the employer. The fund actuary will include costs of the proposed increase in protection in its 3-year valuation, however this information will not be available until November 2007.

The Union position

10. Union feedback has been sought at the local level. Both nationally and locally, Unison has asked Herefordshire Council to respond positively to the CLG consultation. No other local unions have responded.
11. In supporting the proposed amendments, Unison is citing fairness and equality for LGPS members in England and Wales in comparison to Scotland where full protection to 2020 has already been agreed. In addition, Unison believe that the costs of increased protections can be met from savings provided by the new look LGPS.

The national employers position

12. The Local Government Association's response to the informal consultation exercise did not support the extension of the existing protections as the additional costs would have to be met by new Scheme members. They have indicated that their response to the current consultation will be broadly similar.

Response to the Consultation

13. It is not recommended that Herefordshire Council supports the proposed extension of the existing protections. Even if a legally effective objective justification for the extension could be provided, the additional costs would need to be offset through further adjustments to the benefits package or an increase in employees' contribution rates. This would mean that new Scheme members would, in effect, be paying towards the cost of additional protections for existing members. We are, however, sympathetic to the inconsistencies this would produce for LGPS members in England and Wales in comparison to Scotland. Attached at appendix 1 is the text of the Council's proposed response.

Risk Management

14. The removal of the 85 year rule from the LGPS has generated strike action and a judicial review and is still very much a 'live' issue for the unions. 97.1% of Unison members have voted in favour of the new look LGPS but did so in the context of the Government commencing this statutory consultation exercise.
15. Herefordshire Council will review its contingency plan to deal with the consequences of any proposed industrial action ballot. Systems are already in place following the trade union industrial action over the abolition of the 85 year rule on 28 March 2006.
16. If full protection is not extended to 2020 the Council would need to consider how to address issues arising from cross-border transfers of employees from Scotland. However, given our location in proximity to the Scottish border, this is not considered a high risk.

Alternative Options

An alternative option is not to respond. This is not a recommended action as it is important that the views of all employers are made known to the CLG and inform the final decision making process.

Consultees

Pensions Administering Authority – Worcester

Trade Unions

Appendices

Appendix 1 – RESPONSE TO LGPS STATUTORY CONSULTATION – CONTENT

Background Papers

None identified