

Local Government Pension Scheme in England and Wales

Access and Fairness Consultation

Summary

This is an open consultation which covers a number of proposals relating to the Local Government Pension Scheme (LGPS). The closing date for the consultation is 7 August 2025.

The consultation aims to improve access to, and fairness in, the LGPS including addressing some long-standing issues regarding survivor benefits which relate to outcomes of legal cases which have not yet been reflected in the scheme's regulations.

The government has encouraged responses to the consultation to be submitted via its online survey to assist its analysis of the responses received.

Derbyshire Pension Fund's proposed response is set out in this document to mirror the online survey.

The full consultation document prepared by the Ministry of Housing, Communities and Local Government (MHCLG) and draft changes to the LGPS regulations reflecting the government's proposals are available from the government's website:

[Local Government Pension Scheme in England and Wales: Access and fairness - GOV.UK](https://www.gov.uk/government/consultations/local-government-pension-scheme-in-england-and-wales-access-and-fairness)

Pensions and Investments Committee

The Pensions and Investments Committee is responsible for the management and administration of Derbyshire Pension Fund (the Fund) on behalf of the Council as the administering authority of Derbyshire Pension Fund.

The Committee agreed at its meeting on 16 July 2025 to delegate approval of the Fund's response to the consultation to the Director of Finance in consultation with the Chair of the Committee.

Proposed response

The Consultation is divided into six main chapters, each reflecting the government's proposals in a particular area of the LGPS.

A seventh chapter includes questions about the administrative impact of the proposals.

This document includes the background to each chapter which is included in the online survey, and the consultation's questions with the Fund's proposed response shown in blue.

Responses have not been provided where proposals do not have an impact on the Pension Fund.

Chapter 1 – Survivor Benefits

Background

When a member of the LGPS dies, their survivor (surviving spouse, civil partner or eligible cohabiting partner) will receive pension benefits, in the form of a survivor's pension (regular monthly payment). In some cases, their beneficiary may receive a death grant (lump sum). This applies whether the member was an active, deferred, or pensioner member.

This chapter of the consultation sets out proposed changes to the LGPS in relation to survivor benefits. Currently, there are cases where survivors of same-sex marriages and same-sex civil partnerships are eligible to receive a more generous pension entitlement than survivors of opposite-sex marriages and opposite-sex civil partnerships. This does not reflect the government's commitment to equality regardless of marriage or partnership status. In addition, parts of the LGPS Regulations still require that cohabiting partners of LGPS members would only be eligible for survivor benefits if a signed declaration form nominated them as the survivor. This nomination requirement has been disapplied by the courts.

In relation to death grants, current regulations require a member to have died before age 75 for their beneficiary to receive a death grant. Changes to the Finance Act 2004 mean that age cap is no longer appropriate.

Lastly, the LGPS Regulations currently require that a death grant has to be paid to personal representatives if not paid within two years of member death. This affects the charge applied to it even though the Finance Act (No.2) 2015 means this is no longer required.

The government proposes to equalise the survivor pension entitlement of all members, regardless of the sex of the eligible member or their survivor, and to update regulations on survivor benefits and death grants in relation to these points. Further detail on the background and proposals is set out in the rest of this chapter.

Summary of proposals

| Survivor Benefits | |
|---|--|
| Area | Proposal |
| Pension entitlement equalisation | Modification of the LGPS Regulations to ensure that the survivor pension payable to the survivor of a marriage or civil partnership with a member is calculated in the same way, regardless of the sex or sexual orientation of the member or survivor. This equalisation is proposed to be to the highest level of entitlement currently available (given the date of the marriage or civil partnership) and to be backdated. |
| Cohabitee survivor pensions | Modification of the Benefits Regulations to remove the requirement for a signed nomination form in the case of qualifying cohabitee survivors, retrospective for any individual who stopped being a member between 1 April 2008 and 31 March 2014. Additionally, amendment of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 to remove reference to a nomination requirement, with no retrospective application. |

| Death Grants | |
|---------------------------------|--|
| Area | Proposal |
| Age 75 cap | Removal of the age 75 cut-off on eligibility for death grants, backdated for all deaths on or after 1 April 2014. |
| Personal representatives | Removal of the requirement on administering authorities to pay the death grant to the personal representative where it hasn't been paid within the two-year limit, applicable for all death grants yet to be paid. |

Survivor Pension Entitlement Equalisation

Background

A survivor pension is an annual pension, paid monthly to an eligible survivor of a scheme member. Over time, survivors of opposite-sex marriages, survivors of same-sex civil partnerships (SSCPs), survivors of cohabiting couples, survivors of same-sex marriages, and survivors of opposite-sex civil partnerships (OSCPs), have all been given eligibility to receive survivor pensions.

The Equality Act 2010 replaced and consolidated a series of previous pieces of anti-discrimination legislation. This meant that, for the first time, discrimination on the grounds of sexual orientation was prohibited. However, the Act also included an exception, in that it was not deemed discriminatory to disregard pensionable service prior to 5 December 2005 when calculating pension entitlement for survivors of same-sex partnerships i.e., the differing treatment of people in same-sex relationships compared to people in opposite-sex relationships was permitted.

In *Walker v Innospec*, 2017, a male member brought a case against his private defined benefit scheme, claiming that his male spouse should be entitled to the same survivor benefits which would be paid to a member who predeceased a wife in an opposite-sex marriage. The court found that the spouse's survivor pension should be calculated on the whole period of the member's service (provided they were married at the time of death), as opposed to the period since 5 December 2005. Accordingly, in 2018 the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 ('the 2014 Regulations') were amended to equalise the final salary survivor benefit entitlements of surviving same-sex spouses and civil partners with those received by widows of opposite-sex marriages.

The 2014 Regulations rules on survivor benefits were further amended when OSCP were introduced in 2019. These amendments specified that for male and female opposite-sex civil partners, the survivor pension should be calculated in the same way as it was for widowers and widows respectively. After this point, the calculation of survivor pension entitlement has been dependent on a number of factors, including whether the 1995, 1998 or 2008 Scheme rules applied, the date the marriage or civil partnership took place, and the specific circumstances in which additional periods of service could be taken into account. The cumulative effect has been that:

1. Survivors of same-sex marriages, survivors of SSCP, and female survivors of opposite-sex marriages have had their survivor pension calculated based on the relevant member's service since 1978.
2. Male survivors of opposite-sex marriages have had their survivor pension calculated based on the relevant member's service since 1988.

In *Goodwin v Secretary of State for Education*, 2020 a female member of the TPS successfully argued that the TPS unlawfully discriminated against women in opposite-sex marriages or civil partnerships, when compared to women in SSCPs. This case highlighted that pensionable service was only considered from 1988 when calculating the survivor pension of an opposite-sex survivor of a woman, whilst service would be considered from 1978 when calculating the survivor pension of a same-sex survivor of a woman. The TPS rules were changed accordingly to provide male survivors of an opposite-sex marriage or civil partnership with a member with the same entitlement as all other survivors of a marriage or civil partnership with a member.

The LGPS in England and Wales has similar rules to survivor eligibility as the TPS but has not changed its approach to calculating survivor benefits since the *Goodwin* case. The LGPS in Scotland ('the LGPS Scotland') and the LGPS in Northern Ireland ('the LGPS NI') have changed their approaches following the case, backdating those changes to the point at which the relevant regulations came into force. In both the LGPS Scotland and the LGPS NI the changes were backdated to 1 April 2015. This is the date on which [the LGPS \(Transitional Provisions and Savings\) \(Scotland\) Regulations 2014](#) and the LGPS (Amendment and Transitional Provisions) (Northern Ireland) Regulations 2014 came into force (and the date on which the career average revalued earnings (CARE) schemes were introduced in Scotland and Northern Ireland). The amendments were made so that the changes applied in relation to the death of any member after 5 December 2005, the date that SSCPs were first introduced. The changes being proposed here are intended to have the same effect, that they will in effect be backdated to cover any death of a member after the date that the relevant relationship type was first introduced.

Proposal

The government proposes to amend the survivor benefit rules of the LGPS, to ensure that all survivors are treated equally with regards to entitlement to survivor pensions, regardless of the sex of either the eligible member or their survivor. This uplift would include addressing the point highlighted in *Goodwin*, of the male spouse or civil partner of a female member being treated less favourably than the female spouse or civil partner of a female member.

The government has identified that in the majority of cases, the most generous benefit entitlement is that due to survivors of SSCPs. In a small number of cases there is no comparable benefit entitlement due to survivors of SSCPs (because the point of comparison comes from before the introduction of SSCPs), in which case the most generous benefit entitlement due is to female survivors of opposite-sex marriages.

As a remedy, the government proposes to amend the 2014 Regulations to ensure that all survivor benefits are calculated by uplifting the entitlement of all groups to either the entitlement due to survivors of SSCPs, or when that is not applicable, to the benefit entitlement due to female survivors of opposite-sex marriages. This would go further than uplifting the entitlement of male survivors of an opposite-sex marriage or civil partnership.

The government proposes that the survivor benefits due to eligible members should also be backdated, to the point at which the underlying relationship types were recognised in UK law:

1. For widows of opposite-sex marriages and widowers of opposite-sex marriages, backdating for deaths that occurred from 5th December 2005.
2. For widows of same-sex marriages and widowers of same-sex marriages, backdating for deaths that occurred from 13th March 2014.

3. For survivors of opposite-sex civil partnerships, backdating for deaths that occurred from 31st December 2019

Q1 - Do you agree with the government's proposed amendment of survivor benefits rules?

Yes

We agree with the proposal to remove the discrimination identified in relation to the calculation of survivor benefits.

Q2 - Do you have any comments on the intended approach to equalising survivor benefits?

We agree with the intended approach to equalising survivor benefits, however, due to the potential complexity of implementing the proposed survivor benefit regulations, it is requested that statutory guidance is provided on the implementation of the proposals to ensure a consistent approach is adopted across LGPS funds.

Q3 - Do you have any comments on the administrative impact, particularly in identifying cases where calculations of past benefits would need to be revisited?

The administrative impact for LGPS funds in identifying cases back to 2005 that are 'in scope' for a potential recalculation of survivor benefits will be challenging.

With corrective recalculations potentially being backdated up to 20 years, identifying and recalculating cases will involve significant amounts of manual investigation and corrective work. It is also likely that some LGPS funds will have used multiple pensions software systems during this period.

Further added complications will arise through the need to prepare arrangements for tracing relatives of now deceased recipients of survivor pensions.

Some cases may come to light where a female member who died on or after 5 December 2005, only had LGPS membership before 6 April 1988 resulting in a potential retrospective survivor pension becoming due. Tracing relatives to highlight the possibility of a backdated survivor pension to a potential beneficiary in such cases will be difficult.

LGPS funds will need to be mindful of the sensitive nature of reopening calculations for survivor benefits which resulted from the death of relatives' former spouses and partners and of managing expectations about the extent of any potential payments.

Corrective processes will require the utilisation of the most technically skilled and experienced LGPS practitioners who already have significant workloads related to other LGPS priorities such as the implementation of the McCloud remedy and preparations for Pensions Dashboards.

Q4 - Do you have any further comments on the proposed changes?

In order to ensure that LGPS funds achieve a full understanding of the proposals, expectations and related procedures, clear and promptly issued statutory guidance will be essential which sets out an approach that all funds can follow so there is consistency in applying the remedy, including steps to follow in respect of:

- tracing survivors where a pension is no longer in payment
- where the survivor is deceased, and their Estate has been closed
- interest on revisions of survivor benefits
- tax implications on revisions

- possible refunds where the scheme member elected to make payments to increase widower's pension by counting membership before 6th April 1988 (see para C14 of The Local Government Pension Scheme Regulations 1995)

In recognition of the level of complexity in implementing the proposals, it would be helpful for any implementation deadline to be realistic and achievable.

Cohabitee Survivor Pensions

Background

When the Benefits Regulations came into effect on 1 April 2008, cohabiting partners were recognised in the LGPS for the first time. To simplify administration, the government introduced the category of 'nominated cohabiting partner' within the Benefits Regulations.

To be considered a nominated cohabiting partner, several conditions had to be met by the cohabitees, which were set out in the regulations. In addition, the scheme member would need to submit a signed declaration to the administering authority to confirm the eligibility requirements had been satisfied and that the member wished their survivor benefits to be paid to their cohabitee. In the absence of this signed form no survivor benefit would be paid, even if the cohabiting partner had satisfied all other eligibility criteria.

In *Brewster* (2017) UKSC 8, a survivor of a member of the LGPS NI challenged the scheme in respect of rules providing that cohabiting partners could only receive a survivor pension if their partner had duly nominated them. The Supreme Court ruled that this requirement was a form of unlawful discrimination and disapplied the rule. The ruling established that if all conditions other than the signed nomination form could be met, the survivor would be deemed eligible.

The LGPS maintained a similar nomination requirement from 1 April 2008 to 31 March 2014, until it was removed in the 2014 Regulations. However, the requirement of a signed nomination form for benefits related to members who died between 1 April 2008 and 31 March 2014 was not removed.

In *Elmes* (2018), the rules in the Benefits Regulations were challenged, on the requirement for members to have a signed nomination form in order for their cohabiting partner to be eligible for survivor benefits. The High Court granted a declaration that the requirement to nominate a cohabiting partner as a condition of eligibility was incompatible with the European Convention on Human Rights. The judgment disapplied the nomination requirement in the LGPS and applied the same remedy as in *Brewster* (2017).

In 2021, the department issued a letter (Letter to Funds) to administering authorities in the LGPS, with a related statement being issued by the Local Government Pensions Committee (LGPC Bulletin 161), that provided non-statutory guidance that allowed administering authorities to rely on the *Brewster* judgement and the Human Rights Act 1998 to not require a surviving partner to have been nominated. Though the Benefits Regulations have not been updated, the government's expectation is therefore that administering authorities have in practice disapplied the nomination requirement.

Additionally, it has been identified that there is also a nomination requirement in the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 ("the 2011 Regulations"). This requirement was originally required because the drafting of these Regulations was carried out in line with the then current LGPS Scheme, as defined in the Benefits Regulations, which required cohabiting partners to be nominated. As the nomination requirement in the Benefits

Regulations is no longer suitable, the government is proposing to remove the nomination requirement in the context of an injury also.

Proposal

The government now proposes to amend the Benefits Regulations to formally remove the nomination requirement for all deaths that occurred between 1 April 2008 and 31 March 2014. This will align the scheme's rules with the declaration disapplying the nomination requirement that the High Court provided for in *Elmes* (2018). This will mean that for any death that occurred between those two dates, qualifying cohabittees will be entitled to a survivor's pension, although as above the expectation is that these survivors will already be receiving their pension.

To qualify, a cohabitee must fulfil all conditions already set out in regulations other than the signed nomination. This is to say, a cohabitee will qualify for a survivor pension without a signed nomination form under this remedy if:

- a) The relevant member had been active in the scheme on or after 1 April 2008;
- b) The relevant scheme member's death occurred between 1 April 2008 and 31 March 2014;
and
- c) The survivor had met the following conditions for a continuous period of at least 2 years on the date the relevant member died:
 - The member and the survivor would be able to marry, or form a civil partnership; **and**
 - The member and the survivor were living together as if they were spouses or as if they were civil partners; **and**
 - Neither the member nor the survivor was living with a third person as if they were spouses or as if they were civil partners; **and**
 - Either the survivor was financially dependent on the member, or the member and the survivor were financially interdependent.

As the Benefits Regulations have been revoked (subject to some exceptions) the government proposes to make these changes through an amendment to regulation 3 of the 2014 Regulations. This provides that, insofar as the Benefits Regulations continue to have effect for the purposes of those exceptions, they apply with modifications.

The government proposes to apply these changes from the date the signed nomination form was required, and so the relevant change is backdated to apply from 1 April 2008.

In making any changes to the LGPS's rules, the government is mindful to manage costs. As stated in the judgement in the case of *Harvey, R (On the Application Of) v London Borough of Haringey & Anor*, 2018, pre-2008 schemes did not make provision for survivor pensions for cohabittees. This influenced the contribution levels set for employees and employers across the LGPS before 2008. If cohabittees were to be recognised, local government employers and employees would have to cover the costs. The government therefore does not propose to extend benefits to cohabittees of members who have not contributed to the LGPS on or after 1 April 2008. In effect, the government is not proposing to backdate earlier than 1 April 2008.

Regarding the 2011 Regulations, the government is proposing to also remove the nomination requirement from these regulations, with no retrospective application. The decision to not backdate the change in this case is because payments to survivors under the 2011 Regulations are discretionary, as opposed to an entitlement, and the government does not intend to revisit cases where the decision to award payment has already been made.

Q5 - Do you agree with the government's proposals to formalise the removal of the nomination requirement?

Yes

Q6 - Do you have any comments on the government's proposals to formalise the removal of the nomination requirement?

We agree that the legislation should reflect the correct legal position.

Q7 - Do you have any comments on the proposed approach to backdating?

Following receipt of the [letter from DCLG in August 2017](#) we decided to remove the requirement for a nomination form. The proposal will align regulation to procedures that are already likely to be in place across most LGPS funds.

In order to ensure that there is clarity on procedures for LGPS funds, statutory guidance should include steps which LGPS funds should take in a number of potential scenarios including:

- In the event of a potential co-habiting survivor contacting the relevant LGPS fund to claim a survivor's benefit for a death which occurred between 2008 and 2014 which had not been paid because their partner had not submitted a nomination form.
- Additionally, in a case as described above, where a child's pension may be/have been in payment at a higher rate because there was no eligible co-habiting partner when the payment commenced.

Death Grants (age 75 cap)

Background

In the LGPS, death grants are lump sums paid to beneficiaries of eligible members, due from the day after death. In most cases, the lump sum is initially set at 10 times the member's annual pension amount and reduces to nil over the 10 years following pension payment commencement. This is intended to ensure members or their beneficiaries receive a minimum pension benefit equal to 10 years pension regardless of when a member dies.

In the LGPS, Normal Pension Age (NPA) is equal to an individual's State Pension Age (SPA), which means that as SPA has risen NPA has followed. As a result, the age 75 death grant cap has become outdated, and beneficiaries of individuals who retired at an NPA over 65 have unintentionally been potentially excluded from death grant eligibility. For example, the beneficiary of an individual who retired at 66 (in line with their NPA and SPA) and then died between their 75th and 76th birthdays, would have been excluded from death grant eligibility.

Additionally, as the LGPS is a registered pension scheme, it must comply with overriding legislation, as made by the Department for Work and Pensions (DWP) and HM Treasury (HMT), that applies to all such schemes. In 2004, HMT legislated that death grants could only be paid in respect of members who died before age 75 and the current LGPS Regulations adopted that position. On 6 April 2011, HMT removed that age cut-off, but the current LGPS rules have not been updated accordingly and the cut-off remains.

Proposal

The government now proposes to amend the 2013 Regulations to remove reference to an age 75 limit on eligibility for death grant payments, and to amend the 2014 Regulations to disapply the

age 75 limit on death grants for individuals to whom the rules of the previous schemes continue to apply and who died on or after 1 April 2014.

The effect of the proposed changes is to remove the age 75 cut-off from LGPS Regulations, retrospective for all deaths of eligible members on or after 1 April 2014. The government understands that administering authorities have access to records enabling them to identify members eligible for the retrospective element of the proposal.

This proposal would align the LGPS in England and Wales with the LGPS NI, which removed it with retrospective effect to 1 April 2015 (the date at which the reformed legislation was introduced).

Q8 - Do you agree to the proposed amendments on death grants?

Yes

Q9 - Do you have any comments on the government's proposals to remove the age 75 cut-off from the LGPS Regulations?

We support the proposal to remove the age 75 cap on death grants which removes discrimination against scheme members' beneficiaries where the member continued working, or delayed drawing their pension, until reaching the increasing State Pension age in order to access their LGPS pension without reduction.

Q10 - Do you have any comments on the proposed approach to backdating?

No

Q11 - Do you have any comments on the administrative impact, particularly in identifying historic cases where death grants that were not paid would now be paid?

The administrative impact on LGPS funds may be significant.

The checking of all member deaths from 1 April 2014 where the member was 75 or over at the date of death will add to workloads that are already high in volume, and increasingly complex.

The most technically skilled and experienced LGPS practitioners, who already have significant workloads related to other LGPS priorities such as the implementation of the McCloud remedy and preparations for Pensions Dashboard, will be needed to identify the cases in scope, undertake corrective calculations and identify potential beneficiaries. These practitioners will also be required to implement the proposed changes to survivor benefits.

Detailed statutory guidance to support LGPS funds carrying out the retrospective change will be essential in order to provide clarity on a number of potentially complex matters which are likely to emerge:

- applying the discretion which administering authorities have to determine recipients where a death grant was not initially due
- tracing potential recipients
- tax implications on revisions
- interest on payments

In recognition of the level of complexity in applying the removal of the age 75 cap alongside other pressures, it would be helpful for any implementation deadline to be realistic and achievable.

Death Grants (personal representatives)

Background

When a death grant is payable, the death grant goes to either the person the member nominated as their beneficiary, or to their personal representatives or any other person that the administering authority deems to have been a relative or a dependant.

This may involve the administering authority having to decide the appropriate recipient of the death grant, and this can take time. The LGPS Regulations set a time limit for the administering authority to make that decision. Regulations 40(4), 43(4) and 46(5) of the 2013 Regulations require that where a death grant is payable, and if the administering authority has not made a payment within 2 years of the death (or the date the administering authority could reasonably be expected to have known about the death), payment must be made to the member's personal representatives i.e., to the member's estate. Where a death grant is paid to the estate outside the two-year time limit, it will be subject to the Special Lump Sum Death Benefits Charge (SLSDBC) of 45%.

The Finance (No.2) Act 2015 amended the Finance Act 2004 to provide that defined lump sum death benefits were no longer unauthorised payments if they were paid beyond the two-year limit. Accordingly, from 6 April 2016, death grants paid beyond the two-year limit are subject to either the 45% SLSDBC if paid to personal representatives, or the recipient's marginal rate of tax if paid to beneficiaries. However, as the current LGPS Regulations require that beyond the two-year limit the death grant must be paid to the personal representatives, the 45% charge is always applied.

Proposal

The government is proposing to remove the requirement that beyond the two-year limit the death grant must be paid to the personal representatives i.e., to remove the two-year limit. This will align the LGPS Regulations with the Finance Act 2004 (as amended by the Finance (No.2) Act 2015) and reduce instances of the Special Lump Sum Death Benefits Charge. This is intended to apply to all deaths where the death grant has not yet been paid. It is also proposed that where the same two-year limit applies to AVCs it will also be removed, by removing Regulation 17(14) of the 2013 Regulations.

Q12 - Do you agree with the proposal to remove the two-year limit?

Yes

Q13 - Do you have any comments on the government's proposal to remove the two-year limit?

No

Chapter 2 – Gender Pension Gap

Background

74% of the 6.7 million members of the LGPS are women, and there is a significant gender pension gap. Analysis by the Government Actuary's Department (GAD) has shown that for the post-2014 Career Average Revalued Earnings scheme, the average pension accrued is 34.7% lower for a woman than a man, and for the pre-2014 final salary scheme the gap is 46%.

The outcome is that millions of low-paid women working to provide local public services have worse pensions than their male counterparts. Many of the reasons for the gap are not in scope of MHCLG's role as the responsible authority for the LGPS, such as greater part-time working and caring responsibilities for women. Pensions are a function of pay, and so any gender pay gap will always translate to a gender pension gap.

The government believes that, beyond differences in pay and part-time working, periods of a woman's career when she is not accruing a pension contribute significantly to the gap. Across the course of a woman's life, such gaps – such as taking unpaid maternity leave or taking an unpaid absence to look after children or perform other caring responsibilities – all add up. The government believes there are four specific areas that LGPS requirements could be changed to address this gap.

Authorised Absences Under 31 Days

Regulations 11 to 14 of the 2013 Regulations determine contributions during a member's absence from work, depending on the type of absence. Authorised unpaid absences under 31 days in the LGPS are not automatically pensionable, with the exception of sickness, ordinary maternity and adoption and paternity leave. Instead, under regulation 16, when the member returns to work, they can choose to buy back the pension lost during the absence.

The government understands from the SAB that most members who take authorised unpaid absence do not buy back the pension lost. The process to buy back the pension is complex. It requires members to know the option is available, to decide that they want to spend their money on doing so, and to write to their employer making an application. An actuarial calculation is then needed to determine how much the member has to pay. All of this has to happen within the first 30 days of returning to work, for the employer to contribute 2/3rds of the cost. Most members do not go through this process, and pension is not accrued for the absence.

This process disproportionately penalises women, because it is mostly women who take such unpaid leave. Data from the SAB shows that across two example funds, 90% of unpaid leave is taken by women. It is a particular problem for LGPS staff in schools, who cannot take annual leave during term time. When a child is sick at short-notice or there are unexpected caring responsibilities, it appears it is more often a woman who takes the time off work, and so it is more often a woman who ends up with a gap in pensionable service.

Proposal

The government proposes to return to the approach used for authorised unpaid absences in the LGPS before 2014, where authorised unpaid absences under 31 days were automatically pensionable for all members. Both employee and employer contributions would be made, based on the member's lost earnings, and pension would continue to be accrued. The intent is to make catching up with small gaps in pensionable service the default option. Considering the

demographics of members taking such leave, it is expected that this will lead to female members having fewer periods where no pension is built up.

The proposal is to amend regulation 11 to create a new regulation 11(5) in the draft SI.

For such unpaid leave under 31 days, there are two options for how the lost earnings could be calculated for the purpose of determining contributions for the period: with reference to assumed pensionable pay (APP), or the actual lost pay for the period.

The government recognises that in certain circumstances the use of one method over the other can result in a significantly different cost to the member. APP uses the average of the member's pensionable pay in the three months preceding the unpaid leave and includes non-contractual pay such as overtime. Lost pay uses the actual pay as per the contract, and so does not include non-contractual pay. If there is a significant change in a member's pensionable pay just before the period of unpaid leave, such as if a member goes part-time or receives a large promotion, or if the member works a significant amount of non-contractual overtime each month, then the choice between lost pay and APP can lead to significantly different outcomes.

The government's preference is to use actual pay lost. This has been chosen because in most cases it would most closely match what the member would have paid had she or he not taken unpaid leave. Lost pay is the method already being used in the LGPS Scotland and should be easier for administrators. However, the government is keen to hear views from administrators. Both options have been included in the draft SI accompanying this consultation (amendments to regulation 21 and creation of a 21a).

Q14 - Do you agree that the LGPS Regulations should be updated so that any unpaid leave under 31 days is pensionable, as a way to address the gender pension gap?

Unsure

We support the proposal's aim of preventing short gaps in members' (particularly female members') pension build-up. However, we have concerns about the potential of the proposal to result in an increase in scheme members opting out of the scheme due to the financial pressure of having to effectively pay two months' worth of contributions in the month following the relevant period of unpaid leave.

The proposal would require employers to ensure that 'normal' pension contributions are collected from their employee's pay and paid to the Fund for up to 30 days of authorised unpaid leave.

In addition to adding direct costs to employers, they would also be expected to fund and prepare changes to their payroll systems to ensure that they are compliant with the proposed change.

Should the government decide to introduce this change, it will be essential that clear guidance is issued for funds and employers, including

- clarity on how employers are expected to apply the automatic contributions on a period of no pay, and
- whether flexibility should be allowed for employees to repay sums over a longer period than automatic collection in the following month.

Q15 - Do you agree the government should use the actual lost pay option when calculating contributions, or do you think APP should be the chosen option? Please explain the reasons for your view.

If the government decide to implement this change, our view is that 'actual pay lost' would provide the clearest and most administratively convenient approach, and result in the closest to mirroring what the member would have paid had they not been on authorised unpaid leave.

Cost of Buying Back Pension Lost in an Unpaid Break of Over 30 Days

The government believes that the cost of buying back lost pension for unpaid absences over 30 days disproportionately affects female members of the scheme. The total cost of buying back lost pension is calculated in accordance with Regulation 16(7) of the 2013 Regulations, using actuarial factors that account for age and gender. Where a member chooses to buy the pension back within the time limit, currently 30 days after returning to work, the total cost is split two-thirds to the employer, one-third to the employee, in accordance with Regulation 15(5).

The pension contribution rate for active members is determined by Regulation 9 or 10, and by the member's pensionable pay, not their age or gender. When buying back lost pension, factors based on age and gender are used, and the effect of this can be that the cost to members is greater than the contributions they would have paid had they not taken the leave.

Analysis by GAD shows that the cost of buying back lost pension under the current method is generally cheaper for younger male members of the scheme, compared to the cost if the member had not taken the leave, and more expensive for older and female members of the scheme. This is because under the current regulations the factors used to determine the cost are based on age and gender so that the cost of providing pension is generally more for women (who tend to live longer) and older members.

The government has considered 3 options for how the cost could be calculated when a member makes an election within the time limit:

1. Restructure the sharing of costs to align members' and employers' contributions with the standard member contributions that would have been payable under the scheme if the member had not been on unpaid leave;
2. Change the share of costs which fall to employers and to members.
3. Design a new method which redistributes the cost between members and employers.

The government's preference is option A, to align with standard member contributions, which are based on members' pay. GAD's analysis has shown that this will have a direct impact on the cost for female members of the scheme. There is no direct evidence that proposal B would improve outcomes for female members. If proposal B were to make the cost of buying back unpaid leave cheaper for members, then it could be assumed that take-up of the option to buy back might increase, but there is no detailed data on existing take-up by female and male members of the scheme, and so it cannot be evidenced that it would improve the gender pension gap. Proposal C has been discounted because it would require designing a new approach, with associated set-up costs.

Proposal A requires the addition of a new regulation (16(8A)) to the 2013 Regulations, so that the cost of buying back authorised unpaid leave over 30 days is what a member would have paid if they had not taken any leave. The current method that uses gender and age factors would still apply for members desiring to pay extra to boost their pension, including where the employer voluntarily pays towards the cost.

The government also proposes to extend the time-limit to buy back any lost pension during unpaid absences with permission, from 30 days to one year. This proposal gives members more time to understand their options and may make it more affordable as they will have more time to recover financially from the reduction in pay. This proposal would be achieved by amending Regulation 16(16) of the 2013 Regulations. If members elect to buy back their unpaid leave pension within the new time limit, the employer would also be required to pay the standard employer contributions for that period.

The government also proposes to remove the three-year time limit on compulsory employer contributions on unpaid leave provided by Regulation 15(6). There is no clear rationale for a time limit, nor for it to be three years. Removing the three-year limit would increase employer costs in some situations, such as where a member has been on authorised unpaid leave for over three years and opts to buy back pension on their return.

Q16 – Do you agree with the proposal to align the cost of buying back unpaid leave over 30 days with standard member contribution rates?

Yes

We support the proposal to align the cost of buying back 'lost' pension in respect of authorised unpaid leave with standard member contribution rates for members.

The current basis of costs for covering 'lost' pension which are based on factors differ across genders and ages, with significant differences between younger males and older females. The proposal would result in a transparent gender-neutral approach.

If the proposed change is implemented that authorised unpaid leave under 31 days becomes automatically pensionable it will be important that there is clarity for members and employers to recognise that there is a different procedure for covering authorised unpaid leave over 30 days.

Q17 - Do you agree with the proposal to change the time-limit for buying back unpaid leave pension absences from 30 days to 1 year?

Yes

The proposed extension will remove the requirement for employer approval where a member wishes to apply to cover their 'lost' pension after 30 days from their return to work. This will provide a more reasonable timescale for members to investigate and consider the option.

Q18 – Do you agree with removing the three-year limit on employer contributions in Regulation 15(6)?

No

The current limit clearly highlights to employers that they are liable to continue paying pension contributions through assumed pensionable pay for up to 3 years if they keep long-term absent employees on their books.

Cases of a period of authorised unpaid leave extending beyond 3 years are likely to be very infrequent.

Pension Contributions During Child-Related Leave

In the LGPS, when a member is on child-related leave it is still pensionable and contributions must be paid, on any pensionable pay received as per Regulation 12 of the 2013 LGPS Regulations. Child-related leave includes:

Ordinary adoption or maternity leave;

- Additional adoption or maternity leave during which the member receives some pensionable pay;
- Neonatal care leave during which the member receives some pensionable pay
- Paternity leave;
- Shared parental leave during which the member receives some pensionable pay; or
- Parental bereavement leave during which the member receives some pensionable pay.

One of the most significant gaps in a woman's pensionable service is often maternity or adoption leave. In the LGPS, a woman who takes the full 52 weeks that she is entitled to under statutory maternity leave, will take 26 weeks of ordinary maternity leave (pensionable), 13 weeks of additional maternity leave where some pensionable pay is received (pensionable for those who receive pensionable pay during this period) and 13 weeks of additional maternity leave where no pensionable pay is received (not pensionable).

The government proposes to make additional maternity leave, additional adoption leave and shared parental leave during which no pay is received automatically pensionable, with the cost to be met by the employer.

This would be achieved by amending the definition of "child-related leave" in the 2013 Regulations to include additional maternity leave, additional adoption leave and shared parental leave during which the member receives no pay. This would have the effect of all additional maternity or adoption leave and shared parental leave being fully pensionable, with no contributions payable by the employee for any leave that is unpaid. Where the member is not entitled to any pay during additional maternity/adoption leave, this proposal means an additional 26 weeks will be automatically pensionable.

The government recognises that this proposal is a significant improvement in terms for women who take the full year of statutory maternity leave, and both men and women who take up adoption leave. It should also encourage take up of shared parental leave.

The government is mindful that this would be a new requirement for LGPS employers, to increase support for employees during maternity, adoption or shared parental leave. The government believes that the cost would be affordable, both at the individual level (as in most cases it is time-limited to only 13 weeks of accrual) and at the fund-wide level (as the overall number of members who would take the full year of child-related leave in each valuation period is likely to be relatively small in the context of the entire fund). GAD has estimated this proposal might cost the scheme under £1 million in increased contributions per year, although we do not have data on the number of members who do not receive pensionable pay during the first 13 weeks of additional maternity, adoption or shared parental leave.

Q19 – Do you agree with updating the definition of child-related leave to include all periods of additional maternity, adoption and shared parental leave without pay?

Unsure

We support the principle of seeking changes to address the gender pension gap and recognise that extending the pensionable status of child-related leave to all periods of additional maternity, adoption and shared parental leave without pay will help to reduce the impact a female member's child-related leave has on the gender pension gap.

However, further investigation would be beneficial to assess the potential impact of employers being required to meet the full cost of the additional child-related leave becoming pensionable.

Employers who participate in the LGPS are wide-ranging in terms of size and financial strength, and an employee's child-related leave is likely to have different levels of impact across employers, both organisational and financial. This will extend beyond the payment of pension contributions for periods of unpaid leave, including costs of resource for covering their employee's absence.

A consistent theme across the three proposals to ease the gender pension gap is additional costs for employers and the collective impact for some employers may be significant.

Making Gender Pension Gap Reporting Mandatory in the LGPS

Gender pay gap reporting is now well-established in the UK, having been mandatory for employers with at least 250 employees since 2017. Gender pension gap reporting is not as well-established but is a growing area of interest.

In the LGPS, information on the difference between accrued pensions of men and women is not routinely collected. The government proposes to change that by making gender pension gap reporting mandatory in the LGPS. The intent is to both gather data to understand the gap better and encourage employers to focus on what factors may be contributing to any such gaps.

The government proposes that administering authorities would be required to report on two metrics: their fund-wide gender pension gap and their gender pension saving gap as defined below. This would be reported in the fund actuarial valuation report every three years (as well as in the annual report of that year).

The government believes the actuarial report, and not the annual report, would be the appropriate place for reporting, because the slower movement of gender pension gaps would better align with the 3-yearly cycle of valuation reports. The actuarial valuations already consider demographic data, and so the addition of gender pension gap data is not considered to be likely to be onerous.

The proposed implementation of this proposal is from the 2025 valuation onwards. The government recognises this timeframe may be ambitious but believes the importance of the issues necessitates fast action. As actuarial firms have already started work on the 2025 valuation, the government will continue to work with GAD, the SAB, and actuarial firms on the data that will be needed to meet the new requirements.

The government also believes that there would be value in a more granular view of gender pension gaps at the employer level. This would help administering authorities identify employers where there are specific issues (e.g., the issue of authorised unpaid leave in schools included in the section covering 'Authorised absences under 31 days') and to take steps to understand and tackle such gaps. However, this would be a new requirement, and for smaller employers may be less meaningful and more difficult to calculate. The government proposes that only employers with at least 100 employees would be required to report in such a way. The expectation would be that actuarial valuation report would contain the gender pension gap and savings gap for such employers. It is proposed that this would be included in the Rates and Adjustments Certificate, which already lists all employers in a fund. Administering authorities would also have the option of grouping certain types of employers to gather insights.

The government will work with the SAB to review gender pension gaps once the reporting process has been embedded. It is recognised that the calculation of gender pension gaps will have

complications, such as whether casual workers are included or not, and the government intends to work with the SAB on guidance for reporting requirements.

The government proposes to define the gender pension gap as 'the percentage difference in the LGPS pension income built up for male and female scheme members over a typical working life'. The government also suggests a further definition of the gender pension savings gap as 'the percentage difference in the LGPS pension accrued annually for male and female scheme members'. These definitions are adopted from the Pension Equity Steering Group, in collaboration with the SAB.

Q20 – Do you agree that gender pension gap reporting should be mandatory in the LGPS?

Yes

We agree that such mandatory reporting would assist the building of a more comprehensive understanding of the gender pension gap.

Capturing further details may add context to gaining an understanding of factors which contribute to the gender pension gap.

The proposed information being sought in mandatory reporting will help to identify differences in pensions for males and females on scheme membership already accrued, and over a period of time, indicating whether measures to mitigate the gap are achieving their aim.

Additional reporting of factors directly from employers may provide details on factors which may assist with determining appropriate scheme changes towards gender equity in scheme benefits and scheme membership in general. Examples of such factors may be:

- the gender split of overall employees and pension scheme membership,
- numbers and levels of pay for employees who have decided not to join the pension scheme for which they are eligible

Q21 – Do you agree that the 2025 valuation (and associated fund annual reports) is preferable?

No

We agree that the valuation, and the following annual report, are appropriate to include reporting on the gender pension gap and gender pension savings gap.

However, this reporting in the 2025 valuation report is unlikely to be achievable given the majority of actuarial data work as part of the 2025 valuation exercise is likely to have been completed before the amended scheme regulations come into force.

Q22 - Do you agree with the threshold of 100 employees for defining which employers must report on their gender pension gap?

No

A threshold of 100 employees **with eligibility for LGPS membership** would be a more appropriate reporting threshold.

Further helpful matters to clarify may include whether the threshold includes:

- for employers with multiple LGPS fund references, whether it is only eligible employees under that reference (e.g. function providers with multiple contracts triggering multiple admission agreements)

- for academies in multi academy trusts, whether it is eligible employees across the trust or by individual academy

Q23 – Do you agree with the gender pension gap definition being ‘the percentage difference in the pension income for men and women over a typical working life’?

Yes

Q24 – Do you agree with the gender pension savings gap being ‘the percentage difference in the pension savings accrued over one year for men and women’?

Yes

Chapter 3 – Opt-Outs

Background

The LGPS is a good pension scheme which plays an important role in providing security in later life for its members. Members may have good reasons for opting out of the scheme but in general remaining in the scheme is likely to be in their long-term interests.

Collecting and reporting data on members opting out of the LGPS is not required under current legislation and so is limited. A Local Government Association survey of administering authorities in June 2024 showed opt-out rates ranged from 3% to 40% of members. Further, only 35% of respondents to that survey said that they routinely review the number of members who have opted out of the scheme.

The government proposes to make it mandatory for administering authorities to collect and report data on the rate of members opting out of the scheme. The government wants to understand who is opting out, and why, and proposes the structured collection of demographic and equalities data of those who choose to opt-out.

The government proposes that the percentage rate of opt-outs will be required to be published in the Annual Report of each administering authority through amending Regulation 57 of the 2013 Regulations.

The government proposes that the opt-out form that members fill out when they leave should be updated. Additionally, regarding the collection of demographic and equalities data, the government will also create a separate survey on [Gov Forms](#) that the employee would be asked to fill in, and when completed, it would automatically return to MHCLG. The Gov Forms platform has been selected as it allows information to be provided to MHCLG directly, anonymously and handled securely, in line with legal requirements on data protection. This information would not be published and would be used in its anonymised state to build an evidence base as to why people choose to opt-out of the scheme.

At the administering authority level, it is considered necessary for administering authorities to hold this data on the number of opt-outs so they can assess how effective the scheme is as a recruitment and retention tool, and so they can properly assess the fund's maturity and plan future cashflow.

Depending on the evidence and trends identified for opt-outs, the government may consider further action. An increase in the numbers of members opting out of the scheme is an issue not just for government or the pension fund, but also for employers, and the solution must be sought together, whether through further changes to regulations, guidance or communications with members.

Publication of Opt-Out data in the Annual Report

The government proposes to add reporting on the rate of opt-outs to the requirements for an Annual Report, through Regulation 57 of the 2013 LGPS Regulations. The opt-out rate published would be the total number of current employees who have opted out of the scheme, divided by the total number of current employees eligible to be a member of the LGPS, at fund level. The government will clarify the detail of this proposal, such as at what date the rate is, and if employees on contracts under 3 months are included, through updated Annual Report guidance.

The Annual Report has been selected as the place for such reporting, because government believes that opt-out levels are sensitive to economic conditions, and so regular reporting is necessary. It is not intended for reporting on opt-outs to be onerous, and the expectation is that in line with the updated guidance, administering authorities will request from employers the total number of those eligible to participate in the scheme and the number of those that have opted-out at the time of the annual report data collection to meet this requirement.

Q25 - Do you agree that the annual report is the best method of reporting data on those who choose to opt-out of the scheme?

Yes

Q26 - Do you foresee any issues with administering authorities' ability to gather data on opt-outs?

Yes

LGPS funds would be reliant on participating employers maintaining and providing data on opt-outs. It would be helpful for the government to consider imposing duties on scheme employers to provide the required data.

Q27 - When updating the annual report guidance to reflect opt-out data collection, what information would be most useful to include?

Useful information to include (some of which may need to be collected directly from the individual), would be:

- age of the individual
- whether the opt-out is from the individual's 'main' employment
- whether the individual is already in receipt of their pension and is not seeking to accrue further pension savings.

Collection of Additional Opt-Out Data

Beyond a headline figure, the government is interested in who is choosing to opt-out of the scheme and why.

The government proposes to publish a Gov Form alongside the new opt-out form that administering authorities should be using when a member chooses to opt out. The current opt-out form does not have to include a section for members to say why they are opting out, nor their personal circumstances. Whilst some administering authorities do already collect this information, the government intends to formalise its collection. Our proposal is to add a new Regulation (5(6)) to the 2013 Regulations:

"A notice under paragraph (2) must be given in the form approved for that purpose from time to time by the Local Government Pension Scheme Advisory Board."

The new proposed optional Gov form will ask members their reasons for opting out, as well as additional information on profession type, working hours and salary, gender, age, ethnicity, marital status and dependants. This form can be completed by employees at their discretion at the time in which they choose to opt-out of the scheme.

Q28 - Do you agree with the proposal to collect additional data about those opting out of the scheme?

Yes

In order to understand why individuals decide not to contribute to the LGPS when employed in a position which makes them eligible for membership of the scheme, data emphasising the reason(s) for their decision will need to be provided by the individual directly either to the individual LGPS fund or to MHCLG. Providing such data to MHCLG would allow for a more effective scheme-wide review.

Q29 - Are you an employer, part of an administering authority or member of a pensions board?

Response

Representing an administering authority

Q30 - Do you have any comments on the collection of additional information?

The collection of additional information may need to be via an updated Opt-Out form.

A standard Opt-Out form could be created in collaboration with the Scheme Advisory Board for use by all LGPS funds which includes in the declaration, an external link to the 'additional information' form, which opens in a new tab. Individuals may be more likely to complete this additional information form as part of their Opt-Out application, rather than being required to do so as a separate task.

Individuals could be asked to 'tick' a box to indicate that they have completed and submitted the additional information form as part of their declaration.

The design of the additional information should be as simple as possible for individuals to complete easily and without difficulty. As a result, 'reason' options should be provided as 'tick box' options, along with a free text option for individuals to highlight any other unavailable option.

In order for the government's gathering of data to be as evidential as possible, other data requested may include the individual's:

- Age
- Gender
- Annual pay in this position
- Main or additional employment
- Geographical location to assist determination of regional trends
- Ethnicity
- Marital status
- Number of dependents

Chapter 4 – Forfeiture

Background

Many public service pension schemes, including the LGPS, provide that under certain circumstances a member's accrued pension rights may be forfeited. A forfeiture certificate of LGPS benefits is only issued in cases where a member has been convicted of an offence deemed to be gravely injurious to the state or liable to lead to a serious loss of confidence in the public service. Further, employers may recover against any financial losses they have incurred as a result of the offence rather than issue a forfeiture direction after issue of the certificate. Forfeiture provisions for the LGPS are set out in regulations 91 to 95 of the 2013 Regulations.

The government has four proposals, intended to make the forfeiture process work better and fix known issues with current regulations:

1. To remove the requirement that a member must have left employment because of the offence for forfeiture to be possible;
2. To abolish the current three-month time limit for an application to be made;
3. To remove the current regulations around interim payment directions
4. To publish guidance on making a forfeiture application.

Removing the Requirement That a Member Must Have Left Employment Because of the Offence

For an offence to be a “relevant offence” for the purposes of the forfeiture regulations, the member must have left employment because of the offence. This means that there have been cases where a member is convicted in connection with their employment, but the member has already left the employment before the crime was discovered, and so a forfeiture application could not be made.

The government proposes to remove the requirement that a member must have left their employment because of the offence in order for the LGPS employer to be able to make an application for a forfeiture certificate or to recover against a monetary obligation. There would be no change to the threshold for when the Secretary of State can issue a forfeiture certificate, nor the requirement that the member is no longer in employment. The LGPS employer would still take the final decision on whether to forfeit benefits and, if so, the extent of the benefits forfeited. Benefits already paid out would not fall within scope of forfeiture.

This proposal would allow for applications for forfeiture certificates to be made regardless of whether the individual left employment because of the offence, ensuring that historic crimes and those where the member sought to conceal their actions can be within scope of the forfeiture provisions. It would also bring the LGPS in line with other public service pension schemes on this issue, including the NHS Pension Scheme, the Police Pension Scheme, the Civil Service Pension Scheme and the Teachers' Pension Scheme.

This proposed amendment to regulation 91 would not be retrospective. The change would not apply to any application for a forfeiture certificate in respect of a relevant offence of which a member was convicted on or before three months before the coming-into-force date of the new regulations. LGPS employers would not be able to bring an application in respect of any offence for which the current time limits had expired, i.e., a case where more than 3 months has expired from the date of conviction.

The government has also considered if there would be any indirect retrospective adverse effect from the proposal. A member who committed an offence in relation to their employment before this amendment came into force, left their employment for a reason other than the offence, and who is subsequently convicted of said offence within three months of the coming into force date (or afterwards), could be in scope of forfeiture. For the overwhelming majority of law-abiding LGPS members, this amendment would have no effect. The amendment would potentially be relevant to a very small number of members who have committed and are subsequently convicted of an offence in connection with their employment. If an application for a forfeiture certificate is made and granted in respect of such a member, that may result in a reduction of the pension payable to that member. However, whilst the member may see this as an adverse effect, the government does not consider that this can be attributed to the broadening of the circumstances in which a forfeiture application can be brought. The government's view is that this should be seen as an adverse effect of the member's own criminal conduct and that such adverse effects, if they materialised, would not be significant in the context of the scheme as a whole. The government's view is that the enhanced consultation procedure under section 23 of the Public Service Pensions Act 2013 therefore does not apply.

Q31 – Do you agree that the government should amend regulations 91 and 93 of the 2013 Regulations to remove the requirement that the member must have left employment because of the offence in order for an LGPS employer to be able to make an application for a forfeiture certificate or to recover against a monetary obligation?

Yes

The resignation of an employee, either during an investigation, or before their offence comes to light should not protect them from their former employer being able to apply for a forfeiture certificate or recover directly associated monetary losses.

Removing the Time Limit to Make a Forfeiture Application

Regulation 91(8) of the 2013 Regulations requires the LGPS employer to make any application to the Secretary of State for a forfeiture certificate within three months of the date of conviction. This is a stricter time limit than in other public service pension schemes. For example, there is no equivalent limit in the NHS Pension Scheme, the Police Pension Scheme, the Civil Service Pension Scheme or the Teachers' Pension Scheme. The time limit has led to cases where forfeiture was not possible as an application could not be made in time.

The government is therefore proposing to remove the time limit of three months to make an application. Abolishing the 3-month time limit to make an application means there will be no circumstances when the employer is unable to make the application in time. Whilst it is intended for this flexibility to help employers make applications, the government would still encourage employers to make applications in a timely manner. If there is a substantial delay between the member being convicted and sentenced and the scheme employer applying for a forfeiture certificate, that may be relevant to the Secretary of State's decision as to whether the offence is gravely injurious to the State or liable to lead to a serious loss of confidence on the public service.

Under the current LGPS Regulations, the 3-month time limit starts from the date of conviction. Under the proposal to remove the time limit, there is no start date, but conviction remains a prior requirement for an application. The government however considers both the sentence given and sentencing remarks as part of the decision whether or not to issue a certificate and will only consider applications where both of these have been provided.

The government is proposing that this change should only apply in respect of persons for whom the existing time limit in regulation 91(8) of the 2013 Regulations had not expired at the point that these changes come into force. Removing the link and the 3-month time limit will only apply from the date a member was convicted on or before 3 months before the amendment to regulations comes into force. For example, if the proposed regulations were to come into force on 1 October 2025, and a member had been convicted of a relevant offence on 30 June, then the 3-month limit would have already expired before this amendment, and a forfeiture application would not be possible. The coming into force date will be determined later in the year, subject to this consultation.

Q32 - Do you agree that the three-month time limit for an LGPS employer to make an application for a forfeiture certificate should be removed?

Yes

The removal of the three-month time limit will be helpful to employers.

Revoking regulation 92

Regulation 92 of the 2013 Regulations allows LGPS employers to give an 'interim payments direction' to the appropriate administering authority. An interim payments direction can be given once a forfeiture certificate has been issued and requires the administering authority to pay some or all of the benefits that would be due to the member whilst the LGPS employer decides whether or not to give a forfeiture direction.

An interim payments direction may only be given where the recipient would otherwise be entitled to receive payment under the scheme, and so in practice this provision may not be commonly used, as administering authorities can continue to use the standard powers to pay benefits under the scheme up to and until the point at which a forfeiture direction is made. As such, the government believes that Regulation 92 is not necessary and proposes revoking it.

Q33 - Do you agree that Regulation 92 of the 2013 Regulations should be revoked?

Yes

Forfeiture in Relation to Benefits Accrued in Earlier Schemes

In addition to the amendments to the 2013 Regulations as discussed above, in order to give full effect to these proposals the government also intend to make equivalent modifications to forfeiture provisions across earlier schemes. This will ensure that the forfeiture rules will apply in the same way to benefits accrued in respect of service before 1st April 2014. The government proposes to do this by inserting a new regulation 23A into the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 ('the 2014 Regulations'), which provides that the forfeiture provisions in the 2013 Regulations apply in respect of any benefits accrued under the earlier schemes.

Q34 - Do you agree that in order to give full effect to the proposed amendments, equivalent modifications should apply to earlier schemes?

Yes

This change will be important in the event of offences coming to light which took place, and the member left the LGPS, before the current scheme came into force.

Forfeiture Guidance

In other public service pension schemes guidance is available to the scheme employer when making an application to the relevant body in cases of forfeiture, but no such guidance exists for the LGPS. The government proposes to publish guidance for forfeiture applications, and to work with the SAB in drafting such guidance.

Q35 - Do you agree that there should be forfeiture guidance to assist employers in making applications?

Yes

Clear guidance will be helpful to employers who are unlikely to be familiar with the forfeiture process.

The publication of guidance may also highlight the option to employers who may have been unaware of the possibility of seeking a forfeiture of pension or recovery of losses.

Guidance should be included for situations where an application to access pension benefits, or transfer-out, is received from a scheme member who is the person named in a forfeiture certificate which has yet to be subject to a forfeiture direction, or who is named in an application for a forfeiture certificate which is still awaiting a decision.

Chapter 5 - McCloud Remedy

In recent years, the government has taken steps to address the findings of the McCloud case for public service pension schemes. In that case, the Court of Appeal found that transitional protections given to older members of public service pension schemes when schemes were reformed in 2015 had unlawfully discriminated against younger members on grounds of age.

The Public Service Pensions and Judicial Offices Act 2022 provides the framework within which the McCloud remedy operates, and in October 2023 MHCLG laid a set of McCloud-related LGPS regulations. These regulations extended underpin protection to the younger members of the scheme in order to remedy the discrimination found by the courts.

This section proposes further McCloud-related changes to the LGPS Regulations. The intention is to address issues with the operation of the underpin that have only been identified now administering authorities are working their way through remedy calculations.

Divorce Credits

Regulation 12 of the LGPS (Amendment) (No 3) Regulations 2023 ('the 2023 Regulations') – Divorce or dissolution of civil partnership before 1st October 2023 – says that for members who were divorced (or dissolved a civil partnership) before 1st October 2023, any additional pension they receive from the underpin (estimated or in payment), must be split with their ex-spouse, in accordance with any pension sharing order.

The issue of a pension sharing order results in a pension credit (the amount the ex-spouse or former civil partner receives) and a pension debit (the amount taken from the member to go to the ex-spouse or former civil partner). Regulations 12(5) and 12(6) however only refer to the pension credit, and not to any pension debit. The government is proposing to amend Regulation 12 so that it can now apply to both a pension credit and debit. This will ensure that a pension sharing order can be implemented in respect of LGPS benefits.

In cases where the pension sharing order sets a fixed amount, instead of a percentage, the appropriate amount is the lesser of the fixed amount or the cash equivalent of the relevant benefits. Where the appropriate amount is the fixed amount, it is not proposed that administering authorities need to revisit pension debits. Where the appropriate amount is the cash equivalent, the proposal is that administering authorities do need to revisit pension debits, as it is possible that the cash equivalent may now be above the fixed amount, if the member has for example received a significant top-up from the McCloud remedy.

We also believe that the member's pension needs to be recalculated in instances where that pension was a tier 3 pension that was suspended before 1 October 2023, where the member trivially commuted the pension before 1 October 2023, and where the member died before 1 October 2023.

The government's view is that where member pensions are recalculated using a recalculated pension debit, this applies to related benefits of survivor pensions, trivial commutation lump sums, deferred/pensioner death grants, transfers out and interfund adjustments. If an overpayment is created by the recalculated pension debit, it is expected that administering authorities will make reasonable efforts to recover the overpayment, as they would any other overpayment.

The proposal amends Regulation 12 to give effect to these scenarios.

Q36 - Do you agree with the government's proposal for pension debits and credits?

No

The McCloud remedy, applied into the LGPS from 1 October 2023, has generated significant volumes of work for LGPS funds which has mostly resulted in no requirement for a change to pension benefits, or in the small number of cases where a change to benefits applies, mostly small increases.

This proposed change will add further administrative burden for LGPS funds, especially at a time when other significant retrospective actions are required.

The potential change to pension values as a result of the proposals would be disproportionate to the administrative burden in recalculating benefits and communicating revisions to all parties. We suggest that the government considers clarifying that a pension debit is determined at the point that it commences on the basis that the debit split has considered values at that time.

Deaths on 30 September 2023

Regulation 8(1)(b) of the 2023 Regulations – Survivor benefits in respect of members who died before 1st October 2023 – applies to members where a survivor pension was paid before 1st October 2023. However, the 2013 Regulations lay down that survivor pensions come into payment the day after a death. The combination of the two regulations means that deaths on 30th September 2023 would not be covered, when this was not the original policy intent. The government is proposing to amend Regulation 8(1)(b) so that deaths on 30th September 2023 are covered.

Q37 - Do you agree with the Government's proposal to cover deaths on 30 September 2023?

Yes

Interest on Club Transfers

Club transfers are where members transfer pension benefits between certain schemes who have joined the Public Sector Transfers Club.

Regulation 14(3) of the 2023 Regulations – Interest on payments under the statutory underpin – says that “an administering authority must take reasonable steps to pay interest in respect of the amount to be paid to the scheme under regulation 10(5) (transfers out)”, but this is contrary to the Public Sector Transfer Club Memorandum as issued by the Cabinet Office. The Club Memorandum at paragraphs 4.41 and 4.22 states that interest should not apply on Club transfers, except where the transfer was completed before 1 October 2023 and the receiving scheme was not a “remedy scheme” (i.e., a scheme subject to the McCloud remedy).

The government proposes to remove this inconsistency and confirm that interest should not apply on such transfers, except where the transfer completed before 1 October 2023 and the receiving scheme was not a remedy scheme. This would require an exception to Regulation 14(3).

Q38 - Do you agree with the government's proposal to clarify if interest applies on Club transfers?

Yes

Interest on Part 4 Tax Losses

Part 4 tax losses can occur where a member may have overpaid annual allowance or lifetime allowance charges as a result of the application of the McCloud remedy.

Treasury Direction 37 of the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 says that LGPS regulations must make provision for certain rules regarding interest on McCloud payments. Direction 39(2) says that the LGPS Regulations must include provision about the periods over which interest must be calculated in relation to specified relevant amounts. However, Regulation 14 of the 2023 Regulations does not cover direct compensation for a part 4 tax loss, which is a “relevant amount”.

The government’s proposal is to amend the LGPS Regulations to cover interest on compensation payments made under section 82(1) of the Public Service Pensions and Judicial Offices Act 2022, including part 4 tax losses. This would require that interest is calculated either from the date direct financial loss occurred or the date overpayment was made, up until the date of payment.

Q39 - Do you agree with the government’s proposal to include part 4 tax losses in to the 2023 regulations?

Yes

Transfers from Other Public Service Schemes for Members Over 65 Years Old

Regulation 4G of the 2014 Regulations states that an eligible member’s underpin date is at a maximum age 65, or earlier if the member leaves active membership or takes flexible retirement. This reflects that a member’s normal retirement age under the previous scheme would have been 65.

If a member joins the LGPS after age 65, they would not build up any benefits to be protected by the remedy. However, if a member transfers in from another public service scheme after age 65, that member may have protected benefits, from their prior service before and after age 65, that go beyond the LGPS cut-off of age 65. Currently there is no mechanism to give such a member an underpin date, provisional underpin amount or provisional assumed benefits.

The government proposes to create a new mechanism to give such members an underpin date that is the date on which the transfer payment was made. Specifically, this would be an amendment of Regulation 4G of the 2014 Regulations, to add this new definition of underpin date, and to require that calculations made under this regulation must be made in accordance with actuarial guidance.

The government then intends to update McCloud guidance to cover this scenario, and to explain its interpretation of how a provisional underpin amount and provisional assumed benefits would be calculated for such a member.

Q40 - Do you agree with the government’s proposal for transfers from other public service schemes for members over 65 years old?

No

Numbers of individuals transferring into the LGPS from other public service pension schemes after age 65 are likely to be very low., however, for any cases which are affected, legislation should provide for a calculation which is fair to members and avoids a disproportionate burden of complexity on LGPS funds.

The proposal for the underpin date to equate to the transfer payment received date is inconsistent with *The Local Government Pension Scheme (England and Wales) - Individual Incoming & Outgoing Transfers* guidance (para 9.10) which requires that any late retirement increase applicable to transferred-in benefits would apply at the retirement date from the guarantee date where it is over age 65, rather than the transfer received date.

A consistent approach would provide a fair outcome for members and mitigate the administrative impact on LGPS funds.

Chapter 6 - Other Regulation Changes

Background

The government intends to make several technical changes to the LGPS Regulations. Most of these proposals do not reflect new or changed policy but are intended to fix known issues raised by administering authorities and administrators.

Retrospective Directions

Under paragraph 3 of Part 2 of Schedule 3 to the 2013 Regulations, the Secretary of State may, by a written direction, substitute a different administering authority as the appropriate administering authority for a person or class of person. Paragraph 4 sets out what the direction must include and how the Government must consult with affected parties.

The government proposes to amend paragraph 4, to clarify that such directions may be retrospective i.e., the direction may be issued after the date on which it directs the substitution of one administering authority for another. This clarification is in response to recent applications for directions, where the request relates to a past event, or there is not enough time to issue the direction before the event that requires a direction.

Combined County Authorities

The government proposes an update to Part 1 of Schedule 2 of the 2013 Regulations, to include as scheme employers the combined county authorities established under section 9(1) of the Levelling Up and Regeneration Act 2023. The intent is to include these newly created authorities as employers in the LGPS.

Welsh Corporate Joint Committees

The government proposes an update to paragraph 6 of Part 2 to Schedule 2 of the 2013 Regulations, to cover companies under the control of newly created Welsh Corporate Joint Committees (CJCs). Corporate Joint Committees are bodies created under the Local Government and Elections (Wales) Act 2021, to enable local authorities in Wales to collaborate on economic development.

The four CJCs are already listed in part 1 of Schedule 2 of the 2013 Regulations as scheme employers which must offer the LGPS. Part 2 of Schedule 2 of the 2013 Regulations lists designating bodies (employers that can nominate employees for access to the LGPS), and in particular covers companies under the control of Part 1 employers but has inadvertently missed companies under the control of CJCs. The proposal is therefore to change paragraph 6 of Part 2 of Schedule 2, to cover companies under the control of a body listed in paragraphs 6 to 28. The intended effect is that companies under the control of North Wales, Mid Wales, South East Wales and South West Wales Corporate Joint Committees would also be covered by Part 2, and would be able to nominate their employees for the LGPS.

Exiting employers

The government proposes a small update to Regulation 64 of the 2013 Regulations, to clarify the current regulations on exiting employers and deferred debt agreements. Deferred debt agreements allow employers who leave the LGPS and have an outstanding payment to spread the cost over time.

Regulation 64(1)(b) defines an exiting employer as one that has no active members in a fund, even if they have some in another fund. However, regulation 64(7B)(a) says that an administering

authority may only enter into a deferred debt agreement with an exiting employer when the last active member has left the scheme. This inconsistency means that if an employer leaves one fund, but still has some active members in another fund, they are prevented from using a deferred debt agreement for the fund they leave.

The Government proposes to update regulation 64(7B)(a) to read "when the last active member has left the relevant fund", which will align with regulation 64(1)(b). It is also intended that regulation 64(7E)(a) is amended to read "new active members in the relevant fund".

De-minimis payments for pre-2008 leavers

Regulation 34(1)(c) of the 2013 Regulations allows for the commutation of a small pension under the Registered Pension Schemes (Authorised Payments) Regulations 2009, but there is no such option for leavers before 1 April 2008. This adds to administration costs for administering authorities as very small pensions must continue to be paid, rather than commuted.

The government proposes to allow for commutation for pre-2008 leavers too. The proposal is to amend Regulation 3 of the 2014 LGPS Regulations ("Membership before 1st April 2014"), to mirror regulation 34(1)(c) of the 2013 LGPS Regulations.

Additional Voluntary Payments (AVCs) and transfers

Regulation 17(10) of the 2013 Regulations requires that where a member transfers their main pension benefits out of the LGPS, the member must also transfer out any balance in their AVC account.

To align with the Freedom and Choice reforms, which aim to give people more options for how they manage their pension savings, the government proposes this requirement is removed, so that, if they wish to do so, a member who transfers out may keep their AVC within the LGPS.

A member who does so will not be able to purchase additional pension with their remaining AVCs, as there would no longer be a main pension account to which these could be added. The two other options for using AVCs under current legislation – a lump sum or purchasing an annuity – would still be available in line with Regulation 17(7) of the 2013 Regulations.

Pre-2014 AVCs

The government is proposing to clarify that deferred members who left active membership of the LGPS before 1 April 2014 can use any AVCs made to buy additional pension in the LGPS.

The intent is to help members who are not able to take all of their AVCs as a tax-free lump-sum, and are left with AVCs which cannot be used to buy an annuity as the amount is too small. Currently, buying additional pension is not allowed, and the only option left is to make an unauthorised payment, which will incur tax charges to the member.

The government proposes to clarify that members to whom Regulation 31 of the Local Government Pension Scheme Regulations 1997 (S.I. 1997/1612) or Regulation 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (S.I. 2007/1166) applies, may elect for the value in their AVCs to be used to provide additional pension under the earlier regulations, when taking payment of their AVCs at the same time as deferred benefits.

Lifetime Allowance

The lifetime allowance (LTA) was the amount of pension (excluding state pension) that could be crystallised over an individual's lifetime before incurring tax. The lifetime allowance charge was the

charge applied when pension benefits were crystallised, and the LTA was exceeded. The last set rates for the LTA charge were 55% on amounts taken as a lump sum and 25% on amounts taken as pension.

The LTA charge was abolished from 6 April 2023, with the new rate being set as the marginal tax rate of an individual. The LTA itself was abolished from 6 April 2024 (by the Finance Act 2024). At the same time as the abolition of the LTA, the lump sum allowance (LSA) and lump sum and death benefit allowance (LSDBA) were introduced, which set the limit on the lump sums that individuals can receive before incurring tax charges (and not counting standard pension payments). The LSA was set at £268,275, 25% of the standard LTA prior to its abolition, and the LSDBA set at £1,073,100 (the same value as the LTA prior to abolition).

As part of the changes to pensions tax enacted by the Finance Act 2024, a new type of authorised payment was established – the pension commencement excess lump sum (PCELS). The PCELS allows individuals who have already used up their LSA or LSDBA to take further lump sums from their pensions, which are to be taxed at their marginal rate. Under the legislation, it is up to schemes to determine:

Whether they will allow PCELSs to be paid from their scheme;

If so, whether a limit will apply to the amount that can be paid from the scheme as a PCELS.

The government is now proposing changes to the LGPS Regulations to reflect the removal of the LTA and LTA charge, provide clarity on the definition of Benefit Crystallisation Events (BCEs), and define the approach to pension commencement excess lump sums (PCELS).

Those changes are summarised as follows:

1. Regulation 50 of the 2013 Regulations and the equivalents to it (to the extent that they have been preserved) in the 1997 and 2008 Regulations to be revoked, and the accompanying actuarial guidance issued under Regulation 50 to be withdrawn.
2. The definition of BCE in Schedule 1 of the 2013 Regulations to be amended to have the same meaning as in Schedule 32 of the Finance Act 2004.
3. Updated actuarial guidance on the approach to PCELSs to be issued by the department, replacing previously issued transitional actuarial guidance on PCELSs.

In respect of the LGPS and PCELSs, the proposal is that PCELSs will be paid from the scheme, subject to the following conditions:

1. The maximum lump sum members will be allowed to take will be 25% of the capital value of the benefits they are crystallising, subject to contracting out limits.
2. That lump sum will first be taken out of their LSA and LSDBA.
3. Once their LSA and LSDBA has been filled/used, the remainder of that lump sum will be paid as a PCELS.
4. That PCELS lump sum will be taxed at the member's marginal rate.

The proposal above reflects a desire to maintain the same proportion of benefits that members can crystallise at each BCE before exceeding tax relief (see regulation 33(2) of LGPS Regulations 2013).

Prior to the abolition of the LTA, members in the LGPS could take 100% of benefits that exceeded the LTA as a lifetime allowance excess lump sum (LTAELS), subject to contracting out limits (defined in actuarial guidance issued under Regulation 50 of the 2013 Regulations). An LTAELS was the equivalent lump sum to the PCELS prior to the LTA's abolition. Whilst acknowledging that the proposed PCELS approach is more restrictive than the LTAELS approach, it should be noted

that the tax treatment of the two lump sums is different. Prior to the aforementioned pensions tax changes, LTAELs were taxed at 55% of their value, whilst PCELSs are taxed at a member's marginal rate of income tax (a current maximum of 45%).

The Finance Act 2024 contains a transitional provision which allows scheme administrator to pay PCELSs in line with the scheme's prior rules on LTAELs. On 15 May 2024, the Local Government Association circulated a communication to administering authorities (AAs) on behalf of the then-Department for Levelling Up, Housing and Communities, which confirmed that AAs must offer members who are retiring the ability to take the benefits that would have been in excess of the LTA as a PCELS, subject to the general rules that apply to PCELSs. These transitional provisions would be superseded by any new rules.

Subject to this consultation, the intention is that a confirmed approach on PCELSs will be reflected in an updated version of the actuarial guidance issued under regulation 33(3) of the LGPS Regulations 2013, and the equivalents to it (to the extent that they have been preserved). That guidance will include advice on the treatment of active cases where the transitional PCELS guidance is in place.

5-year refunds

The government understands that the widely held interpretation of Regulation 18(5) of the 2013 Regulations is that, unless a member has already requested payment, it requires an administering authority to pay the refund of any contributions to a member on the specific date of either the expiry of a period of five years beginning with the date the member's active membership ceased, or, if the member would turn 75 before then, the day before their 75th birthday.

The government desires to give administering authorities greater flexibility in making payments and provide assurance as to when they can do so, and so proposes to amend the Regulations to achieve the following:

The removal of the requirement that unless a member has already requested payment, administering authorities must pay the refund of contributions on the "specific date".

Administering authorities to be provided with a power to pay the refund of contributions at any point after the expiry of the period of five years beginning with the date the person's active membership ceased. This is intended to ensure administering authorities must pay the refund either on request or on the day before the member's 75th birthday (as is currently required by the Regulations), and may also choose to pay the refund after the expiry of the period of five years beginning with the day the person's active membership ceased.

Regulation 19(1) of the LGPS Regulations 2013 to be amended to provide that no refund of contributions is payable from the date that a person attains the age of 75. This is to avoid payments being made that would conflict with an interpretation of the Finance Act 2004 that those payments cannot be made to individuals aged over 75.

A new requirement to be placed on administering authorities, that they must take reasonable steps to obtain the information necessary to pay the refund on the day before the member attains the age of 75.

Child's pensions under the 1995 and 1997 Regulations

The government's view is that currently, a child's short-term pension in the 1995 and 1997 Schemes will be paid in full, even if the beneficiary ceases to be an eligible child part-way through that period. Whilst it is expected that this situation would only occur in a small number of cases,

the government considers that payments made to a beneficiary who is no longer an eligible child are likely to be unauthorised under Section 164 of the Finance Act 2004.

As such, the government is proposing to amend the 1995 and 1997 Regulations (through the 2014 Regulations) to clarify that a child's pension would be paid only for the duration that a beneficiary is an eligible child.

The government is not proposing that this amendment is retrospective, as it does not wish to put any recipients of past pensions in a worse position.

Retained EU law

The government proposes to remove the following references to the European Union (EU):

Local Government Pension Scheme Regulations 2013 (SI 2013/2356)

- Regulation 3(7)(b) and (c) [Active membership]
- Regulation 18(1)(d) [Active membership]
- Regulation 20(2)(j)(iv) [Meaning of pensionable pay]
- Regulation 100(2)(b)
- Regulation 102 [EU Scheme Transfers]
- Schedule 1 – definition of IRMP
- Schedule 1 – definition of European pensions institution

Local Government Pension Scheme (Transitional Provisions, Savings and Amendments) Regulations 2014 (SI 2014/525)

- Regulation 4(5)(d)
- Regulation 9(3)

Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 (SI 2016/946)

- Regulation 3(2)(b) and (c)
- Regulation 6(2)(c)

Bereaved paternity leave

The government proposes to amend the LGPS definition of paternity leave to reflect the Paternity Leave (Bereavement) Act 2024 that will give bereaved fathers and partners a right to Paternity Leave from the first day of employment if they are in the tragic circumstances of losing the mother or primary adopter of their child in the time surrounding birth or adoption.

The definition is to be amended so that "Paternity leave" means leave under section 80A or 80B of the Employment Rights Act 1996.

Amendments from the Joint Committee for Statutory Instruments

The Joint Committee for Statutory Instruments, which reviews statutory instruments for clarity of legal drafting, has proposed minor updates to the LGPS regulations. The government plans to accept the updates in full. The proposed changes are to regulations 27, 41, 42, 44, 45, 47 and 48 the 2013 Regulations, following amendments made by S.I 2023/273 in relation to the revaluation adjustment.

Q41 - Do you agree with the proposal to omit Regulation 50 and the equivalents to it (to the extent that they have been preserved) in the 1997 and 2008 Regulations?

Yes

Q42 - Do you agree with the proposal to withdraw the actuarial guidance linked to Regulation 50?

Yes

Q43 - Do you agree with the proposal to amend the definition of BCE in the 2013 Regulations?

Yes

Q44 - Do you agree with the proposed approach to PCELSs?

Yes

Q45 - Do you agree with the proposed approach to issue updated actuarial guidance on the treatment of PCELSs?

Yes

Q46 - Do you agree with the proposed amendments to the Regulations?

Yes

Q47 - Do you have any comments on the proposals in this chapter?

No

Chapter 7 - Administrative Impact of Proposals

The government recognises that the proposed Statutory Instrument, which can be found alongside this consultation document, would make several changes to LGPS Regulations at once. Some of these changes have been long discussed, but some are new proposals, and all would require administrators to adapt existing processes or create new ones.

The government believes that these changes are important to improve access to and the running of the scheme and proposes to implement most of these changes through the draft Statutory Instrument later this year.

However, the government recognises that there is already significant pressure on LGPS administrators, particularly in the context of McCloud remedy calculations. Accordingly, the government is seeking views on the cumulative administrative burden of the proposals, and in particular if there are areas that administrators consider more complex than others that may need to be introduced later. The government will consider all responses to this consultation and consider if some of the changes would be better introduced through a staggered approach.

The government does not propose to cover any additional cost generated by the proposals in this consultation. The government's view is that, unless otherwise specified, the costs of implementing these proposals are costs of administration of the scheme. Therefore, they would be chargeable to the LGPS pension funds and are not in scope of the New Burdens Doctrine.

Q48 - Do you have any comments about the impact the combined proposals in this document will have on administration?

Whilst the combined proposals will result in the increased compliance of the LGPS with existing legal decisions, remove identified discrimination, seek to improve the gender pensions gap and address a number of outstanding technical regulatory issues, the proposals will undoubtedly increase the already challenging workloads of LGPS funds.

The challenge of recruiting and retaining skilled and experienced LGPS practitioners is well recognised together with the challenges for software providers seeking to develop and implement timely solutions for administering ever evolving LGPS regulations.

We would encourage the government to recognise these challenges and provide clear guidance to LGPS funds on the prioritisation for the backdated amendments while also providing appropriate and achievable implementation timescales

In addition to meeting the requirements for normal operations, LGPS funds are currently committed to achieving deadlines for McCloud and preparing for Pensions Dashboards which require significant resource. Realistic and achievable deadlines for meeting the requirements of the proposals in this consultation should allow for the completion of these existing priorities.

Q49 - Are there any areas where you believe the proposals are significantly more complex and would benefit from a later implementation date?

Opt-Out reporting

The immediate value of reporting data on opt-out numbers in the Annual Report is questionable until there is greater clarity on how LGPS funds would obtain information from employers, and how and when employers record and report the data.

We believe that greater value would be gained from seeking information direct from LGPS eligible employees as to why they decide to opt-out.

This may be achieved by MHCLG introducing a standard form for employees to complete when deciding to opt-out of the LGPS which includes a link in the declaration to a form for submission directly to MHCLG which provides details on why employees decide to opt-out.

We believe that this could be introduced quickly and begin to provide information for government to consider and assist with preparing initiatives to encourage individuals to accept the benefits of scheme participation where it is part of their employment offer.

Gender pension gap reporting

The proposal to introduce gender pension gap reporting from the 2025 Actuarial Valuation appears to be unachievable when LGPS funds have already set, and are working through, their plan for the valuation.

We believe that gender pension gap reporting should reflect individuals who decide not to contribute, or opt-out of pension scheme membership in addition to levels of pension accrued by participating members,

The landscape of employment in the local government sector may also be subject to significant change in the medium term, so a changing environment of employment is likely to result in data that is difficult to analyse.

More time may be helpful to determine an approach that can be consistent and provide robust data.

Q50 - Do you have any comments on the proposed approach to cost?

The majority of the proposals do not appear to have been subject to a determination of estimated associated costs which are likely to fall primarily on scheme employers, with some potentially disproportionate impacts on smaller scheme employers.

Chapter 8 - Public Sector Equality Duty

Background

Under the Public Sector Equality Duty ("PSED"), the government is required to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it, and
- foster good relations between people who share a protected characteristic and people who do not share it

The protected characteristics which should be considered are:

- age
- disability
- sex
- gender reassignment
- marriage or civil partnership
- pregnancy and maternity
- race
- religion or belief
- sexual orientation

The government has access to up-to-date data on the age and sex of LGPS members, but not complete or up-to-date data on the other protected characteristics. Outlined below are the PSED considerations arising from the data the government does have, but respondents to this consultation are encouraged to share any evidence they may have on the potential impact of the proposals on any of the above protected characteristics.

Survivor benefits and death grants

The proposals on survivor benefits and death grants in section 1 are particularly focussed on ensuring there is no discrimination in the LGPS regarding entitlement to survivor benefits. This section outlines the government's approach to PSED considerations regarding the proposals.

The proposal to equalise pension entitlement is intended to ensure there is no discrimination on the basis of sex or sexual orientation when pension entitlement is calculated. The equalisation (where there is a difference in entitlement due to sex or sexual orientation) is intended to uplift the pension entitlement of survivors to the highest entitlement currently provided to any group of survivors. As the proposals are only intended to uplift the entitlement, the government does not consider that this would have any adverse impacts on other members, both generally or on the basis of protected characteristics.

The proposal to remove the nomination requirement for cohabitants is intended to ensure there is no discrimination against members in cohabiting relationships and is put forward in light of the Brewster (2017) ruling. The decision to not backdate the change in the case of the 2011 Regulations is not viewed by government to be discriminatory, as payments under those regulations are discretionary, not an entitlement.

The proposal to remove the age 75 cap on death grants is intended to align the LGPS Regulations with Normal and State Pension Age changes, and underlying HMT legislation. The intention of backdating the change to all deaths of eligible members on or after 1 April 2014 is to align the LGPS with the underlying HMT legislation in a manner consistent with the LGPS NI and other public sector pension schemes.

The proposal to change death grant rules regarding personal representatives is not seen to apply to any specific group of people, as defined by protected characteristics.

Gender Pension Gap

The proposals on the Gender Pension Gap are about improving pension access for women members, and so the protected characteristic of sex is clearly relevant.

The proposal to make unpaid leave under 30 days automatically pensionable will apply equally to any member, regardless of their gender (and indeed any other protected characteristic), but as in 'Chapter 2 – Authorised absences under 31 days', it is mostly women who take such unpaid leave in the scheme. The government considers this proposal to have a positive impact, in that members will have small gaps in their pension accrual filled in, but recognises that for the member this will mean having to make employee contributions for any such gaps, compared to making no contributions and accruing no pension.

The proposal to change how the cost of unpaid leave over 30 days is calculated, when the member has made an election within the time-limit, will have both positive and negative equality impacts. As in 'Chapter 2 – Cost of buying back pension lost in an unpaid break of over 30 days', GAD has performed analysis of the proposal and the impacts according to the protected characteristics of sex and age but has not been able to do the same for other protected characteristics where data is not available. This analysis shows that the proposal will make the cost of buying back cheaper for older members and for women, which means that it will be more expensive for younger members and men. As the government understands that most unpaid leave is taken by women, this is considered to be a reasonable trade-off to make, to address a disproportionately low level of buying back unpaid leave and permitted positive action under section 158 of the Equality Act 2010.

The proposal to make additional maternity leave, adoption leave and shared parental leave without pay fully pensionable only has positive PSED impacts on individual members, as it will improve pension provision and does not make pension provision worse or more expensive for any member. As shared parental leave and adoption leave (which do not have to be taken by a woman) are included, this change would benefit both men and women.

The proposal for gender pension gap reporting does not directly impact individual members' benefits and so there are no PSED considerations to highlight here, although reporting may highlight areas for future work.

Opt-outs

The proposal for opt-out reporting does not directly impact individual members' benefits and so there are no PSED considerations to highlight here, although reporting may highlight areas for future work to support members to remain in the scheme.

Forfeiture

The proposal to remove the requirement that a member must have left employment because of the offence for forfeiture to be possible will have direct impact on some individual members. These proposals mean, there are instances where a member may now come in scope of forfeiture where they would not have done previously. The government considers this to be a consequence of the member's actions - committing a relevant offence - which are unrelated to their protected characteristics. The other proposals for forfeiture do not have direct impact on members and are about making the progress easier for employers to navigate.

McCloud remedy

The McCloud remedy addresses previous discrimination in the scheme on the protected characteristic of age. PSED analysis was conducted as part of the LGPS remedy¹.

The proposals within this document are intended to make sure the remedy is operating correctly in all circumstances. As such, the government considers that these proposals should only have positive PSED impacts, in that they extend the remedy.

Other regulation changes

The proposals on written directions, Combined County Authorities, Welsh Corporate Joint Committees and Exiting employers do not have direct impact on members, and there are no PSED impacts identified.

The proposals on de-minimis payments before 2008, AVCs and transfers and pre-2014 AVCs do have a direct impact on members and are about extending choices available to members. The government does not hold data on the protected characteristics of members who would be affected (such as members who left the scheme before 2008 with a small pension, or those who hold AVCs and are thinking about transferring out their main LGPS benefits), but because the proposals extend member choice, the government believe there can only be positive PSED impacts.

The proposals on the Lifetime Allowance are to reflect wider changes in the tax landscape. Data on the protected characteristics of LGPS members who may be affected by the changes is not held by government. The criteria for being affected by the proposal is driven by the monetary value of benefits being taken rather than any protected characteristic (£268,275 for the Lump Sum Allowance and £1,073,100 for the Lump Sum and Death Benefit Allowance), although it is fair to assume that it will generally be older members of the scheme affected who will have built up such benefits.

The proposals on 5-year refunds will give administering authorities more flexibility over the timeframe in which refunds of contributions must be paid. Data on the protected characteristics of members who have been waiting for refunds to be paid is not held by government, because these members have typically not been paid because there are particular difficulties in locating the right person to pay.

The proposals to amend the 1995 and 1997 Regulations regarding children's pensions have a direct impact on members on the basis of age. The government considers that the

basis of the amendment of the Regulations (to avoid unauthorised payments) justifies the changes being proposed.

The government does not consider the proposals to remove all references to the European Union to have any PSED impacts.

Q51 - Do you consider that there are any particular groups with protected characteristics who would either benefit or be disadvantaged by any of the proposals? If so, please provide relevant data or evidence.

No

Q52 - Do you agree to being contacted regarding your response if further engagement is needed?

Yes

Response prepared by Dawn Kinley (Head of Pension Fund) and Steve Webster (Pension Services Manager – Employers).

Reviewed and approved for submission by Mark Kenyon (DCC Director of Finance) and Cllr Matt Benfield (Chair of the Pensions and Investments Committee)

Submitted on 7 August 2025.