

POLICY BRIEFING NOTE:

LGPS England & Wales Consultation: Access & Protections



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The government has launched another consultation focussed on LGPS benefits and administration. The consultation, titled [Access and Protections](#), includes proposals on four key areas, covering Normal Minimum Pension Age (NMPA), LGPS access for councillors and mayors, academy consolidation, and Fair Deal. In this briefing note, we set out the changes being proposed and give our thoughts on how they may work in practice.

Area 1 - Normal Minimum Pension Age

The NMPA is the earliest age at which pension scheme members in the UK can take benefits from their scheme, ignoring circumstances such as ill health. The current NMPA is 55. In accordance with the Finance Act 2022, the government has announced that the NMPA will rise from 55 to 57, effective from 6 April 2028. This rise in NMPA will apply to all registered pension schemes in the UK. The consultation sets out how it will be applied to the LGPS in England and Wales, and the associated protections.

To facilitate the transition to the higher NMPA, the Finance Act 2022 introduced specific measures allowing for a Protected Pension Age (PPA). This provision ensures that certain individuals are not disadvantaged by the change. A member of any UK pension scheme may be granted a PPA, but this protection is only available if three specific conditions are satisfied. Having a PPA will mean that members can still take their pension from age 55 after 6 April 2028.

Draft regulations have not been provided for this part of the consultation, which means there is a lack of clarity in some areas.

PPA criteria

The eligibility requirements for a member are as follows:

1. immediately before 4 November 2021, the member had an actual or prospective right to any benefit from an age of less than 57
2. the rules of the pension scheme on 11 February 2021 included provision conferring such a right on some or all of the persons who were then members of the pension scheme
3. the member either had such a right under the scheme on 11 February 2021 or would have had such a right had the member been a member of the scheme on 11 February 2021

It is acknowledged that LGPS regulations satisfy conditions 2 and 3; therefore, scheme administrators need only establish whether the member was enrolled in the LGPS immediately prior to 4 November 2021 to determine if they qualify for a PPA. While this may appear straightforward, it could introduce additional administrative complexity. This will be particularly so if there is a lag before administration systems can be updated to reflect the changes.

The changes will result in two groups of members with different NMPAs for many years to come. Monitoring and communicating to the two different groups in the coming years could be a continuing challenge.

Membership categories

The consultation notes that, after the legislative changes, there will be four categories of members. These are as follows:

1. Members with PPA from membership in the LGPS immediately before 4 November 2021
2. Members with PPA from transferring a pension arrangement into the LGPS
3. Members with no PPA
4. Members with a PPA below age 55

Category 1 members who were in the LGPS directly before 4 November 2021 will be able to take their pension benefits from the LGPS from age 55. The government is proposing this will also apply to other regulations that refer to age 55. However they have not yet issued draft regulations for this section of the consultation.

Category 2 members who transfer benefits with a PPA of less than 57 into the LGPS will see their NMPA rise to 57 for those benefits, effective from 6 April 2028. This approach is to align with the LGPS scheme design, which requires members to draw all benefits from a single pension account at the same time.

The details regarding this group within the consultation are somewhat unclear; however, our current understanding is that the government is referring to members who joined the LGPS on or after 4 November 2021 and, therefore, do not have a PPA on their LGPS benefits. In the situation where they then transfer in service that does have a PPA, the government are proposing that service would not be protected in the LGPS. However, if the same member were then to transfer this membership again to another scheme with different rules, they could retain the PPA on that transferred service. Effectively this could result in complications for scheme administrators depending on how administration systems are designed to record this information.

Category 3 members will transition to an NMPA of 57, effective from 6 April 2028. Arguably, many of these members will be younger and the question will be asked whether they can raise a legal challenge on the grounds of indirect age discrimination.

Category 4 members who are currently eligible to access benefits between the ages of 50 and 55 will retain this entitlement, the government has confirmed.

Additional considerations

Service breaks

The consultation does not address how the PPA applies when a member has a service break and rejoins the scheme. The consultation is silent on whether a member can lose their PPA after it has been granted and what the implications are during aggregation. Our understanding is that a member cannot lose the PPA once they have it, and it will apply to all LGPS memberships thereafter, even if not aggregated. This will need to be confirmed by the government.

Vesting period

An additional point of clarification concerns eligibility for PPA when a member participated in the LGPS immediately before 4 November 2021, but for less than the vesting period required to qualify for benefits. We believe these members would qualify for PPA however it is for the government to confirm.

Potential legal challenge

As mentioned previously, the qualifying criteria for PPA could be viewed as indirect age discrimination given the fact that older members have a greater chance of being in the LGPS prior to 4 November 2021. The government will have sought legal advice on this matter given age discrimination is something that public service pension schemes are alert to. Nonetheless, we will ensure this matter is addressed in our consultation response.

Member behaviour

It is possible that the changes could affect member behaviour, especially in the months leading up to the increase on 6 April 2028 when the NMPA is scheduled to rise. However, this may be less significant as many members with longer scheme membership will have a protected pension age and will not be subject to the cut-off in April 2028. Nevertheless, it remains a consideration.

Draft regulations

Finally, the consultation does not currently include draft regulations regarding this change. The government has indicated that they intend to consult on these regulations later this year. Hopefully they will help to provide clarity on some of the issues flagged here.

Area 2 – LGPS access for councillors and mayors

The government's view is that councillors and mayors provide a vital public service. It is proposing that those in England should have access to the LGPS (something which councillors in Scotland and Wales already have). The key elements of the proposal are:

- All English mayors and deputy mayors as well as councillors of principal English local authorities would have access to the LGPS. This will also apply to the Mayor of London and London Assembly Members.
- Councillors who are remunerated for roles (e.g. on combined authorities or audit committees) will be eligible for pension benefits on this remuneration.

- It's not proposed that councillors in Wales, who currently still participate in the scheme under the 1997 Regulations, should move to the 2014 Scheme. The government say they will consider views on this in consultation responses.
- GAD has estimated the total cost to employers at £40-50mn per year and there will not be additional funding to cover the costs.
- Whilst the consultation does not say when this change would be effective from, the [draft regulations](#) have an indicative coming into force date of 1 April 2026, potentially indicating the government's plans.

The idea is that elected members will participate as members in the 2014 Scheme. The starting point is that, as far as possible, elected members should be treated as other members of the scheme, but with various provisions disapplied. Below is a summary of how the scheme will work.

- Councillors and mayors are not defined as workers and so will not be subject to auto-enrolment. Instead they will be required to opt into the scheme if they wish to join. Unlike in the past, councils will not need to pass a resolution to allow elected members to join; the right to join will be automatic.
- Employers will not be allowed to award additional pension, make shared additional voluntary contributions or fund additional pension contributions to an elected member.
- Changes to the definition of pensionable pay will be made to include both basic and special allowances paid to elected members.
- Councillors will pay employee contributions at the same rates as other members, using the same bandings applied to their pensionable pay
- A member will not be permitted to combine any LGPS membership they may have as an elected member with any other type of LGPS membership. The consultation is silent on whether new councillor benefits can be combined with earlier deferred councillor benefits.
- Flexible retirement and early access on redundancy will not be permitted.
- Elected members will be permitted to transfer benefits in and out of the LGPS in the same way as other members, with the exception of final salary benefits
- Early and late retirement will be permitted in the same way as for other members
- elected members will be in scope of forfeiture regulations
- elected members will have access to the 50:50 scheme
- elected members will have the same protections around Assumed Pensionable Pay as other members

Discussion points

The start date of 1 April 2026 for councillors' pensions will provide a challenge. Although benefits are similar to the existing main scheme 'officer' benefits, there are key differences which will need to be reflected in the administration software. Given that software providers will likely want to see final regulations before starting work, the timescale to be ready by 1 April seems unduly ambitious.

There is also the fact that many authorities will have elections on 7 May. This means that councillors who lose their seats will be brought into the scheme on 1 April only to be ejected just over a month later. With this in

mind, we believe a start date after the 2026 local elections would be more appropriate and allow more time for implementation.

Area 3 - Academy consolidation

The government are proposing changes to the consolidation rules in the LGPS in response to the significant growth of multi-academy trusts (MATs) in England. These changes are intended to improve efficiencies and minimise any unnecessary administration costs for employers. It is our understanding that this section of the consultation is applicable to all employers participating in the LGPS; however, it is likely to be of particular significance to MATs.

Background

Over half of schools in England have converted to academy status, with most academies now part of MATs. These trusts often operate schools across different geographical areas, meaning their staff eligible to join the LGPS participate in various local funds, each administered by its own authority. The LGPS Regulations 2013 specify that the administering authority for an academy is determined by the academy's location, not the MAT's headquarters. This geographical spread creates administrative complexities and inefficiencies for MATs, as employers must interact with multiple pension funds and authorities.

This fragmentation across multiple funds not only increases the administrative burden for MATs, but also leads to inconsistent processes, varied contribution rates, and additional costs. As a result, MATs often face challenges in standardising pension management practices, highlighting the need for a more streamlined and coherent approach to LGPS participation for MATs.

Current process

Employers currently have the option under Schedule 3, Part 2, paragraphs 3 and 4 of the LGPS Regulations 2013 to apply to the Secretary of State for a direction to designate a different administering authority as their new administering authority, in order to consolidate all or some of their LGPS membership into a single Fund. Following consultation, the Secretary of State determines whether to grant such a direction. To date, most applications for directions have originated from academies seeking consolidation. However, any LGPS employer can apply for such a direction. Presently, the regulations do not restrict the Secretary of State's discretion nor establish specific criteria for approval. It can prove challenging for MATs and employers seeking to present their case effectively without a formal, structured framework.

The government's proposals

Recognising there is no clear criteria for consolidation applications, the government intends to amend the LGPS 2013 Regulations. The aim is to establish clear requirements, building upon the informal assessment frameworks currently used by the Ministry of Housing, Communities and Local Government (MHCLG). The proposed criteria include:

- A clear, evidenced value-for-money assessment in favour of consolidation, demonstrating that administrative efficiencies will outweigh the costs of transfer and actuarial fees.
- A pre-existing relationship with the administering authority that the MAT wishes to join or consolidate into, such as already having schools within that authority's area.
- All parties involved agreeing to the change, i.e. all administering authorities as well as the employer.

- The receiving fund being able to administer the transfer effectively.

The government proposes removing the requirement for Secretary of State consent where these criteria are met, thereby streamlining the application and approval process. This would enable MATs and other employers to consolidate LGPS memberships more efficiently, provided they can demonstrate compliance with the new criteria

By introducing these criteria, the government seeks to provide greater certainty to both MATs and administering authorities about the expectations and evidentiary requirements for consolidation applications. This approach is intended to facilitate a more consistent and predictable process, encouraging MATs to pursue consolidation where it will deliver tangible administrative and financial benefits.

If an application for consolidation does not meet the established criteria, the process will revert to the current system, whereby the Secretary of State retains full discretion over the decision. In such cases, applicants will still need to submit their case for consideration, and the Secretary of State will consult with all relevant parties before making a determination. This ensures that while the new criteria are designed to streamline straightforward cases, more complex or exceptional circumstances can still be reviewed on their individual merits.

Considerations

Benefits and risks

Consolidation offers potential benefits for MATs and administering authorities, including administrative savings from reduced duplication, and greater efficiency in pension management. Nevertheless, the process carries risks, particularly concerning the transfer of assets and member records. MATs are advised to consider the costs associated with consolidation, including the cost of actuarial assessments and any accounting impacts. When selecting a consolidator fund, MATs should not simply pick the fund with the lowest contribution rate (as this is a poor indicator of risk and an unreliable predictor of future contribution rates) – MATs should consider a range of factors when evaluating which is the favoured consolidator fund. This may require the MAT to form a view on the fund's funding and investment policies, and the fund's policies on employer engagement. Administering authorities will have an important role to play in helping MATs evaluate their options.

Value for money assessment

In the absence of detailed guidelines, the process for conducting a value for money assessment lacks a defined framework and could therefore be subject to varying interpretations. The consultation currently provides only one clear direction: the assessment should demonstrate that administrative efficiencies will offset the costs associated with transfer and actuarial fees. Determining whether and when savings will surpass initial costs is complex, as achieving a break-even point may take several years. This raises questions regarding the appropriate timeframe over which the value for money assessment should be measured to ensure its relevance and validity.

It is unclear what criteria administering authorities should use in assessing value for money, as well as what measures would assure them that this is a desirable course of action. Ultimately, it appears to be at the discretion of each authority to determine their approach to evaluating potential benefits. The transfer process would likely necessitate resources from all parties involved and incur costs to the authorities, which must be carefully weighed against any anticipated advantages.

Practicalities

When considering the transfer process several practical questions arise:

- Will the transfer mechanism automatically apply to any new academies joining the MAT, or will a fresh assessment be required each time a new academy is added? The latter could introduce significant additional costs and administrative burdens for MATs.
- Is it the intention that contractors be automatically included in the transfer process during outsourcing arrangements?
- As the changes proposed will mean a formal direction is no longer issued, we feel it is good practice that these decisions are formally documented by the MAT and the receiving and ceding Funds, and this should be considered at a local level. If there is a statutory requirement to report to MHCLG, it would be useful for guidance to be provided.

Finally, to minimise the risk of disputes over the terms of transfer, it would be beneficial to provide a template agreement that can be used to formalise these arrangements. There should also be clarity as to whether such an agreement would be legally binding, ensuring that all parties have clear recourse should disagreements arise in the future.

Summary

In summary, consolidating pension arrangements for MATs can improve efficiency and cut administration costs, but also brings some challenges. These could be overcome by the presence of clear frameworks and guidance on value for money and transfer processes. MATs and authorities should proceed carefully, weighing short- and long-term effects to ensure benefits exceed risks and costs.

Looking ahead, the successful implementation of consolidation initiatives will depend on transparent decision-making, comprehensive documentation, and clear statutory guidance. Stakeholders would benefit from the introduction of standardised reporting requirements and template agreements to minimise uncertainty and foster consistency across the sector.

New Fair Deal

Background

After years of false dawns, new Fair Deal, which provides protection for outsourced workers, is finally on its way in the LGPS.

Those who have worked in the LGPS for a period will be familiar with this topic, but as a brief recap – ‘Fair Deal’ was the name given to government guidance published in 1999 setting out how pensions issues should be dealt with when public sector staff were compulsorily transferred out of the public sector to service providers. Under the guidance, staff should be given continued access to either their existing public service pension scheme, or to a pension scheme certified by an actuary as ‘broadly comparable’ to their prior scheme.

1999’s Fair Deal guidance was followed by the following directions for local government extending the same protection to local government workers:

- [The Best Value Authorities Staff Transfers \(Pensions\) Direction 2007](#) – (the 2007 Direction) for local government in England
- [The Welsh Authorities Staff Transfers \(Pensions\) Direction 2012](#), which has since been replaced by [a 2022 version](#) (the 2022 Direction) - for local government in Wales.

The 2007 Direction for England and the 2022 Direction for Wales remain in force today. This means that outsourced staff from local government have a continued right to membership of either the LGPS or a broadly comparable scheme after being outsourced.

However, in 2013 the government strengthened its central government policy by publishing 'new' Fair Deal guidance. This provided clarity on a number of areas and removed the broadly comparable scheme option, meaning that central government public sector staff would have an ongoing right to continued membership of their public service pension scheme after being outsourced.

Whilst the new Fair Deal guidance did not apply to local government, various governments have committed to implementing its principles in the sector and there have been two prior consultations on doing this – one [published in 2016](#) and another [published in 2019](#). However, in neither case were the government able to finalise proposals and make the necessary changes.

The government's proposals

The current consultation proposals are very detailed. The government have clearly considered this issue in depth.

Fundamentally, the consultation proposes that LGPS members would retain a right to continued membership of the LGPS after being outsourced – in line with the approach contained in 2013's new Fair Deal guidance.

The significant overhaul in the consultation relates to *how* contractors participate in the scheme. The proposal is to use a 'deemed employer status'. Readers who remember the 2019 consultation proposals will be familiar with this.

- **Deemed employer** is where the contractor does not actually become a full scheme employer in the LGPS. Instead, the outsourcing body remains the LGPS employer for outsourced staff, otherwise known as the '**deemed employer**'.

However, this consultation goes quite a bit further than the 2019 one. It proposes that the admission body route is removed, and that deemed employer status **must** be used. This would reduce the legal number of employers in the scheme over time and would give members more continuity. However, we believe it would add significant complexity. In the next section, [Reflections](#), we set out our thoughts on how this might work in practice.

Deemed employer requires a careful balance of LGPS responsibilities as some issues will be the role of the 'relevant contractor' and others will be the role of the deemed employer. This is borne out in the draft regulations, where detailed provisions [over 38 pages](#) set out how various responsibilities would be split between the two bodies.

The consultation does not just outline how 'relevant contractors' would participate in the scheme under the new regulations. The government also set out their policy on a range of other issues. In the below table we break down what the government are proposing in each of the areas covered.

Topic	Consultation proposal
Protection for outsourced staff	Employees ('protected transferees') who are compulsorily transferred out to a relevant contractor will retain a right to ongoing membership of the LGPS after being outsourced and will remain protected so long as they are working 'wholly or mainly' on the relevant contract.
Employers in scope	All LGPS employers except higher education corporations and admission bodies will be required to follow the Fair Deal requirements when outsourcing. They are termed 'Fair Deal employers' in the consultation and the draft regulations.
Route of access	Relevant contractors will be required to participate in the scheme through the use of deemed employer status. The associated Fair Deal employer will remain the members' LGPS employer and admission agreements will no longer be a requirement for an outsourcing arrangement. Because the protected transferees' actual employer will be the contractor, there are a range of policy and practical issues that mean it will not be the case that the Fair Deal employer will assume all employer responsibilities. Table 2 of paragraph 92 in the consultation sets out a number of employer responsibilities and explains who will have ownership for each of these under the new system. For some areas the answer is that the responsibility will be shared in some way between the Fair Deal employer and the contractor. For example, decisions on which contribution bandings to place members in will be the decision of the Fair Deal employer, but it can be agreed by both parties that this should be taken on by the contractor.
Contributions and funding	One of the main responsibilities of the relevant contractor will be to pay regular contributions to the fund for the life of the contract. The relevant contractor will need to pay the full primary rate, with the Fair Deal employer paying any relevant secondary rate. It will be for the relevant contractor and the Fair Deal employer to decide if the contribution paid by the contractor should be fixed (i.e. set at the rate of the most recent valuation when the contract is let) or floating (where, for example, the rate payable by the relevant contractor may change after each actuarial valuation). These matters would need to be discussed and agreed at the contract negotiation stage.
Contracts already in place	By default, the existing arrangements will continue until the contract is next re-tendered, meaning: - LGPS members participating under an admission agreement will continue to participate under that. - Employees in a broadly comparable scheme will stay in that scheme. When the contract is next re-tendered, the new rules will apply meaning LGPS access must be provided to employees and deemed employer status must be used (except where there are exceptional circumstances – see below). The government do also note that, where parties agree, they could end existing

	contracts earlier than anticipated if this would be beneficial – for example, to take employees out of a broadly comparable scheme and put them into the LGPS.
Inward transfers from broadly comparable schemes	In a change of the policy from the 2019 consultation, it's proposed that inward transfers from broadly comparable schemes should take place on a bulk transfer basis and protect the rights that members had in their previous scheme. For example, if they had final salary rights, these would transfer into the LGPS on a year-for-year basis and no shortfall contribution would be required (although we note that an actuarial gain or loss will arise unless the bulk transfer basis of the transferring scheme is identical to the funding basis of the receiving schemes). Guidance will be issued on this element.
Exceptional circumstances where broadly comparable schemes can continue	The draft regulations provide that there may be exceptional circumstances where a broadly comparable scheme can continue to be used. This relates to cases where the Fair Deal employer believe they may be unable to meet the requirement of the Procurement Act 2023 that they must treat all suppliers the same. The government make clear their strong preference for staff to be transferred into the LGPS and believe that the exception would not apply in most cases.
Continuity of responsibilities	The government set out three options for how shared cost APCs or AVCs that apply in relation to a member prior to being outsourced should be dealt with after outsourcing. The government's preference is that the original arrangement should be honoured and continue to apply with the new contractor. Alternative options include that the previous agreement ends with no preservation of conditions, or that the Fair Deal employer retains responsibility for the previous agreement.
Policy on new employees	Whilst the default will be that only transferring staff would have access to the LGPS, the Fair Deal employer and relevant contractor will be permitted to agree that new employees working wholly or mainly on the contract will also have access to the LGPS. This would enable the Fair Deal employer to avoid having a 'two-tier workforce'. Moreover, even if the Fair Deal employer decides not to permit new employees to join during the life of a contract, when the contract is retendered, they can decide that <u>all</u> those working wholly or mainly on the contract at the time the contract is being re-let should have access to the LGPS under the new contract. This would comprise both originally transferred staff, and new employees hired during the contract with the initial provider. A similar decision could be taken at subsequent retenders.
Implementation	The government intend to work with the SAB, the LGA and other relevant stakeholders to develop and publish statutory guidance on the new requirements. This would replace 2009's admission body guidance. The government is also considering commissioning the SAB to publish additional guidance on areas such as the procurement process, employer responsibilities and administration.

	After the changes come into force, the government intend that there will be a transitional period for contracts beginning within six months of the regulations coming into force during which it will be possible to opt-out of the new requirements, to avoid unnecessary costs being placed on funds and employers. The government intend that this transitional period could be used for contracts that are 'newly signed, reviewed, re-procured or re-negotiated'. The existing pensions protection directions will be updated and reissued to set out the new requirements.
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Reflections

The work produced in the consultation and draft regulations indicate that the government have strongly considered this issue. However, as may be expected for a topic of such legal and contract commercial complexity, we do have a range of questions on various aspects of the proposals, some of which are outlined below:

- In the absence of an admission agreement, will there be a template legal or non-legal document for the contractual matters that need to be decided between the Fair Deal employer and the relevant contractor?
- How will an administering authority ensure they have sufficient oversight of deemed employer arrangements, given that many of the practicalities will be decided upon and implemented between the Fair Deal employer and the relevant contractor?
- How can all parties know and agree which employees are protected in the absence of the schedule to an admission agreement?
- Should Part 2 of Schedule 2 employers (designating bodies) be Fair Deal employers given that the LGPS is effectively optional for these bodies?
- How do the Fair Deal rules apply to Part 4 of Schedule 2 employers, where the regulations are currently silent?
- Do the Fair Deal employers' discretions policies always apply to protected transferees? Who takes discretion decisions for these members?
- Who do members go to if they have a query?
- There now appears to be a minimum of three terms used for the current LGPS employer – Scheme employer, Fair Deal employer and Deemed employer. A probable confusing picture for the LGPS and for Officers to navigate in any new dealings with our employers.

Whilst the compulsory deemed employer model does have key benefits (for example, ensuring continuity for members on day one of a contract), it would add significant complexity to the scheme rules. We have concerns that the value of such a significant overhaul of the current rules may not be beneficial given how far local practices have developed since 2019 – for example, through the widespread use of pass-through in admission

agreements. We believe that a more targeted approach focussing on adjusting aspects of the system that don't work as well as they could, may be more beneficial.

Our views on the impacts of the consultation proposals on members, funding, administration and governance are set out below.

Members

It is very positive that deemed employer would remove the uncertainty that members can experience where an admission agreement is not signed on day one of their outsourcing. This is a persistent and notable problem with the current system and potentially adds to worry and concern for members at a time when their employment change may already be a cause for stress.

On a day-to-day basis, deemed employer could make member engagement with their pension more challenging. Their LGPS employer, the Fair Deal employer, will have some pensions responsibilities, and their actual employer, the relevant contractor, will have others and it may not be clear to members who they should contact. Guidance may be needed to help ensure member engagement consistency across the scheme under the new system.

Funding and risk

The deemed employer proposal would operate in a very similar way to how pass-through currently works across the LGPS – with many pass-through employers paying a rate equal to the Primary Rate of the outsourcing body. For the majority of outsourcings, the proposals would have a negligible impact on funding risk, which is effectively underwritten by the letting authority.

Whilst many contractors are currently admitted on a pass-through basis, a risk-based approach is typically applied when considering the admission basis for large outsourcings, and it is still common for larger contractors to be admitted to the fund under a more 'traditional' admission agreement basis. If all large contractors participated under the 'deemed employer' basis going forward, this would restrict the ability of a letting authority to manage the funding risk to which it is exposed.

Administration and governance

Our view is that there are likely to be significant implementation challenges in a compulsory deemed employer system. As set out in the draft regulations and in table 2 of the consultation, the practical working arrangements of the new approach are highly complex and the practicalities of which party must undertake which responsibility are nuanced. In a world where employers and contractors were more engaged in their pension's responsibilities, the benefits of deemed employer may be more attainable, but this is already a problematic area for LGPS funds and is likely to remain so in to the future. Significant work will need to be undertaken in transition to the new rules to train employees and contractors on the new rules and to help ensure working arrangements are given full consideration before contracts are let.

Other potential governance and administration impacts include:

- Lack of sight of specific working arrangements between the Fair Deal employer and the relevant contractor, meaning it may be harder to resolve queries or check if things are being done correctly.

- Duplication and increased complexity in employer engagement, by having two employer contacts that will each be applicable for different situations.
- The need for the outsourced staff to be held separately on pensions administration systems for monitoring purposes.
- The need to have separate procedures and checks in place to ensure that where decisions are being taken for outsourced staff, these are being taken by the 'right' employer.
- The need to update and amend the pensions administration strategy to reflect deemed employer working arrangements.

Nationally, whilst the government may see that a reduction in employer numbers over time is a positive of the proposals, we believe this is likely to be more of a 'paper' benefit than a 'real' benefit as the same underlying complexity would remain and, in some senses, would increase.

Alternative options to the deemed employer approach

In this section, we set out two alternative options that could be considered by the government as options for implementing Fair Deal in the LGPS, and which we believe have some advantages compared to the deemed employer proposal in the consultation.

In the following section, we provide a comparison table of these two alternatives against the current approach and the consultation proposal.

Alternative 1 – mandation of pass-through admission agreements

Description: Under this approach, admission agreements with contractors would remain. However, the LGPS regulations would be amended to require that pass-through is included in admission agreements. This approach would achieve the government's aim of pensions risk being taken out of outsourcing contracts but retain many of the features of the existing system meaning implementation would be easier.

Pros:

- Pass-through is already the default admission route for most contractors, so this would largely just formalise an existing practice.
- The existing admission body route would be retained, meaning implementation would be more straightforward than other alternatives.
- Contractors would continue to sign a legal document with the fund and outsourcing body, ensuring that they must engage with pensions issues.
- Contractors would have full employer responsibilities under the scheme, meaning there is greater clarity over their responsibilities.
- This could be designed so administering authorities retain the ability to use a different pass-through contribution rate in specific circumstances. The details around this would be clearly noted in the Funding Strategy Statement and as such, subject to consultation with employers.

Cons:

- There may be circumstances where it is appropriate for pensions risk to be passed to a contractor, which mandation of pass-through would prevent (allowing a different pass-through contribution rate would partially address this).
- Members may still suffer uncertainty if the admission agreement is not signed before day 1 of the contract.
- There would be no reduction in employer numbers over time. However, we do not consider the reduction in employer numbers that deemed employer status would achieve to lead to 'real world' efficiencies or reductions in complexity.

Alternative 2 – automatic admission with no admission agreement

Description: Under this approach, the requirement for contractors to sign an admission agreement with the fund would be removed. Instead, automatic admission terms would be contained in a Schedule of the scheme regulations and require a pass-through approach. These terms would automatically apply to contractors from day one of a contract, and contractors would become full employers in the scheme automatically.

Whilst this approach would see more significant changes to the system than Alternative 1, it is closer to the government's deemed employer proposal and would achieve more of the government's aims – for example, continuity from day 1 for LGPS members as well as consistency across the scheme.

Pros:

- Admission agreements are largely standardised documents, and LGPS regulations already contain detailed requirements for what must be contained in these, meaning transition to this approach may not be as disruptive as transition to deemed employer.
- Setting out admission terms in the regulations would provide for a more standardised approach across the LGPS.
- It provides contractors with automatic admission to the scheme, meaning members will legally continue in membership of the LGPS from day one of the contract.
- Similarly to deemed employer status, this option would provide for pass-through automatically.
- Contractors would have full employer responsibilities as they do now, meaning it will be easier for stakeholders to understand what contractors must do, and for funds to monitor that this is being done.

Cons:

- As with deemed employer, there would be no direct legal contract signed between the fund and the contractor, leading to potential lack of engagement with pensions requirements.
- There would be no reduction in employer numbers over time. However, we do not consider the reduction in employer numbers that deemed employer status would achieve to lead to 'real world' efficiencies or reductions in complexity.
- There may be some circumstances where local agreement is needed on specific local situations. Removing the admission agreement may make it more difficult for these to be dealt with.

Comparison table

Below is a table comparing the four different options for the implementation of Fair Deal in the LGPS against various criteria. In all cases, we assume the broadly comparable scheme option is removed. The four options are:

Current system – contractors sign admission agreement with fund, pass-through optional

Government's proposal – compulsory admission through the deemed employer route

Alternative 1 – mandatory pass-through admission agreement

Alternative 2 – automatic admission with no admission agreement

These illustrate that there are a range of ways Fair Deal can be approached, and whilst there is no 'right' answer, there are clear pros and cons of different systems depending on the government's priorities.

With all options, we consider that complexity would remain and that guidance will be crucial to ensure a smooth transition and consistency across the scheme.

Criteria	Current system <i>Contractors sign admission agreement with fund, pass-through optional</i>	Government's proposal <i>Compulsory admission through the deemed employer route</i>	Alternative 1 <i>Mandatory pass-through admission agreement</i>	Alternative 2 <i>Automatic admission with no admission agreement</i>
Achieves pass-through by default	✗	✓	✓	✓
Reduces employer numbers	✗	✓	✗	✗
Achieves consistency across scheme	✗	✓	50/50	✓
Guarantees continuity for members on day one of contract	✗	✓	✗	✓
Ease of transition for administering authorities	✓	✗	✓	50/50
Ease of contractor understanding	✓	✗	✓	✓
Clarity in employer responsibilities	✓	✗	✓	✓
Legal document between fund and contractor	✓	✗	✓	✗

Summary

Overall, we welcome the government's proposal to implement Fair Deal. As is well-recognised in the scheme this is a longstanding challenge and concluding this reform would be welcome. The proposals would give

members more certainty, would open contracts to smaller providers and (would be expected to) make outsourcing cheaper by reducing contractors' risk buffer.

However, we do have significant reservations that the compulsory use of deemed employer status is the right approach to the implementation of this policy. As we have set out, it would add significant complexity to the system and potentially lead to problems with delivery. As the government is implementing an expansive reform agenda in the LGPS, we believe there is an opportunity to achieve a significant policy success – giving LGPS members the right to continued membership of the scheme after being outsourced – in a simpler way. This is particularly so given that the current use of the broadly comparable scheme option appears, from the figures provided in the consultation, to be used minimally.

There will be a range of potential alternative options to achieving Fair Deal, two of which we have set out in this note. In considering how they wish to proceed, the government will need to consider the factors that they consider most important for how the new system will work. We believe adjustments to the current system that focus on achieving particular aims may be more beneficial than a full overhaul.

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