

POLICY BRIEFING NOTE:

# LGPS England & Wales consultation – Access and Fairness



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The government has launched its first non-McCloud consultation focussed on LGPS benefits and administration for many years. The consultation, titled [Access and Fairness](#), includes proposals on a range of big issues, including survivor benefits, the gender pensions gap and opt-outs. In addition, the government is also proposing to tackle a number of technical issues. In this briefing note, we set out the changes being proposed and give our initial thoughts on how they may work in practice.

## Survivor benefits

The consultation makes a number of proposals to reform survivor benefits, many of which have been expected for several years.

Key amongst them is the proposal to address the Goodwin case, which identified unlawful discrimination in the treatment of survivors of female members in the Teachers' Pension Scheme. The government are proposing to do this by equalising survivor benefits.

The proposals also include the retrospective removal of the age 75 limit for death grant eligibility and the formal removal of the nomination requirement for a cohabiting partner's pension under the 2008 Scheme.

With the changes to survivor benefits being largely retrospective, the administrative challenges of implementation will be significant and will likely require manual intervention, not least to determine those affected by the changes. We encourage the government to carefully consider implementation timings, learning from the recent McCloud experience, when determining its final approach.

The government is proposing several changes to survivor benefits. These rectify inequalities which have arisen over the years due to the way entitlements have been calculated.

## Pension entitlement equalisation

Survivor pensions are paid to eligible survivors following the death of a scheme member. The eligibility of survivor members has been extended at various times to accommodate same-sex civil partnerships, same-sex marriages and opposite-sex civil partnerships.

The effect of the amendments can result in lower pensions for the opposite-sex spouses of female members when compared to other survivors. This is due to the fact that, depending on when the member left the scheme and whether the marriage took place before or after leaving, pre-April 1988 member service can sometimes be disregarded in the calculation of the spouse's pensions.

This is not the case for survivors of same-sex marriages, same-sex civil partnerships and female survivors of opposite-sex marriages, where service from 1978 onwards is included in calculations.

The Goodwin ruling in the Teachers' Pension Scheme (TPS) identified unlawful discrimination in the case of the survivor pensions paid to the survivors of women in opposite-sex marriages or civil partnerships, when compared to female survivors of same-sex civil partnerships. The TPS rules were changed accordingly, and similar changes were made to the LGPS Scotland regulations.

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 same-sex civil partners, or when that is not applicable, to the benefit entitlement due to female survivors of opposite-sex marriages.

#### Cohabitee survivor pension

From 1 April 2008, cohabiting partners were recognised in the LGPS and could be entitled to a survivor benefit provided certain conditions were met. In addition to the conditions regarding living circumstances, the scheme member also had to submit a signed declaration confirming the criteria was met and stating their wish that the named cohabitee receive a survivor benefit. Where no such signed form was provided, no survivor benefit would be paid to the cohabiting partner regardless of whether all other eligibility criteria was met.

The 2014 Regulations removed the requirement for a signed nomination; however, it was not removed for benefits related to members who died between 1 April 2008 and 31 March 2014.

Rulings in 2017 (Brewster) and 2018 (Elmes) by The Supreme Court and High Court respectively found that this amounted to unlawful discrimination and was incongruent with the Human Rights Act 1998.

Since 2021, administering authorities have been advised through non-statutory guidance to disapply the nomination requirement. The government now proposes changes to the 2014 Regulations to remove the requirement, with changes backdated from 1 April 2008.

In order to apply the amendments retroactively, administrators will need to review historic cases to determine whether there was a cohabiting partner at the time of the member's death who met the eligibility criteria but was ultimately prohibited from receiving a survivor's pension due to the absence of a signed nomination form. Such circumstances cannot be easily identified from the existing data held on member records and will require a review of previous documents relating to the case and potentially the need to request further information from relevant parties.

#### Death grant – age 75 cap

The LGPS provides for a death grant to be paid where a member dies within the 10 years of their retirement. The grant is equal to 10 times the member's annual pension, less the amount of pension already paid to the member. This is to ensure the member, or their beneficiaries, receives a minimum benefit equal to 10 years pension, regardless of when the member dies. Currently, there is a cap which prevents the payment of such a death grant if the member dies aged 75 or over.

As Normal Pension Age (NPA) in the LGPS is tied to State Pension Age (SPA), which has risen over the years, the age 75 death grant cap has become outdated as many members are working beyond age 65. This means

that where a member dies past age 75 there is no death grant due, even when they are within the 10-year window of their retirement (for example, if they retired at age 67 and their pension has only been in payment for 8 years.)

The previous cap was in line with the overriding legislation introduced by HMT in 2004 which restricted death grants to only be paid in respect of members who died before age 75. In 2011, HMT removed that cut-off for registered schemes and the proposed changes would now update the LGPS rules to reflect that change. Although HMRC rules now permit the payment of death grants where members die aged 75 or over, those death grants are not paid tax free. If the death grant is paid to a non-qualifying person (for example to the deceased's personal representative) it is subject to a Special Lump Sum Death Benefit Charge of 45%. If paid to a beneficiary, the death grant is taxed at the recipient's marginal income tax rate.

Amendments to the 2013 and 2014 Regulations would be made to remove reference to the age 75 limit and ensure that the limit is removed for all eligible members who died on or after 1 April 2014.

Administering authorities would need to revisit cases in order to determine where a death grant was previously not paid and is now due under the changed regulations.

The data required to identify these cases (member's date of birth, date of retirement and date of death) should be readily available and easily obtained via existing software reporting. The number of affected members in each fund is likely to be very small and therefore the administrative impact is not expected to be significant.

The calculation of death grants is currently automated across most administration systems, and it is expected that only a small amendment to the parameters would be required in order to accommodate the changes. Any cases are likely to be few and far between, so any manual intervention required prior to software updates taking effect are likely to have minimal impact on LGPS administrators.

#### Personal representatives

Currently, where a death grant is payable and the payment is not made within 2 years of the death (or the date that the administering authority could reasonably be expected to have known about the death), the payment must be made to the member's personal representatives, i.e. to the member's estate. If paid within the two-year limit, the administering authority may decide to pay the grant to whichever party it deems appropriate (a nominated beneficiary, personal representatives or any other person deemed a relative or dependant). The Finance (No.2) Act 2015 amended the Finance Act 2004 to provide that such death grants, paid outside the two-year window, were no longer unauthorised and would be taxed as follows:

- Special Lump Sum Death Benefits Charge (SLSDBC) of 45% were paid to personal representatives.
- The recipient's marginal rate of tax where paid to beneficiaries.

In practice, this means that death grants paid out in the LGPS beyond the two-year window are always subject to the 45% charge, as the option does not exist for the lump sum to be paid to beneficiaries.

The government is proposing aligning the LGPS Regulation with the Finance (No.2) Act 2015 by removing the requirement for death grants outside of the two-year limit to be paid to personal representatives.

This will apply to all deaths where the death grant has not yet been paid and reduce instances of the SLSDBC being applied going forward.

The same two-year limit which currently applies to AVCs will also be removed by amendment to the 2013 Regulations.

## Gender pensions gap

Following commitments made ahead of the 2024 general election, the government is proposing steps to better understand the LGPS's gender pensions gap, as well as some steps to try close it.

Recognising that part of the cause of the gender pensions gap is the increased likelihood of women having service breaks for caring purposes, the government are making changes to how pension contributions apply to certain breaks in service. These will require payroll development and, in our view, sufficient time should be allowed for this. There is also a significant proposal to provide that unpaid additional maternity leave between 9 and 12 months automatically counts for LGPS purposes, at employer cost.

Key amongst the proposals is that each fund's valuation report includes the whole fund's gender pensions gap, along with the gender pensions gap for applicable employers. Whilst this will be welcome information, we are unsure whether this is achievable for the 2025 valuation, and whether the cut-off for employer participation should be based on number of employees (as the government propose) or number of active members (which is easier to obtain and, potentially, more relevant).

A Gender Pensions Gap exists in the LGPS. Analysis by GAD referred to in the consultation identified a substantial difference between the average LGPS pension benefits currently being built up by male and female members. The difference is roughly 35% for benefits in the CARE scheme, and roughly 46% for benefits in the final salary scheme.

As 74% of the LGPS membership are women, this suggests that a majority of members are not being as well served by the scheme as they should be.

The gap is significantly influenced by the gender pay gap and wider socioeconomic structures. The government proposes changes to address gaps in pensionable service which are predominantly taken by women due to caring responsibilities.

It is worth noting that some of the proposed changes regarding the treatment of unpaid leave would require updates to payroll software systems and therefore sufficient lead-in time should be given to avoid the requirement for manual intervention.

### Authorised Unpaid Leave under 31 days

Currently authorised unpaid absences under 31 days in the LGPS are not automatically pensionable, except for sickness and ordinary maternity/adoption/paternity leave. Members can enter into contracts to buy back missing service and have it count for pensionable purposes, but this is complicated, time constrained and requires knowledge on the part of the member.

The current arrangement penalises women, who take the majority of unpaid leave, often related to childcare issues.

The proposal is to make the first 30 days of authorised unpaid leave pensionable with employer and employee contributions payable automatically, returning to the approach adopted in the LGPS before 1 April 2014.

The consultation discusses two ways in which the earnings (used to calculate contributions over the period) might be calculated:

- **Assumed Pensionable Pay (APP):** Average of the member's pensionable pay (including non-contractual pay such as overtime) in the three months preceding the unpaid leave.
- **Lost pay:** Actual pay as per contract (does not include non-contractual pay such as overtime).

In many cases, APP and Lost pay are likely to be very similar and any difference in the amounts would have a minimal impact on pension, given the short breaks involved.

The consultation states a preference to use Lost pay. This would appear to be the simpler option to administer and aligns with the method currently used in LGPS Scotland.

The proposed approach removes the onus on the member to be aware of the impact of gaps in their pensionable service and take steps to recover the service through additional payments. By treating authorised unpaid absences under 30 days as pensionable (except for industrial action), the default position for members taking such absences is improved. As 90% of unpaid leave is taken by women, this would be a step towards mitigating the gaps in pensionable service which contribute to the overall gender pensions gap.

However, where a member has already taken a period of unpaid leave in a month, they may feel that paying the contributions due for that period is an additional financial strain over the same short-term period, despite the long-term benefit of retaining pensionable service. The government may wish to consider whether members should be given the option to 'opt out' of the automatic purchase of pensionable service. This would retain the benefit of the default position to improve pensionable service gaps for female members but would provide members who are already suffering from the financial burden of unpaid leave with more autonomy over their contributions.

#### Authorised Unpaid Leave over 30 days

For authorised unpaid leave of over 30 days the option exists to buy back the lost service. However analysis shows that the cost of doing this is generally cheaper for younger male members of the scheme and more expensive for older and female members of the scheme. If an election is made to buy back missing service within 30 days of returning to work, the employer must pay 2/3rds of the cost with the member paying the remaining 1/3rd.

The consultation outlines three possible approaches to address this unfairness.

- **Approach A:** 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.
- **Approach B:** Change the share of costs which fall to employers and to members.
- **Approach C:** Design a new method which redistributes the cost between members and the scheme employers.

Whilst approach B would make the cost of buying back unpaid leave cheaper for members, this would not particularly address the gender pensions gap as there is no evidence to suggest that the uptake of the option to buy back would benefit female members of the scheme over their male counterparts.



Therefore, we would agree with the government's preferred option, approach A. This method directly addresses the age and gender disparity for older and female members when buying back lost pension and is more likely to improve outcomes for female members.

The proposed changes also include extending the time-limit for electing to buy back lost pension from 30 days to 1 year. We believe this will encourage more members to take advantage of the option as it gives them more time to understand the process and make a decision based on their personal circumstances and financial position.

Where a member has been on extended authorised unpaid leave and elects to enter into an additional pension contributions arrangement on their return, there currently exists a three-year time limit on the compulsory employer contributions. The proposal is to remove the three-year limit as there is no clear rationale for a time limit of any length.

#### Pension contributions during child-related leave

Currently, ordinary maternity leave (26 weeks) and paid additional maternity leave (13 weeks) where the woman qualifies for maternity leave, counts as pensionable service. However, any unpaid additional maternity leave (up to 13 weeks) is not pensionable.

The proposal is to make all periods of unpaid maternity leave pensionable, without the need to make an election and with the employer picking up the full cost. Members will continue to pay contributions on any maternity pay received.

This would incur additional cost to the employer; however, the impact is not expected to be significant due to the proportionally low number of members who take the full year of child-related leave.

The proposed changes would significantly improve pension outcomes for female members who take the full year of statutory maternity leave. The additional 13 weeks of unpaid additional maternity/adoption leave becoming automatically pensionable would directly address the gaps in pensionable service which contribute to the gender pensions gap.

#### Mandatory Gender Pension Gap (GPG) reporting in the LGPS

Whilst gender pay gap reporting is now well established for UK organisations, the government proposes making gender pension gap reporting mandatory in the LGPS in order to both gather data and encourage focus on factors which may contribute to such gaps.

The report would cover two metrics: the fund-wide gender pension gap (GPG) (the percentage difference in the LGPS pension income built up over a typical working life for men and women) and their gender pension saving gap (the percentage difference in the LGPS pension accrued annually for men and women.) The report would be included in the actuarial valuation report (and annual report) every 3 years.

We support the introduction of mandatory GPG reporting and believe this will raise awareness of the issue, both at an employer level and an individual level.

Where female members are made aware of their fund's GPG, it may become an area of interest and could prompt them to engage more with their own pension planning.

Similarly, as one of the largest pension schemes in the world, the introduction of mandatory reporting for the LGPS would be a significant step towards raising awareness of GPG's and set a positive precedent.

The government proposes that these changes should be implemented in time for the 2025 valuation cycle and reports would be included in the 2025 valuation reporting. This is a challenging timescale, particularly when this is a new area for funds to report on and, as detailed below, there are many areas which may require further clarification.

We agree that the valuation report is an appropriate setting (noting it would also be included in the annual report), and that the 3-yearly cycle of valuation data will be sufficient given the slow-moving nature of any changes to the GPG. However, in order for members to view and engage with the reporting, we would hope to see funds also share the findings in a more accessible format, such as on annual benefit statements or member newsletters.

We note that the government aims to work with GAD, SAB and actuarial firms to discuss data requirements, and would also like to see the actual reporting also addressed by these groups. In particular, there needs to be consistency amongst the four actuarial firms in approach and reporting in order to allow for comparison between funds throughout the LGPS.

Further to the above point, the government's proposed definition of the GPG as "the percentage difference in the LGPS pension income built up for male and female members over a typical working life" allows for interpretation which may give rise to differences in reporting. In particular, 'typical working life' may be used in different ways between the actuarial firms.

Finally, the proposal currently applies to employers with at least 100 employees. However, actuaries and administering authorities are likely to only hold information confirming how many scheme members each employer has. For example, an employer with 150 employees but only 80 of whom are members of the LGPS, would not necessarily be on the radar of the actuary/administering authority as needing to be included in the report. It would be preferable to base the requirement instead on the number of active members for each employer. This would make it easier to identify which employers are in scope and ensure the results are more relevant (e.g. it would avoid the situation arising where an employer has 150 employees but few of them are members of the LGPS and therefore the reporting would be mandatory but may not provide any significant insight into the pension gap.)

## Opt-outs

The government is taking steps to address the LGPS's long-standing lack of knowledge about which LGPS members are opting out and why.

A key element of the proposals is a requirement for LGPS to include an opt-outs report in their annual report, but the success of this will be partly reliant on the quality of data provided by employers. Details are also still to emerge of the exact requirements for the report, with the government saying they will cover this in updated annual report guidance.

Additionally, there will be a new opt-out form issued by the SAB that LGPS employers will be required to use, and an optional Gov.uk form for members to complete. However, as an optional form, it will need to be seen if there are a sufficient number of completions for a statistically significant data base to be built up.

The government is proposing to take steps to improve the information available on members opting out of the LGPS, noting that current data is limited and that this is a concern, due to the importance of people having good pensions in retirement. A Local Government Association survey of LGPS administering authorities from summer 2024 included the striking figure that opt-out rates ranged from 3% to 40% of members. Whilst some of that wide range may be due to the quality and consistency of data used, it was also noted that only 35% of respondents to the survey said they routinely reviewed opt-out rates in their fund.

Better data would be used to better understand both how many members are opting out but also the types of LGPS members who are most likely to opt out, and therefore what is driving this behaviour. The government are proposing three steps, as detailed further in this section, but note that they may consider further action, depending on the evidence and trends identified.

### Annual report

It is proposed that administering authorities must include in their annual reports a report on the number of people eligible to be in the scheme who have opted out. The details on the specific requirement at this stage are unclear and the government state that they will set out their expectations in updated annual report guidance. However, one likely challenge is that the government state their expectation is that administering authorities will need to request data from employers each year on a) the number of staff eligible for membership of the scheme, and b) the number of those who have opted out, to be able to meet the requirement.

With the large number of employers participating in the LGPS and varying levels of engagement with the scheme, this could be challenging data to obtain, particularly when taking into account the need to chase employers and verify information. However, employers should have to hold this information for automatic enrolment purposes and so it should be available to send to administering authorities.

### Scheme advisory board (SAB) form

It is proposed that the scheme advisory board (SAB) develop a new template opt-out form and that the scheme regulations are updated to require that member opt-outs must be submitted using this form. The expectation is this will seek to obtain some further information about why members are opting out and their personal circumstances.



### Optional Gov form

The government also state that they will develop a new Gov form, which members will be asked to fill in, stating why they opted out and containing further information about their circumstances. This'll include profession type, working hours, salary, gender, age, ethnicity, marital status and dependents.

Whilst in our view it is positive that steps are being taken to understand this important issue, it is unclear whether this approach will give the government the clarity on the drivers of opt outs that they seek. As an optional form, it will be up to members to decide if they wish to complete it, and it will need to be seen if there are a sufficient number of completions for a statistically significant data base to be built up.

## **Forfeiture**

Whilst forfeiture is rare, it is important that the provisions that are in place work effectively and the government proposals in this area should mean the provisions work better, and more in line with the policy intent.

Removing the requirement for a member to have left their employment because of the offence will address a significant loophole in the current system, and removing the requirement for an application to be made within three months of conviction will remove a largely arbitrary bureaucratic deadline.

The government is proposing four changes to current forfeiture legislation intended to make the process more effective and fix known issues.

They are also proposing to revoke regulation 92 allowing an employer to give an 'interim payments direction', allowing an administering authority to continue to make benefit payments to a member up to the point a forfeiture direction is made. The government believe this is not necessary as the regulations already, by default, allow benefits to be paid up to this date.

### Removing the requirement for the member to have left employment because of the offence

Current forfeiture regulations can only be applied where the member has left employment due to their offence, known as a "relevant offence." The proposed changes close the loophole whereby a member could avoid forfeiture by leaving their employment prior to an offence being uncovered. This would be achieved by removing the wording in the regulations that links the offence with the reason the member left employment.

The adverse impact of the current legislation was demonstrated in the Pensions Ombudsman's ruling in case PO-7277 in which Enfield Council was unable to pursue recovery or retention of Mr A's benefits, despite his criminal fraudulent actions, as the member was made redundant prior to the discovery of his crimes.

The proposed changes would allow applications for forfeiture recovery of a monetary obligation or forfeiture certificates to be made in a wider range of circumstances and ensure that steps taken by the member to conceal their actions (such as in case PO-7277 described above) do not limit the ability for future applications to be made.

The proposed changes would not be applied retrospectively and would not apply to any applications for forfeiture certificates in respect of a relevant offence where the member was convicted more than 3 months before the regulations came into force.

The proposed changes may arguably result in a greater number of members who suffer reduced pensions due to the broader circumstances in which a forfeiture application can be sought. However, in the Government's

view, this should be considered part of the repercussions for the member's own criminal conduct and will not affect the vast majority of law-abiding LGPS members.

#### Removing the time limit to make a forfeiture application

The provision which currently stipulates a time limit of 3 months from the date of conviction in order to submit an application for a forfeiture certificate will be removed under the current proposal. It will still only be possible to make an application after a person has been convicted of an offence.

This increased flexibility will help employers make applications as there will be no deadline and is in line with other public service pension schemes' current requirements.

This change would not be made retrospectively but would apply to members convicted of an offence where the existing three-month time limit had not expired at the time the regulations come into force.

#### Forfeiture in relation to benefits accrued in earlier schemes

A new regulation will be added to the Transitional Regulations 2014 to ensure that these new forfeiture rules apply equally to benefits accrued both before and after 1 April 2014. In our view, this approach is logical and reasonable to ensure that the intended outcome of the proposed changes applies equally across the earlier schemes.

#### Forfeiture guidance

The government will work with SAB to develop guidance to aid scheme employers when making an application for forfeiture certificates. Such guidance is already available for other public service pension schemes.

The instances in which an employer may seek to apply for a forfeiture certificate are likely to be rare and we believe guidance specific to the LGPS would be a valuable resource.

### **McCloud remedy**

Whilst most of the regulations relating to McCloud were made in 2023, the changes proposed here will close a number of gaps in the current framework and are welcome.

The changes are largely technical and will not effect most members in scope of McCloud – however, a particular gap being addressed is with respect of members who have divorced and been subject to a pension sharing order. The new regulations will allow pension debits to be retrospectively addressed, and allow GAD to issue updated actuarial guidance setting out how this should be done.

The government are proposing a number of mostly technical changes to the regulations governing the McCloud remedy in the LGPS. These would address some gaps in the drafting that have been highlighted since the initial regulations came into force on 1 October 2023.

#### Divorce – pension debits and credits

The government note that regulation 12 of the LGPS (Amendment) (No 3) Regulations 2023 (the McCloud remedy regulations) only provides that a pension credit can be retrospectively amended due to the underpin, and that there is no facility for the corresponding pension debit to be changed. The government are proposing to rectify this. If the rectification results in a member being overpaid, the government expect that administering authorities will take reasonable steps to recover this.

The government also confirm that where a pension sharing order sets a fixed amount instead of a percentage, and that fixed amount has already been used to provide the ex-spouse or partner a pension credit, there will be no need to revisit the pension debit.

### Transfers from other schemes for members over age 65

Currently LGPS underpin protection cannot continue beyond a member's 65<sup>th</sup> birthday. If a member remains in active service at 65, their underpin date will be their 65<sup>th</sup> birthday. However, this approach does not work where a member joins the LGPS after their 65<sup>th</sup> birthday and transfers in remediable service from another public service pension scheme.

To address this, the government is proposing to create a new mechanism to give these members an underpin date, which would take place on the earlier of the day that transfer is received, and the date they leave the LGPS. The government intends to issue actuarial guidance setting out how underpin calculations for these members should work, but has not yet given any details on the mechanism that is being proposed.

### Other regulation changes

Other changes related to the McCloud remedy that are proposed include:

- The retrospective rules for survivor benefits currently do not cover deaths occurring on 30 September 2023. The Government is proposing to rectify this.
- Currently the McCloud regulations require that interest is paid on Club transfer top-up payments to McCloud remedy schemes. However, this is contradicted by the Club memorandum itself and the government previously acknowledged in the McCloud statutory guidance (para 65) that the regulations were incorrect and would be changed. The Government is now proposing to remove the requirement for interest to be paid on Club transfer top-up payments to McCloud remedy schemes.
- Addressing a gap that means there is currently no interest period set out in legislation for direct compensation to cover specified Part 4 tax losses. The proposal is that interest would apply from the date the tax was overpaid to the date the compensation is paid.

## Other regulation changes

Reflecting the fact it has now been a long time since LGPS regulations have been subject to the usual maintenance that was expected in past years, the draft regulations include a number of ‘tidying up’ changes to provide clarity or address more minor issues.

Most significant amongst these are the proposals to remove the requirement for administrators to pay refunds within five years of members leaving, and the clarification of the government’s long-term policy for lump sum payments after the abolition of the lifetime allowance.

In this section of the consultation, the government seek views on a range of other regulation changes, many of which are small or clarifying amendments. The main changes in this section are described below, but other changes that are proposed include:

- Clarifying that directions issued under Part 2 of Schedule 3 of the 2013 Regulations (directions to move from one administering authority to another) can be issued retrospectively.
- Updating the 2023 Regulations to provide that a combined county authority, a new type of authority set up under the Levelling Up and Regeneration Act 2023, is an LGPS employer and must offer access to the scheme.
- Addressing inconsistencies in the regulations to ensure that an employer who has no active members left in an LGPS fund is legally able to enter into a deferred debt agreement, even if they continue to have active members remaining in another LGPS fund.
- Technical changes to the legal drafting on revaluation following feedback from the Joint Committee for Statutory Instruments.
- Amending the definition of paternity leave to ensure that the LGPS definition fits with wider changes that mean fathers and partners are entitled to paternity leave from the first day of employment if the mother or primary adopter of their child dies around the time of the birth/ adoption.
- Amending the 1995 and 1997 Scheme regulations to clarify that a child’s short-term pension is only payable whilst the child is an ‘eligible child’. This change would not be made retrospectively to avoid putting people in a worse position.
- Removing historic references to the European Union.

### Lifetime allowance

The government is proposing a number of changes to LGPS regulations to reflect the abolition of the lifetime allowance in 2024, and the changes to the pensions tax system made at the time (particularly the introduction of the lump sum allowance). The changes would see:

- The government allow members to take up to 25% of the capital value of their benefits as a lump sum:
  - Where members have some of their lump sum allowance (LSA) / lump sum death benefit allowance (LSDBA) remaining, that lump sum will be tax-free.
  - For any part of the lump sum that exceeds this, the remainder of the lump sum would be paid as a Pension Commencement Excess Lump Sum (PCELS), and taxed at the member's marginal rate of income tax.
- Regulation 50 of the 2013 Regulations being revoked. Regulation 50 currently provides that no LGPS member can receive benefits where the capital value of those benefits exceeds the lifetime allowance. The actuarial guidance issued under regulation 50, on how to calculate the capital value, would also be revoked.
- The actuarial guidance issued under regulation 33(3) (commutation of pensions) would be updated to reflect the changes made, particularly to cover the rules surrounding PCELSs.

### 5-year refund limit

The government is taking steps to address the long-criticised rule in the LGPS which means that LGPS refunds must be paid within five years of the member leaving the scheme. This has been problematic for LGPS administering authorities as, in the event the fund loses contact with the member, they often cannot meet this requirement.

The government is now proposing that there would be no specific requirement to pay the refund at the expiry of five years after the member's leaving, and the refund could be paid after this date – either upon request or, at the latest, the day before the member turns 75. There would be a new requirement for an LGPS administering authority to take 'reasonable steps' to obtain the information needed to be able to pay a refund before the member turns 75.

### De minimis payments for pre-2008 leavers

The government is proposing to allow de minimis (or 'small pot') payments to be made to LGPS members who left the LGPS on or before 1 April 2008. Currently, leavers before 1 April 2008 can have a trivial commutation payment, but if they do not meet the criteria for that, then the pension must continue in payment. This change will align the rules for pre-1 April 2008 leavers with those leaving after this date and allow more very small pensions to be commuted to cash where the criteria are met and the member would prefer this.

### Additional voluntary contributions (AVCs)

The Government is proposing two changes in respect of AVCs:

- That the requirement for a member to transfer out their AVCs when they transfer LGPS main scheme benefits out is removed. This appears to be a positive move, reflecting that members often lack options for transferring small AVC pots. After the change, if a member does transfer out their main LGPS benefits and keeps their LGPS AVC in the scheme, they would not be able to use the AVC to buy additional pension in the LGPS. Instead they would be able to take this as a lump sum or purchase an annuity from an insurance company.
- To allow deferred members who left the LGPS before 1 April 2014 to use their AVCs to buy additional LGPS pension, if they take their AVCs at the same time as taking payment of their pension. This would give members more options, and would particularly help for situations where the member cannot buy an annuity because the value of the AVC is too small.

### **Administrative impact of proposals**

Many of the proposed changes are aimed at rectifying inequality and discrimination that exists within the LGPS, or improving member outcomes, and by its nature these factors will sometimes take precedence over concerns about administrative impact of implementation. However, making a number of changes simultaneously would place an additional strain on LGPS administrators, particularly when considered alongside other significant administration undertakings currently ongoing, such as the McCloud remedy and connection to Pension Dashboards.

Some of the proposed changes will require manual calculations or historical investigations in order to apply retrospective amendments, in particular regarding backdated changes to survivor pensions, death grants after age 75 and cohabiting partner pensions from 1 April 2008 to 31 March 2014. Whilst the outcome of any such investigations is likely to impact only a small proportion of members or their beneficiaries, the work required to identify and establish benefits due is still a significant undertaking and much of the work must be done manually in order to review the circumstances of each specific case.

Other changes can be incorporated into existing automation or system functionality; however software providers are currently also working to develop solutions for the McCloud remedy and would require sufficient time in order to make the necessary updates. In particular, the proposed changes to the treatment of authorised unpaid leave would require payroll system changes and would benefit from an extended lead in time.

### **What's next?**

The consultation closes on Thursday 7 August 2025, and later in July we intend to circulate our draft response to clients. The government have requested that responses are submitted using an online form as this makes analysis much easier, so we intend to submit our final response this way and would encourage others to do the same.

With the consultation covering a range of complicated issues and including 52 questions, there will no doubt be a lot of work needed before final regulations are made, and it's hard to predict when the final changes may emerge. When the regulations are made, LGPS funds will be particularly interested to see what the implementation timescales for each topic are, so they can begin their planning for the changes.

If you would like to discuss any of the topics covered in the briefing note, [please get in touch](#).



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