

Access and Fairness Consultation

Hymans Robertson LLP is pleased to submit our response to the '[LGPS in England and Wales: Access and fairness consultation](#)'. Hymans Robertson LLP has a significant legacy in the Local Government Pension Scheme (LGPS), providing independent actuarial, investment, benefits and risk consulting services, as well as data and technology solutions to our clients. These include 75% of LGPS funds and some of the LGPS pools and local government employers.

The responses below have been submitted to MHCLG via its online survey.

Survivor Benefits

Survivor pension entitlement equalisation

Question 1: Do you agree with the government's proposed amendment of survivor benefits rules?

We agree with the proposed amendments.

Question 2: Do you have any comments on the intended approach to equalising survivor benefits?

The proposals go further than just equalising the benefits payable to widowers of opposite sex marriages with those of equivalent widows. Ensuring that all survivors receive the pension that would have been payable to their same sex civil partner (or opposite sex widow of a marriage where no civil partner pension would be payable) should remove any other inequalities in the regulations that might persist through different definitions of service used in the various calculations.

Question 3: 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 of this undertaking will be significant. Affected survivors will need to be identified, systems updated to carry out the calculations and survivors contacted in order to receive the remedy. All at the same time as the resource of officers and systems providers is being focused on McCloud and implementation of Pensions Dashboards.

Given the age profile of the affected survivors this should be a priority area, however, there needs to be a realistic implementation period built into the remedy. To place LGPS funds in the position of having a statutory obligation to pay adjusted survivor benefits without any realistic chance of being able to calculate and pay them would be unreasonable.

Question 4: Do you have any further comments on the proposed changes?

Applying this remedy is likely to produce a number of challenges for funds. It would be helpful for MHCLG, perhaps in collaboration with the Scheme Advisory Board, to produce guidance covering areas such as how to deal with situations where the survivor has subsequently died, interest on retrospective benefits due and timescales.

Cohabitee survivor pensions

Question 5: Do you agree with the government's proposals to formalise the removal of the nomination requirement?

Yes

Question 6: Do you have any comments on the government's proposals to formalise the removal of the nomination requirement?

No further comment

Question 7: Do you have any comments on the proposed approach to backdating?

We agree that backdating the measure to 1 April 2008 is the correct and fair thing to do. However, we believe that this will produce a considerable administrative burden. We anticipate that there will be challenges in some of the following areas. It would be helpful for MHCLG to produce guidance for funds about what expectations it has of funds in these circumstances.

Identifying beneficiaries.

Once funds have identified every member who died between 2008 and 2014 for whom no spouse's, civil partner's or cohabiting partner's pension is payable, they will need to determine that member's co-habiting status at the time of death. This information won't be held on any data fields on administration systems. In some cases it may be possible to identify the information from documents held on archived file but that will be extremely time consuming and provide an incomplete picture.

For cases where it is impossible to tell from information held whether or not there was a possible cohabiting partner at the time of the member's death, the fund will have to contact the deceased's estate, beneficiaries or some other relative. It may not always be obvious who to contact and, in some cases, there may be no obvious individual.

Where the cohabiting partner has since died and their estate wound up, who should receive payment of any pension that would have been due?

Obtaining information

Establishing cohabiting status can sometimes be challenging at the point of a member's death but may be considerably more difficult years after the event. Surviving cohabiting partners may no longer have the paperwork necessary to prove that cohabiting status existed at the time of death and had done so for at least two years.

Where the cohabiting partner has since died this may be almost impossible to determine.

Children's pensions

Difficulties may arise where children's pensions are in pay, or have been paid previously, as these will have been calculated on the basis that no adult survivor pension is paid. If a cohabiting partner's pension becomes retrospectively payable, then any children's pensions will need to be recalculated and will be lower. Is the expectation that funds should recover this overpaid children's element?

Death grants (age 75 cap)**Question 8: Do you agree with the proposed amendments to death grants?**

Yes

Question 9: Do you have any comments on the government's proposals to remove the age 75 cut-off from the LGPS Regulations?

We believe the change should be backdated to 6 April 2011 since that is the date the overriding legislation changed. While this would mean more administrative work now, it would prevent the risk of the government losing a court case in the future and this needing to be revisited again.

Question 10 – Do you have any comments on the proposed approach to backdating?

No comment

Question 11 – 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?

It should be relatively straightforward for funds to identify members who died aged 75 or over since 1 April 2014 and for whom no death grant was paid. However, there will still be complexities for administration staff to deal with. If there are obvious beneficiaries, then payment of backdated death grants will be relatively straightforward. However, where there are no obvious recipients and the member's estate has been wound up, it may be difficult for funds to find a way to pay the backdated death grant.

Death grants (personal representatives)**Question 12: Do you agree with the proposal to remove the two-year limit?**

Yes

Question 13 – Do you have any comments on the government's proposal to remove the two-year limit?

No comment

Gender Pension Gap**Authorised absences under 31 days****Question 14: 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?**

We believe that a return to the approach that applied before April 2014 would be an improvement on the current system of requiring members to elect to use additional pension to make good short breaks in their pensionable service. Requiring members to make a positive election within a limited period of time of returning to work is likely to lead to more short gaps in service for members which will disproportionately affect women.

We do have a concern that where a member is off for the full 30 days, they would be required to pay two full months' contributions from a single month's pay, following a month in which they have not been paid. There is a risk that this could lead to financially stretched members opting out of the scheme, and this situation could be more likely to impact women given their increased likelihood of having gaps in service.

One approach might be to make payment of contributions the default position but allow members to make a time limited election to opt out. Another approach might be to reduce the period for which contributions are compulsory meaning that short breaks of a few days are automatically covered but for longer periods the member must still elect.

Question 15: 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.

We think that using APP introduces unnecessary complexity. Using actual pay lost is likely to be easier for members to understand and employers to manage. Using actual pay lost is also the approach taken in LGPS Scotland, which means that payroll software systems will already be capable of delivering this.

Cost of buying back pension lost in an unpaid break of over 30 days

Question 16 – Do you agree with the proposal to align the cost of buying back unpaid leave over 30 days with standard member contribution rates?

We agree. It seems logical that the cost of buying back additional pension should be the same whether the member is in work and earning or if they are on unpaid leave. It would also be simpler for the pension purchased not to be categorised as APC pension. i.e. the pension purchased should have a survivor element attached and be payable unreduced on redundancy.

The consultation states;

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.

Yet elsewhere it is confirmed that;

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.

If the current approach is deemed to disadvantage women then it would seem reasonable to at least move to gender neutral factors for the purchase of extra pension too.

Question 17 – 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. Although we assume that the member must still be in active employment with that employer.

Question 18 – Do you agree with removing the three-year limit on employer contributions in Regulation 15(6)?

We don't object to the limit being removed but we would be surprised if many employers granted employees a three-year unpaid leave of absence.

Pension contributions during child-related leave

Question 19 – 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?

We agree with the proposal. In our view making all child-related leave pensionable will have a positive impact in reducing the gender pensions gap.

Mandatory gender pension gap reporting in the LGPS

Question 20: Do you agree that gender pension gap reporting should be mandatory in the LGPS?

Yes, we support this.

Question 21 – Do you agree that the 2025 valuation (and associated fund annual reports) is preferable?

A three-year cycle for reporting seems reasonable, given the fairly static nature of the data being measured. The valuation report (and associated fund annual report) seems a reasonable place to include this metric.

There is still work to be done to establish a consistent approach to reporting this metric and fund valuations are already well under way. We would encourage agreement of what should be reported, and how, as soon as possible to meet the ambitious timeframe.

Question 22 – Do you agree with the threshold of 100 employees for defining which employers must report on their gender pension gap?

We think that employees is the wrong metric to use. Some contractors in LGPS may have many hundreds of employees, only a handful of whom are eligible for the LGPS. We believe active LGPS members should be the measure.

We agree that very small data sets need to be excluded to avoid anomalies, and we think that a cut off of 100 LGPS members is reasonable.

Question 23 – 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’?

We agree that the definition used reflects what the government wants to capture. However, we believe there needs to be some work done to properly define the terms used. For example, how should transfers in of non-LGPS benefits, or additional pension purchased by the member be treated?

There is value in measuring the gap both over a working lifetime and over the course of a year. The former measure reflects the reality of the pension gap as it affects women at a point in time, including historic inequalities. The latter measure reflects current scheme design and allows an assessment of the impact of recent scheme changes. Both measures have value in helping to illuminate issues and shape policy in this area.

A further measure that could be considered is the average amount of pension accrued to date for male and female members, split by, say, 5-year age bands.

Question 24 – 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’?

We believe both measures have value. See our response to Q23.

Opt-outs

Publication of opt-out data in the Annual Report

Question 25 – Do you agree that the annual report is the best method of reporting data on those who choose to opt-out of the scheme?

We believe it is important that the quality of opt-out data in the LGPS is improved, and we support the government taking steps to address this. The annual report seems to be an appropriate place for this data to be reported, given it is a legally required report and the underlying data will change from year to year. However, as the annual report deadline is not until 1 December in the year after the scheme year ends and the SAB scheme report is not usually published until the following Spring, there will be a significant gap in how quickly scheme-wide data on opt outs can be published - at least a year.

We believe it may be better for this data to be gathered by the government through the SF3 annual data collection, either instead of or as well as through the annual report. As the SF3 data release is usually published in the

autumn after the end of the scheme year, this would mean scheme-wide data would be available more than six months earlier, and through an official statistic.

Question 26 – Do you foresee any issues with administering authorities’ ability to gather data on opt-outs?

There are likely to be significant challenges in gathering this data due to the fact that the source of this data will be scheme employers. A well-recognised challenge in the LGPS has been the large number of scheme employers and how to effectively engage them in their pension responsibilities. The addition of new data collection requirements for employers each year, with potentially complex specifics (i.e. to ensure that only those employees who are eligible for LGPS membership are included in the figures) may give rise to local difficulties. This will particularly be the case for small employers who may lack the capacity to dedicate time and resource to this.

We would encourage the government to:

- Engage with payroll providers to encourage the development of automated solutions for employers to obtain this data from their payroll systems.
- Specifically impose duties on LGPS employers to provide the required data each year, allowing administering authorities to complete the opt out reports. Under the current proposals, the responsibility for compliance would sit with the administering authority alone. Adding a specific requirement for LGPS employers would make clear that there is a shared responsibility and help support LGPS funds in discussions with their employers. It would also potentially allow for employers to be reported to TPR for non-compliance, although this would not be a preferred choice of action.

Question 27 – When updating the annual report guidance to reflect opt-out data collection, what information would be most useful to include?

To ensure reliable data is gathered for the scheme, and that results are consistent from fund to fund, we would encourage annual report guidance to be clear and specific on the figures that the government wants LGPS funds to include. This should set out clearly which employees should be in-scope and which should not be. For example, we expect that the government is not interested in employees who are not eligible for membership of the LGPS, such as those aged over 75 or those who are eligible for membership of another public service pension scheme.

This annual report guidance should also be developed with administrators, payroll providers and employers so that the final approach is practical and achievable.

Collection of additional opt-out data

Question 28 – Do you agree with the proposal to collect additional data about those opting out of the scheme?

We agree with the aim and believe the SAB template form could be helpful for obtaining this data. If, as set out, the government intend that it will be required for the SAB form to be used in order for a member to opt out, particular care needs to be given to ensuring that this form will work locally, as there will be different processes and formats used by different employers and LGPS administrators. Again, we would encourage that the template is developed with the input of LGPS administrators and employers. A Welsh language version of the form will have to be provided.

With respect to the optional Gov.uk form we have concerns that an optional form may not be completed by enough optants out for a statistically significant data set to be built up and effectively analysed. This would also be a self-

selecting population, meaning that the results could be skewed if members of a certain type are more likely to fill in the optional form. For example, if you do computer-based work, would you be more likely to complete the form than somebody who doesn't?

Question 29 – Are you an employer, part of an administering authority or member of a pensions board?
No.

Question 30 – Do you have any comments on the collection of additional information?

Whilst it is positive that steps are being taken to gather better opt-out data, the lead-in times for gathering this data are lengthy. If parts of the new approach do not prove effective, then there will be further delays whilst alternative approaches are considered and put in place.

An alternative approach to obtaining additional data on LGPS opt-outs may be for the government to undertake a research project with specific LGPS employers and administering authorities to analyse trends for those bodies. Partnering with specific authorities who are willing to support this could be a better way of obtaining reliable and useful data. Whilst this would not represent the whole of the LGPS's experience, it may be more likely to yield statistically significant information in a shorter timeframe.

Forfeiture

Removing the requirement that a member must have left employment because of the offence

Question 31 – 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 current arrangements have already produced some perverse outcomes, where justice isn't done solely because of an accident of timing. These proposals will remove that loophole.

Removing the time limit to make a forfeiture application

Question 32 – 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, more flexibility is welcome in this area.

Revoking Regulation 92

Question 33 – Do you agree that Regulation 92 of the 2013 Regulations should be revoked?

Regulation 92 appears to give employers the power to instruct the administering authority to do what would be the default position anyway, ie in the absence of a forfeiture direction, pay benefits. We, therefore, don't see any need to retain it.

Forfeiture in relation to benefits accrued in earlier schemes

Question 34 – Do you agree that in order to give full effect to the proposed amendments equivalent modifications should apply to earlier schemes?

Yes.

Forfeiture guidance

Question 35 – Do you agree that there should be forfeiture guidance to assist employers in making applications?

Yes. It is rare for administering authorities to get these kinds of cases so some guidance would be welcome. We know for example there have been questions over how GMP should be treated and what to do if members seek to transfer out benefits to avoid a monetary recovery.

McCloud Remedy

Divorce credits

Question 36 – Do you agree with the government’s proposal for pension debits and credits?

Yes. Regulations and actuarial guidance to set out how administering authorities should retrospectively implement the remedy for pension debit/ pension credit members remains the most significant gap in the LGPS’s McCloud remedy. The proposals set out in the consultation seem reasonable and are consistent with how the wider remedy works.

To allow the remedy work for these members to be progressed as a priority it would be helpful if the proposed regulations could be made as soon as possible, along with the proposed actuarial guidance. In the government response, it would be helpful if details of the government’s implementation expectations for these cases could be set out, given the long delay there has been since the initial regulations. Under the statutory guidance issued in summer 2024, the McCloud implementation phase cannot currently extend beyond 31 August 2026.

If there are any cases where the changes mean that a member with a pension debit has been overpaid and steps need to be taken to recover the overpayment, these are likely to be highly challenging and it would be helpful if the government could set out its expectations regarding how administering authorities should progress these. Such cases may be particularly challenging given that it has been almost two years since the rest of the LGPS remedy regulations were made, so arguably the scale of the overpayments will be worse because of the government’s initial oversight in excluding these cases.

Death grants on 30 September 2023

Question 37 – Do you agree with the government’s proposal to cover deaths on 30 September 2023?

Yes – this appears to be necessary to avoid there being a gap in the regulations for members who died on 30 September 2023.

Interest on Club transfers

Question 38 – Do you agree with the government’s proposal to clarify if interest applies on Club Transfers?

Yes. The proposed change appears necessary to address the inconsistency which has been highlighted.

Interest on Part 4 tax losses

Question 39 – Do you agree with the government’s proposal to include part 4 tax losses in the 2023 regulations?

Yes. Under the current regulations there is a gap in respect of the interest period which should be applicable for direct compensation for a Part 4 tax loss. It is helpful that the government is proposing to close this gap.

Transfers from other public service schemes for members over 65 years old

Question 40 – Do you agree with the government’s proposal for transfers from other public service schemes for members over 65 years old?

Given the situation, the proposal described seems a balanced approach, but the specifics will depend on the content of the actuarial guidance, which has not yet been published. The change would mean that members transferring remediable service from other public service pension schemes over the age of 65 would receive underpin protection when they transfer to the LGPS. By providing that such members have an underpin date on the date the transfer payment is made, it means that members in this situation do not benefit unduly compared to the rules that would have applied had they been a normal LGPS member, where the latest an underpin date can take place is their 65th birthday.

It is however unfortunate that a further bespoke approach is required for a relatively small group of members. In particular, it appears this approach would need to be applied retrospectively to all cases since April 2014 where an LGPS fund has received a transfer of remediable service from a public service pension scheme for a member over age 65. It would be helpful if the government could confirm that this is the case and, again, set out its implementation expectations for the revisiting of these cases.

Other regulation changes

Question 41 – 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.

Question 42 – Do you agree with the proposal to withdraw the actuarial guidance linked to Regulation 50?

Yes.

Question 43 – Do you agree with the proposal to amend the definition of BCE in the 2013 Regulations?

Yes.

Question 44 – Do you agree with the proposed approach to PCELSs?

The approach seems reasonable. Whilst a 25% limit is more restrictive than the approach which had been in place before the lifetime allowance was abolished, we can see why it may be desirable for the same limit (25% of the value of benefits) to apply to lump sums below the tax-free limit as well as above this amount.

Question 45 – Do you agree with the proposed approach to issue updated actuarial guidance on the treatment of PCELSs?

Yes. This appears necessary to ensure that administering authorities have adequate information to undertake the benefits calculations under the new rules, and that these calculations are consistent from one LGPS fund to another.

Question 46 – Do you agree with the proposed amendments to the Regulations?

Whilst we have not undertaken a detailed technical review, the regulations generally appear to align with the policy intent in the various areas.

As some of the changes appear intended to address historical errors/ ensure the regulations are fully up to date, we note that Schedule 1 of the LGPS Regulations 2013 currently includes a definition of 'reserve forces pay' without this term being used in the Regulations. It may be possible for this definition to be deleted.

Question 47 – Do you have any comments on the proposals in this chapter?

The changes proposed are generally welcome. Specific comments on the various proposals are outlined below.

Five-year refund limit

We believe the proposal to remove the five-year refund limit is positive and would remove an arbitrary deadline, which has caused administration challenges for many years. It is proposed that an administering authority must take 'reasonable steps' to obtain the information needed to pay a refund before age 75. It would be helpful if the government could confirm what type of steps should be taken to meet this test.

References to the European Union

We question whether the proposed changes to the definition of independent registered medical practitioner could have unintended consequences. It is proposed that the elements of this definition which allow an IRMP to have qualified in an EEA state are removed.

Whilst it may be government policy that, going forward, qualifications issued by EEA states are not recognised for someone to become an IRMP, deleting it from the regulations could affect people currently working as IRMPs and who obtained the relevant qualifications whilst the UK was in the EU. This could apply to British people who qualified overseas or EU citizens who qualified in an EEA state and have settled status in the UK.

As these changes are also proposed to be retrospective to 31 December 2020, the changes may mean that medical advice given in the past by an IRMP would no longer count as IRMP advice under the regulations, which surely wouldn't be right.

Administrative impact of proposals**Question 48 – Do you have any comments about the impact the combined proposals in this document will have on administration?**

While generally supporting the proposed measures we believe there will be a significant impact on administrators. This is particularly the case at a time when significant projects such as McCloud, Pensions Dashboard and, for a number of local authorities, unitarisation are taking place. It should also be noted that a lot of project time and management resource will be taken up by the pooling changes brought about by the Fit for the Future reform.

Where systems changes are required, experience shows that there needs to be a reasonable lead in time, to allow for updates and testing of new routines.

In the area of survivor benefits, there is likely to be a lot of judgement required. For example, what is the appropriate effort required to identify potential survivors? How should funds deal with cases where the estate has long been wound up and there is no obvious beneficiary? In this area guidance from MHCLG and SAB would be valuable.

Question 49 – Are there any areas where you believe the proposals are significantly more complex and would benefit from a later implementation date?

In our view the areas that should be prioritised are those where a long-standing, specific, measurable inequality persists, particularly the area of survivors where the beneficiaries are likely to be older. McCloud divorce credits is another area where legislation is required urgently.

Although supportive of measuring the gender pension gap and reporting on opt-outs, these proposals are designed to gather information to guide future changes to the scheme. We feel it would be reasonable to treat these areas as a secondary priority. This would allow time to develop a consistent approach to reporting and measuring these discrepancies between funds and across the actuarial firms. This would ensure a stronger data set in the long run.

Question 50 – Do you have any comments on the proposed approach to cost?

None.

Public Sector Equality Duty

Question 51 – 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.

Some of the proposals will have benefits for particular groups, as outlined in the consultation document. We are not aware of groups with protected characteristics who may be disadvantaged by the proposals, and have not undertaken any analysis on this.

To better comment on these issues, it may have been helpful for the government to share its own figures on how the proposals are expected to impact members of different groups – for example, any GAD analysis that has underpinned the PSED assessment.

Question 52 – Do you agree to be contacted regarding your response if further engagement is needed?

Yes.