

POLICY BRIEFING NOTE:

LGPS Scotland consultation – Changes to The Local Government Pension Scheme (Scotland) Regulations 2018



Con Hargrave

Governance, Administration &
Projects Consultant



Laura Guest

Associate Governance, Administration &
Projects Consultant

The Scottish Government (via the SPPA) is [consulting](#) on a range of LGPS issues, with a focus on addressing inequality and better understanding longstanding issues such as the gender pension gap and the level of scheme opt-outs. In this note, we summarise the proposals and set out some of the key things administering authorities will need to be thinking about for the upcoming changes. The accompanying draft regulations are [here](#).

Section 1 - Death grants

Death grant – age 75 cap

The LGPS provides for a death grant to be paid where a member dies within 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' worth of 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in the LGPS is tied to State Pension Age (SPA), which has risen over the years, the age 75 death grant cap has become outdated as many members are working beyond age 65. If a member dies past age 75 there is no death grant due, even when they are within the 10 year window of their retirement age (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 2014 and 2018 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 6 April 2011.

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. 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.

Extension of Discretionary Payments and Injury Benefits

Although not mentioned in the consultation document, proposed changes to the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 will see those benefits become payable to cohabiting partners following a member's death.

Section 2 - Gender pension gap

The Scottish Government has been undertaking work to assess the gender pension gap (GPG) in the LGPS. Typically, females accrue a lower pension than males. As 69% 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 GPG is significantly influenced by the gender **pay** gap and wider socio-economic structures. The Scottish Government proposes changes to address gaps in pensionable service which are predominantly taken by women due to caring responsibilities. They are also proposing new reporting requirements so that the GPG in the LGPS is better understood.

Some of the proposed changes regarding the treatment of unpaid leave would require updates to payroll software systems. Therefore, we believe sufficient lead-in time should be given to avoid the requirement for manual intervention.

Authorised Unpaid Leave over 30 days

For authorised unpaid leave of over 30 days, the option exists to buy back the lost service.

The proposed changes extend the time-limit for making an election to buy back lost pension from the current 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.

It should be noted that question 2 of the consultation asks, "Do you agree that all authorised unpaid absences over 30 days should be automatically pensionable?". This approach is not considered in the consultation or in the draft regulations and the question appears to be an error.

Pension contributions during child-related leave

Currently in the LGPS, ordinary maternity leave (26 weeks) and paid additional maternity leave (up to 13 weeks) counts as pensionable service. However, any unpaid additional maternity leave is not pensionable. Unpaid additional maternity leave ranges from 13 to 26 weeks, depending on whether the member qualified for pay on their first 13 weeks of additional maternity leave

The proposal is to make all periods of unpaid additional maternity leave automatically pensionable. This is up to 26 weeks. There would be no need to make an election and the employer would pick up the full cost. Members will continue to pay contributions on any maternity pay received. The pension accrued by the member would be based on their full pay prior to their maternity leave commencing.

This would incur additional cost to the employer and the impact is currently unknown. However, a recent equivalent assessment in the LGPS (England & Wales) indicated that the impact was not expected to be significant due to the proportionally low number of members who take the full year of child-related leave in that scheme.

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 GPG.

Mandatory GPG reporting in the LGPS

Whilst gender **pay** gap reporting is now well established, the Scottish Government proposes making gender pension gap reporting mandatory in the LGPS in order to gather data, encourage focus on factors which may contribute to such gaps and to better enable future policy development.

The report would cover two metrics: the fund-wide GPG (the percentage difference in the LGPS pension income built up over a typical working life for men and women) and the 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.

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.

The Scottish Government also proposes to work with the SAB to review the findings once the reporting process has been completed, and on guidance for the reporting requirements.

The Scottish 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. We believe 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 and intend to make this point in our consultation response.

Finally, the proposal currently applies to employers with at least 100 scheme members. However, it's not clear if this is 100 members in total or 100 active members – clarification will be needed from the Scottish Government on the scope of reporting when final decisions are made.

Section 3 - Opt-outs & participation rates

The Scottish 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 funds to include an opt-outs report in their annual report. The Scottish Government will work with the SAB to produce guidance on the details, but the expectation is that the report will include the total number of current employees in their organisation, the number who have opted out, as well as details of profession type, working arrangements (full/part time), salary, gender, age, ethnicity and marital status.

Additionally, there will be a new opt-out form that LGPS members will be asked to complete. In this form members will be asked their reason for opting out, as well as additional information on profession type, working hours and salary, gender, age, ethnicity, marital status and dependants.

Section 4 – Forfeiture

Recovery and retention

The Scottish Government is proposing changes to current forfeiture legislation intended to bring the LGPS in line with other public service pension schemes, by removing the time limit to make a forfeiture application.

Although not mentioned in the consultation document, the draft regulations propose removing the requirement for the member to have left employment because of the offence for which recovery and retention applies.

This would 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 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 changes will also remove the requirement for an application for forfeiture to be made to Scottish Ministers within three months of conviction, a largely arbitrary bureaucratic deadline. 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.

Forfeiture in relation to benefits accrued in earlier schemes

Equivalent modifications will be made to forfeiture provisions in earlier schemes, to ensure that these new forfeiture rules apply equally to benefits accrued both before and after 1 April 2015. 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.

Section 5 – McCloud

Scottish Ministers are proposing a number of mostly technical changes to the regulations governing the McCloud remedy. 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 draft regulations set out changes to regulation 12 of the LGPS (Remediable Service) (Scotland) Regulations 2023 (the McCloud remedy regulations) which would mean that a pension debit can be retrospectively amended due to the underpin. Currently it is only the corresponding pension credit which could be amended retrospectively. The draft regulations provide that this recalculation must be done in accordance with actuarial guidance. These changes are not described in the consultation document.

Transfers from other schemes for members over age 65

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

To address this, Scottish Ministers are 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. We understand Scottish Ministers intend to issue actuarial guidance setting out how underpin calculations for these members should work, but details on the mechanism that is being proposed have not yet been set out.

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. Scottish Ministers are proposing to rectify this.
- Changes to ensure the correct intent is met regarding the rules on interest on Club transfers. Under the new regulations, interest would not be due on Club transfer top-up payments relating to McCloud, except where the original transfer was completed before 1 October 2023 and the receiving scheme was not a McCloud remedy scheme.
- 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.

Section 6 - Other regulation changes

In this section of the consultation, the SPPA seeks 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:

- Changes to allow deferred members who left the LGPS before 1 April 2015 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. This change is not mentioned in the consultation document but is in the draft regulations.
- Clarifying that directions issued under Schedule 4 of the 2018 Regulations (directions to move from one administering authority to another) can be issued retrospectively.
- 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 1998 Scheme regulations to clarify that a child's short-term pension is only payable whilst the child is an 'eligible child'.
- Removing historic references to the European Union.

De minimis payments for pre-2015 leavers

Scottish Ministers are proposing to allow de minimis (or 'small pot') payments to be made to LGPS members who left the LGPS on or before 1 April 2015. Currently, leavers before 1 April 2015 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 2015 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.

Lifetime allowance

Scottish Ministers are 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 set out how Pension Commencement Excess Lump Sums (PCELS) will be treated in the scheme. A PCELS will be payable from when the member has used up all of their lump sum allowance (LSA) and lump sum death benefit allowance (LSDBA).

A PCELS is taxed at the member's marginal income tax rate. The consultation suggests that the maximum this can be is 40% although, in fact, the top rate of income tax in Scotland is 48%.

To give effect to this, the following changes are proposed:

- Regulation 48 of the 2018 Regulations would be revoked. Regulation 48 currently provides that no LGPS member can receive benefits where the capital value of those benefits exceeds the lifetime allowance. We understand the actuarial guidance issued under regulation 48, on how to calculate the capital value, would also be revoked.

- The actuarial guidance issued under regulation 32(3) (commutation of pensions) would be updated to reflect the changes made, particularly to cover the rules surrounding PCELS's.

5-year refund limit

Scottish Ministers are 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 Scottish 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.

Section 7 - Additional amendments

Definition of local government service

Adds the definition of "local government service" to Schedule 1 of the 2018 Regulations, which had been previously erroneously omitted.

Regulation 29(14) of the 2018 Regulations is to be revoked, as it incorrectly implies members can opt out and receive deferred benefits whilst in the same employment.

Employments relating to provision of education

The Teachers' Pension Scheme (Scotland) (Amendment) Regulations 2025 made certain categories of employment such as music instructors, educational psychologists, quality improvement managers, and certain other employments relating to educational research and the management of teachers eligible for the Scottish Teachers' Pension Scheme.

The proposed amendments to the 2018 Regulations provide for individuals in those categories who were in the LGPS on 1 August 2025 to remain in the LGPS until they leave that post.

Section 8 – Scottish Fire and Rescue Service (SFRS) consolidation

After the establishment of the SFRS on 1 April 2013, the non-firefighting staff of the SFRS remained in their respective regional LGPS funds. The SFRS applied to Scottish Ministers to request that their LGPS members are consolidated into the Strathclyde Pension Fund (SPF), administered by Glasgow City Council. The transfer of these members to SPF has now taken place and changes to the 2018 Regulations are now proposed to reflect the changes made. The changes to the regulations are minimal and simply provide that Glasgow City Council is the administering authority for former and current SFRS employees in the various regional funds.

The Scottish Government say the intent is that the responsibility for the assets and liabilities relating to current and former employees should become the responsibility of the Strathclyde Pension Fund and the value of assets relating to these members should also transfer to Strathclyde. An exception is made for former employees whose employment transferred to Sodexo through a contractual arrangement to provide services to the SFRS.

Section 9 – Neonatal Care Leave

Neonatal Care Leave is a new statutory entitlement for employed parents, which can be used where their child receives neonatal care leave starting within 28 days of birth and goes on to spend seven or more continuous days in care. Scottish Ministers propose that neonatal care leave is added to the definition of child-related leave.

Section 10 – Concurrent aggregation

The Scottish Government is proposing addressing the long-known issue regarding the adjustment of service accrued prior to 1 April 2015 when aggregating the benefits with a concurrent period of membership which started after 31 March 2015.

The current regulations do not require that pre-April 2015 membership is adjusted where the ongoing active pension account does not also contain any pre-April 2015 membership. However, SPPA confirmed in 2018 that this was not the intent of the policy and that they intended to amend the regulations in due course.

It is our understanding that most, if not all, funds are currently processing concurrent aggregations in line with the policy intention. We therefore agree with SPPA's assessment that this will merely formalise the existing practices of administering authorities.

Administrative impact of proposals

Many of the proposed changes are aimed at rectifying inequality that exists within the LGPS, or improving member outcomes, and by its nature these factors will sometimes take precedence over concerns about the 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.

The proposed changes to death grants after age 75 will require manual calculations or historical investigations in order to apply retrospective amendments. 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 payments 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 25th November 2025, and ahead of the closing date we intend to circulate our draft response to clients.

With the consultation covering a range of issues and including 21 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, although we expect there would be a desire to lay final regulations before the pre-election period for the next Scottish Parliament election begins.

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 have any questions on the consultation or anything covered in this briefing note, please [get in touch](#).

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T 020 7082 6000 | www.hymans.co.uk

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