



Ministry of Housing,
Communities &
Local Government

Local Government Pension Scheme: technical amendments to benefits

Government response to the consultation



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Introduction

1. On 4 October 2018, the Ministry of Housing, Communities and Local Government opened a consultation on proposed amendments to the Local Government Pension Scheme (LGPS) Regulations 2013 ('the 2013 Regulations') and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 ('the 2014 Regulations'). The consultation period closed on 29 November 2018 and a copy of the consultation paper can be found at <https://www.gov.uk/government/consultations/local-government-pension-scheme-technical-amendments-to-benefits>.

2. The consultation was split into 3 main sections:

- In common with all public service pension schemes, the government has decided to implement changes to the LGPS to provide that survivors of registered civil partnerships or same-sex marriage will be provided with benefits that replicate those provided to widows.
- A proposed amendment which would enable the Secretary of State to issue statutory guidance on the regulations.
- A technical amendment allowing early access to benefits for deferred members of the 1995 Scheme.

3. This document summarises the responses received and sets out how the Government plans to take forward each of the matters covered in the consultation.

Part A – Overview of the responses received

4. There were 19 responses to the consultation, from various stakeholders ahead of the deadline. 6 additional responses were received after the consultation had closed. Almost half of the responses (8) were from pension administering authorities. There were a small number from individuals and other groups (including one response from a body of pension lawyers, one consultancy and one actuarial firm).

5. All 19 bodies responded positively to the proposals outlined in the consultation to varying degrees, though alternative suggestions were made in respect of the implementation of the proposals. There was little variation in the levels of support for each of the proposed amendments. The technical amendment allowing for early access to benefits for deferred members of 1995 Scheme uniformly received a positive response. There was a similar level of consistency in the concern expressed by the vast majority of responses for the proposal to amend survivor benefits for same-sex and civil partners.

6. The power to issue statutory guidance received a positive response, though stakeholders also sought reassurance about its correct use, including a desire for consultation ahead of guidance being issued. Only one body expressed strong opposition to the introduction of such a power.

Part B – Survivor Benefits

7. We consulted on changes to LGPS that are made necessary following the case of Walker v Innospec. On 12th July 2017, the Supreme Court found that Mr Walker's male spouse was entitled to the same benefits which would be paid if Mr Walker had left a widow in an opposite sex marriage. The government believes that the implication of this judgement for all pension schemes with similar benefits, like the LGPS, is that survivors of registered civil partnerships or same-sex marriages should be provided with benefits equal to those that the scheme member would have left to an opposite sex surviving spouse. The Government has therefore decided that survivors of registered civil partnerships or same-sex marriages will be provided with benefits that replicate the benefits provided to widows. These changes will be implemented in LGPS as though they had applied from the respective dates that the civil partnerships and same-sex marriages were implemented.

8. In undertaking the consultation, we asked for general comments on the proposal.

Response overview

9. Eighteen (95%) responses commented on survivor benefits. All 18 responded positively, with some reservations and concerns around its implementation. The responses were similar in the reservations that were raised. Many of the concerns raised clustered around key issues and themes, as set out below:

Administrative complexity

10. A number of significant concerns, in particular from the local government sector, were raised around the additional administrative burdens that would arise from this new provision.

Extention of equalisation

11. A number of respondents highlighted that they would like to see the equalisation of survivor benefits extended to the benefits payable to widowers in opposite-sex marriages. Some respondents found it difficult to see how the Government can legitimately maintain the current differential treatment for widowers in an opposite-sex marriage.

The probability of legal challenge

12. Some respondents felt that proposals would themselves run a significant risk of legal challenge due to the inadvertent impact the new regulations might have on some scheme members, as well as widowers in opposite-sex marriages. This is because it was not straightforward to unpick the full effects of changes to the complex set of regulations, current and preserved, which set out the entitlements of former members.

Government response

13. The Government recognises the scale of the task in backdating and reviewing applications, and the time it will take for administrative bodies to tend to the task. We

expect LGPS administering authorities to apply proportionate effort to this task within a reasonable time-frame.

14. The differential treatment between widows and widowers, raised by many responses, has been held to be lawful by the Supreme Court in a number of cases, and most recently in the case of Lloyds¹. It is not proposed at this time to equalise benefits for all males who survive their female spouse on the same basis as they are provided to females who survive their male spouse.

15. The Government has separately consulted on this issue in the joint HMT and DWP review of survivor benefits in Occupational Pension Schemes: <https://www.gov.uk/government/publications/occupational-pension-schemesreview-of-survivor-benefits>. No final decisions have been made on these issues and the Government will respond on this matter separately and in due course.

¹ [2018] EWHC 2839 (Ch).

Part C – Power to issue statutory guidance

16. The Government proposes to create a power to issue statutory guidance on the operation of the scheme's rules. The LGPS is a single scheme administered locally and it is our intention that equivalent members' benefits should be the same everywhere. To avoid funds taking different approaches, especially in relation to sensitive areas such as eligibility for survivor benefits, the government proposes to create a power to issue statutory guidance on the operation of the scheme's rules. The aim of this is to deliver greater standardisation of approach, in particular on how the interpretative duties under the Human Rights Act 1998 are met.

17. In undertaking the consultation, we asked for general comments on the proposal.

Response overview

18. Eighteen (95%) responses commented on creating a power to issue statutory guidance. Of these, 17 responded positively, and the large majority supported flexibility that the proposal offers, although they all raised similar concerns around the use of the power. Only one response strongly opposed the proposal. The key issues and themes raised are set out below:

Lack of scrutiny and consultation

19. A number of respondents raised concerns about lack of scrutiny for statutory guidance issued under the proposed power and feared that LGPS regulations could be overridden. Respondents sought reassurance that the power would not be misused through a blanket approach.

20. Many respondents also felt that consultation should be necessary before issuing statutory guidance. They sought reassurance that there would be a robust consultation process to ensure that LGPS stakeholders would have a voice and that general principles of good administration would not be undermined.

Power of central Government over local Government

21. Some respondents expressed their lack of support for an increase to central government powers over a local government scheme.

Transparency

22. A small number of respondents raised concerns that the proposed power would lead to a lack of transparency if guidance were not kept under review, readily available and clear in its interaction with the underlying regulations. For example, some respondents made a practical suggestion that all statutory guidance should be available on a Government website.

Government response

22. To offer the reassurance sought by a number of respondents, the Government undertakes to publicly consult with stakeholders on any new guidance before issue, where possible. Earlier this year, the Department asked the Scheme Advisory board to bring forward recommendations for scheme simplification. In doing so, we will also now ask that they look at the most appropriate way for statutory guidance to be used so support our aim for LGPS to be a single scheme, administered locally.

23. Nothing in statutory guidance should change or conflict with the meaning of the regulations, unless the courts require a new interpretation to ensure consistency with the Human Rights Act 1998. The purpose of guidance will be to clarify the content of regulations and maintain an appropriate level of consistency in interpretations of its rules between funds.

24. The Government will also ensure that there is a dedicated page on gov.uk for all current guidance.

Part D – Early access to benefits for deferred members of the 1995 scheme

25. This technical amendment aims to correct an error in the LGPS (Amendment) Regulations 2018. It proposes to provide that the need for an employer to give consent is removed when a member who left with deferred benefits before 1 April 1988, aged between 55 and 59, chooses early payment of their benefits.

26. In undertaking the consultation, we asked for general comments on the proposal.

Response overview

27. Fifteen (79%) responses commented on this technical amendment to allow early access to benefits for deferred members of the 1995 scheme. All 15 bodies responded positively, though a small number of respondents felt that for consistency with the post-1995 schemes, the regulations should also remove the requirement for the member to have ceased to be employed in all local government employment.

Government response

29. The Government agrees that this change would be consistent with the proposed policy and the Government's wider policy on pension freedoms. We intend to fully equalise the rights of deferred members of the 1995 scheme by removing the need for them to have left all local government employment.

Part E – Equality impact assessment

30. The proposals included in the consultation are intended to increase equality of treatment between scheme members. They extend or clarify entitlements under the scheme for certain groups of members. The Government believes that any other impact on protected groups as a result of these reforms would simply be a natural consequence of the composition of the local government workforce and does not believe that there would be a disproportionate impact on particular groups aside from as a consequence of this.

31. In undertaking the consultation, we asked for general comments on the equality impact assessment.

Response overview

32. Three (15%) responses commented on the equality impact assessment. All three responded positively, agreeing with the approach. No further evidence was offered and no concerns or reservations about the above assessment were raised.