Local Government Pensions Team
MHCLG
Email to: memberbenefitsconsultation@communities.gov.uk

29 July 2025

LGPS in England and Wales: Access and Fairness

Thank you for the consultation on improving fairness and access to the LGPS.

I respond on behalf of the Local Government Association (LGA) and the Local Government Pensions Committee (LGPC).

The LGA is a politically led, cross-party membership organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. 315 of the 317 councils in England are members of the LGA. These include district, county, metropolitan and unitary authorities along with London boroughs and the City of London corporation. The 22 Welsh unitary authorities are also in membership via the Welsh Local Government Association (WLGA).

The LGPC is a committee of councillors constituted by the LGA, the WLGA and the Convention of Scottish Local Authorities (COSLA). The LGPC considers policy and technical matters affecting the Local Government Pension Scheme (LGPS).

In addition to answering the questions posed, the response includes technical comments at the end of each section. These set out our view on whether the draft regulations deliver the stated policy intent.

I hope the content is helpful. Please do not hesitate to contact me if you have any questions about this response.

Yours faithfully

L. Bennett

Lorraine Bennett
LGPC Secretary

Equalising survivor benefits

Q1. Do you agree with the government's proposed amendment of survivor benefits rules?

Yes, we are supportive of the proposal to remove the discrimination based on sexual orientation that currently exists in the LGPS. The LGA has been asking for equalisation since 2018, so this change is very welcome.

Following the Goodwin Case, the previous Government made a statement in July 2020 confirming that all public service pension schemes that discriminated against male survivors of female members would need to take forward changes as soon as possible. It is disappointing this change has taken so long. The delay means more pensions will need to be backdated and some survivors will have been worse off than they needed to be.

Q2. Do you have any comments on the intended approach to equalising survivor benefits?

We agree with the proposals to backdate the changes to the date the underlying relationship type was recognised in UK law. The discrimination would not be fully removed from the Scheme if this were not done. We understand this will mean backdating survivor pensions paid where the marriage / partnership took place after leaving for:

- Widows and widowers of opposite sex marriages – backdated for deaths from 5 December 2005
- Widows and widowers of opposite sex civil partnerships – backdated for deaths from 31 December 2019
- Cohabiting partners – for deaths from 1 April 2014.

Survivor pensions paid to widowers of pre-leaving opposite sex marriages under the 1998 and earlier schemes will also be backdated for deaths from 5 December 2005.

We think statutory guidance should set out the Government's view on:

- whether it is appropriate to recover an overpaid child's pension where a partner's pension becomes payable retrospectively. An overpayment can occur because children receive a higher level of pension where no partner's pension is payable.
- the tax implications where a dependant's pension has been trivially commuted, but it would not qualify for trivial commutation following recalculation (see technical comments)

Q3. Do you have any comments on the administrative impact, particularly in identifying cases where calculations of past benefits would need to be revisited?

Identifying affected survivors will be challenging. There will be some cases where the pension in payment will need to be increased due to more membership counting towards the calculation of the survivor pension. This will apply where membership from an earlier period is now included and / or additional membership such as ill health enhancement and added years now counts.

However, there will also be some cases where no survivor benefit was previously payable but will be after the changes. This could occur where a female member only had membership before 6 April 1988. These records may have been archived and may not show any relationship status due to no survivor pension being payable at the time. Tracing any potential beneficiaries in these cases will be difficult. Relatives may be upset if they are approached to find out the relationship status of such members, especially if it turns out there is no eligible survivor benefit payable.

There will be cases where the survivor has died and there is potential for causing distress to relatives, particularly where the additional amount payable is very small. There may be instances where the estate will need to be reopened, and a supplementary grant of probate applied for and / or new administrators appointed. There may also be tax implications where survivor benefits have been trivially commuted previously.

The administrative impact will be significant. Widowers of opposite sex marriages will be most impacted by the changes; given the membership of the LGPS is 74 per cent female, these reforms will affect many more people than previous changes to survivor benefits.

Administering authorities will need to undertake work to:

- identify potential cases
- recalculate the survivor pension entitlement going forward
- calculate arrears of pension due including interest
- locate potential beneficiaries where no pension is currently being paid.

Any backdating work is complex from an administrative perspective as pensions software is not designed to recalculate benefits going back a number of years. It is likely that manual intervention will be needed in most cases.

Q4. Do you have any further comments on the proposed changes?

It would be helpful for Government to set out in statutory guidance the steps that administering authorities should take to identify potential beneficiaries and what calculations should be revisited. Survivor benefits feed into other calculations such as transfers out, trivial commutations etc. Does the Government expect these cases to be revisited?

Our view is that administering authorities should make reasonable attempts to locate survivors and recalculate benefits where the calculation of the survivor pension in payment will be impacted, including where the survivor pension was trivially commuted.

Technical comments – equalising survivor benefits

- Draft regulation 43(1)(a) inserts new regulation 3(5E) to the 2014 Regulations. It applies certain parts of regulation 17 to deaths between 13 March 2014 and 31 March 2014. This includes surviving spouses of same-sex marriages. With these cases in mind, regulation 3(5E) also needs to say that the pension is calculated in accordance with regulation 17(13B)(c).
- Draft regulation 43(1)(a) inserts new regulation 3(5F) to the 2014 Regulations. This should be excluded from applying to pensions paid to surviving cohabiting partners because they are based on post 5 April 1988 membership. These amendments should take into account that, in accordance with new regulation 17(3E)(a) of the 2014 Regulations, the RAM that will be included for a cohabitee pension (post 31 March 2014 death), will be based on what RAM would have been included had the person been in a same-sex marriage / civil partnership.
- Draft regulation 43(1)(a) – the change to 1978 in new regulation 3(5F) of the 2014 Regulations should also include changing 1988 to 1978 in regulation F8(2)(b)(i) of the 1995 Regulations.
- Draft regulation 43(1)(a) – new regulation 3(5F)(b)(i). There should be an equivalent provision amending regulation F8(2)(b) of the 1995 Regulations – ie removing reference to the widower being the wife's husband 'at some time while she was in local government employment after 31 March 1972'.
- Draft regulation 43(1)(a) – the reference to replacing 1988 for 1978 in regulation 3(5F)(b)(ii) of the 2014 Regulations should be expanded to include reference to regulation 42(2) of the 1997 Regulations.
- Draft regulation 50(1)(h) – new regulation 17(13B)(b) should refer to 'contracted-out employment' not 'contracted-out membership' – because the regulations refer to 'contracted-out employment'.
- Draft regulation 50(1)(i) – new regulation 17(16A) should only refer to regulation 17(13B)(a)(iii) – an election under regulation 17(15) switched off regulation 17(11)(a) so that the survivor pension for a post leaving civil partnership was based on total membership as opposed to post 5 April 1988 membership, it never applied

to survivors of same sex marriages.

- Draft regulation 50(1)(h) – inserts regulations 17(13C) and 17(13E) to the 2014 Regulations. This includes considering what additional membership would be counted as membership for the purposes of regulation 42 and 42A of the 1997 Regulations for survivors of same-sex marriages and civil partnerships. This applies for actual same-sex marriage and civil partnership cases and cohabitees where the regulations require the member is treated as being in a same-sex marriage/partnership. However, regulation 42 does not apply where the member left after 31 March 2008, by virtue of regulation 6 of the LGPS (Transitional Provisions) Regulations 2008. Regulation 6 incorrectly applies total membership under the 2008 Scheme to survivors of same-sex marriages / civil partnerships. In this instance, regulation 42 does not apply to same-sex civil partnerships and marriages. Regulations 17(13C) and 17(13E) should reflect that RAM should apply to any case of the same 'type' (ie pre-leaving relationship or post leaving relationship) if it has ever applied in a single scenario of that 'type'.
- There may be tax implications where the survivor's pension was commuted to a trivial commutation lump sum death benefit (TCLSDB). A TCLSDB can only be paid if certain conditions are met. One of the conditions is it that it extinguishes the dependant's entitlement to a survivor pension and a lump sum death benefit under the scheme in respect of the deceased member. Where additional survivor pension becomes payable retrospectively, this condition will no longer be met. This was also an issue for McCloud remedy. The Government dealt with these cases by introducing regulation 10 of the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No 2) Regulations 2023. This modifies the rules on trivial commutation lump sum death benefits specifically for McCloud remedy cases.

Cohabitee survivor pensions

Q5. Do you agree with the government's proposals to formalise the removal of the nomination requirement?

Yes, we agree it is helpful for legislation to reflect the correct legal position.

Q6. Do you have any comments on the government's proposals to formalise the removal of the nomination requirement?

See technical comments after question 7.

Q7. Do you have any comments on the proposed approach to backdating?

Our understanding is that all administering authorities have disapplied the nomination requirement following the Brewster / Elmes judgments and the statement issued by DCLG in 2017. Therefore, there should be no administrative impact of this change.

We agree with the decision not to backdate cohabiting partners' pensions for members who left the Scheme before 1 April 2008 for the reasons set out in the consultation.

Technical comments – cohabitee survivor pensions

- Draft regulation 2(b) amends regulation 7 of the 2011 Regulations inserting a new definition of a co-habiting partner.
    - the definition does not define 'A' – 'A' is the cohabiting partner.
    - the cohabiting conditions are all written in the past tense. This is inconsistent with the definition of cohabiting in partner in schedule 1 of the LGPS Regulations 2013 which is written in the present tense.
- There appears to be an issue with the existing definition of 'nominated cohabiting partner' in the 2011 Regulations. Currently, the couple must meet the conditions for a continuous period of two years ending with the date the nomination was signed. Regulation 7(4)(d) then sets out the subsequent events that would cause the nomination to cease to have effect. This does not include the couple ceasing to live together, ceasing to live together as if they were married or in a civil partnership and ceasing to meet the financial dependency conditions. These issues would be resolved if the proposed definition in the draft regulations is adopted – this is because the assessment would only be based on the two-year period ending with the date of death. However, there could be cases where the partner technically meets the old definition but does not meet the new definition.
- Draft regulation 43(1)(a) – we suggest deleting words 'in respect of the death of a member' in new regulation 3(5C) of the 2014 Regulations. This is because none of the regulations quoted in new regulation 3(5C) are connected to the death of a member.
- Draft regulation 43(1)(a) - inserts regulation 3(5C)(a)(ii) to the 2014 Regulations which repeals 'nominated' in regulation 58(2)(a) of the LGPS (Administration) Regulations 2008. However, it also needs to repeal "(as defined in regulation 25 of the Benefits Regulations)".
- Draft regulation 43(1)(a) - inserts regulation 3(5C)(b) to the 2014 Regulations which repeals 'or nominated cohabiting partner's' in regulation 80(5)(a) of the LGPS (Administration) Regulations 2008. This is because cohabiting partners are not entitled to GMPs. A similar amendment is also needed to regulation 97(4)(a) of the 2013 Regulations.
- Draft regulation 50(1)(h) - inserts regulation 17(13A)(b)(iv)(bb) to the 2014

Regulations which amends regulation 14A(2) of the Benefits Regulations to repeal 'or 12 months from the date a declaration is first signed in respect of a particular named individual under regulation 25(2), whichever is the later.' However, there may be members who elected for ASBCs after 31 March 2013 and within the 12-month deadline. As a result of regulation 17(13A)(b)(iv)(bb) the legal status of these elections would now be unclear.

- The draft regulations appear to have missed repealing 'nominated' in regulation 3(4) of the LGPS (Transitional Provisions) Regulations 2008.

Death grants – removing age 75 limit

Q8. Do you agree with the proposed amendments to death grants?

Yes. We agree that the age 75 cap on paying a death grant should be removed from the regulations. We think having an age cap is likely to be unlawful age discrimination and the policy could be successfully challenged in the courts at a future date if it were not removed.

The overriding legislation has allowed for death grants to be paid for deaths over age 75 from 6 April 2011. Again, it is disappointing that it has taken so long for the LGPS regulations to be updated in line with the overriding legislation.

Q9. Do you have any comments on the government's proposals to remove the age 75 cut-off from the LGPS Regulations?

See our technical comments after question 11.

Q10. Do you have any comments on the proposed approach to backdating?

Whilst we highlight the administrative complexities with backdating these payments in our answer to question 11, we question whether only backdating to 1 April 2014 is sufficient. In our view, the policy needs to be backdated to 6 April 2011 to fully remove the discrimination. Not backdating to the date the overriding legislation changed leaves the door open for a legal challenge.

Q11. 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?

We understand that pension software systems will easily be able to identify members who have died at age 75 or older; however, locating beneficiaries and deciding to whom the death grant should be paid will be difficult in some cases.

The delay in introducing this change inevitably means it will be harder to find the appropriate recipients and that some of those recipients will have died. Authorities will need to ensure they exercise their discretion appropriately – this will involve asking relatives / dependants questions about potential beneficiaries long after the member's death.

Where a death grant is paid in respect of a member who dies at age 75 or older, the Finance Act 2004 requires that the death grant must be taxed:

- as the beneficiaries' income, or
- subject to the special lump sum death benefits charge of 45%, if paid to a non-qualifying person (usually the personal representatives).

There may be instances where the estate will need to be reopened, and a supplementary grant of probate applied for and / or new administrators appointed.

The LGPS regulations currently require that the death grant is paid to the personal representatives if it is not paid within the two-year period. We understand the proposal in this consultation to remove that requirement will apply to cases where a death grant will be payable retrospectively due to the age 75 cap being removed. This is important as it will allow any unpaid death grants to be taxed as the beneficiaries' income rather than at 45 per cent where payment is not made to the personal representatives.

Technical comments – death grants, removing the age 75 limit

- Draft regulation 18(a) removes the requirement for an active member to die before reaching age 75 for a death grant to be paid. However, a member cannot be an active member of the Scheme once they reach age 75 (regulation 5(4) 2013 Regulations) – so we are not sure why this change has been made.
- Draft regulation 50(1)(c) inserts 'Subject to paragraph (8A),' at the start of regulation 17(5) of the 2014 Regulations. The draft regulation will also need to change 'Death grants' to '<u>d</u>eath grants'.
- There may be tax implications where a survivor's pension has been commuted to a trivial commutation lump sum death benefit (TCLSDB). A TCLSDB can only be paid if certain conditions are met. One of the conditions is it that it extinguishes the dependant's entitlement to a survivor pension and a lump sum death benefit under the scheme in respect of the deceased member. Where a death grant becomes payable retrospectively due the age 75 limit being removed, this condition will no longer be met. This is also an issue for the McCloud remedy. The Government dealt with these cases using regulation 10 of the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No 2) Regulations 2023. This

modifies the rules on ‘trivial commutation lump sum death benefits’ (TCLSDB), specifically for McCloud cases.

Death grants – personal representatives

Q12. Do you agree with the proposal to remove the two-year limit?

We agree that the requirement to pay the death grant to the personal representatives after the end of the two-year period should be removed. This will align the LGPS regulations with the overriding legislation which changed in 2015.

We also agree that the change should apply to all death grants that have not been paid when the legislation takes effect. This will allow administering authorities to pay a death grant to a beneficiary rather than to a personal representative - meaning the death grant will be taxed at the recipient’s marginal rate, rather than the special lump sum death benefit charge of 45 per cent applying.

It is important this also applies to backdated death grants that become retrospectively payable due to the age 75 limit being removed to ensure they are not taxed unfairly.

Q13. Do you have any comments on the government’s proposal to remove the two-year limit?

Technical comments – death grants, personal representatives

- In our view, draft regulations 10(b) and (c) which relate to post 2014 AVC plans and protected post 2014 AVC plans, should be effective from 1 April 2014 to be consistent with the effective date of the equivalent proposals for main scheme benefits.
- Draft regulations 43(2) and 50(2) switch off inserted regulations 3(5G) and 17(8A) of the 2014 Regulations for death grants under the 1995, 1997 or 2008 Regulations where, before the date the draft regulations come into effect, the two-year period has expired, and the administering authority has paid the death grant to the personal representatives. An equivalent provision is needed for death grants under the 2013 Regulations (including AVC death grants).
- Regulation 64(3) of the 1997 Regulations (pre 2014 AVC plans under the 1998 Scheme) and paragraph 7(3) of Schedule C4 of the 1995 Regulations (pre 2014 AVC plans under the 1995 Scheme) prescribe that if a member dies before an AVC plan is paid to the member, the value of the plan is payable to the personal representatives. MHCLG may wish to consider changing these to provide consistency with the approach proposed under the 2014 Scheme.
- The 2008 Scheme is silent on who an unpaid AVC plan should be paid to on death.

MHCLG may wish to make sure the approach is consistent with that proposed under the 2014 Scheme.

- Draft regulation 50(2) refers to new regulation 17(8A)(a)(zi) – we think this should read 17(8A)(a)(i), (ii) and (iii)(bb).

Gender pensions gap – authorised absences under 31 days

Q14. **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?**

Yes, we support this proposal. We understand that women are more likely to take periods of authorised unpaid leave due to childcare and other caring responsibilities. Taking short periods of leave is particularly common for school support staff who work term-time only and are expected to take their leave during school holidays. If a member needs to take time off during term-time to look after a sick child or other dependant, this is likely to be unpaid.

The current process that allows a member to buy back pension 'lost' in an unpaid period may be considered cumbersome, particularly in cases where only a very small amount of pension has been 'lost'. The employer meets part of the cost, but only if the member makes their application within 30 days of returning to work after the break.

Making short periods of authorised unpaid leave pensionable will stop members, particularly women, from having short pauses in their pension build-up.

Lower paid members whose personal circumstances have led to them taking a longer unpaid break from work may face financial hardship. We do not believe that pension contributions should be compulsory during a longer break. This could lead to lower paid members opting out of the LGPS to avoid the financial burden of compulsory contributions. We agree with the proposal for pension contributions to remain optional for longer unpaid periods.

We think that the Government should consider whether 30 days is the correct threshold. An employee who takes 30 days of unpaid leave in April, for example, would generally receive no pay from which the compulsory contributions could be deducted. These unpaid contributions would roll over as a debt to the following month when the member would effectively pay twice the normal level of contributions. This is also more complicated to administer on payroll. Setting a lower limit, 14 days for example, would ensure that, for an employee who is paid monthly or four-weekly, the compulsory member contributions could be collected in the same pay period as the unpaid leave deduction. We believe setting a lower threshold would still meet the Government's objectives. Many 'short' breaks are only one, two or three days. Pension contributions would remain compulsory for these very short breaks. Members would be less likely to opt out if contributions are compulsory for a shorter period and could generally be collected in a single pay period. Reducing the limit to 14 days would also avoid some administrative complexities for payroll providers.

The change to compulsory contributions for short unpaid periods would also reduce the administrative burden on administering authorities. Under the current rules, they must record the dates of these breaks, check that any additional pension contribution contract to buy the 'lost' pension has been calculated correctly, record that contract and check that the additional contributions have been paid. Under the new proposals, none of this would be necessary for short breaks.

The proposals would represent a significant change for employers and payroll providers. However, these new processes would replace the current requirement for employers to provide the member with information about buying back 'lost' pension after each period of unpaid leave.

Q15. **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 agree with using lost pensionable pay instead of APP in this circumstance. In our view, for most members, using lost pensionable pay will more closely match the position the member would have been in had they not taken unpaid leave.

Similar, but not identical, rules covering compulsory contributions during a break of less than 31 days were in place before 1 April 2014. At that time, the contributions were based on 'lost' pay as APP was not introduced to the Scheme until 1 April 2014. The lost pensionable pay method is used in LGPS Scotland with no reported issues. This means payroll software will already be programmed to deal with this method, and it is likely to be simpler for payroll providers to implement.

We welcome the Government's engagement with pension and payroll software suppliers as part of the consultation process. The current wording of the LGPS regulations is ambiguous on how 'lost' pay should be calculated during a period of authorised unpaid leave. We understand that the majority of employers use the lost pay option and not APP for this purpose. Payroll providers also expressed a preference for continuing to use the lost pay option. They voiced concerns about the complexity of APP and their opinion that changes involving APP would take much longer to programme, test and implement.

Technical comments – authorised absences under 31 days

- Draft regulation 13 amends regulation 20 of the 2013 Regulations. The reference to 21(A) should read 21A instead.
- New regulation 11(5) of the 2013 Regulations as currently drafted applies when a member is receiving 'reduced or no pensionable pay'. We believe it should apply only if the member is receiving no pensionable pay for the unpaid period. This would be in line with the proposed wording in regulations 15(4A) and 16(8A)(a) and (b) which do not refer to a member receiving reduced pay. We are not aware of any circumstances where a member would receive reduced pay for the type of authorised unpaid absence that would be covered by this regulation.
- New regulation 21A(4) of the 2013 Regulations states that normal pay excludes any overtime and bonuses that the member would have received in addition to their contractual pay. Do the regulations need to make it clear that if such payments are paid during the authorised period that they are still pensionable ie they are just not included in the lost pensionable pay definition. These payments could be paid during a break because the member worked non-contractual overtime in a previous month, or a regular annual bonus is paid that month.
- We think it would be helpful for the regulations to confirm that 'less than 31 days' relates to calendar days not working days. Similarly, this applies to the proposals on the cost of buying pension lost for breaks over 30 days. Employers reduce salaries for unpaid leave in different ways eg some employers reduce pay based on the number or working days in the month, others use the number of working days in the year (usually 260 days). In our view, the regulations should make it clear that period for assessment under the LGPS regulations relates to calendar this.

Gender pensions gap – cost of buying back pension lost in an unpaid break of over 30 days

Q16. **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 in principle with aligning the cost of buying 'lost' pension with the contributions that would have been paid by the employer and employee had the member been at work receiving their normal pay. We also agree in principle with aligning the added pension the member buys with the normal pension they would have accrued. This necessitates changes to the regulations covering redundancy / efficiency retirement and the calculation of survivor pensions.

However, we understand the policy is for the added pension the member buys to be aligned with the normal pension they would have accrued only if they elect to buy it within a year of returning to work (or a longer period allowed by the employer). Where a member elects to buy back lost pension after this period, the current method will apply ie they will pay the full cost which will be based on age related factors, it will not provide survivor pensions or be paid unreduced on redundancy / efficiency retirement.

Please see our response to question 14 concerning the threshold:

- below which an authorised unpaid period is ‘short’ and pension contributions are compulsory
- above which an unpaid period is ‘long’ and pension contributions are optional.

We believe that the Government should consider a lower threshold, and we suggest 14 days.

We accept that some members consider that the current process for buying back the lost pension is cumbersome. This involves the member getting information about the ‘lost’ pay from their employer, using this to get a quotation of the cost from the Lost pension calculator provided on the member website that we maintain, returning the application to their employer, who forwards information to the relevant LGPS administering authority.

The impact that this proposal will have on the gender pensions gap will depend on how many female members take up the option of buying back lost pension on their return to work after a break of more than 30 days. We will continue to work with MHCLG, administering authorities, Scheme employers and other stakeholders to promote a process that is as simple as possible for members.

We do not believe that this change would represent a significant increase in employer costs. Although we hope that the change will encourage more members to elect to buy back pension ‘lost’ in an unpaid period, the cost to the employer is the same as they would have paid, had the member been at work receiving their normal pay.

We do have concerns about the administrative challenge posed by this proposal. Different rules will apply to added pension purchased to boost pension compared with added pension purchased to cover pension ‘lost’ in an unpaid period. Pension administration systems will need to treat added pension differently depending on:

- whether the extra contributions were paid to boost benefits or buy ‘lost’ pension
- in the case of lost pension, when the leave occurred, as opposed to the date the APC contract started

- whether or not the member started the contract to buy back 'lost' pension within a year of returning to work (or a longer period allowed by the employer).

This will be particularly important for members with more than one APC contract, and for those members with a period of authorised absence that spans the date on which these regulations come into force.

This information must be recorded in such a way that it can be shared and interpreted correctly if the member ends that period of LGPS membership and re-joins the Scheme with a different administering authority. There is a risk of the member's pension, or a survivor pension being underpaid if the information is not correct or clear when a transfer occurs. This risk is greater if the two administering authorities use different pension administration systems.

Administering authorities will need comprehensive guidance on transitional measures, particularly around what happens if a member's break covers both the period immediately before and after the date the regulations take effect.

Q17. **Do you agree with the proposal to change the time-limit for buying back unpaid leave pension absences from 30 days to 1 year?**

Employers must meet part of the cost of the extra pension when the member elects to start the arrangement within a specified period after they return to work. We support extending this period from 30 days to a year; however, we think this should be subject to the member still being employed by the same employer when they make the election.

If a member has been on authorised unpaid leave for an extended period, we think 30 days is too short a period to make such a decision and navigate the application process. Members affected by this may be in financial difficulty because of being unpaid for a month or a number of months. The individual may have returned to a backlog of work after their leave. Thinking about their pension and finding the money for the additional contributions are unlikely to be the member's priority. However, we think it is important that a time limit is still imposed. Removing the time limit would allow members to make an election many years after they return to work. They may be more likely to do so if they are at risk of redundancy or there is a possibility of ill health retirement.

As mentioned above, to make this workable, we think the time limit should be the earlier of one year, or the date the member's employment with that employer is terminated.

Currently, the draft regulations provide that where a member elects to buy pension within one year of returning to work, the Scheme employer must pay the employer contributions for the period of absence. Where the member has changed employers but remained in the LGPS within that year, there is no requirement for that responsibility to fall on the former Scheme employer. We understand this means the new Scheme employer will be required to pay the employer contributions which doesn’t seem fair, particularly if the three-year limit on employer contributions is removed.

If the policy intent is for the former employer to pay the contributions, regulations would need to make this clear. However, this would be difficult administratively, as the former employer could be in a different pension fund. The member’s election to buy back the lost pension would be sent to the employer who would then need to send it onto an administering authority they don’t belong to. They would also need to provide the lost pensionable pay figure and pay regular employer contributions based on the contract length the member has chosen. The administering authority will need to obtain monies and pay information from an employer it has no relationship with. We think this would be unworkable in practice; therefore, we recommend that the regulations require that a member must make an election with one year of returning to work, or before their employment with that employer ends, if earlier.

Similarly, the current rules provide that where a member elects to buy back lost pension by paying regular deductions over a period of at least one year, that contract is terminated if their employment ends. There is no facility to pay up the contract by making a lump sum payment, or for the contract to be restarted where a member is compulsorily transferred to another employer. In our view, the Government should consider introducing a mechanism to allow these members to pay a lump sum on leaving to pay up the contract, or to continue with these contracts on compulsory transfer.

We welcome the fact that the employer’s ability to extend the deadline has been retained in the proposed amendments to the regulations. We hope that employers will continue to use this discretion to yield fair results for their employees.

Q18. Do you agree with removing the three-year limit on employer contributions in Regulation 15(6)?

No, we do not agree with the removal of the three-year limit on employer contributions. We believe it would be very rare for an employer to authorise unpaid leave of more than three years. We are aware that some employers leave the door open for employees who take long periods of sabbatical leave, but they would not keep them on their books as an employee.

If the Government is looking to tackle employers who inappropriately leave employees on unpaid sick leave for long periods, we do not think this is an appropriate method of doing so.

There is a limit on the amount of additional pension an individual can buy, and that limit increases each Scheme year. However, this limit applies across all types of additional pension ie lost and extra pension and there is a lack of clarity on how that limit operates in certain circumstances. Removing the three-year limit on employer contributions for an authorised unpaid period could mean that more members are affected.

We think that further clarity is needed about:

- what APC limit applies to a member who has paid or is paying APCs
- what APC limit applies to a member who has paid or is paying additional regular contributions (ARCs)
- how the limits operate if the employer has contributed to or is contributing to an APC or an ARC
- how the limits operate if the member has more than one pension account.

We think that the change in regulations provides an opportunity to review these limits, and we would be willing to work with the Government in producing guidance for administering authorities.

Technical comments – cost of buying back pension lost in an unpaid break of over 30 days

In regulation 17 of the draft LGPS (Miscellaneous Amendments) Regulations, regulation 30(7A) should read 30(7)(a).

One of the administrative challenges these changes present is the requirement to distinguish between different types of unpaid leave and the additional pension bought to cover the pension 'lost'. The table below shows a basic summary of what we believe the intention to be when a member pays optional contributions to buy back the pension lost during an absence.

Type of leave	APC cost	Redundancy / efficiency retirement	Survivor pension
1. Trade dispute	Current	Added pension reduced	Added pension not included
2. Authorised and member elects to pay within a year*	New	Added pension unreduced	Added pension included

Type of leave	APC cost	Redundancy / efficiency retirement	Survivor pension
3. Authorised and member elects after more than a year *	Current	Added pension reduced	Added pension not included

* or a longer period allowed by the employer

This table does not cover absences in which assumed pensionable pay applies, unauthorised absences nor unpaid leave of under 31 days if the lost pensionable pay proposal is adopted.

In our view, the regulations may not deliver the intended result for row 3 above. Regulation 15(4A) of the 2013 Regulations refers to a member paying additional contributions to cover a period of absence. Regulation 16(16) covers the election deadline after which the employer is not obligated to pay towards the cost of the added pension. The changes to regulation 30(7) covering redundancy and efficiency retirements, and to the survivor benefits provisions (41, 42, 44, 45, 47, 48) of the 2013 Regulations, refer only to new regulation 15(4A). They do not reference the time limit in regulation 16(16). The current wording of the amended regulations would not deliver the intended policy as we understand it for this group in relation to redundancy and the calculation of survivor benefits.

The new regulation 16(10A) (inserted by regulation 9(d) of the draft regulations includes a reference to both 15(4A) and 16(16). We believe that both regulations should be referred to in the amended survivor benefits and redundancy / efficiency retirement regulations to achieve the intended policy.

Further changes may be required to the regulations to ensure that relevant added pension is included when working out a survivor or child's pension. The comments that follow are based on the amended wording of regulation 41 of the 2013 Regulations, but they apply equally to amended regulations 42, 44, 45, 47 and 48.

41(4) sets out how the survivor pension is calculated. 41(4)(iv) and (v) set out how accrued earned pension and transferred in earned pension should be adjusted to calculate the survivor pension. Added pension does not fit in to either of these categories. We believe that a provision similar to 41(4)(v) is needed to confirm that the survivor pension related to any added pension used to work out the survivor pension (additional pension to which regulation 15(4A) applies and election made before expiry of the period mentioned in regulation 16(16)) is the added pension multiplied by 49/160. The appropriate multiplier should be included for each type of survivor pension.

We understand that the policy intent is for added pension purchased to buy back pension 'lost' in an unpaid period to have the same characteristics as the pension the member would have built up if they had been at work receiving their normal pay, but only where 15(4A) applies and the member elects within the period set out in 16(6). One area in which this does not appear to have been achieved is in relation to death in service. If an active member retires on ill health grounds with a tier 1 or 2 pension, any ongoing APC contract is treated as complete when working out their pension. This is covered by regulation 16(14) of the 2013 Regulations. There is no corresponding provision relating to the calculation of survivor pensions because added pension is currently excluded from the calculation. We believe that amendments are needed to regulations 41, 42, 44, 45, 47 and 48 to ensure that an incomplete APC contract is treated as completed if:

- a member dies in service and
- the APC contract is one to which 15(4A) applies and the member made their election to begin the contract before the expiry of the period referred to in regulation16(16) of the 2013 Regulations.

Gender pensions gap - pension contributions during child-related leave

Q19. 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 understand GAD has estimated that the cost of this proposal would be less than £1 million annually. Whilst we recognise this is a very small percentage of total Scheme costs, the financial impact on individual employers, particularly smaller employers, could be more significant. This may be unwelcome at a time when employer costs are already increasing due to rises in the national living wage and employer's national insurance.

We acknowledge that this proposal would make a difference to the LGPS pensions built up by thousands of women. Those who earn below the national insurance (NI) threshold will benefit the most. Under the current rules, when a member who earns below the NI threshold takes 12 months of maternity or adoption leave, assumed pensionable pay (APP) applies during the first six months only. The member has the option to pay APCs to buy back the pension 'lost' during the additional maternity or adoption leave. Under these proposals, APP would apply for the full 12 months, boosting the member's pension at no cost to them. For most members, APP will apply for a further three months compared to the current provisions.

If this proposal is taken forwards, we welcome the fact that unpaid shared parental leave will also be included. Although this will not have a direct impact on narrowing the gender pensions gap, we consider shared parental leave as a progressive policy that supports new parents. We hope that the improvement in pension position during a period of shared parental leave encourages more parents to take this option.

Gender pensions gap – making reporting mandatory in the LGPS

Q20. Do you agree that gender pension gap reporting should be mandatory in the LGPS?

We agree that gender pensions gap reporting should be mandatory in the LGPS.

We believe that it is important to take measures to narrow the gender pensions gap. We welcome the changes to the LGPS that the Government has proposed. We hope that these measures will help to close the gap but acknowledge there will need to be societal changes for larger scale change to take place. It will only be possible to assess the direction of travel and whether any further measures are needed by calculating and reporting the gender pensions gap over time.

Q21. Do you agree that the 2025 valuation (and associated fund annual reports) is preferable?

We agree that using the report accompanying the triennial valuation to report the gap is a better option than the annual report. Any narrowing of the gap will take time. Reporting annually would be a significant exercise which would be disproportionate based on the change in the gap that we would expect to see annually. Reporting on the gender pensions gap every three years is a more appropriate timeframe.

Q22. Do you agree with the threshold of 100 employees for defining which employers must report on their gender pension gap?

We do not believe that the threshold for reporting on the gender pension gap should be set at 100 employees. A large organisation that participates in the LGPS as an admitted body may only have a very small number of employees who are eligible for LGPS membership as a result of a compulsory staff transfer. Reporting based on such a small group would not yield meaningful results, as these could be skewed by the circumstances of an individual member. Reporting those results, particularly if the results are segmented by age, could reveal information about the finances of an identifiable individual.

We recommend that reporting is required based on the number of LGPS members employed by a Scheme employer.

If the threshold is based on number of LGPS members, rather than the number of employees, we question whether 100 is an appropriate level. Pay plays a significant role in the gender pension gap. Companies with more than 250 employees are already required to report on the gender pay gap within their organisation. We have concerns about choosing a lower threshold for reporting the gender pension gap. Smaller sample sizes mean that one or two members who are 'outliers' can skew the results. Knowing the level of gender pay gap at an organisation will help to understand the gender pensions gap. This information may not be available for organisations with less than 250 employees.

We would recommend a threshold for reporting the gender pension gap of 250 Scheme members, which broadly aligns with that for reporting the gender pay gap. Employers who are close to the threshold could choose to participate on a voluntary basis.

If the threshold is set at a lower level, it may be appropriate to group the results from smaller employers to reduce the impact of outliers on the measurement of the gender pension gap.

Q23. **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 have concerns about using the definition in the LGPS. We believe more work is needed to define this term. Without detailed information about how this will be measured and what assumptions should be used, we have concerns about administering authorities' ability to report consistently on the gender pension gap as part of the 2025 valuation.

Whilst this may be a useful definition to consider the gender pension gap at a societal level, it must be recognised that it is not possible for a single administering authority to measure and record this accurately for all members. We expect that the level of pension saving will be done using a unique identifier for an individual – such as national insurance number. This means that the total pension in a pension fund will be used when a member has multiple pension accounts. The average length of LGPS membership is six years. Many LGPS members will hold pension benefits elsewhere – with a different LGPS pension fund, in a different scheme, in the pension protection fund etc. The results from a single LGPS pension fund cannot reflect the total pensions held by each individual.

We recognise that, if data from all pension funds and schemes was available, the average pension built up by men would be consistently higher than the average pension built up by women. The size of the LGPS means that the results at a fund level are more likely to replicate the underlying trend in the population. As we expressed in our response to the previous question, we do have concerns about reporting at employer level for smaller employers. The results for a small employer could be skewed by the decision of a single member of staff to transfer a previous pension to the LGPS or not.

Q24. **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'?**

In our view, this is a more useful measure to identify any movement in the underlying trend. No policies or measures can alter the pension that a member has already built up. What will have an impact are changes that reduce the gap between the average pension built up by men and women each year.

We understand that, at least for the 2025 valuation, it will only be possible to report on the career average pension built up in a year. Changes in final salary benefits would not be measured. We welcome further discussions with the Government actuary's department, MHCLG and fund actuaries on solutions that will improve this measurement in the future.

Administering authorities and other stakeholders will need detailed guidance on how to measure the gender pension savings gap. That should set out exactly what should be included. For example, pension transfers received in the year should not be included, as these do not represent an increase in the member's pension. Added pension purchased or awarded in the year should be included, as they do represent an increase in the member's pension.

Technical comments – gender pensions gap reporting

We encourage Government to work with the actuarial firms, GAD and the Scheme Advisory Board to produce comprehensive guidance. It is important that all funds are measuring the gender pension gap consistently.

We understand that the gender pay gap is based on the average hourly rates of male and female employees. Many employers, especially local government employers have made great progress to reduce that gap to or close to zero. However, even if that gap does reach zero, that will not mean a gender pension gap or a gender pensions savings gap of zero. Gaps in pension savings due to childcare or other caring responsibilities mean that the total pensions built up by women are likely to be lower. Women are far more likely to work part time. If the gender pay gap reaches zero, the gender pension savings gap will continue because women, on average, work fewer hours than men.

Societal changes many mean that caring responsibilities are shared more equally in the future, which would close the gender pensions gap. It would not be reasonable nor popular to expect employers to reduce flexible working options for employees, particularly women, with caring responsibilities. Nor would it be popular to encourage lower paid women in part time roles to pay extra into their pension to reduce the gender pension gap

Opt-outs

Q25. Do you agree that the annual report is the best method of reporting data on those who choose to opt-out of the scheme?

On balance, we agree that the annual report is an appropriate method of reporting opt out data. However, it would also be useful to have a national picture of opt out rates and we wonder whether the data should also be reported centrally by MHCLG using the SF3 data collection.

Although the LGPS Scheme Advisory Board (SAB) currently uses the individual fund annual reports to collate a Scheme annual report, it is always at least 12 months out of date by the time it is published. Annual reports do not have to be published until 1 December following the end of the Scheme year, and it then takes around five months for the data from the individual fund reports to be consolidated into the Scheme annual report.

The SF3 data release is typically published between August and October following the end of the Scheme year. If this was also a vehicle for reporting opt out data, the national picture would be available much quicker. This would allow the Government to be more responsive to any significant changes in opt out rates.

Q26. Do you foresee any issues with administering authorities' ability to gather data on opt-outs?

In our view, the ability of administering authorities to gather data on opt outs relies entirely on LGPS employers' ability to supply that data.

Administering authorities do not hold full information about members who opt out of the Scheme. Employers are not always required to notify the administering authority when an employee opts out of the LGPS; they are only required to inform them when a member who joins the Scheme due to automatic enrolment opts out. Even if the administering authority does know about a member who has opted out, that information is not updated. The administering authority will not know at any time whether that individual is still employed or has left employment. In order for MHCLG and the administering authority to have up to date information on opt out rates, this must be supplied by employers.

Regulation 80 of the 2013 Regulations sets out information that employers must supply to the relevant administering authority annually or at other times. We recommend a change to regulation 80 that requires each employer to supply the relevant opt out data to the administering authority annually.

We have some concerns about employers' ability to provide the data. It is not as simple as working out the difference between the total number of employees and the total number of employees contributing to the LGPS, with the difference being the number of members who have opted out. In reporting the figures, employers will need to distinguish between:

- 'genuine' opt outs - employees who have opted out of the LGPS
- employees with a contract of less than three months who have not opted to join the LGPS, and have not been automatically enrolled
- employees who are over age 75 and therefore not eligible for LGPS membership
- employees who are eligible for membership of a different pension scheme. Certain local government employees are eligible for membership of a different public service pension scheme. Employees of an admitted body may be members of, or eligible to join, a defined contribution pension scheme such as NEST.

On the final bullet point, we understand from engagement with payroll providers that a one-off exercise may be required to place an indicator on individual payroll records to show that a worker not in any pension scheme would be entitled to join the LGPS if they opted in or were enrolled under automatic enrolment rules. We believe a lead-in time is required to give employers an opportunity to make this change and to ensure reporting is accurate and consistent.

Technical comments – opt outs

Further information on the process that administering authorities will need to follow to get approval for an opt out form is needed. We expect that the Scheme Advisory Board (SAB) will issue a template form, but it is likely that funds will add and amend sections to suit their existing processes and data collection priorities. It is also possible that administering authorities may accept forms in different formats – eg secure online forms or forms completed with a digital signature. Administering authorities will need guidance on whether they require SAB approval for every change that they make, or whether this will only be required for significant changes.

The consultation document states the proposal is to require the percentage rate of opt outs; however, draft regulation 28 only requires a report on the number of persons eligible to be active members of the funds who have opted out under regulation 5(2) ie there is no requirement to divide that number by the total number of current employees who are eligible to join the LGPS.

Q27. **When updating the annual report guidance to reflect opt-out data collection, what information would be most useful to include?**

Reporting opt out rates will allow a comparison of rates across administering authorities and allow employers to benchmark their position with the average in their region. This will only be meaningful if all employers and administering authorities are reporting in exactly the same way.

Employers and administering authorities will need clear guidance on:

- **Whether to report at individual or post level**. An individual may hold multiple posts with the same employer concurrently and may choose to opt out in respect of one or more of those posts without affecting their LGPS membership in a different post. For simplicity, we recommend reporting at post level.
    - The Government may decide that the purpose of reporting opt out rates is to distinguish between individuals participating in pension saving and those who do not. In which case, an individual with multiple posts would be considered 'in' if they are participating in the LGPS in at least one post. If the Government does decide that reporting should be based on the individual, only multiple posts with the same employer could be considered collectively. It would not be possible to aggregate results across different employers. The guidance will also need to cover how a member should be categorised if they contribute to a different pension scheme, but have opted out in a separate post in which they would be eligible for membership of the LGPS.
- **The reporting period**. We understand that reporting will be based on the position on a particular day. We support this proposal as it is easier to administer and will require less guidance. This method would provide a snapshot of the position on a particular date each year and any patterns would emerge over time. The alternative would be to collect data for the entire Scheme year. This would require more detailed guidance to cover individuals who become eligible for membership part way through the year, mid-year opt outs, whether to include mid-year leavers, etc. It may also be skewed by members re-opting out after being automatically re-enrolled by employers as part of their automatic enrolment duties.
- **How to treat workers with who are not contractually enrolled into the LGPS**. Employees with a contract for less than three months are not contractually enrolled

into the LGPS when their employment starts. This group will include casual workers. They may opt to join, subject to eligibility rules, and some workers may join the Scheme under automatic enrolment rules. Employers will be heavily reliant on payroll providers to report on opt out numbers. Contract information of this type must be held by the employer but may not be recorded on the payroll system. Payroll providers may not be able to distinguish between a casual worker and an employee with no fixed working hours who does have an ongoing contract for more than three months. The Government will need to decide which groups must be included in the opt out data. This will include a decision on whether to include employees with no fixed working hours. They will also need to consider whether to include a member who is not contractually enrolled (because their contract is for less than three months), but joins the Scheme through automatic enrolment or opting in.

- **Infrequent working.** We are aware of examples of members without fixed hours who remain 'active' on the payroll system, but do not work for months or even years. We believe it would be appropriate to exclude these members when reporting on opt out data to give more accurate and meaningful results. This would need to be covered in the guidance. We suggest that a member (or non-member) with no fixed hours should only be included in the opt out data if they have received some pay in the Scheme year, for example. We recommend using a relevant date later in the Scheme year. This will help to 'weed out' individuals who have had an extended period during which they did not receive any pay, but it will not affect those whose work is concentrated at a particular time of year. Payroll providers will need some time to prepare for these changes. Choosing a date later in the Scheme year will also give them more time to prepare for this new requirement.

Q28. **Do you agree with the proposal to collect additional data about those opting out of the scheme?**

Data protection legislation means that organisations can only collect and hold data that they have a lawful reason for processing under article 6 of the GDPR UK. In the LGPS, administering authorities rely on processing being necessary to comply with a legal obligation as the lawful basis.

Administering authorities do not need to process personal data about members who opt out of the LGPS. They also do not have a lawful basis for collecting special categories of personal data eg ethnicity and religion, to pay the correct level of benefits to those who are Scheme members.

That being said, we recognise the importance of individuals saving towards retirement and that the LGPS is an important tool to attract people to and retain them in local government employment. If certain groups do not consider themselves able to join the LGPS, it is important that the Government can understand who is affected and their reasons for opting out. This information could influence Scheme changes and communications to encourage participation among groups who are currently more likely to opt out of the Scheme. To achieve that end, we support the Government's proposal to use a secure, anonymous form to gather additional data when a member opts out.

Q29. **Are you an employer, part of an administering authority or member of a pensions board?**

No.

Q30. **Do you have any comments on the collection of additional information?**

The consultation document does not set out exactly what information the Government will ask for when a member opts out. More detail on the policy intent and the proposal is needed.

In our view, there are broadly two strands to the data being collected. These are set out below with some issues the Government may wish to consider when refining this policy.

A. Reason for opting out. Individuals will be asked to give their reason for opting out. For administrative simplicity, and to enable quantitative analysis, we assume that an individual will be presented with a list of options. We believe that individuals should be asked to indicate all that apply, rather than being asked to choose a single reason. Although some options which should be included in this list are predictable - such as affordability or short-term employment – others may be less obvious. Respondents should also be able to add their own reason, rather than having to pick from a limited number of options that may not reflect the true reason for their decision.

The Government may wish to consider including an option about whether the employee has been offered an incentive to opt out of the LGPS because their employer is offering an alternative qualifying scheme. Whilst this is not in the spirit of the Pensions Act 2008, we understand it isn't prohibited. The alternative scheme would likely be cheaper for the employer, possibly cheaper for the employee, but with a significantly worse financial outcome in retirement for the individual compared with the pension they would have built up had they remained in a public service pension scheme instead.

In the LGPS, employers listed in Schedule 2 Part 1 of the 2013 Regulations are required to contractually enrol new employees eligible for membership of the Scheme into the

LGPS. However, if an employee opts out of the LGPS, legislation currently allows the employer to offer them membership of a different pension scheme. Although the member retains the right to opt to join the LGPS, many will not take up that option. As long as the alternative scheme is a qualifying scheme under automatic enrolment rules, there is no requirement for the employer to prompt the individual to re-join the LGPS at a later date.

In our view, Government should consider a change in the regulations to prevent these employers from offering a pension scheme other than the LGPS to eligible employees and / or seek an amendment to the Pensions Act 2008 to provide that it is unlawful to incentivise members to opt out of a public service pension scheme, even if the employer is offering an alternative qualifying scheme.

B. Additional information. The Government has provided a list of additional information it plans to collect when a member opts out. We think it is important to take this opportunity to gather all relevant information that may influence future Government policy. The consultation document proposes that the Government will collect data on profession type, working hours and salary, gender, age, ethnicity, marital status and dependants. The Scheme Advisory Board has commissioned legal advice on the issue of members opting out of the LGPS on the basis of their (principally Islamic) religious beliefs. In addition to the current proposals, we believe the Government should consider collecting anonymous data on religion from members opting out of the Scheme. The gender pensions gap is becoming a more common topic for schemes to consider and attempt to address. Less frequently discussed are the LGBTQ+ pension gap and the disability pension gap. The limited data that has been collected to date suggests that these gaps do exist and that they are significant. We think the Government should consider collecting data on these characteristics.

It would be helpful to understand whether particular groups are disproportionately represented in the number of opt outs at administering authority level. We have some concerns about using data from the optional anonymous form to produce results for each administering authority. The level of understanding about pensions is generally low, and it would be reasonable to expect it to be lower than average among those not paying into a pension scheme. We have concerns that an individual may not be able to correctly identify which administering authority their employer is connected with. Members completing this form will have found it when they obtained an opt out form from their administering authority. We believe that MHCLG should consider solutions that could correctly record the ‘source’ administering authority.

We do not think it is appropriate for MHCLG to collect this data at employer level. For a small employer, data on age, gender and ethnicity could be enough to identify the individual. To maintain anonymity, we recommend that this data is not segmented beyond administering authority level.

Forfeiture

Q31. **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, we support this change. In our view, forfeiture applications should be allowed where the employee left employment before the offence was discovered. Employees should not be able to resign when they think they are under investigation to prevent their pension being forfeited. Similarly, if an employee is convicted of an offence years after leaving, the employer should be able to apply for a forfeiture certificate.

Q32. **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, we agree the extra flexibility will help employers make applications. We also agree that applications should only be submitted following sentencing. We support the Government in encouraging employers to make applications in a timely manner and suggest the forfeiture guidance should include this.

Q33. **Do you agree that Regulation 92 of the 2013 Regulations should be revoked?**

We are not aware of any instances where this regulation has been used. Our understanding of this regulation is that it allows the former Scheme employer to issue an interim payments direction to the administering authority to make interim payments to a member where:

- a forfeiture certificate has been issued by the Secretary of State, but
- the employer has not issued a forfeiture direction.

The interim direction must set out the amounts to be paid and cannot exceed the amounts that would be payable if no forfeiture direction were given.

An interim direction can only be issued where a member would be entitled to receive a benefit under the Scheme. As administering authorities already have the power to pay these benefits and a forfeiture direction can be applied to a pension in payment, we are not clear of the purpose of this regulation as it is currently drafted. Regulation 92 appears to be written as though there is another provision in the regulations preventing members from accessing benefits in the circumstances detailed in the bullet points above.

However, we do think it would be helpful for MHCLG to confirm what action administering authorities should take where they receive an application from a member to either take their pension benefits, transfer out or trivially commute for whom:

- an employer has applied for a forfeiture certificate, or
- a forfeiture certificate has been issued but the employer has not issued a forfeiture direction.

Currently, the regulations do not appear to prevent members accessing their benefits in these circumstances. There is also no time limit for the employer to issue a forfeiture direction following the Secretary of State issuing a forfeiture certificate. This places administering authorities in a difficult position where they receive requests from members to access benefits. It also allows members to take actions to prevent forfeiture by transferring out or requesting a trivial commutation lump sum. Members who elect to take payment of their pension during this period may also elect to take the maximum lump sum leaving a lower amount available for forfeiture. Whilst trivial commutation is at the discretion of the administering authority, paying pensions and transfers are not.

We recommend MHCLG provides clarity on this by either amending regulation 92 or including the necessary clarification in statutory guidance. If this recommendation is taken forward, MHCLG will need to consider whether including clarification in statutory guidance would be sufficient.

Q34. Do you agree that in order to give full effect to the proposed amendments, equivalent modifications should apply to earlier schemes?

Yes. The change should be applied consistently to all members regardless of when they left the LGPS. This is particularly important for historic crimes that cause serious harm to the state and damage to the reputation of councils.

Q35. Do you agree that there should be forfeiture guidance to assist employers in making applications?

Yes. This is very important for the policy to be applied consistently and correctly. Forfeiture is, thankfully, not a common occurrence in the LGPS so employers will not be familiar with the process. Having guidance that sets out a clearly defined process with a template application form will help with the administrative process and ensure the Secretary of State only receives appropriate applications.

Technical comments – forfeiture

- Draft regulation 51 extends the forfeiture / misconduct provisions in the 2013 Regulations to leavers before April 2014 and to benefits accrued under the earlier schemes. We understand that the intention is that this should also apply to councillors. However, as the term ‘employment’ in the 2013 Regulations does not extend to office holders and the forfeiture / misconduct provisions are linked to a specific employment, we recommend that draft regulation 51 makes it clear that the changes also apply to councillors.
- Draft regulation 36(a) says ‘in sub-paragraph (a) omit the words from “in consequence” to the end’. This also needs to omit the comma before “in consequence”.

McCloud

Q36. **Do you agree with the government’s proposal for pension debits and credits?**

In principle, we agree that where benefits awarded to the ex-partner increase due to McCloud remedy, the member’s benefits should be used to fund that increase. However, we think the delay in legislating for this outcome means it may now be too difficult to implement retrospectively where a pension entitlement has been paid.

We understand pension debit recalculations will apply where the:

- CARE account has underpin protection
- pension sharing order (PSO) took effect between 1 April 2014 and 30 September 2023
- amount awarded to the ex-spouse / civil partner was a percentage of the cash equivalent
- the recalculated cash equivalent exceeds the original cash equivalent.

We are concerned the delay will mean there are likely to be overpayments because:

- authorities may have performed any recalculations under part 3 of the 2023 Regulations and increased benefits before recalculating the pension debit, and
- for events after 30 September 2023 (such as retirements), authorities will have calculated the relevant event and paid benefits without recalculating the pension debit.

Reducing benefits and seeking to reclaim overpayments will inevitably cause complaints.

Had the requirement to recalculate pension debits been introduced in 2023, these overpayments would not have occurred as authorities would have recalculated the pension debit before any recalculations under Part 3 and any calculations for relevant events after 30 September 2023 and paid any net amount. This would have meant that members were not overpaid.

Whilst we expect the number of cases, and the size of any overpayments, to be small, each case will require significant administration in terms of recalculations, communications, reclaiming overpayments and dealing with potential complaints. The issues with implementing this change retrospectively are set out in the technical comments below.

We suggest MHCLG considers either:

- not requiring these pension debits to be recalculated where an entitlement to a payment occurred before the date the amending regulations come into effect, or
- not requiring that any of these pension debits be recalculated.

An entitlement to payment occurs when the member retires, trivially commutes, transfers out or dies.

Technical comments – McCloud pension debits

- Regulation 12 provides for recalculating the credit member's LGPS annual pension. If the ex-spouse / partner was not awarded LGPS benefits (eg the person transferred their share to a qualifying arrangement or died before the PSO could be implemented), there is no provision to recalculate the transfer to a qualifying arrangement or the death grant. The Amendment regulations do not address this issue.
- Regulation 12 requires the credit member's annual pension to be recalculated. If the annual pension is at deferred status on 1 October 2023, the recalculation must be done before any subsequent annual benefit statement, retirement, trivial commutation, death grant or transfer out calculations can be performed in respect of the credit member. If the annual pension is at pensioner status on 1 October 2023, regulation 12(6) provides for recalculating the pension in payment. This must be done before any subsequent trivial commutation or death grant calculations can be performed in respect of the credit member. However, there are no provisions covering situations where, before 1 October 2023, the credit member:

    - trivially commuted their annual pension,
    - died, or
    - transferred out the cash equivalent of their annual pension to a different scheme.

- Presently, regulation 12 provides for situations where no increase will be payable in respect of the credit, but the authority would still be required to recalculate the corresponding pension debit.
- The requirement to recalculate pension debits has backdated effect to 1 October 2023. We recommend that GAD / MHCLG confirms how this backdated requirement impacts on past interfund adjustment calculations. Will the sending authority be required to recalculate the interfund adjustment and then liaise with the receiving authority about recovering any overpayments? Or will there be no requirement to revisit past interfund adjustment calculations? Is it only to apply to future interfund adjustment calculations?
- Inserted regulation 12(5C)(a)(ii) refers to 'Tier 3 ill-health benefits'. For consistency with regulation 35 of the 2013 Regulations we recommend that this should be changed to 'Tier 3 benefits'.
- It may be useful for MHCLG / GAD to clarify in guidance how the recalculation of a pension in payment works where it is reducing. In particular, where the member originally commuted maximum pension for lump sum. If the extra underpin debit is, say, £10, does the authority simply deduct £10 from the post commutation pension in payment? Or does it deduct the £10 and then re-run the maximum lump sum calculation?
- MHCLG will need to consider the tax implications and may need to ask HMRC to amend the Rectification regulations. For example:

    - What is the effect of the amended pension debits on past and future annual allowance calculations? Do administering authorities need to revisit past annual allowance calculations? If it only applies to future calculations, from which pension input period does this apply?
    - When a pension in payment is reduced, does the reduction result in the pension becoming unauthorised?
    - What is the impact on previous tax calculations (such as lifetime allowance calculations and individual protection 2016 valuations)?
    - What about where the member now, with hindsight, received too much pension commencement lump sum? Is the overpaid lump sum now an unauthorised payment?
    - If the authority is not able to recover any overpayment, what is the tax status of the overpayment?

    MHCLG will need to ensure that any amendments to the Rectification regulations come into force in line with the LGPS Amendment Regulations.

- When considering overpaid pension commencement lump sums and death grants, MHCLG will also need to consider any impacts on supplementary pensions increases on those lump sums.
- Inserted regulation 12(5B) of the LGPS (Amendment) (No 3) Regulations 2023 says that the recalculations listed in (5C) must take into account the recalculated debit. This means that the authority must recalculate the debit before performing the recalculations listed in (5C). We presume that this means that the extra amount due under the regulations listed in (5C) is the net increase. Special interest under regulation 14 would then be due on the net underpayments. However, as regulation 12(5B) is being inserted many years after the regulations listed in (5C), it is likely that administering authorities have already performed the relevant recalculations. In these cases, the authority will be in breach of regulation 12(5B), as it didn't take into account the recalculated debit and may have technically overpaid interest under regulation 14.
- Inserted regulation 12(5A) requires pensions in payment on 1 October 2023 to be recalculated for the pension debit. It is unclear whether the recalculation under regulation 5 should take into account the recalculated pension debit. For example, is the extra amount under regulation 5 on which special interest under regulation 14 is calculated the net increase (increase under regulation 5 minus deduction under regulation 12)? MHCLG will also need to consider the point made in the previous bullet regarding cases where the authority has already performed the benefit recalculation before the Amendment Regulations come into force.

Q37. **Do you agree with the government's proposal to cover deaths on 30 September 2023?**

Yes.

Q38. **Do you agree with the government's proposal to clarify if interest applies on Club transfers?**

Yes.

Q39. **Do you agree with the government's proposal to include part 4 tax losses in the 2023 regulations?**

Yes

Q40. **Do you agree with the government's proposal for transfers from other public service schemes for members over 65 years old?**

Technical comments – McCloud transfers over 65 years old

Inserted regulations 4I(1A) and 4J(1A) switch off the normal rules to calculate the provisional amounts, and stipulate that these are instead done in accordance with GAD guidance. We recommend that either the GAD guidance or 4I(1A) and 4J(1A) says that the provisional amounts are only calculated in respect of the transfer where there has been no continuous break in active membership of a public service pension scheme of more than five years since the transferred remediable service was accrued.

The GAD guidance, or the late retirement GAD guidance, will need to set out how to calculate the increase on the provisional amounts. For example, if the relevant date for the transfer was after SPA / 65, the late retirement increases should be calculated based on the period from the transfer relevant date to retirement date (rather than from SPA / 65 to retirement date).

Is there any merit in amending regulation 4N for these cases? This is because any recalculation of the provisional amounts in these cases would deliver the same result (eg no ill health enhancements can ever be added to the provisional amounts).

As a result of the amendment, some pension accounts may contain multiple sets of provisional amounts with different underpin dates for each set. For example, for members who join the LGPS (or re-join) after 65 who:

- transfer-in more than one period of remediable service and / or
- also aggregate previous LGPS benefits protected by the underpin.

We assume the intention is for the provisional figures to operate separately. If so, it would be helpful to amend section 8 of the McCloud statutory guide to clarify this.

We question whether the 'date on which the transfer payment…was received' is appropriate for this purpose. This will be a different date from the transfer Guarantee date (as defined in paragraph 4.5 of the Club memorandum) and may fall within a different Scheme year. This will cause administrative issues and may result in a less accurate outcome for the member.

- Late retirement increases to the transfer credit will start from the Guarantee date, not the date the transfer is received – see paragraph 9.10 of the GAD transfer guidance. To get a fair result for the member, it seems appropriate for the late retirement increases to the provisional underpin amount and provisional assumed benefits to be based on the same Guarantee date. This would require changes to regulations 4I and 4J of the 2014 Regulations. Without these changes, the underpin test will be a less accurate comparison of the CARE benefits the member built up with the benefits they would have built up in the final salary scheme.

- The transfer in calculation is based on the Guarantee date. Using a different date for the parts of the calculation that relate to the underpin is likely to be more complex for software suppliers to deliver. It also adds further complexity for administrators who must remember which date to use for different elements of the transfer calculation.
- If the member elects to proceed with the transfer late in the Scheme year, or if there are delays in the other scheme sending the transfer payment, the Guarantee date and payment date could fall in different Scheme years. Although the effect of this is relatively minor, it would mean a difference in treatment between a member who joined the LGPS after age 65 and a member whose underpin date was age 65.

These problems could all be solved by using the transfer Guarantee date as the member's underpin date instead of the date on which the transfer payment is received.

Lifetime allowance

Q41. **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.

Q42. **Do you agree with the proposal to withdraw the actuarial guidance linked to Regulation 50?**

Yes, although the lifetime allowance factors will need to be retained as these are used for annual allowance scheme pays debits for active members over NPA, and when the member's retirement is already being processed.

Q43. **Do you agree with the proposal to amend the definition of BCE in the 2013 Regulations?**

The definition of a 'benefit crystallisation event' in section 216 of the Finance Act 2004 was repealed by paragraph 3 of schedule 9 to the Finance Act 2024. Paragraph 13(4) of schedule 9 defined the term in schedule 32 to the Finance Act 2004. Both of these amendments took effect from 6 April 2024. Amendment regulations 39(a) and 43(1)(b) will amend the LGPS Regulations to reflect this with effect from the date the Amendment Regulations come into effect. However, we would have expected these changes to have had backdated effect from 6 April 2024, to align with the changes to the Finance Act 2004.

Q44. **Do you agree with the proposed approach to PCELSs?**

Yes.

Q45. **Do you agree with the proposed approach to issue updated actuarial guidance on the treatment of PCELSs?**

Yes.

Technical comments - PCELSs

The Amendment Regulations repeal regulation 50 of the 2013 Regulations (and the equivalent provisions of the earlier regulations) from the date the Amendment Regulations come into effect. From this point, members will no longer be able to rely on these provisions and the GAD guidance to commute all or some of the scheme pension that would have exceeded the LTA, assuming it had continued, for a PCELS ('existing PCELS policy').

MHCLG will set out its new long-term policy on PCELS by updating the lump sum commutation GAD guidance. The new policy will allow PCELS to be paid subject to:

- contracting-out conditions
- the PCELS conditions in the Finance Act 2004 being met, and
- the total lump sum paid (ie the sum of the pension commencement lump sum and the PCELS) not exceeding 25 per cent of the capital value of the benefits being drawn.

In most cases, the new PCELS policy is more restrictive than the existing policy. It would be helpful for MHCLG to confirm how to assess whether the existing or new PCELS policy applies to a particular case. For example, does revoking regulation 50 of the 2013 Regulations 2013 (and the equivalent provisions of the earlier regulations) from a particular date mean that the existing PCELS policy no longer applies to cases where:

- the PCELS is paid on or after that particular date (regardless of whether the pension start date under the LGPS Regulations and / or the entitlement date to the PCELS under the Finance Act 2004 occurred before then),
- the pension start date under the LGPS regulations occurs on or after then, or
- the entitlement date to the PCELS under the Finance Act 2004 occurs on or after then (regardless of whether the pension start date under the LGPS Regulations occurred before then).

To avoid causing complaints in respect of ongoing cases at the time the Amendment Regulations come into effect, we recommend that the amendments take effect on a future date, giving reasonable notice of the changes.

The amendments to the Lump Sum commutation GAD guidance setting out the new PCELS policy must come into effect in line with the revocation of regulation 50 of the 2013 Regulations (and the equivalent provisions of the earlier regulations). This will avoid cases where:

- both the existing PCELS policy and the new policy apply, or
- neither policy applies.

Other regulation changes

Q46. Do you agree with the proposed amendments to the Regulations?

Yes, we agree with proposed amendments in this section. Some of the changes have been long awaited eg 5-year refunds, de minimis payments, the changes to AVCs. These changes will bring benefits to both members and administrators.

Other changes are more technical in nature and are being introduced to tidy up the regulations and make them compliant with overriding and other legislation.

We encourage MHCLG to review scheme regulations more regularly in future to avoid the risk of legal challenges and ensure members and beneficiaries receive the benefits they are entitled to.

Q47. Do you have any comments on the proposals in this chapter?

Retrospective Directions

When issuing directions with backdated effect, MHCLG will need to consider:

- the legal basis of any decisions and payments made by the former administering authority during the period that, with hindsight, it was not technically the appropriate administering authority, and
- who is responsible for any non-compliance with legislation during that period.

Amendment Regulation 41 amends paragraph 4 of part 2 of schedule 3 to the 2013 Regulations. It says to insert text after sub-paragraph (b). The amendment, however, also needs to omit the full stop after sub-paragraph (b).

Combined County Authorities

No comments.

Welsh Corporate Joint Committees

Amendment Regulation 40(b) updates paragraph 6 of part 2 of schedule 2 to the 2013 Regulations. The consultation says that the purpose of the amendment is to cover companies under the control of the newly created Welsh Corporate Joint Committees. However, Amendment Regulation 40(b) also covers companies under the control of combined county authorities established by regulations under Section 9(1) of the Levelling-up and Regeneration Act 2023. Is this intended?

Exiting employers – deferred debt arrangements

- Amendment Regulation 30 makes minor technical corrections to regulation 64 of the 2013 Regulations. In particular, it corrects amendments previously made by the LGPS (Amendment) (No 2) Regulations 2020, which came into force on 23 September 2020. The corrections in Amendment Regulations 30 will not have backdated effect. We question whether they should have. This will depend on what authorities have been doing. For example, did they assume the wording was an error and:

    - entered into deferred debt agreements with exiting employers while they still had active members in a different fund, and / or
    - not terminated a deferred debt agreement where the employer enrolled new active members in a different fund.

  If all authorities have done so, by not backdating to 23 September 2020, those authorities would continue to be in breach of the LGPS Regulations.

- The consultation document says that '[t]he government proposes to update regulation 64(7B)(a) to read "when the last active member has left the relevant fund", which will align with regulation 64(1)(b)'. However, Amendment Regulation 30(a) instead uses 'fund' rather than 'relevant fund'.

De-minimis payment for pre-2008 leavers

Draft regulation 43(1)(a) inserts new regulation 3(5H)(a)(iii) to the 2014 Regulations. This modifies regulation 156 of the 1997 Regulations, which sets out the commutation right for pension credits awarded under the 1997 Regulations. However, regulation 156 was replaced by regulation 14(3) of the LGPS (Transitional Provisions) Regulations 2008 from 1 April 2008. In turn new regulation 3(5H)(c) modifies regulation 14 of the LGPS (Transitional Provisions) Regulations 2008, so there is no need to modify regulation 156.

AVCs and transfers

This amendment will take effect from the date the Amendments Regulations come into force. In our view, the effective date should be backdated to 6 April 2015 – ie the date the

Pension Schemes Act 2015 introduced the Freedom and Choice Regulations and amended the Pension Schemes Act 1993. Administering authorities have been applying the amended rules of the PSA 1993 since 6 April 2015. Whilst this is technically a breach of the LGPS regulations, the overriding legislation prevails.

Pre-2014 AVCs

- We understand draft regulation 49 is silent on pension credit members because the option to use an AVC to buy scheme pension is not being extended to this group. This is on the basis they never had this option under the 1997 Regulations. However, the issues set out paragraph 139 of the consultation document apply equally to pension credit members ie they could also be in the position where their only option is to receive part of their pension credit AVC as an unauthorised payment. In our view, MHCLG should consider extending this proposal to members awarded a pension credit under the 1997 Regulations. This would then put them in the same position as members awarded a pension credit under the 2013 Regulations. If the Government decides to make this change, new regulation 15(6) of the 2014 Regulations will need to refer to regulation 154 of the 1997 Regulations.
- Draft regulation 49 – new regulation 15(10) of the 2014 Regulations should not include a reference to regulation 94 of the 1997 Regulations. This is because regulation 51 of the LGPS (Administration) Regulations 2008 refers to the payment of interest under the Earlier Regulations.
- Draft regulation 49 - new regulation 15(9) of the 2014 Regulations confirms that the additional pension purchased will be calculated in accordance with actuarial guidance. However, there is no further detail on the pension that will be bought and if any survivor pensions will be included. Since the facility to purchase additional pension from an AVC plan was introduced to the Scheme on 13 November 2001 the purchase options have varied. The additional pension is calculated in accordance with the guidance issued by GAD with reference to the relevant regulations. There will need to be clarity on what additional pension the AVC plan(s) will purchase for both the member and contingent survivor(s) depending under which regulations the member elects for payment.

  The different approaches that have been adopted over time are set out in the table below:

	Membership	Survivor benefits included	Pension £100 of AVC buys (member is 62 and 3 months in normal health)
1.	Left before 1/4/2008	Automatically - paid at 50% of member's pension	Unmarried: £6.66 Married: £5.94
2.	Left between 1/4/2008 and 31/3/2014	Optional - paid at 37.5% of member's pension	Survivor option: £4.53 No survivor option: £4.77
3.	Left after 31/3/2014	Automatically - paid at 30.625% of member's pension	Unmarried: £4.62 Married: £4.62

1. Members who left before 1 April 2008 fall under regulation 66(5) 1997 Regulations. The factors used to calculate the cost can be found in the ODPM letter of March 2004; however, we wouldn't expect these factors to be used due to the passage of time – we are simply setting out the principle.
2. Members who left between 1 April 2008 and 31 March 2014 fall under regulation 26(5) LGPS (Administration) Regulations 2008. The factors used to calculate the cost can be found in the GAD guidance dated 14 April 2016 using the current factors (tables 802 and 803) from the consolidated factor spreadsheet. These factors are not currently used as it is not possible to buy additional pension from Pre 14 AVCs.
3. Members who left after 31 March 2014 fall under regulation 17(7)(b)(ii) of the 2013 Regulations. The factors used to calculate the cost can be found in tables 806 and 807 of the consolidated factor spreadsheet.

- If the additional pension will also provide for survivor benefits, the pensioner member survivor regulations of the Benefits Regulations will need to be amended to include additional pension purchased from an AVC plan. Currently these regulations are silent on the provision of any additional pension for survivors.
- New regulation 16(8) requires that the AVCs were paid in respect of the same employment 'to which the benefits referred to in paragraph (6) relate.' This wording could be problematic:

  - if the policy is extended to pension credit members, the wording may need to be amended to reflect the fact that the pension credit member did not pay AVCs and did not build up an LGPS pension as an employee
  - some LGPS members have an AVC as a result of reinstatement following mis-selling of personal pensions in the 1990s. Members in this group may have never **paid** AVCs.

Regulation 16(8) should be worded in such a way that allows all members in scope of the policy to use an AVC fund to purchase additional scheme pension.

Child's pensions under the 1995 and 1997 Regulations

- Draft regulation 43(1)(b) inserts regulation 3(5I) into the 2014 Regulations, modifying regulation G7(1) of the 1995 Regulations and 45 of the 1997 Regulations 1997. The effect is to make it clear that entitlement to children's short-term pensions can cease before the end of the three / six-month period if the children cease to be eligible before then. The modifications are not going to have backdated effect. Therefore, these will only apply to recent deaths. As the definition of 'eligible child' in the 2013 Regulations will therefore apply (rather than the definitions in the 1995 / 1997 Regulations), it may be clearer to make these amendments in regulation 17 of the 2014 Regulations and refer to ceasing to be an eligible child within the meaning of the 2013 Regulations.
- Where within the three / six-month period and before the date the Amendment Regulations come into force, the child ceases to be an eligible child and the three / six-month period expires after the date the Amendment Regulations come into force, it would be helpful to clarify how the draft regulations apply to these. For example, does the entitlement cease:

  - at the end of the three / six-month period, or
  - on the date the Amendment Regulations come into force, or
  - on the date the child ceased to be an eligible child?

- We think new regulation 3(5I)(a) should add 'or unless they cease to be **eligible** children' to regulation G7(1) of the 1995 Regulations. As currently worded the draft Amendment Regulations only make reference to 'children' not 'eligible children'.
- We don't understand the reference to regulation 44(2) to the 1997 Regulations in new regulation 3(5I)(b) of the 2014 Regulations. Regulation 44(2) refers to a child not being an eligible child if they are born more than 12 months after the first anniversary of the member's death. We think it should simply say 'An eligible child ceases to be entitled to a short-term pension when he ceases to be an eligible child'. This comment also applies to regulation 46 – child's long-term pension. For all deaths from 1 April 2014 the definition of eligible child is with reference to the definition in schedule 1 to the 2013 Regulations due to regulation 17(9) to the 2014 Regulations 2014 (which is to be replaced by new regulation 17(13A)(a)).

Retained EU law – removal of right to a transfer in from a European pensions institution

- Amendment Regulation 37 repeals the right to transfer in benefits from a European pensions institution with backdated effect from 11pm on 31 December 2020. Due to the revocation of section 293 of the Pensions Act 2008 (including the definition of a 'European pensions institution') on 31 December 2020, it has been unclear from then whether LGPS members could elect to transfer in from such an institution. Where an administering authority allowed it and the member elected between 11pm on 31 December 2020 and the date the Amendment Regulations come into force, as Amendment Regulation 37 has backdated effect, the authority will technically have to unwind the transfer. We are not aware there have been any such transfers, but if it transpires there have, how should administering authorities deal with cases where the European pensions institution refuses to accept the returned transfer? This is likely to happen as they are under no obligation to accept the transfer. Additionally, what happens if the member's pension is already in payment? We suspect that there won't be many (if any) of these cases.
- Amendment Regulation 4 repeals references to transfers in from European pensions institutions when assessing the vesting period under regulation 3(7) of the 2013 Regulations. This has backdated effect from 31 December 2020. This means that, where a member previously elected to transfer in from such an institution and who leaves on or after 11pm on 31 December 2020, the transfer in is disregarded for the vesting period.
- Amendment Regulation 11(a) repeals references to contributions in respect of transfers from European pensions institutions in regulation 18(1)(d) of the 2013 Regulations 2013. This has backdated effect from 11pm on 31 December 2020. So, where the member left on or after 11pm on 31 December 2020 and is entitled to a refund, that refund cannot include any contributions in respect of a previous transfer in from a European pensions institution.
- We understand and support stopping members from electing for **new** transfers in from such institutions; however, we believe that previous transfers in should continue to count as normal. If you agree with this, you will need to retain references to EU pensions institutions in regulation 3(7) and 18(1) of, and schedule 1 to, the 2013 Regulations (including within the definition of 'transfer value payment').
- Amendment Regulation 48 repeals references to transfers from a European pensions institution in regulation 9(3) of the 2014 Regulations. This deals with transfers in from non-public service schemes that were received after 31 March 2014 where the relevant date was before 1 April 2014. The relevant date is the date on which the person first became an active member, or the date the transfer payment is received if more than 12 months later. In our view, there is no need for

Amendment Regulation 48. This is because regulation 9(3) is now effectively spent as it can only have effect if the member joined before 1 April 2014 and the transfer in was received within 12 months of joining.

- Amendment Regulation 37(a) amends regulation 100(2)(a) of the 2013 Regulations 2013 by repealing ‘and’. The regulation also needs to substitute the semi-colon at the end of 100(2)(a) with a full stop.

Retained EU law – updating pensionable pay definition

- Draft Amendment Regulation 13(b) repeals the reference to ‘European Parliamentary elections’ in 20(2)(j) of the 2013 Regulations. This amendment has backdated effect from 11pm on 31 January 2020. This means that returning officer fees in respect of a European Parliamentary election paid after then are not pensionable. The last possible such election in respect of which fees could have been paid is the one held in May 2019. It is unclear whether it is possible that fees for this election could have been paid after 11pm on 31 January 2020. If so, as a result of backdating the amendment, these fees (though, initially treated as pensionable) would need to be treated as non-pensionable. I am not sure this would be the intention. To avoid this, we would recommend draft Amendment Regulation 13(b) is not backdated.
- Draft Amendment Regulations 13(b) amends regulation 20(2)(j) of the 2013 Regulations 2013. The amendments also need to substitute the comma at the end of 2(j)(ii) with a full stop.

Retained EU law – revocation of regulation 102

Draft Amendment Regulation 38 repeals regulation 102 of the 2013 Regulations 2013 with backdated effect from 11pm on 31 December 2020. If a person became entitled to LGPS benefits under regulation 102 after 11pm on 31 December 2020, the entitlement would be unwound. We think it is unlikely that there will be any cases.

Retained EU law – IRMP definition

- Draft Amendment Regulation 39(d) amends the definition of an IRMP in schedule 1 to the 2013 Regulations with backdated effect from 11pm on 31 December 2020. This means that IRMP opinions previously given after then may now be invalid. We recommend that 39(d) does not have backdated effect. When considering when to apply the amended definition, where the relevant IRMP will no longer meet the amended definition, MHCLG should consider the impact on:

    - any ongoing cases, and
    - the ongoing legal status of previously given IRMP opinions.

- Amendment Regulation 39(d) amends the definition of IRMP in the 2013 Regulations. This definition applies to:
    - ill health decisions made in respect of members who left after 31 March 2014
    - death in service decisions in respect of members who left after 31 March 2014 (ie whether reductions in hours should be ignored), and
    - eligible child decisions in respect of members who died after 31 March 2014.
- The following IRMP definitions in the earlier regulations apply to ill health deferred benefits decisions for earlier leavers:
    - **left between 1 April 2008 and 31 March 2014**: IRMP definition in regulation 20(14) of the Benefit Regulations
    - **left between 1 April 1998 and 31 March 2008**: ‘qualified in occupational health medicine’ definition in regulation 97(14) of the 1997 Regulations
    - **left before 1 April 1998**: ‘qualified in occupational health medicine’ definition in regulation 97(14) of the 1997 Regulations (see regulation 4 of the LGPS (Transitional Provisions) Regulations 1997).
- We recommend that MHCLG also makes equivalent amendments to the relevant definitions in the earlier regulations.
- The 2011 Regulations also include a definition of ‘IRMP’ that MHCLG may wish to amend.

Retained EU law – Investment Regulations 2016

- Amendment Regulations 53(b) and 54 amend the LGPS (Management and Investment of Funds) Regulations 2016. Regulation 53(b) amends regulation 3(2) by repealing references to insurance contracts entered into with EEA firms mentioned in regulation 3(2)(b) or other persons where their head office is in an EEA state (other than the UK) mentioned in 3(2)(c). Additionally, regulation 54 repeals the reference in regulation 6(2)(c) to allowing an administering authority to hold its LGPS fund with a central bank of an EEA state (other than the United Kingdom).
- Both these have effect from 11pm on 31 December 2020. We are not best qualified to understand the impact on these regulations by backdating the changes to 2020, but we assume that this has been considered.
- Amendment Regulation 53(b) amends regulation 3 of the LGPS (Management and Investment of Funds) Regulations 2016. The amendment regulation needs to substitute the semi colon at the end of regulation 3(2)(a) with a full stop.

5-year refunds

We do not agree that a member should lose their right to a refund if it is not paid before they reach age 75. We think the refund amount could be paid as a small pot payment under the Registered Pension Schemes (Authorised Payments) Regulations 2009, as set out below.

Regulation 18(5)(b) requires that, if the refund has not been paid, the authority must pay the refund on the day before the person attains age 75. Inserted regulation 18(5B) says that if the authority considers that it will be unable to refund the contributions on that date, it 'must make reasonable attempts to obtain that information'. Amendment Regulation 12 changes regulation 19 to say that the person loses the right to the refund once they attain age 75.

The consultation document suggests that the effect of this is that where; despite making reasonable attempts to obtain the information, the authority is not able to pay the refund on the day before age 75, the member loses the refund entitlement. As the member would still not qualify for benefits and is likely to be out of time to take a cash transfer sum, it appears that the member is not due anything.

The requirement to pay the refund on the day before age 75 and the loss of entitlement if this doesn't happen is premised on the assumption that if the authority paid the refund after 75, it would be an unauthorised payment. It is indeed the case that, due to the condition in paragraph 5(1)(e) of schedule 29 to the Finance Act 2004, the refund would not be classified as a 'short service refund lump sum'. However, it is likely that the member would meet the relevant conditions for the refund to be classified as a small pot payment under either regulation 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009. We suggest that you check whether HMRC agrees with this view. If they do, it may not be necessary to remove the refund entitlement on the 75th birthday.

Amendment regulation 11(b) and 12 change the rules on refunds. These amendments apply from the date the Amendment Regulations come into force. This means that the changes only apply to refunds where:

- the request to pay the refund was made on or after that date, or
- where no request was made, the 5-year period expires (or, if earlier, the member attained the day before age 75) on or after then.

We strongly recommend that the amendments should instead apply to all refunds paid after the date the Amendment Regulations come into effect. This would mean that:

- where the 5-year period expired before then and the refund was paid after then, the late payment of the refund would not be a breach of LGPS regulations, and
- administering authorities would aggregate benefits (rather than pay a refund, which would have been unauthorised) where:
    - the 5-year period expired before the date the Amendment Regulations come into effect and a refund has not been paid by then,
    - the member did not re-join the LGPS within the 5-year period, and
    - before a refund can be paid, the member re-joins the LGPS (whether before or after the Amendment Regulations come into force).

  Once a decision has been taken regarding age 75 cases (see first paragraph of this section), you will also need to consider how to treat cases where the member attained age 75 before the date the regulations come into effect and the refund has not yet been paid.

- Amendment Regulation 12 amends regulation 19 of the 2013 Regulations. The amendments appear to miss repealing the full stop at the end of regulation 19(1)(e).

Joint Committee for Statutory Instruments

- Amendment Regulations 16, 19(b), 20(b) to (j), 22(b), 23(b), 25(b) and 26(b) amend the 2013 Regulations. The consultation document suggests that these amendments are intended to address minor updates proposed by the Joint Committee for Statutory Instruments.
- Additionally, when reviewing the LGPS (Amendment) Regulations 2023, the Joint Committee also flagged in their Thirty-Fourth Report of Session 2022-23 existing issues with the revaluation adjustment provisions. These issues were similar to the ones we raised in our consultation response to the LGPS (Amendment) Regulations 2023. It is disappointing that MHCLG has not taken this opportunity to also correct these issues.
- The amendments have effect from the date the Amendment Regulations take effect. As the amendments are proposing to address drafting issues with the LGPS (Amendment) Regulations 2023, we would have expected the corrections to have backdated effect in line with when those regulations came into force (31 March 2023).
- Amendment Regulation 16 makes a minor technical amendment to regulation 27 of the 2013 Regulations. It is unclear why a similar technical amendment has also not been made to regulations 25(4A) and (6).

Administrative impact of proposals

Q48. **Do you have any comments about the impact the combined proposals in this document will have on administration?**

We recognise that changes the Government has proposed in this consultation would have a positive impact on members and their dependants. These include changes necessitated by legal decisions that occurred many years ago, and amendments that administering authorities and the Scheme Advisory Board have been recommending for many years. We welcome the Government's attention to these issues that have been long neglected.

That being said, we do have serious concerns about the ability of administering authorities, pension software suppliers and payroll providers to prepare for so many Scheme changes in a short space of time.

Administering authority resources are stretched due to major ongoing projects including McCloud rectification and preparation for pension dashboards. These changes also demand significant resources of pension software suppliers as they develop, test and introduce upgrades and new features. Administering authorities also report significant problems in recruiting and retaining experienced staff, which will make them less able to implement multiple changes affecting many different aspects of the Scheme.

We have pointed out earlier in our response changes that we think will cause the greatest difficulties for administering authorities. Any retrospective change poses a particular challenge. We strongly recommend that MHCLG issue guidance on the steps that administering authorities should take to pay any additional payments related to the new rules that are proposed for death grants and survivor pensions. The guidance should also set out what calculations should be revisited. This will help to ensure the changes are implemented consistently across the Scheme.

We urge the Government to be mindful of the pressures on administering authorities before further significant changes to the LGPS are planned. We are supportive of changes that result in a better outcome for LGPS members. But if the pace of change is such that administering authorities and software suppliers do not have time to develop, test and implement software updates, create new and amended processes and write updated member communications, this will impact negatively on member outcomes across the Scheme. We encourage the Government to consider this issue in planning the timing and complexity of future Scheme amendments.

We have been regularly reminding MHCLG that the LGPS Regulations must be amended in advance of the increase to the Normal Minimum Pension Age (NMPA) in April 2028.

We have been doing this since the change to the NMPA was legislated for in overriding legislation in 2022. Changes are needed to the LGPS Regulations to ensure that LGPS members can plan their retirement with confidence and without any unwanted tax implications. The policy may also have implications for members making decisions on transferring pension rights with a protected pension age to the LGPS. We recognise the importance of making these changes in a timely manner to provide certainty to Scheme members. In our view, the Government should take a pragmatic approach to these changes and adopt an approach that involves the lowest level of complexity and is therefore least disruptive to administrators.

Q49. **Are there any areas where you believe the proposals are significantly more complex and would benefit from a later implementation date?**

Yes, there are two areas where we think a later implementation date may be appropriate.

Opt out reporting – We support the Government's plan to introduce a requirement for administering authorities to report on opt out rates. We hope that the results can be used to develop initiatives to encourage employees who have opted out or are thinking about opting out to participate in the Scheme, which will have a positive impact on pension adequacy. However, such reporting and comparison across employers and administering authorities is only meaningful if there is clear guidance on exactly what they are required to report and all employers and administering authorities are interpreting that guidance consistently.

Much more work is needed to set out clearly what data Scheme employers need to provide. As we mentioned in our response to question 26, we also believe the LGPS Regulations should be amended to introduce a requirement for Scheme employers to provide this information to administering authorities, not just a requirement for administering authorities to report on the total across all Scheme employers in their fund.

Once the data needed has been clearly defined, we understand that employers will need to undertake a significant exercise to 'label' individual payroll records to indicate whether a member is eligible for membership of the LGPS or not. This will be necessary to ensure, where a member is not in any pension scheme, they are only included in the data if they are eligible to join the LGPS.

We strongly recommend a later implementation date for this policy to give payroll providers and employers sufficient time to make the changes needed.

Gender pension gap reporting – Similar to the position for opt out reporting, it only makes sense to report on the gender pension gap if all administering authorities and actuaries interpret the rules in exactly the same way. There is still some work to do to make sure that this is achieved and that the results are meaningful.

Gender pension gap reporting is important, but it is most important to be able to track the change in the gap over time. It may be possible to report a very basic figure as part of the 2025 Valuation. However, it is likely that a more sophisticated methodology will be developed over time. It may not be useful to compare a basic figure from 2025 with figure calculated in future years based on a different methodology. We strongly urge MHCLG to consider introducing reporting at a later date to ensure that meaningful results that can be tracked over time are produced.

Q50. **Do you have any comments on the proposed approach to cost?**

No.

Public Sector Equality Duty

Q51. **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.**

Nothing further to add than the impacts already covered in the consultation document.

Q52. **Do you agree to being contacted regarding your response if further engagement is needed?**

Yes.