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

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LGPS in England and Wales: Access and Protections

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

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

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 aware that the LGA's Safe and Stronger Communities Board has also submitted a response on the proposals for Councillor and Mayors in the scheme.

In addition to answering the questions posed, the response includes technical comments. 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

Normal Minimum Pension Age

We have received several queries regarding the four categories outlined in the consultation document. Specifically, some members appear to fall into more than one category and there is no distinction made between individual and bulk transfers. As a result, the proposed outcome for some members is unclear.

Following discussions with MHCLG, and for clarity, we understand the intention of the proposals to be as set out in the table below. The references to the LGPS in the table refer to the LGPS in England and Wales only. The earliest age LGPS benefits can be paid does not apply to ill health retirements.

Description	Protected Pension Age (PPA) for LGPS benefits under the Finance Act 2004	Proposal for earliest age LGPS benefits can be taken after 5 April 2028
Category 1 – members who: • were in the LGPS immediately before 4 November 2021, and • do not have special protections under the LGPS regulations (in other words – are not category 4 members).	Age 55 – this applies to all LGPS benefits including: • benefits built up after 3 November 2021 • unaggregated benefits • any transferred-in benefits (including benefits transferred in after 3 November 2021).	Where the LGPS regulations currently allow the member to take benefits from age 55, this will continue.
Category 2 – members who: • were not in the LGPS immediately before 4 November 2021, and • have transferred in benefits (not under a bulk transfer) from a relevant registered pension scheme where they had a PPA of between 55 and 57.	Between ages 55 and 57 on the transferred-in benefits (based on the PPA in the sending scheme). No PPA on the rest of the benefits.	Where LGPS regulations currently allow the member to take benefits from age 55, this will increase to age 57. The LGPS regulations will not allow the transferred-in benefits to be taken separately and earlier than the rest of the benefits.

Description	Protected Pension Age (PPA) for LGPS benefits under the Finance Act 2004	Proposal for earliest age LGPS benefits can be taken after 5 April 2028
Category 3 – members who: • were not in the LGPS immediately before 4 November 2021, and • do not have transferred in benefits from a relevant registered pension scheme where they had a PPA of between 55 and 57.	No PPA on any LGPS benefits.	Where LGPS regulations currently allow the member to take benefits from age 55, this will increase to age 57.
Category 4 – members who have special protections under the LGPS regulations (such as former Learning and Skills Council employees).	Age 50 If protection under paragraph 22 of schedule 36 does not apply at retirement or ceases to apply: age 55. This applies to all LGPS benefits.	Where LGPS regulations currently allow the member to take benefits from: • age 50 in specific circumstances: this will continue • age 55 in other circumstances: this will also continue.
Category 5 – members who: • were not in the LGPS immediately before 4 November 2021, and • have benefits transferred in under a bulk transfer from a relevant registered pension scheme where they had a PPA of between 55 and 57.	Between 55 and 57 (based on the PPA in the sending scheme) This applies to all LGPS benefits, not just the transferred-in benefits.	Where LGPS regulations currently allow the member to take benefits from age 55, this will change to the PPA. In most situations the PPA from the sending scheme will be age 55.

In the table, we have replicated the wording used in the consultation document about whether a member 'was in the LGPS (England and Wales) immediately before 4 November 2021'. It is acknowledged that this wording is intended to simplify the 'entitlement condition' set out in paragraph 23ZB(3) of Schedule 36 to the Finance Act 2004.

We are also assuming that:

- any amendments to the LGPS Regulations will take effect from 6 April 2028, rather than any earlier date

- where a member has a PPA for all their LGPS (England and Wales) benefits under the Finance Act 2004, the LGPS regulations will not set additional conditions (other than those already in the LGPS regulations) limiting their right to take their LGPS benefits from their PPA. For example, where the member has a PPA of age 55 under the Act, the member will continue to be able to take their LGPS benefits from age 55 after 5 April 2028 in the same circumstances as now.

Our responses to the questions below assume that we have correctly understood the intention of these proposals.

Q1. Do you agree with keeping the NMPA at below 57 for members with a PPA?

Category 1 members

We have concerns regarding the continuation of access to benefits from age 55 for category 1 members beyond 5 April 2028:

Redundancy / business efficiency retirements – cost implications for employers

The LGPS is unique among public service pension schemes in allowing unreduced benefits to be paid from age 55 in cases of redundancy or business efficiency retirements.

The financial burden of this provision can be significant and is borne by the relevant employer. Permitting category 1 members to retain the right to unreduced benefits from age 55 in such cases is likely to result in considerably higher costs for employers (and, by extension, taxpayers) than if the minimum age were increased to 57. This issue may be further compounded by a potential rise in such retirements over the next few years due to local government reorganisation.

While we acknowledge that category 1 members may favour retaining the current age threshold, we are concerned about the financial implications for both employers and local taxpayers.

We urge MHCLG to collect data on the additional costs retaining the current age threshold would incur to ensure the financial impact is fully considered. This is particularly important in light of local government reorganisation. We also recommend that HM Treasury be made aware of these cost implications so they can be factored into broader assessments of savings from local government reorganisation.

There is precedent for raising the minimum age for all members for redundancy and business efficiency retirements. When the NMPA increased from 50 to 55 in 2010, the LGPS regulations could have allowed certain members to retain access to benefits from age 50 for these types of retirement (as happened in LGPS Scotland). Instead, the decision was made to raise the age to 55 for all members.

Increased complexity

The LGPS is already a very complex scheme. This complexity makes it challenging for administering authorities to manage the scheme effectively. At the same time, members often find it difficult to understand their benefits, which can lead to confusion and dissatisfaction.

Administering authorities struggle to recruit and retain skilled staff, partly due to this complexity. In addition, they are still facing significant pressure to deliver the McCloud remedy and prepare for pension dashboards. These pressures will only intensify in the coming years as authorities implement major changes arising from the Access and Fairness consultation, new Fair Deal provisions, governance reforms and inheritance tax changes.

Permitting different earliest ages for category 1 members would introduce further unwelcome complexity to the LGPS. This would exacerbate existing challenges in scheme administration and make it even harder for members to understand their entitlements.

The most straightforward solution, for both administration and member understanding, would be to ensure that category 1, 2, and 3 members share the same earliest age at which they can take their benefits. This age would need to be at least 57 to avoid the risk of paying unauthorised payments for category 2 and 3 members.

Risk of discrimination

Legal advice should be sought to assess the potential risk of legal challenges on the grounds of unlawful discrimination. For instance, older members are more likely to fall into category 1, as they are more likely to have joined the LGPS before 4 November 2021.

Creation of a two-tier workforce

Allowing category 1 members to access benefits from age 55 risks creating a two-tier workforce. For example, an employer may have both category 1 and category 2 or 3 members among its employees. While category 1 members would be able to access their LGPS benefits from age 55, their colleagues in other categories would have to wait until age 57.

Category 4 members

The standard LGPS Regulations are modified for certain groups of employees to provide special protections. These protections typically apply to employees who were compulsorily transferred into the LGPS from another public service pension scheme, with specific protections agreed at the time of transfer.

One example is former employees of the Learning and Skills Council in England, some of whom have the right to take their LGPS benefits from age 50.

We support the continuation of these special protections, allowing these members to retain the ability to take their LGPS benefits before age 55 after 5 April 2028, in the same circumstances as currently permitted. The number of such members is diminishing over time, and administering authorities are familiar with managing these protections.

In all other circumstances, category 4 members should be treated in the same way as category 1 members. Please refer to our concerns in the previous section regarding allowing category 1 members to continue accessing benefits from age 55 after 5 April 2028.

Category 5 members

Category 5 members are those who joined the LGPS after 3 November 2021 but subsequently transfer in under a bulk transfer from another scheme where they hold a Protected Pension Age (PPA) between age 55 and 57.

It is proposed that these members will be able to access their LGPS benefits from the PPA in the sending scheme, and that this will apply to all their LGPS benefits, not just the transferred-in benefits.

Effectively, these members will be treated in the same way as category 1 members, although the earliest age may differ slightly for category 5 members depending on their PPA.

We have the same concerns about this proposal as we do for category 1 members. Allowing different earliest ages for different categories introduces further unwelcome complexity into the LGPS. This complexity would be even more pronounced for category 5 members who have a PPA later than age 55.

As these transfers are voluntary, if MHCLG decides that members can take LGPS benefits from their PPA, individuals will be able to factor this into their decision making when considering whether to proceed with the transfer.

Q2. **Do you agree with increasing the NMPA to 57 for members without a PPA?**

Category 3 members

For members who do not qualify for a PPA on any of their LGPS benefits, the earliest age at which they can access those benefits must increase to at least age 57. If this change is not made, the LGPS regulations would permit payments that are considered unauthorised under pension tax legislation, which could jeopardise the Scheme’s status as a registered pension scheme.

We support the proposal that the earliest age for accessing LGPS benefits should be set at age 57, in alignment with the normal minimum pension age as defined in the Finance Act 2004. We do not believe it should be set at a later age.

Category 2 members

The only difference between category 2 and category 3 members lies in whether the LGPS regulations will permit category 2 members to access their transferred-in benefits with a PPA earlier and separately from the remainder of their LGPS benefits.

It is proposed that the answer to this question should be 'no'. The rationale provided is that the Government considers it disproportionate to introduce significant complexity into the LGPS regulations for category 2 members.

We fully support this position. Allowing category 2 members to access their transferred-in benefits separately and earlier than the rest of their LGPS benefits would necessitate substantial amendments to the LGPS regulations. This would introduce further complexity to an already complex scheme, resulting in increased administrative burdens, costly software updates, and significant communication challenges.

We do not believe that adding further complexity for a diminishing group of members, whose numbers will naturally decline over time as we move further away from 4 November 2021, is justifiable.

Furthermore, administering authorities should have made it clear to category 2 members, prior to any transfer decisions, that it was uncertain whether the Government would permit them to access their transferred-in benefits with a PPA earlier than the rest of their LGPS benefits. Therefore, members who chose to proceed with the transfer should not have expected to be allowed to do so.

Q3. Do you have any views on the design of the regulations to incorporate this change?

Members under the 2013 Regulations

To implement the Government's proposals, two main options are:

- replace references to age 55 in the regulations with age 57, while providing for category 1, 4, and 5 members to access their benefits earlier than age 57, or
- replace references to age 55 with 'normal minimum pension age' (NMPA) as defined in the Finance Act 2004.

The consultation document indicates that the Government prefers the second option.

We agree with this approach. The definition of NMPA in the Finance Act 2004 already accommodates protected pension ages. Specifically, paragraph 21(1) of Schedule 36 states that where a member has a PPA, references to NMPA are to be interpreted as the member's protected pension age. This avoids the need for additional provisions in the LGPS regulations to allow category 1, 4, and 5 members to access their benefits earlier than age 57.

Another advantage of this approach is that, if the NMPA increases again in future, and the Government adopts a similar policy stance for the LGPS, only minimal updates to the regulations would be required.

However, additional provisions will be needed for the following cases:

- **Category 2 members**: These members will have two NMPAs for their LGPS benefits. Under paragraph 23ZC(4), the NMPA for transferred-in benefits will be their protected pension age under the sending scheme, while the NMPA for the remainder of their benefits will be 57. The LGPS regulations must clarify that paragraph 23ZC should be disregarded when interpreting NMPA for LGPS purposes.
- **Active members on 5 April 2006 not eligible for redundancy/business efficiency retirement until age 55**: These members may qualify for a PPA of age 50 under paragraph 22 of Schedule 36 to the Finance Act 2004 if their employment ends due to redundancy or business efficiency between ages 50 and 55. Although they may have a PPA, the LGPS regulations currently do not permit access to their pension. We assume it is not the Government's intention to allow such members to access their benefits between ages 50 and 55 after 5 April 2028. However, this would be the unintended consequence if the reference to 'age 55' in regulation 30(7) were simply replaced with NMPA.

Lastly, the consultation document refers to the NMPA definition in the Finance Act 2022. We assume this is an error and that the correct reference should be to the Finance Act 2004.

Members under the earlier schemes

The consultation document does not address the Government's approach for members under earlier LGPS regulations.

There is an argument that no amendments are needed, as such members are likely to be category 1 members. However, amendments will be required for the following groups who may not fall into category 1:

- **Councillor members in Wales**: These members are governed by the LGPS Regulations 1997. As they may have joined on or after 4 November 2021, they will not all be category 1 members.
- **Pension credit members under the 1997 Regulations**: Pension credits can still be awarded under the 1997 Regulations in certain circumstances. These members will also not all be category 1 members.

We will review the draft regulations when published and provide further feedback at that stage.

Other comments

We have submitted two queries to HMRC regarding whether an LGPS member in a specific scenario would qualify for a protected pension age under paragraph 23ZB of Schedule 36 to the Finance Act 2004 in relation to their LGPS benefits. Unfortunately, after multiple requests, HMRC has not provided the necessary clarification.

It would be helpful if MHCLG could liaise directly with HMRC to obtain and share the required clarification or alternatively consider these issues themselves.

Query 1

This query concerns LGPS members who meet the following criteria:

- they drew their LGPS pension before reaching age 57 and before 4 November 2021
- the pension remained in payment as of 3 November 2021
- the member re-joined the LGPS after 3 November 2021, and
- the member reaches age 57 after 6 April 2028.

This scenario primarily applies to members who accessed their pension early due to ill health. It may also apply to members who turned 50 after 6 April 2021 and were able to draw their pension before age 55, relying on a protected pension age under paragraph 22. The key question is whether the member satisfies the entitlement condition.

Our view is that the answer is likely 'yes', but we are not certain. In particular, if the answer depends on whether the employer / administering authority needed to consent to the original payment (for example, deferred benefits under the 2008 and 2014 schemes drawn early on ill health).

Query 2

This query relates to the following scenario:

- an ex-spouse or partner was awarded a pension credit following a pension sharing order (PSO) concerning LGPS benefits, with an effective date before 4 November

2021

- the LGPS administering authority implemented the order after 3 November 2021 and discharged the pension credit by awarding LGPS pension credit benefits, and
- the LGPS pension credit benefits were backdated to the PSO's effective date.

An LGPS pension credit member has an unqualified right to take payment from age 55. The question is: for the purposes of the entitlement condition, when did this right arise? Was it:

- from the PSO's effective date (meaning the member had the right immediately before 4 November 2021), or
- only from the date the administering authority discharged the pension credit, regardless of the backdated effect (meaning the member did not have the right immediately before 4 November 2021)?

Access for councillors and mayors

Q4. **Do you agree with the proposal to give mayors access to the scheme?**

Yes. Many mayoral roles already carry significant responsibilities and require the office holder to work full time. Under local government reorganisation and devolution reforms, mayors in England will assume even greater responsibilities and powers. In some cases, mayors will automatically take on the Police and Crime Commissioner (PCC) role – which is already eligible for LGPS membership.

The consultation rightly recognises that mayors perform a vital public service, and it is essential that they are not placed at a financial disadvantage due to the absence of pension provision. Access to a good quality pension scheme is key to attracting and retaining talented individuals to these roles. Mayoral positions should be accessible to a diverse range of candidates and providing access to the LGPS will help to ensure this.

Q5. **Do you agree with the proposal to give councillors access to the scheme?**

Yes. Councillors in Scotland, Wales and Northern Ireland ('the devolved nations') already have access to the LGPS. Extending this provision to England would ensure consistency and fairness across the UK, generally aligning pension rights for councillors regardless of location. It also acknowledges the increasing responsibilities placed on councillors, particularly in the context of local government reorganisation, where their roles will become more strategic and demanding. It is increasingly common for councillors, particularly those holding special responsibilities, to reduce or relinquish other paid employment to dedicate sufficient time to their role.

The LGA's 2022 councillor census found that 46 per cent of councillors were retired, the average age was 60 years and only 16 per cent were under age 45. The census also found an under representation of women and ethnic minorities. The LGA supports people from all walks of life standing for elected office and pensions are key in supporting representation from people of working age.

Pension access also reinforces the value of public service and may encourage longer tenure among councillors, contributing to better continuity in governance and institutional knowledge. Councillors who are LGPS members may also be more engaged with pension governance, especially if they sit on pension committees or boards, which could lead to more informed oversight and advocacy for scheme members.

Q6. Do you agree with the two principles of how the government plans to develop regulations?

We agree with both principles in that, as far as possible, mayors and councillors (categorised as elected members in the draft regulations) should be treated:

1. the same as other members of the LGPS
2. in a way that is consistent with the LGPS in Scotland, Northern Ireland and pre-2014 England and Wales.

However, the resulting proposals don't entirely follow directly from the principles. This is primarily due to variations in treatment of councillors in the devolved nations.

Joining the LGPS

We understand the proposal is for elected members to have a right to opt into the LGPS. They will not need approval from their independent remuneration panel to join the scheme but will not 'automatically' join from their first day of office. This differs from the treatment of councillors in the devolved nations:

- Wales – councillors will continue to fall under the 1997 Regulations, so access to the LGPS is at their local authorities discretion.
- Scotland and Northern Ireland – councillors 'automatically' join from their first day of office.

The LGPC did not form an agreed view on this issue; however, the majority of councillors on the Committee were of the view that elected members should be required to opt into the LGPS. In their view, requiring elected members to opt in is the most pragmatic approach as not all elected members are full time and they have an older age profile which means they are likely to already have other financial arrangements in place. This approach would also help to limit costs and respect differing political views.

However, a minority of councillors were in favour of members 'automatically' joining from their first day of office. This view was based on the level of responsibility and time commitment now required of elected members and that requiring elected members to opt into the LGPS is at odds with the Government's wider pensions policy and may discourage people, especially women, from becoming councillors.

If the proposal to require elected members to opt in is taken forward, it is imperative that authorities communicate this promptly and clearly and that the joining process is as simple as possible.

It is worth noting that an election to join the LGPS will be made under regulation 3(6)(a) of the LGPS Regulations 2013. This provides that a person becomes an active member on the first day of the pay period following their application. Consequently, it will not be possible for an elected member to be an active member from the first day of their office.

Implementation date

The draft statutory instrument confirms the effective date for this proposal will be 1 April 2026. This leaves very little time for the necessary arrangements to be put in place, such as:

- Pensions software changes – providers have confirmed it will not be possible to implement the necessary changes by April 2026. Whilst it may be possible to add elected members to systems, it is unlikely that calculations will be able to be performed.
- How employer contributions will be handled when a councillor is appointed to a role within a combined authority: under the draft regulations, the councillor's elected local authority remains the scheme employer and is therefore responsible for paying employer contributions, even though it does not pay the allowance for that role.
- New documentation will need to be prepared for councillors and mayors, including scheme guides, template letters, eligibility communications etc.

The Government only announced its intention to allow elected member access to join the LGPS in September 2025. Councils will already have been planning their budgets for the 2026/27 year at this stage with a view to obtaining formal approval in February or March 2026. As the consultation does not close until 22 December 2025, there is going to be very little lead in time for budget adjustments if the proposed changes go ahead.

Finally, if the policy is introduced in 2026, we recommend moving the implementation date to 7 May 2026 to align with the date of the local elections. We understand elections will take place for six directly elected mayors alongside council elections in all 32 London boroughs, 32 metropolitan boroughs, 18 unitary authorities and six county councils. If the implementation date remains 1 April 2026, mayors and councillors could opt into the

LGPS on 1 April 2026, or even 1 May – and then leave later in May if they are not re-elected. This scenario would create significant administrative challenges for LGPS administering authorities, as members who leave with less than three months membership are only entitled to a refund of contributions.

Retrospective application

MHCLG officials have confirmed that mayors and councillors in England will not be granted retrospective access to the LGPS 2014 Scheme. The policy only applies going forward, and the Committee fully supports this approach. Backdating membership would involve significant administrative complexity and prohibitive cost, making it unfeasible to implement. Elected members are not workers, so are not covered by the Pensions Act 2008 which requires employers to automatically enrol certain workers into a qualifying pension scheme if they earn at least £10,000 a year.

Cost

The consultation document confirms the Government will not provide funding for employer contributions for the proposal. This is on the basis that there is no funding for pensions access for councillors in the devolved nations. It goes on to suggest the proposal should be seen in the context of the LGPS 2025 valuation.

However, we urge the Government to implement the policy in accordance with the New Burdens principle and provide funding for the additional costs of its introduction. Based on the Government's own estimates, these costs could reach up to £45 million a year across the sector, alongside associated administrative expenses. While we acknowledge that pension costs in other UK nations are not centrally funded, those schemes have been in place for some time and therefore do not represent a new burden. In contrast, authorities in England have been prohibited from providing elected member pensions since 2014; introducing pension provision now clearly constitutes a new financial commitment.

Whilst the 2025 valuation results are expected to show improvements in funding levels and a reduction in the average employer contribution rate, it is important to remember that not all employer contribution rates will reduce, and reductions may not be sufficient to offset new costs. In this context, the additional cost of enrolling elected members, while modest in terms of overall scheme liabilities, still represents a new financial commitment for local authorities, combined authorities, combined county authorities and the London Assembly operating under significant budgetary pressure. Even with potential contribution rate reductions, the net effect may still be an increase in pension-related expenditure for some employers. This is particularly relevant for smaller employers or those undergoing reorganisation, where financial planning is already complex.

While providing LGPS pension benefits to elected members acknowledges the increasing responsibilities placed on them, this increased responsibility is likely to also attract increased allowances, which will in turn increase the employer contributions.

Employers contributing towards additional benefits / waiving actuarial reductions

We agree that employers should not be allowed to award additional pension, make shared cost additional voluntary contributions or fund the purchase of additional pension for an elected member. This is consistent with their treatment in the devolved nations.

Additionally, we believe that Schedule 4 should also omit regulation 30(8). Regulation 30(8) allows the Scheme employer to agree to waive in whole or in part any reductions to the member’s pension benefits.

Aggregation rules

The consultation document states, ‘a member will not be permitted to combine any LGPS membership they may have as an elected member with any other type of LGPS membership’.

This restriction currently applies to councillors in the devolved administrations and was also applied to English councillors prior to 2014. We understand the rationale for this is linked to specific modifications made to the scheme for elected members. If elected membership were aggregated with non-elected membership, the individual could gain access to scheme benefits that are intentionally excluded for elected members, such as flexible retirement and redundancy-related retirements.

Schedule 4 modifies the 2013 Regulations to prevent the aggregation of deferred benefits between elected and non-elected membership built up in the 2014 Scheme. However, there is no equivalent restriction for aggregating deferred benefits built up under the 1997 Scheme with a pension account in the 2014 Scheme. This change will need to be made by amending the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

In addition, the draft regulations do not modify regulations 22(5) and 22(6) of the 2013 Regulations, which means a deferred refund account must still be aggregated with an active member’s pension account, regardless of whether the membership is elected or non-elected. We assume this is intentional as it replicates the situation in Scotland and avoids the administrative difficulties currently experienced in Northern Ireland where it is not permitted. In Northern Ireland, these deferred refund accounts cannot be paid as refunds or treated as deferred benefits.

However, as the regulations are currently drafted there would be an issue where a post 2014 non-elected deferred refund is combined with an active elected member pension account, and the member qualifies for underpin protection on the non-elected deferred refund account when the two benefits are aggregated – the underpin is not switched off in these circumstances. We note the underpin is switched off for final salary transfers in from another public service pension scheme and recommend an equivalent provision is made for the aggregation of non-elected deferred refunds.

Employee contribution rate

We agree with elected members paying employee contributions at the same rates as other members, using the same bandings applied to their pensionable pay.

Flexible retirement

We agree that flexible retirement should not be permitted for elected membership. Elected members receive allowances rather than a salary and the flexible retirement provisions rely on an employment relationship where hours or grade can be reduced, which does not apply to elected roles.

For consistency, in our view, Schedule 4 should also omit regulations 23(8) and 27.

Redundancy retirement

Elected members cannot be made redundant because they are not employees. Therefore, we agree that regulation 30(7) should be omitted by Schedule 4 as early access to pension rights on redundancy is not applicable.

Transfers

We agree that elected members should be permitted to transfer benefits in and out of the LGPS in the same way as other members. This aligns with other members of the Scheme and councillors in Scotland. However, councillors in Northern Ireland and Wales are not allowed to transfer in. We agree that final salary transfers in should buy CARE benefits and not provide underpin protection; however, we recommend MHCLG check with legal experts that the Public Service Pensions Act 2013 does not impose final salary protection on these benefits.

Early/late retirement

We agree that elected members should be able to elect for the early and late payment of benefits in the same way as other members.

Forfeiture

We agree that elected members should be in scope of the forfeiture provisions.

50:50 membership

We agree that elected members in England should have access to the 50:50 Scheme, although access is inconsistent across the devolved nations.

Councillors in Northern Ireland are not permitted to join, while those in Scotland are. There is no 50:50 option in the 1997 Regulations for pre-2014 England & Wales members.

We interpret regulation 10(5) of the 2013 Regulations to provide that elected members are moved back to the main section approximately every three years on the Scheme employer's automatic re-enrolment date.

Assumed pensionable pay (APP)

The consultation proposes providing elected members with the same APP protections as other members.

Generally, elected members are paid their allowances while on sick leave or child related leave; however, this is not always the case. Where an elected member's allowances are reduced for sickness, injury or child-related leave (as generally understood, not as defined in the regulations), we agree that they should have the same protections around APP as other members.

For information, councillors in Northern Ireland have the same protections around APP as other members, but in Scotland the APP regulation is omitted for elected members except whilst they are on reserve forces service leave.

Continuous terms of office

When an elected member leaves office, they no longer meet the definition of an 'eligible councillor' or 'eligible mayor' and therefore are no longer deemed to be in local government service. As a result, they cease to be an active member of the Scheme under Regulation 5(1).

However, when a councillor is re-elected, they first resign and are then re-sworn into office on the same day. This raises the question:

- does the elected member cease to be an active member and then become eligible to rejoin (requiring a new opt-in)?
- or should this be treated as continuous service?

This is an existing issue that doesn't appear to have any impact in the devolved nations; however, if the intention is for membership to be continuous it would be helpful for this to be clarified as the answer impacts several areas of the regulations – such as whether any additional contributions contracts must stop, whether the 12 month transfer in window opens up again and if the member is allowed to take payment of benefits (if they are above NMPA).

Q7. Do you have any specific comments on the draft regulations?

Absence with permission

Under Section 85 of the Local Government Act 1972, a councillor who fails to attend any council or committee meetings for six consecutive months automatically ceases to be a member of the council unless the council has granted them a leave of absence before the end of that period.

As part of this leave, a councillor may voluntarily waive their entitlement to allowances. In such cases the councillor would be 'absent from work with permission with no pensionable pay', as described in regulation 15(5) of the LGPS Regulations 2013. Where this applies, a councillor will be able to pay additional pension contributions to buy back the lost pension. Regulation 15(5) requires the Scheme employer to contribute two thirds of the cost if the application is made within the timescales set out in the 2013 Regulations. However, draft Schedule 4 switches off regulations 16(2)(e) or 16(4)(d) for elected members. We assume this is intentional. If it is not the regulations should be amended to make the omission of 16(2)(e) or 16(4)(d) conditional:

'In regulation 16 (additional pension contributions) omit paragraphs (2)(e) and (4)(d) except when the arrangement is to cover a break under regulation 15(5)'

If the 'Access and Fairness' regulations are enacted as drafted, this would need to refer to regulation 15(4B) instead of 15(5).

If the intention is for elected members to meet the whole cost of buying back lost pension, we think further amendments are required to regulation 15(5) to avoid the Scheme employer being required to fund two-thirds of the cost of the arrangement.

Allowances paid at the recommendation of the combined authority or combined county authority

In most cases, allowances are paid by the local authority to which the councillor is elected. However, when a councillor is appointed to represent their local authority on a board or committee at a combined authority (CA) or combined county authority (CCA), they are not currently paid directly by the CA or CCA. Instead, the CA or CCA may recommend that the local authority pays an additional allowance to the councillor. This arrangement effectively means that the CA or CCA authority is also recommending the payment of additional pensionable pay, which has implications for LGPS contributions and costs for local authorities.

The English Devolution and Community Empowerment Bill seeks to modify this arrangement by amending LURA 2023 and LDECDA 2009 to allow CAs and CCAs to pay allowances to members serving on boards or committees and we understand the intention is for these payments to be pensionable. However, this change will introduce further complexities, as outlined in the next section.

Allowances paid by the combined authority or combined county authority

If a councillor is a member of an overview and scrutiny committee at a CA or CCA, they are currently also paid an allowance by that authority. This allowance is paid using a remuneration framework created under the establishment order of the CA or CCA. As highlighted in 'Definition of pensionable pay' section, we don't believe these are currently pensionable under the definition of pensionable pay included in the draft regulations.

If the definition of pensionable pay is changed to include these allowances, we have some concerns with how this will work in practice.

For example, The West of England Combined Authority Order 2017, Schedule 1, Paragraph 8(3)(a) states:

'The Combined Authority may pay an allowance to

(a) a member of a constituent council who is appointed to an overview and scrutiny committee of the Combined Authority, or a sub-committee of that committee'

However, the Scheme employer for such a member is 'the local authority to which the eligible councillor is elected'. This creates a situation where the councillor is paid by the CA or CCA, yet the employee and employer contributions are required to be paid by the local authority to the administering authority.

We understand the Government will clarify how this should work in practice through guidance or its formal response. However, as currently drafted the legislation makes the local authority, in their capacity as the Scheme employer, responsible for paying the relevant contributions. This arrangement is problematic for various reasons including the administrative complexity and potential delay in paying contributions to the administering authority:

- the Scheme employer will have no control over the pension costs as they do not control the level of allowances paid.
- the Scheme employer could face financial penalties where there are delays or errors in processing contributions.
- the Scheme employer will need to consider allowances paid by the CA or CCA when setting member contributions rates as the combined pay will be used to allocate the elected member to the appropriate contribution band.
- general administrative delay will likely occur as the CA or CCA will pay the allowance and deduct the employee contributions from the member's salary; however, the Scheme employer must be notified, calculate employer contributions,

and pass both employee and employer contributions to the administering authority. This adds complexity and the potential for delay.

The issue will also apply to special allowances paid directly by CAs or CCAs following the enactment of the English Devolution Bill covered in the next section.

We suggest consideration is given to CAs and CCAs being a Scheme employer in respect of the allowances they provide. This will result in elected members holding multiple pensions pots and elected members potentially paying a lower employee contribution rate (as the allowances will be assessed against the contribution bands separately). However, this approach would avoid the administrative complexity mentioned above.

Special allowances under the English Devolution Bill

Section 10 of the English Devolution and Community Empowerment Bill, amends both LURA 2023 and LDEDCA 2009 to allow CAs and CCAs to directly pay a special allowance to their members.

However, the draft regulations define pensionable pay as all basic or special allowances paid to elected members in any remuneration framework established under:

- the Local Authorities (Members' allowances) (England) Regulations 2003
- the Greater London Authority Act 1999
- a Combined Authority establishment order, or
- Combined County Authority establishment regulations.

We expect that the establishment orders will be amended to allow the CAs and CCAs to pay this allowance to their members. If this is not the case, and the allowance would be payable under the overriding legislation, our concern is that allowance schemes created under LURA 2023 or LDEDCA 2009 are not currently included in this definition. As a result, allowances paid under these regulations may not be treated as pensionable pay under the draft regulations.

Eligibility of directly elected mayors

Directly elected mayors are eligible for the LGPS, under the draft SI, because:

- regulation 2(b) of the Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, provides that an elected mayor of a local authority is treated as a councillor for the purposes of subsections (1),(3),(4) and (5) of section 18 of the 1989 Act.
- under the Local Government and Housing Act 1989, section 18(1) the Secretary of State can make regulations to provide the payment of allowances for councillors.

- the Local Authorities (Members’ Allowances) (England) Regulations 2003 are made by the Secretary of state exercising these powers to allow a local authority to make and pay an allowance scheme to the directly elected mayor.
- a directly elected mayor is then eligible for the Scheme as they meet condition (a) of the definition of an ‘eligible councillor’.

This feels convoluted and we feel that many administering authorities will query the eligibility of these mayor as the legislation is currently drafted. We suggest adding to the definition of eligible mayor:

‘*A mayor of a local authority in England who is entitled to be a member of the Scheme under a scheme made in accordance with the Local Authorities (Members’ Allowances) (England) Regulations 2003’*

Common Council of the City of London

Although the consultation document mentions that councillors of the Common Council of the City of London will have access to the LGPS, we cannot see that this has been provided for in the draft legislation.

An ‘eligible councillor’ is defined as a member of local authority who is entitled to be a member of the Scheme under a scheme made in accordance with the Local Authorities (Member’s Allowances) (England) Regulations 2003. We cannot see that this legislation applies to the City of London.

Refund with concurrent service

The draft legislation omits regulation 19(1)(d) of the 2013 Regulations which states that a person is not entitled to a refund of contributions under regulation 18 if that person holds a concurrent employment to the one that has ceased. We are not clear on the policy intention behind the omission.

If an elected member holds more than one office, they will have a separate pension account for each office (assuming they elect to opt in on all). If they leave the scheme in respect of one office but continue in an other, a payment of a refund of contributions would not meet the definition of a ‘short service refund lump sum’ in the Finance Act 2004. This is because the refund would not extinguish all the member’s entitlement to benefits under the Scheme. The payment would, therefore, be classified as an unauthorised payment triggering tax penalties for both the scheme and the member.

Section 153(3) of the Finance Act 2004 stipulates that a Scheme’s regulations should not contain rules that provide for unauthorised payments. We recommend regulation 19(1)(d) is not omitted for elected members - the result of which would mean the deferred refund account would be automatically aggregated with the ongoing pension.

Ill health and the IRMP role

Under the draft legislation, regulation 39(9)(a) of 2013 Regulations has not been omitted, yet regulation 36(1)(c) has. We are therefore unsure of the policy intent in this area.

Regulation 39(9)(a) provides that a reduction in pensionable pay is to be ignored for the purpose of calculating an ill health enhancement where an IRMP certifies the member has reduced their hours because of the condition that caused or contributed to the ill health retirement.

Regulation 36(1)(c) sets out that the IRMP must include their opinion on the above when providing a certificate to the Scheme employer about the member's eligibility for ill health.

We question whether an elected member's duties could reduce because of ill health, which in turn could lead to a reduction in pensionable pay. Whilst this might not be applicable to many councillors, it could be relevant to mayors and deputy mayors of combined authorities, some of which are paid a salary.

We recommend the Government considers whether this protection is appropriate for elected members and amend the regulations accordingly.

Additionally, regulations 40(3), 41(4)(b), 42(4)(b), 42(5)(b), 42(9)(b) and 42(10)(b) have not been omitted. These provide the equivalent to regulation 36(1)(c) in relation to calculating death grants and survivor benefits following the death of an active member.

Ill health – drafting issues

The draft legislation does not amend all references to leaving/left employment to leaving/left office. We recommend all references are modified including regulations 35(6)(b) and 35(7).

- We suggest regulation 39(1)(a) be further amended to modify all references to termination by modifying:
  - 'day following termination' to 'day following leaving office'
  - 'of the termination of the member's employment' to 'the member ceased to hold office'.
- we suggest references to termination be modified to left office in regulations 39(1)(b), 39(2)(a) and (b) and 39(3).
- in the inserted Schedule 4, paragraph 1(b)(i), only the word "but" is included in the quotation marks. The quotation marks should extend to "but in any event".
- in the inserted Schedule 4, paragraph 10(a), the substituted paragraph repeats the phrase 'a retirement' twice.

Assumed pensionable pay

Regulation 21(2) of the 2013 Regulations needs to be modified for it to apply equally to elected members. This regulation specifies the circumstances for a member to be treated as receiving APP. Conditions (a) and (b) cannot apply to elected members as they do not receive contractual pay and are not eligible for child-related leave (as defined in the 2013 Regulations) as they are not employees.

Elected members are not entitled to the same rights around sick and parental leave as employees. It is up to each individual authority to decide whether to adopt informal policies granting such entitlement to councillors. These policies may be accompanied by an agreement to continue paying allowances during the leave period, but this is not always the case.

Employer's contribution on APP

Regulation 67(4)(b) states that an employer's contribution is based on the assumed pensionable pay in respect of members on leave due to sickness or injury on reduced contractual pay or no pay or on child-related leave.

As already mentioned, elected members do not receive contractual pay and are not entitled to child-related leave (as defined in the 2013 Regulations), so this regulation will need amending to ensure employers contributions are payable on APP for elected members.

References to employment

As already highlighted, the draft regulations do not amend all references to employment and termination in relation to ill health. However, the 2013 Regulations also refer to the terms work, employee and employment in many other places – these terms do not apply to elected members. We suggest these terms are modified in their application for elected members as appropriate.

Definition of pensionable pay

The current drafted definition of pensionable pay for councillors may not be wide enough to capture the expected allowances. It would currently only include basic and special responsibility allowance paid to the elected member in any applicable remuneration framework established under the four stated sources. The definition needs to be amended to include the payments set out below, if the intention is for them to be pensionable:

Pay under the Greater London Authority Act 1999

The Mayor of London and Deputy Mayors of London are paid a salary and not a basic or special responsibility allowance. This is provided for under section 24 of the Greater

London Authority Act 1999.

Pay under a combined authority or combined county authority establishment order

Having studied all the Combined Authority establishment orders and Combined County Authority establishment regulations, wherever an allowance is paid to members sitting on an overview and scrutiny committee or audit committee, it is referred to as ‘an allowance’.

None of these establishment orders or regulations refer to a basic allowance or special responsibility allowance being paid by the combined authority or combined county authority.

Allowances from other authorities

Councillors who serve on or chair bodies such as Fire and Rescue Authority, Police and Crime Panel or waste authority usually receive an allowance for these roles.

In some cases, such as Police and Crime Panels, the allowance is paid by the councillor’s own local authority as a special responsibility allowance. In other cases, such as Fire and Rescue Authorities, the allowance is paid directly by the authority itself.

It is currently unclear whether these allowances fall under the definition of pensionable pay as drafted, or whether they are intended to be included. We would welcome guidance on which types of allowances are intended to be pensionable.

Academies

We agree that the fragmentation of academies across multiple administering authorities creates significant administrative complexity and cost for Multi-Academy Trusts (MATs). They must navigate differing processes, supply data in various formats, manage varied contribution rates, and liaise with multiple authorities.

This is in part exacerbated by the lack of a standard data extract template for employers to send member data to administering authorities. Although previous efforts to establish such a template have been made, they have not succeeded. We recommend that MHCLG considers mandating a standard template. This would go some way to easing the administrative complexity for MATs and would also be welcomed by payroll software providers.

Whilst we understand why MATs want to consolidate, we have significant concerns about the cash flow impact if it becomes more commonplace. MATs tend to have a higher proportion of active members than other employers which means they contribute proportionately more cash in employee and employer contributions than other employers of a similar size. Administering authorities with a large number of academies may need to sell assets to replace this cash flow if their academies transfer to another administering authority.

Removing the requirement for SoS consent where criteria are met

Q8. Do you agree with the proposal to establish the criteria above in legislation?

Yes, we agree it would be helpful for all parties involved to have a set of clear criteria that can be used to assess whether consolidation would be appropriate. It should promote better informed and more transparent decision making. However, more detail should be provided on the criteria for the policy to be applied effectively and consistently.

Value for money assessment

The consultation states there must be a clear and evidenced value for money (VFM) assessment in favour of consolidation (such as to achieve administrative efficiencies that outweigh the cost of the transfer and actuarial fees). However, no further detail is provided. This could lead to varying interpretations and inconsistent application.

We recommend MHCLG provides further guidance on what should be included in the assessment. We strongly recommend that employer contribution rate should not be included as part of the VFM assessment. It should also provide an appropriate time frame over which the assessment should be measured.

The transfer process will impose costs on all the parties involved – these costs should be included in the assessment and guidance should set out which party is responsible for them. In our view, the MAT should be responsible for paying the full cost of the consolidation.

Pre-existing relationship

We strongly agree that there should be a pre-existing relationship with the administering authority that the MAT wishes to consolidate into as this will help to prevent contribution rate shopping.

The consultation confirms this means the MAT must already have schools in that administering authority; however, we question whether this needs to be more specific to avoid contribution rate shopping. For example, would it be appropriate for a MAT to apply to consolidate with an administering authority in which it only has one school (or their head office), if it has 20 schools with a different administering authority?

In addition, the LGPC noted that the Secretary of State has recently issued a direction allowing Oasis Community Learning Trust to consolidate its 56 academies into the LPFA - an administering authority with which it has no pre-existing relationship. The Committee expressed concern about the message this provides to the sector.

All administering authorities involved should agree to the change

We agree with this criterion. It is particularly important for the impact of cash flows to be considered.

The receiving authority must be able to administer the transfer effectively

We are not sure the MAT would be able to assess this effectively. Transferring to a different administering authority is extremely complex and there will be many areas that will need to be considered including:

- the receiving authority's ability to handle bulk transfers
- the ability to integrate new employers and payrolls onto systems without disruption
- how member communications will be dealt with
- SLAs and KPIs
- evidence of the authority's ability to work effectively with MATs and other employers
- processes for monitoring and managing risks during and after the transfer
- process for managing the transfer of transferee admission bodies connected to MATs – we assume that these bodies will also move to the new administering authority.

Again, we recommend that guidance is provided to assist MATs in assessing this criterion effectively.

Q9. Do you have any views on how contribution rate shopping can be discouraged?

As mentioned above, MHCLG should prescribe that the contribution rate should not be included in the VFM assessment. It should also consider providing guidance on what a pre-existing relationship means ie if there is a minimum requirement for the number of schools as a percentage of schools included in the MAT for this to apply.

Q10. Are there any other criteria that should be included?

We suggest the experience of scheme members also be included, either as a separate criteria, or in additional detail for the criteria about the receiving authority being able to manage the transfer effectively.

The proposed consolidation should be able to demonstrate that it will maintain or improve the experience of scheme members. This should include ensuring continuity of service standards, timely and accurate benefit administration, clear and accessible communication, and safeguarding members' ability to access information and support without disruption. Evidence should be provided that the receiving administering authority has the capacity and processes in place to deliver a high-quality member experience post-transfer.

We recommend that the receiving administering authority be required to provide evidence of a satisfactory independent governance review conducted within the past three years. We recommend the three year period, even though reviews will only be required to take place once per valuation period, rather than every three years.

Q11. **Do you have any other comments or considerations relating to establishing the criteria in legislation?**

Consideration should be given to:

- how admitted bodies connected to the transferring MAT are dealt with on transfer
- if the New Fair Deal proposals are taken forward, how relevant contractors will be impacted – again, we assume these would also transfer to the new administering authority
- if new academies joining the MAT will automatically be a part of the consolidated fund, or if a new application will need to be made.

Q12. **Do you agree with the removal of the requirement to seek Secretary of State consent for standard direction order applications?**

Yes, on the condition that more detail is provided on the criteria as well as guidance on how an assessment should be carried out. However, we are not clear if a direction will still be issued. The consultation mentions a direction being made under this new proposal, so we assume there will be some form of documentation to evidence that agreement has been reached by all parties, which we support.

Q13. **What would be the most helpful information to include in guidance?**

See answers to previous questions.

Q14. **Do you have any other comments on or consideration on the removal of the requirement to seek SoS consent for standard order applications?**

We would just like to reiterate our concerns about the cash flow impact if consolidation becomes more common place.

Process for applications where criteria are not met

Q15. **Do you agree that non-standard applications will continue to require Secretary of State approval?**

Yes. We agree that where the criteria are not met, approval should be required. The consultation document only comments on the criterion

about all administering authorities agreeing to the change. However, we assume the intention is for approval to be required where any of the other criteria are not met – which we support.

Q16. **What would be the most helpful information to include in the guidance in relation to nonstandard applications that will require Secretary of State approval?**

We think the guidance should include much of the same information as is included in guidance for standard applications (assuming guidance is issued); however, it will also need to set out the circumstances and thresholds that need to be met if not all the standard criteria are met. For example, if not all parties agree to the consolidation, what circumstances would need to be met for approval to be granted by the SoS? Will the assessment be based only on cost savings and what timeframe are cost savings to be measured against?

Q17. **Do you have any further comments regarding this proposal?**

We seek assurance that the SoS will adhere to the principle of ensuring the MAT has an existing relationship with the administering authority it wishes to join when considering non-standard applications.

New Fair Deal

Removal of broadly comparable schemes

Q18. **Do you agree that the option to offer broadly comparable schemes should be removed, except in exceptional circumstances, to align with the 2013 Fair Deal guidance?**

Yes, we agree with removing the option of offering a broadly comparable scheme. This would improve consistency of treatment within the LGPS, because the 2013 guidance already applies to academies. It would also align the treatment of outsourced local government workers with workers outsourced from central government.

A broadly comparable scheme is only broadly comparable with the LGPS at the time of the transfer. Later amendments to the LGPS regulations are not replicated in the broadly comparable scheme, leading to different outcomes for members compared with what they would have received if they had remained in the LGPS. For example, a scheme certified as broadly comparable before 2014 would remain a final salary scheme. Also, while it may be broadly comparable in respect of the scheme design and accrual rate, it may not offer the same benefits to members and their families that they would receive from the LGPS when a member dies in service or retires on the grounds of redundancy or ill health.

Only by allowing continued access to the LGPS would the pension rights of protected transferees genuinely be protected and aligned with employees who remain employed in local government.

It is our understanding that very few service providers have chosen to use a broadly comparable scheme in recent years. It is far more common that they choose the admitted body route, often with a pass-through arrangement. We therefore anticipate that this change will have a very limited impact when services are outsourced in the future.

Individuals who were outsourced in the past and are currently members of a broadly comparable scheme will be affected the next time the contract for the service is re-tendered. Moving back to the LGPS would mean that these members have the same pension protections as those who remain employed in local government.

Q19. **Are you aware of any other broadly comparable schemes that are currently in operation and have active members covered by the 2007 and/or 2012/2022 Directions? If so, please provide details of these.**

The Prudential Platinum Pension Plan was specifically designed to protect pension rights for workers compulsorily transferred from the public to the private sector. We have no information about the number of individuals who remain contributing to this scheme.

Removal of admission body option for future local government outsourcings

Q20. **Do you agree with the proposals on deemed employer status and the removal of admission body option for service providers who deliver local government contracts?**

Yes, we broadly agree with this proposal.

We believe that these changes would have been welcomed by the sector had they been introduced shortly after the 2013 guidance was introduced, or shortly after the 2016 consultation on amendments to the LGPS regulations to implement them. However, the protracted length of time that has passed means that administering authorities' practices have evolved to solve some of the problems that these amendments would otherwise have addressed. For example, the widespread use of pass-through arrangements has removed the need for an exit payment or exit credit to be paid when an admitted body becomes an exiting employer. There have been suggestions from stakeholders that the proposed regulations are disproportionate to the current problems caused by outsourcing.

In our view, there are still benefits associated with introducing these changes now:

- although some administering authorities require a pass-through arrangement when LGPS members are compulsorily transferred to an admitted body, this is not the case across the board. The proposed changes would ensure consistency across the sector irrespective of which body is outsourcing a service, and which is the appropriate administering authority.

- that consistency should also result in savings for local government employers. Removing pension risk from outsourced contracts should increase competition and reduce prices as the changes encourage more service providers, particularly smaller providers, to bid for local government contracts.
- there are legal and actuarial costs associated with creating an admission agreement and setting an employer contribution rate for the new Scheme employer that would no longer apply under the deemed employer route.
- even where a pass-through arrangement is in place, regulation 64(2) of the LGPS Regulations 2013 requires the administering authority to obtain an actuarial valuation and revised rates and adjustments certificate when an employer exits the Scheme. This requirement would not apply where the Scheme employer does not change when a service is outsourced. In the longer term, fewer actuarial valuations will be required. We recognise that the number of exiting employers in the short term may increase because, under the proposals, an admitted body will become an exiting employer when a contract is re-tendered, even if the contract is awarded to the current provider.
- we believe the proposed changes will have a positive effect on member experience of outsourcing. They will prevent the possibility of pension ‘limbo’ when there are delays in signing an admission agreement. We are aware of cases where members have not received the correct level of pension because admission agreements are not in place. It can take sometimes take years for admission agreements to be put in place and this has a significant, real-life impact on affected members.
- the success of the proposals does depend on employer engagement with pensions at the early stages of an outsourcing exercise, as is it does with the current arrangements. However, the existence of defaults in the amended regulations should mean that the position for members can be resolved more quickly where pension issues are not addressed at the appropriate time.

There have been calls for admission agreements to be allowed to operate in certain circumstances, for example, where a very large contract is outsourced, and pension risk represents a small proportion of the total cost of the contract. The lengths of such contracts could be up to 20 years. The Government may wish to consider an ‘exceptional circumstances’ clause that would allow admitted body status to continue where there is a large number of protected transferees and the provider is awarded a lengthy contract.

Representatives of administering authorities have raised some concerns about the removal of admission agreements. Many are concerned that they will not be told relevant information about a service being outsourced. Under current rules, much of that information is contained in an admission agreement. We support this view and recommend the Government consider introducing a requirement to inform the appropriate administering authority when a deemed employer arrangement is in place. Guidance could be used to set out what information from a service agreement must be shared, but we believe the requirement to inform the administering authority should be in the regulations.

Fair Deal employers

Q21. **Do you agree with the proposed definition of a Fair Deal employer?**

Yes. Further education establishments and sixth form colleges were excluded from the changes consulted on in 2016 and 2019. It is appropriate to include them now following their re-classification as central government bodies in 2022, after the earlier consultations closed.

Protected transferees

Q22. **Do you agree with the proposed definition of a protected transferee?**

In broad terms we agree with the definition, but we think that further information is needed. We welcome the guidance to be issued by the Secretary of State mentioned in 1(4) of the draft Schedule 2A to the 2013 Regulations. It is important that the position for individuals who stop working 'wholly or mainly' on the transferred service is clear. It is not clear from the draft regulations whether the rights of this group will match the provisions in the 2013 Guidance:

"Where a person moves from full-time to part-time employment, or otherwise reduces the proportion of their time employed on the transferred service or function so that they are no longer wholly or mainly employed on that service or function, they will continue to be eligible to be a member of the pension scheme to the extent that the transferred employment continues."

The consultation document suggests that protected transferee status would be lost when an individual stops working wholly or mainly on the outsourced activities. This could mean that outsourced local government workers have less pension protection than is offered to those outsourced from central government.

We support the Government's ambition to protect pension rights for this group. In particular, we are keen for protected transferees not to lose that protection because of a change in their responsibilities, particularly a temporary change. We recommend that the Government includes the following in guidance:

- a definition of 'wholly or mainly' in this context
- best practice to ensure workers do not lose protected transferee status as a result

of short term changes in their role.

We have been involved in discussions with interested groups concerning these proposals. We have learned that it is common practice for some service providers to ask outsourced workers to agree to waive their pension rights. In our view, this worrying trend contravenes Section 91 of the Pensions Act 1995. The guidance could be used to inform service providers that any such agreement is unenforceable. Members who have signed such agreements in the past could launch successful legal challenges to reinstate their pension rights.

Q23. **Do you agree with the proposal to allow the Fair Deal employer to provide protected transferee status for all staff working on a contract outsourced by a Fair Deal employer, which would enable Fair Deal employers and relevant contractors to avoid creating a two-tier workforce on outsourced contracts?**

We support the proposal to allow the Fair Deal employer to extend protected transferee status to employees hired after the contract is outsourced. This goes beyond the provisions in the 2013 guidance:

"The Fair Deal policy does not apply to other staff of the independent contractor, including any staff employed to deliver the outsourced service or function who were not compulsorily transferred from the public sector."

However, allowing individuals in this group access to the LGPS under the current rules can be achieved by having an open admission agreement. If that option is removed, it is sensible to introduce an alternative method to enable new employees working on the outsourced contract to join the LGPS.

Allowing new employees to join the LGPS would make it more difficult to track protected transferees in respect of an outsourced service. If an obligation to inform the administering authority about outsourcings, contract renewals and re-lets is introduced, that obligation should extend to informing the fund about all individuals with protected transferee status, including staff hired after the contract is let.

We welcome the fact that there is a default position written into the draft regulations. New employees working on the outsourced service would only have access to the LGPS if the Fair Deal employer and the relevant contractor agree to it. In the absence of such an agreement, the default position is that the new employees do not have access to the LGPS. Introducing a default position will mean certainty for workers in cases where this issue is not addressed before the contract is awarded.

Service providers are likely to have staff working on other, non-local government contracts. Whether or not new staff working on the outsourced local government contract are allowed to join the LGPS the service provider will have to operate at least two pension schemes. No efficiency savings would be achieved for the contractor by allowing new staff into the LGPS.

We do not expect that many Fair Deal employers will provide protected transferee status to all individuals working on an outsourced contract, but we support this option being available.

Responsibilities for relevant contractors

Q24. **Do you agree with the overall approach on responsibilities for relevant contractors and Fair Deal employers? If you do not, with which proposals do you disagree?**

We agree with the need to move some Scheme employer responsibilities to the relevant contractor. It would not be practical, for example, for members to submit opt in or out requests to the Fair Deal employer which would then need to be forwarded to the relevant contractor to action. However, there are some areas where we do not agree with the proposed approach or where we recommend further amendments or modifications to the regulations to achieve the split of responsibilities set out in the consultation document.

Time limits for transfers and aggregation

The draft regulations modify regulation 22 of the 2013 Regulations, meaning that the relevant contractor would be responsible for extending the time limit for a member's decision on aggregating previous LGPS membership. However, the equivalent amendments have not been made to:

- regulation 100(6) of the 2013 Regulations – to allow the relevant contractor to extend the 12 month time limit that applies for transfers in from other schemes and to require that any applications for a transfer are sent to the relevant contractor instead of the Scheme employer.
- regulation 10(6)(b) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 – to allow the relevant contractor to extend the decision period for aggregating LGPS benefits built up before 1 April 2014.

In our view this discretion would be better exercised by the Fair Deal employer as they will ultimately bear the cost of the liability.

Decisions on member contribution rates

We have concerns about the practicality of the Fair Deal employer making a decision on what member contribution rate should apply, particularly in relation to midyear pay changes. We appreciate that the modified regulations allow this decision to be exercised by the relevant contractor if both parties agree. But we struggle to see how the process would work when no such agreement had been reached.

We believe that the relevant contractor should be responsible for determining a member's contribution rate. The Fair Deal employer should have a policy in place that sets out how it determines member contribution rates. We recommend that relevant contractors are encouraged to adopt the Fair Deal employer's policy, but that responsibility for determining employee contribution rates lies with the relevant contractor. Larger contractors may employ protected transferees from multiple outsourced contracts. This approach would allow them to operate their own policy for determining employee contribution rates. It would not be practical for them to operate multiple policies that mirror those of multiple Fair Deal employers.

Waiving actuarial reductions

Draft paragraph 23(b) of Schedule 2A modifies regulation 30(8) of the 2013 Regulations, giving a relevant contractor the power to waive the early payment reduction that would otherwise apply when a protected transferee retires early.

For consistency, we recommend similar modifications to paragraphs 1(1)(aa) and (c), 1(2), 1(5), 2(1), 2(1A) and 2(3) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014. These provisions allow the employer to 'switch on' the 85-year rule or waive actuarial reductions for members in certain circumstances. We believe that relevant contractors should have that power in respect of protected transferees (and they should meet any strain costs that result from their decisions). If the relevant contractor is no longer a relevant contractor when the decision is required, it should be the responsibility of the Scheme employer, and ultimately the administering authority if that employer has exited the Scheme.

Ill health retirement costs

Regulation 68(1) of the 2013 Regulations requires LGPS employers to meet the cost of ill health retirements and the draft regulations would pass this responsibility on to the relevant contractor. We have concerns about this provision:

- the strain cost associated with ill health retirement of a young LGPS member could run to several hundred thousand pounds. This risk is likely to prevent smaller firms from bidding for contracts.
- larger firms willing to accept the risk will increase the contract price to cover the anticipated costs of future ill health retirements.
- administering authorities take different approaches to the cost of ill health retirements:
    - charging the employer directly for the strain cost
    - the cost of ill health retirements is accounted for as part of the valuation

    process
    - mandatory or optional insurance against the cost of ill health retirement.
- these different approaches could lead to very different results for relevant contractors. This could cause confusion, particularly where a relevant contractor holds multiple contracts across the country with different administering authorities.

If the contract had not been outsourced, the Fair Deal employer would have met the cost of the ill health retirement. In our view, the Fair Deal employer should remain responsible for these costs. This would prevent the need for relevant contractors to build a risk premium into the contract price and mean that all relevant contractors are treated the same, irrespective of a particular administering authority's approach to ill health strain costs.

Complexity of administration

We have serious concerns about the proposals concerning the payment of employer contributions set out in paragraphs 93 and 94 of the consultation document. Under the current proposals, in most cases the Fair Deal employer would need to make a balancing payment to the administering authority that represents:

- the secondary contribution rate
- if the relevant contractor's contribution rate is fixed for the duration of the contract, the difference between the fixed rate and the new rate payable from 1 April in the year following a triennial valuation.

After a valuation, the relevant contractor could be paying a higher contribution rate than the rate set out in the Fair Deal employer's rates and adjustment certificate. This may necessitate the administering authority refunding the overpaid employer contributions to the Fair Deal employer. The same could apply if the secondary rate was negative.

We are concerned about the administrative burden that this approach would place on the Fair Deal employer, the relevant contractor and the administering authority.

Many administering authorities have adopted pass-through arrangements, which mean that the admitted body pays a fixed contribution rate throughout the term of the contract. No exit credit or exit payment becomes due when the admitted body becomes an exiting employer. The body that outsourced the service retains the pension risk. We understand that any shortfall due to underpayment of contributions is reflected in the next valuation and could lead to an increase in the outsourcing body's employer contribution rate. Under these arrangements, there is no requirement for the outsourcing body and admitted body to share information about the contributions paid monthly, nor for any regular balancing payment to be made to or from the administering authority representing under- or overpaid employer contributions by the admitted body.

We are concerned about the administrative burden that introducing balancing payments and the associated paperwork would place on the Fair Deal employer, the relevant contractor and the administering authority. The consultation document makes it clear that the proposals are intended to mirror existing pass-through arrangements, but this administrative complexity would be a new burden on all parties.

We acknowledge that it would not be appropriate for secondary contributions **not** to be paid in respect of the protected transferees. If secondary contributions were not paid, this would have a relatively minor impact where a small number of employees are outsourced from a large employer. In this situation, any over- or underpayment of employer contributions could be reflected in a change to the Fair Deal employer's contribution rate following the next valuation. The funding impact would be much more significant when a large number of workers are outsourced.

We think the proposed solution is disproportionate to the problem. We think a level of flexibility should be provided to allow the Fair Deal employer and administering authority to come to their own arrangements about how these balancing payments are accounted for. These could include:

- requiring that no balancing payments are made and any over or under payment is reflected in the Fair Deal employer's contribution rate at the next valuation.
- where a balancing payment is due to the administering authority - allowing an estimated balancing payment to be paid by lump sum annually, and any over or under payment reflected in the Fair Deal employer's contribution rate at the next valuation
- where a balancing payment is due to the Fair Deal employer, allowing the contributions to be paid by lump annually or to remain in the pension fund and reflected in the Fair Deal employer's contribution rate at the next valuation.

An alternative approach would be for the relevant contractor to pay the primary and secondary contribution rates. Assuming the secondary contribution rate is positive, this would mean higher employer contributions, but that higher rate would be built into the contract price. The administrative complexity of the Fair Deal employer paying or being refunded employer contributions would only be required if the contribution rate paid by the relevant contractor was fixed and the Fair Deal employer's contribution rate changed during the contract.

If the Government does decide to split the responsibility for paying employer contributions in this way, there are some other areas of the regulations that need to be modified to ensure the correct contributions are paid by the right body:

- modified regulation 15(3) of the 2013 Regulations will cover reserve forces leave for protected transferees. The relevant contractor must supply the employer contribution rate to the Ministry of Defence. They may need input from the Fair Deal employer to do so – the relevant contractor may not know the secondary rate, or may not know the current primary rate if the contribution rate they pay is fixed. But we expect this to happen rarely enough that it can be achieved without the need for further modifications to the regulations

- modified regulations 15(3)(b) and (c) require the Relevant Contractor and Scheme employer to pay their share of the employer contributions when a protected transferee is on reserve forces leave. The unmodified regulations do not require the Scheme employer to pay employer contributions - it is our understanding that the Ministry of Defence pays these contributions. This modification would either add a layer of complexity by requiring four parties to be involved in paying the employer contributions, or remove the requirement for the Ministry of Defence to pay employer contributions in this situation. In our view, if these changes were not made, the Ministry of Defence would continue to pay contributions directly to the administering authority as they do now.
- Modified regulation 16(8A) requires the relevant contractor to pay 'the amount of contributions that the Relevant Contractor would have paid under regulation 67 (employer's contributions) in respect of the member for that period if they had not been absent from work with permission with no pensionable pay." However, there is no corresponding regulation that requires the Scheme employer to pay the contributions they would have paid under regulation 67.

Final pay calculations

We believe that relevant contractors should be responsible for calculating final pay when a protected transferee with final salary membership or McCloud protection leaves, dies or takes flexible retirement. We recommend a modification of regulation 22 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 so that relevant contractors are also required to provide administering authorities with the information they need in relation to benefits built up before 1 April 2014.

Retention of data

Paragraph 2(2)(c) of Schedule 2A requires that the relevant contractor provides information requested by the Fair Deal employer that it needs to fulfil its obligations as a Scheme employer. Paragraph 7(2)(c) extends obligation for a year after the relevant contractor stops being a relevant contractor.

We have concerns that a year may not be long enough. Member queries about pay or service breaks may arise some years after the event. Where there is a small number of protected transferees, it may be possible for the Scheme employer to request a full history of pay information, but this would not be practical for outsourcings that involve large numbers of protected transferees. Employers are generally required to keep salary records for a period of six years, so we suggest a longer timer period is provided for.

Continuity of responsibilities across contractors

Q25. **Do you agree that Option 1 should be applied to how agreements between protected transferees and relevant contractors should be treated in the case of subsequent outsourcings? Please give the reasons for your answer.**

We do not agree that Option 1 should apply to additional pension contracts when a member moves to a new employer.

Salary sacrifice arrangements

Shared cost AVCs are often used where a salary sacrifice arrangement is in place. Not all employers offer a salary sacrifice arrangement, and they are not required to do so. Although a salary sacrifice arrangement can yield savings for the employer through reduced national insurance costs, there are costs associated with setting up the scheme. We do not believe that a 'subsequent' relevant contractor should be forced to set up a salary sacrifice arrangement in order to continue an arrangement agreed by the previous service provider.

Shared cost AVCs

Employers may contribute to a shared cost AVC that is not a salary sacrifice arrangement. If they do so, they are able to change the amount that they pay or stop contributing to it altogether. If a subsequent relevant contractor must honour the arrangement agreed to by the earlier employer, we foresee problems. Either:

- the subsequent relevant contractor will have the same power to terminate or alter the arrangement, in which case we anticipate that many would choose to terminate the arrangement, or
- the subsequent relevant contractor would not have the power to alter or terminate the arrangement. It does not seem equitable that the subsequent provider does not have the same options that are open to the original employer that agreed to the arrangement.

Shared cost Additional Pension Contributions (APCs)

When a member is made redundant, they are not given the opportunity to complete an added pension contract, whether that contract is to boost their pension or to buy back pension lost during an authorised unpaid absence. We believe this is comparable to the position for a member whose employment is compulsorily transferred. We are not convinced that it would be fair to introduce protections for one group when their employment ends and it is outside of their control, but not for the other group.

An employer may voluntarily contribute to the cost of purchasing additional pension to boost a member's retirement income. Anecdotal evidence suggests that employers very rarely do so. We think it would be very unlikely that a relevant contractor would agree to make such contributions. Modified regulation 60 allows a relevant contractor to prepare its own policy statement, including its policy on funding additional pension contributions, if the Fair Deal employer agrees. This does not seem consistent with the contractor having to fund additional pension if the previous contractor agreed to do so, irrespective of whether this is in line with the written policy or not. We do not support the proposal described in Option 1 in respect of additional pension contracts to boost a member's pension.

There is a stronger argument for continuity of contracts where the member is paying extra to buy back pension 'lost' in a period of authorised unpaid absence. We expect changes to the regulations covering unpaid absences following the Access and Fairness consultation earlier in the year. One change is that the cost to buy back the 'lost' pension will be based on the contributions the member would have paid if they had not been absent, instead of age-related factors. Rather than requiring the subsequent contractor to honour an existing agreement to buy lost pension, the member could be given the opportunity to complete the contract before their employment transfers by paying the remaining contributions by lump sum. If the member chose to do so, the employer would also have to pay their share of the cost. If this process was adopted, the employer at the time of the unpaid break would meet the cost of purchasing the lost pension, which is the same as the cost they would have paid had they not approved unpaid leave, rather than this cost passing on to the subsequent contractor.

If the Government does decide to proceed with Option 1, a further modification will be needed to regulation 16 of the 2013 Regulations. Regulation 16(11)(f) currently provides that any additional pension contract ends when 'the member leaves the employment'. The reference is to employment, not to the Scheme employer and therefore, without modification, the contract would end when the member's employment is compulsorily transferred.

We expect changes to regulation 16 of the 2013 Regulations to implement proposals from the Access and Fairness consultation. One recommended change was to allow a member to elect to buy back pension only while they remain in the employment they were in at the time they took authorised unpaid leave. If the Government makes changes in this area, they will need to make sure that the regulations deliver the intended policy for protected transferees.

Exceptional arrangements – continuation of broadly comparable schemes

Q26. **Do you agree with the approach to allow broadly comparable schemes to continue only in exceptional circumstances?**

Yes, we agree with introducing a provision that allows the continuation of a broadly comparable scheme in exceptional circumstances.

Q27. **Do you have any views on what the exceptional circumstances, where broadly comparable schemes may need to continue, could be?**

We understand that there may be a contractual requirement for a service provider to offer a broadly comparable scheme to certain members whose employment was outsourced in the past. Allowing these schemes to continue in exceptional circumstances will help to avoid legal conflicts.

Some individuals are currently paying into final salary schemes that were 'broadly comparable' to the LGPS when they were outsourced before 1 April 2014.

For many local government workers, the pension they receive under the LGPS CARE scheme is higher than they would have received in the final salary scheme. This is because the higher accrual rate more than compensates for the lower normal pension age that applied to final salary benefits. Lower paid members in particular are more likely to be better off in the CARE scheme.

Broadly comparable schemes should have accrual rates that are the same as or similar to those in the LGPS at the time of the original outsourcing. They may not offer the same protections that LGPS members and their dependents benefit from when they retire on redundancy or ill health grounds or die in service.

It is important that broadly comparable schemes are only allowed to continue in circumstances that are truly exceptional. Retirement outcomes for many members, particularly the lower paid, would be improved by rejoining the LGPS.

Transitional arrangements – inward transfers from broadly comparable schemes

Q28. **Do you agree with the proposed approach to inward transfers from broadly comparable schemes?**

Actuarial guidance will set out more detail on how transfers credits from broadly comparable schemes will be worked out and we look forward to seeing that further detail. In advance of that detail being available, we do have some comments on the general approach that should be taken to minimise the impact on administrators without negatively affecting the value of members' pension rights.

It is important that any rights transferred to the LGPS adopt the characteristics of benefits built up in the LGPS:

- any pension credited in the CARE scheme has a Normal Pension Age equal to the member's State Pension Age
- the survivor pension that would result from the CARE credit is based on 49/160ths of the member's annual pension, with other survivor benefits matching those fractions set out in regulations 40 to 48 of the 2013 Regulations
- any benefits related to membership credited in the final salary scheme have the same characteristics as benefits built up in the 2008 scheme – 60ths accrual rate, normal pension age of 65 and survivor benefits as set out in regulations 24, 28, 33, 34, 36 and 37 of the LGPS (Benefits, Membership and Contributions) Regulations 2007.

Where the member has built up benefits in a different form, the services of an actuary may be required to convert those benefits to LGPS benefits of an equivalent value. A one-off adjustment of this type is essential to avoid adding unnecessary complexity to the LGPS.

We understand that MHCLG intends to allow certain members with final salary benefits built up in a broadly comparable scheme to retain that final salary link if the benefits are transferred to the LGPS. These provisions are set out in the proposed amendments to regulation 9 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014. We recommend checking with legal experts that this is compatible with the Public Service Pensions Act 2013.

This provision would cover individuals who:

- were members of the LGPS before 1 April 2014
- joined a broadly comparable scheme after their job was compulsorily transferred to a service provider
- rejoin the LGPS after these regulation amendments come into force and the contract they are working on is renewed or awarded to a new provider.

The only individuals in this group who would not be covered are those who opted out of the broadly comparable scheme more than five years before they become eligible for LGPS membership again.

The provisions would also cover an individual who:

- was a member of the LGPS before 1 April 2014
- joined a broadly comparable scheme after their job was compulsorily transferred to a service provider

- left that job
- rejoined the LGPS after these regulation amendments come into force in any role in which they are eligible for LGPS membership.

Including these members raises some issues:

- how will the administering authority know that the transfer is from a broadly comparable scheme if the member did not rejoin the LGPS because of a service provider change or the renewal of a contract?
- timing – this would be an attractive option for members in this group who are earning more now than they did when they were a member of the broadly comparable scheme. It would be beneficial to delay completing a transfer of this type under the current rules and wait until the final salary link could be retained
- complaints are possible from members who have recently completed a transfer of this type and did not benefit from the final salary link, or those who decided against a transfer because the final salary link would not be retained.

We expect the number of members affected to be small. However, our preferred option would be that the amendments to regulation 9 only apply to members who rejoin the LGPS because of the new Fair Deal regulations, not to those who left an employment in which they paid into a broadly comparable scheme and rejoin the LGPS in new job that is not connected with that previous employment.

Early re-negotiation of contracts

Q29. **Do you agree with the approach of including a mechanism in the draft regulations that allows for staff to become protected transferees where there is an early re-negotiation of a service contract using the new Fair Deal regulations?**

We agree that there should be an option for contracts to be re-negotiated early to allow parties to move from the current position to a deemed employer arrangement after the Fair Deal regulations are introduced. However, this should not be an automatic right. Although this would generally be a business decision between the Fair Deal employer and the service provider, there could be implications for the pension fund, and we recommend that the administering authority is involved in discussions before a final decision is made.

Under the new rules, if the contractor currently participates in the LGPS as an admitted body, the contractor will become an exiting Scheme employer when the contract is re-negotiated. If no pass-through arrangement is in place, an exit credit or payment may become due. It could be possible for a contractor to ‘engineer’ an exit date that maximises an exit credit due to them (or minimises an exit payment). This could have a detrimental effect on the liabilities of the Fair Deal employer.

Optional expansion of New Fair Deal beyond originally outsourced workers

Q30. **Do you agree with the proposal that all staff (including those joining a contract after first outsourcing) would be eligible for protected transferee status, providing all relevant parties agree?**

We agree with this proposal. When a contract is re-tendered under the current rules, staff who were employed since the contract was originally outsourced could still have access to the LGPS through an open admission agreement. It seems sensible to offer a route to achieving this same result under the new rules.

Implementation of New Fair Deal proposals

Q31. **Do you agree with the proposal for the draft regulations to come into force on the date the relevant SI is laid, with a 6-month transitional period during which there is the possibility to decide to not apply the new provisions?**

Yes, we think this is a useful provision that will allow parties to continue with an arrangement to set up a broadly comparable scheme or finalise an admission agreement where significant time and effort has already been expended to deliver that result.

Paragraph 118 of the consultation document says:

"In cases involving a tender process, the Fair Deal employer would need to decide before the service contract is put out to tender if the specific contract will make use of the transitional period."

This will not be possible in all cases. Without a specific date on which the amendments will take effect, it will not be possible for the body outsourcing the service to know whether the new rules will be in force on the contract start date. We do not think that any change to the draft regulations is required. The draft regulations do not require a decision to be made before the contract is put out to tender.

We support the introduction of a transitional period. We hope that service providers and Scheme employers will give their views on whether the proposal for the length of the transitional period is appropriate.

Q32. **If you are an individual who is currently outsourced from a local authority and part of a final salary scheme, do you agree with the proposed updating of the 2007 and 2022 Directions to deem the LGPS as broadly comparable to or better than final salary schemes? Please give the reasons for your answer.**

N/A

Q33. **Do you agree with the proposal to develop and publish statutory guidance and Scheme Advisory Board guidance to support with the implementation of the updated Fair Deal proposals?**

Yes, we believe that guidance will help administering authorities, Scheme employers and relevant contractors understand and operate the new rules correctly.

Q34. **Are there any additional topics that you would like to be covered?**

There are number of topics that need further explanation. It may be appropriate to cover these in guidance, but some may require further amendments or modifications of the regulations.

Definition of a protected transferee

We recommend that this includes a definition of ‘wholly or mainly’ and covers what happens when the pattern of work of a protected transferee changes, particularly on a temporary basis.

Protected transferees employed by Scheme employers

The guidance should make the position clear for protected transferees who are employed by a Scheme employer other than the Fair Deal employer when a contract is let. We are aware of confusion in the past in cases where:

- a school becomes an academy
- the local authority continues to provide services such as catering and cleaning to the academy
- the academy later awards the cleaning or catering service to a service provider.

The confusion arises because the catering and cleaning staff were never directly employed by the academy. It would be helpful if the guidance could make it clear that these individuals are protected transferees and the Fair Deal employer would become the deemed employer under the LGPS regulations when their jobs are compulsorily transferred to a relevant contractor.

Machinery of Government changes

Guidance is needed in cases where machinery of Government changes affect the operation of the proposals. We are aware of this affecting existing LGPS members:

- who were employed by an employer listed in Part 1 of Schedule 2 to the 2013 Regulations
- that service was outsourced to a service provider
- the service provider is an LGPS admitted body
- machinery of Government changes mean that responsibility for providing the

outsourced service has moved to a central government body from the LGPS scheme employer.

Clarity is needed on what happens when the contract is re-let after these regulations come into force.

Information sharing

As mentioned in our responses to questions 20 and 23, we strongly believe that there should be a responsibility to inform the administering authority when a service is outsourced, renewed or re-tendered. In our view, that obligation should be in the LGPS regulations, but it may be more appropriate to set out detail about what information must be shared in guidance. The requirement to share information should be an ongoing obligation, not limited to a single notification when a contract starts. Information that must be shared might include:

- the name of the Scheme employer and relevant contractor and contact information
- start date or renewal date of the contract
- the names of protected transferees (and, if new employees are allowed to join, their names)
- details of protected transferees who had previously been members of a broadly comparable scheme in respect of whom a bulk transfer may be payable
- confirmation that the Scheme employer's policy on funding additional pension, flexible retirement and awarding additional pension will also apply to the relevant contractor, or a copy of the relevant contractor's written policy, if applicable
- whether the employer contribution rate paid by the relevant contractor is fixed or floating
- depending on what final policy is adopted in relation to the secondary contribution rate and the difference between the fixed primary rate and the actual primary rate, the administering authority may need additional information about how any balancing payments are to be made
- whether new staff employed wholly or mainly on the outsourced service will be treated as protected transferees.

Q35. What impact do you think these proposals would have on members?

We see these changes as positive for members. They will remove inconsistent treatment in terms of pension protection when a worker's job is moved from the public to the private sector. Ensuring continued access to the LGPS for more members will help to boost pension adequacy.

Members whose jobs are outsourced after the amended and modified regulations are in force will benefit from continuous membership of the LGPS. The changes remove the possibility of a period of pension 'limbo' while an admission agreement remains unsigned and their pension rights are uncertain. These changes align the treatment of workers outsourced from local government with those outsourced from central government who have had this certainty since the 2013 guidance was introduced.

Protected transferees could be confused about who to contact about a pensions issue, particularly after they have left their employment. These problems exist under the current rules if the member's former employer is no longer an admitted body. We do not think these changes make the position worse.

The success of this policy depends on Fair Deal employers considering pensions at an early stage when a contract is outsourced or renewed, as is the case with the current arrangements. We hope that comprehensive guidance and communications will make it more likely that this will happen. We are aware of past examples where pensions are forgotten until after a contract has been outsourced.

The inclusion of default positions in the draft regulations will make it quicker to resolve the position for members if pensions are not addressed at an early stage when contracts are awarded in the future. This is a positive change for members.

Q36. Do you support the proposal to bring all eligible individuals back into the LGPS, including those in broadly comparable final salary schemes? Please explain your reasons.

Yes, we support bringing protected transferees back into the LGPS.

We know that the option to offer a broadly comparable scheme has been taken up very rarely in recent years when a contract was outsourced. We believe the number of active members in a broadly comparable scheme to be very low. Current members of broadly comparable schemes will be building up valuable, guaranteed benefits. But they may not be protected in the same way that LGPS members and their families are if they are made redundant, retire on health grounds or die in service. Moving them back to the LGPS will ensure they regain this protection. Lower earners who move to the LGPS CARE scheme from a final salary scheme are likely to benefit financially from the move.

Q37. On balance, do you agree with the proposals in this chapter?

Yes, on balance we agree with the proposals. It is widely accepted that there are issues with getting admission agreements signed, and this impacts negatively on scheme members. Protecting Scheme members' rights is at the forefront of this policy, which we fully support.

We do have concerns about the level of complexity being introduced in some areas, which we have highlighted in answers to previous questions.

For the proposals to work, there will need to be comprehensive guidance, and consideration should be given to providing template documents. These changes will bring about a fresh opportunity to engage with all employers, and DfE in respect of academies, to improve the way outsourcings are undertaken in future.

Technical comments on New Fair Deal proposals

Minor changes

There is a missing word 'the' in modified regulation 18(2) of the 2013 Regulations: Where a person is entitled to repayment under paragraph (1)(c), the realisable value of any SCAVC contributions paid by the Relevant Contractor are repayable to the Relevant Contractor (other than…

Paragraph 23(c) of Schedule 2A modifies regulation 30(9), however, the modified regulation is the same as the current wording. We believe the reference to paragraph (8) should be changed to (8A).

Paragraphs 30, 31 and 33 of Scheduled 2A modify regulations 57, 59 and 61 of the 2013 Regulations. In our view, these regulations could be amended, not modified.

Only 59(2)(a) is modified. We recommend adding 'relevant contractor' to 59(2)(b), (c), (d), (e), (f)(i), (g), 59(4), 59(6) and 59(7). These regulations all contain references to Scheme employers. We believe it would be useful to specify that these provisions also apply to Relevant Contractors.

Paragraph 32 of Schedule 2A modifies regulation 60 of the 2013 Regulations. There is an extra character in regulation 60(6)(c): (c) 30(8) (waiving of actuarial reduction)l;and

Paragraph 32 of Schedule 2A adds further provisions at the end of regulation 60 of the 2013 Regulations. Numbering of these additional provisions starts at (6). However, regulation 60(6) already exists. We believe that these additional provisions should begin with (7).

We expect changes to regulation 67 of the 2013 Regulations to implement changes proposed in the Access and Fairness consultation. Depending on how these changes are delivered, further amendments or modifications may be required to regulation 67 to ensure that employer contributions are correctly split between the Relevant Contractor and Fair Deal employer when pay is lost during a 'short' authorised absence (ie an absence covered by regulation 11(5)).

Paragraph 35 of Schedule 2A modifies regulation 68 of the 2013 Regulations. We believe that the first part of the modified 68(3) can be removed as a revised actuarial valuation and certificate cannot be obtained in respect of a Relevant Contractor. If an RC awards additional pension, they should meet the cost in all cases without condition. The wording up to the comma could be removed from the modified regulation:

~~Other than where regulation 64(6) (special circumstances where revised actuarial valuations and certificates must be obtained) applies,~~ a Relevant Contractor making an award under…

Paragraph 48 modifies regulation 93 of the 2013 Regulations. The word 'contractor' in 93(6)(b) should be capitalised to be consistent with the rest of the modified regulations.

Regulation 6(d) introduces a definition of protected transferee to Schedule 1 to the 2013 Regulations. Part (b) of that definition includes a reference to paragraph 6(3)(a) of Schedule 2A. There is no paragraph 6(3)(a) in Schedule 2A and so this reference needs to be corrected.

In paragraph 7(1)(c) of Schedule 2A to the 2013 Regulations, 'our' should read 'out': as a result of that service provision change a contractor or subsequent contractor (C) ceases to carry ~~our~~ out activities on behalf of the Fair Deal employer.

Public Sector Equality Duty

Q38. **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.**

To be added

Q39. **Do you agree to being contacted regarding your response if further engagement is needed?**

Yes.