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Consultation: Draft Local Government Pension Scheme (Scotland) (Amendment) Regulations 2026

Thank you for seeking views on the consultation on the draft Local Government Pension Scheme (Scotland) (Amendment) Regulations 2026.

I respond on behalf of the Local Government Association (LGA) and the Local Government Pension Committee (LGPC) in respect of 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 councils in England including district, county, metropolitan, unitary, London boroughs and the City of London are members of the LGA. There are 22 Welsh unitary authorities in membership via the Welsh Local Government Association (WLGA). The LGPC is a committee of councillors constituted by the LGA. It considers policy and technical matters affecting the Local Government Pension Scheme (LGPS).

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

Yours faithfully

Lorraine Bennett

Lorraine Bennett
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Section 1: Death grants

Removal of age 75 limit

Question 1. Do you have any comments on Scottish Ministers' proposals to remove the upper age limit of 75 for death grants from the LGPS Regulations, backdated to 6 April 2011?

We support the proposal to remove the age 75 cap on death grants from the LGPS Regulations. We believe that maintaining an age-based restriction is likely to constitute unlawful age discrimination and could be subject to successful legal challenge if not addressed. We also agree with the proposal to backdate the change to cover all deaths occurring after 5 April 2011.

Other comments

Administrative impact

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

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

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

We strongly recommend that SPPA issue clear guidance on the steps administering authorities should take to make any additional payments arising from the new rules.

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

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

Commencement date

The draft regulations currently do not provide for backdating the amendments to cover deaths before 1 April 2026. However, the stated intention is for the removal of the age 75 restriction to apply to both future deaths and those that occurred after 5 April 2011. To achieve this:

- **Draft regulation 23**, which repeals the age 75 restriction in regulation 44 of the LGPS (Scotland) Regulations 2018, should be backdated to 1 June 2018, aligning with the commencement of the 2018 Regulations.
- **Draft regulation 46**: which repeals the age 75 restriction in regulation 35(1) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 and regulation 37(1) of the LGPS (Scotland) Regulations 1998, should be backdated to 1 April 2015, aligning with the commencement of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

Additional amendments will be required to ensure coverage for:

- members who both left the LGPS and died between 1 April 2015 and 31 May 2018 (for example, could this be achieved by backdating the change in draft regulation 23 to 1 April 2015, rather than 1 June 2018?)
- members who left under the LGPS (Scotland) Regulations 1998 and died between 6 April 2011 and 31 March 2015
- members who left under the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 and died between 6 April 2011 and 31 March 2015.

Miscellaneous

- Draft regulation 18 repeals the age 75 restriction in regulation 38(1) of the LGPS (Scotland) Regulations 2018, which applies to death-in-service cases. Since members cannot be active in the Scheme beyond age 75, this restriction was always irrelevant. We support its removal, and as it has no practical effect, backdating is unnecessary. It should also be noted that a similar issue also applies to regulation 41(1) of the 2018 Regulations, which the draft regulations are not correcting.
- Draft regulation 46(1)(a) inserts 'Subject to paragraph (8A),' at the beginning of regulation 17(5) of the LGPS (Transitional Provisions and Savings) (Scotland)

Regulations 2014. The draft should also amend the heading from 'Death grants' to 'death grants'.

- There may be tax implications where a survivor's pension has been commuted to a trivial commutation lump sum death benefit (TCLSDB). A TCLSDB can only be paid if it extinguishes both the survivor pension and any lump sum death benefit under the scheme. If a death grant becomes payable retrospectively due to the removal of the age 75 limit, this condition will no longer be met. This issue also arises in the context of the McCloud remedy. The UK Government addressed similar cases through regulation 10 of the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No. 2) Regulations 2023, which modifies the rules on TCLSDB specifically for McCloud-related cases.

Death grant discretion

Draft regulations 38(1)(a) and 46(d) remove the requirement for administering authorities to pay unpaid death grants to the estate where the two-year period has expired, for members who left active membership before 1 April 2015.

The LGPS (Scotland) Regulations 2018 had already achieved this for members who left after 31 March 2015 where the two-year period expired after 31 May 2018.

Comments

Commencement date

The intention is for these changes to apply to all death grants paid on or after 1 April 2026, including cases where the two-year period expired before that date.

Draft regulation 38(1)(a) inserts regulation 3(5A) into the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, applying to deaths before 1 April 2015. Draft regulation 38(2) states that regulation 3(5A) 'does not apply in respect of any death grant paid before [coming into force date].' Assuming this is backdated to 1 April 2015, there will be uncertainty for cases where both the member died, and two-year period expired, before 1 April 2015. It may be clearer to amend the wording so that it reads: 'Regulation 3(5A) applies to any death grant paid on or after 1 April 2026 in respect of any death of a member before 1 April 2015.'. There would then be no need for draft regulation 38(2).

Draft Regulation 17 inserts regulation 17(8A) into the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014. Draft regulation 46(2) states that this does not apply to any death grant paid before 1 April 2026. This is intended to cover members who

died after 31 March 2015 and should therefore have backdated effect from 1 April 2015.

Regulation 35(4) of the Benefit Regulations

Regulation 35(4) of the Benefit Regulations should also be repealed via inserted Regulation 17(8A)(a).

2015 Scheme members where the two-year period expired before 1 June 2018

The LGPS (Scotland) Regulations 2018 removed the requirement to pay death grants to the estate after the two-year period for members who left active membership after 31 March 2015, but only where the two-year period expired on or after 1 June 2018.

For members who died between 1 April 2015 and 31 May 2018, and where the two-year period also expired during that time, authorities were still required to pay the death grant to the estate.

It is hoped that most of these payments have already been made.

For such members who died after age 75, and where a death grant is now payable due to the removal of the age 75 restriction, the two-year period will almost certainly have expired. It is assumed that the intention is for authorities to retain discretion over who receives these death grants, rather than being compelled to pay them to the estate. To achieve this, an amendment is needed.

Unused AVCs on death

If a member with AVCs left after 31 March 2015 and dies before drawing all their AVCs, the administering authority has discretion about who to pay the AVCs to, which is not lost at the end of the two-year period. See regulation 17(12) of the LGPS (Scotland) Regulations 2018.

Where the member instead left before 1 April 2015, the authority does not have this discretion and must pay the AVCs to the personal representatives.

We recommend that the discretion afforded regarding members who left after 31 March 2015 should be extended to members who left on or before then.

Section 2: Gender Pension Gap

Changes to buying back lost pension

Question 2. Do you agree that all authorised unpaid absences over 30 days should be automatically pensionable?

We believe this question may have been included unintentionally. The draft regulations do not include any proposal that would result in all authorised unpaid absences exceeding 30 days automatically becoming pensionable.

Question 3. Do you agree with the proposal to change the time-limit for buying back unpaid leave pension absences from 30 days to 1 year, or when the employment ends?

We support the proposal to extend the time limit for members to buy back pension lost during unpaid leave from 30 days to one year. Under the current rules, employers must meet part of the cost of the additional pension if the member elects to start the arrangement within a specified period after returning to work. Extending this period from 30 days to one year is a positive change.

A 30-day deadline is too short for members who have been on authorised unpaid leave for an extended period. These individuals may face financial difficulties after being unpaid for one or more months and may also return to a backlog of work. In such circumstances, arranging additional pension contributions is unlikely to be their immediate priority. However, we agree that a time limit should remain in place. Removing it entirely could allow members to make an election many years after returning to work, potentially when facing redundancy or ill-health retirement, which could create unintended consequences.

We also support the proposal that members should only be able to make the election while they remain active in the relevant employment. This means that, in some cases, the time limit will be shorter than 12 months. It should be noted, however, that despite the wording of the question, the draft regulations do not currently provide for this outcome.

Under the current rules, where a member elects to buy back lost pension through regular deductions over at least one year, the contract ends if their employment ends. There is no option to pay off the balance with a lump sum or to continue the contract if the member is compulsorily transferred to another employer. We recommend that the Scottish Government consider introducing a mechanism to allow members to either pay a lump sum on leaving to complete the contract or continue the arrangement following a

compulsory transfer.

We welcome the retention of the employer's discretion to extend the deadline in the proposed amendments. We hope employers will continue to use this discretion to achieve fair outcomes for employees.

Other comments on changes to rules on buying back lost pension

Currently, there are two types of APC arrangements for buying back lost pension during authorised unpaid leave:

- **Shared cost APCs (SCAPCs) under regulation 15(5):** Covering unpaid additional maternity leave, unpaid additional adoption leave, unpaid shared parental leave (continuous period of more than 30 days), unpaid parental bereavement leave (continuous period of more than 30 days) and unpaid authorised leave (continuous period of more than 30 days).
- **APCs to cover unpaid leave:** Covering unpaid strike and unpaid leave that would have been covered under the previous bullet had the election been made within the relevant deadline.

The draft regulations will close the first type and replace it with SCAPCs under regulation 15(4A). The key differences between SCAPCs under 15(5) and 15(4A) are:

- **Cost calculation:** SCAPCs under 15(5) use GAD age-related factors, whereas SCAPCs under 15(4A) are based on the notional employee and employer contributions that would have been paid during the leave.
- **Employer contribution:** For SCAPCs under 15(5), the employer funds two-thirds of the cost (subject to a 36-month limit). For SCAPCs under 15(4A), the employer funds the notional employer contributions.
- **Election deadline:** For SCAPCs under 15(5), the deadline is 30 days from returning to work; for SCAPCs under 15(4A), it is one year. In both cases, the employer may extend the deadline.
- **Health checks:** Administering authorities can require members electing for SCAPCs under 15(5) to demonstrate reasonable health. This does not apply to SCAPCs under 15(4A).
- **Redundancy/efficiency retirement:** Pension bought under SCAPCs 15(5) is reduced on redundancy or efficiency retirement, whereas pension bought under

SCAPCs 15(4A) is not.

Commencement and transitional arrangements

The regulations should clearly set out the transitional arrangements, particularly whether members can apply under 15(5) or 15(4A). We assume that where the unpaid leave begins and ends on or after 1 April 2026, members will only be able to elect for SCAPCs under 15(4A). However, the position is less clear where the leave began before 1 April 2026.

If the leave began and ended before 1 April 2026, will members only be able to elect for SCAPCs under 15(5)? Or, if they elect after 31 March 2026, can they elect under 15(4A)?

If the leave spans 1 April 2026, will an election made after 31 March 2026 be for SCAPCs under 15(5) or 15(4A)? Alternatively, will the leave be split, allowing an election under 15(5) for the period before 1 April 2026 and under 15(4A) for the period after?

Including APC pension for lost pension in survivor partner calculations

Regulations 39(5), 40(11), 42(5), 43(11), 45(5) and 46(11) of the LGPS (Scotland) Regulations 2018 provide for APC pension for lost pension to be included in survivor partner calculations. The current wording incorrectly suggests that the full APC pension is included, rather than the relevant proportion. We recommend that the draft regulations correct this error.

Incomplete SCAPC contracts due to death in service

Regulation 16(14) of the LGPS (Scotland) Regulations 2018 provides that APC contracts ending early due to ill-health retirement are treated as completed. There is no equivalent provision for contracts ending early due to death in service. We recommend that SCAPC contracts under 15(4A) should also be treated as completed in these circumstances.

Calculating regular SCAPCs under 15(4A)

Draft regulation 10(b) inserts regulation 16(8A) into the LGPS (Scotland) Regulations 2018, setting out how to determine the cost of SCAPCs under 15(4A). Presumably, if the member pays by lump sum, the total equals the amount under 16(8A). However, it is unclear how to calculate APCs where the member pays by regular instalments.

APC limit

There is a limit on the amount of additional pension an individual can buy, and that limit

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

We think that further clarity is needed about:

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

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

References to when regulation 15(4A) applies

There is inconsistency across the following regulations in how they refer to APCs in relation to regulation 15(4A). In some instances, the regulations state only that regulation 15(4A) applies. In other instances, they specify both that regulation 15(4A) applies and that the application was made before the expiry of the time limit set out in regulation 16(16). The affected provisions are:

- inserted regulation 15(4A) and (4B)
- inserted regulation 16(8A)
- inserted regulation 16(10A)
- inserted regulation 16(12A)
- amendment to regulation 29(8)(a).

Other minor technical amendments

- Inserted regulation 16(8A) should clarify in (8A)(a) and (b) that ‘that period’ refers to the authorised unpaid absence, not the election period.

- Inserted regulation 16(10A) is missing the word 'is' before 'made before'.

Updated definition of child-related leave

Question 4. Do you agree with updating the definition of child-related leave to include all periods of additional maternity, additional adoption and shared parental leave when on reduced or no pay?

Whilst we recognise the cost of this change is a very small per cent of total Scheme costs, the financial impact on individual employers, particularly smaller employers, could be more significant. This may be unwelcome at a time when employer costs are already increasing due to rises in the national living wage and employer's national insurance.

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

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

Question 5. Do you agree that the contribution cost of this should be met by LGPS employers?

The employer meeting the cost seems reasonable. We are not sure what the alternatives would be other than increasing member contributions.

Other comments on the updated child related leave definition

Commencement date

The draft regulations are unclear on when the updated definition of child-related leave will apply. We suggest two possible approaches:

- apply the change to all periods of unpaid additional maternity leave, unpaid additional adoption leave and unpaid shared parental leave that end on or after 1 April 2026. For periods of such leave that straddle that date, the existing rules will apply to the bit before 1 April 2026, and the new rules will apply to the bit from then
- apply the change to all periods of unpaid additional maternity leave, unpaid additional adoption leave and unpaid shared parental leave that start on or after 1 April 2026.

If the first option is adopted, clarification is needed on how to calculate APP for periods that span the transition date. This is because there will be a break in the period during which APP applies (start of the unpaid period to 31 March 2026). Specifically, whether the original APP calculation should continue from 1 April 2026 or whether a new APP calculation is required. For simplicity and consistency, we recommend that the original APP calculation continues to apply.

50/50 section

Regulation 10(5)(c) of the LGPS (Scotland) Regulations 2018 currently requires that members in the 50/50 section who go onto unpaid ordinary maternity or adoption leave, unpaid paternity leave or unpaid parental bereavement leave are moved back into the main section from the start of the next pay period.

This is based on the principle that members receiving free pension accrual should do so in the more beneficial main section.

However, the draft regulations do not propose adding unpaid additional maternity, additional adoption, or shared parental leave to regulation 10(5)(c). If APP is to apply to these types of leave, we recommend that 50/50 members be moved to the main section during these periods. Any changes to regulation 10(5)(c) should align with the commencement date of the updated child-related leave definition. For example, members should only be moved back if APP will apply to the unpaid leave period.

Lastly, as APP does not apply during unpaid parental bereavement leave, we believe regulation 10(5)(c) should not include this type of leave.

Gender pension gap reporting

Question 6. Do you agree that gender pension gap reporting should be mandatory in the LGPS?

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

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

Question 7. Do you agree with the threshold of 100 LGPS members for defining which employers must report on their gender pension gap?

We agree that the threshold should be based on the number of LGPS members, rather than employees.

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

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

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

Question 8. Do you agree with the definition of ‘gender pension gap’ and ‘gender pensions savings gap’?

Gender pension gap definition

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

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

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

Gender pensions savings gap definition

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

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

Other comments about gender pensions gap reporting

Guidance

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

We understand that the gender pay gap is based on the average hourly rates of male and

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

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

Commencement

There is a lack of clarity regarding the valuation from which the new reporting requirement should take effect. For instance, it is uncertain whether this should apply to the 2026 valuation cycle or the 2029 valuation cycle. The regulations need to be explicit on this point (though see next sub-section).

Delay implementation

Reporting on the gender pension gap will only be meaningful if all administering authorities and actuaries interpret the rules in exactly the same way. Further work is required to ensure consistency and to produce results that are reliable and comparable.

Gender pension gap reporting is important, but its greatest value lies in tracking changes over time. While it may be possible to report a very basic figure as part of the 2026 Valuation, it is likely that a more sophisticated methodology will evolve in future years. Comparing a basic figure from 2026 with figures calculated using a different methodology later may not provide useful insights.

We strongly urge the Scottish Government to consider introducing this reporting requirement at a later date to ensure that the results are meaningful and can be tracked consistently over time.

Section 3: Opt-outs/participation rates

Opt-out reporting

Question 9. Do you agree that the annual report is the best method for reporting on participation and opt out data?

On balance, we agree that the annual report represents an appropriate and practical mechanism for reporting opt-out data. It is consistent with existing reporting structures and offers a reliable framework for administering authorities to present participation trends in a structured and transparent manner.

That said, we believe there is value in exploring the option of centralised reporting by the SPPA in addition to the annual report. Having a national overview of opt-out rates would provide significant benefits for policy development, benchmarking, and the identification of trends across the LGPS in Scotland.

At present, the Scottish LGPS Scheme Advisory Board (SAB) compiles a Scheme-wide annual report using individual fund annual reports. However, this process introduces a considerable time lag. Since annual reports are not required until 1 December following the end of the scheme year, and the consolidation process typically takes around five months, the resulting Scheme report is often at least 12 months out of date.

Adopting a dual approach—local reporting through annual reports combined with centralised aggregation—would improve transparency and enable more timely and responsive policymaking.

Question 10. Do you foresee any issues with AAs' ability to gather data on opt-outs?

In our view, the ability of administering authorities (AAs) to gather data on opt-outs is entirely dependent on LGPS employers' ability to provide that information.

Administering authorities do not hold complete information about members who opt out of the Scheme. Employers are not always required to notify the administering authority when an employee opts out; they are only obliged to do so when a member who joined the Scheme through automatic enrolment subsequently opts out. Even when the administering authority is aware of an opt-out, this information is not routinely updated. As a result, the administering authority cannot confirm whether that individual remains in employment or has left. For SPPA and administering authorities to maintain accurate and

up to date opt-out data, employers must supply this information.

Regulation 75 of the LGPS (Scotland) Regulations 2018 specifies the information employers must provide to the relevant administering authority annually or at other times. We recommend amending regulation 75 to require each employer to supply relevant opt-out data to the administering authority on an annual basis.

We do, however, have concerns about employers' ability to provide this data accurately. It is not as simple as calculating the difference between the total number of employees and those contributing to the LGPS, as this does not account for various categories of employees. Employers will need to distinguish between:

- **'genuine' opt-outs** – employees who have actively opted out of the LGPS
- **employees with a contract of less than three months** who have neither opted to join the LGPS nor been automatically enrolled
- **employees over age 75**, who are not eligible for LGPS membership
- **employees eligible for a different pension scheme**, such as certain local government employees who qualify for another public service pension scheme, or employees of an admitted body who may be members of, or eligible to join, a defined contribution scheme such as NEST.

Regarding the final point, we understand from engagement with payroll providers that a one-off exercise may be required to add an indicator to individual payroll records. This would identify workers who are not currently in any pension scheme but would be entitled to join the LGPS if they opted in or were automatically enrolled. We believe a lead-in period is essential to allow employers time to implement this change and ensure reporting is accurate and consistent.

Question 11. When updating the annual report guidance to reflect opt-out data collection, what information would be most useful to include?

Reporting opt-out rates will enable comparisons across administering authorities and allow employers to benchmark their position against regional averages. However, this will only be meaningful if all employers and administering authorities report data in a consistent manner. To achieve this, the guidance should clearly address the following:

- **Level of reporting – individual or post:** An individual may hold multiple posts with the same employer concurrently and may choose to opt out in respect of one

or more of those posts without affecting their LGPS membership in a different post. For simplicity, we recommend reporting at post level.

- **Purpose of reporting and treatment of multiple posts:** The Scottish Government may decide that the purpose of reporting opt out rates is to distinguish between individuals participating in pension saving and those who do not. In which case, an individual with multiple posts would be considered 'in' if they are participating in the LGPS in at least one post. If the Scottish Government does decide that reporting should be based on the individual, only multiple posts with the same employer could be considered collectively. It would not be possible to aggregate results across different employers. The guidance will also need to cover how a member should be categorised if they contribute to a different pension scheme, but have opted out in a separate post in which they would be eligible for membership of the LGPS.
- **Reporting period:** We understand that reporting will be based on the position on a particular day. We support this proposal as it is easier to administer and will require less guidance. This method would provide a snapshot of the position on a particular date each year and any patterns would emerge over time. The alternative would be to collect data for the entire Scheme year. This would require more detailed guidance to cover individuals who become eligible for membership part way through the year, mid-year opt outs, whether to include mid-year leavers, etc. It may also be skewed by members re-opting out after being automatically re-enrolled by employers as part of their automatic enrolment duties.
- **Treatment of employees not contractually enrolled:** Employees with a contract for less than three months are not contractually enrolled into the LGPS when their employment starts. This group will include casual workers. They may opt to join, subject to eligibility rules, and some workers may join the Scheme under automatic enrolment rules. Employers will be heavily reliant on payroll providers to report on opt out numbers. Contract information of this type must be held by the employer but may not be recorded on the payroll system. Payroll providers may not be able to distinguish between a casual worker and an employee with no fixed working hours who does have an ongoing contract for more than three months. The Scottish Government will need to decide which groups must be included in the opt out data. This will include a decision on whether to include employees with no fixed working hours. They will also need to consider whether to include a member who is not contractually enrolled (because their contract is for less than three months), but joins the Scheme through automatic enrolment or opting in.

- **Infrequent workers:** We are aware of examples of members without fixed hours who remain ‘active’ on the payroll system, but do not work for months or even years. We believe it would be appropriate to exclude these members when reporting on opt out data to give more accurate and meaningful results. This would need to be covered in the guidance. We suggest that a member (or non-member) with no fixed hours should only be included in the opt out data if they have received some pay in the Scheme year, for example. We recommend using a relevant date later in the Scheme year. This will help to ‘weed out’ individuals who have had an extended period during which they did not receive any pay, but it will not affect those whose work is concentrated at a particular time of year. Payroll providers will need some time to prepare for these changes. Choosing a date later in the Scheme year will also give them more time to prepare for this new requirement.
- **Non-compliance by employers:** Guidance should specify what administering authorities should do if they do not receive all relevant opt-out data from employers to enable it to meet the 1 December deadline. It should also clarify whether the approach differs when data is provided late versus when it cannot be obtained (for example, if an employer has ceased to exist).

Other comments about opt-out reporting

Commencement date

The draft regulations should clearly specify which annual report will first be required to include the new opt-out data.

It appears unlikely that the intention is for this requirement to apply to the annual report for scheme year 2025/26 (which must be published by 1 December 2026), but this should be confirmed in the final regulations.

Delay implementation

We support the Scottish Government’s proposal to introduce a requirement for administering authorities to report on opt-out rates. We hope that the resulting data can be used to develop initiatives aimed at encouraging employees who have opted out, or are considering opting out, to participate in the Scheme—an outcome that would positively impact pension adequacy.

However, such reporting and any comparisons across employers and administering authorities will only be meaningful if there is clear guidance on what must be reported and

if all parties interpret that guidance consistently.

Significant work is needed to define precisely what data Scheme employers must provide. As noted in our response to Question 10, we believe the LGPS Regulations should be amended to include a requirement for Scheme employers to supply this information to administering authorities, rather than limiting the obligation to administering authorities reporting aggregate totals for their fund.

Once the required data is clearly defined, we understand that employers will need to undertake a substantial exercise to 'label' individual payroll records to indicate whether a member is eligible for LGPS membership. This step is essential to ensure that, where a member is not in any pension scheme, they are only included in the data if they are eligible to join the LGPS.

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

Miscellaneous

- The full stop at the end of regulation 55(1)(k) of the LGPS (Scotland) Regulations 2018 should be removed.
- The inserted regulation 55(1)(l) refers to individuals who have 'opted out of the Scheme under regulation 5(2).'
- Firstly, the term 'opted out' does not appear in the regulations; regulation 5 refers to members who give notice under 5(2).
- Secondly, we assume the data should also include eligible persons who are not active members on the relevant date because they opted out under earlier regulations.
- The wording should also clarify the position for authorities that maintain more than one fund. Should the data be reported separately for each fund?

Template opt-out form

Question 12. Do you have any comments on the collection of additional information?

Commencement date of SAB-approved opt out form

Draft regulation 6 inserts regulation 5(7) into the LGPS (Scotland) Regulations 2018, requiring that, from 1 April 2026, opt-out notices must be submitted in the form approved by the Scheme Advisory Board (SAB).

However, if the SAB has not approved the form by 1 April 2026, members may be unable to opt out under regulation 5.

Whether additional information will be sent directly to the Scottish Government

We understand that draft regulation 6 seeks to mirror proposals in LGPS England and Wales, which include:

- a new opt-out form to be used by administering authorities
- an optional government form sent directly to MHCLG collecting anonymised data on reasons for opting out, profession type, working hours, salary, gender, age, ethnicity, marital status, and dependants.

It is unclear from this consultation whether the Scottish Government intends to follow the same approach—ie, collecting anonymous data directly—or whether this information will be included in the opt-out form submitted to the employer.

Assuming the intention is to replicate the England and Wales proposal, we support giving members the opportunity to submit anonymous additional information to the Scottish Government.

The following comments assume that the intention is to replicate the England and Wales proposal.

What additional information to collect

We suggest the Scottish Government consider including an option for members to indicate whether they have been offered an incentive to opt out of the LGPS in favour of an alternative qualifying scheme. While this may not align with the spirit of the Pensions Act 2008, it is not prohibited. Such schemes may be cheaper for employers and possibly for employees, but typically result in significantly worse retirement outcomes compared to public service pension schemes.

We also recommend expanding the list of characteristics collected to include:

- Religion – particularly in light of legal advice commissioned by the Scheme Advisory Board in England and Wales regarding members opting out due to religious beliefs (for example, Islamic).
- Sexual orientation and disability status – to help identify and address the LGBTQ+ pension gap and the disability pension gap, which are less frequently discussed but potentially significant.

Collecting this data would help the Scottish Government better understand the demographics of those opting out and inform future policy decisions.

Data collection at administering authority level

We believe it is important to understand whether particular groups are disproportionately represented in opt-out statistics at the administering authority level.

However, we have concerns about relying on data from the optional anonymous form to produce results at this level. Pension literacy is generally low. Individuals may not correctly identify which administering authority their employer is associated with.

Members completing this form will have found it when they obtained an opt out form from their administering authority. We believe that SPPA should consider solutions that could correctly record the ‘source’ administering authority.

Data collection at employer level

We do not support collecting this data at the employer level. For small employers, even basic demographic data (for example, age, gender, ethnicity) could be sufficient to identify individuals, compromising anonymity.

To maintain privacy, we recommend that data be aggregated only at the administering authority level, and not segmented further.

Section 4: Forfeiture

Forfeiture

Question 13. Do you agree that the three-month time limit for an LGPS employer to make an application for a forfeiture certificate should be removed?

Yes, we agree that removing the three-month time limit will provide additional flexibility for

employers when making applications.

Recovery rules

Comments about the changes to the recovery rules

Draft regulation 33 amends regulation 87 of the LGPS (Scotland) Regulations 2018.

Draft regulation 33(a) says ‘in sub-paragraph (a) omit the words from ‘in consequence’ to the end’. This amendment should also remove the comma that appears immediately before the words ‘in consequence.’

When the 2014 and LGPS (Scotland) Regulations 2018 were enacted, the provisions contained in regulations 68(2) and 68(3) of the LGPS (Administration) (Scotland) Regulations 2008 were not carried forward. It is unclear why these provisions were omitted. In our view, this amendment process provides an opportunity to review and correct this omission. For reference, see the equivalent provisions in the LGPS (England and Wales) Regulations 2013, specifically regulations 93(2) and (3).

Section 5: McCloud

Question 14. Do you agree with or have any comments on these technical remedy amendments?

Yes, we agree with these amendments.

The draft regulations are currently unclear regarding the effective date of McCloud amendments. As these amendments are intended to correct the LGPS (Remediable Service) (Scotland) Regulations 2023, which came into force on 1 October 2023, we believe the amendments should be backdated to that date.

Other comments – transfers from other public service schemes for members over 65 years old

Provisional amounts and breaks in membership

Inserted regulations 4I(1A) and 4J(1A) override the standard rules for calculating provisional amounts, requiring instead that calculations follow GAD guidance. We recommend that either the GAD guidance or the regulations themselves clarify that provisional amounts should only be calculated for transfers where there has been no continuous break in active membership of a public service pension scheme of more than

five years since the transferred remediable service was accrued.

Late retirement increases

The GAD guidance, or the specific late retirement guidance, should explain how to calculate increases on provisional amounts. For example, if the relevant date for the transfer is after State Pension Age (SPA) or age 65, the late retirement increase should be calculated from the transfer relevant date to the retirement date, rather than from SPA / 65 to retirement date.

Multiple provisional amounts

The amendments may result in pension accounts containing multiple sets of provisional amounts, each with a different underpin date. This could occur for members who join or re-join the LGPS after age 65 and:

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

We assume the intention is for these provisional figures to operate separately. If so, we suggest updating Section 8 (multiple sets of underpin figures) of the McCloud statutory guidance to clarify this point.

Appropriateness of the Transfer Payment Date

We question whether the ‘date on which the transfer payment was received’ is the most suitable choice for the underpin date. This date differs from the transfer guarantee date (as defined in paragraph 4.5 of the Club Memorandum) and may fall in a different Scheme year. This discrepancy could:

- create administrative challenges
- lead to less accurate outcomes for members.

Specifically:

- Late retirement increases to the transfer credit will start from the Guarantee date, not the date the transfer is received – see paragraph 8.10 of the [GAD transfer guidance](#). To get a fair result for the member, it seems appropriate for the late retirement increases to the provisional underpin amount and provisional assumed benefits to be based on the same guarantee date. This would require changes to

regulations 4I and 4J of the 2014 Regulations. Without these changes, the underpin test will be a less accurate comparison of the CARE benefits the member built up with the benefits they would have built up in the final salary scheme.

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

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

Other comments – pension sharing orders

Draft regulation 53 amends regulation 12 of the LGPS (Remediable Service) (Scotland) Regulations 2023.

Pension credits

Regulation 12 of the LGPS (Remediable Service) (Scotland) Regulations 2023 provides for recalculating the credit member's LGPS annual pension where the pension sharing order (PSO) is affected by McCloud underpin protection.

However, the regulation does not address cases where the ex-spouse or partner:

- transferred their share to a qualifying arrangement, or
- died before the PSO could be implemented.

In such cases, there is no provision to recalculate the transfer value or any associated death grant.

Also, regulation 12 requires recalculation of the credit member's pension:

- **If the annual pension is at deferred status on 1 October 2023**, the recalculation must be done before any subsequent annual benefit statement, retirement, trivial commutation, death grant or transfer out calculations can be performed in respect of the credit member.
- **If the annual pension is at pensioner status on 1 October 2023**, regulation 12(6) provides for recalculating the pension in payment. This must be done before any subsequent trivial commutation or death grant calculations can be performed in respect of the credit member.

However, there are no provisions for cases where, before 1 October 2023, the credit member:

- trivially commuted their pension,
- died, or
- transferred out the pension credit.

The draft regulations do not resolve these issues.

[Pension debits](#)

Regulation 12 does not require recalculation of the pension debit applied to the original member's benefits where:

- the PSO took effect between 1 April 2015 and 30 September 2023,
- the CARE account qualifies for underpin protection, and
- the recalculated cash equivalent exceeds the original amount.

The draft regulations do not change this position. It would be helpful for the Scottish Government to confirm whether this is a deliberate policy decision rather than an oversight, so that administering authorities can proceed with confidence.

Other comments – interest rules

Draft Regulation 54(a) amends regulation 14(1) of the LGPS (Remediable Service) (Scotland) Regulations 2023 to include regulation 12(5A)(b).

However, regulation 12(5A)(b) does not exist, and the draft regulations do not introduce it. This appears to be a drafting error.

Section 6: Other regulation changes

De-minimis payments

Question 15. Do you agree with these changes to allow those who left the scheme prior to 1 April 2015 to commute small pensions?

Yes, we support the proposed changes to extend the power to pay de-minimis commutation payments to members who left the scheme before 1 April 2015. This amendment removes an unnecessary disparity between pre- and post-2015 leavers and aligns the LGPS (Scotland) with broader pension flexibility available under HMRC regulations.

Other comments regarding de-minimis payments

Leavers between 1 April 2008 and 31 March 2015

While the intention is to extend the power to pay commutation payments under regulations 11 and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009, the draft regulations currently only amend the LGPS (Scotland) Regulations 1998.

To fully implement the policy for leavers between 1 April 2009 and 31 March 2015, and for pension credit members under the 2009 Scheme, similar amendments are needed to:

- regulation 39 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008
- regulation 98 of the LGPS (Administration) (Scotland) Regulations 2008.

Without these amendments, administering authorities will remain unable to make commutation payments under regulations 11 or 12 for these members.

Amendments to regulation 153 of the LGPS (Scotland) Regulations 1998

Draft Regulation 38(1)(a) inserts regulation 3(5B)(a)(iii) into the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, which substitutes regulation 153(1) of the LGPS (Scotland) Regulations 1998 and deletes 153(2).

As regulation 153 deals with trivial commutation options for pension credit members under the 1998 Scheme, there is no need to provide for payment of trivial commutation

lump sum death benefits, as no survivor benefits are payable on the death of such credit members.

Requirement to calculate the lump sum using GAD guidance

The new versions of regulations 48 and 153 of the LGPS (Scotland) Regulations 1998 need a clause equivalent to regulation 33(2) of the LGPS (Scotland) Regulations 2018, which states:

‘Any payment under paragraph (1) shall be calculated in accordance with actuarial guidance issued by the Scottish Ministers.’

Lifetime allowance

Question 16. Do you agree with the changes proposed to the Lifetime allowance regulations?

Yes.

Other comments – pension commencement excess lump sums (PCELS)

Commencement date

The draft regulations repeal regulation 48 of the LGPS (Scotland) Regulations 2018 (and equivalent provisions in earlier regulations) with effect from 1 April 2026. From this date, members will no longer be able to rely on these provisions or the associated GAD guidance to commute pension amounts exceeding the Lifetime Allowance (LTA), assuming it had continued, for a PCELS under the existing policy.

The Scottish Government intends to introduce a new long-term PCELS policy via updated GAD guidance on lump sum commutation. This new policy will allow PCELS payments subject to:

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

In most cases, the new PCELS policy is more restrictive than the existing policy.

To avoid confusion and potential complaints, it would be helpful for the Scottish Government to clarify how to determine whether the existing or new PCELS policy applies to a particular case. Specifically, clarification is needed on whether the repeal of regulation 48 means the existing policy ceases to apply in cases where:

- the PCELS is paid on or after 1 April 2026, regardless of the pension start date or entitlement date
- the pension start date under LGPS regulations occurs on or after 1 April 2026
- the entitlement date to the PCELS under the Finance Act 2004 occurs on or after 1 April 2026, even if the pension start date was earlier.

To ensure fairness and administrative clarity, it is recommended that the amendments take effect on a future date, allowing reasonable notice for scheme members and administrators.

The updated lump sum commutation GAD guidance must also come into effect in line with the repeal of regulation 48 and its equivalents. This will prevent situations where:

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

[Regulation 18A of the LGPS \(Scotland\) Regulations 1998](#)

Draft regulation 38(1)(a) inserts regulation 3(5B)(a)(i) into the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, stating that regulation 18A of the LGPS (Scotland) Regulations 1998 is to have effect as if paragraphs (1) and (2) were omitted.

It is unclear why paragraph (3) is not also omitted.

Other comments – amendment to benefit crystallisation event definition

The draft regulations propose updates to the definition of ‘benefit crystallisation events’ in the LGPS (Scotland) Regulations 2018 and the LGPS (Scotland) Regulations 1998.

However, the draft regulations do not specify whether these should be backdated. We recommend that the changes be given backdated effect from 6 April 2024, in order to align with:

- the revocation of the original definition in section 216 of the Finance Act 2024, and

- the introduction of the definition in schedule 32 to that Act.

Additionally, we note that the LGPS (Administration) (Scotland) Regulations 2008 contain a reference to ‘benefit crystallisation event’ in regulation 47(3)(b), but do not currently define the term. It may be beneficial to use the draft regulations as an opportunity to introduce a definition for consistency and clarity.

Five-year refunds

Question 17. Do you agree with the proposed amendments to the Regulations?

We do not agree with the proposal to remove a member’s entitlement to a refund of contributions if it is not paid before they reach age 75.

The draft regulations (regulation 18(5)(b) and inserted regulation 18(5B)) require administering authorities to make reasonable attempts to obtain the necessary information to pay the refund by the day before the member’s 75th birthday. If the refund cannot be paid by that date, draft regulation 12 amends regulation 19 of the LGPS (Scotland) Regulations 2018 to remove the member’s entitlement to the refund.

This approach assumes that any refund paid after age 75 would be an unauthorised payment under the Finance Act 2004, as it would no longer meet the conditions for a short service refund lump sum.

However, we believe that in such cases, the refund could instead be paid as a small pot payment under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009, provided the relevant conditions are met. These regulations allow for small lump sums to be paid in specific circumstances.

We recommend that the Scottish Government consult HMRC to confirm whether such payments would be authorised under the small pot rules. If HMRC agrees, there may be no need to remove the refund entitlement at age 75.

Other comments on five-year refunds

Commencement date

There is uncertainty about whether the amendments will apply only to cases where the five-year period expires (or age 75 is attained) after 31 March 2026, or to all refunds paid after that date, regardless of when the five-year period expired.

We strongly recommend that the amendments apply to all refunds paid to 2015 Scheme

members after 31 March 2026, so that:

- late payments made after 31 March 2026 do not breach LGPS regulations, even if the five-year period expired earlier
- authorities will aggregate benefits rather than pay a refund (which would be unauthorised) where:
 - the five-year period expired before 1 April 2026 and no refund was paid before then,
 - the member did not rejoin the LGPS within the five-year period, and
 - the member rejoined the LGPS before the refund could be paid (whether before on or after 1 April 2026).

Once a decision is made regarding age 75 cases, consideration should also be given to how to treat members who reached age 75 before the regulations come into force, and whose refunds have not yet been paid.

Minor technical issue

Draft regulations 11 and 12 amend regulations 18 and 19 of the LGPS (Scotland) Regulations 2018. These amendments introduce a new list in regulation 18(5) and amend the existing list in regulation 19(1). However, the amendments use commas to separate list items, which is inconsistent with the existing use of semi-colons.

Child's pension under the LG Superannuation (Scotland) Regulations 1987 and LGPS (Scotland) Regulations 1998

Draft regulation 38(1)(a) introduces a new provision—regulation 3(5C) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014. The inserted regulation amends regulations E8 of the LG Superannuation (Scotland) Regulations 1987 and regulation 44 of the LGPS (Scotland) Regulations 1998, providing for short-term eligible children's pensions to cease before the end of the three or six month period if the person ceases to be an eligible child.

Comments

Eligible child definition

It is understood that these amendments will not apply retrospectively. Therefore, they will

only apply to recent deaths.

As a result, the definition of 'eligible child' in the LGPS (Scotland) Regulations 2018 will apply, rather than the definitions contained in the LG Superannuation (Scotland) Regulations 1987 or LGPS (Scotland) Regulations 1998.

For clarity, it may be preferable to make these amendments in regulation 17 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 and refer specifically to ceasing to be an eligible child within the meaning of the LGPS (Scotland) Regulations 2018.

Transitional issues

Where a child ceases to be an eligible child within the three or six-month period, and this occurs before the date the draft regulations come into force, but the three or six-month period ends after then, clarification would be helpful on how the draft regulations apply in these circumstances. For example, does the entitlement cease:

- at the end of the original three or six-month period, or
- on the date the draft regulations come into force, or
- on the date the child ceased to be an eligible child?

E8(3) of the LG Superannuation (Scotland) Regulations 1987

Inserted regulation 3(5C)(a) amends regulation E8(1) of the LG Superannuation (Scotland) Regulations 1987. However, it is also necessary to amend regulation E8(3).

Retained EU Law

Comments – removal of right to transfer in from a European pensions institution

Commencement date of draft regulation 34

Draft regulation 34 repeals the right to transfer in benefits from a European pensions institution. However, the draft is unclear on whether this amendment is intended to have retrospective effect or apply from 1 April 2026 onwards.

We recommend that the amendment should take effect from 1 April 2026, meaning that from that date, members will no longer be permitted to transfer in benefits from European pensions institutions.

Additionally, the draft regulation should also replace the semicolon at the end of regulation 95(2)(a) of the LGPS (Scotland) Regulations 2018 with a full stop.

Consequential impact on the vesting period and refunds

- Draft regulation 4 repeals references to transfers in from European pensions institutions when assessing the vesting period under regulation 3(6) of the LGPS (Scotland) Regulations 2018.
- Draft regulation 11(a) repeals references to refunding contributions in respect of transfers from European pensions institutions under regulation 18(1)(d).

While we support ending new transfers from European pensions institutions, we believe that existing transfers should continue to be recognised for the purposes of the vesting period and refunds. If this position is accepted, references to European pensions institutions should be retained in regulation 3(6), 18(1) of, and schedule 1 to (including the definition of 'transfer value payment'), the LGPS (Scotland) Regulations 2018.

Amendment to regulation 9(3A) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

Draft regulation 43 repeals references to European pensions institutions in regulation 9(3A) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, which deals with transfers received after 31 March 2015 where the relevant date was before 1 April 2015.

In our view, draft regulation 43 is unnecessary. Regulation 9(3A) is now effectively spent, as it only applies to members who joined before 1 April 2015 and received a transfer within 12 months of joining.

Comments – amendment to pensionable pay definition

Draft regulation 13(b) repeals the reference to 'European Parliamentary elections' in regulation 20(2)(o) of the LGPS (Scotland) Regulations 2018.

The draft regulations are unclear as to whether this repeal will take effect from 1 April 2026 or have retrospective effect. In our view, the amendment should not be backdated. This would mean that any returning officer fees received on or after 1 April 2026 for a European Parliamentary election would not be pensionable under the 2015 Scheme. Given that the last possible European Parliamentary election was held in May 2019, there should be no further outstanding fees due in respect of that election. As such, the

amendment is unlikely to have any practical impact.

However, there is a risk that if the repeal is applied retrospectively, it could inadvertently result in a previously received fee—originally treated as pensionable—becoming non-pensionable.

In addition, draft regulation 13(b) should also repeal the semicolon at the end of regulation 20(2)(o)(iii) and replace it with a full stop.

It is also worth noting that regulation 99(3)(b) of the LGPS (Scotland) Regulations 2018 includes a reference to European Parliamentary elections. It would be sensible for the draft regulations to repeal this reference as well, with effect from 1 April 2026.

Comments – amendment to IRMP definition

Commencement

Draft regulation 35(e) amends the definition of an Independent Registered Medical Practitioner (IRMP) in Schedule 1 to the LGPS (Scotland) Regulations 2018. However, the effective date of the new definition is currently unclear.

When considering when to apply the amended definition, SPPA should consider the impact on:

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

IRMP definition in earlier regulations

The amended IRMP definition in the LGPS (Scotland) Regulations 2018 will apply to:

- ill health decisions made in respect of members who left after 31 March 2015
- eligible child decisions in respect of members who died after 31 March 2015.

However, earlier regulations contain separate definitions for IRMPs in relation to deferred ill-health decisions for earlier leavers:

- 1 April 2009 – 31 March 2015: regulation 20(7) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008
- 1 April 1998 – 31 March 2009: regulation 96(14) of the LGPS (Scotland)

Regulations 1998

- before 1 April 1998: regulation 96(14) of the LGPS (Scotland) Regulations 1998, as applied by regulation 4 of the LGPS (Transitional Provisions) (Scotland) Regulations 1998.

We recommend that the Scottish Government also consider amending the equivalent definitions in these earlier regulations.

Comments – Investment Regulations 2010

Draft regulations 48 to 50 propose amendments to the LGPS (Management and Investment of Funds) (Scotland) Regulations 2010.

- Draft Regulation 49 modifies regulation 3(6) by removing references to insurance contracts entered into with EEA firms as specified in regulation 3(6)(b), and other entities whose head office is located in an EEA state (excluding the United Kingdom), as referenced in regulation 3(6)(c).
- Draft Regulation 50 repeals the provision in regulation 6(2)(c) that permits an administering authority to hold its LGPS fund with a central bank of an EEA state (excluding the United Kingdom).

We are not in the best position to assess the implications of these amendments. It is assumed that the Scottish Government has consulted, or will consult, with relevant stakeholders to evaluate the impact.

However, we note the following technical issues:

- Draft regulation 48 should explicitly refer to regulations 49 and 50. At present, it contains placeholder text: ‘regulations [] to []’, which needs to be completed.
- Draft regulation 49, which amends regulation 3 of the 2010 Regulations, should also correct the punctuation in regulation 3(6)(a) by replacing the semicolon at the end with a full stop.
- Consideration should be given to whether regulation 6(2)(b) also requires repeal. The equivalent provision in the LGPS (England and Wales) was repealed in 2020.

Section 7: Additional amendments

Definition of local government service

Question 18. Do you agree with adding the definition of ‘local government service’ to Schedule 1?

Yes.

Comments

The draft regulations do not clearly specify whether the reintroduction of the definition of ‘local government service’ will take effect from 1 April 2026 or have retrospective effect. In our view, the amendment should be backdated to 1 June 2018—the date on which the LGPS (Scotland) Regulations 2018 came into force and, inadvertently, failed to re-enact the definition previously included in the LGPS (Scotland) Regulations 2014.

Backdating the amendment would correct the original oversight and align the legislation with the interpretation that we understand administering authorities applied since that time.

Repealing regulation 29(14)

Draft regulation 17(b) proposes the repeal of regulation 29(14) from the LGPS (Scotland) Regulations 2018.

However, the draft does not clearly specify whether this repeal is intended to have retrospective effect.

When deciding whether to backdate this correction to 1 June 2018, you may wish to liaise with administering authorities to assess whether any deferred members have actually drawn benefits under 29(14).

Employments relating to the provision of education

Draft regulation 5 introduces regulation 4(5), into the LGPS (Scotland) Regulations 2018. This amendment ensures that any active LGPS member who, as at 1 August 2025, is in an employment that becomes eligible for the Teachers’ Pension Scheme (TPS) will remain in the LGPS for that employment.

Optants out

Our understanding is that if a member wishes to join the TPS instead of remaining in the LGPS for that employment, they may opt out of the LGPS and opt into the TPS.

If the member opts out of the LGPS for that employment—whether or not they subsequently join the TPS—they remain eligible to rejoin the LGPS for the same employment at a later date. There appears to be no restriction preventing this. Is this the intended policy?

If this is the intention:

- Where a member opts out of the LGPS and then joins the TPS, there appears to be no restriction on them later opting back into the LGPS while remaining in the TPS for the same employment.
- Where a member opts out of the LGPS and does not join the TPS, which scheme should the employer enrol them into at the next automatic re-enrolment date? The LGPS or the TPS?

Member ceasing to be eligible for TPS

We understand that, due to changes in TPS eligibility, some employees will cease to qualify for TPS and instead become eligible for the LGPS. We also understand that these employees may remain in the TPS for the same employment if they wish, or alternatively choose to join the LGPS.

However, the Teachers' Pension Scheme (Scotland) (Amendment) Regulations 2025 do not appear to explicitly provide for such transitional arrangements. This raises uncertainty about whether an individual who opts out of TPS remains eligible to rejoin it.

- If the person remains eligible for TPS after opting out, then under regulation 4(1) of the LGPS (Scotland) Regulations 2018, they would be prevented from joining the LGPS. Note that the new regulation 4(5) would not apply in this case.
- If the person ceases to be eligible for TPS upon opting out, and assuming they have a contract of at least three months and otherwise meet LGPS eligibility criteria, then under regulation 3(2) of the LGPS (Scotland) Regulations 2018 they would be automatically enrolled into the LGPS. Is this the intended outcome, or should they be required to opt in?

Member communications

Some members will hold employments that are eligible for both TPS and LGPS. Assuming they have not already received guidance, will SPPA provide these members with clear information to help them understand their options—ie, remain in their current

scheme or opt out and join the other?

Club transfers

Members who choose to move from one scheme to the other (LGPS ↔ TPS) should note that they will not be eligible to transfer benefits from the former scheme under Club transfer arrangements, as confirmed by paragraph 2.6 of the Club Memorandum.

Miscellaneous

- We assume that draft regulation 5 will have retrospective effect from 1 August 2025.
- Regulation 4(1) of the LGPS (Scotland) Regulations 2018 should be amended to state that it is subject to paragraph (5).
- Inserted regulation 4(5)(b) currently states ‘that person was a member of the Scheme on 1 August 2025.’ This should be revised to:
 - explicitly confirm that the person must have been an active member; and
 - confirm that the LGPS membership relates to the relevant employment referred to in sub-paragraph (a).
- Also, should the test in 4(5)(b) instead refer to whether the member was an active member immediately before 1 August 2025, rather than on that date? This is because the amendments extending TPS eligibility and removing LGPS eligibility take effect at the start of 1 August 2025.

Section 8: Scottish Fire and Rescue Service (SFRS) Staff Consolidation into the Strathclyde Pension Fund

Question 19: Do you agree with the change to part 2 of schedule 4 transferring all SFRS staff to Glasgow City Council?

We understand that the SFRS applied for, and was granted, a fund substitution direction. This direction consolidated all of its LGPS members into the Strathclyde Pension Fund. The transfer has now been completed, and the direction addresses all relevant incidental and consequential matters.

It is also understood that the proposed changes simply update the LGPS Regulations to

reflect the outcome of the fund substitution direction. In practice, these changes have no legal effect.

Technical comments

Draft regulations 36(b)(iv) and (vii) replace 'Dundee' and 'Aberdeen' with 'City of Glasgow'. Both provisions should also repeal the references to 'City' immediately following 'Dundee' and 'Aberdeen.'

Section 9: Neonatal care leave

Question 20. Do you agree to the addition of neonatal care leave to the definition of child related leave?

Yes.

Other comments

Commencement

The draft regulations are unclear regarding their effective date. Given that the entitlement to neonatal care leave applies to children born on or after 6 April 2025, the amendments should be backdated to that date.

Correction for final pay calculations

The regulations should make it explicit that, for the purposes of calculating final pay, a member who is on paid neonatal care leave must be treated as if they had received the pay they would have received had they not been absent. The same principle should also apply to periods of paid parental bereavement leave and paid shared parental leave.

We do not believe the current regulations clearly provide for this, for the following reasons:

- **Regulation 10(2) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008** applies where a member has paid (or is treated as having paid) contributions for 'any period of maternity, paternity or adoption absence during the final pay period.' In such cases, the final pay is based on the pay the member would have received but for the absence. However, neonatal care leave, parental bereavement leave and shared parental leave are not listed in this provision, creating uncertainty as to whether regulation 10(2) can be relied upon

for these types of leave.

- **Regulation 10(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008** applies to absences from work for other reasons during the final pay period. It states that a member is ‘only to be treated for these Regulations as having received the pensionable pay the member would otherwise have received if the member has continued to pay contributions in respect of it for the period the member is absent.’ Where a member is on paid neonatal care leave or parental bereavement leave, they will pay contributions on their actual pensionable pay. As this differs from the 2009 Scheme notional pensionable pay, it is unclear whether regulation 10(3) can be applied in these circumstances.

To remove this ambiguity, it would be clearer to include a provision similar to regulation 8(4) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, which applies to members on ‘child-related leave’. Any such amendment should have retrospective effect from 1 April 2015.

Minor technical amends

- The definition of ‘statutory pay’ in Schedule 1 of the LGPS (Scotland) Regulations 2018 should also be amended to include ‘neonatal care pay’.
- Within the definition of ‘child-related leave’ in Schedule 1 of the LGPS (Scotland) Regulations 2018, the placement of the word ‘or’ should be moved. Currently, it appears at the end of ‘shared parental leave’, but, due to the inclusion of ‘neonatal care leave’, it should be moved to the end of ‘parental bereavement leave’.

Section 10: Concurrent Membership Aggregation

Question 21. Do you agree with the proposed amendment to Regulation 10(8)?

Yes.

Technical comments

The draft regulations lack clarity regarding the effective date.

The amendments are intended to correct an error in the original drafting of regulation 10 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 so that it reflects the original policy intention.

Since the Transitional Regulations came into force on 1 April 2015, and it is understood that administering authorities have been applying the policy intention since that date, the amendments to regulation 10 should have retrospective effect from 1 April 2015.

Additionally, draft regulation 44(a) proposes inserting additional wording before ‘and’ in regulation 10(1)(c) of the Transitional Regulations. However, the additional wording should be inserted before ‘;and’.

Section 11: Comments on other amendments in the draft regulations not covered in the consultation document

Extension of injury death benefits to cohabiting partners

Draft regulation 2 explicitly extends regulation 42 of the LGPS (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 to surviving cohabiting partners.

Commencement date

It is unclear whether the amendment will apply only to deaths occurring after 31 March 2026, or whether it will have retrospective effect.

We assume the intention is for the amendment to only apply to future deaths.

Drafting of inserted regulation 42(1)(b)(ib)

Inserted regulation 42(1)(b)(ib) says ‘subject to paragraph (2), if the deceased leaves a surviving cohabiting partner the surviving cohabiting partner shall be entitled to an annual allowance or lump sum, and’

- The reference to ‘subject to paragraph (2)’ appears incorrect for cohabiting partners. Paragraph (2) disqualifies surviving spouses or civil partners from receiving injury benefits if they were cohabiting with another person at the time of death. This condition should not apply to cohabiting partners.
- A comma should be inserted after ‘the deceased leaves a surviving cohabiting partner’.
- The use of a comma to separate sub-paragraph (ib) is inconsistent with the rest of regulation 42(1)(b), which uses semi-colons to separate list items. We recommend aligning the punctuation for consistency.

Definition of 'Cohabiting Partner' in Regulation 42(5B)

Inserted regulation 42(5B) defines a 'cohabiting partner'.

- The definition refers to 'A' and 'B', where 'B' is the deceased member. It would be helpful to clarify that 'A' refers to the surviving partner.
- The phrase 'when the person employed in a relevant employment died' does not reflect that the person may have left the employment between contracting the disease / sustaining the injury and dying.
- The definition differs from the one in Schedule 1 to the LGPS (Scotland) Regulations 2018:
 - The LGPS definition requires that the couple could have married or formed a civil partnership at the date of death. The definition in regulation 42 appears to require this condition to be met throughout the two-year period, which is more restrictive.
 - The conditions in regulation 42 are written in the past tense, whereas the conditions in the LGPS definition uses the present tense.

Fund substitution

Draft regulation 36(a) introduces a new paragraph 6(d) into schedule 4 to the LGPS (Scotland) Regulations 2018. This amendment explicitly enables fund substitution directions issued by Scottish Ministers to have backdated effect.

However, the amendment also requires a minor technical amendment: the full stop following sub-paragraph (c) should be omitted and replaced with a semicolon.

When issuing directions with backdated effect, Scottish Ministers will need to consider the following:

- the legal basis of any decisions and payments made by the former administering authority during the period in which, with hindsight, it was not technically the appropriate administering authority, and
- responsibility for any non-compliance with legislation that may have occurred during that period.

Unpaid parental bereavement leave

The Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 introduced consequential changes to the LGPS (Scotland) Regulations 2018, which came into effect on 6 April 2020.

However, there are a couple of technical errors within these amendments. Specifically, in regulations 10(5)(c) and 12(2) of the LGPS (Scotland) Regulations 2018, a member on unpaid parental bereavement leave is incorrectly treated in the same way as a member on unpaid ordinary maternity leave, ordinary adoption leave or paternity leave.

We note that draft regulation 8 addresses the issue in regulation 12(2).

However, the draft regulations do not correct the error in regulation 10(5)(c). Technically, when a member in the 50/50 section goes onto unpaid parental bereavement leave, they should automatically be moved back to the main section. It is unclear what is happening in practice for these cases. Therefore, if this issue is corrected, you will also need to liaise with authorities when deciding whether to backdate.

Note that it is possible that there may not have been any cases of unpaid parental bereavement leave where the issues identified here would be relevant.

Corrections in respect of regulation 11(5)

The LGPS (Miscellaneous Amendment) (Scotland) Regulations 2019 introduced regulation 11(5) into the LGPS (Scotland) Regulations 2018, with effect from 1 June 2018.

Regulation 11(5) stipulates that members who are on an authorised absence with unpaid or reduced pay (other than sick leave) for a continuous period of less than 31 days must continue to pay employee contributions based on the pensionable pay they would have received had they not been absent ('notional pay').

The draft regulations include several technical corrections and clarifications that are consequential to the introduction of regulation 11(5).

Commencement

The draft regulations are unclear as to whether these corrections should apply retrospectively.

As these changes are purely corrective and clarificatory in relation to regulation 11(5),

they should take effect from 1 June 2018, aligning with the date on which regulation 11(5) came into force. However, see the comments in the sub-section ‘Notional Pay vs Lost Pensionable Pay’ for further considerations.

Amendments incorrectly included

It appears that the Scottish Government based the draft amendments on those included in the equivalent consultation for LGPS (England and Wales). In that consultation, MHCLG proposed different provisions depending on whether CARE accrual would be based on assumed pensionable pay (APP) or notional pay.

In Scotland, regulation 11(5) has been in place for several years, and notional pay has been used. Therefore, there is no question that notional pay (rather than APP) will continue to apply.

We believe that the following draft regulations—based on APP being used—were incorrectly copied across from the LGPS England and Wales draft regulations:

- draft regulation 9(a), which amends regulation 15(2) of the LGPS (Scotland) Regulations 2018
- draft regulation 14, which amends regulation 21 of the LGPS (Scotland) Regulations 2018
- draft regulation 30(b), which amends regulation 62(4)(b) of the LGPS (Scotland) Regulations 2018.

Notional pay v lost pensionable pay

Regulation 11(5) states that employees must pay contributions on ‘the pensionable pay the member would have received during that period but for the absence.’ This is commonly referred to as notional pay.

However, employer contributions and CARE accrual will be based on lost pensionable pay.

Inserted regulation 21A of the LGPS (Scotland) Regulations 2018 defines lost pensionable pay as the pay the member would have received if they had been at work on normal pay during the absence. Normal pay excludes overtime and bonuses beyond contractual pay. Regulation 21A also specifies that, for the purposes of regulations 9 to 14, the member is not treated as receiving lost pensionable pay. Therefore, for regulation 11(5), the reference to notional pay remains in force.

In most cases, notional pay and lost pensionable pay will be the same. However, there are exceptions where notional pay could be higher, for example, if it includes overtime or bonuses. This creates an apparent inequity: members may pay contributions on a higher figure than the amount used for CARE accrual. Ideally, both figures should align.

If lost pensionable pay is adopted going forward, applying it retrospectively to 1 June 2018 becomes complex. This is because we understand that authorities and employers have historically used notional pay for all purposes—deducting contributions, calculating CARE accrual, and determining employer contributions. If lost pensionable pay is introduced with backdated effect, both employees and employers may have overpaid contributions, and benefits originally calculated on notional pay would need to be recalculated and reduced. SPPA may need to engage with authorities and employers to assess the scale of this issue.

Reduced pay authorised leave

Regulation 11(5) applies to unpaid and reduced pay authorised leave (excluding certain specified types of leave). The following draft regulations should therefore explicitly include reduced pay leave covered by regulation 11(5):

- draft regulation 9(b), which inserts regulation 15(3A) into the LGPS (Scotland) Regulations 2018
- draft regulation 30(c), which inserts regulation 62(4)(c) into the LGPS (Scotland) Regulations 2018.

Confirm that contributions under regulation 11(5) are paid in accordance with regulation 9 and 10

Regulation 11(5) should be amended to confirm that contributions are paid in accordance with regulations 9 and 10. This clarification would ensure consistency across other provisions. For example:

- regulation 18(1)(a) of the LGPS (Scotland) Regulations 2018 states that, on a refund, 'any contributions paid under or in accordance with regulation 9 or 10' are refundable
- paragraph 4(2)(a)(ii) of schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 includes periods where contributions were paid under regulations 9 or 10 when working out when a member attains the rule of 85.

Adding this reference to regulation 11(5) would make it clear that contributions on notional pay under 11(5) are potentially refundable and count towards rule of 85 calculations. This amendment should have retrospective effect from 1 June 2018.

Correction for final pay calculations

The regulations should explicitly confirm that, where a member is on leave covered by regulation 11(5), for final pay purposes the member is treated as receiving the pay they would have received but for the absence. This could be achieved by adding a provision to regulation 8 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, with backdated effect to 1 June 2018, using wording similar to 8(4).

This is because, as the member is paying contributions on the notional pay, and this pay may not be exactly the same as the 2009 Scheme notional pensionable pay, it is unclear whether we can rely on regulation 10(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 in all cases.

30-day threshold

In our response to the introduction of an equivalent regulation 11(5) in LGPS (England and Wales), we questioned whether 30 days was the correct threshold:

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

The change to compulsory contributions for short unpaid periods would also reduce the administrative burden on administering authorities. Under the current rules, they must record the dates of these breaks, check that any additional pension contribution contract to buy the ‘lost’ pension has been calculated

correctly, record that contract and check that the additional contributions have been paid. Under the new proposals, none of this would be necessary for short breaks.'

Regulation 11(5), which includes a 30-day threshold, has been in place in Scotland for many years. During this time, we have not been made aware of any issues or difficulties arising from its application. However, SPPA may wish to engage with employers and administering authorities to determine whether there is any interest or appetite for reducing the current 30-day threshold.

Other minor technical amendments

- In draft regulation 13(a), add closing bracket after '(lost pensionable pay'.
- There is a lack of clarity regarding why the definition of 'lost pensionable pay' in inserted regulation 21A is explicitly excluded or included for certain regulations. It appears these provisions have been replicated from the equivalent rules on assumed pensionable pay (APP), where such exclusions and inclusions have clear justification. For example, the APP definition is:
 - **excluded** for the purposes of regulations 9, 10, 11 (other than 11(2)), 12, and 14: this ensures that members on reduced pay or nil pay due to sickness or child-related leave do not pay contributions based on APP
 - **explicitly included** for the purposes of regulation 21: this clarifies that when determining the pensionable pay previously received for calculating APP, the APP the member was treated as receiving during a prior period of leave is included.

It is less clear why similar exclusions and inclusions have been applied to lost pensionable pay.

- Draft regulation 30 will insert regulation 62(4)(c) into the LGPS (Scotland) Regulations 2018. We believe an additional amendment is required to regulation 62(4)(a) by adding the words 'or sub-paragraph (c)' after 'where sub-paragraph (b)'.

Right to use AVCs to buy additional LGPS pension

Draft regulation 45 introduces new regulations 15(6) to 15(10) into the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014. These provisions

allow deferred members who left the scheme between 1 April 1998 and 31 March 2015 to use all or part of their AVCs to purchase additional LGPS pension.

Commencement date

It is unclear whether this provision will have backdated effect.

In our view, it should not. It should only apply where the member draws deferred benefits on or after 1 April 2026.

GAD guidance

Actuarial guidance and factors for calculating additional pension under new regulation 15(7) must be issued by Scottish Ministers in good time before 1 April 2026.

Councillor members

The new regulations permit deferred councillor members who left between 1 April 2009 and 31 March 2015 to use AVCs to buy additional LGPS pension. However, deferred councillor members who left between 1 April 1998 and 31 March 2009 are excluded.

This anomaly appears to arise because draft regulation 45 mirrors proposals for LGPS England & Wales, without reflecting Scottish differences:

- councillors in Scotland did not remain in the 1998 Scheme (unlike England & Wales) after 31 March 2009.
- councillors in Scotland have historically been allowed to use AVCs to buy additional LGPS pension.

Therefore, the inserted regulations should also extend to deferred councillor members who left between 1 April 1998 and 31 March 2009.

Regulation 3(13) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

In most cases, deferred members who left the LGPS before 1 April 2015 and elect to receive early payment of their benefits are, in technical terms, exercising their rights under regulation 3(13) (rather than under the relevant provisions of the earlier regulations). Consequently, this regulation should also be cited within the newly inserted regulation 15(6).

It is understood that the intention is not to extend these amendments to members who left

the Scheme prior to 1 April 1998. Therefore, any deferred members who left before that date would need to be expressly excluded from the scope of this addition to regulation 15(6).

Pension credit members

Pension credit members under the 1998 and 2009 Schemes cannot use AVCs to buy additional LGPS pension, whereas under the 2015 Scheme they can.

The draft regulations do not change this.

However, the issue of small residual AVC amounts (which cannot be taken tax-free or converted to an annuity) could also affect pension credit members under the 1998 and 2009 Schemes.

The Scottish Government should consider extending the proposal to pension credit members under the 1998 and 2009 Schemes, aligning them with the 2015 Scheme.

If adopted, new regulation 16(6) must reference regulation 150(5) of the LGPS (Scotland) Regulations 1998 and 95(5) and (7) of the LGPS (Administration) (Scotland) Regulations 2008.

Survivor benefits

Inserted regulation 15(9) states that the amount of additional pension under paragraph (7) will be determined in accordance with actuarial guidance.

It is unclear whether:

- members can choose if additional pension also provides survivor benefits, or
- additional survivor benefits will automatically be provided, or not at all.

Presumably, this can be addressed in the GAD guidance.

Consideration will need to be given as to how to amend the LGPS Regulations, so that the additional pension is included, or as the case may be excluded, in survivor pension calculations.

Lastly, if the right to use AVCs to purchase additional LGPS pension is extended to credit members under the 1998 and 2009 Schemes, as no survivor pensions are payable on their death, the additional pension should not include survivor benefits.

Interest

Inserted regulation 15(10) states that ‘no interest is payable under regulation 93 of the LGPS (Scotland) Regulations 1998 [...] in relation to the late payment of any additional pension under paragraph (7).’

The reference to regulation 93 is irrelevant as regulation 47 of the LGPS (Administration) (Scotland) Regulations 2008 refers to interest payable under the earlier regulations.

Employment link

Inserted regulation 16(8) requires that AVCs were paid in respect of the same employment ‘to which the benefits referred to in paragraph (6) relate.’ This wording may cause issues:

- if extended to pension credit members under the 1998 and 2009 Schemes, they did not pay AVCs or accrue LGPS pension as employees
- some members have AVCs due to reinstatement after personal pension mis-selling in the 1990s and may never have paid AVCs themselves.

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

Minor technical comment

Inserted regulation 15(6) should refer to ‘becomes entitled to payment of...’.

Section 12: Comments regarding the administrative impact of the proposals

We acknowledge that the changes proposed by the Scottish Government in this consultation will have a positive effect on members and their dependants. Many of these amendments reflect recommendations that administering authorities have been making for years, and we welcome the Government’s attention to issues that have long been neglected.

However, we have significant concerns about the capacity of administering authorities, pension software providers, and payroll teams to implement such a large number of Scheme changes within a short timeframe.

Administering authorities are already under considerable pressure due to major ongoing projects, including McCloud rectification and preparations for pension dashboards. These proposed changes will also require substantial input from pension software suppliers as they design, test, and deploy upgrades and new functionality. Furthermore, authorities report persistent difficulties in recruiting and retaining experienced staff, which will further limit their ability to deliver multiple changes affecting diverse aspects of the Scheme.

We urge the Scottish Government to remain mindful of the operational pressures on administering authorities before introducing further significant changes to the LGPS. While we support amendments that improve outcomes for members, if the pace of change prevents authorities and software suppliers from adequately developing, testing, and implementing system updates, revising processes, and producing updated member communications, this will ultimately harm member outcomes across the Scheme. We encourage the Government to take these factors into account when planning the timing and complexity of future amendments.