



Ministry of Housing,
Communities &
Local Government

Local Government Pension Scheme: Amendments to scheme regulations

Government response to the consultation



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Introduction

1. On 27 May 2016, the Department for Communities and Local Government opened a consultation on proposed amendments to the Local Government Pension Scheme (LGPS) Regulations 2013 ('the 2013 Regulations') and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 ('the 2014 Regulations'). The consultation period closed on 19 August 2016 and a copy of the consultation paper can be found at <https://www.gov.uk/government/consultations/local-government-pension-scheme-regulations>.

2. The consultation was split into two main sections:

- Proposed amendments to introduce the Government policy known as 'Fair Deal' in the LGPS. Fair Deal sets out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. It was proposed that LGPS 'Fair Deal' regulations replace existing pensions protection for local authority employees upon compulsory transfer.
- Other proposed amendments covering a range of different areas, and including proposals to give members greater flexibility in how they use their AVCs.

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

Part A – Overview of the responses received

4. There were 65 responses to the consultation, from a wide range of stakeholders. More than half of the responses (35) were from local government, but there were a significant number of responses from pensions lawyers and contractors, as well as a small number from individuals and other groups (including two trade unions, one charity and one actuarial firm).

5. There was significant variation in the levels of support for each of the proposed amendments. The Fair Deal proposals received the most interest, with three quarters of the respondents commenting specifically on these regulations. Over three-quarters of the responses to the Fair Deal proposals were supportive of the general policy aim, albeit often with serious reservations in respect of how the draft regulations would effectively deliver the Government's policy aims.

6. Of the other regulations consulted upon, the responses were highly varied in terms of the quantity of responses and level of support. A small number of the regulations had a notable number of negative responses, however only one (draft regulation 25) received an almost uniformly negative response.

Part B – Fair Deal

7. The May 2016 consultation included draft regulations to introduce the principles of the Government's [Fair Deal for Staff Pensions: staff transfers from central Government](#) policy into local government. This would provide that employees working in local government who had access to the LGPS and were compulsorily transferred to an independent provider would have continued access to the scheme in their new employment. The consultation outlined that the existing framework for the protection of pension rights for local government workers, via the Best Value Staff Transfers (Pensions) Direction 2007 ('the 2007 Direction'), would be replaced and the 2007 Direction would be revoked. Contractors would therefore no longer have the option of giving members access to a scheme certified as being broadly comparable to the LGPS.

8. In undertaking the consultation, we asked for general comments on the proposals and the draft regulations, but also asked for views specifically on:

- Method of implementation – it was proposed that contractors would need to become admission bodies upon joining the LGPS. Views were sought on whether an alternative approach would be better and why this would be the case (paragraph 4).
- The revocation of the 2007 Direction – it was noted that individuals previously transferred out of the LGPS under the 2007 Direction would not fall under the proposed new Fair Deal regulations at subsequent re-tenders. Views were sought on whether this was the right approach (paragraphs 15 and 16).

Response overview

9. 49 (75%) responses commented on the introduction of the Fair Deal policy. Of these, 8 responded positively, 30 were supportive with reservations whereas 11 were not supportive. The responses were diverse, raising a wide range of different issues and reflecting the different viewpoints of those involved. However, many of the concerns raised clustered around key issues and themes, as set out below:

Administrative complexity

A number of significant concerns, in particular from the local government sector, were raised around the additional administrative burdens that would arise from the new provisions, in particular due to the increase in employer numbers.

Some respondents identified technical issues with the draft regulations that could also lead to problems with the implementation of the policy.

'Pass-through' arrangements

A number of respondents advocated the introduction of 'pass-through'. Under pass-through, contractors pay a fixed employer contribution rate for the life of a contract, with the exception of certain costs that would still need to be met by the contractor (e.g. redundancy strain costs).

Some respondents felt pass-through would provide contractors with more certainty on the costs of pension provision, thus avoiding expensive risk premiums being built into contract costs and potentially opening up tender exercises to smaller organisations who would otherwise be unable to bear the risk.

The employers in scope

Some respondents noted that the regulations would cover many non-public sector organisations who participate in the LGPS as 'community' admission bodies, via admission agreements. It was observed that this could significantly restrict their flexibility and increase financial pressures on them in the longer term.

Some respondents felt this approach was inconsistent with the decision to exclude PCCs from the Fair Deal provisions on the grounds that they are not best value authorities.

Revocation of 2007 Direction

It was felt that the proposed revocation of the 2007 Direction without transitional protection for those already transferred out would unfairly remove some protections for staff who have previously been in the employment of a public sector employment. Respondents felt they should have continued protection on re-tender.

Exclusion of Wales

Some respondents noted that the consultation document didn't refer to the Welsh Authorities Staff Transfers (Pensions) Direction 2012 ('the 2012 Welsh Direction'), nor to the current protection system for employees of Welsh local authorities at all. Clarification was sought on the Government's approach.

Requirement for guidance

A number of consultees requested guidance on various aspects of the process, largely in view of the complexity of the arrangements from an administration perspective.

Government response

10. In view of the range and diversity of issues highlighted in the consultation responses, the Government consider that introducing the draft regulations which were consulted upon in May 2016 would not be in the best interests of LGPS administering authorities, members or employers. This is because:

- It is clear that the approach taken whereby contractors would automatically be given admitted body status has the potential to exacerbate the issues in the LGPS associated with an increasing number of employers.
- A number of the issues highlighted by respondents will require detailed policy consideration in order to ensure Fair Deal in the LGPS works in a fair, cost effective and administratively efficient manner. The issues that require further consideration include pass-through, the employers which are in scope and the transitional provisions relating to those already transferred out under the 2007 Direction (and the 2012 Welsh Direction).

- In addition, a number of respondents noted technical issues with the draft regulations which, if implemented as drafted, would lead to significant issues with how Fair Deal works in practice.

Nevertheless, we remain committed to introducing Fair Deal into the LGPS and intend to commence a consultation on new proposals for achieving Fair Deal in the LGPS by the end of the year. In doing so, we will give full consideration to the issues highlighted in the responses to the consultation, so that the new provisions are more likely to achieve a workable, efficient system of pensions protection for local authority employees.

11. In the period prior to any LGPS Fair Deal reforms being introduced, the 2007 Direction and 2012 Welsh Direction continue to have effect in England and Wales respectively and should be followed in all relevant cases.

Part C – Comments on other draft regulations

12. This section summarises the responses received to the other draft regulations which were consulted upon and details the approach the Government has taken to each in the Local Government Pension Scheme (Amendment) Regulations 2018 ('the 2018 Amendment Regulations').

Amendments to the LGPS Regulations 2013 ('the 2013 Regulations')

Local Government Service – Draft Regulations 3 and 4

13. Alongside the proposed amendments to introduce Fair Deal (as covered in the section above), it was proposed to make amendments to regulations 2 and 3 of the 2013 Regulations, to more closely align the LGPS's admission body provisions with the Public Service Pensions Act 2013.

Response overview

49 (75%) consultees responded on these regulations, with most of those comments relating to the Fair Deal policy. In respect of the changes which were proposed to align the 2013 Regulations with the Public Service Pensions Act 2013, there were some suggestions on how to improve the drafting, but no negative responses.

Government response

The amendments have been taken forward with drafting revisions via regulations 3 and 4 of the 2018 Amendment Regulations.

Temporary reduction in contributions – Draft regulation 6

14. An amendment to regulation 10(5) of the 2013 Regulations was proposed to make it clear that a member would not have to meet both conditions in sub-paragraphs (a) and (b) in order for their 50/50 election to be cancelled.

Response overview

There were no specific responses on this proposal.

Government response

This amendment has been taken forward without revision via regulation 5 of the 2018 Amendment Regulations.

Contributions during absence from work – Draft regulation 7

15. Regulation 11(4) of the 2013 Regulations confirms that a member remains an active member and pays contributions on any pay received whilst on certain specified absences. It was proposed to delete the words at the end of paragraph (c) as the accrual of earned pension is covered by regulations 23(4) and (5).

Response overview

There were no specific responses on this proposal.

Government response

This amendment has been taken forward without revision via regulation 6 of the 2018 Amendment Regulations.

Additional voluntary contributions (AVCs) – Draft regulations 8 and 9

16. In order to meet the aims of the Government's pension reform 'Freedom and Choice in Pensions', it was proposed that regulation 17 of the 2013 Regulations be amended and regulation 17A introduced in order to provide a wider range of options for members to access benefits from the Scheme's AVC arrangements.

Response overview

25 (38%) consultees responded on this regulation, the majority of responses being supportive with reservations. A wide variety of concerns were expressed, albeit mostly of a technical nature.

Government response

These amendments have not been made. It has become clear that introducing these provisions directly into the 2013 Regulations would create substantial administrative complexities, primarily due to difficulties standardising procedures among a large number of AVC providers (as exist in the LGPS). If a member wishes to use their AVC to take one or more uncrystallised funds pension lump sums (UFPLSs), they can do this by transferring their AVC out of the LGPS.

This approach ensures that individual members can take advantage of the pensions freedoms in respect of their AVC, whilst avoiding new administrative requirements for LGPS administering authorities and AVC providers.

Assumed pensionable pay – Draft regulation 10

17. An amendment to regulation 21 of the 2013 Regulations was proposed to allow employers greater discretion in the calculation of assumed pensionable pay (APP) where, in the view of the employer, the calculated figure would otherwise be too low.

In addition, a new paragraph was proposed to average the APP calculated for returning officers over a three year period, so as to avoid disproportionately high or low figures being used.

Response overview

16 (25%) consultees responded on this proposal, with only 3 negative responses. 3 respondents noted that the regulation did not allow an employer to substitute a lower APP in place of the figure calculated.

Government response

The amendments have been taken forward with modifications via regulation 7 of the 2018 Amendment Regulations. The modifications have been made in order to:

- a) require that an employer must have regard to the pay received by an individual in the previous 12 months when considering substituting a higher level of pensionable pay than calculated in paragraphs (4)(a)(i) or (4)(b)(i), and
- b) ensure that the calculation of APP for returning officers works for those who have more than one employment and for those who have been in their employment for less than three years.

We are content that the 2013 Regulations do not allow a lower rate of APP to be substituted in place of the calculated amount, as such an approach could be detrimental to members.

Pension accounts – Draft regulation 11

18. It was proposed to amend regulation 22(8) of the 2013 Regulations to end ‘automatic’ aggregation of pension accounts when a member with a deferred pension account becomes an active member again. Instead, members would be given the option to aggregate their deferred and active pension accounts within 12 months of becoming an active member again.

Response overview

17 (26%) consultees responded on this proposal, with the comments mostly supportive.

Government response

These amendments have not been made. We have concluded that introducing these changes would not be consistent with Schedule 7 of the Public Service Pensions Act 2013, which provides that final salary protection must be provided where a member re-joins a public service pension scheme within five years of leaving their previous public service pension scheme.

Retirement benefits – Draft regulation 12

19. An amendment to regulation 30(7)(b) of the 2013 Regulations was proposed to make clear that a member is only required to take benefits from their active pension account where their employment is terminated due to redundancy or business efficiency and the member is over age 55.

Response overview

3 (5%) consultees responded on this proposal, with no negative responses.

Government response

The amendment has been taken forward with a minor drafting revision via regulation 8 of the 2018 Amendment Regulations.

Election for lump sum instead of pension – Draft regulation 13

20. Amendments to regulation 33(2) of the 2013 Regulation were proposed to ensure that all lump sum payments are taken into account in calculating the overall limit on benefits a member can take as lump sum. Changes were necessary in part due to the proposed amendments to how members can take their AVCs from the LGPS (the new regulation 17A).

Response overview

5 (8%) consultees responded on this regulation, with all issues raised being technical in nature.

Government response

The amendment has been taken forward with drafting modifications via regulation 9 of the 2018 Amendment Regulations to reflect that regulation 17A is now no longer being introduced.

Survivor benefits – Draft regulation 14

21. Amendments to regulations 47(4)(a), 48(4)(a), 48(9)(a) and 48(10)(a) of the 2013 Regulations were proposed to provide that the pension a surviving partner or child receives be based on the tier 1 or 2 ill health pension the member received before death, as opposed to the amount of pension the member earned before the award of the ill health enhancement.

Response overview

2 (3%) consultees responded on this regulation, with all issues raised being technical in nature.

Government response

The amendments have been taken forward with a modification via regulation 10 of the 2018 Amendment Regulations to clarify that the new provisions should apply to the calculation contained in regulation 48(5)(a) too.

Exit credits – Draft regulation 15

22. An amendment to regulation 64 was proposed to allow for exit credits to be paid where an exiting employer's liabilities are fully funded and there is a surplus of assets in the pension fund. It was proposed that an exit credit must be paid within one month of the employer ceasing to have any active members.

Response overview

33 (49%) consultees responded on this regulation. All consultees were broadly supportive of the policy, but there were a couple of common reservations:

- 20 respondents raised concerns around the one month deadline, and whether it would be achievable for an administering authority to pay an exit credit within one month of the employer ceasing.
- 4 consultees supported the regulation but wanted assurance that, once an exit credit had been paid, there could be no further claim on the fund.

Government response

The amendments have been taken forward with modifications, via regulation 13 of the 2018 Amendment Regulations, to address the concerns raised by consultation respondents:

- The one month period for payment of an exit credit has been extended to three months.

- An additional paragraph confirms that where an exit credit has been paid no further payments are due from the administering authority.

Employer's further payments – Draft regulation 16

23. The proposed amendment to regulation 68(2) of the 2013 Regulations updated the list of circumstances where an employer may be required to make additional payments to the fund to include an employer's waiver of actuarial reductions under regulation 30(5).

Response overview

4 (6%) consultees responded on this regulation, with all issues raised being technical in nature.

Government response

The amendments have been taken forward without revision via regulation 14 of the 2018 Amendment Regulations.

Public Sector Transfer Club – Draft regulations 17, 18 and 19

24. The Public Sector Transfer Club allows easier movement of staff within the public sector by making sure that employees receive broadly equivalent credits when they transfer their pensionable service from one Club scheme to another.

It was proposed to amend regulations 96, 100 and 101 of the 2013 Regulations to confirm that, where a transfer is a Club transfer, the administering authority must comply with the Public Sector Transfer Club Memorandum.

Response overview

6 (9%) consultees responded on these proposals. The responses were mainly supportive but suggested a number of drafting improvements.

Government response

The amendments have been taken forward with minor drafting modifications via regulations 15, 16 and 17 of the 2018 Amendment Regulations. In addition, the legislative references to the Pension Schemes Act 1993 contained in regulation 96(1) have been updated following changes made by the Pension Schemes Act 2015.

Definitions – Draft regulation 20

25. Amendments to Schedule 1 were proposed to introduce necessary definitions relating to local government service, the Fair Deal policy and the Public Sector Transfer Club. In addition it was proposed to amend the definitions of statutory pay and partner.

Response overview

3 (5%) consultees responded on this regulation. The responses were mainly supportive but suggested a number of drafting improvements.

Government response

With the exception of the new definitions which related to Fair Deal (protected transferee and protected transferee employer), these amendments have been taken forward via regulation 20 of the 2018 Amendment Regulations. Modifications have been made in the following respects:

- Definition of Club memorandum – for completeness, the definition includes references to previous versions of the Club memorandum which have been in force since 1 April 2014.
- Definition of local government service – the definition now refers to the content of regulation 2(1A).

It should be noted that the new definition of local government service has resulted in consequential amendments to regulations 30, 51, 102 and 103 of the 2013 Regulations and to regulation 7 of the 2014 Regulations (respectively, via regulations 8, 12, 18, 19 and 25 of the 2018 Amendment Regulations). These amendments ensure that the change to the definition does not result in unintended changes in how the term has effect.

Scheme employers - Draft regulations 21 and 22

26. Amendments to Part 2 of Schedule 2 and Part 2 of Schedule 3 were proposed in order to clarify that some of the bodies named in paragraphs (1) to (5) of Part 1 of the Schedule are not local authorities.

Amendments to Part 3 of Schedule 2 were also proposed in order to:

- (a) confirm that admission agreements can have retrospective effect,
- (b) remove the requirement for administering authorities to make admission agreements available for public inspection, and
- (c) remove the requirement for administering authorities to inform the Secretary of State when they enter into admission agreements.

A minor amendment to Part 3 of Schedule 2 relating to Fair Deal was also proposed.

Response overview

21 (32%) consultees responded on this regulation, with a mixed response of predominantly supportive responses. Many of the reservations focussed on the effect of backdating admission agreements, with some feeling that this could discourage the prompt signature of admission agreements by new Scheme employers, particularly in the case of outsourcings.

Government response

With the exception of the new provision which related to Fair Deal, these amendments have been taken forward without revision, via regulations 21 and 22 of the 2018 Amendment Regulations. Whilst we recognise the concerns raised by consultees, we are keen to ensure that the 2013 Regulations are clear that an admission agreement can have retrospective effect. We hope to take a wider look at admission body status in the LGPS in the new Fair Deal consultation we plan to issue before the end of the year.

Lifetime allowance protections

27. One respondent pointed out that regulation 50(2) of the 2013 Regulations needed updating to refer to individual protection. Individual protection is a lifetime allowance protection provided for by the Finance Act 2004.

This amendment has been made via regulation 11 of the 2018 Amendment Regulations. We are content that this is a minor clarifying amendment which ensures the 2013 Regulations remain in line with primary legislation.

Amendments to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 ('the 2014 Regulations')

Membership before 1st April 2014 – Draft regulations 24 and 29

28. An amendment to regulation 3 of the 2014 Regulations was proposed to remove the need for an employer to give consent when a member aged between 55 and 59 chooses early payment of benefits under Regulations 30(2) and 30A(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007. A consequential amendment to Schedule 2 was proposed to ensure the effective working of the rule of 85. The 'rule of 85' provides that certain members, whose age and scheme membership in full years equals at least 85, may access some or all of their scheme benefits without actuarial reductions.

Consultees were also invited to comment on whether the 2014 Regulations should be amended to give the same right to members who left the LGPS with deferred benefits prior to 1 April 2008, as well as how that might be achieved.

Response overview

23 (35%) consultees responded on these amendments, with the responses predominantly positive. There was a strong feeling that this option should be extended to members who left the LGPS prior to April 2008.

Government response

The entitlement amendments have been taken forward via regulation 24 of the 2018 Amendment Regulations, with modifications to the LGPS Regulations 1995 and the LGPS Regulations 1997 to provide that this option is extended to members aged between 55 and 59 who left the LGPS prior to April 2008.

The amendment to Schedule 2 has been taken forward via regulation 30 of the 2018 Amendment Regulations with several additional amendments made in order to ensure the rule of 85 works effectively for pre-April 2014 leavers who choose to make use of the new freedoms.

Transfers – Draft regulation 25

29. An amendment to regulation 9 of the 2014 Regulations was proposed to provide that members who had transferred in from another public service pension scheme and who would have met the statutory underpin criteria if they had been in the LGPS are granted underpin protection.

The statutory underpin is a mechanism via which certain protected members can have the better of the benefits they would have received under the 2008 Scheme or the 2014 Scheme.

Response overview

20 (31%) consultees responded on this regulation, almost entirely from the local government sector. The responses were almost uniformly negative, with the main issues

raised relating to the additional cost burden of administering the change and the measure's perceived unfairness.

Government response

This amendment has been taken forward without revision via regulation 26 of the 2018 Amendment Regulations. Whilst we understand the strength of feeling expressed in the consultation responses, the protection brings the LGPS in line with other public service pension schemes in their approach to transitional protection under s18(5) the Public Service Pensions Act 2013. The additional costs to the scheme from introducing this benefit are also likely to be small as this protection is likely to benefit only a small number of members.

Interfund adjustments – Draft regulation 26

30. An amendment to regulation 10 of the 2014 Regulations was proposed to provide that a member with a deferred benefit relating to benefits accrued before 1 April 2014 has 12 months from joining (or such longer period as the employer permits) to elect to aggregate that benefit with their 2014 Scheme pensions record. Currently there is no time limit for members to make this election.

Response overview

3 (5%) consultees responded on this regulation. Two of the responses suggested drafting amendments.

Government response

The amendment has been taken forward with a minor drafting revision via regulation 27 of the 2018 Amendment Regulations.

Contributions – Draft regulation 27

31. An amendment was proposed to make clear that any refund of contributions under regulation 14(2) of the 2014 Regulations should include any additional contributions that the member paid.

Response overview

There were no specific responses on this proposal.

Government response

This amendment has been taken forward without revision via regulation 28 of the 2018 Amendment Regulations.

Additional contributions – Draft regulation 28

32. Amendments to regulation 15 of the 2014 Regulations were proposed to provide that regulations 17 and 17A apply to AVC contracts entered into prior to 1st April 2014 as they apply to AVC contracts entered into after that, with certain exceptions.

Response overview

2 (3%) consultees responded on this regulation and both were supportive.

Government response

These amendments have been taken forward with minor drafting changes via regulation 29 of the 2018 Amendment Regulations to reflect that regulation 17A of the 2013 Regulations is now no longer being introduced.

Transitional provisions – Draft regulation 30

33. This was a standalone provision to make clear that existing admission agreements are to be treated as if they were the subject of a determination under section 2(5) of the Public Services Pensions Act 2013. It was also proposed each administering authority would have 12 months to publish a list of their current admission agreements.

Response overview

6 (9%) consultees responded on this regulation and were supportive of the overall measure, although 3 suggested a 12 month period was too long and that a shorter timeframe might be more appropriate.

Government response

These amendments have been taken forward without revision via regulation 31 of the 2018 Amendment Regulations.