



Ministry of Housing,
Communities &
Local Government

Local Government Pension Scheme: Technical Amendments to Benefits

Policy Consultation



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Scope of the consultation

Topic of this consultation:	This consultation seeks views on proposed amendments to the rules of the Local Government Pension Scheme. These amendments are necessary to respond to recent legal judgments and maintain existing pensions policy objectives.
Scope of this consultation:	MHCLG is consulting on changes that will affect members of the LGPS and those who may be entitled to survivor benefits from them.
Geographical scope:	These proposals relate to the Local Government Pension Scheme in England and Wales only.
Impact Assessment:	<p>The government believes that any impact on protected groups as a result of these reforms would simply be a natural consequence of the composition of the local government workforce and does not believe that there would be a disproportionate impact on particular groups aside from as a consequence of this.</p> <p>How much individual members or their beneficiaries may benefit from these reforms will be determined by a combination of factors, including when they were employed, their pensionable earnings, the length of any pensionable service and the specific benefits of the scheme to which the deceased belonged. We do not hold data from which these costs could be modelled with any accuracy, however we do not anticipate that these extra costs will be material to the Scheme as a whole.</p>

Basic Information

To:	This consultation will be of greatest interest to members of the the Local Government Pension Scheme, as well as those who might be entitled to survivor benefits from them. Any change to the Local Government Pension Scheme is likely to be of interest to other stakeholders as well, such as local pension fund administrators, those who advise them, other LGPS employers and local taxpayers.
Body/bodies responsible for the consultation:	LGF Reform and Pensions Team, Ministry of Housing, Communities and Local Government.
Duration:	This consultation will last for 8 weeks from 4 October 2018
Enquiries:	For any enquiries about the consultation please contact LGpensions@communities.gsi.gov.uk
How to respond:	Please respond by email to:

LGpensions@communities.gsi.gov.uk

Alternatively, please send postal responses to:

LGF Reform and Pensions Team
Benefits Consultation
Ministry for Housing, Communities and Local Government
2nd Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post-code),
- an email address, and
- a contact telephone number

If you are responding in writing, please make it clear which questions you are responding to.

Introduction – Purpose of the Reforms

The Local Government Pension Scheme is a statutory scheme established under the Superannuation Act 1972. Its rules and benefits are set out in regulations¹.

The legislation governing the LGPS has been changed at various points in time. This has generally been in order to maintain the affordability and effectiveness of the LGPS, as well as to reflect wider legal changes. Changes have also been necessary to reflect the changing composition and working practices of those delivering local public services.

Since the Human Rights Act 1998 came into force, LGPS funds also need to interpret those rules consistently with the human rights of scheme members. Recently there have been a number of challenges on grounds that the plain meaning of the rules can be inconsistent with the human rights of those affected by them.

The purpose of this consultation is to propose some changes to the scheme to accommodate judgments already made and to give some flexibility to respond to future developments.

A number of those challenges have focussed on the issue of survivor benefits. The Scheme provides a variety of insurance-style benefits on the death of a scheme member. The nature of these benefits has changed over time in line with societal developments and evolving family structures. For example, for all active members, the scheme now includes equal benefits for the partners of survivors irrespective of the legal form of their relationship (i.e. marriage, civil partnership or co-habitation).

As the scope of these benefits has expanded over the years to take in wider numbers of beneficiaries, so has the cost of providing them. To manage this cost, it is long-standing government policy that benefits should only exceptionally be improved retrospectively and that only members with active membership at the time the benefit is brought in should be entitled to them.

However, there are instances when the rules around benefits have to be redrawn, and this consultation covers a number of those.

¹ Principally the Local Government Pension Scheme Regulations 2013

Survivor Benefits

Amendment to benefits payable to same-sex married or civil partners

One successful legal challenge was brought in the case of Walker v Innospec². Mr Walker was not a member of the LGPS, he was a member of a private defined benefit scheme. On 12th July 2017, the Supreme Court found that Mr Walker's male spouse was entitled to the same benefits which would be paid if Mr Walker had left a widow in an opposite sex marriage. The judgment meant that the survivor's pension would be calculated on all the years of Mr Walker's service with Innospec provided that, at the date of Mr Walker's death, they remained married. Prior to the judgment, pension schemes had been able to make use of a provision within the Equality Act 2010 which allowed service accrued before 5 December 2005 to be disregarded in calculating the pension entitlement of a surviving civil partner or surviving same-sex spouse.

The implication of this judgment for all pension schemes with similar benefits, like the LGPS, is that survivors of registered civil partnerships or same-sex marriages should be provided with benefits equal to those the scheme member would have left to an opposite sex surviving spouse. In the LGPS, surviving partners in a civil partnership or same sex marriage of either sex are all currently afforded benefits equivalent to widowers.

This change would be significant as earlier LGPS schemes, on which the pensions of certain members are still determined, recognise past service back to 1978 for widows of post-service marriages but only back to 1988 for widowers of post-service marriages.

The Government has decided that all public service pension schemes should implement changes to provide that survivors of registered civil partnerships or same-sex marriage will be provided with benefits that replicate those provided to widows. These changes will be implemented in LGPS as though they had applied from the date civil partnerships and same-sex marriages were implemented. Hence there will be a need for LGPS administering authorities to revisit all awards made under the current rules to partners affected and pay any additional sums that are due.

Many same-sex survivors of a public service pension scheme member will benefit from this change. How much they benefit will be determined by a combination of factors, including when the deceased was employed, their pensionable earnings, the length of any pensionable service and the specific benefits of the scheme to which the deceased belonged.

² Judgment available at : <https://www.supremecourt.uk/cases/uksc-2016-0090.html>

This differential treatment between widows and widowers has been held to be lawful by the Supreme Court in a long line of cases. The European Court of Justice judgment in Barber required schemes to provide equal survivor benefits for males who survive their female spouse in relation to service only from May 1990. The LGPS meets this requirement, but it is not proposed at this point to equalise benefits for all males who survive their female spouse on the same basis as they are provided to females who survive their male spouse. The costs of doing so would be significant - £2.8bn across different public sector schemes. The government had separately consulted widely on this issue in the joint HMT and DWP review of survivor benefits in Occupational Pension Schemes: <https://www.gov.uk/government/publications/occupational-pension-schemes-review-of-survivor-benefits>. No final decisions have been made on these issues and the Government will respond on this matter separately and in due course.

Question One - Do you agree with this approach?

We intend to undertake separately a technical consultation on draft amendment regulations to give effect to this change in the current and previous Schemes.

Power to issue statutory guidance

A further successful challenge was brought in the very similar cases of Brewster³ and Elmes⁴. In February of last year the Supreme Court handed down its judgment in the case of Brewster. The claimant, who was the unmarried partner of a deceased member of the Northern Irish Local Government Pension Scheme, successfully argued that the requirement for her partner to have provided a written nomination of her as the recipient of his survivor benefits was unlawful.

The LGPS in England and Wales maintained a similar nomination requirement for several years (between 2008 and 2014). Prior to 2008 no unmarried partners were recognised for survivor benefit purposes and from 1 April 2014 no nomination form was required to establish eligibility. The change in 2014 was made in part in response to legal action that was brought by the unmarried partner of a deceased scheme member, Ms Elmes. Her circumstances were almost identical to those in Brewster and the rules were changed in LGPS ahead of the judgment in Brewster. Ms Elmes' case was stayed behind Brewster and has since been settled in the claimant's favour.

On 17 August last year the Department wrote to funds asking them to review their records and see whether they now need to offer a survivor pension to partners whose claim for a benefit had been rejected at the time the nomination requirement was in force. However,

³ Judgment available at: <https://www.supremecourt.uk/cases/uksc-2014-0180.html>

⁴ The judgment is not yet available

there will also be cases where as the fund judged that there was no eligible surviving partner any dependent children were given a larger pension than they would have received had there been an eligible partner. Accordingly, where a partner is now found to be eligible for a survivor benefit (which would be backdated to the scheme member's death) the children's pension would need to be reduced and, in theory, the overpayment recovered.

Although it was not necessary for this to be decided in the case before him, the Judge in Elmes queried what account would need to be taken by funds of the rights of the children affected.

The Department's view of the implications of this case was set out in the letter of 17 August 2017. However, that letter recognised that the Department's view had no legal force as the Secretary of State had no power to issue statutory guidance in this area. Accordingly it is possible for funds to reach different and inconsistent conclusions about to the entitlements of beneficiaries in identical positions.

This is contrary to the Government's view that the LGPS is a single scheme administered locally. It was always our intention that equivalent members' benefits should be the same everywhere. These issues are sensitive and to avoid funds taking different approaches, the government proposes to create a power to issue statutory guidance on the operation of the scheme's rules. The aim of this is to deliver greater standardisation of approach, in particular on how the interpretative duties under the Human Rights Act are met. An alternative would be to amend the rules of the scheme in relation to each judgment as it is made. Such an approach would be less flexible to inevitable changes in position as case law develops. It would also require a greater call on Parliamentary time.

Question Two - Do you agree with this approach?

We intend to undertake separately a separate technical consultation on draft amendment regulations to give effect to this change.

Technical Amendment

Early access to benefits for deferred members of 1995 Scheme

The Government consulted in 2016 on amendments to the LGPS regulations⁵. These proposals set out the Government's wish to remove the requirement for persons aged between age 55 and 60 to obtain their employer's consent before drawing their benefits early (with the appropriate actuarial reduction for early payment). This intention was restated in the Government response published earlier this year. In that response we said that we proposed to remove the need for an employer to give consent when a member who left the LGPS with deferred benefits prior to 1 April 2008, and is aged between 55 and 59, chooses early payment of their benefits.

Regulations were made on 17 April 2018 that were intended to have that effect but it has since become apparent that in relation to one group of members the Regulations have not had the intended effect. Our intention was that Regulation 24 of the 2018 Amendment Regulations [SI 2018/493] should modify the LGPS Regulations 1995 (as preserved) to provide that this option is extended to members over the age of 55 who left the LGPS with a deferred benefit under that scheme.

This has not been achieved because the 1995 Scheme rules were constructed differently from other Schemes. The 1995 Scheme provided that a person may elect for early payment of their benefits *within three months of attaining age 60*, or if later, the date on which they ceased to be employed in local government employment. The Amendment Regulations reduced the age at which that choice could be exercised to 55, but left this as a single, one-off point at which that flexibility could be exercised.

Successor LGPS schemes had adopted a different formulation and allowed members early access to their *benefits on or after* reaching the earliest age at which benefits could be drawn down early. This gave them an on-going flexibility to make an election at any time after having reached the revised minimum age.

The amendments made earlier this year have created a lacuna whereby members who left active membership of the LGPS prior to 1 April 1998 and who were aged between 55 and 60 are likely to have lost the option to elect for early payment of benefits. We therefore intend to amend the regulations again to fully achieve the initial policy aim, which is to allow all deferred members over the age of 55 to draw down their pensions early, with the appropriate actuarial reduction.

⁵ <https://www.gov.uk/government/consultations/local-government-pension-scheme-regulations>

It is also proposed to allow anyone who has been prevented from getting early access to their pensions because of this oversight to be able to backdate their application to 14 May 2018. This facility will be available for 6 months from the coming into force of the amendment to the 1995 scheme rules.

Question Three - Do you agree with this approach?

We intend to undertake a separate technical consultation on draft amendment regulations to give effect to this change to the 1995 Scheme.

Equality Impact Assessment

Each of these measures is intended to increase equality of treatment between scheme members. They extend or clarify entitlements under the scheme for certain groups of members who previously have not had the benefit of them.

The government believes that any other impact on protected groups as a result of these reforms would simply be a natural consequence of the composition of the local government workforce and does not believe that there would be a disproportionate impact on particular groups aside from as a consequence of this.

Question Four – Do you agree with this assessment? Please identify any evidence you think would support your response.

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation, and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at Annex A.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

Annex A

Personal data

The following is to explain your rights and give you the information you are be entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at dataprotection@communities.gsi.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

Section 21 of the Public Service Pension Act 2013 requires the scheme authority, in this case the Secretary of State, to consult such persons as he believes are going to be affected before making any regulations for the Local Government Pension Scheme. MHCLG will process personal data only as necessary for the effective performance of that duty.

3. With whom we will be sharing your personal data

We do not anticipate sharing personal data with any third party.

4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the consultation

5. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

6. Your personal data will not be sent overseas

7. **Your personal data will not be used for any automated decision making.**
8. **Your personal data will be stored in a secure government IT system.**