

This response is made on behalf of East Sussex Pension Fund (ESPF, the Fund) in its capacity as scheme manager of an LGPS Fund.

Our response to the call for evidence is set out below and we would be pleased to expand, clarify or discuss any of the comments made.

Where this response uses the term LGPS fund the term should be taken to refer to the administering authority (scheme manager) as set out in the Local Government Pension Regulations 2013.

Equalising survivor benefits

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

We support the proposed amendments to remove the discrimination.

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

We believe it is appropriate to change the LGPS Regs so that all pensions to the survivor of a marriage or civil partnership is calculated the same way irrespective of their sex/sexual orientation or either the member or survivor. The benefits should be backdated to dates set out in the consultation and amount payable at the rate due to the higher of male/female entitlement.

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

Whilst we fully support the proposals, we hope that Ministers have learnt from other recent projects that have spanned a decade or more (such as GMP and McCloud) and ensure that the implementation period for the remedy is more realistic and reasonable. This will be a complex and challenging project just to identify (relatives can be upset and offended by late questioning, which may not lead to additional benefits) and find the survivors (via archived files, tracing agencies, very hard where no pension being paid), let alone performing the calculations. We need to recognise that some pension administration software providers development time is already tied up with automating McCloud calculation routines for the next two years. That said, we also need to appreciate the likely age profile of the affected survivors, is such that this should be prioritised amongst the wider benefit changes identified in the consultation. The administrative impact of this undertaking will be very significant as historical pension changes tend to have to be calculated manually.

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

We would appreciate more detailed guidance from MHCLG on more opaque areas such as how to deal with situations where the survivor has subsequently died, possibly recovery of an overpaid child pension where a backdated partner's pension becomes payable, impact on trivial commutation values, levels of interest on retrospective benefits due, tax implications,

impact on transfer out values (which include value of survivor benefits), define reasonable attempts to find a survivor and most importantly timescales to work towards.

Cohabitee survivor benefits

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

Yes, it's logical to remove the requirement for a cohabitee to be nominated.

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

We don't believe there is any administrative impact of this change.

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

We agree that the decision not to backdate cohabiting partner's pensions for leavers before 1 April 2008 is the correct and fair thing to do. Similar process to be followed and resulting administrative burden as per Q3 above, (more so to identify death between 2008 and 2014 with no spouse or equivalent pension is payable then decide any cohabiting status at date of death – manual process).

Death grants – removing age 75 limit

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

Yes, we have concerns that an age cap could be classed as age discrimination.

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

We believe identifying deaths in scope will be easy but determining beneficiaries for some cases will be much more difficult and time consuming – thus to repeat that retrospective changes are complex from an administrative perspective.

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

We accept the change should be backdated to 6 April 2011 when legislation changed.

Q11 – Do you have any comments on the administrative impact, particularly in identifying historic cases where death grants that were not paid would now be paid?

Should this change be implemented and historic payments made, we would appreciate, the removal of, or more guidance on, the need to use the special lump sum death benefits tax charge of 45% and if it should be paid to the personal representative (see Q12). There may also be tax implications if the survivor's pension is being commuted under triviality whilst other benefits remain. This has the potential to become a very complex area.

Death grants – personal representatives

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

Yes, we agree paying death grant benefits to personal representatives after two years (from date of death) should be removed.

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

No comment

Gender pensions gap – authorised absences under 31 days

Q14: Do you agree that the LGPS Regulations should be updated so that any unpaid leave under 31 days is pensionable as a way to address the gender pension gap?

We believe that the current need for members to make a positive election within a limited period of returning to work does lead to short gaps in service for members which will predominantly impact women due to childcare and caring responsibilities. Making short period of authorised unpaid leave pensionable will help resolve the issue. Most unpaid leave is for a few days covering child sickness so not clear why the proposal is not, say, 7 days?

Q15: Do you agree the government should use the actual lost pay option when calculating contributions, or do you think APP should be the chosen option? Please explain the reasons for your view.

Using actual pay lost is simple for members to understand and pension payroll software to automate.

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

Q16 – Do you agree with the proposal to align the cost of buying back unpaid leave over 30 days with standard member contribution rates?

We agree the cost of buying back additional pension should use the actual lost pay approach (not APP), it's the question of what the period of unpaid leave is being treated as pensionable. A longer period could potentially result in lower paid members (mainly woman) electing to opt-out of the scheme.

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

We agree 30 days is not long enough. The proposal should be within one year or date of leaving, if earlier.

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

We are opened minded to the limit being removed. We think it very unlikely that employers will approve unpaid leave of absence of more than three years. The additional pension via APC is complex and requires more clarity – with annual limits on what can be bought, using age and sex related rates, used both for purchasing lost and extra pension, employers sometimes contribute in full or part, can have multiple regular contribution contracts. Should survivor's and children's benefits be included?

Gender pensions gap – pension contributions during child related leave

Q19 – Do you agree with updating the definition of child-related leave to include all periods of additional maternity, adoption and shared parental leave without pay?

We agree with the proposal that all child-related leave becoming pensionable will have a positive impact in reducing the gender pensions gap.

Gender pensions gap – making reporting mandatory in the LGPS

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

Yes, we agree. Measuring the pensions gap over time will help determine if further changes are required

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

We agree that a three-year cycle for reporting is an appropriate timeframe that gives a better opportunity for a change in the gap to materialise. In addition, it minimalises the administrative burden of a more regular exercise.

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

We agree small data sets should not be included, so agreed with a 100 threshold, but believe active LGPS members should be the measure.

Q23 – Do you agree with the gender pension gap definition being ‘the percentage difference in the pension income for men and women over a typical working life’?

We agree that the definition will capture pension gap data. MHCLG does need to specify the terms to be used by the 100 administering authorities (and their Actuaries) in the LGPS to ensure reporting consistency as regard future assumptions. Members can have multiple roles at different employers in the same or different Funds, as well as employments outside Local Govt (some transferred-in, others not), some will be paying additional contributions, throughout their working lifetimes. We appreciate the 2025 valuations are underway and data may already be provided to Fund Actuaries, so hopefully, they have agreed a joined-up way forward.

Q24 – Do you agree with the gender pension savings gap being ‘the percentage difference in the pension savings accrued over one year for men and women’?

We believe this measure may be a more meaningful measure to recognise the movement in the pensions gap and be more easily delivered. See our response to Q23.

Opt-outs

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

We believe the annual report is an appropriate place for opt-out data to be reported but it would also be sensible to capture the data centrally, say via the Pension Regulator annual returns.

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

This data is not currently collected and administering authorities having to collect new data from employers will be challenging. The administering authorities do not know if non-member individuals involved in auto enrolment are still employed or left. Employers can also pay short-term refunds via employer payrolls that administering authorities have no sight off. Administering authorities have large numbers of scheme employers with differing engagement (some have employees whom will never be eligible to join the LGPS like Teachers & Fire staff [or

over age 75's] whilst other small employer often has no dedicated staff for pensions). It will be essential for payroll software suppliers to come up with automated solutions (an eligible for LGPS marker?). Employer responsibilities would need to be document in the Fund's administration strategy with consequences for non-compliance.

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

The guidance should set out clearly which employees should be in-scope (or excluded from scope). The format of the required data (at individual or role level, only reporting on position at year end? What to do with casual workers?) to evidence the opt-out rates.

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

MHCLG has considered data protection legislation in that pension funds can only collect data required for a legitimate purpose – not sure collecting data about employees not in the scheme is appropriate? However, if collected using a secure, anonymous form they we would support the approach to collecting “additional data” when a member opts out.

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

An officer of an administering authority acting on behalf of both the pensions board and committee.

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

We would expect and support the reason for opt-out (from a possible drop-down option of reasons). We would be cautious about trying to determine if employers are encouraging opt-outs at an individual level and some data items may be contentious. We understand the MHCLG desire to understand if particular groups are disproportionately represented in opt-outs at administering authority level.

Forfeiture

Q31 – Do you agree that the government should amend regulations 91 and 93 of the 2013 Regulations to remove the requirement that the member must have left employment because of the offence in order for an LGPS employer to be able to make an application for a forfeiture certificate or to recover against a monetary obligation?

Yes, an individual election to leave employment when knowingly being investigated can create an avoidance loophole.

Q32 – Do you agree that the three-month time limit for an LGPS employer to make an application for a forfeiture certificate should be removed?

We also support removing the time limit for an employer to make a forfeiture application.

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

We don't see that Regulation 92 adds much value as it appears to be the same as the default position. It may be helpful for MHCLG to clarify what action the Administering Authority is supposed to take if the member requests to retire with the maximum retirement grant or transfer-out when the employer has applied for a forfeiture certificate.

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

Yes, the change needs to apply to all members.

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

Yes, as employers rarely use the process.

McCloud

Q36 – Do you agree with the government's proposal for pension debits and credits?

Yes. Statutory Guidance for divorce pension debit/ pension credit members is outstanding, impacting the 2025 ABS and the McCloud remedy. The proposals set out in the consultation seem reasonable and are consistent with how the wider remedy works and will presumably be impacted by the 31 August 2026 implementation deadline. Given the MHCLG delay in providing any guidance have potentially exasperated any overpayments, it would good to have some clarity if the debits are to be reclaimed or written-off?

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

Yes.

Q38 – Do you agree with the government's proposal to clarify if interest applies on Club Transfers?

Yes.

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

Yes.

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

We believe the proposal described is reasonable, but we would need to see and understand the GAD guidance. The change would mean that members transferring remediable service from other public service pension schemes over the age of 65 would receive underpin protection when they transfer to the LGPS. It is not clear if MHCLG expects administering authorities to retrospectively revisit transfers-in since 1st April 2014?

Lifetime Allowance

Q41 – Do you agree with the proposal to omit Regulation 50 and the equivalents to it (to the extent that they have been preserved) in the 1997 and 2008 Regulations?

Yes.

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

Yes.

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

Yes.

Q44 – Do you agree with the proposed approach to PCELSs?

Yes.

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

Yes.

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

Yes. We believe these proposals will bring the regulations up to date and in line with some overriding legislation.

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

We applaud the spirit of the proposals but clarity on detail is important. We agree with the loosening of the five year refund rules but not that a member should lose their right to a refund if not paid before age 75. We remain concerned about the disruption and administrative impact of implementing the proposals.

Administrative impact of proposals

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

We understand the good intentions of the proposals from which will result in positive outcomes for some members and survivors. However, we expect there will be a significant impact on administrators who have limited and overstretched resources. Administering Authorities are already struggling to keep up with other large/complex pension projects, often driven by Government changes, such as McCloud, Pensions Dashboard, GMP reconciliation/rectification, Unitarisation, Pooling changes/Fit for the Future reform. There is also the matter of keeping pace with technological improvements in AI and automating processes/procedures and creating online workflow and interaction with both employers and members. What we need is a realistic implementation period, particularly for the retrospective aspects such as even identifying and finding survivors to pay. We will have to revisit death estates that were closed years ago and may then make no additional payments, potentially creating many complaints about lack of unnecessary interference and lack of empathy.

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

We think the proposals could be split into phases/stages and areas within prioritised. MHCLG should recognise some areas of change are long standing areas of inequity and retrospective that need to be addressed first. There are other proposals that, whilst important, are forward looking and can be implemented later.

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

Not at this stage – pension administration and payroll software costs (and third party consultancy support) can be significant but the most important aspect is the timing and cost to the Administering Authorities.

Public Sector Equality Duty

Q51 – Do you consider that there are any particular groups with protected characteristics who would either benefit or be disadvantaged by any of the proposals? If so, please provide relevant data or evidence.

No.

Q52 – Do you agree to be contacted regarding your response if further engagement is needed?

Yes.