

## **Local Government Pension Scheme in England and Wales: Scheme improvements (access and protections)**

**Consultation Link:** [Local Government Pension Scheme in England and Wales: Scheme improvements \(access and protections\) - GOV.UK](https://www.gov.uk/government/consultations/local-government-pension-scheme-in-england-and-wales-scheme-improvements-access-and-protections)  
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### **Respondant Details**

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**Type of respondent:** Administering Authority - East Sussex County Council

Topic	Question Num	Question	East Sussex Pension Fund Response
Normal Minimum Pension Age (NMPA)	1	Do you agree with keeping the NMPA at below 57 for members with a PPA?	Yes – but with some reservations. An arbitrary cutoff off date (in this case 4th November 2021) is a significant concern, in relation to the potential for legal challenge. Many Administering Authorities feel rather scarred from the experience of McCloud, and the additional work and complexity that has followed for retrospective rectification.
	2	Do you agree with increasing the NMPA to 57 for members without a PPA?	Yes – the LGPS should assimilate with the wider pensions sector. Amending the NMPA without protection is administratively straightforward, subject to Government having taken robust legal advice to mitigate any legal challenge that may arise.
	3	Do you have any views on the design of the regulations to incorporate this change?	The ability of Administering Authorities to implement these changes effectively, will to some extent be dependent on how quickly software suppliers can effect changes to software and avoid any need for manual interventions. An implementation date of 6th April 2028 should afford ample opportunity for the required changes to be made in advance. Aside from the practical implementation of the changes, Administering Authorities will also need to confront the communication difficulties with members, when required to operate multiple NMPA's.
Access for councillors and mayors	4	Do you agree with the proposal to give mayors access to the scheme?	Should a decision be taken to reintroduce membership of the LGPS for councillors, in the interests of consistency it would make sense to also permit membership to other elected post holders, such as mayors and deputy mayors.
	5	Do you agree with the proposal to give councillors access to the scheme?	We agree that the status quo should be addressed in an effort to make a more uniformed provision for councillors across the UK. With access to the LGPS currently being prevented to such members in England only. However, the proposals could have considered going a step further, in order to create a single version of the LGPS for elected members, rather than various different iterations of the scheme.
	6	Do you agree with the two principles of how the government plans to develop regulations?	We agree that, to the greatest extent practicable, elected members should be afforded the same treatment as other members of the LGPS and that efforts should be made to ensure consistency wherever possible.
	7	Do you have any specific comments on the draft regulations?	Although it is the case now that the provision for elected members with regard to LGPS membership differs across the UK, the regulations as proposed do not address the imbalance but instead create a new one. This may be a missed opportunity to standardise provision, or indeed could be the first step in doing so with further reforms outside England to follow.

			The approach as detailed in the consultation is welcome, an ability to consolidate the position of scheme employers where all parties are in favour of such action appears to be a sensible decision. However, it is our view that the policy will need to be supported by clear and unambiguous guidance. For example, the first of the criteria requires there to be a clear and evidenced value for money assessment in favour of consolidation. However, what is not clear is whose responsibility it will be to evaluate that assessment with the matter not being considered by the Secretary of State. The very nature of this policy requires its operation across multiple administering authorities and so it is vital for consistency that all administering authorities have a clear view of what value for money looks like. This can best be achieved by clear, centrally issued guidance. Similarly, the last of the criteria, in which it requires the receiving administering authority to be able to administer the transfer effectively appears almost a repetition of the third criteria in which the receiving administering authority has implicitly declared an ability to administer the transfer in agreeing to it taking place. How such claims are assessed should also be made clear within the guidance.
Academies	8	Do you agree with the proposal to establish the criteria above in legislation?	Although very difficult to prevent, in practice this may well prove to be self-policing via the requirement for all parties to be in agreement for consolidations without Secretary of State approval. The 'value for money' assessment may also assist in preventing contribution rate shopping by focussing on the potential long-term efficiencies that may be achievable by the employer and not on the prevailing or potential employer contribution rate. Limiting the number of occasions on which such consolidations could take place may be worth considering. This could occur naturally, due to a shrinking pool of administering authorities with whom the employer would have a pre-existing relationship each time consolidation occurs, but for new schools joining an academy trust. Ultimately, this should be mitigated by clear guidance for the value for money assessment, where recurring transition costs would be hard to justify.
	9	Do you have any views on how contribution rate shopping can be discouraged?	
	10	Are there any other criteria that should be included?	As detailed above, the existing criteria is likely sufficient, but only if supported by clearly defined terms and clear accompanying guidance.
	11	Do you have any other comments or considerations relating to establishing the criteria in legislation?	No further comments
	12	Do you agree to the removal of the requirement to seek Secretary of State consent for standard direction order applications?	Yes - In circumstances where the prescribed criteria are met, it would appear sensible not to occupy the Secretary of State with such matters. However, as described in previous responses, the key issue is the evaluation of the criteria having been met, will this simply be a requirement of the sending and receiving administering authorities?
	13	What would be the most helpful information to include in guidance?	Clearly defined terms and clear detail around what satisfying the criteria looks like.
	14	Do you have any other comments or consideration on the removal of the requirement to seek SoS consent for standard order applications?	No further comments
	15	Do you agree that non-standard applications will continue to require Secretary of State approval?	Yes – in circumstances where the criteria is not satisfied, the Secretary of State should be required to make a determination.
	16	What would be the most helpful information to include in the guidance in relation to nonstandard applications that will require Secretary of State approval?	We are not convinced that significant addition guidance would be required, other than for the relevant scheme employer to highlight to the Secretary of State what elements of the criteria are unsatisfied and the reasons why.
	17	Do you have any further comments regarding the proposal?	No further comments
	18	Do you agree that the option to offer broadly comparable schemes should be removed, except in exceptional circumstances, to align with the 2013 Fair Deal guidance?	Yes – it is our experience that use of a 'broadly comparable' scheme is extremely rare. The term 'broadly comparable' can all too often create confusion during the process of establishing pension provision, where some employers equate parity of inputs as meeting the threshold of 'broadly comparable' without considering the potential disparity of outputs.
	19	Are you aware of any other broadly comparable schemes that are currently in operation and have active members covered by the 2007 and/or 2012/2022 Directions? If so, please provide details of these.	No

20	Do you agree with the proposals on deemed employer status and the removal of admission body option for service providers who deliver local government contracts?	Yes – in the long term, this would streamline administrative processes and no longer resulting in long standing delays to the signing of admission agreements. However, the reason for such delays is often due to employers fully assessing the undertakings an admission agreement exposes them to, which are ultimately agreed when the agreement is signed. The proposed approach may see a diminution in the level of engagement from both the contractor and outsourcing employer. The introduction of a requirement such as a participation agreement may assist in this, whilst are the same time providing a clear and agreed delegation of responsibilities between all parties. Whilst also achievable through the regulations, a signed agreement does offer some reassurance that pension matters have been properly considered.
21	Do you agree with the proposed definition of a Fair Deal employer?	Yes
22	Do you agree with the proposed definition of a protected transferee?	Yes
23	<del>Do you agree with the proposal to allow the Fair Deal employer to provide</del> protected transferee status for all staff working on a contract outsourced by a Fair Deal employer, which would enable Fair Deal employers and relevant	From the perspective of an Administering Authority this would not pose any issues and operate in a way similar to open admission agreements which are currently in place. However, in our experience, it is more often the case that employers will
24	Do you agree with the overall approach on responsibilities for relevant contractors and Fair Deal employers? If you do not, with which proposals do you disagree?	Our concern is more in relation to the management of those responsibilities, more than the responsibilities themselves. The absence of a clear document such as an admission agreement, that not only details responsibilities but demonstrates an acknowledgement and agreement to them may contribute to additional confusion and uncertainty. This could be mitigated by use of a similar document following TUPE making clear the obligations on each of the relevant parties.
25	Do you agree that Option 1 should be applied to how agreements between protected transferees and relevant contractors should be treated in the case of subsequent outsourcings? Please give the reasons for your answer.	From the perspective of a scheme administrator, the least complicated option is option 2, akin to the status quo. This has the benefit of being the default position if no deliberate action is taken, both option 1 and 3, require clear communication amongst all parties to ensure the ongoing position, and the absence of any positive action would default the employee into a position unsupported by the legislation. However, it is acknowledge that this should not necessarily be a barrier to change, both options 1 and 3 create an advantageous position for the scheme member in providing a greater level of protection.
26	Do you agree with the approach to allow broadly comparable schemes to continue only in exceptional circumstances?	Yes - although used infrequently, it is sensible to retain this as a possibility.
27	Do you have any views on what the exceptional circumstances, where broadly comparable schemes may need to continue, could be?	No
28	Do you agree with the proposed approach to inward transfers from broadly comparable schemes?	Yes - providing the scheme member retains the choice of whether to proceed with a transfer from the broadly comparable scheme and not be compelled to make such a transfer.
29	Do you agree with the approach of including a mechanism in the draft regulations that allows for staff to become protected transferees where there is an early re-negotiation of a service contract using the new Fair Deal regulations?	Yes - subjecting to satisfying legal concerns of any relevant party.
30	Do you agree with the proposal that all staff (including those joining a contract after first outsourcing) would be eligible for protected transferee status, providing all relevant parties agree?	As mentioned in answer to an earlier question, in our experience few contractors wish to extend membership of the LGPS beyond those for whom they are compelled to offer it. Consequently, were the proposals to proceed as drafted it may be unlikely that employers would be motivated to widen the offer of protected transferee status beyond the group to whom they obliged to do so.
31	Do you agree with the proposal for the draft regulations to come into force on the date the relevant SI is laid, with a 6-month transitional period during which there is the possibility to decide to not apply the new provisions?	Yes, but on the proviso that the necessary guidance is made available at the same time, or ideally prior to the implementation date. A 6-month window is rather short and possibly consideration could be given to extending to a 12-month period.
32	If you are an individual who is currently outsourced from a local authority and part of a final salary scheme, do you agree with the proposed updating of the 2007 and 2022 Directions to deem the LGPS as broadly comparable to or better than final salary schemes? Please give the reasons for your answer.	Not applicable

	33	Do you agree with the proposal to develop and publish statutory guidance and Scheme Advisory Board guidance to support with the implementation of the updated Fair Deal proposals?	Yes, this should be made available from the earliest opportunity.
	34	Are there any additional topics that you would like to be covered?	No
	35	What impact do you think these proposals would have on members?	Broadly very little, given the limited use of broadly comparable schemes, the same member outcomes are largely delivered now via use of admission agreements - the potential for widening access to further employees, will not be an option the Fund envisage many employers making use of.
	36	Do you support the proposal to bring all eligible individuals back into the LGPS, including those in broadly comparable final salary schemes? Please explain your reasons.	Given that it is possible that some employees contributing to such schemes may enjoy greater benefits than those offered within the LGPS, it would not seem sensible to enforce a transition back to the LGPS. However whilst theoretically possible such cases will be rare.
	37	On balance, do you agree with the proposals in this chapter?	Yes
General	38	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
	39	Do you agree to being contacted regarding your response if further engagement is needed?	Yes