

## **The Society of Pension Professionals (SPP) response to the MHCLG consultation on the Local Government Pension Scheme in England and Wales: Scheme improvements (access and protections)**

### **1. Executive summary**

#### Normal Minimum Pension Age

- 1.1. **The SPP supports the maintenance of the Normal Minimum Pension Age (NMPA) below 57 for members with a Protected Pension Age (PPA).** However, we have significant concerns regarding the proposed treatment of Category 2 members, who would see their LGPS NMPA increase to 57 due to transferred benefits from a relevant registered pension scheme and so urge the government to reconsider the proposal to avoid disproportionate impacts on this group.

#### Access for Councillors & Mayors

- 1.2. **The SPP supports extending scheme access to mayors.** However, there is not broad agreement amongst SPP members as to whether or not Councillors should be given access to the scheme but instead a range of views which is likely to be reflective of wider society. Concerns arise due to the relatively low financial benefit this would have for Councillors set against the potentially disproportionate administrative burden and inequity between English and Welsh Councillors.
- 1.3. **It is unclear whether there is an overriding obligation to protect McCloud remedial pension rights that are transferred into the Councillors' LGPS.** It would be helpful for the government to clarify its position on not protecting McCloud remedial service transferred into the Councillors' LGPS.
- 1.4. **Where a Councillor is also employed in a local government employment, and that person is a member of the LGPS via their Councillor and local government employment roles, then paying a refund in respect of their Councillor role could, arguably, be treated as an unauthorised payment under HMRC rules.** The government should clarify whether the Councillor's modified LGPS would be recognised by HMRC as separate pension scheme to the unmodified 2014 Scheme for local government workers.

#### Academies

- 1.5. **With regard to contribution rate shopping, the SPP believes it is unreasonable to expect a MAT not to consider the administrative efficiency and lower administrative cost of a consolidation given a change could, for example, potentially double or halve their LGPS pension contributions.** MATs seeking to consolidate have to meet the additional actuarial, legal and administration costs of assessing a move - a limiting factor that should prevent a MAT from shopping very widely across multiple funds – but if unjustified contribution rate shopping is suspected by either administering authority then there remains the backstop of withholding agreement, which would then require the MAT to make its case to the Secretary of State.
- 1.6. **The SPP agrees with the removal of the requirement to seek Secretary of State consent for standard direction order applications.** Where there is a transparent and clear case for a MAT to consolidate its academies and there is no material imbalance of risks or costs to either fund (or its existing academies) then there is no need for the additional burden of seeking Secretary of State consent.

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- 1.7. **In relation to non-standard applications, the SPP believes that these should continue to require Secretary of State approval.** The sheer number of academies participating in the LGPS mean it is inevitable that there will be complex cases or reasonable differences of opinion about how and when a transfer can take place. The oversight of an independent party with the power to direct an action should reduce delays and deadlock.

#### New Fair Deal

- 1.8. **In relation to the New Fair Deal proposals, having the flexibility to offer broadly comparable schemes in exceptional circumstances is very important.** We therefore think it is important that the law not be changed retrospectively. This is so that those members of broadly comparable schemes, for whom a change in scheme could lead to future accrual which is less generous, are not affected by the removal.
- 1.9. **It is unlikely that the "deemed employer" approach will reduce the administrative burden on administering authorities as suggested.** It is already possible for administering authorities to achieve the same commercial result as the proposals, by means of a "pass-through" arrangement
- 1.10. **The overall approach on responsibilities for relevant contractors and Fair Deal employers will potentially increase the complexity and administrative burden for administering authorities when a service provider joins the LGPS.** We anticipate that many administering authorities might look to issue service providers (and potentially ask them to sign) an equivalent document to the admission agreement, setting out the participation terms and the expectations and obligations placed upon them.
- 1.11. **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 appears to be a very tight timeframe.** The SPP suggests that a 12 month transitional period would appear to be in the best interests of all parties.
- 1.12. **In practice it is likely that these proposals will create an increased administrative burden.** Given the proposed outcome can already be achieved by means of a "pass-through" arrangement which is commonly adopted, we question the value of imposing further administrative obligations at such a busy time for the LGPS.

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## **2. Consultation response**

### ***Normal Minimum Pension Age***

#### **Q1. Do you agree with keeping the NMPA at below 57 for members with a PPA?**

- 2.1. The SPP supports the maintenance of the Normal Minimum Pension Age (NMPA) below 57 for members with a Protected Pension Age (PPA).
- 2.2. However, we wish to highlight significant concerns regarding the proposed treatment of Category 2 members, who would see their LGPS NMPA increase to 57 due to transferred benefits from a relevant registered pension scheme.
- 2.3. Detrimental impact on redundancy-related retirement
- 2.4. Category 2 members would no longer be entitled to draw their pension unreduced at age 55, but instead at 57, resulting in a material reduction in retirement benefits for those retiring due to redundancy.
- 2.5. Barriers to pension consolidation
- 2.6. Individuals who would become Category 2 members through a transfer may perceive this as a barrier or disincentive to consolidate external pensions into the LGPS. This could lead to fragmented pension holdings, increasing the risk of lost or poorly managed benefits.
- 2.7. Complexity and member understanding
- 2.8. Pension transfers are inherently complex, and the proposed change introduces a risk that members may lose their NMPA of 55 without fully understanding the implications. There is also a risk that financial advice may not adequately address this issue.
- 2.9. Interaction with New Fair Deal proposals
- 2.10. Careful consideration is required to ensure alignment with New Fair Deal proposals, which may inadvertently create “forced” Category 2 members through compulsory transfers.
- 2.11. The consultation clarifies that Category 2 members’ transferred benefits would be subject to “actuarially neutral” adjustments if taken at 57. While this ensures actuarial fairness, it does not mitigate the practical disadvantage of delayed access to benefits for members.
- 2.12. For clarity, we note that Category 2 members (affected by transferred benefits) are a subset of Category 1 members (those with pre 4 November 2021 LGPS membership). Category 3 members, as defined, already have an NMPA of 57. For Category 4 members (members with a PPA below age 55), we understand that there is no intention to change the current policy towards these members and therefore understand these members to be unaffected by the proposals.

#### **Q2. Do you agree with increasing the NMPA to 57 for members without a PPA?**

- 2.13. We agree with aligning the NMPA to 57 for members without a PPA. However, we reiterate the concerns outlined in our response to Q1 regarding the impact for Category 2 members.

#### **Q3. Do you have any views on the design of the regulations to incorporate this change?**

- 2.14. Our primary concerns relate to the treatment of Category 2 members, as detailed in Q1.
- 2.15. The government should reconsider the proposal if it wishes to avoid disproportionate impacts on this group.

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**Q4. Do you agree with the proposal to give mayors access to the scheme?**

- 2.16. The SPP believe that this proposal makes sense given that the role of mayor requires a great deal of commitment and, arguably, similar to that required of a Police and Crime Commissioner, who already have access to the LGPS. It would therefore seem unfair to allow Police and Crime Commissioners access to the LGPS, whilst barring entry of the Scheme for mayors.

**Q5. Do you agree with the proposal to give councillors access to the scheme?**

- 2.17. This is not a clear cut issue.
- 2.18. It has been argued that as Councillors are volunteers undertaking public service; they are not and should not be employees of the council dependent on the municipal payroll. It is obvious that they are not professional, full-time politicians like Members of Parliament and it is important to note that Councillors receive an allowance rather than a salary.
- 2.19. That said, a precedent has already been created, not simply because they were previously enrolled in the LGPS but because Councillors of Welsh councils are currently entitled to LGPS membership.
- 2.20. Given the average allowance for a Councillor is £7,000 per annum<sup>1</sup> and the average length of service is just 9.5 years<sup>2</sup> it is clear that these changes are unlikely to cost the taxpayer a great deal. Just as importantly, perhaps more so, they are unlikely to result in any significant degree of pension benefit for individual Councillors. As such, it is arguable whether or not the administrative complexity and resources required for relatively little return is a prudent use of taxpayer money and resource.
- 2.21. In addition, inclusion in the LGPS as proposed will create a new inequality by allowing Councillors of English Councils access to a modified version of the 2014 Scheme (with a generous accrual rate), whilst retaining Councillors of Welsh Councils in a modified version of the 1997 Scheme (with a less generous accrual). This issue is addressed in more detail in our response to question 7.
- 2.22. There was not broad agreement amongst SPP members as to whether or not councillors should be given access to the scheme but instead a range of views which is likely to be reflective of wider society.
- 2.23. **Q6. Do you agree with the two principles of how the government plans to develop regulations?**
- 2.24. The principles appear sound although we acknowledge, as already outlined above, that the role of an elected Councillor is different to that of a 'local government worker', so the Scheme needs to be modified to accommodate Councillors differently should they be included.

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<sup>1</sup> Local Government Association, Be A Councillor:  
<https://www.local.gov.uk/be-councillor/becoming-councillor-0>

<sup>2</sup> LGA census for local authority councillors:  
<https://www.local.gov.uk/sites/default/files/documents/national-census-local-aut-6af.pdf>

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2.25. **Q7. Do you have any specific comments on the draft regulations?**

2.26. Typographical errors

2.27. The SPP would like to take this opportunity to highlight some apparent typographical errors contained within the draft regulations as follows:

Draft Regulation	Amendment Required
1. In regulation 3 (active membership)— (a) omit paragraphs (3), (4) and (5); (b) in paragraph (6) — (i) in sub-paragraph (a) omit “but” in any event, and (ii) omit sub-paragraph (b).	Wording change from <i>(i) in sub-paragraph (a) omit “but” in any event, and</i> To <i>(i) in sub-paragraph (a) omit “but in any event, and”</i>
14. In regulation 39 (calculation of ill-health pension amounts)— (a) in paragraph (1)(a), for “the member’s employment was terminated” substitute “the member ceased to hold office”; (b) in paragraph (8)(a), for “the member’s employment was terminated” substitute “the member ceased to hold office”.	At the end of the last line remove the superfluous “.

2.28. Different scheme design for English and Welsh Councillors

2.29. Whilst we acknowledge that there is currently a two-tiered (and, arguably, unfair) system in place for Councillors of English and Welsh Councils (‘English Councillors’ and ‘Welsh Councillors’ respectively) with regards to LGPS membership, it seems problematic to ‘flip’ that division and now allow English Councillors access to a more generous LGPS (2014 Scheme, 1/49<sup>th</sup> pension) when compared to the one currently being offered to Welsh Councillors (1997 Scheme, 1/80<sup>th</sup> pension, 3/80<sup>th</sup> lump sum).

2.30. For the sake of equality, in keeping with the welcome trend of addressing inequality across the LGPS, and the implied low-cost of allowing English Councillors access to the LGPS, if the government does allow English Councillors to return to the LGPS, it should carefully consider allowing both English and Welsh Councillors access to the 2014 Scheme (though transitional arrangements would need to be put in place for Welsh Councillors who are currently in the Scheme).

2.31. Authority not permitted to contribute towards Shared Cost AVCs (SCAVCs) and Additional Pension Contribution (APC) arrangements

2.32. On the face of it, the decision not to allow Authorities (in their capacity as a ‘Scheme employer’) to contribute towards SCAVCs and APCs seems a reasonable one, as it could be politically problematic for the Authority if it was revealed to the public that local Councillors were receiving ‘top ups’ to their pension.

2.33. However, the removal of Regulations 16(2)(e) and (4)(d) (as per the proposed Councillor amendments to the LGPS Regulations 2013) means that Councillors are wholly liable for funding any ‘lost’ pension that they wish to buy back, rather than the usual 1/3<sup>rd</sup> proportion paid by Scheme members.

2.34. Whilst the nature of Councillors’ duties mean that this is not normally an issue, there could be a situation where the Councillor is deemed to have some ‘lost’ pension, and the cost of buying back this ‘lost’ pension falls entirely on the Councillor.

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- 2.35. Whilst this change may be intentional, it should be brought to the Government's attention, as the change may be an unintentional consequence of removing 16(2)(e) and (4)(d) of the LGPS Regulations 2013 as part of the modifications for Councillor members.
- 2.36. Disregarding final salary and McCloud protections for public service pension rights transferred into the Scheme
- 2.37. English Councillors have the right to transfer other pension rights into the Scheme, but those rights will acquire 'earned pension' in the LGPS, irrespective of where those pension rights came from or what they relate to; this means that final salary pension rights transferred in from another public service pension scheme (PSPS) will **not** be treated as final salary pension on being transferred into the Councillors' LGPS. Additionally, any CARE pension transferred from another PSPS that contains McCloud remedial service will not be treated as such when transferred into the Councillors' LGPS.
- 2.38. It should be noted that the Public Service Pensions Act 2013 (which introduced the 2014 Scheme, as well as the rules for treatment of final salary pension rights on being transferred into another PSPS) does, for LGPS purposes, apply to "local government workers", as well as allowing for Scheme rules to make exceptions for different "persons", meaning that the Government's decision to treat any final salary benefits transferred into the Councillors' LGPS as 'earned pension' seems reasonable.
- 2.39. However, the Public Service Pensions & Judicial Offices Act 2022 (which introduced the McCloud protections) applies to members "in an employment or office" of the 2014 Scheme, so it is unclear whether there is an overriding obligation to protect McCloud remedial pension rights that are transferred into the Councillors' LGPS.
- 2.40. It would be helpful for the government to clarify its position on not protecting McCloud remedial service transferred into the Councillors' LGPS, given the protections offered by the Pension.
- 2.41. Potential issue concerning refund of Councillors' contributions
- 2.42. Regulation 5 of the proposed Draft Regulations effectively allows a councillor with less than 2 years' service to receive a refund of contributions, even though they may also be an active member in a concurrent employment (i.e. where the councillor member is also a local government employee in a separate role - the councillor). We understand that, although Councillors will be members of a modified version of the 2014 Scheme, it would still be the same scheme as the 'unmodified' 2014 Scheme. Therefore, where a Councillor is also employed in a local government employment, and that person is a member of the LGPS via their Councillor **and** local government employment roles, then paying a refund in respect of their Councillor role could, arguably, be treated as an unauthorised payment under HMRC rules, as such a payment would normally need to extinguish the member's rights under the Scheme.
- 2.43. The government should clarify whether the Councillor's modified LGPS would be recognised by HMRC as separate pension scheme to the unmodified 2014 Scheme for local government workers.
- 2.44. Interaction of Assumed Pensionable Pay for Ill Health Retirement
- 2.45. The definition of Assumed Pensionable Pay (APP), which is used for calculating a member's ill health enhancement for those awarded a Tier 1 or Tier 2 on ill health retirement, needs to be tweaked to accommodate councillors; this is because the Regulation concerning the calculation of APP (Regulation 20 of the LGPS Regulations 2013) refers to 'employment', which is probably not appropriate for a Councillor member (we would suggest that 'office holder' or similar should be used). Additionally, whilst Regulations 21(5A) and (5B) of LGPS Regulations 2013 arguably give the Scheme employer (i.e. the Authority) discretion as to what pensionable pay should be used in the APP calculation, it would be better if the Regulation were modified to apply specifically to Councillors.

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**Q8. Do you agree with the proposal to establish the criteria above in legislation?**

- 2.46. Broadly yes, since the clarity of the criteria will offer certainty to academies, MATs and administering authorities and a more efficient path to well-considered decisions. It will also help MATs to fully assess a consolidation proposal by providing a more comprehensive consideration of the implications of a move.
- 2.47. Criteria a is open to interpretation and subjectivity since a MAT cannot fully comprehend the administration costs, and a fund cannot consider a MAT's operations in entirety to understand any efficiency savings. [*a. There must be a clear and evidenced value-for-money assessment in favour of the consolidation (such as to achieve administrative efficiencies that outweigh the cost of transfer and actuarial fees).*]
- 2.48. However, we do not agree that criteria d is practicable. [*d. The receiving administering authority must be able to administer the transfer effectively.*]
- 2.49. Only the administering authority can judge whether they have the capacity and resource available to administer a transfer effectively. In the unlikely event of being unable to meet this criteria (due to competing pressures of local government re-organisation or temporary officer recruitment or retention issues, for example), the administering authority can simply use criteria c to prevent an unmanageable transfer in the first instance [*c. All administering authorities involved should agree to the change.*]
- 2.50. We therefore consider criteria d to be too subjective to be useful, and redundant in practice given the other criteria. We suggest instead that a lack of capacity to administer the transfer effectively should be included in a list of examples of why a fund may reasonably disagree to a transfer (or request that it be postponed).

**Q9. Do you have any views on how contribution rate shopping can be discouraged?**

- 2.51. It would be unreasonable to expect a MAT not to consider the administrative efficiency and lower administrative cost of a consolidation given a change could, for example, potentially double or halve their LGPS pension contributions.
- 2.52. A MAT with a current high rate seeking a lower rate elsewhere must understand why it currently has a higher rate. This might be due to inherent factors like an older workforce or a low asset share following conversion at an inopportune time or adverse member experience. Such a MAT would need to understand that its costs may be higher wherever it participates.
- 2.53. Alternatively, a MAT's current rate might be higher due its fund's investment strategy decisions or approach to prudence, in which case the MAT could genuinely have a lower LGPS cost (with a different level of risk) in another fund. This is the scenario under which a MAT might be able to shop around for a lower rate.
- 2.54. If all the other criteria are met, it is not practicable to prohibit a change in fund due to lower LGPS contributions in a receiving fund. If unjustified contribution rate shopping is suspected by either administering authority then there remains the backstop of withholding agreement, which would then require the MAT to make its case to the Secretary of State.
- 2.55. However, as long as the consolidation of MATs into one fund is an operational possibility, then MATs will continue to consider whether they can reduce their LGPS contributions elsewhere, which for the reasons explained above, does not seem unreasonable.
- 2.56. Since MATs seeking to consolidate should bear the additional actuarial, legal and administration costs of assessing a move, there is already a limiting factor that should prevent a MAT from shopping very widely across multiple funds.

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**Q10. Are there any other criteria that should be included?**

- 2.57. The criteria that the administering authorities must agree to the transfer provides an essential protection to a fund that could otherwise be forced to accept a transfer that it does not wish to receive. However, it does still allow that the Secretary of State may authorise the transfer regardless.
- 2.58. There are other criteria such as comparative funding which could be valid, particularly where a fund operates a risk-sharing approach that allows for cross-subsidy across its academies. However, to insist upon a particular level of funding or some other criteria which cannot reasonably capture all nuanced or complex scenarios is too burdensome and not likely to be effective.
- 2.59. Instead, we suggest instead that principles and case studies for a reasonable rejection of a transfer should be included in guidance.
- 2.60. We also suggest that the MAT and administering authorities are also required to acknowledge and agree that associated outsourced contractors should also transfer out of a ceding fund when the relevant employers leaves too.

**Q11. Do you have any other comments or considerations relating to establishing the criteria in legislation?**

- 2.61. We strongly urge a very thorough and detailed consideration of any consultation responses that are received on draft legislation and guidance. The participation of academies in the LGPS has evolved significantly over a comparatively short timeframe, and there is a wide variation of funding positions and funding approaches for academies across Funds in England.
- 2.62. The legislation must be very clear to avoid later disputes or disagreements about how to interpret guidance or how administering authorities can (and cannot) apply their discretion. In particular, it is essential that stakeholders understand which parties are ultimately the decision makers about how and when transfers are permitted and, following any transfer, how funding strategy is set for all academies in a fund.

**Q12. Do you agree to the removal of the requirement to seek Secretary of State consent for standard direction order applications?**

- 2.63. Yes, where there is a transparent and clear case for a MAT to consolidate its academies and there is no material imbalance of risks or costs to either fund (or its existing academies) then there is no need for the additional burden of seeking Secretary of State consent.

**Q13. What would be the most helpful information to include in guidance?**

- 2.64. The most helpful information would be a comprehensive, but not exhaustive, list of examples of where a consolidation would reasonably be blocked. This would be most useful in the form of reasoned case studies, which demonstrate the additional risks, costs or administrative burdens that a receiving or ceding administering authority might face, even for standard cases.
- 2.65. This would be useful for MATs to understand what action they might take to make a successful transfer more likely. It would also be useful for administering authorities to help highlight issues that they may not yet have considered and for which they may need to seek additional advice for their own fund circumstances.
- 2.66. MATs might particularly benefit from specific examples of the types of costs that they should expect to consider in their application. This would include current costs of advice and transition, and also the ongoing costs (and potential savings) of LGPS participation. This might include the efficiency savings if any financial reporting or operations can be streamlined, but also a comparison of any fund's administration costs (noting that employers may meet these costs in different ways across funds).

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- 2.67. It would be helpful if the guidance could provide a consistent framework for MATs and administering authorities to be able to consider relevant issues in a consistent way. This will allow a fair and consistent approach within individual funds but also across the LGPS.
- 2.68. We would expect that the MAT will have to self-declare their eligibility for criteria around the value-for-money assessment and would benefit from some guidance on how to carry out a realistic assessment. It will otherwise be difficult for MATs (and administering authorities) to have an effective and unbiased decision-making framework.
- 2.69. The guidance should also make clear to MATs that it is not reasonable to expect a fund to make significant or material changes to its own funding strategy in order to accommodate a transferring MAT. The guidance can be useful in this area if it can manage the expectations of MAT and counter any assumptions they might have made about how they might benefit from a transfer to another fund.
- 2.70. We note that the requirement for “robust evidence” of why a receiving fund may not consider themselves able to administer a transfer effectively. It would be useful to specify the evidence that would be acceptable, and to clarify whether a fund could agree to a transfer in principle, but request that it be delayed for a reasonable period to allow for, for example, local government reorganisation activities, completion of pre-existing transfers or any other material exercise that would strain officer resource to an unacceptable level.

**Q14. Do you have any other comments or consideration on the removal of the requirement to seek SoS consent for standard order applications?**

- 2.71. Standard order applications should, by their nature, be straightforward and uncontentious. If these have typically been waived through in the past, then there is no additional value in having SoS consent as an operational step during the transfer.

**Q15. Do you agree that non-standard applications will continue to require Secretary of State approval?**

- 2.72. Yes, due to the sheer number of academies participating in the LGPS it is inevitable that there will be complex cases or reasonable differences of opinion about how and when a transfer can take place. The oversight of an independent party with the power to direct an action should reduce delays and deadlock.

**Q16. What would be the most helpful information to include in the guidance in relation to nonstandard applications that will require Secretary of State approval?**

- 2.73. In addition to the information that would be helpful for a standard application, the most helpful information will be a very clear framework for how the application will be considered by the Secretary of State, how it may reasonably be challenged by any parties and which parties will ultimately make the decisions (whether a transfer proceeds or not).
- 2.74. It would also be helpful to include guidance on next steps following an application rejection, including whether a MAT can try again at another fund and any time limits or restrictions on the number of applications it can make within a period.

**Q17. Do you have any further comments regarding the proposal?**

- 2.75. We note that the proposal suggests that LGPS administering authorities should consider the balance between long-term investment strategy, competitiveness and the impact of contribution rates on cashflow.
- 2.76. We do not agree with any suggestion that LGPS funds should view themselves as a marketplace, attempting to attract new employers with the promise of low contribution rates or else risk losing their operational cashflow.

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- 2.77. Such an approach does not align with each LGPS fund's primary purpose. It undermines the principles of local decision making and sidelines administering authorities' responsibilities to existing fund employers and local taxpayers.
- 2.78. With nearly 12,000 academies and free schools across 77 administering authorities in England it can be difficult to balance the interests of all stakeholders. LGPS funding is a long-term matter and short-term upheaval, like a change of fund for an employer, will have unavoidable short-term cost and administrative effort. What is most important, however, is that temporary circumstances and periods of transition are not allowed to derail the efforts of administering authorities in managing their funds efficiently and fairly for all participating employers.
- 2.79. Although we are aware of a few instances of MATs appearing to be contribution rate shopping, we do not expect that the proposal will trigger a large number of consolidations. We expect that the criteria will be reasonably met by the small number of MATs who participate in multiple LGPS funds and who might benefit from a consolidation for efficiency reasons.
- 2.80. The proposals and our responses focus on academies. We do not believe there is any other category of employer that could reasonably expect to meet the criteria under any standard circumstances. Where there has been consolidation in the past, for judicial or probation services for example, the circumstances have been unique and so varied that it is not likely that a standard approach could apply without the additional oversight of an impartial party like the Secretary of State to assess whether the case had been made in terms of a value-for-money assessment or the strength of a pre-existing relationship.

## **New Fair Deal**

### **Q18. 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?**

- 2.81. Having the flexibility to offer broadly comparable schemes in exceptional circumstances is very important.
- 2.82. It is possible that employees have employment contracts which provide that their pension benefits should be on a more generous basis than the current LGPS (for example, such contracts might reference final salary benefits and a retirement age of 65).
- 2.83. We therefore think it is important that the law not be changed retrospectively. This is so that those members of broadly comparable schemes, for whom a change in scheme could lead to future accrual which is less generous, are not affected by the removal.
- 2.84. Whilst the exception in the TUPE regulations is likely to have the effect (in most cases) that pension rights under an employment contract do not transfer, it could be an issue where an incumbent contractor wins a future outsourcing contract. In this case, there may be no TUPE transfer such that contractual entitlements to more favourable benefits remain.

### **Q19. 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.**

- 2.85. We are aware of commercial arrangements established to allow employers to provide broadly comparable benefits that may have members in this category – e.g. the Citrus Pension Plan and the Mercer DB Master Trust (formerly the Federated Pension Plan).

### **Q20. 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?**

- 2.86. We understand that the aims of the "deemed employer" approach are to reduce the administrative burden on administering authorities by reducing the number of admission bodies, and also to reduce the transfer of pensions funding risk to contractors via the admitted body route.

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- 2.87. Given the continued need for administering authorities to liaise with and obtain information from both the service provider and Fair Deal employer during the period of the service provider's participation, however, we question whether the proposals will in fact result in a reduced administrative burden.
- 2.88. It is already possible for administering authorities to achieve the same commercial result as the proposals, by means of a "pass-through" arrangement. Under the proposals it will remain the case that administering authorities need to ensure they are aware of the underlying commercial arrangements giving rise to a service provider's participation and conversely the lack of need for an admission agreement may make it less likely that Fair Deal employers will involve the administering authority in a timely way when contracting.
- 2.89. To the extent that the "deemed employer" route is introduced, we consider that it would be beneficial to retain an option to use an admission agreement because there may be circumstances (particularly in relation to large scale transfers of staff) where there may be a preference to establish an admission agreement to manage pension risk in a different way.

**Q21. Do you agree with the proposed definition of a Fair Deal employer?**

- 2.90. We have no comments on the definition from a drafting perspective but we do note that employees of Higher Education corporations do not benefit from the proposed protections as they are not treated as part of the public sector.

**Q22. Do you agree with the proposed definition of a protected transferee?**

- 2.91. We have no comments on the definition from a drafting perspective.

**Q23. Do you agree with the proposal to allow the Fair Deal employer to provide protected transferee status for all staff working on a contract outsourced by a Fair Deal employer, which would enable Fair Deal employers and relevant contractors to avoid creating a two-tier workforce on outsourced contracts?**

- 2.92. We agree with the proposal to avoid creating a two-tier workforce on outsourced contracts and agree that it should not be an obligation, but an option available for Fair Deal employers to provide all staff working on an outsourced contract with the same pension protections, regardless of whether they were involved in an eligible TUPE transfer.
- 2.93. This does however have the potential to increase the administrative burden on administering authorities where a closed admission could open due to the Fair Deal employer choosing to provide all staff with the pension protections.

**Q24. 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?**

- 2.94. The proposals will potentially increase the complexity and administrative burden for administering authorities when a service provider joins the LGPS (for example, with contributions potentially being payable by both the service provider and the Fair Deal employer). The lack of an admission agreement could result in a gap in documenting the terms of participation and result in queries and uncertainty if the underlying commercial contract that led to the participation does not cover the position adequately.
- 2.95. We anticipate that many administering authorities might look to issue service providers (and potentially ask them to sign) an equivalent document to the admission agreement, setting out the participation terms and the expectations and obligations placed upon them.

**Q25. 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.**

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- 2.96. Option 1 would be most beneficial from the perspective of protected transferees, but will mean it is important that Fair Deal employers identify those paying shared cost AVCs as part of the commercial contracting process (which we anticipate may not always be the case in practice). Where there is inadequate disclosure Option 3 would be more appropriate as a backstop (and this could encourage full disclosure by Fair Deal employers).

**Q26. Do you agree with the approach to allow broadly comparable schemes to continue only in exceptional circumstances?**

- 2.97. The SPP believes that the continued provision of a broadly comparable scheme should be permitted as an important safeguard where previously transferred-out staff could be detrimentally impacted by being forced to rejoin the LGPS. That might be the case, for example, where they transferred-out prior to 1 April 2013 and have remained entitled to final salary benefits and the employer would prefer to continue on that basis or where an incumbent provider is reappointed and relevant employees have a contractual right to more favourable terms (than the current form of LGPS).

**Q27. Do you have any views on what the exceptional circumstances, where broadly comparable schemes may need to continue, could be?**

- 2.98. We expect that one exceptional circumstance is likely to be an instance where a contractor who has employees via a TUPE transfer, set up their own scheme that is running well. We expect such a scheme would be well priced, and removing employees from this scheme and transferring them to the LGPS would destabilise the private sector scheme, having a knock-on effect. Transferring employees to the public sector should not jeopardise a well-run scheme which is potentially reliant on those members.
- 2.99. Furthermore, as noted in Q26, a broadly comparable pension scheme may be necessary where an incumbent provider is reappointed and relevant employees have a contractual right to more favourable terms than the current form of LGPS.

**Q28. Do you agree with the proposed approach to inward transfers from broadly comparable schemes?**

- 2.100. The Department should be aware that it is possible that the current broadly comparable pension scheme may provide for pension benefits which are more favourable than the current terms of the LGPS. Therefore, a change in scheme could lead to future accrual for protected transferees which is less generous than their current arrangements.
- 2.101. On a related note, it is possible that employees have employment contracts which provide that their pension benefits should be on a more generous basis than the current LGPS (for example, such contracts might reference final salary benefits and a retirement age of 65). The mandatory nature of using the LGPS could therefore give rise to a breach of employment contract.
- 2.102. Under earlier iterations of the Fair Deal policy the Government Actuary's Department's broad comparability assessments did not require broadly comparable schemes to guarantee a past service reserve transfer basis.
- 2.103. If the underlying service contracts did not contain provisions requiring the contractor to ensure a minimum level for onward transfer values, it is possible that protected transferees transferring their past service benefits into the LGPS from an underfunded broadly comparable scheme will either receive less than the full value of their benefits or that transfer will create a funding strain in the receiving LGPS fund.

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**Q29. 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?**

- 2.104. Yes, we agree with this but the SPP suggests that this goes further and applies to all re-tenders not just where there is an early re-negotiation.

**Q30. 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?**

- 2.105. We note that a person who satisfies sub-paragraph 6 is to be treated as a protected transferee. Sub-paragraph 6 (5) (a) provides that:

*"an employee of the contractor or subsequent contractor working wholly or mainly on the activities which are being carried out by the Relevant Contractor on the Fair Deal employer's behalf in accordance with guidance issued by the Secretary of State (a)."*

- 2.106. The consultation states that the Fair Deal employer would need to decide before the contract is put out to tender if the protected transferee status would also apply to workers who join after the contract is initially outsourced.
- 2.107. We do not foresee a Fair Deal employer agreeing to this, where a relevant contractor, who has been in place for a number of years, has employees who were never part of the LGPS but are protected due to a re-tender. The Fair Deal employer agreeing to this could materially increase the obligations on the new contractor. Therefore, this may have the impact of dissuading contractors from tendering for contracts.
- 2.108. Further, as this is not a mandatory obligation on the Fair Deal employer, we anticipate that these provisions would be rarely used as there is no obvious benefit in a Fair Deal employer agreeing to admit subsequent new recruits to LGPS membership.

**Q31. 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?**

- 2.109. A 6-month transition period is very short although it may just about be feasible where all statutory instruments and guidance are implemented at the same time.
- 2.110. The SPP suggests that rather than impose unnecessary undue pressure on various stakeholders, a 12-month transitional period would appear to be in the best interests of all parties.

**Q32. 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.**

- 2.111. As a representative body, this question is not relevant to the SPP.

**Q33. 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**

- 2.112. According to regulation 110 of the LGPS Regulations, the function of the Scheme Advisory Board is to provide advice to the Secretary of State, administering authorities and local pension boards. It does not have any power under regulation 110 to advise LGPS scheme employers.
- 2.113. However, we would welcome statutory guidance to support with the implementation considering the very tight timescales afforded by the proposed 6-month transition period.

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- 2.114. In order to support the transition, publication of the statutory guidance and Scheme Advisory Board guidance should be sufficiently far in advance of implementation to enable administering authorities and Fair Deal employers to adjust their administration processes.

**Q34. Are there any additional topics that you would like to be covered?**

- 2.115. There are no additional topics that SPP is would like to be covered.

**Q35. What impact do you think these proposals would have on members?**

- 2.116. In practice, we do not anticipate these proposals will have a significant impact on current LGPS members as, in our experience, the vast majority of service providers have elected to participate in the LGPS as an admission body in recent years. We have already commented on the potentially negative impact on members of existing broadly comparable schemes who have continued to accrue benefits on a final salary basis and may not wish to be transferred back into the LGPS on a re-tender.

**Q36. 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.**

- 2.117. As outlined above, the SPP does not believe all eligible individual should be brought back into the LGPS. We consider that in appropriate circumstances the option of a broadly comparable scheme should remain.

**Q37. On balance, do you agree with the proposals in this chapter?**

- 2.118. In practice it is likely that these proposals will create an increased administrative burden and given the proposed outcome can already be achieved by means of a “pass-through” arrangement which is commonly adopted, we question the value of imposing further administrative obligations at such a busy time for the LGPS.

**3. About The Society of Pension Professionals**

- 3.1. The SPP is the representative body for a wide range of providers of advice and services to pension schemes, trustees and employers. Our work harnesses the expertise of our membership, striving for a positive impact on pension scheme members, the pensions industry and its stakeholders.
- 3.2. The breadth of our members is a unique strength for the SPP and includes actuaries, lawyers, professional trustees, DC consultants, investment managers, providers, administrators, covenant assessors, and other pension specialists, delivering a wide range of services.

**4. Further information**

- 4.1. For more information about this consultation response please contact SPP Director of Policy & PR at: [phil.hall@the-spp.co.uk](mailto:phil.hall@the-spp.co.uk) or telephone the SPP on 0207 353 1688.
- 4.2. To find out more about the SPP please visit the SPP web site: <https://the-spp.co.uk/>
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Tuesday 9 December 2025



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