

Scheme Advisory Board

HYBRID MEETING – 21 JULY 2025

ITEM 5 – PAPER C

ACCESS AND FAIRNESS DRAFT SAB CONSULTATION RESPONSE

Background

1. The Government issued the [Access and Fairness consultation](#) on 15 May 2025. The main proposals are summarised below. As this is the first time the Board have met since the consultation's release, Board members are invited to contribute their views on the proposals to shape the Board's final intended response.

Survivor benefits and death grants

2. The consultation proposes changes that would implement the Goodwin judgment in LGPS. This will mean that the survivor pension payable to the survivor of a marriage or civil partnership with a member will be calculated in the same way regardless of sex or sexual orientation. The proposals also formally remove the requirement for a signed nomination form in the case of qualifying cohabitee survivors. This is something which administrators have been implementing since the Brewster case and [associated guidance](#) from MHCLG in 2017. These proposed changes both have retrospective effect.
3. In line with the Board's [recommendation](#) in August 2022, the Government proposes to remove the age 75 cut-off on eligibility for death grants. This change would be backdated for all deaths of eligible members on or after 1 April 2014.
4. The consultation also implements the recommendation of the National Technical Group to remove the requirement on administering authorities to pay the death grant to the personal representative where it hasn't been paid within the 2-year limit. This change is proposed to be applicable for all death grants yet to be paid.

Gender Pensions Gap

5. One proposal here is to treat unpaid authorised absences under 31 days as normal pensionable earnings. Also to align the cost of buying back pension lost in an over 30-day unpaid break with standard member contribution rates
6. There is also a proposal to make additional maternity leave, additional adoption leave and shared parental leave during which no pay is received automatically pensionable, with the cost to be met by the employer.
7. Gender pension gap reporting is also proposed to be made mandatory for all LGPS funds, with the results to be reported as part of the triennial local fund valuations. This is to take effect from the 2025 valuation.

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Opt outs

8. The consultation suggest that funds should be required to publish data related to opt-outs in their Annual Reports. The consultation states that the Board will develop a new template opt out form and that the regulations will be updated to require members to use this form.
9. An optional Gov Form will in addition ask members their reasons for opting out as well as for personal and demographic information (e.g., working hours, salary, gender, age, ethnicity, marital status, etc).

Forfeiture

10. Currently, forfeiture can only be considered if a member is dismissed in connection with a conviction for an offence that was “gravely injurious to the State”, or “liable to lead to a serious loss of confidence in the public service”. In line with the previous recommendation of the Board, this proposal removes the requirement that in order to pursue forfeiture, a member must have left employment because of the relevant offence.
11. The proposals also remove the 3-month time limit from the date of conviction to make a forfeiture application and revoke regulation 92 which allows for interim payments to be made to an otherwise eligible member after the issuing of a forfeiture certificate by the Secretary of State but before a decision is made by the employer on the size of the amount to be forfeited.
12. The consultation also sets out that MHCLG will publish forfeiture guidance to assist employers in making applications for a forfeiture certificate.

Other measures

13. The consultation includes various other regulatory amendments to support McCloud remedy (e.g. around divorce and Club transfers), bring in Bereaved Parent Leave and many other beneficial technical changes that have been developed in partnership with Local Government Association (LGA) colleagues from the LGPC team.

Administrative impact of the proposals

14. Considering it proposes making several changes to the operation of the regulations, the consultation recognises that there will be a significant administrative impact of the proposals, However, it does not propose to assess or cover any additional cost generated by the proposals as might be expected under the New Burdens Doctrine. It also asks for views on staggering the implementation of some proposals.

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Board consideration

15. This consultation is generally a hugely welcome step forward in bringing the scheme up to date with various case-law developments as well as getting on the front foot with respect to emerging issues like the Gender Pensions Gap.
16. A good deal of work has gone on behind the scenes already to shape these proposals and the Secretariat have taken the opportunity to discuss the consultation with various forums and technical groups since the consultation launch but this is the first opportunity to obtain Board views to prepare the Board's response. As there will be a significant administrative impact, a detailed technical response is also being prepared by the LGPC team.
17. The Secretariat recommends that the Board adopts the response that is being drawn up by the LGPC team and recommends making some additional points, contained in **Annex A** below. However, we would also like to invite Board members to contribute their views on the proposals to shape the Board's intended response.

Recommendation

That the Board agrees to adopt the LGPC consultation response, that the further Board-specific points included at Annex A are considered and that the Board contribute their views during the meeting to shape the Board response.

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ANNEX A – ADDITIONAL POINTS TO RAISE IN ACCESS AND FAIRNESS BOARD CONSULTATION RESPONSE

Gender Pensions Gap reporting

1. That the Board strongly supports the intention and ambition of the proposals for gender pensions gap reporting but have outstanding issues with the specific definitions and methodology proposed in the consultation. Specifically, what can practically be reported for the 2025 Actuarial Valuation and what should be longer-term aims, and how reporting can be developed and staggered overtime, in consultation with employers. The Secretariat are sharing these issues separately with the GAD and MHCLG, particularly what can be practically achievable for the 2025 Valuation report to keep momentum on reporting.
2. The Secretariat would also like to propose that similar reporting proposals for LGPS should be extended across the Public Sector Pensions Schemes.

Opt-outs

3. The Secretariat supports the intention and ambition of the proposals for administering authorities to report opt-outs but suggest that there should be a parallel duty on scheme employers to provide it (as it is similar to Auto Enrolment responsibilities) and to do so in a prescribed format for comparability.
4. The proposal that the Board will develop a new template opt out form to be prescribed in the regulations. This will need to be added to the Board's workplan and require cross-working with the LGPC technical team to produce and guidance for adoption of the form by Administering Authorities. In addition to this form, it is expected an optional Gov Form will be developed. The consultation states that the information collected on the Gov Form would not be published and would be used in its anonymised state to build an evidence base as to why people choose to opt-out of the scheme. The Secretariat fully supports this and the need to protect sensitive information, however, also feel that there will be some benefit to publishing anonymised data for further analysis at fund level, and potentially by employer type within funds.
5. One challenge to consider is whether the 'optional' part of the opt out form will be sufficiently completed to obtain a significant database of data and the practicality of having an 'optional' form which will be completed outside of the main opt out form.

Administrative impact of the proposals

6. For many years, the scheme has faced mounting administration pressures from both an increase in business-as-usual casework, increased complexity of casework and significant rectification projects such as McCloud. The Board will want to express complete support for

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rectifying inequality and discrimination in the regulations, but it should be acknowledged for some of the proposals, administrators will need to review historic cases and will require updates to software systems. This comes during an incredibly busy time for administrators and software suppliers. To ensure the best scheme member outcome, the Board welcomes that the consultation asks for views on a staggered approach to implementation to ensure the changes are given due time to investigate and implement. However, as raised in previous consultations, the Board may wish to reiterate its view that New Burdens principles should apply to these kinds of changes.

Forfeiture

7. While the Board does support the removal of the three-month deadline from conviction for employers to make a forfeiture application, when that change has been made there is potentially a case for a revised Regulation to govern interim payments. We support the removal of existing Regulation 92, which only applies in the gap between the forfeiture certificate being granted and the ultimate decision by the employer, but given that there would be no timeline at all under the new arrangements, administrators may want some comfort in relation to decisions on how to proceed when a member asks for their pension to be put into payment (or transferred or trivially commuted) while an application for forfeiture is being considered. Board views on that would be helpful.
8. The Board's response should acknowledge and welcome that the government proposes to work with the Board in drafting such guidance, but this will need to be added to the Board's workplan and further understanding on timetable, once known.
9. Also, the Secretariat would want to suggest that the guidance must have sections on due process, representation (including the practical difficulties with that when people are incarcerated) and guidance for employers on how to set the amount to be forfeited in non-financial cases. That feels particularly important for scheme employers which are not treated as public sector for human rights or equality purposes.