

Research Briefing

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# Guaranteed Minimum Pension (GMP) equalisation



## Summary

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## Summary

### What are Guaranteed Minimum Pensions (GMPs)

People who reached State Pension age before 6 April 2016, are covered by the old State Pension. The old State Pension is composed of two tiers:

- The basic State Pension (paid at a flat rate for people with the required ‘qualifying years’ of National Insurance contributions or credits).
- The additional State Pension, which was earnings-related.

When the additional State Pension was introduced in 1978 there was an option to “contract-out”, where employees and their employer would pay less National Insurance and leave the additional State Pension. Between 1978 and 1997, contracted-out schemes had to provide an individually calculated Guaranteed Minimum Pension (GMP).

Contracting-out ended when the new single-tier State Pension replaced the basic and additional State Pensions in April 2016.

### Requirement to equalise GMPs

The [Pension Schemes Act 1993](#) required GMPs to be calculated on a different basis for men and women to reflect differences in the state pension age at the time. This led to inequalities in the rate at which benefits build up in the scheme and the age at which they can be drawn.

Following decisions of the European Court of Justice, since reflected in UK law, the [position of successive governments](#) has been that pension schemes “are under an obligation to equalise overall scheme benefits accruing from 17 May 1990 including, in respect of accruals from 17 May 1990 to 5 April 1997, any inequality resulting from the GMP rules, where an opposite sex comparator existed in the scheme.”

Debate about how the legal requirements applied to schemes regarding GMP equalisation continued until October 2018, when the High Court held in [Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank PLC and others](#) that schemes were “under a duty to amend the Schemes in order to equalise benefits for men and women so as to alter the result which is at present produced in relation to GMPs.”

## Approach to equalisation

The legislation did not specify the approach schemes should take to GMP equalisation. Following consultation, the Government issued [guidance in April 2019](#) on one approach, which involved:

- Placing an actuarial value on benefits accruing between 17 May 1990 and 5 April 1997
- Taking the higher of two values i) that of the member's benefits; and ii) what it would have been had the member been of the opposite sex during that period
- Converting this into scheme benefits that are no longer subject to the (unequal) requirements of the GMP.

The Government had legislated to enable schemes to convert GMPs into scheme benefits in the [Pensions Act 2007](#). However, in its [2019 guidance](#), the Department for Work and Pensions noted that the provisions had been rarely used in practice.

Following the Lloyds Bank judgement, the Government [said](#) it would make changes to the existing GMP conversion legislation to address pensions industry concerns that the existing legislation was unclear in some areas.

## The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022

[The Pension Schemes \(Conversion of Guaranteed Minimum Pensions\) Act 2022](#) amended existing legislation to:

- Clarify that the legislation applies to survivors as well as earners.
- Allow the government to set out in regulations the conditions that must be met in relation to survivors' benefits and set out in regulations detail about who must consent to the conversion.
- Remove a requirement for schemes to notify HMRC when they carried out a conversion exercise.

Following the Act, HMRC [issued further guidance for schemes on GMP equalisation in April 2022](#), particularly in relation to tax implications of different methods that schemes use for GMP equalisation.

Further guidance was issued in June 2022 by HMRC about [how to deal with pension scheme arrears and interest when equalising for GMP](#).

# 1 Requirement to provide a Guaranteed Minimum Pension

People who are in receipt of the state pension, and reached State Pension age before 6 April 2016, are covered by the old State Pension.<sup>1</sup> The old State Pension is composed of two tiers:

- The basic State Pension (paid at a flat rate for people with the requisite number of ‘qualifying years’ of National Insurance contributions or credits).
- The additional State Pension, which was earnings-related.

From the time the additional State Pension was introduced in 1978 there was an option to “contract-out”. Where someone was contracted out, they and their employer would pay less National Insurance and leave the additional State Pension. Instead, they would build up an occupational pension that met certain criteria.<sup>2</sup> At State Pension age, a “contracted-out deduction” was made from their State Pension to reflect this.<sup>3</sup>

When the policy was first introduced in 1978, contracted-out occupational pension schemes had to provide an individually calculated defined benefit known as the Guaranteed Minimum Pension (GMP).<sup>4</sup> GMPs are generally only part of the total pension payable to a member, so the member’s total pension can be viewed as having a GMP element and a pension amount above that.<sup>5</sup>

Future accruals of GMPs were abolished with effect from 6 April 1997.<sup>6</sup> However, schemes still have to provide GMPs in terms of rights built up to that date.<sup>7</sup> Contracting-out ended when the new single-tier State Pension replaced the basic and additional State Pensions in April 2016 as there was no longer an additional State Pension to contract-out from.<sup>8</sup>

<sup>1</sup> People who have retired since then receive the [new single-tier State Pension](#)

<sup>2</sup> The additional State Pension was known as the State Earnings Related Pension Scheme (SERPS) between 1978 and 2002. See Commons Library research briefing CBP-07202 [Pensions 2015](#), 27 May 2015, section 2.3 for further details.

<sup>3</sup> Department for Work and Pensions, [A state pension for the 21<sup>st</sup> century](#), Cm 8053, April 2011, chapter 2, p 32; For more on the background, see Commons Library research briefing CBP 4822, [Contracting out of the State Second Pension](#), 23 March 2011

<sup>4</sup> Department of Health and Social Care, [New Pensions: a more secure future](#), NP34, January 1978

<sup>5</sup> [Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank PLC and others \[2018\]EWHC 2839 \(ch\)](#), para 27

<sup>6</sup> [Pensions Act 1995](#), s12, 12A and 12B

<sup>7</sup> [As above](#)

<sup>8</sup> [Pensions Act 2014](#)

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## 2 GMP equalisation

### 2.1 Reason for inequality

The GMP rules set out in the Pension Schemes Act 1993 broadly followed those of the State Earnings Related Pension Scheme.<sup>9</sup> The intention was to ensure that members of contracted-out occupational pension schemes were at least as well-off as if they had remained contracted-in.<sup>10</sup>

GMPs were calculated differently for men and women because retirement ages at the time were different (60 for women and 65 for men). This led to differences in the calculation for GMPs for men and women. In 2021 the Department for Work and Pensions explained that:

- Where a woman and a man had an identical work history, the woman's overall GMP would be greater than that of the man.
- Women would be entitled to receive a GMP at an earlier age (age 60) than men (age 65).<sup>11</sup>

The requirements to increase GMPs to protect members from inflation are different for GMPs in payment and where a member is a deferred member of a scheme (no longer contributing but not receiving a pension). GMPs in payment receive indexation and for deferred members the GMP receives revaluation. The Department for Work and Pensions explained that this had had different impacts on the GMPs of men and women:

Because their GMP ages differ, a woman will be entitled to indexation on a GMP in payment in periods during which a man of the same age is entitled to revaluation on a GMP that has not yet been put into payment. As a result of different rates of indexation or revaluation applying at different times, a woman's GMP will typically start out as higher than that for a comparable man, but the value of the man's GMP may overtake that of the woman's over time.<sup>12</sup>

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<sup>9</sup> [Pension Schemes Act 1993](#), s14-16

<sup>10</sup> Department of Health and Social Care, Better pensions fully protected against inflation: proposals for a new pensions scheme, Cmnd 5713, September 1974, Foreword; Department for Work and Pensions, [A state pension for the 21st century](#), Cm 8503, April 2011, p32

<sup>11</sup> [Pension Schemes \(Conversion of Guaranteed Minimum Pensions\) Bill 2021-22 – Explanatory Notes](#) (PDF), 16 June 2021; See also, Department for Work and Pensions, [A proposed methodology for equalising pensions for the effect of GMPs – Public consultation](#), November 2016, para 3.11-14

<sup>12</sup> As above

The Department explained that inequality in GMPs often create inequalities in overall scheme benefit. However, it can be far from clear which sex receives the greater total scheme benefit and this can change over a lifetime.<sup>13</sup>

The State Pension age for men and women has now been equalised. Legislation to do this was first included in the Pensions Act 1995 and the latter part of the timetable was accelerated in the Pensions Act 2011, so that the State Pension age for women reached 65 in November 2018.<sup>14</sup> Ministers in successive governments decided not to increase women's GMP age on grounds that to do so would "interfere with an individual's accrued rights under their occupational pension scheme."<sup>15</sup>

## 2.2 Requirement to equalise

On 17 May 1990 the Court of Justice of the European Union (CJEU) ruled that occupational pensions were deferred pay and, as such, schemes had to treat men and women equally: 'the Barber judgment.'<sup>16</sup> The judgement was incorporated into UK domestic law and applies for any accruals from 17 May 1990.<sup>17</sup> The judgment imported an equal treatment rule into occupational pension scheme rules. This means that, where a particular rule would treat a member of one sex less favourably than a member of the opposite sex, it must be read as though it did not treat that member less favourably.<sup>18</sup> Following the Barber judgement, the CJEU reconsidered the issue of equal treatment between the sexes further in cases including 'Allonby' in January 2004.<sup>19</sup>

Following these judgements, the position of successive governments was that "schemes are under an obligation to equalise overall scheme benefits accruing from 17 May 1990 including, in respect of accruals from 17 May 1990 to 5 April 1997, any inequality resulting from the GMP rules, where an opposite sex comparator existed in the scheme."<sup>20</sup>

The Labour Government legislated in the Pensions Act 2007 (s14) to enable GMPs to be converted into scheme benefits, offering an actuarial benefit in

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<sup>13</sup> Department for Work and Pensions, [Guidance on the use of the Guaranteed Minimum Pensions \(GMP\) conversion legislation, Department for Work and Pensions, April 2019, section 2](#)

<sup>14</sup> For more information, see Commons Library Briefing Paper CBP 7405, [Increases in the State Pension age for women born in the 1950s](#),

<sup>15</sup> [HC Deb 17 September 2012 c535W](#) [Steve Webb]; see also [HL Deb 13 Oct 2004 GC103-4](#) [Baroness Hollis].

<sup>16</sup> [Case C-262/188 IRLR 240, \[1990\] ECR I-1889](#)

<sup>17</sup> [Equality Act 2010](#), s64 and 67 to 70, previously section 62 of the Pensions Act 1995

<sup>18</sup> Department for Work and Pensions, [A possible method for equalising pensions for the effect of the GMP](#), January 2012

<sup>19</sup> [Case C-256/01, Debra Allonby v Accrington & Rossendale College and Others, 13 January 2004](#); For a discussion of the Allonby judgement, see Department for Work and Pensions, [Occupational pension schemes draft regulations, occupational pensions legislation subject to review and a proposed methodology for equalising pensions for the effect of GMPs](#), November 2016, p27

<sup>20</sup> [As above](#), para 3.15



exchange.<sup>21</sup> The purpose was to enable schemes to simplify their administrative arrangements by moving to a single set of rules.<sup>22</sup> It is not possible to convert GMPs into scheme benefits unless they have been equalised.<sup>23</sup>

Debate about the legal requirements on schemes regarding GMP equalisation continued for some years.<sup>24</sup> The position was clarified by the High Court judgment in [Lloyds Banking Group Pensions Trustees Ltd v Lloyds Bank PLC and others](#) in October 2018.<sup>25</sup> In response to action by a number of female scheme members, the scheme trustees had asked the court to rule on whether there was an obligation to equalise benefits and, if so, what method should be adopted. The court ruled that the trustees were “under a duty to amend the Schemes in order to equalise benefits for men and women so as to alter the result which is at present produced in relation to GMPs.” It said a range of methodologies may be available for trustees to implement this.<sup>26</sup>

The Government responded that the High Court judgment had endorsed its’ long-held position that schemes must equalise for the effect of inequalities in GMPs.<sup>27</sup>

In a statement, Lloyds welcomed the clarity provided by the judgment and said it would work through the details in order to implement the court’s decision. It estimated the cost of the ruling as far (as it was concerned) to be between £100 and £150 million.<sup>28</sup>

Experts estimated the cost across all contracted-out schemes at £15 bn. This was a lower figure than in previous estimates, in part due to the fact that the court had decided that arrears could be restricted to six years if scheme rules allowed.<sup>29</sup>

## 2.3

### How GMPs can be equalised

In a 2012 consultation DWP set out a method by which GMPs could be equalised. It said it was aware there was uncertainty as to how schemes should amend their benefits to equalise where a GMP entitlement exists. It wanted to offer as much help to pension schemes as possible and was

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<sup>21</sup> Pensions Act 2007 (s14); Department for Work and Pensions, [Security in retirement: towards a new pensions system](#) (PDF), CB 6841, May 2006

<sup>22</sup> PBC Deb, 1 February 2007, c231

<sup>23</sup> [PBC Deb 4 July 2013 c251](#) [Steve Webb]. Power for the Secretary of State to issue guidance on GMP conversion was in the [Pensions Act 2014, Sch 13 \(20\)](#)

<sup>24</sup> “Lloyds Trade Union to fight GMP equalisation battle”, Occupational Pensions, October 2016, p12  
<sup>25</sup> [2018] EWHC 2839 (ch), 26 October 2018

<sup>26</sup> As above, Part IX

<sup>27</sup> [HC Deb 14 February 2019 c1961](#)

<sup>28</sup> “[Companies face £15bn bill after court bans unequal pension payments to men and women](#)”, Financial Times, 26 October 2018

<sup>29</sup> [As above](#)

therefore putting forward one possible method of equalising pensions that schemes could choose to use.<sup>30</sup>

Its proposed method required an additional calculation, for benefits accrued from 17 May 1990 to 5 April 1997, to compare what a member would get under scheme rules and relevant legislation if treated as being a person of the opposite sex. The member's entitlement would be the higher of the two. The comparison would need to be undertaken each time the amount of the pension was calculated, generally annually.<sup>31</sup> However, the industry was concerned that this approach would be particularly onerous to implement. DWP therefore withdrew the draft regulations.<sup>32</sup>

In 2016, DWP launched a consultation on an alternative methodology, involving a comparison of future cash flows and then converting the GMP into a scheme benefit. Under this proposed approach, schemes would compare:

[...] the value of the future expected cash flows for the member in the period that needs to be adjusted for GMP inequalities (i.e. during the period from 17 May 1990 to 5 April 1997) with that for the opposite sex comparator, allowing for contingent benefits. If the opposite sex comparator has the greater discounted value of expected cash flow, then that greater value is delivered. (Schemes will have to consider whether it is appropriate to use the cash equivalent transfer value method, or whether another method would be more appropriate).

In order to avoid having to then comply with the unequal requirements of the GMP legislation, the GMP is also converted into a benefit that is not subject to the requirements of the GMP legislation. Because of the benefits that simplification provide, it is likely that all the GMP will be converted; not just that which accrued between 1990 and 1997. The pension that accrued alongside the GMP that is to be converted may also be put through the conversion process. All of this is achieved through the GMP conversion legislation set out in sections 24A to 24H of the Pension Schemes Act 1993.<sup>33</sup>

In its response to the consultation in 2017, DWP said there was broad agreement that the proposed methodology was an improvement on the 2012 proposal and offered a relatively simple way to convert GMPs into ordinary scheme benefits.<sup>34</sup>

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<sup>30</sup> Department for Work and Pensions, [A possible method for equalising for the effect of the Guaranteed Minimum Pension](#), January 2012, para 7

<sup>31</sup> [As above](#), para 11-13

<sup>32</sup> [A proposed methodology for equalising pensions for the effect of GMPs – public consultation](#), Department for Work and Pensions, November 2016

<sup>33</sup> [As above](#)

<sup>34</sup> Department for Work and Pensions, [Government response: Occupational pension schemes regulations 2017, occupational pensions legislation reviews and a proposed methodology for equalising pensions for the effect of GMPs](#), March 2017, para 4.2

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## 3 The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022

### 3.1 2019 guidance

Statutory guidance published by DWP in April 2019 describes one way of equalising GMPs. As set out in the 2016 consultation, this involves:

- Placing an actuarial value on benefits accruing between 17 May 1990 (the date of the Barber judgment) and 5 April 1997 (when GMP accrual ended)
- Taking the higher of the value of the member's benefits and the value it would have been had the member been of the opposite sex during that period.
- Converting this into scheme benefits that are no longer subject to the (unequal) requirements of the GMP legislation.<sup>35</sup>

The conversion means that the GMP rules, which create inequality between the sexes, are removed for the relevant members going forward.<sup>36</sup>

### 3.2 The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022

The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022 amended previous provisions in legislation to:

- Clarify that the legislation applies to survivors as well as earners.
- Provide for a power to set out in regulations the conditions that must be met in relation to survivors' benefits.
- Provide for a power to set out in regulations detail about who must consent to the conversion.

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<sup>35</sup> Department for Work and Pensions, [Guidance on the use of the Guaranteed Minimum Pensions \(GMP\) conversion legislation](#), April 2019

<sup>36</sup> [As above](#)

- Remove a requirement for schemes to notify HMRC when they carried out a conversion exercise.<sup>37</sup>

Introducing the Act at second reading as a Private Members Bill Margaret Ferrer, highlighted that the Government had developed a methodology which the industry could use for GMP guidance, but added that “The industry agrees that this is a sensible approach, but has pointed out that the legislation supporting the conversion process contains some uncertainties that it believes will expose it to legal risk and potential accusations of not equalising correctly.”<sup>38</sup>

### 3.3 Further guidance

Following the Act, HMRC [issued further guidance for schemes on GMP equalisation in April 2022](#), particularly in relation to tax implications of different methods that schemes use for GMP equalisation.<sup>39</sup>

Further guidance was issued in June 2022 by HMRC about [how to deal with pension scheme arrears and interest when equalising for GMP](#).<sup>40</sup>

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<sup>37</sup> [Explanatory Notes to the Pension Schemes \(Conversion of Guaranteed Minimum Pensions\) Bill 2021-22](#) (PDF), para 12

<sup>38</sup> [HC Deb 26 November 2021, c615](#)

<sup>39</sup> HM Revenue and Customs, [Guidance Guaranteed Minimum Pension equalisation newsletter — April 2022](#), 6 April 2022

<sup>40</sup> HM Revenue and Customs, [Guidance Pension schemes newsletter 140 – June 2022](#), 30 June 2022

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