House of Commons Library

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10 June 2021

Local Government Pension Scheme - response to McCloud

Contents

Summary

The Local Government Pension Scheme (LGPS) is a statutory public service pension scheme. There two separate schemes – one for England and Wales and one for Scotland. It operates on a funded basis (i.e. contributions are made to a fund which is invested and from which benefits are paid at retirement). These funds are managed and administered at local level – there are 88 funds in England and Wales and 11 in Scotland. The schemes were reformed under the *Public Service Pensions Act 2013*, with new schemes introduced in April 2014 in England and Wales (LGPS 14), and in 2015 in Scotland (LGPS 15). Key elements were:

The move to a scheme based on career average revalued earnings (CARE) rather than final salary. Benefits build up at a rate of 1/49th of pay for each year of service, compared to 1/60th under the legacy scheme.

The move from a normal pension age of 65 to one linked to the member's State Pension age.

Changes to tiered contribution rates, plus the introduction of a 50/50 section where members have flexibility to pay half the contributions for half the pension accrual for a period of time, whilst still retaining full life cover and ill-health cover.

All active members were moved into the new schemes when they were introduced and the same rules in relation to contributions and benefits apply to all members in the same way. Transitional protection was provided by means of a 'statutory underpin', providing protected members with the higher of their pension under the reformed, career average scheme and the pension they would have been entitled to under the previous final salary scheme. Benefits built up in the legacy scheme were protected by a 'final salary link', so that benefits are based on final salary on leaving the scheme rather than at the date of reform.

In December 2018, the Court of Appeal ruled in McCloud that the transitional arrangements for the schemes for the judges and the firefighters introduced under the 2013 Act constituted unlawful discrimination. In July 2019, the Government accepted that the discrimination would have to be remedied across public service schemes, including the LGPS.

Consultation followed on what form this should take. For the LGPS, the proposal was to extend underpin protection to younger qualifying members who joined before 31 March 2012. From April 2022, all LGPS members would accrue benefits on a career average basis, without underpin protection, to apply a fairer system to all future service (MHCLG, LGPS E&W amendments to the statutory underpin, July 2020; SPPA, LGPS Scotland. Addressing discrimination- amendments to the statutory underpin, July 2020).

On 13 May 2021, the Government confirmed that underpin protection would apply to all LGPS members who meet the revised qualifying criteria. Further details are to be provided in the Governments response to the consultation later in 2021.

There is a separate paper on LGPS investments. The background to the 2013 Act reforms is discussed in more detail in Library Briefing Paper SN-05823 Local Government Pension Scheme – background to the 2013 reforms (July 2012).

1 Introduction

The Local Government Pension Scheme (LGPS) is a statutory public service pension scheme. It is the only main public service pension scheme that operates on a funded basis. This means that contributions are paid to a fund, which is invested and used to pay pensions at retirement. The others operate on a pay-as-you-go basis, which means contributions are paid to the sponsoring government department which meets the cost of pensions in payment. [1]

1.1 Scheme rules

The current schemes were introduced under the Public Service Pensions Act 2013 . The detailed rules are in regulations set by the 'responsible authority' i.e. the Secretary of State for Housing, Communities and Local Government for LGPS E&W, and Ministers in the Scottish Government for LGPS Scotland. [2]

For LGPS 14 E&W the main scheme rules are in the *Local Government Pension Scheme Regulations 2013 (SI 2013/2356).* Information about the regulations and guidance for employers is on the LGPS employers website. There is a separate site with guidance for LGPS members.

The rules for LGPS Scotland, are on the website of the Scottish Public Pensions Agency. The main scheme rules for the current scheme – LGPS 15 - are in *The Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141).*

The Northern Ireland Executive agreed the introduction of reforms in line with those for Great Britain and legislated for them in the Public Service Pensions Act (Northern Ireland) 2014*.* Information for scheme members is on the NILGOSC website.

[1] For more detail, see Public service pensions: facts and figures, Commons Library Briefing Paper CBP 8478, May 2021

[2] *Public Service Pensions Act 2013*, s2 and Sch 2

1.2 Membership

The LGPS is one of the largest defined benefit (DB) schemes in the world and is the largest DB scheme in England and Wales, with 16,300 employers, 6.2m members and assets of £276 bn. [3]

Members

As at 31 March 2020, there were 6,160,000 members in LGPS E&W and 606,312 in Scotland. [4] Details by membership status is in the table below: [5]

Local Government Pension Scheme (LGPS) membership As at 31 March 2020

	LGPS England and Wales	LGPS Scotland
Active	2,019,000	249,635
Deferred	2,307,000	198,605
Pensioner	1,833,000	158,072
Total	**6,160,000**	**606,312**

Note:

England and Wales data rounded to the nearest thousand.

Sources:

LGPS Scheme Advisory Board Annual Report 2020

LGPS Scotland SAB Annual Report 2020

In March 2019, almost three quarters (73.87%) of members were women and just over a quarter (26.19%) were men. [6]

Scheme employers

To be eligible to join, an individual must be under age 75 and work for an employer that offers LGPS membership. [7] LGPS E&W has three main categories of employer: [8]

[3] LGPS Scheme Advisory Board (England and Wales) – Scheme Annual Report 2020
[4] LGPS Scotland SAB Annual Report 2019-20
[5] Active members are in pensionable service and currently contributing to the scheme; deferred members are early leavers with preserved pension rights; pensioner members are in receipt of a pension, including survivors' benefits
[6] Equality analysis for LGPS E&W consultation – addressing unlawful discrimination, June 2020
[7] LGPS members site – who can join; SI 2013/2356, reg 3 and Sch 2
[8] SI 2013/2356, reg 2 and 3 and Sch 2

- **Scheme employers whose employees are automatically eligible for LGPS membership**. This includes county councils, district councils, fire and rescue authorities, police and crime commissioner, further education colleges, academies. [9]
- **Scheme employers who must designate their employees for them to eligible for LGPS membership.** Designating bodies include town and parish councils; voluntary, foundation and federated schools; technical Institutes; Transport for London and the children and the Family Court Advisory and Support Service. [10]
- **Admission bodies** who must enter into an admission agreement to participate in the LGPS. Admission body status was introduced to enable contractors providing local government services to offer LGPS membership to employees. [11]

If an individual is entitled to membership of another public service scheme (although there are specified exemptions to this rule with regard to certain NHS employees), or a member of another occupational scheme through employment by an admission body, that person is prevented from joining the LGPS. [12]

In 2019, there were a total of 16,307 employers in LGPS in England and Wales. This includes active and ceased employers, scheme employers as specified in Schedule 2 of the regulations and 'admitted bodies', such as outsourcing companies. [13]

LGPS Scotland has two categories of employers, scheme employers whose employees are eligible for LGPS membership and admission bodies. [14] In 2018/19, it covered 32 councils and around 500 other employers. [15]

1.3 Funding

The LGPS is funded, which means that contributions from employers and employers are paid to a fund, which is invested, and from which the cost of pension benefits is met. It is administered, managed and funded at local level

[9] Ibid, Sch 2 Part 1
[10] Ibid, Sch 2 Part 2 LGPS members' site – designating bodies
[11] Ibid, Sch 2 Part 3; For background, see Commons Library Briefing Paper TUPE and Pensions, June 2014
[12] SI 2013/2356, reg 4
[13] LGPS Scheme Advisory Board (England and Wales) – Scheme Annual Report 2020/membership
[14] SSI 2018/141, Reg 3 and Sch 2
[15] Audit Scotland, Scottish Local Government Pension Scheme 2018/19; SSI 2018/141 reg 3 and Sch 2

by administering authorities. [16] There are 88 LGPS funds in England and Wales and 11 in Scotland. [17]

Information on the financial position of the schemes is in the 2019-20 Annual Reports of the Scheme Advisory Boards. [18]

Valuations

LGPS funds undergo an actuarial valuation every three years. [19] These valuations measure the costs of the benefits being provided and inform the future contribution rates to be paid into the schemes by employers. The assumptions for these valuations are set locally. [20]

In May 2019, the Ministry of Housing, Communities and Local Government launched a consultation on changes to the local valuation cycle and management of employer risk. This proposed amendments to the local fund valuations from the current 3-year (triennial) to a 4-year (quadrennial) cycle, in line with other public sector schemes and with valuations of the scheme nationally. To mitigate the risks of longer periods between valuations, it proposed allowing interim valuations and enabling LGPS administering authorities to amend an employer's contribution rate between valuations. [21]

2016 valuation

The last triennial valuation of the LGPS E&W was at 31 March 2019. Overall, LGPS funds had assets of £285 billion and liabilities on local funding assumptions of £291.7 bn, i.e. a deficit of £5.9 bn and a funding level of 98%. This was an overall improvement compared to the position in 2016 which showed assets of £216.6 bn and liabilities of £254.3 bn, i.e. a deficit of £37.7bn and a funding level of 85%.

The report noted that participating employers were under pressure and that funds had undertaken reviews of the employer covenant (i.e; the willingness and ability of employers to support the scheme) and how this was taken into account in the investment and funding strategy. [22] The valuation reports for individual funds can be accessed via the Scheme Advisory Board website.

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[16] SI 2013/2356, Part 2; SSI 2018/141, Part 2

[17] Triennial valuation 2019 in the LGPS – England and Wales, October 2020; Scottish Public Pensions Agency, LGPS funds (viewed 4 June 2021)

[18] Scheme Advisory Board LGPS E&W Annual Report 2019-20; Scheme Advisory Board LGPS Scotland Annual Report 2019-20

[19] *Public Service Pensions Act 2013*, s11; SI 2013/2356, regs 62-6; SSI 2018/142, regs 61-2; HM Treasury, Public Service Pensions (Valuations and Employer Cost Cap) mechanism (updated 12 March 2015); HM Treasury, Public Service Pensions (Valuations and Employer Cost Cap) Amendment Directions, 2018

[20] SI 2013/2356 reg 62; LGPS SAB – Triennial valuations in the LGPS (England and Wales) 2019

[21] MHCLG, LGPS: Changes to local valuation cycle and the management of employer risk. Policy consultation, May 2019

[22] Triennial valuation 2019 in the LGPS (England & Wales) - Detail Report, LGPS Scheme Advisory Board, October 2020

In May 2019, the MHCLG consulted on proposals to change the local valuation cycle from a three-year to a four-year cycle, to bring it into line with the valuation cycles for other public service schemes and the LGPS nationally. It acknowledged that there were potential risks in that "changes in employer contribution rates may be greater as a result of longer valuation periods and that longer valuation periods could also lead to reduced monitoring of any risk." To mitigate these risks, it proposed allowing interim valuations and widening the power of LGPS administering authorities to amend employer contribution rates between valuations. [23] MHCLG has not responded this this aspect of the consultation. [24]

Valuations conducted by LGPS funds in Scotland as at 31 March 2020 can be found on the websites of the individual funds. Guidance is on the website of the Scottish Public Pensions Agency.

Employee contribution rates

Prior to the introduction of reforms in April 2008, there was a standard employee contribution rate of 6%, except for certain members with "lower rate rights", who contributed at 5%. [25] From 1 April 2008, employee contribution rates have been tiered according to pensionable pay. [26] Whereas there were seven tiers of contribution rates in the legacy scheme, there are nine in LGPS 14. Members pay one rate on all their earnings, based on the highest band into which they fall. [27]

In contrast, LGPS Scotland 2015 has a five-point member contribution rate, which is 'banded.' This means that scheme members pay a proportion of earnings up to each limit, and then higher contributions on earnings above each limit. The argument is that this provides for fairer contribution rates for scheme members at the lower end of the pay scale and improves the perceived fairness of contributions at different salary levels. Band values increase each year in line with the CPI. [28]

[23] MHCLG, LGPS: Changes to local valuation cycle and the management of employer risk, Policy consultation, May 2019

[24] MHCLG, Partial response to consultation – reform of exit credits, March 2021

[25] *Local Government Pension Scheme Regulations 1997 (SI 1997/1612)*, regulation 12.

[26] *Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166)*, reg 3

[27] SI 2013/2356, reg 9

[28] Heads of agreement, New Local Government Pension Scheme (Scotland), 12 December 2013; *LGPS (Scotland) Regulations 2018 (SI 2018/141)*

Local Government Pension Scheme (LGPS) contribution rates 2021/22

Pensionable pay band 2021/22	Contribution rate
LGPS England and Wales	
Up to £14,600	5.5%
£14,601 to £22,900	5.8%
£22,901 to £37,200	6.5%
£37,201 to £47,100	6.8%
£47,101 to £65,000	8.5%
£65,001 to £95,400	9.9%
£93.401 to £110,000	10.5%
£110,001 to £165,000	11.4%
£165,001 or more	12.5%
LGPS Scotland	
Up to and including £22,300	5.50%
Above £22,301 and up to £27,300	7.25%
Above £27,301 and up to £37,400	8.50%
Above £37,401 and up to £49,900	9.50%
£49,901 and above	12%

In both schemes, employees can opt to pay 50% contributions for a period in return for accruing 50% benefits. [29] This is designed to "help members stay in the scheme, building up valuable pensions benefits, during times of financial hardship." [30]

Employer contributions

Employers pay the balance of the costs of providing benefits, after taking into account investment returns. Amounts vary, but generally the employer contributes two thirds of the scheme's costs and the employee one third. [31]

The purpose of the 2019 actuarial valuations was to set appropriate contribution rates for each employer in the Scheme for the period from 1 April 2020 to 31 March 2023. The actuary sets a total employer contribution rate made up of:

The primary rate, which is the employer's share of the cost of benefits accruing in each of the three years beginning 1 April 2020.

A secondary contribution, which is based on employers' particular circumstances, with individual adjustments are made for each employer.

[29] SI 2013/2356, reg 10; SI 2018/141, reg 10
[30] LGPS member website - contribution flexibility – the 50:50 section
[31] LGPS member website – employer contributions

Most secondary contributions are a certified amount to recover any deficit over a specified period, or a surplus amount attributable to an employer. [32]

Based on the 2019 valuation, the average primary employer contribution rate increased to 18.6% of payroll from 17% of payroll at 2016. In terms of secondary contributions, the total amounts from employers were £1.3bn, £1.2 bn and £1.2 billion for the 2020/21, 2021/22 and 2022/23 scheme years respectively. Combining the two, the average total employer contribution rate for the period 2020/21 to 2022/23 is 22.9% of payroll, down from 23.6% following the 2016 valuation. [33]

Employer contribution rates for the funds in Scotland from 1 April 2021 can be found in the valuation reports of the individual funds.

32 Triennial valuations in the LGPS E&W 2019 LGPS SAB; SI 2013/2356, reg 62 (5)-(7); SSI 2018/141, reg 61-2

33 Triennial valuations in the LGPS E&W 2019 LGPS SAB

2 Public Service Pensions Act 2013

2.1 Background

Reforms by the Labour Government included the introduction of new look schemes in 2008 in England and Wales and 2009 in Scotland.[34] The schemes remained final salary schemes. Changes included modernisation of survivors' benefits, the introduction of contribution rates that were tiered according to earnings, changes to survivors' benefits and reduced early retirement benefits (with the removal of the 'rule of 85', under which a member could retire early on a full pension if the sum of their age and length of service was 85 years or more).[35]

In a 2010 report, the Audit Commission said that further reform was needed because "unfunded liabilities are being deferred into the future, to make the scheme more affordable to employers in the short term." It said consideration should be given to changes to benefits (such as an increase in the pension age), giving more discretion to local pension funds to adjust the level of benefits they offer, and increases in employee contributions. Any reforms should take account of the nature of the membership, with a high proportion being low-paid and part-time, and the interaction with state benefits given that half of pensions in payment were below £3,000.[36]

For more on the background, see LGPS – background to the 2013 Act reforms, Commons Library Briefing Paper, CBP 5823, July 2012.

2.2 Independent Public Service Pensions Commission

The Coalition Government of 2010-2015 established an Independent Public Service Pensions Commission, chaired by former Labour Work and Pensions Secretary of State, Lord Hutton of Furness, to "undertake a fundamental, structural review of public service pension provision by Budget 2011 and

[34] *LGPS (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166)*; *LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (SI 2008/230)*

[35] For more detail, see LGPS: 2008 reforms, Commons Library Briefing Paper, CBP 4115, June 2012; LGPS: 85-year rule, CBP 4002, January 2011

[36] Local Government Pensions in England, Audit Commission, July 2010

consider the case for short-term savings in the Spending Review period, by September 2010." [37]

In its interim report, published in October 2010, the Commission said it had concluded that an increase in member contribution rates was the most effective way of making short-term savings. To reduce opt-out rates, increases should be designed to protect the lower-paid and phased-in. [38]

In response to the interim report, the Government said it would increase employee contributions by an average of 3.2 percentage points across public service pension schemes except for the armed forces, over the three years from April 2021, designed to protect the lower paid. [39] It said it expected savings from the LGPS of £900 million a year by 2014/15 as a result. [40]

However, local government trade unions and employers expressed concerns about the impact on the LGPS, the membership for which included many lower paid employees who might opt out, increasing the burden to deliver the expected savings on those middle earners who remained in the scheme. They argued that the LGPS was different to other public sector schemes in that it was a funded scheme which had a positive cash-flow. They said they would be prepared to consider amendments to Scheme benefits to find alternative ways of making savings. [41]

In a statement on reforms in 19 July 2011, the then Chief Secretary to the Treasury, Danny Alexander, agreed to discuss alternative ways of delivering some or all of the savings, in recognition of the fact that the funded nature of the LGPS put it in a different position. [42]

2.3 Negotiations on LGPS reform

On 23 September 2011, the Local Government Group submitted proposals on how to achieve the required short-term savings, although it had not been able to reach agreement with the unions. [43]

Then, on 7 October 2011, the Department for Communities and Local Government (CLG) launched a consultation on proposals to deliver the

[37] HM Treasury, Budget 2010, HC 61, June 2010
[38] Independent Public Service Pensions Commission: Interim Report, 7 October 2010, para 8.16
[39] HM Treasury, Spending Review – policy costings, October 2010
[40] HC Deb, 28 April 2011, c555-6
[41] GMB Press Release, 26 October 2010, '£1 billion pension raid on council workers is wrong and unsustainable'; Letter to Chancellor from Local Government Group, 16 February 2011; Unite, LGPS - 2011 Budget
[42] HC Deb, 19 July 2011, c91-4; Letter from the Chief Secretary to the Treasury to TUC General Secretary, Brendan Barber, 18 July 2011
[43] LG Group press release, 'Councils submit pension reform proposal to Secretary of State', 23 September 2011

expected short-term savings through a combination of increased member contribution rates and a reduction in the accrual rate. [44]

Heads of LGPS funds expressed concerns about the complexity of the proposals, [45] trade unions about the impact on low-paid members.” [46]

A Written Ministerial Statement of 20 December 2011 explained that the aim would be to introduce a new scheme in 2014. [47] The aim was to find a single solution to short and long-term issues in the LGPS. [48] On 9 January 2012, the CLG proposals were rejected by UNITE as the basis for a satisfactory outcome. [49] UNISON and the GMB agreed to continue negotiations. [50]

Then in June 2012, the Local Government Association (LGA) and trade unions announced agreement on proposals for reform of the LGPS in England and Wales. [51] In an informal consultation over the summer, the proposals were supported by: 93% of employers; 90% of UNISON members; 95% of GMB members and 84% of Unite members. This provided a ‘clear mandate’ for CLG to launch a consultation on the proposed scheme. [52]

2.4 Introduction of new schemes

In September 2013, the Government responded to the consultation and laid the regulations for the new scheme before Parliament. It came into effect in April 2014. [53] As the Regulations were made before the relevant sections of the *Public Service Pensions Act 2013* had been commenced, they were made under the relevant sections of the Superannuation Act 1972. [54]

The reform package implemented from April 2014 (‘the 2014 Scheme’) through the *Local Government Pension Scheme Regulations 2013 (SI 2015/2356)* consisted of the following main elements:

- fundamentally, and consistent with the approach taken across the public sector, a move to future benefit accrual based on a member’s pay over their career (a ‘career

[44] CLG, Consultation on proposed increases to employee contribution rates and changes to scheme accrual rates, effective from 1 April 2012 in England and Wales, 7 October 2011
[45] Michael Bow, ‘Managers: LGPS plans ‘fiendishly complicated’, Professional pensions, 13 October 2011
[46] UNISON press release, Stop the great pensions robbery, 20 October 2011
[47] HC Deb, 20 December 2011, c152-3WS
[48] Employer and union agreement on the future of the LGPS, 15 December 2011
[49] UNITE rejects local government pensions offer 9 January 2012
[50] GMB update bulletin on local government pensions negotiations, 11 January 2012; UNISON, LGPS Newsletter 11
[51] LGPS, Pension reform proposals agreed with unions - LGA media release 31 May 2012
[52] HC Deb, 17 July 2012, c123WS; CLG, Local Government Pension Scheme 2014: Draft regulations on membership, contributions and benefits. Consultation, December 2012
[53] Local Government Pension Scheme 2014: Government response to consultation, September 2013; SI 2013/2356
[54] SI 2013/2356 – Explanatory Memorandum, para 7.18

average' structure), from a structure where member's benefits were based on a member's pay at leaving the scheme (a 'final salary' structure). Importantly, where active members had membership of the LGPS prior to April 2014 and did not have a disqualifying break in service, but had aggregated their membership, they retained a 'final salary link' that meant their pay at point of leaving the scheme would still be used in calculating their 2008 Scheme benefits, even where this is after April 2014.

- a move from a NPA of 65 to a NPA linked to a member's State Pension age, subject to a minimum of 65 (currently ranging from 65 to 68), but with members still able to retire as early as 55 or as late as 75, with actuarial reductions or increases applied, respectively.

- a move from a 1/60th accrual rate to a 1/49th accrual rate. A pension scheme's accrual rate is the proportion of a member's pay that they receive for each year of membership. The change in the LGPS accrual rate in the 2014 Scheme was a 22% improvement from that which applied in the 2008 Scheme.

- revisions to employee contribution bandings. From April 2014, employees' contributions to the LGPS were banded from 5.5% of earnings (for members earning less than £13,500 per year) up to 12.5% of earnings (for members earning over £150,000 per year). Contribution rates had also been banded in the 2008 Scheme, but the range had been narrower, from 5.5% to 7.5% of earnings.

- the introduction of a 50/50 section, giving scheme members the flexibility to pay half the contributions for half the pension accrual for a period of time, whilst still retaining full life cover and ill-health cover. [55]

The Government said the package was designed to achieve its aims in making the LGPS more sustainable, affordable and fairer in the longer term:

> In particular, the combination of the move to a career average basis and the improvement to the LGPS's accrual rate should mean that many low and medium paid members will receive a pension from the 2014 Scheme at least as good as the pension they would have received from the 2008 Scheme. In addition, whilst LGPS employer contributions vary, members will benefit from significantly higher

[55] MHCLG, Local Government Pension Scheme (England and Wales). Amendments to the statutory underpin, July 2020

employer contributions than the average applicable in the private sector. [56]

LGPS Scotland

There were separate negotiations on reforms in to the LGPS Scotland, where representatives from local authorities, trade unions and the Scottish Government worked to develop proposals for a new Scottish Local Government Pension Scheme with effect from April 2015. [57]

As with the scheme in England and Wales, there would be a new CARE scheme with an accrual rate of 1/49 th One area of difference is the contribution rates. In Scotland there are fewer tiers (five compared to nine in LGPS 14) and the tiers are tiers are banded rather than the employee paying the highest rate that applies to them on all their pensionable pay. [58]

2.5 Governance changes

The LGPS Scheme Advisory Board (SAB) explains that prior to the 2013 Act reforms, the LGPS had a relatively straightforward governance structure which included the Secretary of State, responsible for making scheme regulations, and an Administering Authority for each fund, Responsible for management, administration and for maintaining and investing its Fund. [59]

The Independent Public Service Pensions Commission identified the need for changes in public service pension scheme governance, given a "lack of transparency and of clarity as to who is responsible for what" and the fact that scheme members were not always formally represented. It recommended that each scheme, and individual LGPS Fund, should have "a properly constituted, trained and competent Pension Board, with member nominees, responsible for meeting good standards of governance including effective and efficient administration." It also recommended the introduction of a "pension policy group for each scheme at national level for considering major changes to scheme rules." [60]

The 2013 Act required each public service pension scheme to establish:

- **A responsible authority** to make scheme regulations. For the LGPS, this is the Secretary of State or Minister in the Scottish Government. [61]

[56] Ibid
[57] SPPA website/Local Government Pension Scheme/Consultation/2014
[58] Heads of Agreement – New Local Government Pension Scheme Scotland, December 2013
[59] LGPS Guidance on the creation and operation of Local Pension Boards in E&W, LGPS SAB, 2015
[60] Independent Public Service Pensions Commission: final report, 10 March 2011, Ex37
[61] PSPA 13, s2 and Sch. 2

- A **scheme manager** to be responsible for managing and administering the scheme and its investments. For the LGPS, this is the Administering Authority. [62]
- A **pensions board** to assist the scheme manager in securing the effective and efficient administration of the scheme. Each LGPS Administering Authority is now required to establish a local pensions board, with an equal member and employer representatives. [63]
- A **Scheme Advisory Board (SAB)** to provide advice to the Secretary of State on Minister in the Scottish Government, at their request, on the desirability of changes to the scheme. [64] The LGPS SAB also has the function of providing advice to Administering Authorities and local pension boards in relation to effective and efficient administration and management. [65] The LGPS E&W SAB has projects underway on governance, transparency, cost management and responsible investment.

2.6 Cost control mechanism

The 2013 Act reforms included a 'cost control mechanism' under which if 'member costs' rise or fall by more than 2% compared to a target rate, measures need to be taken to bring them back to target. Member costs are those related to the profile of members, for example, the expectations about their life expectancy, growth in salaries, or career paths. [66]

The LGPS has two cost control mechanisms: that operated by HM Treasury, which applies across public service pension schemes, and a 'future service cost' process operated by the LGPS Scheme Advisory Board (SAB), which reflects the specifics of the LGPS. Both could lead to changes to the scheme design or member contributions if they showed that costs had moved sufficiently from the target. The Treasury process would take precedence if it suggested corrective action, but the SAB process did not. [67]

For more detail, see Public Service Pensions: the cost control mechanism, Commons Library briefing paper CBP 6971, April 2020.

[62] Ibid, *s4;* SI 2013/2356, Part 2; SSI 2018/141, reg 51
[63] Ibid, s5; SI 2013/2356, Part 3; See LGPS SAB Local Pension Boards; SSI 2015/60
[64] Ibid, s7;SI 2013/2356, Part 3
[65] SI 2013/2356, Part 3
[66] PSPA *13*, s12, SI 2014/575, HM Treasury directions 2014; para 2.24-6 & 2.31-3.
[67] Cost control in the LGPS, LGPS SAB

3 Transitional arrangements

The Independent Public Service Pensions Commission set up by the Coalition Government in 2010 was asked to ensure that its recommendations protected accrued rights. [68]

In its final report in March 2011, it said that based on its proposals, existing members in their 50s should experience fairly limited change to the benefit which they would otherwise have expected to have built up by normal pension age. This was particularly the case if the final salary link was protected for past service as it recommended (i.e. pension benefits are based on final salary on leaving public service, not on salary at the time of the reforms). [69]

The Coalition Government accepted the recommendation on the final salary link. [70] However, it also agreed that there should be transitional protection for those 'closest to retirement.' [71]

Section 18 of the Public Service Pension Act 2013 provided that no benefits could be provided under the existing schemes after the 'closing date' (31 March 2015, 31 March 2014 for relevant local government schemes). Scheme regulations could make exceptions for:

- persons who were, or were eligible to be, members of an existing scheme immediately before 1st April 2012; and
- for other persons who ceased to be, or to be eligible to be, members of existing schemes before that date.

Transitional protection took a different form in the LGPS compared to the other public service schemes.

The unfunded schemes gave people within 10 years of normal pension age on 1 April 2012 and still in service on 1 April 2015, the option remain in that scheme until retirement. There was also 'tapered protection' for those between 10 and 14 years of normal pension age on that date, who could remain in their legacy scheme for a limited period, depending on their age. [72]

In contrast, in the LGPS, transitional protection was provided by means of a 'statutory underpin.' What this meant was that 'protected members' who were within ten years of normal pension age on 1 April 2012 (there was no

[68] Independent Public Service Pensions Commission: Interim Report, 7 October 2010,
[69] Independent Public Service Pensions Commission: Final Report, 10 March 2011, recommendation 4 and para 7.34
[70] HM Treasury, Public Service Pensions – good pensions that last, November 2011, Foreword
[71] HC Deb 2 November 2011 c927WS
[72] E.g. The Public Service (Civil Servants and Others) Pensions Regulations 2014 (SI 2014/1964), Sch 2

tapered protection) were given an "underpin" that provided their retirement pension could not be less than it would have been in the 2008 Scheme.

The underpin test is carried out at the qualifying member's 'underpin date', i.e. the earlier of the date they reach normal pension age under the legacy (2008) scheme or the date they cease to be an active member with an immediate entitlement to a benefit. It is designed to guarantee that the qualifying scheme member's pension calculation gives them the better of a) the pension they have built up in the career average 2014 Scheme and b) the pension they would have built up in the final salary 2008 Scheme, over the same time period. [73]

There was a high-level description of how it works in the July 2020 consultation document:

- Underpin protection is granted to those who were active members in the LGPS on 31st March 2012 and who on 1st April 2012 were 10 years or less from the NPA applicable to the member under the 2008 Scheme (usually 65) (regulation 4(1)(a)). •
- Those who meet the basic criteria for underpin protection retain this so long as they are:
  - in active membership in the 2014 Scheme the day before their 'underpin date' (see below),
  - do not have a disqualifying break in service after 31st March 2012, and
  - have not drawn benefits from the 2014 Scheme before their underpin date (regulation 4(1)(b) to (d) and (3)). •
- The underpin test is carried out on an individual's 'underpin date' which is the earlier of:
  - the date the protected member reaches their NPA under the 2008 Scheme (usually 65), or
  - the date the protected member ceased to be an active member of the scheme with an immediate entitlement to a benefit (regulation 4(2)). •
- The underpin test is carried out by comparing the 'assumed benefits' (i.e. the career average benefits the protected member has accrued) against the 'underpin amount' (i.e. the final salary benefits the protected member would have accrued if the scheme had not been reformed) (regulations

[73] Local Government Pension Scheme (Transitional Provisions, Savings and Amendments) Regulations 2014 (SI 2014/525), reg 4

4(5) and (6)). These paragraphs contain detailed provisions which enable administrators to take into account a variety of factors in the comparison of benefits. For example, where the protected member is due to receive an enhancement to their 2014 Scheme benefits as a result of retiring on ill-health grounds, the difference between that enhancement and the enhancement they would have received under the 2008 Scheme would be considered.

- If the underpin amount is calculated to be higher than the assumed benefits on the underpin date, the protected member's pension account is to be increased by the difference (regulation 4(4)). [74]

There is an explanation on an archived page of the LGPS 2014 website.

LGPS Scotland 2015 also delivered transitional protection by means of a statutory underpin. [75]

3.1 Legal challenge - McCloud

In December 2018, the Court of Appeal ruled in McCloud v Ministry of Justice that the 'transitional protection' offered to some members as part of the reforms amounted to unlawful discrimination. The matter was remitted to the Employment Tribunal, to determine a remedy for the claimants. In July 2019, having been denied leave to appeal, the Government said the difference in treatment would be remedied across public service pension schemes. This would apply to pension scheme members with relevant service across all those public service pension schemes including the LGPS and regardless of whether an individual had made a claim. [76]

3.2 Consultation on remedy for LGPS members

The LGPS Scheme Advisory Board explained that for the LGPS it was likely that the remedy would involve the extension of some form of underpin to members in scope who were not currently offered protection. [77]

[74] MHCLG, LGPS (England and Wales). Amendments to the statutory underpin, July 2020, p13-4
[75] *LGPS (Transitional Provisions and Savings) Regulations Scotland 2015 (SI 2015/233)*
[76] HCWS 1275 15 July 2019
[77] LGPS Scheme Advisory Board – McCloud

In July 2020, HM Treasury launched a consultation on its proposal to address unlawful discrimination arising from the transitional arrangements in the main unfunded public service pension schemes. [78]

The Ministry of Housing and Local Government (MHCLG) conducted a separate consultation for the LGPS because transitional protection had been provided differently - by means of a statutory underpin. [79] It identified two groups of LGPS members affected by the age discrimination identified in McCloud:

- Those who were in service on 31st March 2012 and were within ten years of NPA on 1st April 2012, therefore benefiting from underpin protection and 'better off' than the second group; and,
- Those who were in service on 31st March 2012 and were more than ten years from NPA, were not eligible for underpin protection and therefore 'worse off' than the protected members (as they were not guaranteed a pension of at least the level they would have received in the final salary scheme).

It proposed removing the difference in treatment by extending underpin protection to the second group. Regardless of age, "members who were active in the 2008 Scheme on 31st March 2012 and who have accrued benefits under the 2014 Scheme without a disqualifying break in service (five or more years) would have underpin protection, subject to aggregation requirements." [80]

Members who joined the LGPS in the final salary scheme after 31 March 2012 are not covered by the proposals. They were ineligible for transitional protection regardless of their age and they were not subject to the discrimination identified by the Courts. In addition, the Government argues that the widespread media scrutiny of the reform proposals means that "anyone joining after 31 March 2012 could, therefore, reasonably be expected to have known when they entered service that they would join or be moved to the reformed scheme. [81]

Aspects of the existing regulations that the Government was seeking to fix included:

- **Currently, a member must leave active service with an immediate entitlement to a pension for underpin protection to apply.** Under the consultation proposals, protection would also apply where a member

[78] HM Treasury, Public service pension schemes: changes to the transitional arrangements to the 2015 schemes, July 2020
[79] MHCLG, LGPS (England and Wales). Amendments to the statutory underpin, July 2020
[80] Ibid
[81] Ibid, para 116

leaves early with entitlement to a preserved pension. This would enable younger workers, who are more likely to leave early to benefit. [82]

- Making it clear that, where a member had a break in service, or a period of concurrent employment, these needed to be aggregated for underpin protection to apply. It would otherwise be extremely difficult for scheme administrators to effectively administer the underpin in the coming decades. [83]
- **The introduction of two-stage process for checking entitlement.** In place of the current one-stage process, where a comparison of benefits under the legacy and reform schemes is made on one date, there would be a second check when benefits came into payment. This is intended to ensure the member always received at least the higher of the pension they would have been due from the reform or legacy, taking into account the impact of factors like early/late retirement adjustments. [84]

The 'underpin period' (i.e. the period over which a member's legacy and reform scheme benefits are compared) would run between 1 April 2014 to 31 March 2022. This reflects the position under the existing regulations where 31 March 2022 is the last date a member in the protected cohort can reach their 2008 Scheme normal pension age. From 1 April 2022, all LGPS members would accrue benefits on a career average basis, with no underpin. This "reflects the Government's original desire to phase out final salary membership of public service pension schemes, and to replace them with career average pension rights, which we believe are fairer and more sustainable." However, where a member continues in active service beyond March 2022, they will retain a final salary link, and it will be their pay at the point of leaving the LGPS (or at age 65, if earlier) which would be used in their underpin calculation. This should "ensure that older and younger members have an equivalent level of protection." [85]

Ministerial Statement of 13 May 2021

A Written Ministerial Statement of 13 May 2021 explained that the change would be implemented by regulations. The intention was that the regulations would come into force on 1 April 2023, retrospective to 1 April 2014. The Government's response to consultation, to be published later this year, would provide more detail:

> Underpin protection will apply to LGPS members who meet the revised qualifying criteria, principally that they were active in the scheme on 31st March 2012 and subsequently had membership of the

[82] Ibid, para 42

[83] MHCLG, Local Government Pension Scheme. Amendments to the statutory underpin, July 2020, para 44 to 54

[84] Ibid, para 61-3

[85] MHCLG, Equality analysis. LGPS E&W - addressing unlawful discrimination, June 2020, p4

> career average scheme without a continuous break in service of more than five years.
>
> The period of protection will apply from 1st April 2014 to 31st March 2022 but will cease earlier where a member leaves active membership or reaches their final salary scheme normal retirement age (normally 65) before 31st March 2022.
>
> Where a member stays in active membership beyond 31st March 2022, the comparison of their benefits will be based on their final salary when they leave the LGPS, or when they reach their final salary scheme normal retirement age, if earlier.
>
> Underpin protection will apply to qualifying members who leave active membership of the LGPS with an immediate or deferred entitlement to a pension.
>
> A 'two stage process' will apply for assessing the underpin so that, where there is a gap between a member's last day of active membership and the date they take their pension, members can be assured they are getting the higher benefit.
>
> Scheme regulations giving effect to the above changes will be retrospective to 1st April 2014.
>
> A full Government response, containing further detail on the matters addressed above, and on other issues which were covered in the consultation, will be published later this year. This will include the Government's decision on whether members will be expected to meet the underpin qualifying criteria in a single period of scheme membership for the underpin to apply.
>
> It is anticipated that regulations giving effect to these changes will be made after new primary legislation in relation to public service pensions has completed its passage through Parliament and the Government's intention is that regulations will come into force on 1st April 2023. [86]

The Scottish Public Pensions Agency consulted separately on proposals for the scheme in Scotland that mirrored those under consultation for the scheme in England and Wales. [87]

Responses to consultation

In its response to the consultation in October 2020, the Pension and Lifetime Savings Association (PLSA) said it supported the Government's proposal to address the discrimination identified in McCloud by extending the underpin to younger scheme members with the underpin period applying from the 1st

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86 HCWS 26 13 May 2021

87 LGPS (Scotland). Addressing discrimination – amendments to the statutory underpin, 2020, para 6

April 2014 to the 31st March 2022. However, it had concerns about the impact the proposals would have on funds and their administrators as well as employers, given the significant amount of resource and data that will be needed to implement the remedy. [88]

The LGPS SAB supported the proposal to extend underpin protection to deferred members. It identified the decision to exclude younger members who joined the Scheme after 31 March 2012 as an area of potential future challenge, " given that younger members are likely to see the cost of the remedy passed onto them via the cost cap arrangement." [89]

3.3 Impact on scheme members

The MHCLG explains that the proposed changes are likely to benefit women and younger members:

> Together and individually, these changes are intended to be beneficial for scheme members and are intended to ensure that the revised underpin works for all members with underpin protection in a consistent and effective way. The proposals to extend underpin protection to those with breaks in employment may be more likely to benefit women, who are more likely to have time out of the labour market , and therefore have positive affects in relation to the protected characteristics of sex. The proposals to extend underpin protection to those who leave with a deferred or immediate entitlement is likely to mean younger members would be more likely to benefit from underpin protection and therefore have positive effects in relation to the protected characteristics of age. [90]

The Equality Analysis identifies some differences in how the revised underpin applies to different age groups, both in terms of who qualifies and who is likely to benefit from it. This reflects two main points:

> Under our proposals, members will have to have been in active membership of the LGPS on 31st March 2012 to qualify for underpin protection. Younger members, who are more likely to have joined the LGPS since then, will be less likely to qualify. The Government is not proposing extending underpin protection to those who joined the LGPS after 31st March 2012 because:

[88] LGPS (E&W): Amendments to the statutory underpin. Response to MHCLG's consultation paper, PLSA, October 2020

[89] LGPS SAB, Local Government Pension Scheme (LGPS) - Response to consultation: Amendments to the Statutory Underpin, October 2020

[90] MHCLG, Equality analysis, LGPS E&W - addressing unlawful discrimination, June 2020

> For members joining after 1st April 2014, they joined the career average scheme and there is no need to provide protection to help them transition to the new scheme structure.
>
> For members joining between 1st April 2012 and 31st March 2014, they joined the LGPS at a time when upcoming reforms were well publicised, and they could not have expected to remain in the final salary scheme.
>
> Members between the ages of 41 and 55 as at 31st March 2019 are more likely to benefit from the underpin than other groups because, based on LGPS experience and future assumptions:
>
> - they are more likely to experience pay progression that would make the final salary benefit higher for the underpin period than their older colleagues, and
> - they are more likely to remain in active membership than younger colleagues who would be expected to leave before they receive the pay progression necessary for the underpin to result in an addition to their pension.
>
> These differential impacts reflect the workings of a final salary scheme, and demonstrate why the Government is keen to move local government pensions accrual to a career average basis from April 2022 to apply a fairer system to all future service. [91]

The proportion of men and women who would qualify for, and benefit from, underpin protection under the proposals matches the profile of scheme members, which is predominantly female (74% of LGPS members in March 2019 were female, compared to 26% of men), Men are marginally more likely to qualify for underpin protection and to benefit from it, reflecting the fact that "men would be expected to have higher salary progression than women and that women are expected to have higher voluntary withdrawal rates than men." [92]

3.4 Meeting the costs

The proposed remedy is estimated to cost LGPS employers £2.5bn in the coming decades, as protected members retire and begin to receive their benefits. Because employer contribution rates are set through local fund valuations and take account of a number of factors, it is not possible to say how these changes would impact on employer contribution rates. However, as the consultation proposals could "only lead to improvements in scheme

[91] Ibid, section 2.3
[92] Ibid, p17

benefits for qualifying members and, by necessity, there will be an upward pressure on liabilities":

> 140. The LGPS is a locally administered, funded scheme with three-yearly funding valuations to determine employer contribution rates. The next funding valuation is due on 31st March 2022. Employer contribution rates are, in most cases, determined on an individual employer basis, and take into account a number of factors, some related to the individual employer (such as membership demographics) and some related to the fund more broadly (such as the performance of fund investments since the previous valuation).
>
> 141. As a result of this backdrop, it is not possible to say how these changes would impact employer contribution rates at future valuations. However, the proposals in this paper can only lead to improvements in scheme benefits for qualifying members and, by necessity, there will be an upward pressure on liabilities. Because a variety of factors influence LGPS employer contribution rates, this upward pressure does not necessarily mean any particular employer's contributions will go up as a result of these changes, and administering authorities are required to smooth employer contributions as far as possible over the long term. Where any fund or employer would like to understand how these proposals may affect their own position, they should speak to their fund actuary. As scheme liabilities predominantly sit with local authorities and other public bodies, which are largely taxpayer funded, any employer contribution increases that do arise would need to be met, for the most part, by the taxpayer. [93]

Cost control element of the 2016 valuations

In October 2018, the LGPS E&W SAB said that "the total cost of the scheme (employer and employee) under the Board's process is 19% against a target total scheme cost of 19.5%." Work was underway to agree a package of benefit changes to return the costs to target, with the aim of getting these on the statute book by April 2019. [94]

However, in January 2019, this work was put on hold due to uncertainty about costs due to the McCloud judgement. [95]

In July 2020, the Government launched a consultation on proposals to remedy the discrimination identified in McCloud. It said that there was now enough certainty about the value of benefits to proceed with the valuations. The costs of the McCloud remedy would count as a 'member cost', to be considered as part of the completion of the cost control element of the 2016

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93 MHCLG, Local Government Pension Scheme. Amendments to the statutory underpin, July 2020

94 LGPS SAB website/board updates/October 2018

95 HCWS 1286 30 January 2019

valuations. [96] This consultation was issued after the 2019 valuations of LGPS funds were completed. However, fund actuaries had been required to include some form of allowance for the remedy in the 2019 valuation results. [97]

In February 2021, announcing its response to consultation on McCloud remedies, the Government said the cost control element of the 2016 valuations could now be completed. [98] The LGPS SAB said it was considering its options regarding the pause of its process. Once this work was completed, the Board was committed to bring forward any resulting improvements to benefits costed on the assumption of an April 2019 effective date. [99]

The SAB expects to receive recommendations from the Government Actuary Department (GAD) on the 2016 Cost Cap Valuation, in the first half of 2021. [100]

96 HCWS380 16 July 2020

97 LGPS SAB website, 2019 valuations – detail report/current issues

98 HCWS 757, 4 February 2021; HM Treasury, Update from the 2016 and 2020 valuations, Feb 2021; (NAO, Public service pensions, HC 2424, March 2021, para 3.12

99 LGPS SAB website – McCloud Q&A, updated 21 Feb 2021

100 Scottish Local Government Pension Scheme Advisory Board Annual Report 2019-20