



**Report of: Corporate Director of Finance**

Meeting of:	Date	Agenda item	Ward(s)
Local Pensions Board	15 September 2020		n/a

Delete as appropriate		Non-exempt
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## **SUBJECT: LGPS McCLOUD CONSULTATION-AMENDMENT TO STATUTORY UNDERPIN**

### **1. Synopsis**

- 1.1 This consultation seeks views on changes to the Local Government Pension Scheme in England and Wales (LGPS). It outlines proposed changes to the LGPS statutory underpin protection to remove unlawful discrimination found by the Courts in relation to public service pension scheme 'transitional protection' arrangements. Specifically, it is proposed to remove the condition that required a member to have been within ten years of their normal pension age on 1st April 2012 to be eligible for underpin protection. In removing the discrimination, a number of supplementary changes are proposed to ensure the revised underpin works effectively and consistently for all members.

### **2. Recommendation**

- 2.1 To note the consultation policy document via link <https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin>
- 2.2 Consider the proposals being consulted on as summarised in para 3.1.1
- 2.3 To consider the questions in paragraph 3.1.2 and discuss responses to be submitted to MHCLG by the deadline of 8 October 2020
- 2.4 To also note the resource and planning that needs to be undertaken to effectively implement these changes

### **3. Background**

3.1 The Ministry of Housing, Communities and Local Government (MHCLG) published its long awaited consultation on draft Regulations introducing amendments to the statutory underpin for the Local Government Pension Scheme (LGPS) in England and Wales on 16 July 2020. The proposals are designed to remedy the unlawful discrimination caused by the protection of older members when the scheme was reformed in April 2014. The consultation is estimated to affect around 1.2 million members of the LGPS by extending the underpin to all qualifying members, regardless of their age.

3.1.1 The key features of the remedy are set out below:

- The eligibility conditions for the final salary underpin will now exclude the age criterion but are still applied to members of the scheme at 31 March 2012 only.
- The underpin will, however, cease to apply for all members in respect of pensionable service from 1 April 2022.
- The underpin will now also apply to members leaving but not immediately drawing benefits, whereas it previously applied only on the sooner of retirement or reaching Normal Pension Age.
- Members benefits are not changed for the impact of the underpin until retirement ("the underpin crystallisation date"), but members need to be informed of the position should they leave pensionable service before retirement. In this situation, the underpin will then need to be re-tested at the point of retirement to allow for the impact of any early/late retirement factors that may be applied.
- There are differences in how the new underpin will operate (including as above) and the new approach will apply to all eligible members and retrospectively in replacement of the previous age-related underpin – even for those members previously covered by the underpin.
- The underpin will apply only where benefits are aggregated. As this could mean a loss of underpin for some existing members, there will be a 12-month election window where members can opt to retrospectively aggregate benefits thereby retaining the underpin across all service.
- Any increase in benefit due to the underpin will count for Annual Allowance purposes only in the year of the underpin crystallisation date.
- The underpin will have to be revisited for members who have died or transferred out since 2014 which will add complexity to the implementation
- MHCLG estimate the cost to LGPS employers of their proposals will be £2.5bn over the coming decades, as protected members retire and begin to receive their benefits. This equates to c0.8% of the total liabilities of the LGPS.

3.1.2 The summary of consultation questions are listed:

The consultation itself is extremely detailed and has 29 questions to respond on and included draft Regulations which will be retrospective to 1 April 2014

- **Question 1** – Do you agree with our proposal to remove the discrimination found in the McCloud and Sargeant cases by extending the underpin to younger scheme members?
- **Question 2** – Do you agree that the underpin period should end in March 2022?
- **Question 3** – Do you agree that the revised regulations should apply retrospectively to 1st April 2014?
- **Question 4** – Do the draft regulations implement the revised underpin which we describe in this paper?
- **Question 5** – Do the draft regulations provide for a framework of protection which would work effectively for members, employers and administrators?

- **Question 6** – Do you have other comments on technical matters related to the draft regulations?
- **Question 7** – Do you agree that members should not need to have an immediate entitlement to a pension at the date they leave the scheme for underpin protection to apply?
- **Question 8** – Are there any other comments regarding the proposed underpin qualifying criteria you would like to make?
- **Question 9** – Do you agree that members should meet the underpin qualifying criteria in a single scheme membership for underpin protection to apply?
- **Question 10** – Do you agree with our proposal that certain active and deferred members should have an additional 12 month period to decide to aggregate previous LGPS benefits as a consequence of the proposed changes?
- **Question 11** – Do you consider that the proposals outlined in paragraphs 50 to 52 would have 'significant adverse effects' in relation to the pension payable to or in respect of affected members, as described in section 23 of the Public Service Pensions Act 2013?
- **Question 12** – Do you have any comments on the proposed amendments described in paragraphs 56 to 59?
- **Question 13** – Do you agree with the two-stage underpin process proposed?
- **Question 14** – Do you have any comments regarding the proposed approaches outlined above?
- **Question 15** – Do you consider there to be any notable omissions in our proposals on the changes to the underpin?
- **Question 16** – Do you agree that annual benefit statements should include information about a qualifying member's underpin protection?
- **Question 17** – Do you have any comments regarding how the underpin should be presented on annual benefit statements?
- **Question 18** – Do you have any comments on the potential issue identified in paragraph 110?
- **Question 19** – Do the proposals contained in this consultation adequately address the discrimination found in the 'McCloud' and 'Sargeant' cases?
- **Question 20** – Do you agree with our equalities impact assessment?
- **Question 21** – Are you aware of additional data sets that would help assess the potential impacts of the proposed changes on the LGPS membership, in particular for the protected characteristics not covered by the GAD analysis (age and sex)?
- **Question 22** – Are there other comments or observations on equalities impacts you would wish to make?
- **Question 23** – What principles should be adopted to help members and employers understand the implications of the proposals outlined in this paper?

- **Question 24** – Do you have any comments to make on the administrative impacts of the proposals outlined in this paper?
- **Question 25** – What principles should be adopted in determining how to prioritise cases?
- **Question 26** – Are there material ways in which the proposals could be simplified to ease the impacts on employers, software systems and scheme administrators?
- **Question 27** – What issues should be covered in administrative guidance issued by the Scheme Advisory Board, in particular regarding the potential additional data requirements that would apply to employers?
- **Question 28** – On what matters should there be a consistent approach to implementation of the changes proposed?
- **Question 29** – Do you have any comments regarding the potential costs of McCloud remedy, and steps that should be taken to prevent increased costs being passed to local taxpayers?

### **Resource and work**

- 3.2
- There are many different aspects of work that will need to be carried out to implement the changes and to administer the changes once they take effect. These include:
    - ongoing administration changes – will we be ready to implement the new regulations by April 2022, process, and resources
    - benefits review for leavers - able to identify all qualifying members with 100% accuracy and need to collect the data needed to calculate the final salary underpin.
    - member communication - content and the delivery of communications, and additional queries from members affected by McCloud?
    - employer communication - content and the delivery of communications
    - data – how do we ensure that we have all the data needed to calculate the final salary underpin back to 1 April 2014 for those who qualify.
    - systems – capabilities to collect the McCloud data, carry out the retrospective review of benefits, administer the scheme going forward, and communicate with scheme members and employers.
- 3.3
- Members are asked to consider the full consultation document at the link as and discuss their views and responses to the questions listed in paragraph 3.1.2 for submission to MHCLH by the deadline of 8 October 2020. Members are also asked to note the administering resources required and to monitor progress on planning for this project McCloud.

## **4. Implications**

### **4.1 Financial implications**

None applicable to this report.

### **4.2 Legal Implications**

None applicable to this report.

### **4.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:**

None applicable to this report. Environmental implications will be included in each report to the Pension Board Committee as necessary. The current agreed investment strategy

statement for pensions outlines the policies and targets set to April 2022 to reduce the current and future carbon exposure by 50% and 75% respectively compared to when it was measured in 2016 and also invest 15% of the fund in green opportunities. The link to the full document is <https://www.islington.gov.uk/~media/sharepoint-lists/public-records/finance/financialmanagement/adviceandinformation/20192020/20190910londonboroughofislingtonpensionfundinvestmentstrategystatement.pdf>

#### 4.4 **Resident Impact Assessment:**

The Council must, in carrying out its functions, have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity in relation to disability, race and gender and the need to take steps to take account of disabilities, even where that involves treating the disabled more favourably than others (section 49A Disability Discrimination Act 1995; section 71 Race Relations Act 1976; section 76A Sex Discrimination Act 1975."

##### 4.4.1

An equalities impact assessment has not been conducted because this report is seeking opinions on a government policy document and therefore no specific equality implications arising from this report.

## 5. **Conclusion and reasons for recommendation**

5.1 Members are asked to consider the consultation document and responses to the questions and also note administering resources that will be required to implement the changes and the need to plan ahead of April 2022.

### **Background papers:**

None

Final report clearance:

### **Signed by:**

**Received by:** Corporate Director of Finance Date

Head of Democratic Services Date

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