

## **Councillors' Pensions - Consultation**

### **Purpose of report**

For decision.

### **Summary**

In a written ministerial statement on 19 December, Local Government Minister Brandon Lewis announced that councillors would not be able to join the Local Government Pension Scheme (LGPS) after April 2014, and that those who were already members would not be able to accrue further benefits after that date.

The Department for Communities and Local Government (CLG) is now consulting on the issue. The closing date for the consultation is 5 July 2013.

### **Recommendations**

That the Executive:

1. Endorses the Leadership Board recommendation to support **option 3**.
2. Decides whether to commission further evidence in support of its response.
3. Supports the proposal to bring contributions in line with the rest of the scheme in the event that councillors continue to be part of the Local Government Pension Scheme from 1 April 2014.

### **Action**

Officers to complete the Consultation response in line with Members' steer and bring back to the LGA Leadership Board for final sign off

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## **Councillors' Pensions - Consultation**

### **Background**

1. Following Brandon Lewis' written ministerial statement on 19 December, the Consultation on *Taxpayer-funded pensions for councillors and other elected local office-holders* was published in April 2013. The closing date for responses is 5 July.

### **The Consultation**

2. The Consultation has moved on from the original ministerial statement, which excluded the Mayor of London, elected mayors and the London Assembly. These are now included. However, MPs are not included – further information on the remuneration of MPs is set out **Appendix A**.
3. The Consultation sets out three options:
  - 3.1 **Option 1:** No access to the new Local Government Pension Scheme (LGPS) from April 2014 through being directly elected to local office. Thus, councillors; elected mayors; the Mayor of London and members of the London Assembly would be excluded from active Scheme membership – this is the government's preferred position.
  - 3.2 **Option 2:** Two-tier membership - continued access for 'front bench' councillors only. This option could include just elected mayors (including the Mayor of London) and elected leaders or could encompass all those with a special responsibility allowance (including members of the London Assembly) – the government would welcome views on which councillors and elected local office holders should be eligible if this option were to be pursued.
  - 3.3 **Option 3:** No change. Access to the taxpayer-funded LGPS remains for all councillors and elected local office holders on the same basis as at present.
4. The Consultation poses three questions for respondents to consider.
  - 4.1 **Question 1:** Taking account of the issues raised in this consultation document and any other considerations, what option do you prefer and why?
  - 4.2 **Question 2:** Do you have any alternative proposals on councillors and other elected office holders access to the Scheme?

- 4.3 **Question 3:** If councillors continue to have access, do you agree with the proposed change in contribution rate? If not, what contribution rate would you recommend?
5. It also challenges respondents to produce evidence that:
- 5.1 Supports the view that access to a pension has had any impact on the number of people putting themselves up for election.
- 5.2 Demonstrates that withdrawal of pension will cause hardship in individual cases.
6. Following publication of the Consultation, the four Group Offices have contacted their members, urging them to respond and inviting them to copy their responses to the LGA, so that our own response fully reflects the views of our membership.

### **The current position**

7. The LGA Leadership Board considered the issue in February and concluded unanimously that all councillors should continue to have access to the LGPS – **option 3** of the Consultation. A copy of the initial legal advice secured following the ministerial statement is set out in paragraph 11 below.
8. In its response to the Government's response to the CLG Select Committee report, *Councillors on the frontline*, the LGA said:
- 8.1 *"It is generally agreed that we would like to see more people from all walks of life interested in and standing for political office. We are clear that we do not want to see a professional class of councillor. However if we want to see increasing representation of local councillors, particularly those of working age, we need to look at the role in its entirety. Remuneration alone will not overcome this issue; however, remuneration needs to reflect the loss of earnings councillors may face. We also think that councillors should continue to have access to the LGPS because access to a pension is a factor in attracting a broad cross-section of people to become councillors"*.
9. The National Census of Local Authority Councillors in 2010 showed that the average age of councillors has increased from 55 in 1997 to 60 in 2010. The number of councillors under 60 years of age has declined from 51 per cent in 2004 to 41 per cent in 2010.
10. Although no formal position has yet been it is understood that the London assembly will seek to retain membership of the LGPS for its members and the Mayor of London.

### **Legal advice**

11. The initial view of our external legal advisers is that *"there are real problems for the Minister should he decide to withdraw membership"*. Lawyers have highlighted three particular courses on which to challenge.
- 11.1 **Judicial review**, *"The prospects of success in a judicial review depend on the consultation response, the way in which the Minister effects the changes and the*

*detailed provisions of the regulations brought forward.* If the Minister fails to give due regard to the outcome of the consultation, then there may be recourse to judicial review.

- 11.2 **Designation of councillors under the Pensions Act 2008.** The pensions act requires employers to provide access to a pension scheme for its workers. Until now, councillors have not been designated workers. However, initial advice is that *“In summary we consider that Members that receive a regular allowance are “workers” for the purposes of the pensions Act 2008”*. However, it is understood that the government’s own legal advice on this matter concluded that elected members are not workers for the purposes of this legislation.
- 11.3 **Challenges under the Equalities Act 2012.** Legal advice supports the view that operating a two-tier approach, as set out in option 2, could lead to claims under the Equalities Act 2010 for indirect discrimination/equal pay. It could also amount to a breach of the public sector equality duty.
12. The Consultation makes no real reference to previous government policy, which took positive action to encourage more high quality councillors from a greater diversity of backgrounds. Many serving councillors made important choices based on the expectation this created, and access to the LGPS will have been a factor. Given that the principle of “legitimate expectations” is embedded in European legal decisions, the LGA is seeking further advice on this issue.

### **Contribution rates**

13. In the event that councillors continue to be part of the Local Government Pension Scheme from April 2014, the proposal is to bring their contributions in line with the rest of the scheme. This means moving from a current fixed 6 per cent to a scale ranging from 6 per cent to 12.5 per cent depending on allowance received (**Appendix B**). Given levels of members’ allowances, the majority of contributions would be set at 6 – 6.5 per cent.

### **Conclusion and next steps**

14. Resolving the issue of members’ pensions is a high priority for the LGA and its membership. The Leadership Board unanimously supports **option 3** - the continuation of current pension arrangements. The Executive is invited to endorse that view and to decide whether it wishes to commission evidence in support of its response.

**MP's pensions**

1. Under the Parliamentary Pensions (Amendment) Regulations 2009 (SI 2009/1920), MPs have access to a final salary contributory pension with contribution rates set at 11.9%, 7.9% and 5.9% respectively, accruing benefits at 1/40th, 1/50th or 1/60th.
2. MPs' pension at normal retirement age (65) is based on final pensionable salary, length of pensionable service and the chosen contribution rate. Once in payment, pension benefits increase in line with the Consumer Prices Index in the 12 months to the preceding 30 September (subject to fund limits). Members can choose to exchange part of their pension for a tax-free lump sum, normally to a maximum of 25% of the capital value of the pension.
3. An MP serving the average term of office of 15 years, paying contributions at 11.9% (accruing benefits at a rate of 1/40th) would accrue a pension of around £22,500 p.a. (about 1/3rd of an MP's pay). The average pension in payment from the scheme is £18,000 pa, including transfers in from other schemes and payments for added years. Therefore, the average pension financed by contribution from the Exchequer is estimated to be around £15,000 pa.

**MPs leaving office**

4. The current pay and allowances for members who leave the House at a General Election are difficult to determine. The only information readily available is in the Committee on Standards in Public Life's 2009 report on MPs' expenses and allowances, which outlines the then current and proposed future arrangements.

Current arrangements	Proposed future system (at 2009)
MPs who lose their seats or stand down at a general election receive a resettlement grant of between 50 and 100 per cent of annual salary.	<p>MPs who lose their seats at a general election should receive one month's pay for every year served to a maximum of nine months salary.</p> <p>MPs who stand down at a general election should receive eight weeks' pay from the date of the election in lieu of notice to cover time spent winding-up offices, dealing with staff, and transferring casework.</p> <p>Loss of resettlement grant should be one of the sanctions considered as a penalty for MPs found guilty of breaching the Code of Conduct.</p>
MPs may claim a winding-up allowance to meet necessary expenditure incurred after leaving office – e.g. to settle outstanding bills or pay staff who have been given notice.	No change to claims for winding-up allowance. The amount claimable should be reduced to reflect the fact that staff redundancy pay should in future be paid from a central budget.

5. The Independent Parliamentary Standards Authority is currently reviewing MPs remuneration. Details can be found at <http://parliamentarystandards.org.uk/payandpensions/Pages/default.aspx>

**PROPOSED CONTRIBUTION RATES**

<b>Pensionable allowance</b>	<b>Contribution rate</b>
Up to £21,000	6%
£21,001 to £34,000	6.5%
£34,001 to £43,000	6.8%
£43,001 to £60,000	8.5%
£60,001 to £85,000	9.9%
£85,001 to £100,000	10.5%
£100,001 to £150,000	11.4%
£150,001 or more	12.5%