

## **Members' Pensions**

### **Purpose of report**

For discussion and direction.

### **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.

This report sets out the current position on members' pensions, an initial legal view and possible options for the future.

### **Recommendation**

Members are asked to consider the report and to agree how they wish to take forward.

### **Action**

Next steps and handling to be agreed as part of the discussion.

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## Members' Pensions

### Background

1. 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 statement can be found at <https://www.gov.uk/government/speeches/local-government-pension-scheme>
2. The statement specifically excludes the Mayor of London and the members of the Greater London Assembly, who are classed for pension purposes as employees and receive a salary rather than an allowance. It also proposes to consult on allowing elected mayors to remain in the scheme as a voluntary option, although under the current regulations elected mayors are treated in the same way as councillors.
3. The Minister has since suggested to lead LGA members that it is not the intention to exclude council leaders or cabinet members from the pension scheme.

### The current position

4. In 2003, the LGPS Regulations 1997 were amended to allow councillors under the age of 75 to join the scheme. However, councils can only offer membership on the recommendation of their independent remuneration panel. In England, independent remuneration panels also determine whether the basic allowance, the special responsibility allowance or both can be pensionable. In Wales, the system is slightly different and both allowances are pensionable.
5. LGA research carried out earlier this month through the pension funds found that 59% of councils offered councillors access to their pension scheme, compared with 52% in 2008. Overall, 17% of councillors are in the scheme. Further detail is set out in table 1.

**Table 1 – <sup>1</sup>Councillors in the Local Government Pension Scheme**

	<b>England</b>	<b>Wales</b>	<b>All</b>
No of councils offering councillors access to LGPS	179 (57%)	19 (95%)	198 (59%)
No of councillors taking up LGPS in councils offering access	2897 (30%)	414 (38%)	3311 (30%)
No of councillors with SRAs taking up LGPS in councils offering access	2016 (21%)	274 (25%)	2290 (21%)
No of councillors taking up LGPS across all councils	2897 (16%)	414 (36%)	3311 (17%)
No of councillors with SRAs taking up LGPS across all councils	2016 (11%)	274 (24%)	2290 (12%)

<sup>1</sup> Based on a response by 77 of the 89 pension funds

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6. The current LGPS will be replaced by a new scheme on 1 April 2014. The new scheme currently excludes councillors, but includes the Mayor of London and GLA members as employees.
7. The LGA has consistently raised with CLG the question of what will happen to councillors' pensions when the new scheme for employees is introduced in 2014 and were assured that the matter was under consideration. The current Statutory Consultation on the 2014 scheme commits to a separate consultation on councillors' pensions at the earliest opportunity, although no further details have been released. The Workforce Board has been fully briefed.
8. Information on MPs' pensions, MPs' salaries and expenses, and on the Mayor of London and GLA is attached at **Appendices 1, 2 and 3.**

**The options**

9. Members have two main routes they may wish to follow –
  - 9.1 To object to the proposed exclusion of councillors from LGPS as a matter of principle (Option 1)
  - 9.2 To agree that not all members will be eligible for the scheme and to press instead for the inclusion of certain designated members (Options 2 – 4). This was part of the original consultation in 2001, when the Government suggested “that members of a local authority’s Executive, and chairs of its overview and scrutiny committees who have been appointed to that position for a period of at least 6 months, should be eligible for pensionable remuneration through the LGPS”.
10. Given that the current scheme will come to an end on 1 April 2014, either approach would require Government to create a new scheme for councillors, or to make amendments to the main scheme.

**Option 1 - All councillors to continue to have access to the LGPS**

11. This is likely to have the widest support from the LGA’s membership. However it would require the Government to reverse its stated position.

**Option 2 - Only Councillors in positions deemed to be full-time have access**

12. The Minister’s statement refers to the principle of full-time in relation to elected mayors, and this could be extended to cover other designated full time roles. However
  - 12.1 This approach would require each authority to put in place additional process to demonstrate which roles are full time, and could be open to challenge.
  - 12.2 The approach could lead to indirect discrimination/equal pay claims – full time status could be a criterion that women as a group find more difficult to meet than men - although this is untested and would need further investigation. (The part time judges recently won their discrimination claim over access to the judges’ pension scheme in the Supreme Court, although in this case under the Part-time Workers Regulations/Part-time Workers Directive).

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**Option 3 - Only Councillors in receipt of a SRA have access**

13. This would include any member in receipt of an SRA under an authority's scheme of allowances. Possible issues:
- 13.1 For some councils, this could be complicated and costly to administer, as members move in and out of roles. To mitigate this, the scheme could include a specified "qualifying period". This would tie in with the Government's original consultation in 2001. Members who have held an SRA for the specified time would be included in the LGPS CARE scheme and so could purchase additional pension to cover the qualifying period should they wish to do so.
- 13.2 If the majority of those on SRAs were full time, this could lead to indirect discrimination/equal pay claims as in 12.2 above. However with a broader range of roles this is less likely than in option 1.

**Option 4 - Only leaders and cabinet members have access**

14. Under this option, only leaders and cabinet members would have access to the scheme. The same issues are likely to apply as option 3, but with a greater likelihood that these roles are full time and could lead to indirect discrimination/equal pay claims, although the different nature of the roles could in some cases be a defence.

**Legal advice**

15. 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.
- 15.1 **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.*"
- 15.2 **Designation of councillors under the Pensions Act 2008**. The pensions act requires employers to provide access to a pension scheme for its workers. However 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*".
- 15.3 **Challenges under the Equalities Act 2012**. Legal advice supports the view that withdrawing the LGPS for some but not all members, including differentiating between full time and part time members, and elected mayors, 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.

**Conclusion and next steps**

16. Resolving the issue of members' pensions is a high priority for the LGA's membership but is highly sensitive and unlikely to attract public support. The Leadership Board is invited to give a clear steer on how it wishes to take the issue forward.

**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.

<b>Current arrangements</b>	<b>Proposed future system (at 2009)</b>
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>

**MPs' salaries and expenses**

1. MPs salary and expense entitlements are set by the Independent Parliamentary Standards Authority (IPSA) and are published in *Members' pay and allowances from April 2010*. **Table 1** summarises the current entitlements although ministers do not take their full salary entitlement. **Table 2** sets out the actual combined salary drawn by ministers. The salary which the Prime Minister draws is the same as the threshold senior civil servant salary, above which salaries are subject to Ministerial approval

**Table 1 – ministerial salary entitlements**

Salary per annum	Parliamentary	Ministerial	Combined
Prime Minister	£65,738	£132,923	£198,661
Cabinet Minister	£65,738	£79,754	£145,492
Minister of State	£65,738	£41,370	£107,108
Under Sec of State	£65,738	£31,401	£97,139
Member of Parliament	£65,738	-	£65,738

**Table 2 – ministerial actual combined salaries**

Office	Previous administration	Current Government	Annual pay cut
Prime Minister	£150,000	£142,500	£7,500
Cabinet Minister	£141,647	£134,565	£7,082
Minister of State	£103,937	£98,740	£5,197
Under Sec of State	£94,142	£89,435	£4,707

2. MPs expense entitlements are set out in the MPs' Scheme of Business Costs and Expenses (Fourth Edition), which came into effect on 1 April 2012. Table 3 shows the maximum amounts that MPs can claim in 2012/13.

**Table 2 – ministerial actual combined salaries**

<b>Accommodation</b>		<b>Office costs</b>	
London area rent	£20,000	London Area MPs	£24,750
Mortgage interest (transition <sup>2</sup> )	£8,850	Non-London Area MPs	£22,200
Caring responsibility	£2,425		
London Area Living Payment	£3,760	<b>Start-up</b>	
London Area Living Payment (addition)	£1,330	All MPs	£6,000
		<b>Winding-up</b>	
<b>Staffing<sup>3</sup></b>		London Area MPs	£56,250
London Area MPs	£144,000	Non-London Area MP	£53,150
non-London Area MPs	£137,200		

<sup>2</sup> Transition period ended 31 August 2012

<sup>3</sup> Subject to IPSA approval

**Appendix 3 - GLA members and Mayor/Deputy Mayors of London**

1. The Review Body on Senior Salaries (SSRB) sets the remuneration package for GLA members, the current rates are as follows:

<b>Office</b>	<b>Salary</b>	<b>Actual salary taken</b>
Mayor of London	£145,350	£143,911
Statutory Deputy Mayor	£96,092	
Chair of the London Assembly	£64,103	
London Assembly Members	£53,439	

2. In line with the freeze on public sector pay, members have received no cost of living award since 2009/10. Further details can be found at <http://www.london.gov.uk/who-runs-london/greater-london-authority/budget-and-strategic-plan/salaries>
3. GLA members who stand down, are not re-elected or who retire on ill-health grounds may qualify for a resettlement or ill-health retirement grant. These are calculated on the basis of age and the number of years in office.  
<http://legacy.london.gov.uk/gla/budget/docs/resettlement-grant-scheme.pdf>
4. Regulation 9 of the Local Government Pension Scheme (Administration) Regulations 2008 provides that the Mayor of London and London Assembly members can join the LGPS. If they join they are treated as employees of the Greater London Authority.