

GMP equalisation - Government response to consultation

Alert | 15 March 2017



Introduction

The Government has published its [response](#) (“the Response”) to a [consultation](#) (see our [Alert](#)) on several contracting-out issues, including GMP equalisation.

Key points

- The DWP’s proposed new methodology seeks to achieve equal benefits in private sector pension schemes using a one-off calculation followed by GMP conversion.
- The Government:
 - does not intend to place any obligation on schemes to use its methodology to equalise GMPs.
 - will consider its position on GMP equalisation in the light of any developments in the legal action taken by Lloyds Trade Union as to whether the inequality of GMPs constitutes unlawful sex discrimination.
 - “hopes” to be in a position to consult on any proposed changes to contracting-out legislation to enable bulk transfers without consent to take place between formerly contracted-out schemes and schemes which have never been contracted-out “by autumn 2017”.

GMPs – a brief history

From 6 April 1978, individuals could accrue an entitlement to an earnings-related addition to their basic state pension, called the State Earnings Related Pension Scheme (SERPS). An employer could contract its scheme out of SERPS if it was designed to provide a pension at least as good as a statutory minimum, known as the GMP. The GMP is a component of a member’s total scheme pension.

The method for calculating GMPs is set out in legislation. It is possible for the GMP component of a scheme’s benefits to be unequal between the sexes because:

- GMPs accrue at different rates for men and women
- GMPs are payable from different ages (65 for men, 60 for women), and
- a member’s GMP increases at a different rate from their scheme pension.

GMP accrual was abolished from 6 April 1997 onwards.

Equalisation of benefits

In the [Barber](#) case (17 May 1990), the ECJ ruled that occupational pensions were deferred pay and, as such, schemes were required to treat men and women equally. As a result schemes “equalised” their retirement ages, often at age 65, and adjusted their benefits accordingly. However, as the rules governing GMPs are set out under legislation, there was some doubt as to whether Barber applied to GMPs.

Where any inequality is the result of legislation, there has also been uncertainty as to whether there is a need for a “comparator” – namely, a worker of the opposite sex who is being treated more favourably. The Government’s view is that European case law does not require a comparator where state legislation (in this case the UK’s unequal state retirement ages and its effect on GMPs) is at issue.

Equalising for the effect of GMPs

The proposed equalisation method involves a one-off calculation and actuarial comparison of the benefits a man and woman would have, with the greater of the two converted into an ordinary scheme benefit under the legislative facility for converting GMPs. It should be noted that, under the current proposals, a GMP cannot be converted into DC benefits. This will cause difficulties for DC schemes with GMP underpins.

In the Response, the Government makes clear that it does not intend to require schemes to equalise GMPs using this method, nor does it consider it appropriate to provide a “safe harbour” in respect of the proposed methodology. “It is for the trustees of a scheme to decide what, if any, action is needed for their scheme to provide equal pension benefits”.

Further work

The Government will be considering certain issues with the industry working group (which was set up back in 2012 to help to look at potential methods for GMP equalisation) to determine what, if any, particular action should be taken. For example:

- whether tolerance (de-minimis) levels should be adopted when deciding which members should be selected for full conversion
- where responsibility should fall where a scheme has already transferred or bought-out GMPs (ie. on the transferring scheme, the receiving scheme or the annuity provider?)
- what method should be used for valuing benefits?

More generally, they will also consider what further changes might be necessary to the proposed methodology and to legislation to enable schemes to convert benefits more easily.

The Government is also working with HMRC to:

- ensure any future communications regarding contracting-out take into account the fact that some schemes may have undertaken GMP conversions
- consider how GMP conversion may impact on an individual’s tax arrangements.

Tidying up contracting-out legislation

The initial DWP consultation covered several minor changes to contracting-out legislation. The Government has chosen to take more time to think about most of these and will consult in the future on any particular proposals. However, it has decided to:

- give HMRC discretion, where specific conditions are met, in relation to the notification of payment of a contributions equivalent premium or “CEP”
- remove the 0.5% premium for fixing the revaluation rate for GMPs. This results in an overall new fixed rate revaluation for those leaving pensionable service after 5 April 2017 of 3.5%.

Bulk transfers without consent

Regulatory restrictions prevent a formerly contracted-out scheme from making a bulk transfer without member consent to a receiving scheme which has never been contracted-out. This used to be resolved by the receiving scheme contracting out for a short period and thereby becoming a formerly contracted-out scheme. But, since the end of contracting-out, this workaround is no longer available.

This issue was flagged with the Government before last year’s consultation and was raised again by respondents. The Government is considering the issues and hopes to be in a position to consult on any proposed changes by autumn 2017.

Next steps

The Government will be undertaking further work with the industry working group and intends to set out a more definite timeline for publishing guidance and potentially amending legislation on GMP conversion as soon as it is in a position to do so.