



News Alert 2019/04

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DWP publishes GMP conversion guidance

At a glance

The Department for Work and Pensions has today published guidance to using its existing GMP conversion legislation to tackle the 17 May 1990 – 5 April 1997 Guaranteed Minimum Pension inequality issue. This is a significant development, but much more needs to be done before schemes will be able to use this approach with confidence to resolve GMP inequalities.

The Detail

On 18 April 2019, the DWP [published](#) guidance on how its GMP conversion legislation can be used to equalise pensions for the effect of unequal GMPs. This guidance takes the work of the DWP and its industry working party one further step on from the November 2016 consultation (see [News Alert 2016/04](#)), but there remains much to be done. It also references only one of a number of equalisation methods that the Lloyds Banking Group case made clear are available for consideration (see [News Alert 2018/07](#)).

Back in 2016 the DWP intended to first make any necessary changes to the conversion legislation before publishing any guidance material. While Parliament remains otherwise engaged, the guidance has been published without speculation as to timing on legislative changes, other than noting that the Government is considering what may be necessary to clarify certain issues, and a promise to update the guidance from time to time to reflect any such changes that take place in the future and any material developments in case law. HMRC is also mentioned as working to provide guidance to reflect the tax position for equalised schemes.

What does the guidance cover?

To a large extent, the guidance reprises material that had already been written, in both the 2016 consultation and the DWP's 2017 interim response to that, but it is now neatly presented in a single guidance document.

After dealing with how the GMP inequality issue arose, introducing the working group and its role, and explaining why inequalities in benefits resulting from unequal GMPs need to be addressed (including a useful short summary of the High Court's decision in the Lloyds Banking Group case), the guidance focuses on the methodology that was developed by the working group and first exposed in 2016.

The DWP guidance is a useful first step but it is incomplete ...

... as changes to DWP legislation are likely to be needed, along with assistance from HMRC and clarity from the courts

Much of the guidance covers familiar ground ...

The familiar ten-stage process is set out – as tabulated below:

... including the ten-stage process

1	Reach agreement with the employer	6	Equalisation
2	Select the members for conversion and agree which benefits are to be converted and the form of the new benefits	7	Conversion – determining the post-conversion benefit
3	Set the conversion date	8	Certification
4	Pre-conversion consultation	9	Modification of scheme to effect conversion
5	Valuation	10	Post-conversion notifications

Within this process there are some useful new points. These include the following:

... but there are some useful new points

- **De minimis** – trustees may wish to take legal advice in relation to members for whom the estimated cost of calculating and implementing equalisation is the same or greater than the projected additional benefits to which the member would be entitled as a result of equalisation.
- **Member selection** – it is not necessary to convert benefits for all members, nor to convert at the same time. Trustees can undertake conversion in stages for different groups or individuals if they wish.
- **Fiduciary duty** – trustees are reminded that when taking decisions on the shape and form of the post-conversion benefits, they need to have regard to their fiduciary duties as trustees as well as what is possible within the scope of the GMP conversion legislation. Where the benefits will be materially different in shape and form, the guidance suggests that the trustees may wish to give the members options and if they do this, consider if aspects of the [Code of Practice for Incentive Exercises](#) may be relevant.
- **Pre-conversion consultation** – guidance is set out on the nature of consultation with members that DWP expects to see operate, including in relation to member tracing.
- **Actuarial assumptions** – the guidance points to the scheme’s cash equivalent transfer value basis, or a unisex equivalent as a starting point for a basis to undertake the conversion, giving a steer to applying unisex factors as they will ensure that the individual’s converted benefits relating to the 17 May 1990 – 5 April

1997 window period will be identical to those of their notional opposite sex comparator.

- **Active members** – some suggestions are made as to how to approach their conversion, including potentially waiting until they are no longer in pensionable service.

But perhaps the most interesting new material is to be found in the chapter dealing with “detailed and practical aspects”. There is useful guidance on how to approach the conversion calculations for pensioners and survivors, including how to deal with arrears payments. The guidance also suggests how the interaction of arrears payments with future payments can be handled where the advantaged sex changes over time.

The guidance concludes with a short section on pensions tax issues, which confirms that HMRC is looking at certain aspects of its pensions tax law, followed by a Q&A section that repeats a number of points made earlier in the guidance.

What does the guidance not cover?

Many points were explicitly acknowledged in the DWP’s 2017 interim response to its 2016 consultation, and most of these are covered in the guidance, albeit in relatively short order. What is clearly missing is any further information on changes to the conversion law which the DWP acknowledged back in 2016 might need to be made.

Amongst the legislative difficulties are the following:

- how employer consent operates in schemes where participating employers have changed over the years, including where there are currently no participating employers; and
- how to interpret the current conversion law in respect of the setting up of post-conversion contingent survivor benefits.

Pensions tax law is replete with challenges when it comes to any modification of scheme benefits and the guidance does not even scratch the surface of the issues that will need to be tackled as trustees address the GMP inequality issue – whether through conversion or otherwise. Hopefully we will hear more from HMRC on how it will ensure that tackling the GMP inequality issue does not cause unfair tax penalties or unnecessary administrative processes, especially as HMRC has now [announced](#) the setting up of its own working group to look into equalisation issues.

The DWP guidance also does not get into the technical and practical issues likely to be faced by those undertaking GMP conversion in any depth. However, this may be an opportunity for the recently formed industry group, [announced](#) in January by the Pensions Regulator, to “fill in the gaps” with its promise to promote “best practice” on issues arising from the Lloyds Banking Group ruling.

... with new guidance on dealing with pensioners and survivors

We wait to hear from the DWP on changes to conversion law ...

... from HMRC on the pensions tax law impact

... and from the Pensions Regulator’s industry group

Our viewpoint

DWP's guidance is a welcome step in what is proving to be an extraordinarily lengthy journey in providing tools to trustees and their advisers to tackle the GMP inequality issue. Its significance is that it demonstrates that conversion is a viable and practical option. This will be welcomed by those for whom the alternative of dual records is unacceptable. But more needs to be done, by both DWP and HMRC, before trustees can use conversion to resolve the GMP inequality issue with confidence. And there remain outstanding legal issues that need to be tested in the Lloyds case.

In the meantime, schemes can get on with the preparatory work – such as completing GMP reconciliation, establishing data availability, gathering full documentation on the operation of the scheme, establishing administrative practices for GMPs and confirming how comparator benefits should be calculated. And trustees and employers should be undertaking a strategic review of what outcomes they wish to achieve ahead of carrying out the actual equalisation exercise.

... but schemes can start preparatory work now

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Lane Clark & Peacock LLP
London, UK
Tel: +44 (0)20 7439 2266
enquiries@lcp.uk.com

Lane Clark & Peacock LLP
Winchester, UK
Tel: +44 (0)1962 870060
enquiries@lcp.uk.com

Lane Clark & Peacock
Ireland Limited
Dublin, Ireland
Tel: +353 (0)1 614 43 93
enquiries@lcpireland.com

Lane Clark & Peacock
Netherlands B.V. (operating
under licence)
Utrecht, Netherlands
Tel: +31 (0)30 256 76 30
info@lcpnl.com

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