LGPS (England and Wales) scheme administrator guide

Freedom and Choice – AVCs

Contents

Background

The Taxation of Pensions Act 2014 introduced more flexibility in the way members of Defined Contribution (DC) pension schemes can take their benefits from age 55.

Members of DC schemes now have increased flexibility over how they can take their retirement income. From 6 April 2015, subject to their pension scheme offering them, members of DC schemes can use their pension pots in four main ways:

- buy an annuity (or scheme pension, if offered by the scheme, with or without a pension commencement lump sum)
- enter into a flexi access drawdown arrangement
- take a number of lump sums from uncrystallised funds at different stages i.e. an Uncrystallised Fund Pension Lump Sum (UFPLS)
- take the entire pot from uncrystallised funds in one go (UFPLS).

For clarity, the LGPS is a Defined Benefit (DB) pension scheme with an in-house AVC arrangement provided for within its regulations. The in-house AVC arrangement is a DC scheme.

The Pension Schemes Act 2015 amended the Pension Schemes Act 1993 to allow members to transfer their LGPS benefits and in-house AVC plans independently of each other, rather than having to transfer all of the benefits under the scheme together, as was the case before 6 April 2015.

In addition to the increased flexibilities, certain additional safeguards and disclosure requirements were introduced to help people make informed decisions about their retirement options.

Do the pension flexibilities apply to in-house AVCs?

Although the in-house AVC arrangement within the LGPS is a DC scheme which provides money-purchase benefits, the increased flexibilities mentioned above i.e. flexi access drawdown and the option of taking one or more UFPLS are not permitted in the LGPS.

In May 2016, MHCLG consulted on amending regulations for the LGPS in England and Wales which proposed introducing the UFPLS option into the LGPS for AVCs. However, in its response to the consultation, MHCLG stated that the UFPLS option would not be introduced into the LGPS due to the substantial administrative complexities it would introduce. Therefore, if members wish to enter into flexi-access drawdown or take an UFPLS, they must transfer their AVC plan(s) to a DC scheme which provides the required flexibility.

Members are unable to take payment of their AVC benefits within the LGPS before taking their main scheme benefits.

LGPS (Amendment) Regulations 2018

The LGPS (Amendment) Regulations 2018 amend the Transitional Regulations 2014 to provide that, from 14 May 2018, the rules that apply to AVC plans that started on or after 1 April 2014 will also apply to AVC plans that started before 1 April 2014. The change affects:

- active members on 14 May 2018 who have an AVC plan that started before 1 April 2014, and
- deferred/pensioner[1] members who have an AVC plan that started before 1 April 2014, who left active membership of the scheme on or after 1 April 2014 and take payment of their AVC plan after 13 May 2018.

The changes do not affect members who left the LGPS before 1 April 2014, nor do they apply to councillor members whose AVCs are contributed to and paid under the rules of the LGPS 1997 Regulations.

The changes means that, for affected members, regulation 17 of the 2013 Regulations applies to an AVC plan entered into before 1 April 2014 as it applies to an AVC plan entered into on or after that date, but with two protections:

- the normal pension age in an AVC plan entered into before 1 April 2014 is the normal retirement age under the 2008 Scheme; and
- members who started paying AVCs before 13 November 2001 still retain the right to buy extra membership in the LGPS with their AVC plan in accordance with regulation 66(8) of the 1997 Regulations.

This means there is now a further category of AVC plan i.e. a protected post 2014 AVC plan. See the 'categories of AVC plans' section for more information.

The changes made by the LGPS (Amendment) Regulation 2018 also have implications for how affected members can take their AVC plan, how an AVC plan is paid in the event a member dies before taking the AVC plan, the amount that can be paid into an AVC and what happens to an AVC plan when main scheme benefits are aggregated. Where appropriate, the changes are incorporated within the rest of this guide. For full details of the changes see bulletin 171.

[1] Where a member who left the LGPS on or after 1 April 2014 took payment of their main scheme benefits before 14 May 2018 but deferred payment of their AVC plan

Categories of AVC plans

Before 14 May 2018, AVCs were categorised as either pre or post 2014 AVC plans. As described in the section above, there is now a further category of AVC plan i.e. a protected post 2014 AVC plan. The three categories of AVC plan are described below:

Post 2014 AVC plan

An AVC plan that started on or after 1 April 2014, or is treated as such upon aggregation (see the aggregation section).

Pre 2014 AVC plan

An AVC plan that started before 1 April 2014, where the member either left the LGPS before 1 April 2014 or took payment of the AVC plan before 14 May 2018.

Protected Post 2014 AVC plan

An AVC plan that started before 1 April 2014, where the member remains in the same employment[2], is an active member of the LGPS on 31 March 2014 and 1 April 2014 and takes payment of the AVC plan after 13 May 2018. That member holds a protected post 2014 AVC plan even if they stopped paying AVCs before 1 April 2014. A protected post 2014 AVC plan retains the NRA under the 2008 scheme and the member retains the right to use option four below, if eligible.

AVC options at retirement

When a member takes their main scheme benefits from the LGPS they must notify the relevant administering authority how they would like to use their accumulated AVC plan, in accordance with the options below:

1. **Buy one or more annuities** – from an insurance company, bank or building society of the member’s choice at the same time as taking their main scheme benefits.
2. **Buy a top-up LGPS pension** – they can use some or all of their AVC plan to buy a top-up pension from the LGPS but, for pre 2014 AVC plans, only if the member takes immediate payment of their main scheme benefits when they leave the scheme.
3. **Take a pension commencement lump sum** – members can take up to 100% of their AVC plan as a tax free lump sum if taken at the same time as the main scheme pension provided, when added to any LGPS lump sum, it does not exceed 25% of the overall value of the LGPS benefits (including the AVC plan) or 25% of the member’s available lifetime allowance.
4. **Buy extra membership in the LGPS** – if the member’s AVC contract started before 13 November 2001 the member may be able, in certain circumstances (such as flexible retirement, retirement on ill health grounds or on ceasing payment of AVCs before retirement) to convert the AVC plan into extra LGPS membership in order to increase their LGPS benefits. The extra membership

[2] It is for the employer to determine whether a new employment commences when a person is offered a new, consecutive, contract (e.g. as a result of a promotion) or whether they have simply carried on in the same employment.

will provide a pension of 1/60th of final pay for each year of membership purchased.

5. **Leave their AVC plan invested and use it at a later date** - if the member has a pre 2014 AVC plan they can elect to defer taking their AVC anytime up to the eve of their 75th birthday. However, members that take their AVC at a later date can normally only take up to 25% of the AVC plan as a tax free lump sum and would be obliged to buy one or more annuities from an insurance company, bank or building society with the remainder. If a member defers taking their AVC when they take their main scheme pension, provided the conditions set out in the transfer section of this guide are met, they have a statutory right to transfer out their AVC plan up to the eve of their 75th birthday. Note, members with post 2014 AVC plans or protected post 2014 AVC plans must take their AVC at the same time as they take their main scheme benefits (except for some flexible retirees, see below).

It is possible for a member to take a combination of options one, two and three, if they are eligible for those options individually.

If a member flexibly retires and their AVC contract started on or after 13 November 2001 they can choose to take some, all or none of their AVC plan in one of the above ways at the time they take their flexible retirement benefits, and, if they wish, continue paying AVCs. If the AVC contract started before 13 November 2001 the AVC contract will cease and the member will have to use all of the AVC plan in one of the above ways at the time they take their flexible retirement benefits.

AVC options for pension credit members

Where the debited member has been a member of the 2014 scheme and the transfer date is on or after 1 April 2014, options one, two and three above apply equally to pension credit members as they do to post 2014 AVC members who have taken out an AVC in their own right (except for pension credit members where the debited member's pension benefits are already in payment on the transfer date – these members are not allowed to take a pension commencement lump sum)[3]. Options four and five do not apply.

Where the debited member left the LGPS prior to 1 April 2014 or the transfer date is prior to 1 April 2014, pension credit members are only able to take up to 25% of the AVC plan as a pension commencement lump sum and they must buy one or more annuities with the remainder. However, if the debited member's pension benefits are already in payment on the transfer date the pension credit member is not permitted to take a pension commencement lump sum. Option five also applies.

AVC options for councillor members

Councillor members are able to take options one, three and five. Options two and four do not apply. Councillor AVCs continue to fall under the 1997 Regulations (which means any active councillors in Wales are restricted to paying 50% of pensionable pay into an AVC plan).

[3] Para 2 of Sch 29 to the Finance Act 2004

Transferring AVCs

The Pension Schemes Act 2015 Act made a number of changes to the transfer rights of members, including introducing certain new concepts and definitions, which are explained below.

Benefits are now described as either 'flexible' or 'safeguarded':

Flexible benefits	Safeguarded benefits
• Money purchase benefits • Cash balance benefits • The third type of benefit[4]	Any benefits that are not: • Money purchase benefits • Cash balance benefits

In relation to the LGPS benefits, main scheme benefits are safeguarded benefits and AVCs are generally deemed to be flexible benefits. However, an AVC product that offers Guaranteed Annuity Rates (GARs) falls under 'the third type of benefit' above and is considered to be a safeguarded-flexible benefit. The Secretariat recommend that, if they haven't already done so, all administering authorities ask their AVC provider[5] to confirm that their AVC product does not fall within the definition of safeguarded-flexible benefits.

For the purpose of this guide all LGPS AVC plans are assumed be money purchase benefits.

The above distinction is important because a transfer of safeguarded benefits to a scheme that provides flexible benefits (i.e. a DC scheme) is subject to the requirement that, where the member's cash equivalent transfer value of safeguarded benefits in the scheme is more than £30,000 (excluding AVCs and any survivor's pension which the member is in receipt of, but including any pension credit rights), the member must obtain appropriate independent advice.

As AVCs are generally flexible benefits this guide will be not be looking at the requirement to obtain appropriate independent advice in respect of safeguarded benefits.

Statutory transfers: categories of benefits

From 6 April 2015 the statutory right to transfer applies separately in relation to each category of benefits a member holds in the LGPS, as opposed to all of the benefits under the Scheme. Benefits are split into the following three categories:

[4] A benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor).

[5] Prudential have confirmed that Prudential's With-Profits policies are not safeguarded benefits as they do not offer GARs under the AVC product.

- Money purchase benefits (i.e. LGPS AVCs)
- Flexible benefits that are not money purchase benefits i.e. cash balance benefits or the third type[2]
- Benefits that are not flexible benefits (i.e. main scheme benefits as they are DB benefits)

Section 93 of the Pension Schemes Act 1993 provides that where a member has more than one category of benefit in a pension scheme they will have a statutory right to transfer out all of their benefits in relation to each category separately. For the LGPS this means that, since 6 April 2015, members are able to transfer out their AVC plan(s) independently of their main scheme benefits.

In addition, section 96 of the Pension Schemes Act 1993 says that a member transferring their accrued rights in a category from the LGPS must transfer out all the rights in that category (with the exception of contracted-out rights). This means that if a member has more than one AVC plan in the Scheme, they must elect to transfer them all, even if those AVC plans are in different LGPS funds[6].

Transferring AVCs independently of main scheme benefits

A member with an entitlement to a deferred benefit under the Scheme (or who has met the vesting period required for an entitlement to a deferred benefit) who also has an AVC plan can transfer out their main scheme benefits and not their AVC plan, or vice versa.

In respect of AVC transfers the following conditions must all be met:

- no crystallisation event has occurred in relation to LGPS AVC benefits in that or any other LGPS fund (other than Pension Credit rights derived from AVCs or a survivor's pension derived from AVCs). Note that a crystallisation event for this purpose is payment of a pension or annuity derived from the AVCs. If the member has previously taken an AVC plan wholly as tax free cash, this (perhaps perversely) will not constitute a Crystallisation Event for the purposes of section 93(3) and (7) of the Pension Schemes Act 1993,
- the member is no longer actively contributing to an AVC in that or any other LGPS fund,
- if the member has more than one AVC plan in the Scheme, they must elect to transfer them all, even if those AVC plans are in different LGPS funds. This is in accordance with section 96 of the Pension Schemes Act 1993.[6] A transfer out can be made to one or more receiving schemes by virtue of section 96(1) of the Act.

It should be noted that all references to "LGPS fund" above are references to the LGPS in England and Wales. The LGPS in Scotland, Northern Ireland and the Isle of Man are different registered pension schemes meaning that the above requirements do not apply to any LGPS benefits the member may also have accrued in those schemes.

It should also be noted that:

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[6] The LGPS in England and Wales is technically treated as one single scheme

- a member who has met the vesting period under the Scheme who also has an AVC plan can transfer out their AVC plan even if they are still contributing to the main scheme, by virtue of section 93 of the Pension Schemes Act 1993.
- the requirement for the member to have stopped accruing rights in that category at least one year before normal pension age does not apply to AVCs (section 93(4) of the Pension Schemes Act 1993).
- pension credit members are also able to transfer their main scheme benefits and AVCs independently of each other by virtue of section 101F of the Pension Schemes Act 1993. Although the pension credit member must give a notice to transfer their main scheme benefits at least one year before normal benefit age, this does not apply in relation to the pension credit AVCs by virtue of section 101G of the Pension Schemes Act 1993.
- a pension credit AVC member who is also an AVC member in their own right has the statutory right to transfer their AVC plans independently of each other e.g. they could transfer out their pension credit AVC plan(s) but leave the AVC plan(s) in their own right invested, or vice versa[7].
- a member with 3 or more months[8] but less than 2 years membership has to transfer the whole of their accrued rights (i.e. they cannot transfer out their main scheme benefits and not their AVC plan, or vice versa) by virtue of section 101AA of the Pension Schemes Act 1993.

Orphan AVCs

The statutory right to transfer different categories of benefits separately also means that a member who has met the vesting period under the scheme can transfer their main scheme benefits out of the LGPS and leave their AVC plan still invested which has the effect of creating orphan AVCs.

The right to transfer AVCs and main scheme benefits independently of each other is provided for by the Pension Schemes Act 1993 (as amended by the Pension Schemes Act 2015) and has the effect of overriding regulation 17(10)[9] of the LGPS Regulations 2013. This overriding right also applies to leavers under earlier schemes. Regulation 17(10) therefore needs to be amended to comply with the Pension Schemes Act 1993. However, until this happens administering authorities should still permit members to transfer their main scheme benefits independently of their AVCs in the appropriate circumstances.

Transfer discharge forms

Transfer discharge forms to enable a member to transfer out their AVC plan are available at the guides and sample documents page of www.lgpsregs.org.

[7] Under section 96(4) of the Pension Schemes Act 1993 the LGPS could require that where a member elects to transfer out pension credit rights in a category they must also transfer out the rights they have accrued in their own right in that category, and vice versa. The LGPS Regulations do not require this however.

[8] And those with less than 3 months' membership who left the LGPS in England and Wales between 1 April 2008 and 31 March 2014 (see regulation 78(2) of the LGPS (Administration) Regulations 2008).

[9] Regulation 17(10) provides that a member must transfer out their AVC fund where they are transferring out their main scheme benefits under regulation 96

AVCs and aggregation

Regulation 17(11) of the LGPS 2013 Regulations requires that where an active member aggregates a deferred benefit account or deferred refund account with an active pension account the realisable value in any deferred AVC account must be transferred to an arrangement under regulation 17 and the member may make an election to make further payments to the arrangement, if they so wish.

However, for certain members who took out their AVC plan before 1 April 2014 the situation can differ. The table below summarises the position and has been aligned with the aggregation scenarios, as set out in the aggregation technical guide. All scenarios assume the member re-joins the Scheme on or after 1 April 2014.

Aggregation scenario	Main scheme benefits	AVC plan prior to transfer	AVCs	Regulation
A1 - deferred refund with all post 31 March 2014 membership (or treated as if it were post 31 March 2014 membership)	automatic aggregation	post 2014 plan	automatic aggregation	LGPS 2013 17(11)
A2 – deferred benefit with all post 31 March 2014 membership (or treated as if it were post 31 March 2014 membership)	automatic aggregation unless member elects to keep separate within 12 months[10] of re-joining or concurrent employment ceasing	post 2014 plan	automatic aggregation (where deferred benefit account is aggregated)	LGPS 2013 17(11)
B1 – deferred refund with mix of pre and post 1 April 2014 membership with a break of less than 5 years[11] and active in the scheme on 31 March 2014 and 1 April 2014	automatic aggregation	protected post 2014 plan	AVC must be aggregated unless the member elects not to	LGPS 2013 17(11) Transitional regulations and 15(3)
		post 2014 plan	automatic aggregation	LGPS 2013 17(11)

[10] or such longer period as the employer allows

[11] in active membership of a public service pension scheme

B2 – deferred benefit with mix of pre and post 1 April 2014 membership with a break of less than 5 years[11] and active in the scheme on 31 March 2014 and 1 April 2014	automatic aggregation unless member elects to keep separate within 12 months[10] of re-joining or concurrent employment ceasing	protected post 2014 plan	AVC must be aggregated unless the member elects not to (where deferred benefit is aggregated)	LGPS 2013 17(11) Transitional regulations 15 (3)
		post 2014 plan	automatic aggregation (where deferred benefit account is aggregated)	LGPS 2013 17(11)
C1 – deferred refund with a mix of pre and post 1 April 2014 membership with a break of more than 5 years[11] and active in the scheme on 31 March 2014 and 1 April 2014	N/A – refund should already have been paid			
C2 – deferred benefit with a mix of pre and post 1 April 2014 membership with a break of more than 5 years[11] and active in the scheme on 31 March 2014 and 1 April 2014	automatic aggregation unless member elects to keep separate within 12 months[10] of re-joining	protected post 2014 plan	automatic aggregation (where deferred benefit account is aggregated)	LGPS 2013 17(11)
		post 2014 plan	automatic aggregation (where deferred benefit account is aggregated)	LGPS 2013 17(11)
D1 – deferred refund with pre 1 April 2014 membership only	automatic aggregation	pre 2014 plan	automatic aggregation	LGPS 2013 17(11)

D2 – deferred benefit with pre 1 April 2014 membership only with a break of less than 5 years[11]	if member elects to be treated as if a member on 31 March 2014 and 1 April 2014 within 12 months[10] of re-joining - benefits are aggregated with final salary protection	pre 2014 plan	AVC must be aggregated unless the member elects not to (where deferred benefit is aggregated)	LGPS 2013 17(11) Transitional regulations 15(3)
	if member does not elect to be treated as if a member on 31 March 2014 and 1 April 2014 within 12 months[10] of re-joining - can elect to aggregate as earned pension		automatic aggregation (where deferred benefit is aggregated)	LGPS 2013 17(11)
D3 – deferred benefit with pre 1 April 2014 membership only with a break of more than 5 years[11]	may elect to aggregate	pre 2014 plan	automatic aggregation (where deferred benefit is aggregated)	LGPS 2013 17(11)

Administering authorities should also note that:

- where a member has a pre 2014 AVC plan and elects not to aggregate their AVC plan by utilising regulation 15(3) of the Transitional Regulations 2014, the AVC plan will to continue fall under the Administration Regulations 2008 or equivalent earlier regulations.
- where a pre 2014 AVC plan or protected post 2014 AVC plan is aggregated in the any of the scenarios detailed in the table above it will become a post 2014 AVC plan in respect of all the contributions made to it. This is because it is a new arrangement in relation to the new employment.This is the case regardless of whether the member elects to make further payments to the AVC plan.
- there is no provision within the LGPS regulations[12] which allows a member to aggregate an AVC plan where the main scheme benefits are not being aggregated.
- where an orphan AVC is left with a previous administering authority the member can take 100% of the deferred AVC plan as tax free cash provided:

[12] Under either regulation 17 of the LGPS 2013 Regulations or regulation 26 of the Administration Regulations 2008

- the member has not previously drawn some main scheme benefits to which the AVCs relate
- the member draws the AVC and main scheme benefits at the same time, and
- the value of the AVC pot does not exceed 25% of the combined value of the member’s AVC pot and main scheme benefits.

Disclosure Requirements

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, which will be referred to as the “Disclosure Regulations 2013” from here on, was amended on account of the freedom and choice changes.

Administering authorities need to ensure that their documentation and processes take into account the additional requirements that were introduced.

Provision of Information in the scheme member’s guide

The information that must be included in the scheme member’s guide in relation to freedom and choice is detailed in appendix 1.

Information to be provided to leavers with a right to transfer

Leaver documentation sent to any member leaving with 3 months or more membership[13] (and who is not retiring with an immediate pension on the grounds of redundancy, business efficiency, or ill health) includes a notification that they have the right to a transfer of their accrued pension rights in the LGPS, including any accrued AVC plan, to another scheme, including to a pension arrangement offering flexible benefits i.e. a scheme providing money purchase benefits, cash balance benefits or the third type of benefit.[14]

Where a member elects to transfer their accrued benefits in the LGPS to a pension arrangement offering flexible benefits, they will be required to take appropriate independent advice before doing so if the value of their safeguarded benefits in the LGPS (excluding AVCs and any survivor’s pension which the member is in receipt of, but including any pension credit rights) is more than £30,000. Appropriate independent advice must be obtained from an authorised independent adviser[15]. Appropriate independent advice must be paid for by the member, and although not required where the value of the member’s safeguarded benefits is £30,000 or less, or the payment is in respect of AVCs, the member is recommended to seek appropriate independent advice before deciding to transfer their LGPS benefits and / or AVCs.

Additional disclosure requirements

In addition to the information provided above, there are further disclosure requirements for leavers with an AVC plan who are aged 54 years and 8 months or older, or who meet the ill health condition, and for members with a right to take their

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[13] the requirement to have at least 3 months’ membership does not apply to members who left the LGPS in England and Wales between 1 April 2008 and 31 March 2014 (see regulation 78(2) of the LGPS (Administration) Regulations 2008

[14] A benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor).

[15]“authorised independent adviser” means a person who (a) has permission under Part 4A of the Financial Services and Markets Act 2000, or resulting from any other provision of that Act, to carry on a regulated activity specified in regulations made by the Secretary of State, or is acting as an appointed representative (within the meaning given by section 39(2) of that Act) in relation to a regulated activity so specified, and (b) meets such other requirements as may be specified in regulations made by the Secretary of State for the purpose of ensuring that the person is independent;

AVC plan. Further information about these requirements is provided in the following pages of this guide.

Definition of terms used in the Disclosure Regulations 2013

Pension administrators should familiarise themselves with the terms below before reading the next section.

For information, the legislative requirements of Part 6 of the Disclosure Regulations 2013 are set out in table format in appendix 2 of this guide.

Ill health condition – paragraph 1 of schedule 28 to the Finance Act 2004 defines that in this context the ill health condition is met if:
(a) the scheme administrator has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, and
(b) the member has in fact ceased to carry on the member's occupation

The opportunity to transfer flexible benefits - in this context means that the member has the right to transfer their AVC plan out in accordance with section 93 of the Pension Schemes Act 1993 or would have the right to do so if they stopped accruing those rights, that is, if:

- they have met the vesting period under the Scheme, and
- no crystallisation event has occurred in relation to LGPS AVC benefits in that or any other LGPS fund (other than Pension Credit rights derived from AVCs or a survivor's pension derived from AVCs)[16].

It is also worth noting that if the member has more than one AVC plan in their own right they must elect to transfer them all, even if those AVC plans are in different LGPS funds.

A pension credit member has the right to transfer their AVC plan out in accordance with sections 101F and 101G of the Pension Schemes Act 1993 if no crystallisation event[17] has occurred in relation to LGPS AVC benefits in that or any other LGPS fund (other than rights derived from AVCs in their own right or a survivor's pension derived from AVCs).

Similarly, if a pension credit member has more than one pension credit AVC plan they must elect to transfer them all, even if they are held in different LGPS funds.

As confirmed previously, a pension credit member who is also an AVC member in their own right has the statutory right to transfer their AVC plans independently of

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[16] Note that a Crystallisation Event for this purpose is payment of a pension or annuity derived from the AVCs. If the member has previously taken an AVC fund wholly as tax free cash, this (perhaps perversely) will not constitute a Crystallisation Event for the purposes of section 93(3) and (7) of the Pension Schemes Act 1993
[17] Note that a Crystallisation Event for this purpose is payment of a pension or annuity derived from the AVCs. If the pension credit member has previously taken an AVC fund wholly as tax free cash, this (perhaps perversely) will not constitute a Crystallisation Event for the purposes of section 101G(1) and (7) of the Pension Schemes Act 1993

each other e.g. they could transfer out their pension credit AVC plan(s) but leave the AVC plan(s) in their own right invested, or vice versa.

All references to "LGPS fund" above are references to an LGPS fund in England and Wales.
Note: a member with 3 or more months but less than 2 years membership[18] has the right to a transfer under section 101AB of the Pension Schemes Act 1993, (rather than section 93) therefore the requirements under the Disclosure Regulation 2013, as set out in the section below, do not apply. Such members have the right to transfer the whole of their accrued rights (i.e. they cannot transfer out their main scheme benefits and not their AVC plan, or vice versa).

Specified retirement date (SRD) - regulation 19(3) of the Disclosure Regulations 2013 states that for this purpose retirement date means the date specified by –

a) the member to the managers of the scheme that is acceptable under the scheme rules, or
b) the managers of the scheme where no acceptable date has been specified under a), or
c) where there is no date under (a) or (b) above, the date the member attains their normal pension age.

Regulation 19(3) of the Disclosure Regulations 2013 requires that administering authorities send certain information to AVC members at least four months before their SRD. This is often referred to as the 'wake-up' journey and the information that is provided is often termed a 'wake-up' pack.

Where the member has specified a retirement date - in practice, members usually specify a retirement date in relation to their AVCs when the AVCs are first taken out. However, a member may specify (or update their specified retirement date) at any time.

Administering authorities should be aware that where the member specifies a retirement date but only does so within the minimum four month period, the information must be provided within 20 days of the date the member specifies the retirement date.

Current practice is for the SRD data to be held by the AVC provider rather than the administering authority, however, as administering authorities need this data in order to comply with the Disclosure Regulations 2013 they must ensure that this data is obtained (and updated regularly) from their AVC provider(s).

The Secretariat recommend that administering authorities, if they haven't already done so, request an initial report of the SRD data held by their AVC provider(s) and then, on an ongoing basis, request a monthly change report which specifies any new SRDs or changes that have been made to existing SRDs.

[18] the requirement to have at least 3 months' membership does not apply to members who left the LGPS in England and Wales between 1 April 2008 and 31 March 2014 (see regulation 78(2) of the LGPS (Administration) Regulations 2008

Where a member has not specified a retirement date - consistency with regulation 17(6) of the LGPS Regulations 2013 should be sought i.e. normal pension age (NPA) should be used.

Members with pre 2014 AVC plans, or protected post 2014 AVC plans, who have an NPA of over 65 in the 2014 scheme but, by virtue of regulation 15(2) and 15(2)(A) of the Transitional Regulations 2014, have a different AVC NPA i.e. age 65, it is recommended that the retirement age should be specified as their NPA under the 2014 scheme. This approach is recommended by the Secretariat given that it would not make sense for the AVC "retirement date" under the Disclosure Regulations 2013 to be different to the NPA under the main scheme. If the retirement dates were different it would mean that administering authorities would be obliged to write to members a minimum of four months before their AVC NPA about their AVC options even though the member would be unable to take their 2014 main scheme benefits at the same time without suffering a reduction.

The retirement date for members who left the LGPS prior to 1 April 2014 should be specified as age 65.

Where the member has already attained NPA the retirement date should be 75.

Note members are unable to take their AVC benefits within the Scheme prior to taking their main scheme benefits.

Risk Warnings – regulation 19A of the Disclosure Regulations 2013 prescribes that an appropriate risk warning is a statement:
(i) that sets out the risks associated with any of the actions listed below that the member is proposing to require the trustees or managers of the scheme to take and that have the potential to adversely affect the retirement income of that member or their widow, widower, surviving civil partner, nominee, successor or other dependant; and
(ii) that is based on the characteristic attributes and features of an annuity, lump sum or drawdown pension referred to in the actions below and answers to questions the trustees or managers of the scheme have asked the member in order to identify any factors or other variables that increase the risks referred to in paragraph (i).

The actions referred to in paragraph (i) above are—
(a) the application of sums or assets held for the purpose of providing flexible benefits for purchasing an annuity;
(b) the payment of a lump sum in respect of flexible benefits; or
(c) the designation of sums or assets held for the purpose of providing flexible benefits as available for the payment of drawdown pension.

The Pensions Regulator recommends pension scheme administrators provide these generic risk warnings at the point a member is required to make a final decision to take their retirement benefits in a particular form or to take a transfer to another scheme or provider in order to take their retirement benefits. This should be after the member has been sent their retirement wake-up pack and even if the member has used Pension Wise, as they may have changed their mind following their Pension Wise appointment or the appointment may have been some time ago.

Note, a risk warning MUST always be provided when members are provided with, in addition to information about how they can use their AVC plan, an application form or online access, information about access or any other information that enables the member to use their AVC plan in the ways listed in the AVC options at retirement section of this guide.

A retirement risk warning is included as appendix 3 to this document. A transfer risk warning is included with the transfer discharge forms.

Information to be provided about accessing AVCs

The different scenarios where information about taking payment of or transferring AVC plans can or must be provided are set out below scenarios 1-6.

• **Scenarios 1, 2 and 3**	Flow charts and template letters A – F are provided
• **Scenario 4**	Template letter G is provided
• **Scenarios 5 and 6**	Confirmation of information that must be given is provided

- **Scenario 1**: Information to be given on request or if a member informs their administering authority that they are considering, or have decided, what to do with their AVC plan e.g. if a member informs the administering authority that they are thinking of, or have decided to, transfer out their AVC plan
- **Scenario 2**: Information to be provided with deferred leaver options
- **Scenario 3**: Information to be provided to members at least four months before their specified retirement date (where the member has specified a date), otherwise at least four months before their normal pension age (NPA) or age 75 if over NPA
- **Scenario 4**: Information to be provided with retirement options letters
- **Scenario 5:** Information to be provided, once the member has chosen their retirement options and an AVC benefit under the Scheme has, or is about to, become payable to a member
- **Scenario 6:** Information to be provided where a dependent's pension or death in service lump sum becomes payable in respect of AVC life cover upon the death of an active member

Flow Charts

Flow charts for scenarios 1, 2 and 3 are provided later in this guide.

Where there is a statutory requirement to provide information under the Disclosure Regulations 2013 the text box will be shaded **blue**. Where information is required in accordance with the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 the text box will be shaded **green**.

There are circumstances where there is no statutory obligation to provide information in accordance with either the Disclosure Regulations 2013 or the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991, but where communication is still recommended in line with good practice. These text boxes are shaded are left shaded **orange**.

Template letters

Template letters A to G are available in appendix 4 and are provided in relation to scenarios 1 to 4.

Specific template letters for councillor and pension credit members are not provided. The letters will also need to be adapted where a member has an orphan AVC plan.

List of information that must be provided for Scenarios 5 and 6

Scenario 5: Information to be provided when an AVC benefit under the scheme has, or is about to, become payable to a member, as below:

(i) the amount of benefit that is payable.
(ii) if benefit is payable periodically—
  (a) any conditions for continuing to make the payments, and
  (b) any provisions which would allow the payments to be altered.
(iii) any rights and options that persons have on the death of the member or beneficiary of the scheme.
(iv) any procedures for exercising the rights and options referred to in (iii) above.

Note, although the term 'benefits under the scheme' is not defined in the Disclosure Regulations 2013 the Secretariat interpret this to include an AVC annuity purchased from the AVC provider or by using the open market option (because the administering authority purchases the annuity on behalf of the member), a top-up pension in the LGPS and a pension commencement lump sum.

In practice, it is likely that the information packs administering authorities receive from either the AVC provider or the provider of the open market option will include the information above in respect of an annuity. However, as the responsibility to provide the information rests with the administering authority, from a governance perspective, they should check it is complete and add it to it where necessary.

Timing

This information must be provided in accordance with regulation 20 of the Disclosure Regulations 2013 and within the timescales below:

- where the benefit becomes payable on or after normal pension age the information should be provided before it becomes payable, where practicable, and in any event within one month, or
- where the benefit becomes payable on a date before normal pension age, within two months of that date.

Scenario 6: Information to be provided where a dependent's annuity becomes payable in respect of an active member who has taken out AVC life cover and dies in service:

- where the person who is entitled to exercise rights and options under the scheme as a result of the death has the opportunity to select an annuity the information in part 1 and paragraphs 8 to 10 of schedule 7 of the Disclosure Regulations 2013,
- in any other case all of the information listed in (i) to (iv) of scenario 5 plus the provisions (or, as the case may be, a statement that there are no provisions)

under which the pension payable to the survivor of a member or beneficiary of the scheme may or will be increased and the extent to which such increases are dependent on the exercise of a discretion
AND in both cases:

- the information on pensions guidance set out in part 1 of schedule 10 of the Disclosure Regulation 2013

Note: given that the beneficiary could be under age 50 and unable to access advice from Pension Wise the requirement to signpost pensions guidance may not always be appropriate. Administering authorities should therefore consider whether they will comply with the Disclosure Regulations 2013 in this respect regardless or take a pragmatic approach and provide the relevant information only.

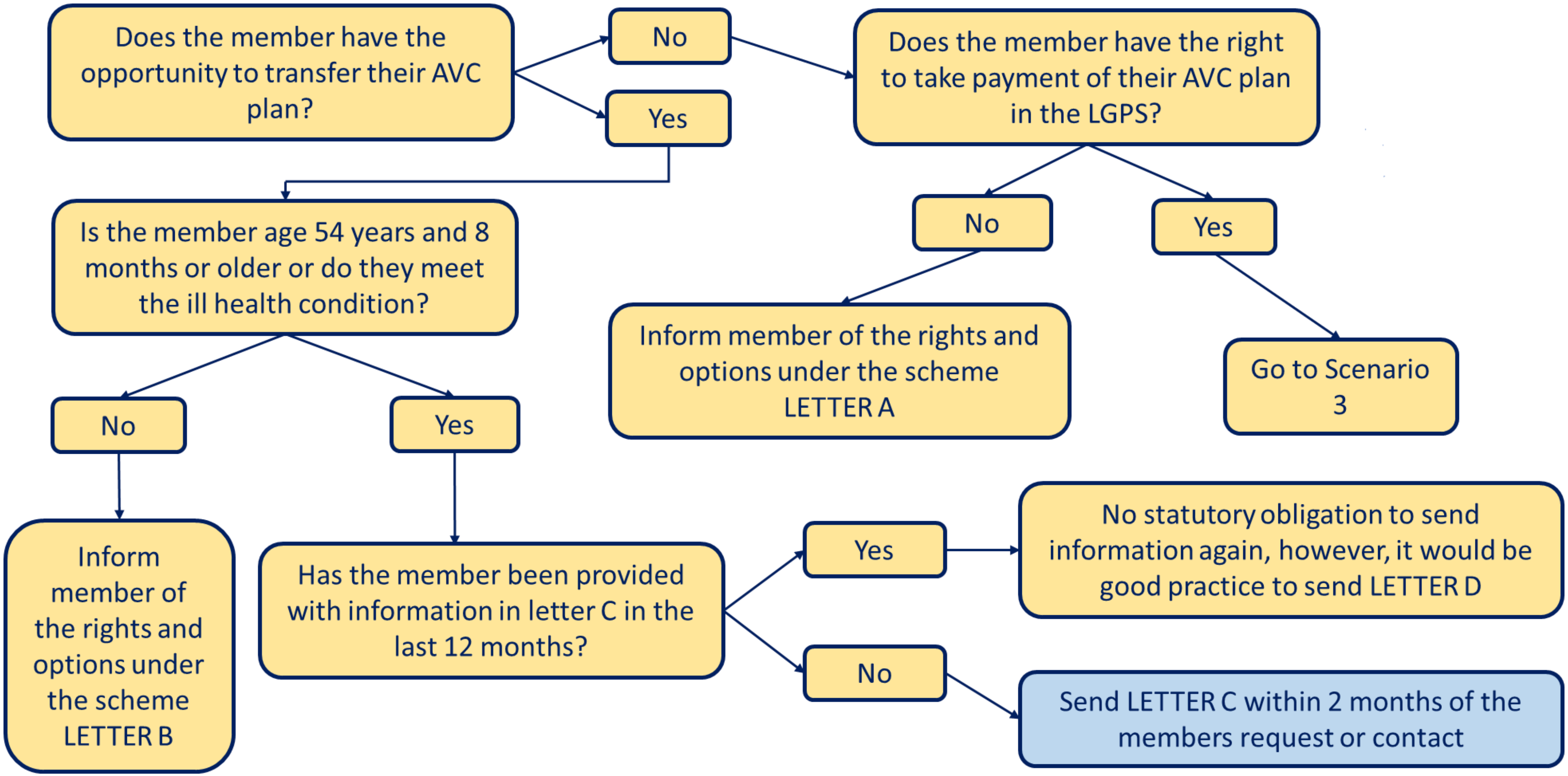
Also, see appendix 2 for information about when the information should be provided to a personal representative or a person who is authorised to act on behalf of the person who is entitled to exercise rights and options the scheme.

In practice, it is likely that the information packs administering authorities receive from their AVC provider will include the required information. However, as the responsibility to provide the information rests with the administering authority, from a governance perspective, they should check it is complete and add it to it where necessary.

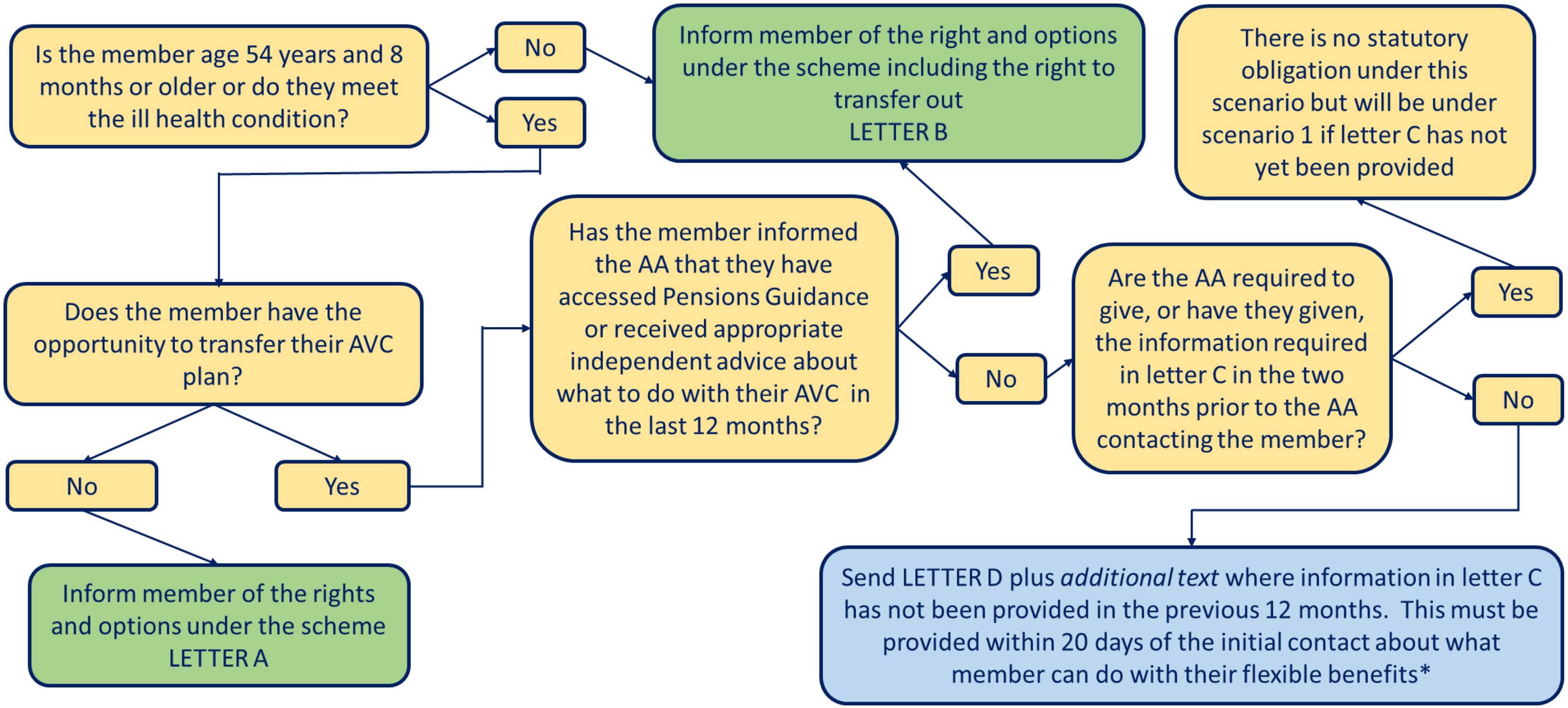
Timing
The information required under scenario 6 must be provided in accordance with regulation 21 of the Disclosure Regulations 2013 and must be given as soon as possible and in any event within two months of:

- the date on which the trustees or managers of the scheme become aware of the death, or
- the request from the personal representatives or the person authorised to act on behalf of the person entitled to exercise rights or options under the scheme

Scenario 1 – Information to be given where the member requests information about what they can do with their AVCs or if they inform the administering authority that they are considering, or have decided, what to do with their AVCs

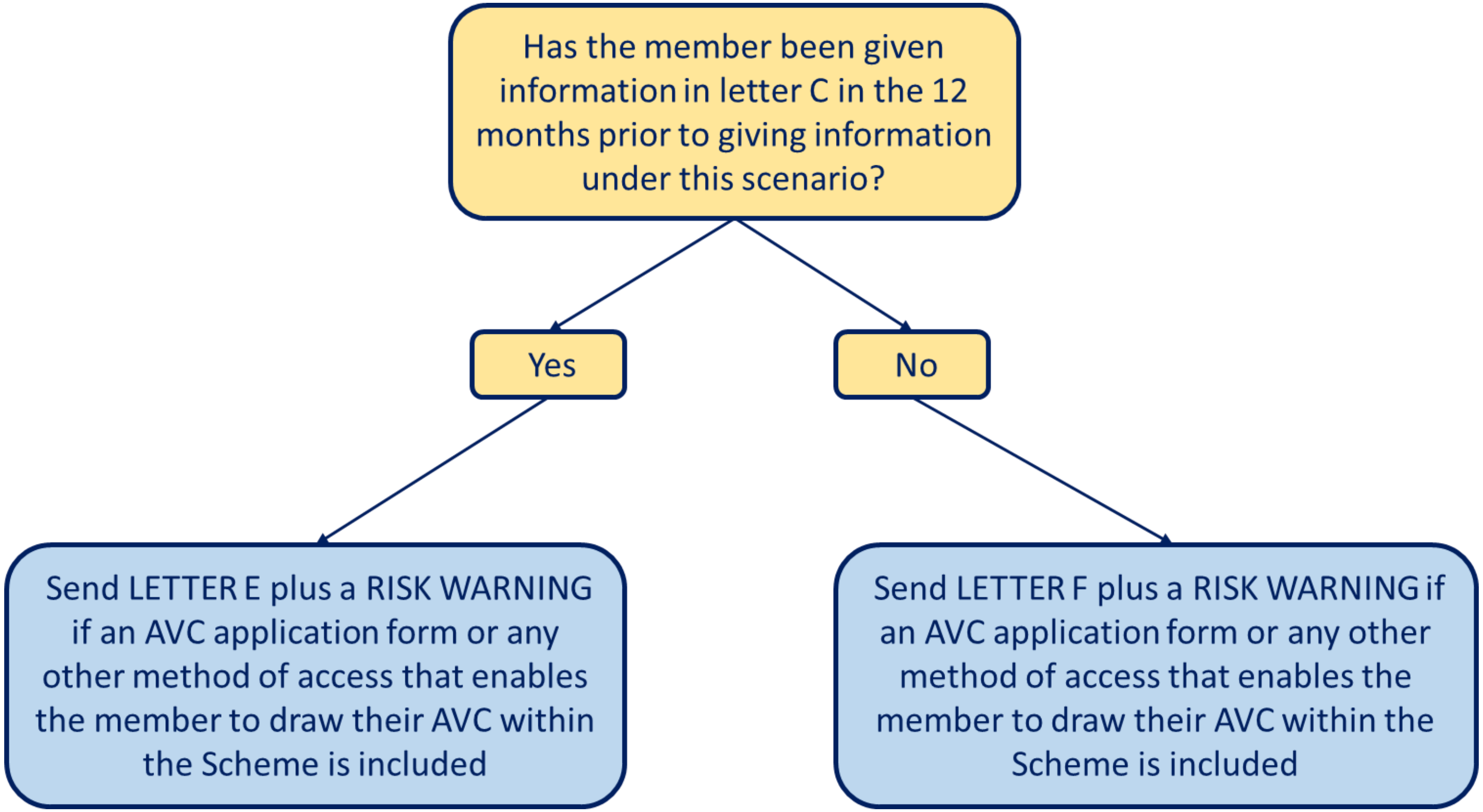


Scenario 2 – Information to be provided to a member with deferred leaver options



*Where an administering authority informs members of their deferred rights and options within 2 months of leaving (in accordance with the statutory requirement under regulation 27A of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991) by providing a standard leaver options form the information included in letter D must be provided within 20 days of issuing the standard leaver form. Where the statutory requirement is met by sending an individual a deferred benefit letter it would make sense to include letter D, or the information included within it, with the deferred benefit letter - in which case this would be the initial contact.

Scenario 3 – Information to be provided to AVC members at least four months before their specified retirement date (where the member has specified a date), otherwise at least four months[19] before their normal pension age (NPA) or at least four months before age 75 if the member is over NPA – the 'wake-up' journey



[19] If the member specifies a retirement date but only does so within the four month period, the information has to be provided within 20 days of the date the member specifies a retirement date.

Flexible Access and the annual allowance

From the tax year 2015/16 onwards, individuals who flexibly access a money purchase arrangement will have to test their total Pension Input Amount against:

- the standard/tapered annual allowance, and
- the money purchase annual allowance (MPAA)

For more information on how this works and what constitutes a flexible access 'trigger event' see the Annual Allowance Technical guide (pages 103 onwards).

How does an administering authority know whether the standard annual allowance or the money purchase annual allowance applies?

Of course, in order to know whether the member is subject to the MPAA, it is necessary for an administering authority to know whether the member has flexibly accessed benefits from another scheme.

To ensure that members know when they are subject to the MPAA and to ensure the administering authority is made aware that a member has flexibly accessed benefits, a number of new reporting requirements have been introduced. Further information is provided in the Annual Allowance Technical guide in paragraph 118 onwards.

Glossary

Cash balance benefit means a benefit calculated by reference to an amount available for the provision of benefits to or in respect of the member ("the available amount") where there is a promise about that amount. But a benefit is not a "cash balance benefit" if, under the scheme—

(a) a pension may be provided from the available amount to or in respect of the member, and
(b) there is a promise about the rate of that pension.
Note: The LGPS is not a cash balance scheme.
[*Section 75 of the Pension Schemes Act 2015*]

Flexible benefits
(a) money purchase benefit,
(b) a cash balance benefit, or
(c) a benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor).
[*Section 74 of the Pension Schemes Act 2015*]

Ill health condition – in the context of this guide the ill health condition is met if
(a) the scheme administrator has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, and
(b) the member has in fact ceased to carry on the member's occupation.
[*Paragraph 1 of Schedule 28 to the Finance Act 2004*]

Normal Minimum Pension Age (MPA**)** - as defined in section 279(1) of the Finance Act 2004 means:
(a) before 6th April 2010, 50, and
(b) on and after that date, 55,

Opportunity to transfer flexible benefits
(a) a member has an opportunity to transfer flexible benefits where –
the member —
(i) has transferrable rights in relation to flexible benefits; or
(aa) would have transferrable rights in relation to flexible benefits if the member stopped accruing rights to some or all of the flexible benefits (see sub-paragraph (b)); or
(bb) has an opportunity to transfer accrued rights to flexible benefits out of the scheme under the scheme rules; and the making of a transfer or transfer payment in respect of the flexible benefits is not prohibited by section 135(4)(a) of the 2004 Act (restrictions on winding up, discharge of liabilities etc.); or
(ii) the member has an opportunity to transfer accrued rights to flexible benefits out of the scheme under the scheme rules;

(b) a member stops accruing rights to flexible benefits when there are no longer arrangements in place for the accrual of rights to those flexible benefits for or in respect of the member.
[*Regulation 2(2) of the Disclosure Regulations 2013*]

Pensions guidance means guidance given by a designated guidance provider (which has the meaning given in section 333E(1) of the Financial Services and Markets Act 2000 (designation of providers)) for the purpose of helping a member of a pension scheme, or a survivor of a member of a pension scheme, to make decisions about what to do with the flexible benefits that may be provided to the member or survivor

Pension Input Amount –the amount by which the value of a person's pension savings increase in any one year (the Pension Input Period). This is determined by calculating the difference between the Opening Value and the Closing Value for the aggregate of all the arrangements a member has in the Fund). Where the Closing Value is less than the Opening Value, the Pension Input Amount is nil.
[*Section 229 of the Finance Act 2004*]

Uncrystallised Funds - rights are uncrystallised if the member is not entitled to the present payment of benefits in respect of the rights. The member is to be treated as entitled to the present payment of benefits in respect of the sums and assets representing the member's drawdown pension fund or the member's flexi-access drawdown fund.
[*Section 212(1) and (2) of the Finance Act 2014*]

Legislative background and Useful Links

Legislative background

The Pension Schemes Act 2015 sets out the framework for the pension flexibilities introduced from April 2015. In addition the following regulations provide added detail:

- The Occupational and Personal Pension Schemes (Transfer Values) (Amendment and Revocation) Regulations 2015 [SI 2015/498]
- The Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2015 [SI 2015/482]
- The Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations 2015 [SI 2015/493]
- The Funded Public Service Pension Schemes (Reduction of Cash Equivalents) Regulations 2015 [SI 2015/892]
- The Pension Schemes Act (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 [SI 2015/742]
- The Public Service (Civil Servants and Others) Pension (Consequential and Amendment) Regulations 2015 [SI 2015/372]
- The Pension Sharing (Miscellaneous Amendments) Regulations 2016 [SI 2016/289]
- The Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2016 [SI 2016/294]

- The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations 2017 [SI 2017/717]
- The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No 2) Regulations 2017 [SI 2017/1272]

In addition the legislative requirements of Part 6 of the Disclosure Regulation 2013 are set out in a table format in appendix 2 of this guide.

Useful links

The Money Advice Service produce a useful booklet called "Your pension - it's time to choose leaflet". Administering authorities can request free printed versions from https://www.moneyadviceservice.org.uk/en/articles/free-printed-guides

Pension Wise - https://www.pensionwise.gov.uk/en

The Pensions Regulator (TPR)
TPR has issued guidance on DB to DC transfers and conversions. Please see http://www.thepensionsregulator.gov.uk/docs/db-dc-transfers-conversions-regulatory-guidance.pdf for more information.

TPR has also issued an "Essential Guide to Communicating with Members about Pension Flexibilities" – see http://www.thepensionsregulator.gov.uk/docs/essential-guide-pension-flexibilities-april-2015.pdf

See also TPRs guidance on protecting your members from scammers - http://www.thepensionsregulator.gov.uk/trustees/pension-scams-trustees.aspx

Combating Pension Scams – a code of good practice developed by a pensions industry group is available here http://www.combatingpensionscams.org.uk/

The **Association for British Insurers (ABI)** has put together a guide called 'making retirement choices clear – a guide to simplifying language on retirement options' – the guide can be accessed here - https://www.abi.org.uk/globalassets/sitecore/files/documents/publications/public/2016/pensions/making-retirement-choices-clear-nov-2016.pdf

The FCA has provided guidance on what it expects when firms are providing advice on pension transfers https://www.fca.org.uk/news/news-stories/advising-pension-transfers-our-expectations

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