

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 54 – January 2009

As stated in the previous Bulletin, the Secretariat is committed to publishing Bulletins on a regular monthly basis. The item on transfers in Bulletin 53 has been reproduced in this Bulletin to include the clarifications contained in the e-mail from the LGE issued on 12 January. Please contact Dave Friend with any comments you might have on the contents of this Bulletin or to suggest other items that you would wish to see included in future Bulletins.

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LGPS 2008 – GAD Guidance on Individual Incoming & Outgoing Transfers

The following is a copy of the item on transfers contained in Bulletin 53, updated to include comments received from practitioners and the clarifications contained in the e-mail from the LGE issued on 12th January. The updates are highlighted.

In [Bulletin 51](#), the Secretariat indicated that a review of transfer value factors to be used in CETV calculations to and from the LGPS was expected to be completed in time for 1 October 2008 (the date from which regulations permit transfers to be calculated on a scheme specific basis).

New cash equivalent transfer factors are required to comply with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations [SI 2008/1050] which amended The Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847]. In addition, public service pension schemes are affected by regulation 3(2)(c) of The Occupational and Personal Pension Schemes (Transfer Value) (Amendment) Regulations 2008 [SI 2008/2450]. This SI inserts a new sub-paragraph (6) in regulation 7B of The Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] and a new sub-paragraph (6) into regulation 2B of The Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006 [SI 2006/33]. These two new sub-paragraphs require cash equivalent transfer values from public service pension schemes to be calculated in accordance with guidance that has been prepared, and from time to time revised, by the Treasury for calculating the discount rates. The amendments did not have effect until 13 October 2008 which caused a brief hiatus for the period 1 to 12 October 2008.

In response to these changes:

- a) on 26 September 2008, CLG circulated a note on the processing of individual incoming and outgoing transfers to and from LGPS funds
- b) on 29 September 2008, CLG issued an amendment to paragraph 2 of the note plus new GAD public sector transfer club factors dated 8 September 2008
- c) on 17 October 2008, CLG issued a Q&A sheet giving answers to 2 particular questions that had been raised in relation to the new transfer system. Please note that the answer given to question 2 in the Q&A, concerning yields to calculate the AMC, is no longer correct. The correct answer is as follows:
“A2. There are some technical changes around the yield. Previously, the value used was the yield on index-linked gilts of over 5 years duration using a 0% inflation assumption (but subject to a 2% underpin).
This has now changed to the **average** of the yields on the index-linked gilts series of **over 15 years duration assuming 0% and 5% inflation**; the average is rounded to **the nearest** two decimal places (with no 2% underpin).”
- d) on 19 November 2008, CLG issued a letter dated 18 November 2008, advising that “local authority pension funds should now process all non-club transfer in cases using the approach and factors which applied as at 30 September 2008 **AS LONG AS** the transfer can be completed by 31 December 2008. As this non-club transfer-in process also applies to old style interfund adjustments, they too should be progressed in similar fashion if they can be completed by the end of this year. This advice applies in respect of individuals irrespective of when they started with their current employer and became members of their current fund”

- e) on 21 November 2008, CLG circulated new GAD cash equivalent factors for pensioners undergoing divorce
- f) on 5 December 2008, CLG circulated a letter providing further advice on the practical application of the 31 December 2008 deadline and enclosing updated guidance on transfers out (to club and non-club schemes) and transfers in (from non-club schemes)
- g) on 22 December 2008, CLG circulated a letter to advise that, for InterFund Adjustments, "for the rest of this financial year, up to 31 March 2009, all pension funds in England and Wales should continue to use the guidance from GAD contained in their note of 2 May 2008 where a member is moving from one LGPS fund to another in England and Wales"

and, in Scotland:

- h) on 12 September 2008, SPPA issued the GAD guidance note on transfers from 1 October 2008
- i) on 4 December 2008, SPPA circulated new GAD guidance dated 24 November 2008 on cash equivalent factors for pensioners undergoing divorce and new GAD guidance dated 20 November 2008 on transfers out (to club and non-club schemes) and transfers in (from non-club schemes)
- j) on 9 December 2008 David Lauder (SPPA) e-mailed Scottish Pension Managers confirming that Scottish administering authorities should follow the information in this Bulletin in respect of the conversion of AVCs into a period of membership, and also copied Scottish Pension Managers into e-mail correspondence from GAD confirming that cross border IFAs should be dealt with on a Club basis.

The current position in relation to transfers was discussed in a workshop at the Pension Managers' Conference in Torquay on 26 November 2008 and at the Technical Group on 3 December 2008 at which it was agreed that the following advice, whilst not conforming precisely to the CLG/SPPA and GAD guidance, should be followed by administering authorities in order that transfers can be completed in a practicable and consistent manner.

Club and Non-Club Transfers Out (including cross border¹ IFAs out)

- Quote given with a relevant date pre 1 October 2008 using "old" Club transfer out factor tables and transfer offer accepted and received (either before, on or after 1 October 2008) and within the guarantee period - **payment to be made based on guaranteed figure using "old" Club transfer out factor tables (with the GMP factor applied to 45% of the post 5 April 1988 GMP and yield factors of not less than 2%).**
- Quote given with a relevant date pre 1 October 2008 using "old" Club transfer out factor tables and transfer offer accepted and received before 1 October 2008 but outside the guarantee period, with re-calculation being performed after 1 October 2008 - **recalculation to be performed using revised relevant date (date acceptance received) using "old" Club transfer out factor tables (with the GMP factor applied to 45% of the post 5 April 1988 GMP and yield factors of not less than 2%).**

¹ i.e. transfers from England / Wales to Scotland or Northern Ireland; transfers from Scotland to England / Wales or Northern Ireland; transfers from Northern Ireland to England / Wales or Scotland.

- Quote given with a relevant date pre 1 October 2008 using “old” Club transfer out factor tables and transfer offer accepted and received after 1 October 2008 and outside guarantee period - **recalculation will be performed using revised relevant date (date acceptance received) using “new” Club transfer out factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60
- Quote given with a relevant date on or after 1 October 2008 using “new” Club transfer out factor tables and transfer offer accepted and received within the guarantee period - **payment to be made based on guaranteed figure using “new” Club transfer out factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60
- Quote given with a relevant date on or after 1 October 2008 using “new” Club transfer out factor tables and transfer offer accepted and received outside the guarantee period - **recalculation will be performed using “new” Club transfer out factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60

Notes:

- AMCs when using the “new” Club transfer out factor tables – for Club transfers out, administering authorities in England, Wales and Scotland should use Table 5.1 in the GAD guidance. For Non-Club transfers out, administering authorities in Scotland should use Table 5.1 in the GAD guidance but administering authorities in England and Wales should use Table 5.1 in the GAD guidance in respect of that part of the transfer value that relates to pre 1 April 2008 membership and use Table 5.2 in the GAD guidance in respect of that part of the transfer value that relates to post 31 March 2008 membership. This will necessitate a split transfer value calculation in England and Wales.
- ARCs – the amount of additional pension purchased by ARCs should be included in the CETV calculation for transfers to Club and Non-Club schemes. The advice in the Club’s ‘Guide for

members of club schemes' (see: http://www.civilservice-pensions.gov.uk/scheme_information/Public_Sector_Transfer_Club.html) states:

Can you take a Club transfer if you have bought added pension in your previous scheme?

Many Club schemes allow members to buy additional benefits in the form of added pension. You pay an agreed sum for a specific amount of pension, which increases each year in line with prices.

*Because the amount of that pension is not determined by your **final salary**, Club transfer terms do not apply. Therefore, if you take a transfer to another Club scheme, your normal **final salary** based benefits would be transferred on Club terms, and your added pension benefits transferred on non-Club terms.*

However, please see the note in the section below on the treatment of ARCs on transfer in from a Club scheme.

- For transfer out to Club schemes, the above represents the Secretariat's opinion although the Secretariat is not aware of an agreement across the public sector as to how to proceed. The Secretariat assumes that if the LGPS offered a CETV using the "old" factors, the member opts within the guarantee period, and the LGPS pays the CETV using the "old" factors (even if the payment is made after 30 September) that the receiving Club scheme will perform a reverse calculation using their "old" factors.
- Updated protected rights factors² have not yet been received from GAD (to enable administering authorities to quote the split of the CETV between protected and non-protected rights), although the Secretariat understands these are to be issued shortly. Until such time as new factors are issued, administering authorities will have no option but to continue to use the current protected rights factors.

Club Transfers in (including cross border³ IFAs in)

- Use whichever basis the exporting Club scheme has used, i.e. if they used "old" factors then use "old" LGPS Age 60 Club Factors to calculate the service credit but if they have used "new" factor tables then use the "new" LGPS Age 60 Club Factors. Note that, for the latter cases:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60

However, the Administering Authority ought to challenge the sending Club scheme if they believe that the sending scheme is using the wrong factors i.e. old factors are used when new ones should have been used. For example:

² See regulation 80 of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 118 of the Local Government Pension Scheme (Scotland) Regulations 1998.

³ i.e. transfers from England / Wales to Scotland or Northern Ireland; transfers from Scotland to England / Wales or Northern Ireland; transfers from Northern Ireland to England / Wales or Scotland.

- where the sending scheme offered the transfer pre 1 October 2008 and the member opted to proceed before 1 October 2008, the sending scheme should use the "old" factors
- where the sending scheme offered the transfer pre 1 October 2008 and the member opted within the guarantee period (even if the date of option is post 30 September 2008), the sending scheme should use the "old" factors
- where the sending scheme offered the transfer pre 1 October 2008 but the member did not opt within the guarantee period, and the new relevant date used by the sending scheme is on or after 1 October 2008, the sending scheme should use the "new" factors
- where the sending scheme offered the transfer on or after 1 October 2008 the sending scheme should use the "new" factors

Notes:

- AVCs – as AVCs will purchase a service credit in the LGPS it is understood that the service credit derived from the AVCs should be calculated using non-club transfer in factors.
- ARCs – it is not yet known how any ARCs included in a transfer from another Club scheme (or a cross border IFA) should be dealt with i.e. should the amount included in the transfer value purchase membership or a fixed amount of pension? If the former, the service credit would, according to the Club's 'Guide for members of club schemes' (see: http://www.civilservice-pensions.gov.uk/scheme_information/Public_Sector_Transfer_Club.html), have to be calculated as a non-Club transfer in. If the latter, how is the fixed amount of pension to be calculated? Early indications are that it should purchase a fixed amount of pension but the Secretariat is awaiting further advice from CLG/SPPA/GAD.
- Cross border IFAs – a person who has a protected 85 year rule (CRA) in England and Wales which is met prior to age 65 and who moves to an authority in Scotland (or vice versa) is joining a new scheme (as the schemes in England / Wales and in Scotland are contained in separate SIs and are viewed by HMRC as separate schemes). The member's NRD in the new scheme will, therefore, be age 65 and he / she will not have a protected CRA. His / her service credit in the new scheme will therefore be greater than a day for day service credit.

Non-Club Transfers In (including conversion of LGPS AVC pot to scheme membership for a pre 13 November 2001 AVC contributor / pre 30 June 2005 AVC contributor in Scotland)

- Service credit quote given before 1 October 2008 using "old" Non-Club transfer in factor tables and transfer acceptance given and received before 1 October 2008 - **calculate service credit using "old" Non-Club transfer in factor tables.**
- Service credit quote given before 1 October 2008 using "old" Non-Club transfer in factor tables and transfer acceptance given and received on or after 1 October 2008 but prior to 1 January 2009 - **calculate service credit using "old" Non-Club transfer in factor tables (regardless of the date the transfer monies are received).**
- Service credit quote given before 1 October 2008 using "old" Non-Club transfer in factor tables and transfer acceptance given and received on or after 1 January 2009 - **calculate service credit using "new" Non-Club transfer in factor tables (and using AMC Table 5.1).**
- Service credit quote given on or after 1 October 2008 and before 1 January 2009 using "old" Non-Club transfer in factor tables and transfer acceptance given and received before 1 January

2009 - **calculate service credit using "old" Non-Club transfer in factor tables (regardless of the date the transfer monies are received).**

- Service credit quote given on or after 1 October 2008 and before 1 January 2009 using "old" Non-Club transfer in factor tables and transfer acceptance given and received on or after 1 January 2009* - **calculate service credit using "new" Non-Club transfer in factor tables (and using AMC Table 5.1).**

***NB:** however, to avoid maladministration claims to the Pensions Ombudsman, the Technical Group suggests that, where a quote is given on or after 1 October 2008 and before 1 January 2009 using the "old" Non-Club transfer in factor tables, administering authorities should agree to calculate the actual service credit using the "old" Non-Club transfer in factor tables **provided** the transfer acceptance is given and received within 3 months of the quote being issued. The member should be informed that if they miss this deadline, the service credit will be calculated using the "new" Non-Club transfer in factor tables which would reduce the potential service credit.

- Service credit quote given on or after 1 January 2009 using "new"* Non-Club transfer in factor tables – **calculate service credit using "new"* Non-Club transfer in factor tables (and using AMC Table 5.1).**

***NB:** to avoid maladministration claims to the Pensions Ombudsman, the Technical Group suggests that there may be cases where an administering authority will wish to calculate the service credit using the "old" Non-Club transfer in factor tables. Take the following case, for example:

A member joined the LGPS on 26 August 2008 and the administering authority received the transfer quote from the sending non-club scheme on 16 October 2008. The relevant date for the transfer is 26 August 2008 and the transfer value is guaranteed by the sending scheme until 15 December 2008. Due to uncertainty over how to deal with transfers post September 2008, the case is stockpiled by the administering authority until post 31 December 2008 and so the transfer acceptance is not given and received until on or after 1 January 2009. In these situations administering authorities might wish to provide a quote using the "old" Non-Club transfer in factor tables and should then agree to calculate the actual service credit using the "old" Non-Club transfer in factor tables **provided** the transfer acceptance is given and received within 3 months of the quote being issued. The member should be informed that if they miss this deadline, the service credit will be calculated using the "new" Non-Club transfer in factor tables which would reduce the potential service credit.

Notes:

- **Use of "new" Non-Club transfer in factor tables where the service credit would purchase Part A membership⁴ (i.e. a pension of 1/80th and a lump sum of 3/80ths or, in the case of conversion of a LGPS AVC pot to scheme membership, a pension of 1/80th)** – the new GAD guidance for Non-Club transfers in stipulates that the tables in the guidance are for the sole purpose of calculating service credits for Non-Club incoming transfers in relation to members with an NPA of 65 buying 60ths benefits with a commutation option. Further advice is being sought from CLG and GAD as to how transfers that purchase Part A membership should be dealt with. We understand from CLG that they hope the guidance will be issued shortly.

4 See LGPC Bulletin 52

- **Conversion of LGPS AVC pot to scheme membership** – the existing GAD guidance includes factors for protected regulation 66(8) cases / protected regulation 65(8) cases in Scotland to adjust the service credits on account of the fact that such service credits produce no lump sum. However, given the fact that the normal Non-Club CETV factors are being updated, the Secretariat assumes that GAD will also issue new protected regulation 66(8) factors / regulation 65(8) factors in Scotland. This guidance will need to clarify, given that the service credit will count as type A membership, whether the service credit will now generate a 1/80th pension and 3/80th lump sum (as there is no longer any overriding requirement for there to be no lump sum derived from the AVC conversion into membership). Please note that the final entry in the table on page 5 of Bulletin 52 should read as follows:

Service credit under protected regulation 66(8) of the LGPS Regulations 1997 (as amended) ⁵	1/80 (adjusted in accordance with GAD guidance as there is no automatic 3/80 th lump sum) ****	CRA****	A**** but no reduction
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**** but the membership from the service credit (before adjustment to allow for the fact there is no automatic 3/80th lump sum) will also have the effect of dragging forward the CRA of all the member's membership.

- **Conversion of LGPS AVC pot to a “top up” pension i.e. a scheme annuity under regulation 26(5) of the LGPS (Administration) Regulations 2008 / regulation 65(4) of the LGPS (Scotland) Regulations 1998** – in these cases, given the change to the Non-Club transfer in factors (reflecting increased life expectancy), the Secretariat assumes that GAD will issue updated factor tables. Until such time as new factors are issued, administering authorities will have no option but to continue to use the current scheme annuity factor tables.

Interfund adjustments out after 30 September 2008 (other than cross border IFAs)

Paragraph 1.5 of the GAD guidance note for England and Wales dated 2 May 2008 said that the guidance covered *“transfers where the member left their old Fund on or after 1 April 2008. Transfers where the member left their old Fund before 1 April 2008 should be treated in line with the previous GAD guidance under Regulation 125 of the Local Government Pension Scheme Regulations 1997 (SI 1997/1612) if complete payment is made before 1 October 2008. This guidance should be used if a member left their old Fund before 1 April 2008 but complete payment is not made until on or after 1 October 2008.”*

So, as at the date of this Bulletin, Funds in England and Wales are now in a position whereby the sum to be transferred from one Fund to another (other than in the case of cross border IFAs) is to be calculated using the non-club transfer in factors. Based on the CLG letter dated 22 December 2008, Funds can continue to use the “old” non-club transfer in factors and the approach set out in the GAD guidance note of 2 May 2008 **provided** the transfer is completed before 1 April 2009. CLG's letter of 22 December 2008 indicated that it is intended to introduce a simplified approach to transfers from 1 April 2009.

⁵ Protected regulation 65(8) of the LGPS (Scotland) Regulations 1998

The Torquay workshop and the Technical Group have considered two questions in relation to IFAs in England and Wales that have been vexing Funds. These are considered below.

Q1. What is the effective date for the calculation of the IFA for members who:

a) left their former Fund on or after 1 April 2008, or

b) left their former Fund before 1 April 2008 but complete payment is not made until on or after 1 October 2008?

The GAD IFA guidance note for England and Wales dated 2 May 2008 says:

"2.1 The transfer amount should be calculated in the same way that a cash equivalent transfer is calculated but based on the non-Club transfer-in factors.

2.4 The effective date of the calculation should be the date of the election that triggers the transfer."

Under regulation 86(1)(c) of the LGPS (Administration) Regulations 2008 an IFA is payable if a member makes an "election" under regulation 16, 17 or 46(4), of those Regulations or an election is made under regulations 4 or 5 of the LGPS (Transitional Provisions) Regulations 2008. Regulation 16 of the LGPS (Administration) Regulations 2008 says that where a member makes an election it must be made to the administering authority for the new employment and also, if the appropriate fund for the new employment is different to that for the former employment, to the administering authority for the former employment. Clearly, if the two administering authorities each require the member to sign an election form, the date of election to the two administering authorities could, potentially, be different. Given that scheme members usually elect to aggregate by signing a form for the new administering authority (which is then copied to the former administering authority) all Funds should, for the sake of ensuring a consistent approach, use the date on the form signed for the new administering authority as the "effective date" for the calculation.

Administering authorities in England and Wales will, if they haven't already done so, need to amend their IFA (aggregation of membership) election forms in order to ascertain marital / civil partner / nominated co-habiting partner status at the date of election.

Note that the GAD IFA guidance note for England and Wales dated 2 May 2008 says if the IFA "is paid within three months of the effective date, then no interest is payable. If payment is delayed, then interest should be paid in line with regulation 44 of the Administration Regulations".

With regard to IFAs within Scotland, these should continue for the time being to be paid in accordance with the current method of Service x Pay x Factor. A decision has yet to be taken as to the timing of any move to a CETV approach as applies in England and Wales.

Q2. For the cases falling within Q1 above, should the "old" or "new" non-club CETV in factors be used?

The GAD IFA guidance note for England and Wales dated 2 May 2008 says:

"1.5 This guidance covers transfers where the member left their old Fund on or after 1 April 2008. Transfers where the member left their old Fund before 1 April 2008 should be treated in line with the previous GAD guidance under Regulation 125 of the Local Government Pension Scheme Regulations 1997 (SI 1997/1612) if complete payment is made before 1 October 2008. This guidance should be used if a member left their old Fund before 1 April 2008 but complete payment is not made until on or after 1 October 2008.

2.1 The transfer amount should be calculated in the same way that a cash equivalent transfer is calculated but based on the non-Club transfer-in factors.

2.4 The effective date of the calculation should be the date of the election that triggers the transfer."

The note on CETVs issued by CLG on 1 October 2008 indicated that where a CETV out quote had been offered before 1 October 2008 [subsequently extended by CLG to 1 January 2009] and the member elected within the 3 month guarantee period, the CETV should be paid using the old CETV factors.

This subject was discussed at the Pension Managers' Conference in Torquay and was followed up by further discussion at the Technical Group Meeting on 3 December 2008. As a result of these discussions, and with a view to moving to a single approach to calculate outward transfers, CLG confirmed in a letter dated 22 December 2008 that the factors and approach made available in the GAD guidance note of 2 May 2008 should continue to be used for IFAs until 31 March 2009 where the effective date is on or before that date.

Note that the "old" yields for October, November and December 2008 were 2% (as a result of the underpin). The actual yields were, respectively, 1.03, 1.68 and 1.77.

Divorce CETV / CEV quotes

- For divorce CETV quotes for active and deferred members where the relevant date for the divorce quote is pre 1 October 2008 – **calculate the quote using the "old" factor tables (with the GMP factor applied to 45% of the post 5 April 1988 GMP and yield factors of not less than 2%)**
- For divorce CETV quotes for active and deferred members where the relevant date for the divorce quote is on or after 1 October 2008 – **calculate the quote using the "new" factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used. Administering authorities in Scotland should use Table 5.1 in the GAD guidance but administering authorities in England and Wales should use Table 5.1 in the GAD guidance in respect of that part of the transfer value that relates to pre 1 April 2008 membership and use Table 5.2 in the GAD guidance in respect of that part of the transfer value that relates to post 31 March 2008 membership. This will necessitate a split transfer value calculation in England and Wales.
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60
- For divorce CEV quotes for a pensioner member where the relevant date for the divorce quote is pre 1 October 2008 – **calculate the quote using the "old" PENSIONER DIVORCE factor tables (see appendices 8 and 5 in the Divorce Guide)**
- For divorce CETV quotes for a pensioner member where the relevant date for the divorce quote is on or after 1 October 2008 – **calculate the quote using the "new" PENSIONER DIVORCE factor tables dated 1 October 2008.**

Notes:

- [bullet point deleted]
- [bullet point deleted]
- Updated factors for Adjustment A in the GAD guidance in Annex 8 of the Pension Sharing on Divorce guide are also to be supplied shortly. The GAD Guidance (entitled "Pensioner Cash Equivalent Factors on Divorce" which is dated 24 November 2008) contained the relevant Adjustment B factors in Tables 1.1 and 1.2. Where a CEV is prepared in respect of a pension in payment (other than an ill health pension) and the pensioner is under age 55, the pension factor in Table 1.1 or 1.2 is to be applied to the basic pension and the PI factor in Table 1.1 or 1.2 is to be applied to the notional PI (i.e. the PI that is being deferred and which will not be paid until age 55). Where the pensioner is 55 or over, the pension factor in Table 1.1 or 1.2 is to be applied to the combined basic pension and PI (i.e. to the amount of pension actually in payment).

Divorce - actual Pension Sharing Orders

- Quote given before 1 October 2008 for an active or deferred member and the actual valuation date is before 1 October 2008 - **calculate actual using the "old" factor tables (with the GMP factor applied to 45% of the post 5 April 1988 GMP and yield factors of not less than 2%)**
- Quote given before 1 October 2008 for a pensioner member and the actual valuation date is before 1 October 2008 - **calculate actual using the "old" PENSIONER DIVORCE factor tables (see appendices 8 and 5 in the Divorce Guide)**
- Quote given before 1 October 2008 for an active or deferred member and the actual valuation date is on or after 1 October 2008 - **calculate actual using the "new" factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used. Administering authorities in Scotland should use Table 5.1 in the GAD guidance but administering authorities in England and Wales should use Table 5.1 in the GAD guidance in respect of that part of the transfer value that relates to pre 1 April 2008 membership and use Table 5.2 in the GAD guidance in respect of that part of the transfer value that relates to post 31 March 2008 membership. This will necessitate a split transfer value calculation in England and Wales.
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60
- Quote given before 1 October 2008 for a pensioner member and the actual valuation date is on or after 1 October 2008 - **calculate actual using the "new" PENSIONER DIVORCE factor tables dated 1 October 2008.**

- Quote given on or after 1 October 2008 for an active or deferred member and the actual valuation date is on or after 1 October 2008 - **calculate actual using the "new" factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used. Administering authorities in Scotland should use Table 5.1 in the GAD guidance but administering authorities in England and Wales should use Table 5.1 in the GAD guidance in respect of that part of the transfer value that relates to pre 1 April 2008 membership and use Table 5.2 in the GAD guidance in respect of that part of the transfer value that relates to post 31 March 2008 membership. This will necessitate a split transfer value calculation in England and Wales.
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60
- Quote given on or after 1 October 2008 for a pensioner member and the actual valuation date is on or after 1 October 2008 - **calculate actual using the "new" PENSIONER DIVORCE factor tables dated 1 October 2008.**

Notes:

- The Secretariat understands that GAD will issue updated guidance on the application of Pension Credits and Pension Debits, given that the Pension Credit still currently generates a 1/80th pension plus, in some cases, a 3/80ths lump sum, whereas the Pension Debit member is currently accruing a 1/60th pension (with the option to commute).
- Updated factors for Adjustment A in the GAD guidance in Annex 8 of the Pension Sharing on Divorce guide are also to be supplied shortly. The GAD Guidance (entitled, "Pensioner Cash Equivalent Factors on Divorce" which is dated 24 November 2008) contained the relevant Adjustment B factors in Tables 1.1 and 1.2. Where a CEV is prepared in respect of a pension in payment (other than an ill health pension) and the pensioner is under age 55, the pension factor in Table 1.1 or 1.2 is to be applied to the basic pension and the PI factor in Table 1.1 or 1.2 is to be applied to the notional PI (i.e. the PI that is being deferred and which will not be paid until age 55). Where the pensioner is 55 or over, the pension factor in Table 1.1 or 1.2 is to be applied to the combined basic pension and PI (i.e. to the amount of pension actually in payment).

Augmentation

The current GAD guidance on augmentation (dated 18 December 2006 in England and Wales, and 16 April 2008 in Scotland) stipulates that the cost of augmented membership should be calculated based on Non-Club transfer in tables. Thus, for administering authorities who use the GAD guidance (rather than their own Fund actuary guidance) to calculate the cost of augmented membership:

- For augmentation where the resolution to grant augmented membership is made before 1 January 2009 **calculate the cost using the "old" Non-Club transfer in factor tables**
- For augmentation where the resolution to grant augmented membership is made on or after 1 January 2009 **calculate the cost using the "new" Non-Club transfer in factor tables.**

Notes:

- The current GAD guidance on augmentation does not adequately cover the real cost of augmentation as it assumes that benefits will not be payable until, at the earliest, age 60. Whilst this might be appropriate in the limited number of cases where an employer grants augmented membership to an active scheme member as, for example, a bonus or inducement to join / remain with the employer, the vast majority of cases are where augmentation is granted immediately prior to early retirement on redundancy or efficiency grounds. In the latter cases, the methodology used in the GAD guidance materially underestimates the true cost of augmentation. New guidance is needed to cover this. Also, the existing GAD guidance draws a distinction between cases where the augmentation affects a member's CRA and cases where it does not. However, any augmentation granted under the new Scheme in England and Wales (regulation 12 of the Benefits Regulations) does not affect a member's CRA - see paragraph 3(2) of Schedule 2 to the LGPS (Transitional Provisions) Regulations 2008. Paragraphs 1.5.3 to 1.5.5 and Example 2 in the current GAD guidance should, therefore, now be ignored in England and Wales (and paragraphs 2.3.3 to 2.3.5 and Example 2 of the Scottish guidance should be ignored from 1 April 2009 in respect of any augmentation awarded under regulation 12 of the Benefits Regulations in Scotland).
- Administering authorities using their own Fund actuary guidance (rather than GAD guidance) to calculate the cost of augmented membership should follow the advice from their Fund actuary.

The LGPS 2008 – Statutory Guidance on Ill-health

On 24 November 2008, CLG issued the Statutory Guidance on the application of the ill-health provisions contained in the Benefits Regulations for England and Wales. A copy of the guidance can be downloaded from the Timeline Regulations section of the LGE website (www.timeline.lge.gov.uk).

The LGPS 2008 – Statutory Guidance on Governance Compliance Statements

CLG published the Statutory Guidance on Governance Compliance Statements for England and Wales on 3 December 2008. A copy of this guidance is also available on the Timeline Regulations section of the LGE website (www.timeline.lge.gov.uk).

LGPS 2008 – Contribution Bands with effect from 1 April 2009

CLG issued a letter on 13 January 2009 which contained the uplift of the contribution bands for England and Wales that will apply from 1 April 2009.

The table listed in regulation 3(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2008 (as amended) will have the following values from 1 April 2009.

Band	Range	Contribution Rate
1	£0 - £12,600	5.5%
2	£12,601 - £14,700	5.8%
3	£14,701 - £18,900	5.9%
4	£18,901 - £31,500	6.5%
5	£31,501 - £42,000	6.8%
6	£42,001 - £78,700	7.2%
7	More than £78,700	7.5%

The letter from CLG will be added to the Statutory Guidance / FAQs page of the Timeline Regulations section on the LGE website.

The LGPS - Early Payment of Deferred Pension on the grounds of ill-health

Justice Lewison of the High Court handed down a decision on 18 December 2008 in the case of Hamilton v Monmouthshire CC. Mr Hamilton was appealing against a decision taken by the deputy Pensions Ombudsman on 11 August 2008. The deputy Pensions Ombudsman had determined that Mr Hamilton was not entitled to an ill-health pension under regulation 27 of the 1997 Regulations (because the reason for cessation of employment was, on the facts of the case, not permanent ill health, but the ending of a fixed-term contract), but was entitled to elect for early payment of deferred benefits under regulation 31.

Mr Hamilton was, for the purpose of his appeal, relying on the decision of Justice Lightman in Spreadborough v Wandsworth LBC which put back the date of entitlement to early payment of a deferred benefit from the date of application / diagnosis to the (earlier) date of onset of the medical condition. Justice Lightman's decision was based on the construction of regulation D11 of the 1995 Regulations which permits the backdating of payment of a deferred pension to the date the member first became permanently incapable of discharging efficiently the duties of their former job by reason of ill health or infirmity of mind or body.

In upholding the decision of the deputy Pensions Ombudsman, Justice Lewison made it clear that decision in Spreadborough v Wandsworth LBC did not extend to regulation 31 of the 1997 Regulations as this regulation is constructed differently to regulation D11 of the 1995 Regulations. Under regulation 31 of the 1997 Regulations (or regulation 31 of the Benefits Regulations 2007), deferred benefits can only be paid on the grounds of permanent ill health or infirmity of mind or body from the date of the member's application or, if later, the date of the onset of the permanent ill health or infirmity of mind or body which would prevent the member from discharging efficiently the duties of their former job. Payment of the deferred benefit cannot be backdated to a date prior to the date of the member's application, even if the permanent ill health or infirmity of mind or body arose after leaving but before the date of application.

Public Sector Pensions in England and Wales – Overpayment of Pensions Increase on GMPs

Liam Byrne (the Minister for the Cabinet Office) issued a written ministerial statement on 16 December 2008 concerning the incorrect indexation of GMPs which has resulted in the overpayment of some public sector pensions. The statement advised that the overpayment affected pensioners of the NHS, Teachers, Armed Forces, Judicial and Civil Service pension schemes in England and Wales.

CLG copied the ministerial statement to all LGPS Pension Managers in England and Wales on 16 December 2008 via an e-mail which said:

"Dear Pension Manager

You may have seen press reports concerning overpayments to a significant number of public servants. The enclosed documents explain the background to these cases, and you may wish to reassure any pensioners that contact you that this does not appear to be a problem within the LGPS, and that only if they are contacted directly would there be any query about the amounts of pension in payment. As administrators if you do have concerns about your data you may wish to follow this up, other than in the normal course of business, to confirm their level of GMP liability and can do so via the Accrued GMP Liability Service (AGLS), details of which can be obtained from the HMRC website at <http://www.hmrc.gov.uk/nic/enquiry-service.htm>, or by contacting Richard Crerar on 0191 2250164, or Paul Malcolm on 0191 2250259."

LGPS Scotland – Overpayment of Pensions Increase on GMPs

SPPA issued a draft SSI together with a covering letter on 17 December 2008. The Scottish Government has decided that past overpayments of Pensions Increase on GMPs shall not be recovered and that pensioners should not be penalised for errors that are not of their own making. The Scottish Government intend to exercise their devolved powers to make the necessary legislative changes.

The draft SSI sets out the authority for the overpaid Pensions Increase to have been paid, confirms that any overpayment may not be recovered, and introduces a new allowance called the Increased Pension Entitlement (IPE) which will provide that any such overpayment of Pensions Increase in payment at 5 April 2009 will be maintained. The IPE will be payable to the pensioner for life but it is intended that the IPE will not provide any inheritable or pension sharing rights with the exception that it should be included in any calculation of a short-term spouse's or civil partner's pension.

The LGPC has submitted a written response to the draft SSI.

CLG Consultation Exercises

The CLG issued a covering letter on 27 November 2008 regarding the latest stage of the consultation exercise on sustaining the LGPS in England and Wales. The closing date for this consultation was 23 January 2009. The LGPC has submitted a written response to the consultation. This can be viewed on [the LGE website](#).

On 28 November 2008, CLG sent out a covering letter and a draft SI in respect of the LGPS (Miscellaneous) Regulations 2009. The closing date for this exercise is 20 February 2009. The LGPC will be submitting a response to the draft SI.

On 2 January 2009, CLG issued a letter regarding the deficit in the LPFA's pensioners' sub-fund. CLG are proposing the introduction of a provision in the Administration Regulations to permit a "series of lump sum payments (special contributions)" to be made to the LPFA by each London Borough to cover the LPFA's pensioner sub-fund liabilities. The closing date for comments on the proposal is 6 February 2009. The LGPC has submitted a brief response to the consultation letter, saying that it supports the principles of funding arrangements and recovery plans that reflect the long term nature of the LGPS and that it is supportive of arrangements that both seek an equitable treatment for employers and mitigate the risk of cross-subsidisation.

P46(Pen) Form

HMRC's Notes for Payroll Software Developers issued in September 2008 and December 2008 contained information on the P46(Pen) form which is to be used from April 2009.

In the [September edition](#), paragraph 3.5 states that the P46(Pen) will replace the P160 and PENNOT forms and gives advice for authorities who file on-line and on how to obtain paper copies of the new form. Annex A of the September edition contains the layout of the new P46(Pen).

The [December edition](#) of Notes for Payroll Software developers include a further update in respect of form P46(Pen). HMRC will issue guidance on the PAYE process for the new P46(Pen) in February 2009. This will be available in the 2009 CWG2 Employer Further Guide to PAYE and NICs booklet and on the Employer CD-ROM from HMRC. The December edition also says "Employers will be reminded that if they have 50 or more employees they will need to send the new form P46(Pen) online."

Redundancy Payments

The Employment Rights (Increase of Limits) Order 2008 [SI 2008/ 3055] comes into force on 1 February 2009. It increases the maximum “week’s pay” for calculating a statutory redundancy payment from £330 per week to £350 per week where the appropriate date falls on or after 1 February 2009. In the case of entitlement to a redundancy payment by virtue of section 135(1)(a) [dismissal by reason of redundancy] or section 135(1)(b) [lay-off or short time] of the Employment Rights Act 1996, the appropriate date means the relevant date as defined by, respectively, sections 145 or 153 of the Act.

The prospect of negative RPI

The Secretariat has received a number of queries recently asking what the Pensions Increase position would be should there be a period of negative inflation (deflation). The Secretariat’s understanding is that the Pensions (Increase) Act 1971 provides powers to increase the annual rate of an official pension if any qualifying condition is satisfied or the pension is a widow's pension. It does not provide the power to decrease a pension in payment if the Retail Prices Index is negative. Thus, in a period of deflation, pensions in payment would not be increased but, equally, would not be reduced.

Bits and Pieces

LGPC Circulars

Last month, the Secretariat issued [Circular 219](#) as a final reminder that hard copies of circulars will no longer be distributed and that, in future, all Circulars will be notified by e-mail. Employers wishing to be added to the e-mail distribution list should notify colin.divens@lge.gov.uk of the e-mail address(es) they wish Circulars to be sent to. The Secretariat will accept up to a maximum of 3 designated e-mail addresses per organisation. Employers wishing to amend the e-mail address(es) to which Circulars are sent should provide the appropriate details to colin.divens@lge.gov.uk.

[Circular 220](#) detailed the Secretariat’s understanding of the eligibility of casuals to join or remain in membership of the LGPS in Scotland from 1 April 2009 onwards.

[Circular 221](#) was an update to [Circular 212](#) and contained the latest version of the suite of ill-health certificates for use in England and Wales.

[Circular 222](#) contained the results of the survey, undertaken in July 2008, of the provision of benefits for councillors in the local government pension schemes in England, Wales and Scotland.

[Circular 223](#) advertised forthcoming training courses on, firstly, transfer values and, secondly, employer’s discretions and polices.

Timeline Regulations

Since the publication of the previous Bulletin, the Timeline Regulations on the LGE website have been updated to correct a few minor faults. The Timeline Regulations were updated on 22 January to take account of The LGPS (Administration) (Amendment) Regulations 2008 (SI 2008/3245) and the latest correspondence from CLG on transfers.

Deadline Reminder

The deadline for individuals to register for primary or enhanced protection with HMRC is 5 April 2009. As mentioned in the previous Bulletin, the announcement that the SLA will remain at its 2010/2011 level of £1.8 million might make more people consider applying for enhanced protection.

Legislation

United Kingdom

SI Reference Title

2008/3070	The Occupational Pensions (Revaluation) Order 2008
2008/3157	The Social Security (Miscellaneous Amendments) (No.7) Regulations 2008
2008/3241	The Pensions Act 2008 (Commencement No.1 and Consequential Provision) Order 2008
2008/3245	The Local Government Pension Scheme (Administration) (Amendment) Regulations 2008

Scotland

SSI Reference Title

2008/387	The Police Pensions (Amendment) (Scotland) Regulations 2008
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Northern Ireland

SR Reference Title

2008/485	The Occupational Pensions (Revaluation) Order (Northern Ireland) 2008
2008/498	The Social Security (Miscellaneous Amendments) (No.7) Regulations (Northern Ireland) 2008

Useful Links

[The LGE Pensions page](#)

[The LGPS members' website](#)

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in England and Wales, and Scotland.

[Qualifying Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

[Tax Guide \(Version 11\)](#)

[The Timeline Regulations](#)

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Distribution sheet

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