

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 59 – June 2009

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 – Interest Paid on Interfunds

On 30 April 2009, CLG issued a letter which informed administering authorities how to calculate interfund adjustments where the member elects to aggregate benefits after 31 March 2009. The letter stated, "the factors as used in club transfers and cross border transfers should be used meaning that the Scheme is moving toward simplification of the transfer factor suite. These factors were included in the guidance note 1.3 sent out on Friday 24 April."

The Secretariat has received a number of enquiries regarding the calculation of interest subsequent to CLG issuing the letter on 30 April 2009. The Secretariat believes that the change in the method used to calculate Interfund Adjustments does not affect the earlier guidance issued in respect of interest calculations.

GAD issued guidance, dated 2 May 2008, which covered the calculation of interfund adjustments where the member elects to aggregate benefits on or after 1 April 2008. Paragraph 2.6 of the guidance states, "If the amount calculated 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(4) of the Administration Regulations." This means that interest is calculated at one per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

LGPS 2008 – Interfunds and N.I. Modification

[Last month's Bulletin](#) included a query regarding N.I. Modification where a member deferred his benefits before 31 March 1980 and subsequently elected to aggregate benefits between 1 April 2008 and 31 March 2009 inclusive. The Secretariat understands from CLG that any N.I. Modification component should be ignored in the calculation of the IFA.

LGPS (England & Wales, Scotland) – Outgoing Transfers and Application of Interest

Given the questions raised on interest to be paid on interfunds, the Secretariat thought that it might be helpful to set out its current understanding of the application of interest to all types of outgoing transfers from LGPS funds.

For IFAs within England and Wales (and within Scotland) - funds have to pay interest in accordance with Administration Regulations 44(4) and (5) (regulations 39(4) and (5) in Scotland) if payment is made more than 3 months after the effective date; i.e. 1 per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests. No interest is payable if the IFA is paid within 3 months of the effective date. In [Bulletin 54](#), the Secretariat provided a view on what is meant by the "effective date".

For Club transfers (including cross border IFAs) - funds have to follow the Club rules. Paragraph 4.22 of the Club rules, state:

"Late payment of a transfer value

4.22 A Club transfer value should be paid within 6 months of the Guarantee Date; otherwise it must be recalculated as at the date of payment. Interest should not be added to the original transfer value even if this would result in a higher transfer value. "

For non-Club transfers out - funds have to follow the provisions of Administration Regulation 79 (Administration Regulation 74 in Scotland) and Chapters 4 and 5 of the Pension Schemes Act 1993.

Regulation 10 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] provides as follows:

10 Increases of cash equivalents on late payment

(1) Subject to paragraph (2), if the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail to do what is needed to carry out what the member requires within six months of the **appropriate date** the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.

(2) If the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail without reasonable excuse to do what is needed to carry out what the member requires within six months of the **appropriate date** the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by -

(a) interest on that cash equivalent calculated on a daily basis over the period from the **appropriate date** to the date on which the trustees carry out what the member requires, at an annual rate of one per cent. above base rate; or, if it is greater,

(b) the amount, if any, by which that cash equivalent falls short of what it would have been if the **appropriate date** had been the date on which the trustees carry out what the member requires.

The "appropriate date" has the meaning given to that expression in section 97(3A) of the 1993 Act which says:

(3A) For the purposes of subsection (3), the "appropriate date" -

(a) in the case of a salary related occupational pension scheme, is the guarantee date (within the meaning of section 93A)

Section 93A of the 1993 Act says:

"The guarantee date" means the date by reference to which the value of the cash equivalent is calculated, and must be -

(a) within the prescribed period beginning with the date of the application, and

(b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.

Regulations 6(1) and (2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] provide that:

- for (a) above, the prescribed period is the period of three months beginning with the date of the member's application under section 93A of the 1993 Act (salary related schemes: right to statement of entitlement) for a statement of entitlement, and

- for (b) above, the prescribed period is the period of ten days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday) ending with the date on which the statement of entitlement is provided to the member.

Therefore, for a non-Club transfer out, the LGPS administering authority provides a CETV quote which it must guarantee for a period of three months from the date of calculation, known as the 'Guarantee Date'. The member must make a written option to proceed with the guaranteed transfer value which must be received within the three month guaranteed period. The normal time limit for payment of the guaranteed transfer value will be six months from the 'Guarantee Date'. If payment is not made within this period the administering authority will need to recalculate the value as at the actual date of payment and pay the recalculated value or, if it is greater, the original value plus interest. If the member makes an election outside the three month guarantee period, a new CETV quote has to be provided.

LGPS Scotland – Increased Pension Entitlement

The Local Government Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Regulations [SSI 2009/186] was laid before the Scottish Parliament on 15 May 2009 and comes into force on 26 June. The effective date for the SSI is 6 April 2009 and it covers any overpayment of GMP which occurred between 12 November 1979 and 5 April 2009.

The SSI inserts a new Part VII (Increased Pension Entitlement) regulations into the LGPS (Scotland) Regulations 1998. The new part contains 6 regulations. Regulation 161 covers interpretation of terms for the new Part VII and regulation 162 ensures that only members whose pensions were in payment on 5 April 2009, who were entitled to a GMP on that date after the attainment of State Pension Age, and who had incorrectly received a GMP related payment are covered. Regulation 163 defines a GMP-related payment as a payment made by an administering authority where Pensions Increase (Review) Orders were applied without make an adjustment to the member's pension due to his or her GMP – in other words, Pensions Increase had incorrectly been applied to a GMP resulting in an overpayment of PI (other than in cases where the AP was less than the GMP, in which case full PI was correctly due).

Regulation 164 covers any GMP-related payments made under Pensions Increase (Review) Orders made between 12 November 1979 and 5 April 2009. It states that administering authorities may not recover any GMP-related payments made before 6 April 2009. Regulation 165 details the right of a member to an Increased Pension Entitlement (IPE) and the amount of the IPE. The final regulation sets out that the IPE is payable by the relevant administering authority and shall be paid out of the appropriate fund. The IPE is payable for life but no part of it can be commuted for a lump sum.

The SSI also makes an amendment to regulation 39(5) of the LGPS (Scotland) Regulations 1998 to ensure that the IPE element is excluded from a surviving spouse's or civil partner's long-term pensions (but not from the short-term pensions).

Identical amendments have been made to the LGPS (Scotland) Regulations 1987 by the insertion of a new Part 'U' and an amendment to regulation E6(1)(a) (amount of widow's short-term and long-term pensions).

It should be noted that there are no plans to make a similar amendments to the LGPS Regulations in England and Wales.

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009 [SSI 2009/187] was laid before the Scottish Parliament on 15 May 2009. It came into force on 8 June and is effective from 1 April 2009 with the exception of the amendments to the minimum early retirement age (from 50 to 55) which will be effective from 1 April 2010.

The main changes included in the SSI are provisions:

- to enable employer's to make a discretionary one-off lump sum to scheme members who have at least 2 years membership and whose employment is terminated due to ill-health but the member does not qualify for either 1st or 2nd tier ill-health benefits. The payment would be equal to one week's pay for every whole year of employment with that employer, subject to a maximum of 30 weeks' pay. This is the Scottish version of 3rd tier ill-health benefits in England and Wales but, unlike in England and Wales, is a payment outside of the Pension Scheme i.e. it is a payment paid for by the employer, not the Pension Fund;
- to increase the maximum compensation payable to employees, who are made redundant or cease employment due to efficiency of the service, to 104 weeks' pay (up from the previous maximum of 66 weeks' pay);
- to clarify that benefits from the award of CAY will continue to be based on 1/80th pension and 3/80th lump sum;
- to remove regulation 20(1)(b) from the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008. This means there is no longer a requirement for a member to have a reduced likelihood of obtaining gainful employment to be entitled to receive ill-health retirement benefits;
- to amend regulation 31(2) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 so that a deferred member's benefits can be paid if the person is permanently incapable of discharging efficiently the duties of the former employment because of ill health or infirmity of mind or body and that condition is likely to prevent the person from obtaining gainful employment before age 65;
- to remove the requirement that a pre 1 April 2009 deferred member who rejoins the Scheme post 31 March 2009 had to elect to aggregate within 12 months of rejoining the scheme. Interestingly, for such a member, no equivalent of regulation 13(7) of the LGPS (Administration) (Scotland) Regulations 2008 has been included in regulation 4 of the LGPS (Transitional Provisions) (Scotland) Regulations 2008;
- to permit administering authorities to recover any additional costs, incurred due to employing authorities' poor level of performance, from the employing authorities; and
- to enable administering authorities to set out procedures for liaising and communicating with employing authorities and to establish levels of performance which they and their employing authorities are expected to achieve in carrying out their scheme functions.

Correction to Bulletin 58

In [Bulletin 58](#) we included information on “Trivial Commutation (Easement of Administration)” and “Authorised Payments”. Following further consideration of [The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2009 \[SI 2009/1172\]](#) and [The Registered Pension Schemes \(Authorised Payments\) Regulations 2009 \[SI 2009/1171\]](#) the Secretariat has concluded that it is necessary to update / expand upon the information provided in Bulletin 58. The updated version is provided in the next two sections below, with the additional information highlighted with a grey background. Please note that in both sections, for payments made from the LGPS in England and Wales, “scheme” means all LGPS funds in England and Wales; and for payments made from the LGPS in Scotland, “scheme” means all LGPS funds in Scotland.

Trivial Commutation (Transitional Provisions)

[The Taxation of Pension Schemes \(Transitional Provisions\) \(Amendment\) Order 2009 \[SI 2009/1172\]](#) was laid before the House of Commons on 8 May and comes into force on 1 June 2009. The SI amends The Taxation of Pension Schemes (Transitional Provisions) Order 2006 [SI 2006/572] by inserting articles 23B to 23D into that Order. These, in turn, amend Part 4 of the Finance Act 2004.

The effect of the amendments is to permit payment of a trivial commutation lump sum by a registered pension scheme without attracting a charge to tax. The main conditions are:

- the lump sum does not exceed £2,000;
- the member’s age is 60 or over and less than age 75;
- the lump sum is paid while the member has all or part of his Lifetime Allowance available;
- the payment of the trivial commutation extinguishes all the member’s benefits in the registered pension scheme (except for any actual pension entitlement the member had before 6 April 2006); and
- all of the following conditions are met:
 - the trivial commutation lump sum is paid in connection with a Pension Commencement Lump Sum (PCLS),
 - [the accrued PCLS at 5 April 2006 was greater than 25% of the member's uncrystallised rights in the scheme at that date,](#)
 - the trivial commutation lump sum is paid within 1 month of the PCLS,
 - after the payment of the PCLS, the scheme has not received any contributions nor received or paid a recognised transfer in respect of the member, and
 - after the payment of the PCLS, the member has not been in receipt of a pension from the scheme or an annuity purchased in respect of any AVCs paid under the scheme.

[SI 2009/1172](#) is of very limited application as it only appears to cover those whose accrued lump sum at 5 April 2006 was greater than 25% of their uncrystallised rights at that date (and the LGPS would have few, if any, such cases in the LGPS).

Authorised Payments

[Bulletin 55](#) highlighted the draft Registered Pension Schemes (Authorised Payments) Regulations 2009. At that time, HMRC had confirmed that scheme administrators could anticipate the regulations provided that they notified the HMRC of any payments which were expected to become authorised but remained as unauthorised payments. Scheme administrators would have had to submit an amended Event Report.

The actual Statutory Instrument, [The Registered Pension Schemes \(Authorised Payments\) Regulations 2009 \[SI 2009/1171\]](#), which comes into force on 1 June 2009, was laid before the House of Commons on 8 May 2009 and contains a couple of additional provisions which did not appear in the draft instrument.

Regulation 3 in conjunction with Part 2 (Commutation Payments) of SI 2009/1171 will treat trivial commutations payments as authorised payments in certain circumstances. This is a real easement for schemes when dealing with trivial commutation payments (although the limit of £2,000 is somewhat low and it is to be hoped that the Government will review this limit otherwise its usefulness to schemes will diminish over time). It should be noted, however, that [unless / until an amendment is made to regulation 39 of the Benefits Regulations, administering authorities will **not** be able to utilise the commutation options allowed for by **Part 2** of SI 2009/1171¹](#). This is because all of the payments made under SI 2009/1171 are made in accordance with section 164(1)(f) of the Finance Act 2004, not section 166 of the Finance Act 2004. By virtue of regulation 39 of the Benefits Regulations, however, administering authorities can only commute trivial pensions if the payment is to be made under section 166 of the Finance Act 2004. The Secretariat understands that CLG are considering making an appropriate amendment to regulation 39 of the Benefits Regulations. Even if such an amendment is made, there will still be a problem in cases where the member is entitled to a GMP. As far as the commutation of a GMP is concerned, regulation 60(1) of The Occupational Pension Schemes (Contracting-out) Regulations 1996 [SI 1996/1172] only permits commutation if:

- (a) a guaranteed minimum pension has become payable; and
- (b) the payment of a lump sum is authorised under section 164 of the Finance Act 2004 and the payment is permitted -
 - (i) by the lump sum rule in section 166 of that Act and qualifies as-
 - (aa) a trivial commutation lump sum for the purposes of paragraph 7 of Part 1 of Schedule 29 to that Act

So, unless / until regulation 60(1) of The Occupational Pension Schemes (Contracting-out) Regulations 1996 is amended to also refer to payments made under paragraph 7A of Part 1 of Schedule 29 to the Finance Act 2004 and to payments made under Part 2 of SI 2009/1171 the following will apply where a member is entitled to a GMP:

A) where a female is entitled to a GMP, only the standard trivial commutation route can be followed (which allows the GMP to be commuted). The easement routes in Part 2 of SI 2009/1171 cannot be used at all as regulation 60(1) of The Occupational Pension Schemes (Contracting-out) Regulations 1996 does not permit the commutation of the GMP in these circumstances.

B) where a male is entitled to a GMP, the standard trivial commutation route can be followed (which allows the GMP to be commuted) BUT only where the member is aged 65 or over. Where the member is under age 65, the standard commutation route cannot be applied until the member attains age 65. The easement routes in Part 2 of SI 2009/1171 cannot be used at all as regulation 60(1) of The Occupational Pension Schemes (Contracting-out) Regulations 1996 does not permit the commutation of the GMP in these circumstances.

¹ Administering authorities will, however, be able (subject to the note on GMPs above) to utilise the commutation option offered in the very limited number of cases covered by SI 2009/1172, as a payment under that SI would be made in accordance with section 166 of the Finance Act 2004.

Regulation 4 and Part 3 (Pension Errors) of the SI detail when pension payments paid in error will be treated as authorised payments. Lump sums paid in error will be regarded as authorised payments if they fall within the conditions of Regulation 5 and Part 4 (Lump Sum Errors) of the SI.

Part 2 - Commutation payments, paid on or after 1 December 2009, will be regarded as authorised payments if

- a scheme has paid a transfer out to another registered pension scheme or to a qualifying recognised overseas pension scheme, or has purchased an annuity from an insurance company (e.g. in respect of LGPS AVCs); and
- after paying such a transfer or purchasing such an annuity there is a further "accretion" i.e. a scheme receives a belated payment in respect of the member (other than pensions contributions or a belated transfer in) or there is a belated allocation (e.g. to an AVC pot) affecting the value of the sums and assets; and
- the scheme makes a payment in respect of the above which extinguishes the member's benefits under the pension scheme; and
- the payment is less than £2,000 and does not exceed the value of the "accretion"; and
- the payment is made by 1 June 2010 if the "accretion" occurred before 1 December 2009 or, else, the payment is made no later than 6 months after the date the "accretion" occurred;

or

- a member has attained age 75; and
- despite having taken reasonable steps to locate the member, the scheme has been unable to trace the scheme member before age 75; and
- no communication had been received from the scheme member for at least 5 years prior to the date the scheme administrator traced the member's whereabouts or learned of the member's death; and
- if the scheme is a defined benefit scheme (which the LGPS is), no scheme pension is being paid to the member by the scheme or any related scheme; and
- the payment does not exceed £2,000; and
- the payment extinguishes the member's entitlement to benefits in the scheme or, if the member has died, represents the total value of all sums and assets held by the scheme in respect of the member; and
- the payment is made no later than 1 June 2010 or, if later, 12 months after the date the scheme administrator traces the member or learns of the member's death;

or

- the member is receiving an annuity; and
- the trivial commutation lump sum is paid before the end of the commutation period set out in paragraph 7(2) of Schedule 29 to the Finance Act 2004; or
- the member is not a member of any other registered pension scheme, has not previously received either a trivial commutation lump sum or a commutation payment that was an authorised payment under regulation 10 of the Registered Pension Schemes (Authorised Payments) Regulations 2009, and the value of the member's pensions rights immediately before the payment is made (as calculated in accordance with paragraph 7(5) of Schedule 29 to the Finance Act 2004) does not exceed 1% of the Standard Lifetime Allowance

or

- the member is age 60 or over and under age 75; and
- the member is not, and is not connected to, a controlling director of a sponsoring employer; and
- the payment extinguishes all of the member's entitlement to benefits in the scheme; and
- no recognised transfer was paid by the pension scheme in respect of the member in the 3 years preceding the date of the payment; and
- the commutation value of the member's benefits in the scheme and in any related scheme does not exceed £2,000; and
- the payment does not exceed £2,000; and

or (in respect of payments made by larger schemes)

- the scheme has at least 50 members; and
- the member has reached the age of 60 and is under age 75; and
- the member is not, and is not connected to, a controlling director of a sponsoring employer; and
- the payment does not exceed £2,000; and
- the payment extinguishes the member's entitlement to benefits under the scheme; and
- no transfer was made into the scheme in respect of the member in the 5 years preceding the date of payment (other than a transfer resulting from the transfer of an undertaking or a business (or part of an undertaking or a business) from one person to another which involves the transfer of at least 20 employees; and
- a recognised transfer (as defined in section 169 of the Finance Act 2004) was not paid from the scheme in respect of the member during the 3 years preceding the date of payment; and
- the scheme was in existence as at 1 July 2008 (which the LGPS was).; and

Part 3 – Any pension paid in error on or after 6 April 2006 will be regarded as an authorised payment if:

- the scheme administrator believed the recipient was entitled to the payment and at the amount that was paid;
- the payment was made to the scheme member, or to another beneficiary in respect of the scheme member (within the pension rules or death benefit rules as defined in sections 165 and 167 of the Finance Act 2004); and
- the member or beneficiary was alive at the time the payment was made.

or

- after the discovery of an overpayment covered by the three bullet points above, a further overpayment is made to the same person; and
- the payer took reasonable steps to prevent the further overpayment; or
- the further payment overpayment is made whilst the scheme administrator is considering, or is in the process of, amending the scheme rules to make such payments permissible (provided the administrator has not taken an unreasonable amount of time to do so);

or

- the overpayment is made no more than 6 months after the person's death; and
- the payment would not have been an unauthorised payment if it had been made before the person's death; and

- the Scheme administrator was unaware of, or could not reasonably have been expected to know about, the person's death (or where they were aware of the member's death had taken reasonable steps to prevent the overpayment);

Payment of arrears of pension after death will be regarded as an authorised payment if:

- the payment is in respect of a defined benefits scheme; and
- the member is under age 75; and
- the member was not, and was not connected to, a controlling director of a sponsoring employer; and
- if the member died before 6 April 2006
 - the payment represents accrued arrears of pension, and
 - the payment was permitted under the scheme rules as they stood immediately before the member's date of death, and
 - the scheme rules would have been approved by the Inland Revenue or HMRC with reference to IR12;
- where the member dies after 5 April 2006
 - the payment represents an entitlement to arrears of pension which the scheme administrator only established after the member's death,
 - the payment would not have been unauthorised if it had been made before the member's death, and
 - the scheme could not have reasonably have been expected to make the payment before the member's death.

The amount of payment which will be treated as an authorised payment is the amount that accrued from the earliest date the member was entitled to receive benefits until the date the member died. The payment will be treated as a Benefit Crystallisation Event 9 for the purposes of the Lifetime Allowance check where the member dies after 5 April 2006. Paragraph 1(3) of Schedule 29 to the Finance Act 2008 inserted BCE 9 into the table within section 216(1) of the Finance Act 2004. The last entry in the table now reads

Benefit Crystallisation Events	Amount Crystallised
9. If regulations under section 164(1)(f) so provide, the happening of an event prescribed in the regulations in relation to a payment prescribed in the regulations.	An amount determined in accordance with the regulations.

Part 4 - Lump sums paid in error on or after 6 April 2006 will be regarded as authorised payments if:

- a PCLS exceeds the permitted maximum because it has been calculated by reference to an incorrectly calculated and overpaid scheme pension or annuity; or
- a PCLS exceeds the permitted maximum because it is calculated by reference to an incorrectly calculated scheme pension or annuity, and is paid before the incorrect scheme pension is brought into payment or the annuity is purchased, but the scheme pension or annuity is recalculated to the correct amount before the initial payment of scheme pension or annuity is made; and
- the payer has taken reasonable steps to prevent the payment of a lump sum in excess of the permitted maximum if the error had been discovered before the lump sum payment was made.

or

- a lump sum is paid by a defined benefit pension scheme to or in respect of a member who has died; and
- the scheme administrator only established the member's entitlement to the lump sum after the member's death; and
- the scheme administrator could not reasonably have been expected to make the payment before the member's death; and
- the payment would have been regarded as a PCLS if it had been made immediately before the member's death; and
- the member was not, and was not connected to, a controlling director of a sponsoring employer; and
- the payment is made no later than one year after the earlier the date on which the scheme administrator learned of the member's death or the day the scheme administrator could reasonably have been expected to know of the member's death.

The amount of PCLS in excess of the permitted maximum or a PCLS paid after the member's death will be regarded as a BCE 9 for the purpose of the amount of an individual's Lifetime Allowance used.

Age 50 protections

The Secretariat has been in correspondence with CLG over the question of age 50 protections, as the Secretariat was of the view that the LGPS Regulations 1997 (and the LGPS (Scotland) Regulations 1998) needed to be amended to raise the minimum retirement age from 50 to 55 by 5 April 2010 for those employees who were not active members on 5 April 2006 and who left with a deferred benefit between 6 April 2006 and 31 March 2008 (6 April 2006 and 31 March 2009 in Scotland).

CLG have considered this and the conclusion that has been reached is that, for the LGPS in England and Wales:

1. Members who left with a deferred benefit prior to 6 April 2006 can retain age 50 ERD (forever) - which both the LGPS Regulations 1995 and the LGPS Regulations 1997 provide for;
2. Members who left with a deferred benefit on or after 6 April 2006 and before 1 April 2008 and who were active members of the scheme on 5 April 2006 can retain age 50 ERD (forever) - so these cases are OK under the wording of the LGPS Regulations 1997;
3. Members who left with a deferred benefit on or after 6 April 2006 and before 1 April 2008 and who were not active members of the scheme on 5 April 2006 can retain age 50 ERD until, at the latest, 5 April 2010, whereupon the age for ERD rises to 55 - which the LGPS Regulations 1997 do not currently provide for. The Secretariat understands that CLG are minded to make an appropriate amendment to the LGPS Regulations 1997 prior to 5 April 2010;
4. The LGPS, because it is a scheme which was in existence on 10 December 2003, can provide that members who left with a deferred benefit on or after 1 April 2008 and who were active members of the scheme on 5 April 2006 can retain an age 50 ERD (forever). However, in agreeing the terms of the new LGPS, a rise in the ERD to age 55 has been accepted. Thus, the protection in the Benefits Regulations at regulation 30(6) is actually more restrictive than what the Finance Act 2004 would permit, in that the protection only last to 31 March 2010 (rather than forever) for those who elect to draw their deferred benefits by then, and even then only for those who were active members of the scheme on 31 March 2008;

5. The LGPS can provide that members who left with a deferred benefit on or after 1 April 2008 and who were not active members of the scheme on 5 April 2006 can retain an age 50 ERD until, at the latest, 5 April 2010, whereupon the age for ERD rises to 55. The protection in the Benefits Regulations at regulation 30(6) is actually slightly more restrictive than what is permissible for schemes under the Finance Act 2004 in that the protection only last to 31 March 2010 (rather than to 5 April 2010) and only covers those who were active members of the Scheme on 31 March 2008 (rather than both pre April 2008 joiners and post April 2008 joiners who join prior to 6 April 2010);
6. Anyone who was retired on redundancy/efficiency grounds aged 50 or over prior to 1 April 2008 is alright (as the general Finance Act 2004 age 50 protection covers those who leave before 6 April 2010).
7. Under the Finance Act 2004, anyone who retires on redundancy/efficiency grounds aged 50 or over on or after 1 April 2008 and before 6 April 2010 is alright (as the general Finance Act age 50 protection covers those who leave before 6 April 2010). The protection in Benefits Regulation 19 is actually more restrictive than this in that is only covers those who were active members of the Scheme on 31 March 2008 and who leave on redundancy/efficiency grounds before 31 March 2010;
8. The Finance Act 2004 provides that, as the LGPS was in existence on 10 December 2003, anyone who retires on redundancy/efficiency grounds aged 50 or over on or after 6 April 2010 and who was an active member on 5 April 2006 could be provided, by the LGPS, with a protected age 50 ERD (forever). However, in agreeing to the terms of the new LGPS, a rise in the ERD to age 55 has been accepted. The protection in the Benefits Regulations at regulation 19(2) is actually tighter than the Finance Act 2004 permits, in that the protection only lasts to 30 March 2010 (rather than forever for those who were active members on 5 April 2006, or to 5 April 2010 for those who were not active members on 5 April 2006) and only covers those who were active members of the Scheme on 31 March 2008 and who leave on redundancy/efficiency grounds before 31 March 2010;
9. Anyone who was retired on flexible retirement aged 50 or over prior to 1 April 2008 is OK (as the general Finance Act age 50 protection covers those who leave before 6 April 2010);
10. Under the Finance Act 2004, anyone who takes flexible retirement aged 50 or over on or after 1 April 2008 and before 6 April 2010 is OK (as the general Finance Act age 50 protection covers those who leave before 6 April 2010). Benefits Regulation 18 is actually more restrictive than this in that is only covers those who were active members of the Scheme on 31 March 2008 and who take flexible retirement before 31 March 2010; and
11. The Finance Act 2004 provides that, as the LGPS was in existence on 10 December 2003, anyone who takes flexible retirement aged 50 or over on or after 6 April 2010 and who was an active member on 5 April 2006 could be provided, by the LGPS, with a protected age 50 ERD (forever). However, in agreeing the terms of the new LGPS, a rise in the ERD to age 55 has been accepted. The protection in the Benefits Regulations at regulation 18(4) is actually far more restrictive than required under the Finance Act 2004 in that the protection only lasts to 30 March 2010 (rather than forever for those who were active members on 5 April 2006, or to 5 April 2010 for those who were not active members on 5 April 2006) and only cover those who were active members of the Scheme on 31 March 2008 and who take flexible retirement before 31 March 2010.

The information on the HMRC technical pages [RPSM03106020](#) and [RPSM03106025](#) (which suggests that protection only applies if there is an unqualified right to draw benefits from age 50 i.e. that no other party need consent to the individual's request before it becomes binding) has been considered but, in arriving at the views given above, it was felt necessary to have proper regard to the provisions of both the Finance Act 2004 and the Superannuation Act 1972.

The ERD position of those former NHS members who were covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 is being considered by CLG.

The age 50 reference in regulation 66(1)(d) of the LGPS Regulations 1997 (as protected by regulation 66(8) of the LGPS Regulations 1997) is not affected by the provisions of the Finance Act 2004. So, there is no change to regulation 66(1)(d) unless CLG decide, perhaps for consistency reasons, to consult on raising it from 50 to 55. Of course, there is equally an argument to leave it as age 50 on the grounds that members taking out an AVC may have been told they could cease paying AVC and convert the AVC pot to membership from age 50.

The position in Scotland is as follows:

1. Members who left with a deferred benefit prior to 6 April 2006 can retain age 50 ERD (forever) - which both the LGS (Scotland) Regulations 1987 and the LGPS (Scotland) Regulations 1998 provide for;
2. Members who left with a deferred benefit on or after 6 April 2006 and before 1 April 2009 and who were active members of the scheme on 5 April 2006 can retain age 50 ERD (forever) - so these cases are OK under the wording of the LGPS (Scotland) Regulations 1998;
3. Members who left with a deferred benefit on or after 6 April 2006 and before 1 April 2009 and who were not active members of the scheme on 5 April 2006 can retain age 50 ERD until, at the latest, 5 April 2010, whereupon the age for ERD rises to 55 - which the LGPS (Scotland) Regulations 1998 do not currently provide for. An appropriate amendment will need to be made to the LGPS (Scotland) Regulations 1998 prior to 5 April 2010;
4. The LGPS, because it is a scheme which was in existence on 10 December 2003, can provide that members who left with a deferred benefit on or after 1 April 2009 and who were active members of the scheme on 5 April 2006 can retain an age 50 ERD (forever). However, in agreeing the terms of the new LGPS, a rise in the ERD to age 55 has been accepted. Thus, the protection in the Benefits Regulations at regulation 30(6) is actually more restrictive than what the Finance Act 2004 would permit, in that the protection only last to 31 March 2010 (rather than forever) for those who elect to draw their deferred benefits by then, and even then only for those who were active members of the scheme on 31 March 2009;
5. The LGPS can provide that members who left with a deferred benefit on or after 1 April 2009 and who were not active members of the scheme on 5 April 2006 can retain an age 50 ERD until, at the latest, 5 April 2010, whereupon the age for ERD rises to 55. The protection in the Benefits Regulations at regulation 30(6) is actually slightly more restrictive than what is permissible for schemes under the Finance Act 2004 in that the protection only last to 31 March 2010 (rather than to 5 April 2010) and only covers those who were active members of the Scheme on 31 March 2009 (rather than both pre April 2009 joiners and post April 2009 joiners who join prior to 6 April 2010);

6. Anyone who was retired on redundancy/efficiency grounds aged 50 or over prior to 1 April 2009 is alright (as the general Finance Act age 50 protection covers those who leave before 6 April 2010).

7. Under the Finance Act 2004, anyone who retires on redundancy/efficiency grounds aged 50 or over on or after 1 April 2009 and before 6 April 2010 is alright (as the general Finance Act age 50 protection covers those who leave before 6 April 2010). The protection in Benefits Regulation 19 is actually more restrictive than this in that, for those who were not active members of the scheme on 5 April 2006, it only covers those who were active members of the Scheme on 31 March 2009 and who leave on redundancy/efficiency grounds before 31 March 2010;

8. The Finance Act 2004 provides that, as the LGPS was in existence on 10 December 2003, anyone who retires on redundancy/efficiency grounds aged 50 or over on or after 6 April 2010 and who was an active member on 5 April 2006 could be provided, by the LGPS, with a protected age 50 ERD (forever). This protection has been replicated in Benefits Regulation 19(3). However, for those who were not active members on 5 April 2006, the protection in the Benefits Regulations at regulation 19(2) is actually tighter than the Finance Act 2004 permits, in that the protection only lasts to 30 March 2010 (rather than to 5 April 2010) and only covers those who were active members of the Scheme on 31 March 2009 and who leave on redundancy/efficiency grounds before 31 March 2010;

9. Anyone who was retired on flexible retirement aged 50 or over prior to 1 April 2009 is alright (as the general Finance Act age 50 protection covers those who leave before 6 April 2010);

10. Under the Finance Act 2004, anyone who takes flexible retirement aged 50 or over on or after 1 April 2009 and before 6 April 2010 is alright (as the general Finance Act age 50 protection covers those who leave before 6 April 2010). Benefits Regulation 18 is actually more restrictive than this in that it only covers those who were active members of the Scheme on 31 March 2009 and who take flexible retirement before 31 March 2010; and

11. The Finance Act 2004 provides that, as the LGPS was in existence on 10 December 2003, anyone who takes flexible retirement aged 50 or over on or after 6 April 2010 and who was an active member on 5 April 2006 could be provided, by the LGPS, with a protected age 50 ERD (forever). However, in agreeing the terms of the new LGPS, a rise in the ERD to age 55 has been accepted. The protection in the Benefits Regulations at regulation 18(5) is actually far more restrictive than required under the Finance Act 2004 in that the protection only lasts to 30 March 2010 (rather than forever for those who were active members on 5 April 2006, or to 5 April 2010 for those who were not active members on 5 April 2006) and only cover those who were active members of the Scheme on 31 March 2009 and who take flexible retirement before 31 March 2010.

The age 50 reference in regulation 65(1)(d) of the LGPS (Scotland) Regulations 1998 (as protected by regulation 65(8) of the LGPS (Scotland) Regulations 1997) is not affected by the provisions of the Finance Act 2004. So, there is no change to regulation 65(1)(d) unless SPPA decide, perhaps for consistency reasons, to consult on raising it from 50 to 55. Of course, there is equally an argument to leave it as age 50 on the grounds that members taking out an AVC may have been told they could cease paying AVC and convert the AVC pot to membership from age 50.

Balance of trivial commutation paid after age 75

The Secretariat has been liaising with HMRC over a case where a widow's trivial pension was commuted in 1998 but, due to problems in ascertaining the correct level of the widow's GMP, it was subsequently discovered that the trivial commutation had been underpaid by around £200. Unfortunately, by the time the underpayment was discovered (post April 2006) the widow was over age 75 and so the payment would have constituted an unauthorised payment.

Following representations from the Secretariat, HMRC have provided the following, very helpful, reply:

"HMRC has decided that in cases of this nature we will exercise our discretionary powers of Collection and Management so that we will not seek to collect the tax that, in strictness, is due in respect of the unauthorised payment (although the payment remains an unauthorised payment). Furthermore, the scheme or sub-scheme administrator does not have to report the unauthorised payment to HM Revenue and Customs on its Event Report under Event Report no.1. Nor does the unauthorised payment have to be returned on the recipient's self-assessment tax return or be otherwise notified to HM Revenue and Customs.

The £200 may therefore be paid as though it were, in effect, an authorised trivial compensation lump sum. For completeness, I can confirm that for tax purposes this payment and the original payment should be treated as though there has been a single commutation payment thereby satisfying the various requirements of the legislation.

GAD – Specialist Team to deal with TUPE transfers

GAD estimates that it has an annual workload of about 100 cases where clients seek assistance in respect of TUPE transfers. In response to this GAD have recently created a dedicated team to meet the demand for assistance.

LGE / LGPC response to the draft Pensions (Automatic Enrolment) Regulations 2009

The LGE / LGPC have issued a [response](#) to [the draft Pensions \(Automatic Enrolment\) Regulations 2009](#).

The response contains comments on a number of technical matters, but has also warned the Department for Work and Pensions that the proposed pensions auto-enrolment process to be applied from 2012 could lead to increases in salary on costs for employers participating in the Local Government Pension Scheme (LGPS) if a significant number of those employees who currently choose not to join / choose to opt out of the LGPS miss the short opt-out deadline proposed in the draft Automatic Enrolment Regulations. This could result in a serious level of additional cost hitting hard pressed council budgets unless additional funding were to be provided by central government.

CBI Report on reforming pensions practice in public services contracting

The CBI has issued a report called "[A question of balance – Reforming pensions practice in public services contracting](#)" The report calls for what it calls a "level playing field for all providers" when public sector contracts are being tendered and says that the same principles and approach which the LGPS has allowed via the admitted body route should be applied across the rest of the public sector. Although the report raises some concerns about a few aspects of the admitted body route, it nonetheless praises this as an exemplar for the rest of the public sector schemes to follow.

Policy Exchange Report on Public Sector Pensions: The UK's Second National Debt

A [report from Policy Exchange](#) claims that to reveal the true extent of the public sector pension debt. The report says that the cost of the public sector pension schemes – what it terms as the second national debt - is much larger than the national debt and, taken into account with net public sector debt, this second national debt brings the total the Government owes to £1.854 trillion, or 150 per cent of GDP.

Bits and Pieces

Timeline Regulations

The June 2009 update of the [Timeline Regulations](#) website included:

- A link to the CLG letter dated 18 November 2008 has been added in the section headed "Administration Regulation 79 Rights to payment out fund authority's pension fund & 83 Inward transfers of pension rights";
- An updated version of the LGPS (Scotland) Regulations 1998 has been created to incorporate the changes in The Local Government Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Regulations [SSI 2009/186];
- A updated version of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009 and a new set of the LGPS (Scotland) Regulations 2008 have been created due to the amendments made by The Local Government (Discretionary Payments and Injury Benefit) (Scotland) Amendment Regulations 2009 [SSI 2009/187];
- The Scottish Statutory Instruments page now includes SSIs 2009/186 and 2009/187 together with the accompanying explanatory memoranda and
- SPN/LG Circular No.4 /2009 has been added to the Statutory Guidance and Circulars page.

LGPC Communications

Scheme Guides

The main guide and the introductory leaflet to the LGPS for councillors in England and Wales have been updated and are now available on the [LGE's website](#).

LGPS members' website

[The LGPS members' website](#) "Thinking of Joining" and "Already a Member" sections for employees in Scotland are now up to date with the provisions in Scotland from 1 April 2009. A full update for councillors in Scotland and a review of the "Previous Member" and "Receiving a Pension" sections of the website are currently being worked on.

Legislation

United Kingdom

SI Reference Title

2009/1225 The Firefighters' Pension Scheme (Wales) Amendment Order 2009

2009/1226 The Firefighters' Pension (Wales) Scheme Amendment Order 2009

2009/1311 The Pension Scheme (Reduction in Pension Rates) (Amendment) Regulations 2009

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

Pension managers (internal) of administering authorities
Pension managers (outsourced) and administering authority client managers
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Local Government Pensions Committee
Trade unions
CLG
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