

The Local Government Pensions Committee
Secretary: Mike Walker

CIRCULAR

Please pass on sufficient copies of this Circular to your Treasurer/Director of Finance and to your Personnel and Pensions Officer(s) as quickly as possible

No. 184 – APRIL 2006

CHANGES TO THE LGPS IN ENGLAND AND WALES

Purpose of this Circular

1. This Circular has been issued to provide information to authorities on the changes to the LGPS in England and Wales contained in the Local Government Pension Scheme (Amendment) Regulations 2006 [SI 2006/966].
2. In summary, the Amendment Regulations provide that:
 - the so-called '85 year rule' will be removed from the Scheme in respect of benefits accruing after 30 September 2006 (or, by virtue of Transitional Protection, after 31 March 2013 for those members who would be aged 60 or over and satisfy the 85 year rule by that date) but benefits banked up to 30 September 2006 (or up to 31 March 2013 for those covered by the Transitional Protection) will not be affected by the change;
 - further consideration may still be given to additional Transitional Protection arrangements for existing scheme members, where these are affordable and can be legally provided, in the context of a new-look Scheme for 2008;
 - a new facility for Scheme members to pay extra contributions in order to be able to draw an unreduced pension on voluntary retirement before age 65 has not (yet) been introduced into the Scheme; and
 - the earliest age that benefits may be paid on the grounds of redundancy or efficiency, or at which an employer can agree to the early release of pension benefits, remains as age 50 (but will have to increase to 55 by 2010)

3. The Amendment Regulations also provide that, as from 6 April 2006:
- the normal retirement age for councillor members is reduced from age 70 to age 65 so that all contributors to the Scheme now have a common normal retirement age of 65;
 - employees (other than Coroners) and eligible councillors will be able to join and remain in the Scheme until the day before their 75th birthday (although there is an inconsistency in the regulations – see comments under regulation 5 in the technical guidance at Annex 4). It would appear that all employees (other than casual employees, coroners and eligible councillors) who are aged 65 or over but under age 75 and who are not presently contributing to the Scheme will have to automatically be brought into the Scheme from 6 April 2006 (unless they opt not to be a member before then). Casual employees and eligible councillors have the right to opt in. The upper age limit for Coroners to join / remain in the Scheme has remained unaltered at age 70;
 - the current 15% contribution limit on employees' and councillors' contributions is removed and thus up to 100% of taxable pay can be paid into the Scheme with full tax relief. The change also has an impact on some employees who are purchasing part time service under the "Preston" buy-back terms. Where the amount of contributions required to buy-back the service exceeded 15% the employer had, prior to 6 April 2006, to net down the contributions above 15% because the employee was not entitled to tax relief on contributions above 15%. Now that the 15% contribution limit has gone and the employee will receive tax relief via the payroll on those contributions, the amount payable by the employee should, as from 6 April 2006, be grossed back up to the full amount due;
 - benefits will have to be paid before a Scheme member's 75th birthday (although there is an inconsistency in the regulations – see comments under regulation 5 in the technical guidance at Annex 4). Where a Scheme member defers drawing benefits beyond age 65 their benefits will be actuarially increased i.e. just as benefits drawn before age 65 may be subject to an actuarial reduction to reflect the fact that they will be paid for longer, benefits drawn after age 65 will be actuarially increased to reflect the fact that they will be paid for a lesser period of time;
 - flexible retirement is to be permitted at or after age 50, linked to a reduction in hours or grade agreed by the employer, and the employer will (at their cost) be able to waive, in whole or in part, any actuarial reduction that would have been applied to the early payment of those benefits;
 - members drawing benefits on or after 6 April 2006 will be able to commute some of their pension to receive a bigger lump sum. For each £1 of annual pension surrendered, the member will receive a lump sum of £12. Up to 25% of the capital value of the member's pension benefits can be taken in the form of a lump sum;

- the ability for retirees to convert some or all of their scheme lump sum into additional pension has been removed;
 - the facility for employers to be able to reduce or waive the contributions of employees who have been in pensionable local government employment for at least 40 years is removed and so, as from 6 April 2006, any member who has had their contributions reduced or waived will have to start paying full contributions again. The employer can, at their discretion, recoup the contributions that would otherwise have been paid by the member had their contributions not been reduced or waived. Whether or not the employer seeks to recoup the relevant contributions, the period will count. The maximum service limit of 40 years (or, for those who joined the Scheme before 1 June 1989, the maximum of 40 years at age 60 and 45 years at age 65) has been removed;
 - the ability for a member to provide a survivor benefit over and above the standard spouse's, civil partner's or children's pensions by surrendering a part of his / her pension in favour of spouse, civil partner or dependant (payable should they survive the member) has been removed;
 - children's pensions coming into payment after 5 April 2006 will, for those who carry on in full time education or training for a trade, profession or calling beyond age 17, have to cease by age 23 (even if they carry on in full time education, etc beyond that age);
 - the amount of augmented membership that an employer may, in future, grant to a scheme member is subject to a limit of 6 2/3rd years (subject to this not exceeding the shortfall in membership to age 65). Employing authorities who make use of the augmentation provision may wish to remove any reference to a 40 year limit from their discretionary augmentation policy. If an employing authority amends its policy it must send a copy of the amended policy to the administering authority within one month of the date of the decision to amend the policy;
 - the maximum number of added years that a scheme member can, in the future, elect to purchase is limited to 6 2/3rd years;
 - the Earnings Cap of £105,600 for those members who joined the LGPS on or after 1 June 1989 is removed. From 6 April 2006 such members will have to start paying pension contributions on their uncapped pensionable pay. A service adjustment is to be performed in respect of their local government membership between 1 June 1989 and 5 April 2006.
4. One change that has not gone ahead was the proposal to amend the amount of contributions payable by Scheme members who take one or more days of industrial action and who wish to pay pension contributions to ensure the service counts for pension purposes. The relevant contribution payable by the member if they wish the service to count remains as 16% of the pay lost during the industrial action.

5. Further information on the removal of the 85 year rule is contained in Annex 1. A flowchart is provided in Annex 2 and worked examples are shown in Annex 3.
6. Detailed technical guidance on the Amendment Regulations is provided in Annex 4 together with additional commentary in Annex 5. Administering authorities in England and Wales may wish to note that the "How membership counts" table is being updated to take account of the Amendment Regulations. The updated table will be available at www.lg-employers.gov.uk/documents/pensions/membership/table.doc

Actions to be taken

7. Regulation 4 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 [SI 1996/1655] requires the pension fund administering authority to notify all scheme members and beneficiaries (except those deferred members and pension credit members for whom no current address is held) of any changes to the scheme rules which may materially affect them. This should be done either before the change takes effect or, in any event, not later than 3 months after the effective date of the change. The notification must be accompanied by a written statement that further information about the scheme is available, giving the address to which enquiries should be sent. The LGPC is preparing a Newsletter which administering authorities may wish to utilise to help inform Scheme members of the changes.
8. Administering authorities will need to consider the impact of the removal of the '85 year rule' on the information they provide on Annual Benefit Statements, particularly if the information to be provided on future statements will differ to that provided on statements issued prior to the Scheme amendments.
9. All pension scheme guides, literature, standard letters and computerised pensions administration systems will need to be updated to reflect the Scheme changes. The standard guides on the LGPC website are all in the process of being updated and the updated versions will be available for downloading / printing shortly.
10. Administering authorities should also note a change to the suggested disclaimer to be included on refund application forms (see the comments on regulation 87 of the LGPS Regulations 1997 contained in Annex 5). The disclaimer now includes a reference to ill health commutations, transfers to an overseas scheme and spouse's / civil partner's / child's pensions.
11. The national website for Scheme members (see www.lgps.org.uk) is in the process of being updated to reflect the Scheme changes.

12. All Committee members and staff with responsibilities in relation to pension matters will need to be informed of the changes including, amongst others, HR staff, pension liaison officers in employing authorities, Pension Committee members, and of course, the staff of Pension Sections (both internal and outsourced).
13. Administering authorities in England and Wales are asked to copy this Circular to employers in their Fund (other than to Local Authorities to whom this Circular has been sent direct), or bring the Circular to the attention of employers by directing them to the Circular on the LGPC website at <http://www.lge.gov.uk/pensions/content/circulars.html> or, in some other way, bring the main messages in this Circular to the attention of the employers in their Fund.

Terry Edwards
Head of Pensions
April 2006

Effect of removal of the 85 year rule

1. The age at which an unreduced pension can be taken is being standardised at age 65 for all members of the Scheme. This is being achieved:
 - a) by removing, as from 1 October 2006, a 'protected' Normal Retirement Date enjoyed by some members who joined the Scheme before 1 April 1998¹;
 - b) by removing the '85-year rule'² in respect of benefits accruing in the Scheme after 30 September 2006 (but with Transitional Protections for older Scheme members); and
 - c) by amending, as from 6 April 2006, the Normal Retirement Date for councillor members from age 70 to age 65.

New joiners after 30 September 2006

2. The Scheme's Normal Retirement Date for people who start contributing to the LGPS after 30 September 2006 will be age 65. If their benefits are drawn at age 65 they will be paid in full; but if the benefits are voluntarily drawn on or after age 60 and before age 65 (or, with the employer's consent, on or after age 50 and before age 60) they will be paid at an actuarially reduced rate to take account of early payment (unless the employer agrees to waive the reduction on compassionate grounds). The reduction will be based on the period between the date the benefits come into payment and age 65.

Existing contributors at 30 September 2006

3. The Scheme's Normal Retirement Date for existing contributors at 30 September 2006 will be age 65. If their benefits are drawn at age 65 they will be paid in full; but if the benefits are voluntarily drawn on or after age 60 and before age 65 (or, with the employer's consent, on or after age 50 and before age 60) they will be paid at an actuarially reduced rate to take account of early payment (unless the employer agrees to waive the reduction on compassionate grounds). However, benefits already accrued up to 30 September 2006, or up to 31 March 2013 for those who will be aged 60 or over by 31 March 2013, will be protected as if

¹ The 'protected' Normal Retirement Date only applied to employees who joined the Scheme before 1 April 1998. Such members could draw unreduced benefits on or after age 60 and before age 65 if, on the date the benefits were drawn, the member would have had 25 years membership.

² The 85 year rule is a rule which allowed employees retiring on or after age 60 and before age 65 or, with the employer's consent, on or after age 50 and before age 60, to receive an unreduced pension if, when their benefits were drawn, their combined age and Scheme membership (both in whole years) added up to 85 years.

the change in the Scheme rules had not occurred, as detailed in paragraphs 4 and 5 below.

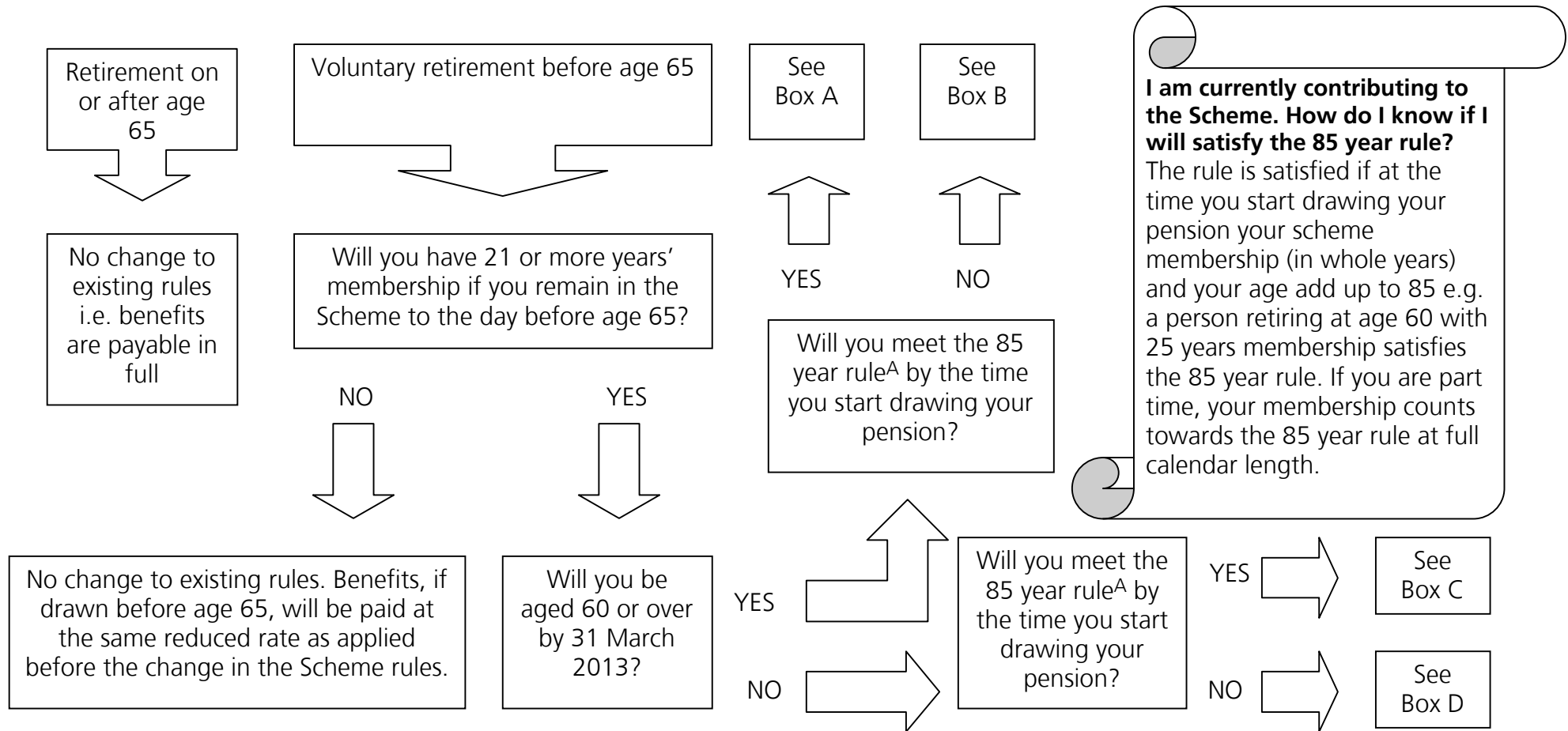
4. For members contributing to the LGPS on 30 September 2006 who will **not** be age 60 by 31 March 2013:
 - in respect of the benefits the member has already accrued up to 30 September 2006 the Scheme rules will be unaltered i.e.
 - the benefits, if paid at age 65, will be paid in full;
 - if voluntarily drawn before age 65, the benefits will be paid in full if the member's combined age and service (each in whole years) is 85 years or more on the date the benefits commence or, if applicable, the member has attained the former 'protected' Normal Retirement Date¹ on the date the benefits commence;
 - if voluntarily drawn before age 65 and the member does not meet the '85 year rule' on the date the benefits commence or, where applicable, the member has not attained an earlier 'protected' Normal Retirement Date¹ on the date the benefits commence, the benefits will be paid at an actuarially reduced rate to take account of early payment (unless the employer agrees to waive the reduction on compassionate grounds). The reduction will be based on the period between the date the benefits commence and the earlier of:
 - a) the former 'protected' Normal Retirement Date¹ (where it applies), or
 - b) the date the '85 year rule' would have been met, or
 - c) age 65.
 - in respect of benefits accruing from membership after 30 September 2006, the Scheme's Normal Retirement Date will be age 65. If the benefits in respect of the post 30 September 2006 membership are drawn at age 65 they will be paid in full; but if they are voluntarily drawn on or after age 60 and before age 65 (or, with the employer's consent, on or after age 50 and before age 60) they will be paid at an actuarially reduced rate to take account of early payment (unless the employer agrees to waive the reduction on compassionate grounds). The reduction will be based on the period between the date the benefits come into payment and age 65.
5. For members contributing to the LGPS on 30 September 2006 who **will** be age 60 or over by 31 March 2013:
 - in respect of the benefits the member accrues up to 31 March 2013 (or the date of leaving if earlier) the Scheme rules will be unaltered i.e.
 - the benefits, if paid at age 65, will be paid in full;

- if voluntarily drawn before age 65, the benefits will be paid in full if the member's combined age and service (each in whole years) is 85 years or more on the date the benefits commence or, if applicable, the member has attained the former 'protected' Normal Retirement Date¹ on the date the benefits commence;
 - if voluntarily drawn before age 65 and the member does not meet the '85 year rule' on the date the benefits commence or, where applicable, the member has not attained an earlier 'protected' Normal Retirement Date¹ on the date the benefits commence, the benefits will be paid at an actuarially reduced rate to take account of early payment (unless the employer agrees to waive the reduction on compassionate grounds). The reduction will be based on the period between the date the benefits commence and the earlier of:
 - a) the former 'protected' Normal Retirement Date¹ (where it applies), or
 - b) the date the '85 year rule' would have been met, or
 - c) age 65.
- in respect of benefits accruing from membership after 31 March 2013, the Scheme's Normal Retirement Date will be age 65. If the benefits in respect of the post 31 March 2013 Scheme membership are drawn at age 65 they will be paid in full; but if they are voluntarily drawn on or after age 60 and before age 65 (or, with the employer's consent, on or after age 50 and before age 60) they will be paid at an actuarially reduced rate to take account of early payment (unless the employer agrees to waive the reduction on compassionate grounds). The reduction will be based on the period between the date the benefits come into payment and age 65.
6. It should be noted that Scheme members who could **not** have met the 85 year rule before age 65 (and who did not have an earlier 'protected' Normal Retirement Date¹) will not be affected by the removal of the 85 year rule. The actuarial reduction that will be applied to their benefits if they choose to draw them on or after age 60 and before age 65 (or, with their employer's consent, on or after age 50 and before age 60) will be same under the new rules as it would have been under the old rules.
 7. The above changes are covered in the flow charts at Annex 2.
 8. Worked examples of the effects of the change to the '85 year rule' are included at Annex 3.

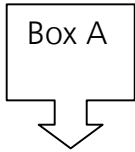
How will the changes to the LGPS being made on 1 October 2006 affect me?

Annex 2

By following the flowcharts below you will be able to see how the changes to the Scheme being made on 1 October 2006 affect you if you voluntarily retire on or after age 60, or if you voluntarily retire on or after 50 and before age 60 with your employer's consent.

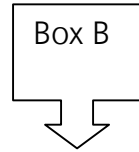


A. or meet an earlier Normal Retirement Date which some members who joined the Scheme before 1 April 1998 have under previous regulations



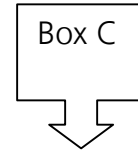
None of the benefits you accrue up to 31 March 2013 will be reduced.

However, any benefits you accrue after that date will be reduced to take account of the fact that the benefits are being drawn before age 65. The size of the reduction will depend on how many years before age 65 you draw your benefits.



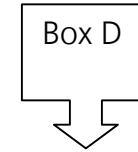
The benefits you have accrued up to 31 March 2013 will be reduced but the reduction will be the same as under the old rules (i.e. based on the number of years you are short of meeting the 85 year rule^B).

The benefits you accrue after 31 March 2013 will be reduced but the reduction will be higher than under the old rules to take account of the fact that the benefits are being drawn before age 65. The size of the reduction will depend on how many years before age 65 you draw your benefits.



None of the benefits you accrue up to 30 September 2006 will be reduced.

However, any benefits you accrue after that date will be reduced to take account of the fact that the benefits are being drawn before age 65. The size of the reduction will depend on how many years before age 65 you draw your benefits.



The benefits you have accrued up to 30 September 2006 will be reduced but the reduction will be the same as under the old rules (i.e. based on the number of years you are short of meeting the 85 year rule^B).

The benefits you accrue after 30 September 2006 will be reduced but the reduction will be higher than under the old rules to take account of the fact that the benefits are being drawn before age 65. The size of the reduction will depend on how many years before age 65 you draw your benefits.

Please note that no reduction will be applied to any of your benefits if you draw them on or after age 65.

B. or the shortfall to any earlier Normal Retirement Date which some members who joined the Scheme before 1 April 1998 may have had under previous regulations

Annex 3

Examples of how the April 2006 Scheme changes affect members

Example 1

Male or female member who is 60 on 31 March 2011 and satisfies the '85 year rule' when benefits are drawn

Joined the LGPS: 1 April 1986

Retires on: 31 March 2011

Age at retirement: 60

Membership at retirement: 25 years

Final salary for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

First check whether the '85 year rule' is satisfied at retirement:

To do this we check the calculation to see whether age (when the member elects to receive LGPS benefits) + membership = 85 (or more)

Which for this example is: $60 + 25 = 85$. This means that this member does satisfy the '85 year rule'.

Because the member reaches age 60 before 1 April 2013 and satisfies the 85 year rule when the benefits are drawn the changes mean that none of the LGPS benefits will be reduced.

The member will receive an unreduced pension based on 25/80ths of their final salary because all their membership relates to employment before 1 April 2013 and the criteria for the Transitional Protections contained in the regulations are satisfied.

So the pension is: $25 \times 1/80 \times £15,000 = £ 4,687.50$

And the lump sum is: $25 \times 3/80 \times £15,000 = £14,062.50$

Example 2

Male member who is 60 on 31 March 2013 and will have satisfied the '85 year rule' on retirement on 31 March 2015

Joined the LGPS: 1 April 1986

Retires on: 31 March 2015

Age at retirement: 62

Membership at 31 March 2013: 27 years

Membership at retirement: 29 years

Final salary for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Did the member attain age 60 on, or before, 31 March 2013? Yes, the member was age 60 on 31 March 2013.

Has the member satisfied the '85 year rule' at retirement? Yes i.e. age (62) + membership at age 62 (29 years) = 91 years at 31 March 2015.

Because the member reached age 60 before 1 April 2013 and will satisfy the '85 year rule' when their LGPS benefits are paid, the changes mean that none of the LGPS benefits which are based upon membership up to 31 March 2013 will be reduced. All benefits which relate to service from 1 April 2013 will, however, be reduced if they are drawn before age 65.

Calculation:

Membership up to 31 March 2013: 27 years

The member's benefits are based on 27/80ths of his final salary for membership up to 31 March 2013.

The pension for this period of membership is: $27 \times 1/80 \times £15,000 = £ 5,062.50$

And the lump sum for this period is: $27 \times 3/80 \times £15,000 = £15,187.50$

Membership from 1 April 2013: 2 years

The member's benefits are based on 2/80ths of his final salary for membership between 1 April 2013 and 31 March 2015. But this period of membership is subject to a reduction because the benefits are being paid 3 years before the member reaches age 65.

The pension for this period is: $2 \times \frac{1}{80} \times \text{£}15,000 = \text{£}375.00$

Less 22% reduction to reflect payment at age 62: £ 82.50

Reduced pension payable = £292.50

And the lump sum for this period is: $2 \times \frac{3}{80} \times \text{£}15,000 = \text{£}1,125.00$

Less 7% reduction to reflect payment at age 62: £ 78.75

Reduced lump sum for this period = £1,046.25

Both periods combined give total benefits of:

Total pension per annum: $\text{£}5,062.50 + \text{£}292.50 = 5,355.00$

Total lump sum: $\text{£}15,187.50 + \text{£}1,046.25 = \text{£}16,233.75$

Example 3

Female member who is 60 on 31 March 2013 and will have satisfied the '85 year rule' on retirement on 31 March 2015

Joined the LGPS: 1 April 1988

Retires on: 31 March 2015

Age at retirement: 62

Membership by 31 March 2013: 25 years

Membership at retirement: 27 years

Final salary for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Did the member attain age 60 on, or before, 31 March 2013? Yes, the member was age 60 on 31 March 2013.

Has the member satisfied the '85 year rule' at retirement? Yes i.e. age (62) + membership at age 62 (27 years) = 89 years at 31 March 2015.

Because the member reached age 60 before 1 April 2013 and will satisfy the '85 year rule' when their LGPS benefits are paid, the changes mean that none of the LGPS benefits which are based upon membership up to 31 March 2013 will be reduced. All benefits which relate to service from 1 April 2013 will, however, be reduced if they are drawn before age 65.

Calculation:

Membership up to 31 March 2013: 25 years

The member's benefits are based on 25/80ths of her final salary for membership up to 31 March 2013.

The pension for this period of membership is: $25 \times 1/80 \times £15,000 = £ 4,687.50$

And the lump sum for this period is: $25 \times 3/80 \times £15,000 = £14,062.50$

Membership from 1 April 2013: 2 years

The member's benefits are based on 2/80ths of her final salary for membership between 1 April 2013 and 31 March 2015. But this period of membership is subject to a reduction because the benefits are being paid 3 years before the member reaches age 65.

The pension for this period is: $2 \times \frac{1}{80} \times \text{£}15,000 = \text{£}375.00$

Less 18% reduction to reflect payment at age 62: £ 67.50

Reduced pension payable = £307.50

And the lump sum for this period is: $2 \times \frac{3}{80} \times \text{£}15,000 = \text{£}1,125.00$

Less 7% reduction to reflect payment at age 62: £ 78.75

Reduced lump sum payable = £1,046.25

Both periods combined give total benefits of:

Total pension per annum: $\text{£}4,687.50 + \text{£}307.50 = \text{£}4,995.00$

Total lump sum: $\text{£}14,062.50 + \text{£}1,046.25 = \text{£}15,108.75$

Example 4

Male member who is 60 on 30 September 2015 and satisfies the '85 year rule' on 30 September 2015

Joined the LGPS: 1 October 1986

Retires on: 30 September 2015

Age at retirement: 60

Membership by 30 September 2006: 20 years

Membership at retirement: 29 years

Final salary for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Did the member attain age 60 on, or before, 31 March 2013? No, the member was only 57 on 31 March 2013.

Has the member satisfied the '85 year rule' at retirement? Yes - age (60) + membership (29 years) = 89 years.

Because the member will satisfy the '85 year rule' when their LGPS benefits are paid, the changes mean that none of the LGPS benefits which are based upon membership up to 30th September 2006 will be reduced. All benefits based on membership from 1 October 2006 will, however, be reduced if they are drawn before age 65.

Calculation:

Membership up to 30 September 2006: 20 years

The member's benefits are based on 20/80ths of his final salary for membership up to 30 September 2006.

The pension for this period of membership is: $20 \times 1/80 \times £15,000 = £ 3,750.00$

And the lump sum for this period is: $20 \times 3/80 \times £15,000 = £11,250.00$

Membership from 1 October 2006: 9 years

The member's benefits are based on 9/80ths of his final salary for membership between 1 October 2006 and 30 September 2015. But this period of membership is subject to a reduction because the benefits are being paid 5 years before the member reaches age 65.

The pension for this period is: $9 \times 1/80 \times \text{£}15,000 = \text{£}1,687.50$

Less 33% reduction to reflect payment at age 60: £ 556.88

Reduced pension for this period = £1,130.62

And the lump sum for this period is: $9 \times 3/80 \times \text{£}15,000 = \text{£}5,062.50$

Less 11% reduction to reflect payment at age 60: £ 556.88

Reduced lump sum for this period = £4,505.62

Both periods combined give total benefits of:

Total pension per annum: $\text{£}3,750 + \text{£}1,130.62 = \text{£}4,880.62$

Total lump sum: $\text{£}11,250 + \text{£}4,505.62 = \text{£}15,755.62$

Example 5

Female member who is 60 on 30 September 2015 and satisfies the '85 year rule' on 30 September 2015

Joined the LGPS: 1 October 1990

Retires on: 30 September 2015

Age at retirement: 60

Membership by 30 September 2006: 16 years

Membership at retirement: 25 years

Final salary for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Did the member attain age 60 on, or before, 31 March 2013? No, the member was only 57 on 31 March 2013.

Has the member satisfied the '85 year rule' at retirement? Yes - age (60) + membership (25 years) = 85 years.

Because the member will satisfy the 85 year rule when their LGPS benefits are paid, the changes mean that none of the LGPS benefits which are based upon membership up to 30 September 2006 will be reduced. All benefits based on membership from 1 October 2006 will, however, be reduced if they drawn before age 65.

Calculation:

Membership up to 30 September 2006: 16 years

The member's benefits are based on 16/80ths of her final salary for membership up to 30 September 2006.

The pension for this period of membership is: $16 \times 1/80 \times £15,000 = £ 3,000.00$

And the lump sum for this period is: $16 \times 3/80 \times £15,000 = £9,000.00$

Membership from 1 October 2006: 9 years

The member's benefits are based on 9/80ths of her final salary for membership between 1 October 2006 and 30 September 2015. But this period of membership is subject to a reduction because the benefits are being paid 5 years before the member reaches age 65.

The pension for this period is: $9 \times 1/80 \times \text{£}15,000 = \text{£}1,687.50$

Less 27% reduction to reflect payment at age 60: £455.62

Reduced pension for this period = £1,231.88

And the lump sum for this period is: $9 \times 3/80 \times \text{£}15,000 = \text{£}5,062.50$

Less 11% reduction to reflect payment at age 60: £556.88

Reduced lump sum for this period = £4,505.62

Both periods combined give total benefits of:

Total pension per annum: $\text{£}3,000 + \text{£}1,231.88 = \text{£}4,231.88$

Total lump sum: $\text{£}9,000 + \text{£}4,505.62 = \text{£}13,505.62$

Example 6

Male member who is 60 on 31 March 2013 and does not satisfy the '85 year rule' at the date he retires, but would have satisfied the rule before he reached age 65

Joined the LGPS: 1 April 1993

Retires on: 31 March 2015

Age at retirement: 62

Membership by 31 March 2013: 20 years

Membership at retirement: 22 years

Pay for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Did the member attain age 60 on, or before, 31 March 2013? Yes, the member was age 60 on 31 March 2013.

Has the member satisfied the '85 year rule' at retirement? No i.e. age (62) + membership (22 years) = 84 years.

At what age would the member have satisfied the '85 year rule'? Age 63 i.e. age 63 + 23 potential years at age 63 = 86 years.

Because the member would not satisfy the '85 year rule' if his benefits are paid at age 62, all the benefits will be subject to a reduction. But benefits that relate to service before 1 April 2013 are reduced, **in exactly the same way as before the changes**, by reference to the age at which the '85 year rule' would have been met, i.e. age 63. This means they are paid 1 year early. Benefits that relate to service from 1 April 2013 will be reduced by reference to age 65, i.e. they are paid 3 years early.

Calculation:

Membership up to 31 March 2013: 20 years

The member's benefits are based on 20/80ths of his final salary for membership up to 31 March 2013, which is then subject to an actuarial reduction to reflect the fact that the benefits are being paid 1 year before the member would have satisfied the '85 year rule' at age 63.

The pension for this period is: $20 \times 1/80 \times \text{£}15,000 = \text{£}3,750.00$

Less 8% reduction to reflect payment at age 62: £ 300.00

Pension for this period = £3,450.00

The lump sum for this period is: $20 \times 3/80 \times \text{£}15,000 = \text{£}11,250.00$

Less 2% reduction to reflect payment at age 62: £ 225.00

Lump sum for this period = £11,025.00

Membership from 1 April 2013: 2 years

The member's benefits are based on 2/80ths for membership from 1 April 2013, which is then subject to an actuarial reduction to reflect the fact that the benefits are paid 3 years before the member reached age 65.

Pension for this period is: $2 \times 1/80 \times \text{£}15,000 = \text{£}375.00$

Less 22% reduction to reflect payment at age 62: £ 82.50

Pension for this period = £292.50

The lump sum for this period is: $2 \times 3/80 \times \text{£}15,000 = \text{£}1,125.00$

Less 7% reduction to reflect payment at age 62: £78.75

Lump sum for this period = £1,046.25

Both periods combined give total benefits of:

Total pension per annum: $\text{£}3,450.00 + \text{£}292.50 = \text{£}3,742.50$

Total lump sum: $\text{£}11,025.00 + \text{£}1,046.25 = \text{£}12,071.25$

Example 7

Female member who is 61 on 31 March 2014 and does not satisfy the '85 year rule' at the date she retires, but would have satisfied the rule before she reached age 65

Date Joined the LGPS: 1 April 1994

Retires on: 31 March 2014

Age at retirement: 61

Membership by 31 March 2013: 19 years

Membership at retirement: 20 years

Final salary for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Did the member attain age 60 on, or before, 31 March 2013? Yes, the member was age 60 on 31 March 2013.

Has the member satisfied the '85 year rule' at retirement? No i.e. age (61) + membership (20 years) = 81 years.

At what age would the member have satisfied the '85 year rule'? Age 63 i.e. age 63 + 22 years potential membership at age 63 = 85 years.

Because the member would not satisfy the '85 year rule' if her benefits are paid at age 61, all the benefits will be subject to a reduction. But benefits that relate to service before 1 April 2013 are reduced, **in exactly the same way as before the changes**, by reference to the age at which the '85 year rule' would have been met, i.e. age 63. This means they are being paid 2 years early. Benefits that relate to service from 1 April 2013 will be reduced by reference to age 65, i.e. they are paid 4 years early.

Calculation:

Membership up to 31 March 2013: 19 years

The member's benefits are based on 19/80ths of her final salary for membership up to 31 March 2013, which is then subject to an actuarial reduction to reflect the fact that the benefits are being paid 2 years before the member satisfied the '85 year rule' at age 63.

Pension for this period is: $19 \times 1/80 \times \text{£}15,000 =$	<u>£3,562.50</u>
Less 13% reduction to reflect payment at age 61:	<u>£ 463.13</u>
Pension for this period =	<u>£3,099.37</u>
Lump sum for this period is: $19 \times 3/80 \times \text{£}15,000 =$	£10,687.50
Less 5% reduction to reflect payment at age 61:	<u>£534.38</u>
Lump sum for this period =	<u>£10,153.12</u>

Membership from 1 April 2013: 1 year

The member's benefits are based on 1/80ths of her final salary for membership from 1 April 2013, which is then subject to an actuarial reduction to reflect the fact that the benefits are paid 4 years before the member reached age 65.

Pension for this period is: $1 \times 1/80 \times \text{£}15,000 =$	£187.50
Less 23% reduction to reflect payment at age 61:	<u>£ 43.13</u>
Pension for this period =	<u>£144.37</u>
The lump sum for this period is: $1 \times 3/80 \times \text{£}15,000 =$	£562.50
Less 9% reduction to reflect payment at age 61:	<u>£ 50.63</u>
Lump sum for this period =	<u>£511.87</u>

Both periods combined give total benefits of:

Total pension per annum: $\text{£}3,099.37 + \text{£}144.37 = \text{£}3,243.74$

Total lump sum: $\text{£}10,153.12 + \text{£}511.87 = \text{£}10,664.99$

Example 8

Male member who is 60 on 30 September 2015 and does not satisfy the '85 year rule' at the date he retires, but would have satisfied the rule before he reached age 65

Joined the LGPS: 1 October 1993

Retires on: 30 September 2015

Age at retirement: 60

Membership by 30 September 2006: 13 years

Membership at retirement: 22 years

Final salary for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Did the member attain age 60 on, or before, 31 March 2013? No, the member was only 57 by 31 March 2013.

Has the member satisfied the '85 year rule' at retirement? No, age (60) + membership (22 years) = 82 years.

At what age would the member have satisfied the '85 year rule'? Age 62 i.e. age 62 + 24 potential years at age 62 = 86 years).

Because the member would not satisfy the '85 year rule' if his benefits are paid at age 60, all the benefits will be subject to a reduction. But benefits that relate to service before 1 October 2006 are reduced, **in exactly the same way as before the changes**, by reference to the age at which the '85 year rule' would have been met, i.e. age 62. This means they are paid 2 years early. Benefits that relate to service from 1 October 2006 will be reduced by reference to age 65, i.e. they are paid 5 years early.

Calculation:

Membership up to 30 September 2006: 13 years

The member's benefits are based on 13/80ths of his final salary for membership up to 30 September 2006, which is then subject to an actuarial reduction to reflect the fact that the benefits are being paid 2 years before the member would have satisfied the '85 year rule' at age 62.

The pension for this period is: $13 \times 1/80 \times \text{£}15,000 = \text{£}2,437.50$

Less 15% reduction to reflect payment at age 60: £ 365.63

Pension for this period = £2,071.87

And the lump sum for this period is: $13 \times 3/80 \times \text{£}15,000 = \text{£}7,312.50$

Less 5% reduction to reflect payment at age 60: £ 365.63

Lump sum for this period = £6,946.87

Membership from 1 October 2006: 9 years

The member's benefits are based on 9/80ths for membership from 1 October 2006, which is then subject to an actuarial reduction to reflect the fact that the benefits are paid 5 years before the member reached age 65.

The pension for this period is: $9 \times 1/80 \times \text{£}15,000 = \text{£}1,687.50$

Less 33% reduction to reflect payment at age 60: £ 556.88

Pension for this period = £1,130.62

And the lump sum for this period is: $9 \times 3/80 \times \text{£}15,000 = \text{£}5,062.50$

Less 11% reduction to reflect payment at age 60: £ 556.88

Lump sum for this period = £4,505.62

Both periods combined give total benefits of:

Total pension per annum: $\text{£}2,071.87 + \text{£}1,130.62 = \text{£}3,202.49$

Total lump sum: $\text{£}6,946.87 + \text{£}4,505.62 = \text{£}11,452.49$

Example 9

Female member who is 61 on 30 September 2016 and does not satisfy the '85 year rule' at the date she retires, but would have satisfied the rule before she reached age 65

Joined the LGPS: 1 October 1996

Retires on: 30 September 2016

Age at retirement: 61

Membership by 30 September 2006: 10 years

Membership at retirement: 20 years

Final salary for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Did the member attain age 60 on, or before, 31 March 2013? No, the member was only 57 by 31 March 2013.

Has the member satisfied the '85 year rule' at retirement? No, age (61) + membership (20 years) = 81 years.

At what age would the member have satisfied the '85 year rule'? Age 63 i.e. age 63 + 22 years potential membership at age 63 = 85 years.

Because the member would not satisfy the '85 year rule' if her benefits are paid at age 61, all the benefits will be subject to a reduction. But benefits that relate to service before 1 October 2006 are reduced, **in exactly the same way as before the changes**, by reference to the age at which the '85 year rule' would have been met, i.e. age 63. This means they are being paid 2 years early. Benefits that relate to service from 1 October 2006 will be reduced by reference to age 65, i.e. they are paid 4 years early.

Calculation:

Membership up to 30 September 2006: 10 years

The member's benefits are based on 10/80ths of her final salary for membership up to 30 September 2006, which is then subject to an actuarial reduction to reflect the fact that the benefits are being paid 2 years before the member satisfied the '85 year rule' at age 63.

The pension for this period is: $10 \times 1/80 \times \text{£}15,000 = \text{£}1,875.00$

Less 13% reduction to reflect payment at age 61: £ 243.75

Pension for this period = £1,631.25

And the lump sum for this period is: $10 \times 3/80 \times \text{£}15,000 = \text{£}5,625.00$

Less 5% reduction to reflect payment at age 61: £281.25

Lump sum for this period = £5,343.75

Membership from 1 October 2006: 10 years

The member's benefits are based on 10/80ths of her final salary for membership from 1 October 2006, which is then subject to an actuarial reduction to reflect the fact that the benefits are paid 4 years before the member reached age 65.

Pension for this period is: $10 \times 1/80 \times \text{£}15,000 = \text{£}1,875.00$

Less 23% reduction to reflect payment at age 61: £431.25

Pension for this period = £1,443.75

And the lump sum for this period is: $10 \times 3/80 \times \text{£}15,000 = \text{£}5,625.00$

Less 9% reduction to reflect payment at age 61: £ 506.25

Lump sum for this period = £5,118.75

Both periods combined give total benefits of:

Total pension per annum: $\text{£}1,631.25 + \text{£}1,443.75 = \text{£}3,075.00$

Total lump sum: $\text{£}5,343.75 + \text{£}5,118.75 = \text{£}10,462.50$

Example 10

Male member who is 60 on 30 September 2010 and does not satisfy the '85 year rule' at the date he retires, and would not have satisfied the rule before reaching age 65

Joined the LGPS: 1 October 1996

Retires on: 30 September 2010

Age at retirement: 60

Membership at retirement: 14 years

Pay for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Has the member satisfied the '85 year rule' at retirement? No, age (60) + membership (14 years) = 74 years.

At what age would the member have satisfied the '85 year rule'? Age 66 i.e. age 66 + 20 years potential membership at age 66 = 86 years.

Because the member would not satisfy the '85 year rule' by age 65, all the benefits will be subject to a reduction because he is drawing them before age 65. His benefits are reduced, **in exactly the same way as before the changes**, by reference to the shortfall to age 65. This means they are being paid 5 years early.

Calculation based on membership up to date of retirement: 14 years

The member's benefits are based on 14/80ths of his final salary, which is then subject to an actuarial reduction to reflect the fact that the benefits are being paid 5 years before the member attains age 65.

The pension for this period is: $14 \times \frac{1}{80} \times £15,000 = £2,625.00$

Less 33% reduction to reflect payment at age 60: £ 866.25

Pension for this period = £1,758.75

The lump sum for this period is: $14 \times \frac{3}{80} \times £15,000 = £7,875.00$

Less 11% reduction to reflect payment at age 60: £ 866.25

Lump sum for this period = £7,008.75

Example 11

Female member who is 60 on 30 September 2010 and does not satisfy the '85 year rule' at the date she retires, and would not have satisfied the rule before reaching age 65

Date joined the LGPS: 1 October 1996

Retires on: 30 September 2010

Age at retirement: 60

Membership at retirement: 14 years

Pay for the 12 months up to retirement: £15,000

Benefits will be calculated as follows:

Has the member satisfied the '85 year rule' at retirement? No, age (60) + membership (14 years) = 74 years.

At what age would the member have satisfied the '85 year rule'? Age 66 i.e. age 66 + 20 years potential membership at age 66 = 86 years.

Because the member would not satisfy the '85 year rule' by age 65, all the benefits will be subject to a reduction because she is drawing them before age 65. Her benefits are reduced, **in exactly the same way as before the changes**, by reference to the shortfall to age 65. This means they are being paid 5 years early.

Calculation based on membership up to date of retirement: 14 years

The member's benefits are based on 14/80ths of her final salary, which is then subject to an actuarial reduction to reflect the fact that the benefits are being paid 5 years before the member attains age 65.

Pension for this period is: $14 \times \frac{1}{80} \times £15,000 =$ £2,625.00

Less 27% reduction to reflect payment at age 60: £ 708.75

Pension for this period = £1,916.25

The lump sum for this period is: $14 \times \frac{3}{80} \times £15,000 =$ £7,875.00

Less 11% reduction to reflect payment at age 60: £866.25

Lump sum for this period = £7,008.75

Reduction Factors in the LGPS

The current LGPS early retirement reduction factors are as follows:

	Percentage Reduction		
Years Early	Retirement Pension		Lump Sum
	Men	Women	Both Sexes
0	0%	0%	0%
1	8%	7%	2%
2	15%	13%	5%
3	22%	18%	7%
4	28%	23%	9%
5	33%	27%	11%
6	37%	31%	14%
7	40%	35%	18%
8	43%	39%	21%
9	46%	42%	24%
10	48%	45%	26%

NB: Where the number of years a person is retiring early is not an exact number (e.g. 4 years and 6 months) the necessary interpolations are made in the table. For 4 years 6 months, for example, the percentage reduction applied to the pension would be 30.5% for a man and 25% for a woman. The lump sum percentage reduction would be 10%.

Annex 4

Technical Guidance on the Local Government Pension Scheme (Amendment) Regulations 2006 [SI 2006/966]

PART 1: GENERAL - comes into force on 1 April 2006.

Regulation 1: Citation, commencement, interpretation and application

The Amendment Regulations only apply to the LGPS in England and Wales.

Parts 1 and 2, paragraph (a) of regulation 34 and regulation 46 come into force on 1 April 2006.

Part 3 (except paragraph (a) of regulation 34) and regulations 47 and 48 come into force on 6 April 2006.

Part 4 comes into effect on 1 October 2006.

Regulation 2: Amendment of Regulations

The Amendment Regulations amend the Local Government Pension Scheme Regulations 1997 (hereinafter referred to as "the Principal Regulations"). The Amendment Regulations do not, in a number of areas, provide for what was intended and certain specific issues have been highlighted in the commentary on each amendment regulation below. The LGPC has requested that the ODPM provide authorities with further clarification as to corrective steps will be taken and the extent to which they will be retrospective.

No amendments have been made to the Local Government Pension Scheme Regulations 1995. All provisions of the 1995 Regulations continue to apply to members who left the Scheme before 1 April 1998 apart from "the replaced provisions" i.e.

Replaced 1995 provision	Now dealt with under ... of the 1997 Regulations
C1 – appropriate fund	74 and Schedule 5
C21 – refunds	87
H1 – interest on late payments	94
H3 – benefits not assignable	96
H4 – forfeiture	111
H5 – commutation of small pension	49
H6 – commutation – serious ill health	50
H7 – payments in respect of deceased	95
M4 – information to be supplied by employees	107
M5 – records to be kept by administering and employing authorities	-
M6 – transmission of documents / information	108
Part J – appeals	97 to 105
Part K – transfer values, inter-fund adjustments	116 to 125
L1 to L3 and L9 to L21 – pension funds and	75 to 77, 79 to 81, 90 to

payments by authorities	92, 113, 115
Schedule C1 – appropriate pension fund	Schedule 5
Schedule K1 – community scheme transfers	124
Schedule K2 – mis-sold pensions	122A
Schedule L1 – calculation of contributions in respect of augmented pensions	-
Schedule D5, Part I – abatement of pensions where re-employment commenced after 31 March 1998 (unless the member was a re-employed pensioner at 31 March 1998 and subsequently left the re-employment but rejoined again within a month, in which case Schedule D5, Part I continues to apply)	109 to 110 (by virtue of paragraph 3 of Schedule 2 to the Transitional Provisions Regulations 1997)

Thus, all refunds, transfers in / out, mis-sold pension reinstatements, appeals, interest calculations, trivial and ill health commutations and forfeiture must be dealt with under the 1997 Regulations, even where the member left prior to 1 April 1998.

However, all other benefits for leavers before 1 April 1998 continue to be paid under the 1995 Regulations. The 1995 Regulations will, therefore, need to be amended as necessary by the ODPM, either directly or via the Local Government Pension Scheme (Transitional Provisions) regulations 1997, in order to comply with the Finance Act 2004 (e.g. children's pensions, payments over age 75, etc). Additionally, for deferred members drawing benefits post 5 April 2006, amendments need to be made to permit up to 25% of the value of a member's benefits to be taken as a lump sum and to specify how benefits in excess of the Lifetime Allowance, Primary Protection or Enhanced Protection are to be dealt with.

PART 2: COST OF LIABILITIES – comes into force on 1 April 2006.

Regulation 3: Calculations

New regulations 20(3A) to 20(3D) are inserted into "the Principal Regulations". These permit a Scheme member whose benefits become payable on or after 6 April 2006 to elect, in writing, to the appropriate administering authority, before the benefits become payable, to increase the amount of their tax free lump sum retirement grant by commuting some of their pension. For each £1 of pension given up, the member will receive £12 additional lump sum.

The maximum lump sum retirement grant that may be taken, including the extra sum derived from commutation, must not exceed 25% of the capital value of the member's accrued rights in the LGPS (in England and Wales), calculated as shown in guidance issued by the Government Actuary, and including the value of any Additional Voluntary Contributions (AVCs) **made by him / her** to the LGPS AVC or Shared Cost AVC arrangements.

Comments:

1. This regulation applies to members whose benefits become payable on or after 6 April 2006 and allows them to increase the amount of their tax free lump sum retirement grant payable under regulation 20(3) of "the Principal Regulations". A member is defined in Schedule 1 of the Principle Regulations as having the same meaning as in section 124(1) of the Pensions Act 2004 which defines a member as any active, deferred, pensioner or pension credit member. However, pension credit members will not be able to increase their tax free lump sum because:

- i) the lump sum payable to a pension credit member is payable under regulation 153(2) and not regulation 20(3),
- ii) the lump sum payable to a pension credit member is not a lump sum retirement grant but is, instead, simply a lump sum grant, and
- iii) for certain pension credit members (i.e. those whose pension credit was derived following the divorce of a pensioner who had already received the lump sum retirement grant), regulation 147(3) prevents any lump sum grant from being paid

It is not clear whether the exclusion of Pension Credit members was intentional; if not, amending regulations may allow Pension Credit members to increase their lump sum grant (perhaps subject to point (iii) above).

2. The wording of regulation 20(3C) stipulates that the value of a member's accrued rights shall include the value of rights accrued in respect of any payments made by the member under Chapter IV of Part III of "the Principal Regulations". As regulation 20(3C) uses the words "payments made by him" it could be argued that this would preclude payments made for him by the employer under a SCAVC i.e. regulation 67 of "the Principal Regulations" recognises the distinction between the employee and employer AVC payments under a SCAVC by referring to "contributions to be paid by and for active members". However, it is clearly the intention that, for the purposes of regulation 20(3C), the value of a member's accrued rights should include the total value of any AVC or SCAVC rights (including those derived from employer contributions to an SCAVC).

3. It was intended that a member should be able to take up to 100% of the value of his / her accrued AVC / SCAVC pot as tax free cash, subject to this sum, when aggregated with the lump sum retirement grant payable under the LGPS, not exceeding 25% of the capital value of the member's accrued rights. However, it is difficult to see that this intention has been achieved by the Amendment Regulations because of the "no lump sum from AVCs" provisions contained in regulations 64(6), 66(6) and protected old regulation 66(8) of "the Principal Regulations". The LGPC understands that the ODPM intend to make the necessary clarifying amendments in due course and that this will be retrospective in its application.

4. Regulation 20(3A) requires that those Scheme member whose benefits become payable on or after 6 April 2006 who wish to increase the amount of their tax free lump sum retirement grant by commuting some of their pension have to do so by electing, in writing, to the appropriate administering authority, before **any** benefits become payable. The use of the word "any" should be taken to mean "any benefits in relation to that benefit crystallisation event". Members coming up to retirement will need to be provided with the necessary information / option forms in advance of retirement and this will clearly have implications for the information flows between employing and administering authorities which will need to be addressed. The message for employers is that they must inform the administering authority of forthcoming retirements well in advance of the leaving date. Of course, there will be cases where an employee is dismissed without notice. It might also be prudent for Scheme guides to be updated to make it clear to scheme members that they should contact the Pensions Section well in advance of their intended retirement date so that the Pensions Section can ensure the necessary paperwork is issued on time. The need to make an election before the benefits become payable flows from sections 165 and 166 and Part 1 of Schedule 29 to the Finance Act 2004. In essence these provide that a person is deemed to have become entitled to the lump sum retirement grant before becoming entitled to the pension and, as the person becomes entitled to the pension when they first acquire a right to receive it, the person will have had to decide how much of their benefits to take as a lump sum before they become entitled to the pension.
5. There is nothing within regulations 20(3A) to 20(3D) that would prevent a member from reducing the amount of pension payable following commutation from falling below the level of the member's Guaranteed Minimum Pension under regulation 36 of "the Principal Regulations". The LGPC does not consider that member's should be permitted to commute their pension to below the level of their GMP. This is being considered further by the ODPM and may require an amendment to "the Principal Regulations".
6. Any anti-franking test should be based on the pension pre commutation.
7. Regulation 20(3D) requires that the capital value of the member's accrued rights should be calculated in accordance with guidance issued by the Government Actuary. The GAD guidance will be provided by reference to the Finance Act 2004 and will provide the iterative formula for calculating the maximum lump sum. (i.e. to ensure the lump sum is 25% of the pension that remains post commutation). Administering authorities should remember that the 25% limit is subject to the overriding provision that the lump sum should not exceed 25% of the standard lifetime allowance.
8. A member can only take up to 25% of the capital value of benefits crystallising at the date of the benefit crystallisation event within the Scheme. This should be confirmed in the GAD guidance. If an AVC pot is drawn at a later date, only 25% of that pot could be taken as a lump sum (subject to

the relevant amendments being made to regulations 64(6), 66(6) and protected old regulation 66(8) of "the Principal Regulations") and not up to 100% - see note 3 above – if the AVC were drawn at the same time as the main Scheme benefits.

9. An amendment to regulation 36(5) of "the Principal Regulations" is needed to make it clear that it is the member's pension prior to commutation that is relevant when performing the requisite benefit test.
10. It should be noted that any lump sum taken relating to an excess over the standard lifetime allowance, or an enhanced lifetime allowance if relevant, is not included in the 25% permitted by this provision.
11. Also, in order to ensure that deferred members who ceased membership prior to 1 April 1998 are able to utilise the commutation option, the ODPM will need to make an appropriate amendment to regulation 18A of the LGPS (Transitional Provisions) Regulations 1997.
12. The GAD guidance will need to clarify whether any actuarial reduction under regulation 31(4) of "the Principal Regulations" is to be applied to the pension and lump sum pre or post commutation.
13. As authorities will know, the Courts are now expressly required to take account of pensions on divorce, nullity of marriage, judicial separation or dissolution of a civil partnership and have the power to make the following "earmarking orders":
 - an Order requiring the Scheme to pay a specified percentage or all of a member's pension when that pension comes into payment to the member's "ex-spouse" or "ex-civil partner", if and when the pension becomes payable i.e. the deduction to be paid to the "ex-spouse" or "ex-civil partner" is taken from the member's net pension after tax. (Note: this power does not apply to divorces / dissolutions in Scotland);
 - an Order requiring the member to exchange pension for lump sum if and when the Scheme gives the member that option (Note: this power does not apply to divorces / dissolutions in Scotland);
 - an Order requiring the Scheme to pay part or all of the member's lump sum to the member's "ex-spouse" or "ex-civil partner" if and when the lump sum becomes payable;
 - an Order requiring the Scheme to pay part or all of a lump sum death grant to a member's "ex-spouse" or "ex-civil partner" if and when the member dies i.e. under section 25C(2)(a) of the Matrimonial Causes Act 1973 or section 12A(3)(a) of the Family Law (Scotland) Act 1985.

Clearly, any existing Earmarking Order requiring a specified percentage of an existing active or deferred member's pension to be paid to the "ex-spouse"

or "ex-civil partner" when the pension is brought into payment will probably have been made by the Court based on the current standard LGPS pension and lump sum rules. If, under the new LGPS rules, the member decides to commute pension into lump sum, the "ex-spouse" or "ex-civil partner" will get a percentage of a smaller residual pension. Where an event occurs which is likely to result in a significant reduction in the benefits payable under the LGPS the administering authority must inform the "ex-spouse" or "ex-civil partner" of the event and the likely extent of the reduction in benefits within 14 days of the event occurring. This is a requirement of regulation 5 of the Divorce etc (Pensions) Regulations 2000 [SI 2000/1123].

Conversely, where under any existing Earmarking Order, the Scheme is required to pay a percentage of the member's retirement lump sum to the member's "ex-spouse" or "ex-civil partner" if and when the lump sum becomes payable and the member either opts to commute some pension into lump sum, or is required by the Order to commute the maximum pension into lump sum, the cash that will be received by the "ex-spouse" or "ex-civil partner" will be greater than perhaps had been anticipated by the Court prior to the LGPS Regulations being amended. Administering authorities should consider alerting any Scheme member who currently has an earmarking order against the lump sum retirement grant which is expressed as a percentage of the lump sum so that the member, if he / she wishes or intends to take a larger lump sum under the new LGPS rules, can seek a variation to the Order under section 31 of the Matrimonial Causes Act 1973.

Regulation 4: Revised rates and adjustments certificates: period over which increased costs to be spread

This regulation provides that where, as a result of the revocation of the removal of the '85 year rule' in 2005, an administering authority decided that there had been an increase in the Fund's liabilities and, in consequence, decided to obtain a revised rates and adjustment certificate (increasing employer contributions from 1 April 2006), the increased liabilities should be spread over the period the administering authority identified in their first Funding Strategy Statement as the period over which they would spread liabilities identified in the 2004 Fund valuation.

PART 3: THE TAX REGIME – comes into force on 6 April 2006 (except paragraph (a) of regulation 34 which comes into force on 1 April 2006)

Regulation 5: Further restrictions on eligibility

This regulation amends regulation 6(3) of "the Principal Regulations" to allow employees (other than Coroners) and eligible councillors to join and remain in the Scheme up to the day before their 75th birthday. As a result of this amendment it would appear from regulation 7(5)(b) of "the Principal Regulations" that all employees (other than casual employees, coroners and

eligible councillors) who are aged 65 or over but under age 75 and who are not presently contributing to the Scheme will automatically be brought into the Scheme from 6 April 2006 (unless they opt not to be a member before then). Casual employees and eligible councillors have the right to opt in. Administering authorities will need to consider whether there is any impact on their abatement policy e.g. if they currently have an abatement policy which disallows abatement from age 65. The upper age limit for Coroners to join / remain in the Scheme has remained unaltered at age 70.

Comment:

1. It should be noted that whilst regulation 6(3) of "the Principal Regulations" now permits employees (other than Coroners) and eligible councillors to join and remain in the Scheme up to the day before their 75th birthday, regulation 25A(2) of "the Principal Regulations" – as amended by regulation 13 below – requires that a member's pension and retirement grant are payable on the day before the member's 75th birthday, but regulation 35(2) of "the Principal Regulations" – as amended by regulation 17 below – requires that retirement benefits are paid no later than the member's 75th birthday, and regulation 93(2)(b) – as amended by regulation 31 below - requires that a member's deferred pension and retirement grant are payable by no later than the day before the member's 75th birthday. Thus we have a situation where "the Principal Regulations" are now inconsistent i.e.

Regulation 6(3) – member (other than a Coroner) can be in the Scheme on the day before age 75

Regulation 25A(2) – benefits must be paid on the day before age 75 i.e. on the same day that, according to regulation 6(3), the person can still be contributing to the Scheme

Regulation 35(2) – benefits must be paid at age 75, whereas regulation 25A(2) says that benefits must be paid the day before age 75

Regulation 93(2)(b) – deferred benefits must be paid no later than the day before age 75.

2. The Finance Act specifies that any lump sum retirement grants paid on or after age 75 are unauthorised payments and, accordingly, the LGPC believes that is the reason for the wording of regulation 25A(2) and 93(2)(b). The LGPC understands that regulations 6(3) and 35(2) will be amended accordingly.
3. The upper age limit for Coroners to join / remain in the Scheme has remained unaltered at age 70. Regulation 135 of "the Principal Regulations" requires an amendment to raise the age to 75 if it is felt that Coroners should be treated in the same way as all other members of the Scheme.

Regulation 6: Periods of membership

This regulation deletes regulation 9(1A) from "the Principal Regulations" which debarred membership after age 65 from counting. This regulation is, of course,

no longer needed now that members can stay in the Scheme up to the day before age 75 (but see comments under regulation 5 above).

Regulation 7: High earners

This regulation inserts new regulation 11A into "the Principal Regulations". The intention of this regulation, now that the Earnings Cap has been removed from the LGPS (see regulation 9 below), is to apportion the membership of those who, as at 5 April 2006 were subject to the Earnings Cap, so that they do not have a "windfall gain" in the value of their benefits upon the removal of the Earnings Cap i.e. that the value of their accrued benefits to 5 April 2006 is, on 6 April 2006 (after the removal of the Earnings Cap), actuarially equivalent to their value on 5 April 2006 (prior to the removal of the Cap).

Regulation 11A specifies that this should be achieved by apportioning the membership of member's whose pensionable pay in the year ending 5 April 2006 would have exceeded £105,600 if the Earnings Cap had not applied to them and that the apportionment should be in accordance with the following formula:

membership after 5 April 1989 and before 6 April 2006 (excluding any membership credited by virtue of a transfer under regulation 121) multiplied by (105,600 / what would have been the member's pensionable pay in the year to 5 April 2006 if the Earnings Cap had not applied).

Adjusting pre 6 April 2006 membership for those post 31 May 1989 joiners affected by the removal of the Earnings Cap (i.e. pro-rating the accrued membership to 5 April 2006 by dividing the capped pensionable pay by the uncapped pensionable pay) appears to be an equitable method of dealing with this issue and is similar to the formula used to adjust periods of concurrent employment under regulations 32A and 87(4) of "the Principal Regulations".

So, if a capped member has 10 years LGPS membership at 5 April 2006 and, for example, earned twice the cap (i.e. £211,200), their LGPS benefits pre 6 April 2006 would have been:

Pension of $10 \times \frac{1}{80} \times £105,600 = £13,200$ and
Lump sum of $10 \times \frac{3}{80} \times £105,600 = £39,600$

After the service conversion, their membership would be $10 \text{ years} \times £105,600 / £211,200 = 5 \text{ years}$ which will produce benefits of:

Pension of $5 \times \frac{1}{80} \times £211,200 = £13,200$ and
Lump sum of $5 \times \frac{3}{80} \times £211,200 = £39,600$

Comments:

1. The drafting of regulation 11A(1) requires the membership adjustment to be applied to all members whose pay in the year ending 5 April 2006 exceeded

£105,600, not just Class A members whose pensionable pay had actually been limited by the Earnings Cap i.e. the wording catches Class B and Class C members as well. This regulation will need to be amended to deliver the intention of covering Class A members affected by the Earnings Cap.

2. The drafting of regulation 11A(2) requires the membership to be apportioned for the purposes of entitlement to benefits (i.e. qualifying service) instead of for the purposes of calculating benefits (i.e. reckonable service). Again, this requires amendment so that the period of membership counts in full for qualifying purposes and at the apportioned length for reckonable purposes (in the same way that regulations 10 and 11 of "the Principal Regulations" specify what counts / does not count as qualifying and reckonable membership).
3. In order to:
 - i) deal with the fact that some members may only have been subject to the Earnings Cap for part of the year to 5 April 2006 (e.g. because they received a pay rise part way through the year); and
 - ii) remove any complexities where fluctuating elements of pay are received in the year prior to 6 April 2006

the numerator in the formula in regulation 11A(3) is the pensionable pay for the year to 5 April 2006 and the divisor is what would have been pensionable pay for the year to 5 April 2006 had the Earnings Cap not applied. This means that in the case of both the numerator and the divisor:

- i) if either of the previous two years pay were higher, these should be ignored, and
 - ii) any payment made after 5 April 2006 that relates to the period 6 April 2005 to 5 April 2006 (e.g. an honorarium, performance related pay, backdated pay award, etc) should be taken into account
4. The formula in regulation 11A(3) does not deliver as intended and as such, if not corrected by the ODPM, will result in some membership being apportioned where it should not be and vice versa i.e.
 - i) regulation 11A(3) requires that membership after 5 April 1989 and before 6 April 2006 is apportioned. As mentioned in comment 1 above, the apportionment should only apply to Class A members. However, it is possible to have Class A members with LGPS membership prior to 6 April 1989 e.g. a member with a pre 6 April 1989 deferred benefit in the LGPS rejoins the Scheme post 5 April 1989 after more than a months break and opts to combine the membership. All of the membership in this scenario would now be Class A membership but the formula in regulation 11A(3) only permits the post 5 April 1989 membership to be apportioned;

- ii) regulation 11A(3) specifies that all membership transferred in by virtue of a transfer under regulation 121 should be excluded from apportionment. However, this is incorrect. Transfers in under regulation 121 for Class A members have taken a number of forms i.e.
- non-club transfer in where the member was not subject to the Earnings Cap in the sending scheme. In these situations the service credit should have been based on the uncapped salary at the date of joining the LGPS (or the date the transfer was received if more than 12 months after joining). This would have resulted in a reduced service credit. In this scenario, regulation 11A(3) is correct as there should be no further apportionment
 - non-club transfer in where the member was subject to the Earnings Cap in the sending scheme. In these situations the service credit would have been based on the capped salary at the date of joining the LGPS (or the date the transfer was received if more than 12 months after joining). In this scenario, regulation 11A(3) is incorrect as the transferred in service should now be subject to apportionment following the removal of the Earnings Cap
 - club transfer in where the member was not subject to the Earnings Cap in the sending scheme. In these situations the service credit would have been based on the salary used by the sending scheme. This would have resulted in a full service credit even though the member was subject to the Earnings Cap in the LGPS. As this was a requirement of the Club rules it seems that, in this scenario, regulation 11A(3) is correct and there should be no apportionment of the transferred in membership
 - club transfer in where the member was subject to the Earnings Cap in the sending scheme. In these situations the service credit would have been based on the capped salary used by the sending scheme. In this scenario, regulation 11A(3) is incorrect as the transferred in service should now be subject to apportionment following the removal of the Earnings Cap
- iii) membership credited by virtue of a transfer under regulation 121 is excluded from the formula in regulation 11A(3). Only the adjusted membership that results from the formula (which excludes the transferred in service) is added back to the post 5 April 2006 membership under regulation 11A(2). This means that the transferred in service has been "lost". Similarly, any pre 6 April 1989 LGPS membership is not added back to the post 5 April 2006 membership under regulation 11A(2). This means that such membership has been "lost". Clearly these outcomes are not intended.
- iv) regulation 11A(3) does not appear to adequately deal with returning officers and acting returning officers who have received fees (as opposed to a consolidated salary) and who have not paid contributions on part or all of their fees due to the Earnings Cap. It would have seemed logical in such cases for the membership to be

adjusted by the average pensionable pay for the three years to 5 April 2006 divided by what would have been the average pensionable pay for the three years to 5 April 2006 had the Earnings Cap not applied.

5. Regulation 11A only caters for those who were in active membership of the LGPS on 5 April 2006. As presently worded, it does not ensure that any capped LGPS benefits that have not already been adjusted (e.g. a deferred benefit where membership ceased prior to 6 April 2006) which are aggregated on or after 6 April 2006 will be subject to pro ration for that part of the membership that was subject to the Earnings Cap. In these cases, the numerator should be the pensionable pay for the year to the date of leaving and the divisor should be what would have been pensionable pay for the year to the date of leaving had the Earnings Cap not applied. An appropriate amendment to "the Principal Regulations" is required.
6. Where a service adjustment takes place in accordance with regulation 11A it will be necessary, to ensure no detriment for those who leave before 5 April 2007, for their final pensionable pay to be calculated on uncapped pay (even the part prior to 6 April 2006 to reflect the fact that the service prior to that date had been adjusted). An amendment to regulations 21 and 22 of "the Principle Regulations" may be required to ensure this intention is met.
7. Any augmented membership for a capped active scheme member that was granted under regulation 52 of "the Principal Regulations" prior to 6 April 2006 will need to be pro-rated and the proportion of any whole cost added years purchased under regulation 55 of "the Principal Regulations" by a capped active scheme member up to 5 April 2006 will also need to be pro-rated.
8. An apparent requirement of continued participation in the Public Sector Transfer Club post 5 April 2006 is that membership transferred from a Club scheme which retains an Earnings Cap and in which the member was (or potentially would have been) subject to the Earnings Cap in that Scheme, should continue to be subject to the Cap in the LGPS. This appears to mean that the LGPS would need to retain a Cap just for capped Club transferred in membership unless the ODPM agree the LGPS membership apportionment method with the Club administrators. The ODPM is presently following this up and will issue advice in due course.
9. Subject to the correction of the flaws in regulation 11A, a service adjustment is probably the simplest method to ensure there is no "windfall gain" for members subject to the Earnings Cap now that the Cap has been removed. Such members will still "gain" to the extent that future pay increases exceed the Retail Prices Index (RPI). The flexibility exists within the present Scheme rules for employers to deal with any perceived detriment that the service adjustment method might produce. Employers have the flexibility to:
 - augment membership under regulation 52 of "the Principal Regulations",
 - or

- contribute to a Shared Cost AVC (but not if the member has opted for, and wishes to keep, Enhanced Protection)

subject to these being within the limits set by the new tax regime and as long as the augmentation or contribution to a Shared Cost AVC can be shown to be reasonable within the employer's relevant policy on the use of augmentation or SCAVCs. Equally, employers will need to consider what action to take where an employee has, prior to 6 April 2006, already been compensated for pension benefits being subject to the Earnings Cap (e.g. by being granted an increased salary or where the employer has contributed to a Shared Cost AVC).

10. Heywood and Comino will need to consider how best to record the pro-rated service on the computerised service history record. For example, assume that the pro-rated service for a full time employee is 75% of calendar length. The period will need to be shown on the computerised record as full time, but counting as 100% for qualifying purposes and 75% for reckonable purposes.
11. The ODPM will be writing to authorities shortly confirming what further clarifying amendments are to be put in place, and the date from which they will apply.

Regulation 8: Employer's discretion to reduce member's contribution rate

This regulation deletes regulation 15 from "the Principal Regulations". Employers will, as from 6 April 2006, no longer be able to waive or reduce the contributions of employees who have completed 40 years membership of the Scheme whilst employed in local government. Thus, as from 6 April 2006, the contributions of any employee whose contributions have been waived or reduced will need to be increased back to the normal employee contribution rate. This is to tie in with the fact that employees will now be able to count more than 40 years membership (see regulation 35 below). Employers may, if they wish, recover from the employee the contributions that would otherwise have been paid by the employee if the contributions had not been reduced or waived (bearing in mind that the employer may, by virtue of regulation 80(4)(a) of "the Principal Regulations", already have had to meet any extra charge resulting from their decision to waive or reduce the employee's contributions under regulation 15 of "the Principal Regulations"). The membership for the period during which contributions were waived or reduced will count regardless of whether or not the employing authority recovers contributions from the employee.

Regulation 9: Inland Revenue limits on contributions

This regulation deletes regulation 16 of "the Principal Regulations". This means that:

- i) the Earnings Cap (£105,600) for members who joined the Scheme post 31 May 1989 is removed as from 6 April 2006. Thus, as from 6

April 2006, employees who were subject to the Cap will have to start paying contributions on their full pensionable pay. Furthermore, any AVCs paid as a percentage of pensionable pay will be collected as a percentage of full pensionable pay (rather than a percentage of the Capped pensionable pay). Payroll sections should be informed of this change.

- ii) the 15% employee contribution limit is removed. Scheme members will now be able to pay up to 100% of their taxable pay into the LGPS (including the LGPS AVC provision) with tax relief. Payroll sections should be informed of this change. If the amount a member wishes to contribute exceeds that which can be given relief through the net pay arrangement (e.g. the member wishes to pay contributions equal to 100% of pay but cannot do so due to the requirement to deduct NI from pay), the member can pay the balance direct to the Fund/AVC provider and claim tax relief from HMRC. The removal of the 15% contribution limit also has an impact on some employees who are purchasing part time service under the "Preston" buy-back terms. Where the amount of contributions required to buy-back the service exceeded 15% the employer, prior to 6 April 2006, had to net down the contributions above 15% because the employee was not entitled to tax relief on contributions above 15%. Now that the 15% contribution limit has gone and the employee will, as from 6 April 2006, receive tax relief via the payroll on those contributions, the amount payable by the employee should be grossed back up to the full amount due.

Comments:

1. The Finance Act 2004 specifies that scheme members will be eligible for tax relief on pension contributions up to the higher of £3,600 or 100% of their UK taxable earnings in the tax year.
2. The ODPM is considering further whether to include a limit whereby LGPS contributions in **each separate** LGPS employment are limited to 100% of taxable pay in relation to **that** LGPS employment. Individuals earning less than £3,600 in an employment would only be able to pay contributions up to 100% of their actual taxable earnings in that LGPS employment (not £3,600). Individuals will not be able to pay £3,600, if their pay is less than that, because the LGPS is not a Scheme that operates 'relief at source'.
3. Individuals would not be able to pay additional contributions into the LGPS relating to taxable earnings elsewhere.
4. It should be noted that members would be able to take out alternative arrangements to maximise tax relief in relation to other employments or where their pay is less than £3,600.

Regulation 10: Limit on total amount of benefits

This regulation inserts new regulation 19A into “the Principal Regulations”.

The intention of the regulation is to recognise the new requirements in the Finance Act 2004 relating to the Lifetime Allowance, Primary Protection and Enhanced Protection.

Comments:

1. Regulation 19A(4) requires that the administering authority is responsible for deducting tax from a member's benefits where the value of these exceeds the Lifetime Allowance or a member's Primary or Enhanced Protection allowance. Unfortunately, regulation 19A(1) is flawed in that it prevents the LGPS from paying out any benefits in excess of the Lifetime Allowance or, if greater, the member's Primary or Enhanced Protection allowance i.e. no member will be allowed to receive the excess benefits and have the relevant tax charge deducted from those benefits under regulation 19A(4). The wording of regulation 19A(1) is also inaccurate in that it refers to the Lifetime Allowance being increased by Enhanced Protection. Of course, unlike Primary Protection, Enhanced Protection is not calculated as a multiplier of the Lifetime Allowance.
2. Regulation 19A(3) requires that the value of a member's benefits is to be calculated in accordance with GAD guidance. Strictly speaking, the value is calculated in accordance with the Finance Act 2004. The GAD guidance should stipulate how excess benefits should be reduced to recover the tax charge.
3. Assuming the regulations are amended to permit excess benefits to be paid these would, unless the current regulations are amended to provide otherwise, be payable as pension and lump sum in accordance with the standard $1/80^{\text{th}}$ and $3/80^{\text{th}}$ formula. However, if it is intended that the member should be able to take all the excess benefits as a lump sum, (with any conversion of pension into lump sum being on the standard 12:1 commutation rate), further consideration as to whether this can be covered by GAD guidance or set out in regulations will be needed. It will need to be made clear that this lump sum is over and above the lump sum retirement grant (as this excess lump sum does not have to remain within 25% of the value of benefits, or lifetime allowance if less). Any excess taken as lump sum would be subject to a 55% tax charge. Excess taken as a pension would initially be taxed at 25% (with the resulting pension being taxed at 40%). The reduction in the pension necessary to recover the 25% tax could be carried out over a fixed period or over the average length of pension in payment. We are awaiting the GAD guidance on which method the LGPS will adopt and how this will work in practice. One matter that GAD will need to consider is that if the reduction in pension to recover the tax is for a fixed period only, the pension in payment would then rise at the end of the recovery period. It will be necessary to determine how HMRC would view this

e.g. would there be any possibility that the increases could cause a problem in relation to the Annual Allowance check? Of course, the tax is payable by the Fund immediately but would only recover the sum over a period of time. Therefore, the GAD factors should, one assumes, take account of interest but, conversely, recognise that the Fund would only pay Pensions Increase (PI) on the reduced sum, so during the period of the reduction there is a PI saving. The GAD factors will, therefore, need to strike a balance.

4. Any member opting for Enhanced Protection will need to monitor the rate at which their benefits in the LGPS are accruing and, if necessary, opt out of the LGPS at the appropriate time (on or after 6 April 2006) if they wish to ensure they do not breach their Enhanced Protection amount, thereby losing their Enhanced Protection. By opting out, however, the member would lose death in service, ill health and redundancy / efficiency retirement cover. As an alternative, the ODPM did consider including a provision allowing scheme members to opt to 'surrender' benefits that exceed the relevant accrual limits permitted by Enhanced Protection. It is not clear whether or not this provision will eventually be included in the LGPS although it may be that HMRC would not permit such a provision. The LGPC is awaiting clarification from the ODPM. Scheme members electing for Enhanced Protection are required to surrender any benefits as at A-day that exceed the former HMRC limits. As this is a requirement of the Finance Act 2004 it will be necessary to consider whether the LGPS Regulations need to be amended to incorporate this. GAD guidance is needed confirming how the surrendered amount will be calculated. Heywood and Comino will need to consider how any surrendered benefit at 5 April 2006 should be recorded on the computerised administration system. [Note that if a member pays into any money purchase arrangement after 5 April 2006 they will lose Enhanced Protection. Contributions to Life Assurance AVC do not presently constitute payments to a money purchase arrangement.]
5. A confirmatory letter from the ODPM is to be issued shortly confirming that authorities may anticipate retrospective corrective amendments to permit excess benefits to be paid.

Regulation 11: Calculations

This regulation substitutes regulation 20(4A) of "the Principal Regulations" and provides that benefits drawn after a member's 65th birthday shall be increased to take account of payment after the normal retirement age of 65. The increase shall be calculated in accordance with guidance to be issued by the Government Actuary.

Comment:

1. The regulation, as presently worded, says that "where no benefit crystallisation event has occurred [on or after 6 April 2006 and] before the day after a member's 65th birthday in respect of any benefits payable under the Scheme, those benefits shall be increased at such rate as is shown as

appropriate in guidance issued by the Government Actuary". The use of the words "no" and "any" could be taken to mean that if any benefit crystallisation event has occurred before age 65 (e.g. the member is already drawing a pension from any LGPS Fund in England and Wales, even as a result of flexible retirement) then the benefits from a current employment which are not paid until after age 65 cannot be actuarially increased. This is unlikely to be intended and it would be helpful if this was clarified by the ODPM.

Regulation 12: Final pay

This regulation simply deletes a cross reference to Schedule 4 contained in regulation 21(1) of "the Principal Regulations". As Schedule 4 has itself been deleted (see regulation 36 below) the cross reference is no longer required.

Regulation 13: Retirement after the normal retirement date

This regulation amends regulation 25A(2) of "the Principal Regulations" and specifies that benefits for a person remaining in the Scheme after age 65 are to be paid immediately upon retirement or, if earlier, from the day before the member's 75th birthday (i.e. where they are remaining in employment beyond age 75).

Comment:

1. See comments made under regulation 5 above regarding the inconsistencies between regulations 6(3), 25A(2), 35(2) and 93(2)(b) of "the Principal Regulations".

Regulation 14: Other early leavers: deferred retirement benefits and elections for early payment

This regulation introduces new regulation 31(7) into "the Principal Regulations". The intention behind this regulation is that members who opt out of the Scheme should not be able to access their pension benefits whilst they continue in employment unless they obtain their employer's permission to the release of their benefits.

Comments:

1. The regulation, as presently worded, debars optants out from starting to draw their benefits on or after their NRD without obtaining their employer's consent. However, only those employed by an employer listed in Schedule 2 of "the Principal Regulations" need to obtain employer consent. Those employed by admitted bodies, resolution bodies, and certain non-scheme employers (see Chapter I of Part V of "the Principal Regulations") would not have to obtain such consent.

2. The regulation as presently worded would permit optants out to draw their benefits at an actuarially reduced rate before their Normal Retirement Date without the need for employer consent. This seems inconsistent with 1 above.
3. The use of the words "A member who continues to be employed" would apparently debar members who cease one employment but carry on in a concurrent employment with a Schedule 2 employer from receiving their pension benefits from the terminated employment at or after their NRD unless they receive employer consent.
4. Further clarificatory amendments are needed by ODPM in order to deliver the intention behind the regulation.

Regulation 15: Re-employed and rejoining deferred members

This regulation deletes cross-references in regulation 32 of "the Principal regulations" to Class B and Class C members – terms which are no longer appropriate under the new HMRC tax regime.

Comment:

1. Regulation 32(11) of "the Principal Regulations" should also have been deleted as it is also now an irrelevant provision under the new HMRC tax regime.

Regulation 16: Surrenders of pensions

This regulation deletes regulation 33 from "the Principal Regulations" i.e. it removes the ability for a member to provide a survivor benefit over and above the standard spouse's, civil partner's or children's pensions by surrendering a part of his / her pension in favour of spouse, civil partner or dependant (payable should they survive the member).

Comments:

1. A saving provision should have been provided to protect those active members who elected within the timescales set out in, and in accordance with, "old" regulation 33(2) of "the Principal Regulations" before 6 April 2006 and who retire on or after 6 April 2006. This is necessary to ensure that their surrender election can continue to apply (or cease to apply in accordance with "old" regulation 33(9) of "the Principal Regulations" should the beneficiary die before the member retires)
2. A saving provision should have been provided to protect those pensioner members who are already in receipt of a reduced pension prior to 6 April 2006 following an election under "old" regulation 33(2) and whose nominated beneficiary dies before them i.e. so that the pension can be restored to the unreduced amount in accordance with "old" regulation 33(9)

(although these pensioner members can make use of the opt out provisions – see regulation 48 below).

3. Regulation 38(5A)(b) as inserted by Schedule 8 of “the Principle Regulations” should be treated as if deleted i.e. the regulation to which it cross-refers, (regulation 33 of “the Principal Regulations”), no longer exists.

Regulation 17: Requirements as to time of payment

This regulation introduces the concept of flexible retirement into the LGPS by adding new regulations 35(1A) to (1E) into “the Principal Regulations”.

As from 6 April 2006, flexible retirement is to be permitted where a member who is aged 50 or over reduces, with the employer’s consent, his / her hours or grade. The member can then make an election to the administering authority for payment of his / her accrued pension benefits.

If the payment of benefits occurs before age 65 the benefits are to be reduced in accordance with guidance issued by the Government Actuary. However, the employer may choose to waive any reduction in whole or in part. If the employer chooses to do so, then the cost of waiving the reduction in whole or in part has to be paid to the Fund and is to be calculated by the Fund’s actuary.

Any benefits paid as a result of flexible retirement shall not be subject to abatement under the administering authority’s abatement policy during such time as the person remains in the employment of the employer who employed him / her at the date the member elected to receive benefits.

Comments:

1. Regulation 35(1A) permits a member who is aged 50 or over to opt to draw his / her accrued benefits if the employer consents to the member reducing his / her hours or grade. There is no separate requirement for the employer to agree to the release of benefits; the benefits are payable automatically if the member opts to receive them.
2. It is important that the GAD provided actuarial reduction factors to be applied to benefits drawn before age 65 under this provision ensure that there is no strain on Fund cost to be met by the employer e.g. as a minimum, where the employer agrees to a reduction in hours or grade and benefits are released before age 65, any actuarial reduction in respect of the protected (pre removal of the 85 year rule) membership should be calculated by reference to the shortfall to the earlier of:
 - a) age 65
 - b) the date between age 60 and age 65 when the 85 year rule or the ‘protected’ 25 year rule would have been met
 - c) age 60 (even where the 85 year rule would have been met before age 60)

and the reduction in respect of the post 30 September 2006 membership (or post 31 March 2013 membership for those with Transitional Protection) should be calculated by reference to the shortfall to age 65.

2. Although regulation 35(1A) does not specify that the election for benefits should be for immediate payment from the date of reduction in hours / grade, the LGPC understands that this is the intention of the regulation. This view is backed up by the wording of regulation 35(1E) which says that no abatement to the pension should be applied whilst the person remains in the employment of the employer who employed him / her at the date the member elected to receive benefits. If the election for benefits to be paid could be made several months after the reduction in hours / grade, this would potentially render regulation 35(1E) meaningless e.g. the person might have moved to a different employer by then and so would be employed by a different employer at the date of election to the one he / she was employed by at the date of reduction in hours / grade.
3. Regulation 35(1E) requires that no abatement should be applied to the pension of a member who takes flexible retirement during "any subsequent employment with the person who is his employer at the date of his election." The words "subsequent employment" should be read as "employment subsequent to the election". It should be noted from the wording of the regulation that should the member leave that employment and, after a break, return to employment with that employer, no abatement can be applied.
4. Regulation 35(1D) requires that the cost of a decision by the employer to waive, in whole or in part, any actuarial reduction to benefits has to be paid to the Fund. It also stipulates that the amount to be paid is to be calculated by the Fund's actuary. It does not, however, specify when such a payment has to be made and no clarifying amendment has been made to regulation 80 of "the Principal Regulations".
5. It should be noted that a member who reduces their grade could have a deferred benefit awarded under regulation 32(10) of "the Principal Regulations" and could opt to have that put into payment under regulation 31 of "the Principal Regulations", albeit that employer consent would be needed for payment on or after age 50 but before age 60. There would appear to be little advantage in using this route compared to using regulation 35(1A) as benefits paid under regulation 31 of "the Principal regulations" could be subject to the administering authority's abatement policy whereas benefits payable under regulation 35(1A) would not be.
6. Councillor members do not appear to be subject to the flexible retirement provision since this only applies where a scheme member, with their employer's consent, reduces their hours or grade (neither of which seem to be appropriate in the case of councillors).

7. It would have been helpful if it had been made clear whether, for the purposes of regulation 29 of "the Principal Regulations", a person taking flexible retirement under regulation 35(1A) is "a pensioner member becoming an active member again". Despite this lack of clarity it would seem appropriate to treat the former membership of a flexible retiree in the same way as for a normal retiree. Thus administering authorities should read regulation 29 of "the Principal Regulations" as if it said:

"29. Where a pensioner member becomes and active member again or continues in active membership following an election under regulation 35(1A), his former membership shall be taken into account only for the purposes of calculating –"

Regulation 18: Guaranteed minimum pensions etc.

This regulation deletes the surrender provisions contained in regulations 36(7), (8) and (9) from "the Principle Regulations" as these are no longer required following the deletion of regulation 33 of "the Principal Regulations" (see regulation 16 above).

Regulation 19: Surviving spouse's long term pension

This regulation amends the amount of pension payable to a surviving spouse or civil partner where a pensioner member had commuted part of his / her pension under regulation 20(3A) of "the Principal Regulations" in return for an increased lump sum retirement grant.

The long term spouse's pension in such cases is to be calculated as the greater of:

- half of the deceased member's pension (after adding back the various reduction elements mentioned in regulation 20(6) of "the Principal Regulations") and
- half the deceased member's pre commutation pension (after adding back the various reduction elements mentioned in regulation 20(6) of "the Principal Regulations")

Comments:

1. No amendment has been made to the short term spouse's pension provisions under regulation 40 of "the Principal Regulations". Thus, the short term spouse's pension payable in respect of a deceased pensioner is equal to the deceased's post commutation pension (but adding back the various reduction elements mentioned in regulation 20(6) of "the Principal Regulations").
2. The short and long term pensions for a civil partner or for the spouse of a post retirement marriage will follow the same principles as set out above, albeit with the relevant pre / post 5 April 1978 or 1988 apportionment as required by regulations 42 and 42A of "the Principal regulations".

3. Although the relevant amendment has been made to regulation 41(6) of “the Principal Regulations” to ensure that a long-term spouse’s or civil partner’s pension is based on the deceased pensioner’s pre commutation pension, no equivalent amendment has been made to regulation 46 of “the Principal Regulations” to cover the pension payable to eligible children. Thus, unless / until an amendment is made by the ODPM to regulation 46 of “the Principal Regulations” both the short and long term pensions payable to eligible children will be based on the deceased pensioner’s post commutation pension (after adding back the various reduction elements mentioned in regulation 20(6) of “the Principal Regulations”).

Regulation 20: Meaning of “eligible child”

This regulation inserts new regulation 44(2A) into “the Principal Regulations” in an attempt to reflect a requirement in the Finance Act 2004. It requires that a pension payable to an eligible child which comes into payment on or after 6 April 2006 shall cease when the child attains age 23 (unless the child is physically or mentally incapacitated and became so whilst under age 17 or if, since age 17 he / she has been engaged continuously in full-time education or in training for a trade, profession or vocation and became physically or mentally incapacitated during that time).

Comments:

1. Regulation 44(2A) contains a drafting error. It refers to children’s pensions coming into payment “on or after 5th April 2006”. It should have referred to payment “on or after 6th April 2006”.
2. Regulation 44(2A) will not apply in cases where no child’s short-term pension was payable before 6 April 2006 because of regulation 45(6) of “the Principal Regulations” [reduction of child’s short term pension whilst a short-term spouse’s / civil partner’s pension is being paid] and where the first payment of the long-term pension to the child is on or after 6 April 2006. This is because the child’s pension actually came into payment before 6 April 2006 but was merely reduced by the amount of the short-term spouse’s / civil partner’s pension.
3. In the case of a physically or mentally incapacitated child, paragraph 15 of Part 2 of Schedule 28 to the Finance Act 2004 requires the incapacity to have applied at the date of death if the pension is to continue to be paid beyond the age of 23 (whereas regulation 44 of “the Principal Regulations” allows for cases where the incapacity occurred before or after the date of death but at any time up to age 17 or during education, training, etc). Any payment made in accordance with the requirements of “the Principal Regulations” as a result of incapacity arising after the member’s death where payment continues beyond age 23, would therefore be an unauthorised payment. An appropriate amendment to the LGPS Regulations will need to be made. In the meantime, such unauthorised payments would have to be made and

reported to HMRC, with the relevant deduction of tax. GAD advice would be necessary on how the pension should be reduced to recover the tax.

Regulation 21: Commutation: exceptional ill health

This regulation amends regulation 50 of “the Principal regulations”. It introduces a requirement of the Finance Act 2004 that, as from 6 April 2006, the Scheme can only commute the pension of a person who is seriously ill, if the administering authority has obtained a certificate from a fully registered person* within the meaning of the Medical Act 1983* to the effect that the member’s life expectancy is less than one year.

[* see http://www.gmc-uk.org/doctors/how_to_register/index.asp for further details]

Although this regulation also deletes the reference to “(except the guaranteed minimum)” in regulation 50(2) of “the Principle Regulations” the reference to the Guaranteed Minimum Pension in regulation 50(1) of “the Principle Regulations” has not been amended.

Regulation 50(3) of “the Principal Regulations” has been deleted as the tax treatment of exceptional ill-health commutation payments is treated differently under the Finance Act 2004 (see the relevant section in the LGPC Guide to Tax Simplification). The payment will be counted towards the lifetime allowance.

Comments:

1. As a result of the removal of the reference to the Guaranteed Minimum Pension (GMP) from regulation 50(2) of “the Principle Regulations” but not from regulation 50(1) of “the Principle Regulations” it is not clear from the regulations whether the whole of the pension, including the GMP, can or cannot be commuted. The ODPM have confirmed that the intention is that the whole of the pension should be commuted in order to comply with paragraph 4 of Part 1 of Schedule 29 to the Finance Act 2004 and so an appropriate amendment will need to be made to regulation 50(1) of “the Principal Regulations”. It is understood that the DWP intend to introduce legislation permitting the GMP and Section 9(2B) rights to be commuted (but this legislation has not yet been promulgated). If administering authorities commute the whole of the pension, including a GMP and Section 9(2B) rights, before the DWP legislation has been amended they will be doing so with no statutory backing. Equally, if administering authorities commute only the benefit in excess of the GMP (i.e. they do not commute all the benefit) this would be an unauthorised payment under the new HMRC rules. It is probably wise, therefore, for administering authorities not to commute benefits under regulation 50 of “the Principle Regulations” until the position becomes clearer.
2. Where a member’s benefits are to be commuted on the grounds of serious ill health it has been suggested that the member could increase the lump sum

retirement grant to up to 25% of the value of their benefits (using the 12:1 commutation rate) and then commute the remaining pension at, effectively, a 5:1 commutation rate. However, this would not appear to be possible as it would constitute 2 benefit crystallisation events and we understand that benefits under a serious ill health commutation should be paid as a single benefit crystallisation event. An amendment to “the Principal Regulations” should be made to specify that the payment of the normal 3/80ths lump sum and the commutation of the normal 1/80th pension will constitute a single benefit crystallisation event.

3. Although regulation 50 of “the Principal Regulations” has been amended to refer to the need to obtain a certificate from a fully registered person within the meaning of the Medical Act 1983 to the effect that the member’s life expectancy is less than one year, no equivalent provision has been included in regulation 157 of “the Principal Regulations” (serious ill health commutation for a Pension credit member). An amendment to regulation 157 of “the Principal Regulations” is needed.
4. “The Principal Regulations” also need to be amended to permit the payment of a lifetime allowance excess lump sum (taxable at 55%) if the payment of the exceptional ill-health commutation lump sum means that they exceed their lifetime allowance.

Regulation 22: Scope of Part III: limits on benefits

This regulation deletes regulation 51(2) of “the Principal Regulations” as this cross referred to Schedule 4 of “the Principal Regulations”. As Schedule 4 has itself been deleted (see regulation 36 below) the cross reference is no longer required.

Regulation 23: Power of employing authority to increase total membership

This regulation removes one of the limits on the amount of membership that an employer may grant to an active scheme member under the augmentation provisions of regulation 52 of “the Principal Regulations”. Prior to the amendment an employer could augment up to the shorter of:

- a) 6 years 243 days
- b) the period by which the member’s total membership fell short of 40 years
- c) the period to age 65

From 6 April 2006, item (b) above is removed. Employing authorities who make use of regulation 52 of “the Principal Regulations” to augment member’s benefits may wish to remove any reference to a 40 year limit from their discretionary augmentation policy. If an employing authority amends its policy it must send a copy of the amended policy to the administering authority within one month of the date of the decision to amend the policy.

This regulation also inserts a new paragraph (11) into regulation 52 of “the Principal Regulations” and provides that a period of additional (augmented) membership awarded under regulation 52 will be treated as post 1 October 2006 membership if the resolution to award the augmented membership was made on or after that date.

Comment:

1. Even if the resolution to augment membership is passed after 30 September 2006, and the augmented membership counts as post 30 September 2006 membership, it will nonetheless count towards determining when “the 85 year rule” will be met in respect of the member’s pre 1 October 2006 membership (or pre 1 April 2013 membership for those with Transitional Protection).

Regulation 24: Effect of increases under this Chapter for older members

This regulation deletes regulation 54 of “the Principal regulations” which stipulated that augmented membership awarded to a member under regulation 52 of “the Principal Regulations” who was aged 45 or over on the first day of the earliest period of membership he / she could count would generate a higher level of pension but no lump sum retirement grant.

Comment:

1. No saving provision has been provided for those members who were entitled to membership to which regulation 54 of “the Principal Regulations” applied immediately before 6 April 2006. In the absence of such a saving provision it would appear that those members will now be entitled to both a standard rate pension and a lump sum retirement grant from the augmented membership.

Regulation 25 and paragraph 5 of the Schedule: Payments to increase total membership

This regulation amends the limit on the amount of added years that a member can purchase under regulation 55 of “the Principal Regulations”. As from 6 April 2006 the maximum service purchase is limited to 6 years 243 days (or the notional whole time equivalent for part timers) for contract elections made on or after that date. If a member makes more than one election, the total period of membership under the elections can only be increased by 6 years 243 days in aggregate.

Contracts entered into on or after 1 October 2006 will be payable to age 65 and the membership purchased will be treated as post 30 September 2006 membership. Even if the election is made after 30 September 2006, and the added years count as post 30 September 2006 membership, they will nonetheless count towards determining when “the 85 year rule” will be met in

respect of the member's pre 1 October 2006 membership (or pre 1 April 2013 membership for those with Transitional Protection).

Regulation 55(10) of "the Principal Regulations" provides that a member paying additional contributions to purchase added years of membership under that regulation can only count the full period being purchased if the member continues paying the additional contributions until Normal Retirement Date. For contracts entered into on or after 1 October 2006 the NRD is age 65. If the member does not complete payment of the additional contributions the provisions of regulation 83 of "the Principal Regulations" will come into play i.e.

- the contract will be deemed to have been completed if the member dies in service or is retired on the grounds of permanent ill health
- in all other cases the member will be credited with a proportion of the number of added years being bought calculated as follows:

number of added years being purchased x (period contributions have been paid for divided by the period the contributions should have been paid for i.e. to age 65).

However, a member being retired on the grounds of redundancy / efficiency more than 12 months after making an election to purchase added years can elect within 3 months of leaving, or such longer period as the administering authority allows, to make a capital payment to complete the purchase of the added years.

Paragraph 5 of the Schedule to the Amendment Regulations protects the position of those members who **elect** before 1 October 2006 to make additional contributions to purchase added years (even if the additional contributions do not start until the member's next birthday which could fall on or after 1 October 2006). The intention is that added years purchased under such contracts should be treated as pre 1 October 2006 membership and the contract (even if it was for more than 6 years 243 days) should continue to be dealt with as if "the Principal Regulations" had not been amended i.e.

- the contract would be taken out to pay additional contributions until the birthday before the member's NRD, or to the member's NRD where his / her birthday falls on his / her NRD (as defined in regulation 25(3A) before its deletion by the Amendment Regulations)
- the contract will be deemed to have been completed if the member dies in service or is retired on the grounds of permanent ill health
- in all other cases the member will be credited with a proportion of the number of added years being bought calculated as follows:

number of added years being purchased x (period contributions have been paid for divided by the period the contributions should have been paid for i.e. to the birthday immediately before or coincident with the member's NRD).

However, a member being retired on the grounds of redundancy / efficiency more than 12 months after making an election to purchase added years can elect within 3 months of leaving, or such longer period as the administering authority allows, to make a capital payment to complete the purchase of the added years.

Whilst this is the intention behind paragraph 5 of the Schedule to the Amendment Regulations, a strict interpretation of the wording might suggest that the intention has not been entirely met.

In order for the added years purchased under a contract entered into before 1 October 2006 to be treated as membership prior to that date, the member must complete making payments (because paragraph 5(3) stipulates that for the added years to be treated as pre 1 October 2006 membership, all the conditions of paragraph 5 must be satisfied – and one of the conditions is that payment of the additional contributions under the contract must be completed). If the payments are not completed, paragraph 5 does not stipulate how the membership derived from the added years should be treated (e.g. as pre or post October 2006 membership).

Nevertheless, despite the above concern, and despite the lack of a saving provision so that the references to NRD in regulation 83 of “the Principal Regulations” continue to be a reference to the NRD under regulation 25(3A) (before its deletion by these Amendment Regulations) for any members who have an existing added years contract at 30 September 2006, it is felt that administering authorities should honour the intention of the Amendment Regulations.

Administering authorities may wish to consider advising members who have already been issued with an added years quote where the birthday falls on or after 1 October 2006 that they will need to elect to proceed with the contract before 1 October 2006 if they wish the quote to be honoured and to ensure the membership purchased under the contract will count as pre 1 October 2006 membership.

GAD guidance for calculating the cost of added years contracts entered into on or after 1 October 2006 is awaited.

Regulation 26: Effect of increases under this Chapter for older members

This regulation deletes regulation 57 of “the Principal regulations” which stipulated that added years purchased by a member under regulation 55 of “the Principal Regulations” who was aged 45 or over on the first day of the earliest period of membership he / she could count would generate a higher level of pension but no lump sum retirement grant.

Comment:

1. No saving provision has been provided for those members who were entitled to membership to which regulation 57 of "the Principal Regulations" applied immediately before 6 April 2006. The absence of such a saving provision would suggest that those members will now be entitled to both a standard rate pension and a lump sum retirement grant in respect of the added years they are purchasing. However, this does not seem appropriate as the contributions they are paying reflect the fact that no lump sum retirement grant would be payable in respect of the added years being purchased. The ODPM have confirmed that the intention is for the original terms of the contract to be honoured i.e. that it should generate a higher level of pension and no lump sum retirement grant.

Regulation 27: Election for pension in lieu of retirement grant

This regulation deletes regulation 58 from "the Principal Regulations". Members will, therefore, no longer have the right to convert some or all of their lump sum retirement grant into pension (but see the opt out provisions under regulation 48 below).

Regulation 28: Election for lump sum in lieu of pension

This regulation deletes regulation 59 from "the Principal Regulations". Members will, therefore, no longer have the right to convert some or all of their pension into lump sum retirement grant under regulation 59 of "the Principal Regulations" (but see the opt out provisions under regulation 48 below). The conversion of pension into lump sum is now dealt with under regulation 20(3A) of "the Principal regulations" (see regulation 3 above).

Regulation 29: Accounts and audit

This regulation inserts new regulation 76(2) into "the Principal Regulations".

The period over which the pension input amount is ascertained (referred to as the 'pension input period') for the purposes of the annual allowance check under the Finance Act 2004 does not have to coincide with a tax year. The default period is each successive 12-month period beginning with the date pension accrual started (i.e. if a scheme member joined on 1 August 2007, the pension input periods would always finish on 31 July each year).

For scheme members who are already in the LGPS as at 6 April 2006, the start date of the first pension input period is 6 April 2006 and, therefore, the default end date would be 5 April.

However, for convenience, the scheme administrator (or member in the case of a money purchase arrangement) may nominate an earlier date to which savings growth should be considered (i.e. the end of the pension input period). The next pension input period would then be the 12 month period immediately following

this nominated end-date, and so on. If the scheme administrator nominates the date, they must notify the individual of the nominated date, and vice versa. There is no time restriction on when such a date may be nominated.

Regulation 76(2) nominates 31 March as the end of the input period. As a result, the first pension input period for existing scheme members will run from 6 April 2006 to 31 March 2007. Future input periods will run from 1 April to 31 March.

As in-house AVCs are treated as separate arrangements for the purposes of the annual allowance checks, the default pension input period would be from the date of the commencement of the AVCs, or 6 April 2006 if later. As this is a money purchase arrangement, the individual or the scheme administrator has the right to nominate a different period (in defined benefit arrangements it is just the scheme administrator that can nominate). However, if more than one nomination is received (i.e. if both the individual and the administrator nominate), then it is the first nomination that counts. As the pension input period has been nominated within regulation 76(2) of "the Principal Regulations", this is classed as the first nomination and so, in all cases, the pension input periods will run to 31 March.

It should, however, be noted that the Registered Pensions (Splitting of Schemes) Regulations 2006 [SI 2006/569] have delegated the responsibility (under Section 238(3) of the Finance Act 2004) for nominating the pension input end date from the Secretary of State (the scheme administrator) to the administering authority (the sub-scheme administrator). In practice, the inclusion of regulation 76(2) in "the Principal Regulations" means that the administering authority (the sub-scheme administrator) has no option but to comply with the regulation.

Regulation 30: Over provision: calculation and return of surplus AVC and SCAVC funds

This regulation deletes regulation 85 from "the Principal Regulations". This specified the process for returning surplus AVCs and surplus SCAVCs but is no longer required as the Finance Act 2004 no longer limits benefits.

Regulation 31: Commencement of pensions

This regulation amends regulation 93(2)(b) of "the Principal regulations". Although deferred benefits are, by virtue of regulation 31(7) of "the Principal Regulations" payable from a member's Normal Retirement Date if he / she has not elected for them to be paid earlier, regulation 93(2)(b) of "the Principal Regulations" permits a deferred beneficiary to elect to defer payment beyond his / her Normal Retirement Date (but the benefits must be paid by no later than the day before age 75).

Comments:

1. See comments made under regulation 5 above regarding the inconsistencies between regulations 6(3), 25A(2), 35(2) and 93(2)(b) of “the Principal Regulations”
2. Although regulation 93(2)(b) of “the Principal Regulations” specifies that a deferred beneficiary may elect to defer payment beyond his / her Normal Retirement Date (but the benefits must be paid by no later than the day before age 75), it does not specify to whom the election should be made. It is clearly intended, however, that the election should be made to the appropriate administering authority.
3. The ability for a deferred beneficiary to delay payment of their benefits beyond their NRD provides a facility that is not available to members retiring under regulations 25 (i.e. member’s retiring at their NRD), 25A (i.e. members retiring after age 65), 26 (i.e. members retiring on redundancy or efficiency grounds) and 27 (member’s retiring on ill health grounds). In all the latter cases, members must draw their benefits immediately and cannot choose to delay payment to a date of their choice (but no later than the day before age 75).

Regulation 32: Treatment of other benefits

This regulation inserts new regulation 96A into “the Principal Regulations”. It is an attempt to overcome the problem identified in the ODPM letter of 3 February 2006 i.e. that Compensatory Added Years payments made by an administering authority from the Pension Fund and subsequently recharged to the employing authority would be unauthorised payments under the Finance Act 2004.

The options set out in the ODPM letter of 3 February 2006 were:

Option A: Administering authorities continue to pay CAY on behalf of employers but payments would be charged direct to the relevant employer’s bank account i.e. the administering authority would simply act as a payroll processor.

Option B: Administering authorities would have to pay any CAYs they were asked to pay through a separate revenue account. The CAY payments would then subsequently be recharged to the relevant employer or, alternatively, the employer could place money into the relevant revenue account the day before the CAY is paid.

Option C: Employers would have to pay their own CAYs. The administering authority / pension fund would no longer have any involvement.

Option D: All CAYs could be treated as if awarded under the LGPS augmentation provisions, allowing them to be paid through the pension fund

directly (with current recharging built in to ongoing employer contribution rates).

Option E: Allow the flexibility to follow any or a combination of options A, B, C or D.

In the event, the ODPM has introduced regulation 96A into “the Principal Regulations”. It says that “any payment of employment-related benefits made to a member by an administering authority other than in accordance with regulations made under section 7 of the Superannuation Act 1972 shall be treated as if it had been made under the Scheme.” This would make the payment an authorised payment.

Comments:

1. The use of the words “any payment of employment related benefits made to a member by an administering authority” is wide ranging; the regulation doesn’t even require that the benefit referred to is one that is being paid out of the Fund – merely that it is a payment being made by an administering authority.
2. By treating payments (made from the Fund) as if they were payments made under the Scheme, the payments change from being non-scheme payments on 5 April 2006 to authorised scheme payments on 6 April 2006. We are checking with HMRC whether the value of the payments will have to be taken into account for the purpose of the annual allowance test if the member has any other pension benefits that have not yet crystallised (i.e. because on 6 April 2006, the value of the person’s scheme payments suddenly increase by the value of any “employment related benefits” being paid from the Fund on that date). Where Compensatory Added Years payments, etc are awarded after 5 April 2006 and paid out of the Fund (before being recharged), they will count towards the annual allowance test (unless awarded in the year of leaving) and towards the member’s Lifetime Allowance / Primary Protection / Enhanced Protection.
3. HMRC have confirmed that:
 - payments made through a LGPS fund after 5 April 2006 have to be considered in the light of the new tax regime for registered pension schemes (which includes the LGPS) even if the payments are not strictly LGPS benefits.
 - the payments may be authorised employer payments by virtue of s.175(a) and s.176 of the Finance Act 2004
 - as they are paid to members of the registered pension scheme they are also member payments.
 - they will be authorised member payments if they satisfy the relevant requirements of the legislation. An annual compensation payment (ACP) will be a Scheme pension if it is paid by a sub-scheme administrator (as will be the case due to paragraph 2(2A)(a) of Schedule

28 to Finance Act 2004 - as amended by The Registered Pension Schemes (Splitting of Schemes) Regulations 2006), is payable for life and does not reduce (paragraph 2(3)(a) and (b) of Schedule 28 to Finance Act 2004). Likewise, the CAY lump sum payable may be a pension commencement lump sum if it satisfies the conditions at paragraph 1 of Schedule 29 of the Finance Act 2004.

- otherwise the payments will be unauthorised member payments.
 - as authorised member payments, they will use up part of the members Lifetime Allowance (LTA) as Benefit Crystallisation Event 2 (BCE 2 - scheme pension) and BCE 6 (lump sum). HMRC will not legislate to provide that such payments should not be BCEs and thereby not use up LTA.
4. As any payments from the Fund (which are subsequently recharged) are to be treated as being made under the Scheme, the ODPM will be clarifying how they are to be shown on FRS17 reports (i.e. as funded or unfunded payments). The ODPM will confirm that they are not to be incorporated into valuation data and that they cannot be funded via the normal employer's contribution rate to the Fund.
 5. The provisions of regulation 31(2) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 remain in place and so any payment from the Fund of instalments of annual Compensatory Added Years should continue to be recharged under that regulation.
 6. If an authority decides to make gratuity payments under the Local Government (Discretionary Payments) Regulations 1996 [SI 1996/1680] from the Fund and to recharge the payment to the relevant employer they must be aware that it would then be an authorised payment and the provisions of the Finance Act 2004 would apply. This would mean that a gratuity could not be paid wholly as a lump sum. Regulations 41 and 42 of the Discretionary Payments Regulations would be overridden by the Finance Act 2004 so as to limit the maximum lump sum to 25% of the value of the initial gratuity calculation (with the balance having to be paid as an annuity).

Regulation 33: First instance decisions

This regulation simply deletes a cross reference to Class A, B and C members in regulation 97(6) of "the Principal Regulations" as such categories are no longer required following the tax changes made by the Finance Act 2004.

Regulation 34: Interpretation

This regulation deletes redundant definitions in Schedule 1 of "the Principal Regulations" and inserts a new definition i.e. for a Benefit crystallisation event.

Regulation 35: Excluded membership

This regulation deletes paragraphs 4 and 5 of Schedule 3 to “the Principal Regulations” thereby removing the maximum membership limit of 40 years (or, for those who joined the Scheme before 1 June 1989, the maximum of 40 years at age 60 and 45 years at age 65). Members can now accrue as much membership as they wish. It should be noted, however, a 40 year limit still applies to the maximum ill health enhancement by virtue of regulation 28(3) of “the Principal Regulations”. It should also be noted that a 40 year limit still currently applies to the compensatory added years (CAY) that may be awarded under regulation 8 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 [SI 2000/1410] in cases of redundancy / efficiency retirement. The LGPC understands, however, that draft regulations to amend the Discretionary Compensation Regulations before October 2006 will be issued for consultation during May 2006, although we do not presently have any information on the content of those draft regulations.

Regulation 35 of the Amendment Regulations also makes an amendment to paragraph 1 of Schedule 3 to “the Principal Regulations” which, as a result of an amendment made to that paragraph by SI 2002/206, is somewhat meaningless. Consequently, the whole of paragraph 1 of Schedule 3 to “the Principal Regulations” should have been deleted (rather than amended).

Regulation 36: Revenue restrictions

This regulation deletes Schedule 4 of “the Principal Regulations” as a consequence of the changes to the tax rules made by the Finance Act 2004.

Regulation 37: Councillor members

Schedule 8 of “the Principal Regulations” has been amended to:

- allow eligible councillors to join / remain in the Scheme up to the day before their 75th birthday. As a result, eligible councillors over age 70 should, as from 6 April 2006, be given the opportunity to elect to join the Scheme
- provide for an actuarial increase to benefits paid to an eligible councillor if the councillor does not draw those benefits until after age 65
- allow an eligible councillor to count more than 40 years membership
- reduce the Normal Retirement Age of eligible councillors from 70 to 65
- reduce the permanent ill health test from age 70 to “more likely than not, be incapable until, at the earliest, his 65th birthday”
- limit ill health enhancement to age 65 (instead of to age 70)
- require that elections for payment of voluntary retirement / deferred benefits require employer consent if made on or after age 50 and before age 60 (instead of before age 65)
- specify that a child’s long term pension should be based on a minimum of 10 years membership or, if less, what the deceased’s membership

would have been had he / she remained in the Scheme to age 65 (rather than to age 70)

Comments:

1. See comments made under regulation 5 above regarding the inconsistency in "the Principal Regulations" between members being able to remain in the Scheme until the day before their 75th birthday, but benefits having to be paid on the day before their 75th birthday.
2. The Amendment Regulations have deleted the whole of paragraph 12 of Schedule 8 to "the Principal Regulations". However, it is not clear why paragraph 12(b), which amended regulation 31(6) of "the Principal Regulations" has been deleted.
3. Administering authorities will need to write to all former Councillors who left with a deferred benefit explaining that they can now have access to their pension benefits from age 60. Furthermore, the deferred benefits for any deferred Councillor member who is already aged 65 or over as at 6 April 2006 should be brought into immediate payment as from that date unless the member elects under regulation 93(2)(b) of "the Principal Regulations" (as introduced by regulation 31 of the Amendment Regulations) to defer payment.

PART 4: THE 85 YEAR RULE – comes into force on 1 October 2006

Regulation 38: Normal retirement

This regulation deletes regulation 25(3A) of "the Principal Regulations" which provided a 'protected' Normal Retirement Date for those members who were members of the Scheme on 31 March 1998. This means that, as from 1 October 2006, the Normal Retirement Date for all active members becomes age 65, although the GAD guidance in respect of the actuarial reduction to be applied to the early payment of benefits under regulation 31 of "the Principal Regulations" will continue to recognise the 'protected' NRD in respect of membership up to 30 September 2006 (or up to 31 March 2013 for those subject to the Transitional Protection from the removal of the 85 year rule).

Comment:

1. The harmonisation of the Normal Retirement Date at age 65 for all scheme members has an impact on transfers in and out of the LGPS. The LGPC understands that updated GAD guidance on transfers in / out will be issued shortly. It should also be noted that the removal of the 'protected' NRD means that some members who would not otherwise have been entitled to transfer out their accrued benefits will now be entitled to do so. Scheme members who leave more than one year before Normal Retirement Date (now 65 for all) can transfer their pension rights. The latest an option to transfer can be made is one year before Normal Retirement Date or six

months after leaving the Scheme, if this is later.

Regulation 39 and paragraphs 1 to 3 of the Schedule: Other early leavers: deferred retirement benefits and elections for early payment

Regulation 39 of the Amendment Regulations amends regulation 31(4) of “the Principal Regulations” and provides that if a member makes an election for the early payment of benefits on or after 1 October 2006 and before the age of 65, the benefits are to be reduced in accordance with guidance issued by the Government Actuary. However, when considering what the level of reduction should be it is necessary to have regard to paragraphs 1 to 3 of the Schedule to the Amendment Regulations.

Paragraphs 1 to 3 of the Schedule to the Amendment Regulations say that where a member was an active or deferred member on 1 October 2006 there will, if the member elects for payment of benefits before age 65, be no reduction applied to:

- a) the benefits accrued up to 30 September 2006 or,
- b) by virtue of Transitional Protection, the benefits accrued up to 31 March 2013 or the date membership of the Scheme ends, if earlier, in the case of a member who will be aged 60 or more on 31 March 2013

PROVIDED the member satisfies “the 85 year rule” (see the definition below) when the benefits are brought into payment. Any benefits accrued after 30 September 2006 or, where (b) applies, after 31 March 2013, will be subject to an actuarial reduction, with the amount of the reduction being based on the period between the date the benefits are brought into payment and age 65.

It will be noted that the protection from reduction of benefits accrued up to 30 September 2006 (or up to 31 March 2013 where applicable) only applies **IF** the member satisfies “the 85 year rule” when the benefits are brought into payment. If the member does not satisfy “the 85 year rule” when the benefits are brought into payment the implication is that there will be no protection and ALL the benefits would be subject to an actuarial reduction based on the shortfall to the new NRD (i.e. to age 65). However, it is important to recognise that members cannot, in relation to accrued benefits, be placed in a worse position than applied before the change in the Regulations. Thus, as was the case in 2005 (before the April 2005 changes to the Scheme were revoked), the Government Actuary’s guidance which will be issued shortly will make it clear that the reduction in respect of any benefits accrued up to 30 September 2006 (or up to 31 March 2013 where applicable) will be based on the period between:

- a) the date the benefits come into payment, and

- b) the earlier of age 65, or the date “the 85 year rule” would have been met, or the date the former ‘protected’ Normal Retirement Date³ would have been met.

Membership accrued after 30 September 2006 (or after 31 March 2013 for those subject to the Transitional Protection) if voluntarily drawn before age 65 will be subject to an actuarial reduction based on the period between:

- a) the date benefits come into payment, and
- b) age 65

Paragraph 3 of the Schedule to the Amendment Regulations defines “the 85 year rule”. It stipulates that a member satisfies the rule if the sum of the following is 85 years or more:

- a) the member’s age in whole years on the date active membership ended or, if later, the date he elects under regulation 31(1) to receive immediate payment of benefits; and
- b) his total membership in whole years (excluding, by virtue of paragraph 4 of the Schedule to the Amendment Regulations, any unaggregated membership); and
- c) in a case where the member elects after his active membership ends, the period between the end of that employment and the date of election; and
- d) in the case of a person who was an active member immediately before 1 April 1998, any qualifying period counted by virtue of regulation 123 of “the Principal Regulations” which was awarded before 1 October 2006.

Comments:

1. It would have been appropriate if a further sub-paragraph (e) had been added to deal with optants out i.e. that the period between the date of opting out and leaving employment should also count towards the 85 year rule.
2. There are a number of points to make in relation to item (d) above. Firstly, although paragraph 3(d) of the Schedule to the Amendment Regulations only refers to a member, this is taken to be a reference to an active member on 31 March 1998 (as per regulation 2(2) of “the Principal Regulations”).

³ The protected Normal Retirement Date only applied to employees who joined the Scheme before 1 April 1998. Such members could draw unreduced benefits on or after age 60 and before age 65 if, on the date the benefits were drawn, the member would have had 25 years membership. For some members, the protected NRD fell before the date they would have met the 85 year rule e.g. where the member had pure qualifying service from earlier part-time service or from a split refund (i.e. from a partial refund up to 5.4.75. or to 5.4.78.).

3. Secondly, paragraph 3(d) is an attempt to build in a non-worsening provision for those members who were active members of the Scheme before 1 April 1998 and who could therefore count towards their 'protected' NRD (before its removal by these Amendment Regulations) any qualifying service from a transfer in of pension rights from an occupational pension scheme to the LGPS (i.e. where the period of membership in the former scheme exceeded the period of membership credited in the LGPS). Such members will now be able to count the qualifying service when determining whether "the 85 year rule" is satisfied, provided the service credit was **awarded** before 1 October 2006⁴. The inclusion of such qualifying service in the definition of "the 85 year rule" would have no material effect on the calculation of such a member's eventual pension benefits PROVIDED it does not drag the date the 85 year rule is satisfied to a date earlier than when the former protected NRD would have been satisfied. There will be cases, however, where the date the 85 year rule is satisfied may be dragged to a date earlier than when the former 'protected' NRD would have been satisfied, for example:

Position prior to the 1 October 2006 amendments

A member joined the LGPS at age 46. He was in a previous occupational scheme for 7 years and on transferring this to the LGPS he was credited with 1 year of membership.

The member would not have met the 85 year rule until age 65 i.e.
19 years in the LGPS + 1 year transferred + age 65 = 85 years.

However, the member would have met the former protected NRD at age 64 i.e. 18 years in the LGPS at age 64 + 1 year transferred + 6 years qualifying = 25 years. His earliest retirement date at which unreduced benefits could have been paid was therefore age 64.

Position after the 1 October 2006 amendments

The member will meet the new definition of the 85 year rule (contained in paragraph 3 of the Schedule to the Amendment Regulations) at age 62 i.e. 16 years in the LGPS at age 62 + 1 year transferred + 6 years qualifying + age 62 = 85 years.

Thus, if the effect of the 1 October 2006 amendments were to drag forward the earliest retirement date by 2 years (from age 64 to age 62), this could mean that, due to the way in which service credits from transfers in are calculated, the 1 year service credit originally awarded was greater than it should have been now that the earliest retirement age has come forward by 2 years. The intention of the ODPM in introducing paragraph 3(d) into the

⁴ Although qualifying service awarded before 1 April 1998 under regulation K14 of the LGPS Regulations 1995 was not awarded under regulation 123 of the LGPS Regulations 1997, it still meets the requirements of paragraph 3(d) of the Schedule to the Amendment Regulations because Part K of the LGPS Regulations 1995 is a replaced provision by virtue of regulation 2 of the LGPS (Transitional Provisions) Regulations 1997 and thus counts under regulation 123 of the LGPS Regulations 1997.

definition of “the 85 year rule” was not to alter the way in which past service credits have been calculated.

4. The third point to make about paragraph 3(d) is that although it uses the words “awarded before 1 October 2006” all transfers in from occupational pension schemes for members who were contributing to the Scheme on 31 September 2006 should be treated as if they had been awarded before 1 October 2006 (even if the transfer payment is not received until after 30 September 2006). This is to ensure consistency of treatment with new regulation 122(6C). Under new regulation 122(6C) a credited period of membership arising from a request to accept a transfer value which is made by a person who is an active member immediately before 1 October 2006 is to be treated as a period of membership before that date. If it is to be treated as membership before 1 October 2006 it should also, for the sake of consistency, count towards paragraph 3(d) of the definition of “the 85 year rule” for those members who were also active members on 31 March 1998.

Regulation 40: Re-employed and rejoining deferred members

This regulation deletes from regulation 32(5)(a) of “the Principal Regulations” the cross-reference to regulation 31(4) as it is superfluous. It is now irrelevant whether or not a member who has a deferred benefit decides to aggregate that earlier period of membership with a current period of membership as this will not affect the percentage reduction to be applied to the member’s benefits accrued post 30 September 2006 (or post 31 March 2013 for those with Transitional Protection) i.e. if a member retires at age 63 the reduction factor in respect of that post 30 September 2006 (or post 31 March 2013) membership will be the factor for retiring 2 years early; it is no longer influenced by whether / when the member would have met the 85 year rule. Benefits accrued up to 30 September 2006 (or up to 31 March 2013 for those with Transitional Protection) are, however, affected by whether / when the member would have met the 85 year rule and so, to cover this, the equivalent of the cross reference to regulation 31(4) contained in regulation 32(5)(a) of “the Principal Regulations” (before its deletion by these Amendment Regulations) has been retained in paragraph 4 of the Schedule to the Amendment Regulations i.e. an unaggregated deferred benefit will not count towards the 85 year rule (as defined in paragraph 3 of the Schedule to the Amendment Regulations) when assessing whether or not an actuarial reduction should be applied to the benefits accrued up to 30 September 2006 (or up to 31 March 2013 for those with Transitional Protection) if those benefits are voluntarily drawn before age 65.

Regulation 41: Right to count credited period

This regulation introduces two new paragraphs, (6C) and (6D), into regulation 122 of “the Principal Regulations”. These have the effect, respectively, of making a credited period arising from a request to accept a transfer value under regulation 121 of “the Principal Regulations” count:

- a) as a period of membership before 1 October 2006 if the person was an active member of the LGPS immediately before that date, and
- b) as a period of membership after 30 September 2006 if the person becomes an active member on or after 1 October 2006.

Comment:

1. With regard to (a) above, it is imperative that employers who agree to extend the normal time limit of 12 months from joining the Scheme within which a member must opt to transfer pension rights into the LGPS are aware that, if they do so, the credited period will count as pre 1 October 2006 membership and will attract the Transitional Protections outlined above under the notes on regulation 39 of the Amendment Regulations.

Regulation 41 also amends regulation 122(4) of "the Principal Regulations" so that in calculating membership credits in respect of non-club transfers in, the period for which allowance for earnings increases must be made runs to the member's NRD in all cases.

Comment:

1. This implies that in calculating credits, the assumed retirement date should be the new NRD of age 65 in all cases. However, although there is no specific saving provision contained in the Amendment Regulations for the 'pre-amendment' regulation 122(4), it seems reasonable that the method of calculating a credited period for a person who was an active member on 30 September 2006 should reflect the fact that the service credit will, by virtue of regulation 122(6C), be treated as membership prior to 1 October 2006. Thus, the period for which allowance for earnings increases must be made in such cases should be as defined in regulation 122(4) of "the Principal Regulations" as it stood prior to its amendment by these Amendment Regulations. In other words, the calculation of the service credit for a person who was an active member on 30 September 2006 should be calculated in the same way as before the Amendment Regulations came into force, with the period for which allowance for earnings increases should be made running to the earlier of the member's NRD (as defined in regulation 25(3A) before its deletion by these Amendment Regulations) or the date the member would have satisfied the 85 year rule. The LGPC anticipates that GAD will not defer from this view.

Regulation 42: Credited periods for transferring members with mis-sold pension rights

This regulation amends regulation 122A of "the Principal Regulations" and provides that reinstated membership awarded following settlement of a mis-sold personal pension case is not to be treated as a period of membership after 30 September 2006. The clear implication, although not explicitly stated, is that such membership should be treated as pre 1 October 2006 membership.

Comment:

1. Regulation 42 disapplies regulation 122(6B) of "the Principal Regulations" whereas it should disapply regulation 122(6D) of "the Principal Regulations". The ODPM will need to make an appropriate corrective amendment.

Regulation 43 and paragraph 3(d) of the Schedule: Rights as to service not matched by credited period

This regulation deletes regulation 123(2)(b) of "the Principal Regulations". It removes the (now redundant) provision allowing qualifying service from a transfer in of pension rights from an occupational pension scheme to the LGPS to count towards a member's NRD (i.e. to count where the period of membership in the former scheme exceeded the period of membership credited in the LGPS). Protection for counting such qualifying service in relation to transfers that occurred in respect of members who were active members on 30 September 2006 and who were also an active member on 31 March 1998 is provided by paragraph 3(d) of the Schedule to the Amendment Regulations. However, in some cases this possibly produces a flawed result (see the example given in the commentary on regulation 39 above).

Regulation 44: Excluded membership

This regulation makes consequential amendments to paragraphs 7 and 8 of Schedule 3 to "the Principal Regulations" which contained cross-references to regulation 25(3A) of "the Principal regulations" which has been deleted by these Amendment Regulations (see commentary on regulation 38 above).

Regulation 45: Former members of the Metropolitan Civil Staffs Superannuation Scheme

This regulation makes a consequential amendment to paragraph 2(4) of Schedule 7 to "the Principal Regulations" to reflect the deletion of the 85 year rule from regulation 31(4) of "the Principal Regulations".

PART 5: MISCELLANEOUS – coming into force on 6 April 2006 (except regulation 46 which comes into force on 1 April 2006)

Regulation 46: Scheme employers: Firebuy Limited

This regulation inserts Firebuy Limited into Schedule 2 of "the Principal Regulations" (i.e. it becomes a Scheduled Body). It also amends Schedule 5 of "the Principal Regulations" so that the London Pensions Fund Authority is named as the Fund in which Firebuy Limited will participate.

Regulation 47: Transitional provisions and savings

This states that the transitional savings and provisions contained in the Schedule to the Amendment Regulations shall have effect.

Regulation 48: Right to opt out

This contains a provision allowing members to opt out of the changes being introduced by the Amendment Regulations provided:

- a) they ceased active membership before 1 April 2006 where they want to opt out of the changes made by Parts 2 and 5 of these Amendment Regulations
- b) they ceased active membership before 6 April 2006 where they want to opt out of the changes made by Part 3 of these Amendment Regulations, and
- c) they make such an option before 1 April 2007.

A deferred member as at 5 April 2006 may wish to consider opting out of the effect of the changes introduced by the Amendment Regulations if he / she wishes to:

- a) retain the right to convert lump sum into pension under regulation 58⁵ of "the Principal Regulations" before its deletion by the Amendment Regulations, or
- b) retain the right, if he / she is a Class C member, to elect to convert pension into lump sum under the more favourable terms offered by regulation 59⁶ of "the Principal Regulations" before its deletion by the Amendment Regulations (i.e. more favourable than the 12:1 commutation rate offered by regulation 20(3A) of "the Principal Regulations" (as inserted by regulation 3 of the Amendment Regulations).

A deferred pensioner whose benefits are due to come into payment on or after 6 April 2006 cannot opt out of the effect of the Lifetime Allowance (see the commentary under regulation 10 above) as this is a requirement of the finance Act 2004.

A pensioner member opting out of the effect of the changes made by the Amendment Regulations could thereby protect an election made under the

⁵ Although regulation 58 refers to members who have become entitled to the immediate payment of benefits, this is felt to also cover deferred beneficiaries i.e. the reference to "immediate payment" is taken to mean immediately upon becoming entitled to payment of the benefits as opposed to immediately after leaving. This view is backed up by regulation 18A of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 [SI 1997/1613] as inserted by regulation 28 of the Local Government Pension Scheme (Miscellaneous) Regulations 2001 [SI 2001/770].

⁶ Although regulation 59 refers to members who have become entitled to the immediate payment of benefits, this is felt to also cover deferred beneficiaries for the same reasons as set out in footnote 5 above.

surrender provisions of regulation 33 of “the Principal Regulations” before its deletion by the Amendment Regulations.

Neither a deferred nor pensioner member can opt out of the changes made, as from 6 April 2006, to the definition of an eligible child (see the commentary under regulation 20 above) or the exceptional ill health commutation changes (see the commentary under regulation 21 above) as these are requirements of the Finance Act 2004.

Other matters

Regulation 8(5) of “the Principal Regulations”: Leaving the Scheme

The ODPM have not deleted regulation 8(5) from “the Principal Regulations”. This is the regulation which specifies that if a person opts out of membership of the Scheme before he / she has been a member for three months, he / she shall be treated as not having been a member. In such circumstances the employer has, prior to 6 April 2006, refunded the contributions through payroll, adjusted the NI contributions and reduced the next payover of contributions to the Fund by the amount of pension contributions refunded. However, it appears to the LGPC that such payments by the employer will, as from 6 April 2006, be unauthorised payments if contributions have been paid over to the Fund in respect of the person in question. It is the view of the LGPC that where a person opts out of the Scheme within 3 months but contributions have been paid over to the Fund, the refund of contributions should be paid via the pension Fund under regulation 87 of “the Principal Regulations” and not via payroll. Only if contributions have **not** been paid over to the Fund for that individual should a refund through payroll be processed. Although HMRC will allow the Fund to make payments to a participating employer (which, in essence, the present system mirrors on account of the fact that the employer reduces the total payover of contributions to the Fund by the amount they have refunded through the payroll) this cannot be relied upon from 6 April 2006 because the HMRC rules do not permit the employer to make a refund of contributions; only the Fund may do so where it has received contributions for that individual.

Furthermore, refunds of contributions, if made by the employer, run the serious risk of potentially “wiping-out” any other benefits the employee has in the LGPS in England and Wales – see the comments below on regulation 87 of “the Principal Regulations”.

Regulation 20B of “the Principal Regulations”: Replacement of rights

Where a Scheme member is divorced or a civil partnership is dissolved and part of the Scheme member’s pension is allocated to their former spouse / partner, the member’s pension is reduced (known as a “pension debit”). Although from 6 April 2006 the Finance Act allows such members to build up their pension rights, regulation 20B of “the Principal Regulations” prevents such members who are not “moderate earners” from replacing the debit within the LGPS. This does not, of course, prevent the member from replacing the rights by paying contributions into a separate pension scheme or arrangement.

The LGPC anticipates that the LGPS Regulations will eventually be amended to delete regulation 20B of “the Principle Regulations” thereby allowing such members to build up full pension rights in the LGPS.

Regulations 49 and 156 of “the Principal Regulations”: Commutation of small pensions

No changes have yet been made to regulations 49 and 156 of “the Principal Regulations” i.e. to the rule governing the commutation of small pensions for members, spouse’s / civil partner’s / children’s pensions, and small pensions for Pension Credit members. Until such time as amendments are made, administering authorities will have to check whether a benefit satisfies the requirements of regulation 49 / 156 of “the Principal Regulations” and the requirements of the Finance Act 2004 before permitting a trivial commutation payment to be made (see the relevant sections on trivial commutation in the LGPC Guide to Tax Simplification).

Regulation 66 of “the Principal Regulations”: Elections as to use of accumulated value of AVCs

Members covered by “old” regulation 66 can still elect to convert their AVCs into a period of Scheme membership. Where they do so, the membership should be treated as membership before 1 October 2006. This honours the terms under which they took out the AVC contract and can be justified on the basis that “old” regulation 66(6) says that the transfer credits are to be calculated on the same basis as if a transfer value were being received under regulation 121. Regulation 122(6C) says that a credited period arising from a transfer received under regulation 121 shall be treated as pre 1 October 2006 membership where the member was an active member before that date (and, of course, a member who took out an AVC contract before 13 November 2001 must have been a member before 1 October 2006).

Please see comment 3 in the commentary above on regulation 3 of the Amendment Regulations for details of other current issues connected with regulation 66 of “the Principal Regulations”.

Regulation 87 of “the Principal Regulations”: Rights to return of contributions

It will no longer be possible, under the terms of the Finance Act 2004, to pay refunds to Scheme members relating to one arrangement where they have another arrangement in the Scheme in England or Wales, due to the fact that the LGPS in England and Wales is considered to be one single Scheme and the Finance Act requires all rights under a pension scheme to be extinguished on the payment of refund. Furthermore, refunds will not be permitted where the member has previously had a ‘benefit crystallisation event’ (i.e. a pension coming into payment or an exceptional ill health commutation payment) or has previously had an overseas transfer out. Regulation 88 of “the Principle Regulations” needs to be amended accordingly.

As mentioned in LGPC Bulletin 44, if a person claims a refund which is made as an authorised payment, having failed to disclose that they already have a frozen LGPS refund, or hold a concurrent employment in the LGPS, or hold a deferred

LGPS benefit or an LGPS Pension Credit, or are in receipt of an LGPS pension (other than a widow's/ widower's, civil partner's or child's pension), the payment of the refund will "wipe out" those benefits. It is vitally important, therefore, that refund application forms include a relevant disclaimer e.g. I certify that I do / do not have other pension rights in the LGPS in England or Wales derived from a period of personal membership of the Scheme, that I have not previously had such rights commuted due to exceptional ill health, and that I have not transferred pension rights from the LGPS in England or Wales to an overseas scheme. I acknowledge that if I do have such pension rights or have had such a commutation or transfer, I am not entitled to make a claim for a refund of contributions and that, if I make a false statement, the payment of a refund will mean that I cease to be entitled to any other pension benefits I have in the LGPS in England or Wales (other than any spouse's, civil partner's or child's pension being paid to me) and that I will have no further claim on the relevant pension Fund, administering authority or employing authority in respect of those pension benefits.

A member who ceases / opts out of an employment with less than 3 months membership but who is not able to satisfy the above statement will need to be awarded a deferred benefit. Regulation 19 of "the Principal Regulations" will need to be amended accordingly. If such a member continues in active membership in another concurrent employment he / she would be able to elect to aggregate the membership using the formula in regulation 87(4).

The Finance Act 2004 permits a refund to be paid where an individual has paid more contributions than they are entitled to receive tax relief on (i.e. more than 100% of their UK taxable pay). The ODPM propose to incorporate a provision into "the Principal Regulations" to allow such refund payments to be made by administering authorities from the Fund within 6 years of the end of the tax year in which the excess was paid.

Regulation 125 of "the Principal Regulations": Interfund adjustments between England / Wales and Scotland

It is anticipated that the 85 year rule will be removed from the LGPS Regulations in Scotland as from 1 October 2006 (the same date as applies in England and Wales). Provided the amendments and Transitional Protections in Scotland match those in England / Wales, there will be no implications for inter-fund adjustments between England / Wales and Scotland.

Regulations 116 to 122 of "the Principal Regulations": Transfers in / out

The LGPC understands that updated GAD guidance on transfers in / out will be issued shortly.

Unauthorised payments

In general, where the LGPS Regulations 1997 require an administering authority to pay a benefit that would be an unauthorised payment under the Finance Act

2004, the administering authority has no option but to pay the benefit and report it to HMRC as an unauthorised payment.

However, as mentioned earlier in this Circular, the Amendment Regulations do not, in a number of areas, provide for what was intended and certain specific issues have been highlighted in the commentary above on each amendment regulation. The LGPC has requested that the ODPM provide authorities with further clarification as to corrective steps will be taken and the extent to which they will be retrospective. This may enable authorities to avoid making certain payments which, under the Finance Act 2004, would be classified as unauthorised payments.

Pension Sharing on Divorce / Dissolution of a Civil Partnership

Administering authorities should note that, as from 6 April 2006, they will need to take account of:

- a) the removal of the 40/45 membership limit
- b) the Class A membership conversion

and, as from 1 October 2006

- a) the removal of the 85 year rule for membership accruing after 30 September 2006 (or after 31 March 2013 for those with Transitional Protection)

when preparing the information to be provided for Pension Sharing purposes.

Other consequential changes:

As a result of the Finance Act 2004 and also in consequence of certain changes made by the Amendment Regulations [SI 2006/966] the following changes to “the Principal Regulations” appear to be required:

Regulation 5B(4) should be deleted as there is no longer a requirement for an administering authority to notify the Commissioners of the Inland Revenue of the admission of an admission body.

Regulation 8 should be amended to make it clear that a member is permitted to opt out of membership from any individual concurrent employment, rather than having to opt out of all concurrent employments. In other words, employees with concurrent employments should be able to choose which ones they wished to be pensionable and which ones not pensionable.

In regulation 9(2), delete the words “disregarding any period which would otherwise count twice” as this now seems overly prescriptive given the new tax regime. Also delete the reference to “Schedule 4”.

Regulation 9(6) should also cross-refer to regulation 31A (in addition to the existing reference to regulation 87(4)).

A further sub-paragraph (i) should be added to regulation 13(2) i.e.:
“(i) any payment made on or after age 75”.

Regulations 17(1), 18(1), 18(2) and 18(3) should be amended by adding at the end of each “provided he has received pay in relation to that employment in the tax year in which the period of absence falls and / or the contributions are paid”.

In regulation 18(1) delete the words “or, if it exceeds 36 months, for 36 months,”.

Regulation 18(7) should be amended by deleting the words from “the expiry of” to the end and replacing them with the words “the date of cessation of employment”.

Regulations 20(6)(b), 20(6)(d) and 20(6)(e) should be deleted but with a saving provision in the Schedule to cover members to whom the regulation applied prior to 6 April 2006.

Regulation 24 should be deleted.

In regulation 36(10) add “(aa) regulation 50 (exceptional ill health commutation”.

Regulations 38 and 155 need to be amended to make it clear that death grants must be paid within 2 years of the date of death (albeit that there will inevitably be issues surrounding cases where no body is found – where 7 years have to elapse before the estate can be dealt with – and cases of deliberate (fraudulent) or non-deliberate non-notification of death).

Regulations 40(5), 45(5), 45(5A), 46(7A) and 46(8) may need to be amended in the case of deaths on or after age 75 (as it may be that the pension payable under these regulations should not be payable at a higher level than that which was being received by the pensioner – this should be checked / confirmed with HMRC). Similarly, regulations 41(6) and 46(7) might need to be amended for the same reason (e.g. where a pensioner was in receipt of an actuarially reduced pension).

In regulation 42(4)(c) amend the words “paragraph 7 of Schedule 4 after that date” to “paragraph 7 of Schedule 4 before its deletion by SI 2006/966 after that date”.

In regulation 43(3) add “(aa) regulation 50 (exceptional ill health commutation”.

The purchase of membership under regulation 66(8) where the date of election is after 30th September 2006 (or after 31st March 2013 for those with the transitional protection) should be treated as post 30th September 2006 (or post 31st March 2013) membership in order not to affect the “Critical Retirement Age” of the pre 1st October 2006 (or pre 1st April 2013) membership.

Regulations 64(6) and 66(6) should be deleted. Regulation 66(4) should be amended to make it clear that the member may elect take up to 100% of the accumulated value as a lump sum if drawn at the same time as the main LGPS benefits or up to 25% if drawn afterwards, subject to the payment not exceeding the maximum permitted under the Finance Act 2004. Regulation 66(8) should be amended to disapply regulation 66(8) of the former regulation 66 i.e. by entering after the words "as if they had" the words ", other than regulation 66(8),".

Regulation 66 should also make it clear that AVC's can only be drawn, at the earliest, at a benefit crystallisation event (and not before), but must be taken by age 75.

Some administering authorities have suggested that there should be a single AVC provider appointed for the whole of the LGPS. This is something that the ODPM may wish to consider but, amongst other things, the question of who would appoint and monitor the provider would need to be addressed.

It would make sense for regulations 60 to 72 to eventually be completely rewritten / simplified.

The implications of the Finance Act 2004 for regulations 89(5) and (5A) will also have to be considered.

Regulations 116 and 117: The LGPS assumes that despite the rise in the age at which employees may remain in the Scheme to age 75, there is no intention to go beyond the provisions of the Pension Schemes Act 1993 (i.e. that only those who leave at least 12 months before the NRD of 65 can opt for a CETV transfer out).

An FSAVC cannot currently be transferred into the LGPS under regulation 121(2). Former regulation 121(2)(e) could be reinstated to permit such transfers now that a lump sum could be taken in respect of membership derived from a transferred in FSAVC.

Delete regulations 133(3) and 133(3A).

The reference in regulation 133(4) to "and paragraph 8(2)(b) of Schedule 4 (maximum addition under regulations 53 and 55)" should be deleted.

Delete regulations 135(2) and 135(2A).

The reference in regulation 135(3) to "and paragraph 8(2)(b) of Schedule 4 (maximum addition under regulations 53 and 55)" should be deleted.

In Schedule 7, amend paragraph 4 – School Crossing Patrols – by deleting from sub-paragraph (2) the words "or, if earlier, the date on which his period of total membership is 45 years (in the case of a Class B or Class C member) or 40 years

(in the case of a Class A member).” And by deleting from sub-paragraph (3) the words “and paragraph 8(2)(b) of Schedule 4 (maximum addition under regulations 53 and 55)”

Paragraph 15 of Schedule 8 (death grants) needs appropriate amendment to deal with the requirements of the Finance Act 2004.

Regulation 38(5A) as inserted by paragraph 15 of Schedule 8 needs to have added to it “(e) regulation 20(3A) (commutation of pension to lump sum)

Interest payments

If HMRC confirm that interest payments made to members are unauthorised payments, appropriate amendments will need to be made to regulations 82, 84(1), 87(2A), 89(5), 89(5A), 89(6), 94(1), 152 and paragraphs 7(6) and 7(7) of Schedule 6.

LGPS (Transitional Provisions) Regulations 1997

Despite the removal of the 85 year rule, the LGPC assumes that it is intended that former NHS scheme members covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 will still continue to be entitled to an unreduced pension at age 60. If so, no amendment to the aforementioned regulation is necessary.

Paragraph 8(1)(b) of Schedule 3 to the Transitional Provisions Regulations should be deleted as should the words from “and accordingly” in paragraph 8(2).

Terry Edwards
Head of Pensions
April 2006

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LGPC
Local Government House
Smith Square
London
SW1P 3HZ

or email: terry.edwards@lge.gov.uk
tel 020 7296 6744
fax 020 7296 6739