

The Local Government Pensions Committee
Secretary: Jeff Houston

CIRCULAR

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No. 262 – SEPTEMBER 2012

CHANGES TO THE LGPS IN ENGLAND AND WALES

Purpose of this Circular

1. This Circular has been issued to inform employers participating in the Local Government Pension Scheme (LGPS) in England and Wales of the main changes to the LGPS that are contained in the Local Government Pension Scheme (Miscellaneous) Regulations 2012 [SI 2012/1989], hereinafter referred to as the 'Miscellaneous Regulations'. As shown in this Circular, most of the changes are effective from 1 October 2012 and some have significant impacts on processes and procedures for employers and / or Pension Fund administering authorities (for example, the changes concerning how and when employees can join / opt out of the LGPS).

Joining and opting out of membership of the LGPS

2. Under the Pensions Act 2008 all employers will be required to comply with new pension duties¹ which are being introduced in stages, with the duties for the very largest employers (those with 120,000 or more workers) starting from 1 October 2012. These duties include automatically enrolling 'eligible jobholders' into an 'automatic enrolment scheme' but with the right for the 'eligible jobholder' to opt out of membership of the scheme. Every employer in the UK will be allocated a date from which the duties will first apply to the employer, known as the employer's 'staging date', and this will, generally speaking, be determined by the number of people in the employer's largest PAYE scheme at 1 April 2012.

¹ For more information see the automatic enrolment guide at <http://www.lge.gov.uk/lge/core/page.do?pagelid=17995528>.

3. Three significant changes have been made to the LGPS in England and Wales in preparation for the introduction of the new duties under the Pensions Act 2008. The changes, which are operative from 1 October 2012:

- allow employees with a contract of employment that is for less than 3 months duration to be able to elect to join the Scheme,
- fundamentally change the way in which employees of admission bodies join the LGPS, and
- provide that employees cannot complete a form to opt out of membership of the LGPS prior to commencement of employment (or the date they are designated by their employer for membership of the LGPS, if later).

Each one of the changes is covered in more detail below but, in simple terms, as from 1 October 2012:

- all eligible employees of Scheme employers listed in Part 1 of Schedule 2 to the LGPS (Administration) Regulations 2008² will be enrolled into the LGPS when their employment commences (or when their employer becomes a Scheme employer, if later), apart from those employees with a contract of employment that is for less than 3 months duration who can, nevertheless, opt to join the Scheme,
- an eligible employee of:
 - an admission body who, under the terms of the admission agreement, is designated as being eligible for membership of the LGPS by their employer, or
 - a Scheme employer listed in Part 2 of Schedule 2 to the LGPS (Administration) Regulations 2008 who is designated as being eligible for membership of the LGPS by their employer, or
 - a body covered by regulation 8 of the LGPS (Administration) Regulations 2008 who is designated as being eligible for membership of the LGPS by their employer

will become an active member on the day the designation has effect, apart from those employees with a contract of employment that is for less than 3 months duration who can, nevertheless, opt to join the Scheme, and

- no employee who is eligible for automatic membership of the LGPS will be allowed to complete a form to opt out of membership of the LGPS prior to commencement of employment or prior to the date they are designated for membership.

Employees with a contract of employment of less than 3 months duration can opt to join the LGPS from 1 October 2012

4. Prior to 1 October 2012 employees with a contract of employment that was for less than 3 months duration were not eligible for membership of the LGPS. This rule changes from 1 October 2012.

² The LGPS (Administration) Regulations 2008 can be viewed at <http://timeline.lge.gov.uk/LGPS2008Regs/BATidx.htm>

5. Any existing employees who, on 1 October 2012, have a contract of employment that is for less than 3 months duration will not be enrolled into the LGPS from 1 October 2012. However, they will have the right to opt to join the Scheme by giving written notice to their employer provided they are eligible to join the Scheme i.e.:

- they are under age 75, and
- if employed by a designation body, they are covered by the employer's designation, and
- if employed by an admission body, they are eligible for membership under the terms of the admission agreement.

Employers who have appointed employees on a contract of less than 3 months duration which will span 1 October 2012 and who have informed such employees that they cannot join the LGPS will need to advise them that (provided they are otherwise eligible) they can elect to join the Scheme from 1 October 2012 if they are still employed under the contract at that time.

If they do opt in, they become a member of the Scheme from the beginning of the next pay period following their application to join.

If an employee opts in September 2012 to join the LGPS from 1 October 2012 but, because they submit timesheets which are paid a month in arrears, they are not paid for the work undertaken in October until the November pay run, the first pension contribution deduction will be from the November pay run. This is because the pay paid in the October pay run relates to a period prior to the date the person joined the Scheme.

6. Any new employees who commence on or after 1 October 2012 under a contract of employment that is for less than 3 months duration will not be compulsorily (contractually) enrolled into the LGPS from the commencement of the contract but will have the right to opt to join the Scheme by giving written notice to their employer provided they are eligible to join the Scheme i.e.:

- they are under age 75, and
- if employed by a designation body, they are covered by the employer's designation, and
- if employed by an admission body, they are eligible for membership under the terms of the admission agreement.

If they do opt in, they become a member of the Scheme from the beginning of the next pay period following their application to join (or from the beginning of employment if their election to join is made before then³).

³ The ability to be able to opt to join from the beginning of employment is necessary to ensure that the LGPS meets the conditions to be a qualifying scheme / automatic enrolment scheme under the Pensions Act 2008.

7. For casual employees with no mutuality of obligation (NOMO's), such an option to join the LGPS (where exercised) would, in practice, remain in force for so long as the employee remains with the employer (or until the employee opts to cease membership of the Scheme). Whilst this approach is not specifically provided for in the regulations it is the only practical solution and the LGPC Secretariat would recommend that this pragmatic approach is adopted as, otherwise, in order to remain a member such an employee would have to opt into the scheme each time they are offered and accept work.
8. Once an employer attains their 'staging date' the employer will, in order to comply with their duties under the Pensions Act 2008 (automatic enrolment), need to issue a 'postponement notice':
 - to any new employees commencing on or after the employer's 'staging date' who are employed under a contract of less than 3 months duration and who are eligible to make an election to join the LGPS, and
 - to any existing employees who, on the employer's 'staging date', are employed under a contract of less than 3 months duration and who, although eligible to make an election to join the LGPS, have not done so by the employer's 'staging date' (unless the employer decides, instead, to issue a Transitional Delay Notice to such employees)

For more information relating to the above two bullet points please see the relevant sections in the automatic enrolment guide at <http://www.lge.gov.uk/lge/core/page.do?pagelid=17995528>.

Employees with a contract of employment of less than 3 months duration whose contract is, on or after 1 October 2012, extended to be for a period of 3 months or more

9. If employees with a contract for less than 3 months duration who are eligible for membership of the LGPS (i.e. those in paragraphs 5 and 6) do not elect to join the Scheme and their contract is, on or after 1 October 2012, subsequently extended to be for a period of 3 months or more they will, if they are still under age 75, be enrolled into the Scheme as from the date of the contract extension⁴ (with the right to opt out). There is, as from 1 October

⁴ There is no specific provision in regulation 13 of the LGPS (Administration) Regulations 2008 setting this out. Regulation 13(4) provides that a person who would be eligible for membership is not automatically a member if they are employed under a contract of employment that is for less than 3 months duration, but they may opt to join the Scheme. The clear implication is that once the contract is extended to be for 3 months or more regulation 13(4) then lapses and the person must at that point become a member of the Scheme (if they had not already opted in) but with the right to opt out. Although it might be argued that, upon regulation 13(4) lapsing, regulation 13(1) or 13(2) would then apply (meaning that the person would be retrospectively enrolled into the LGPS from the first day of employment / first day of designation) it is believed the policy intention is that the person only becomes a member from the date the contract is extended (with no right for retrospective membership, as the member had already had the right to opt to join the LGPS prior to the contract being extended).

2012, no facility for any such employees to backdate their membership to the first day of employment⁵.

The provision requiring eligible employees of admission bodies to have to elect to join the LGPS if they wished to be a member of the Scheme is removed from 1 October 2012

10. Prior to 1 October 2012, employees of admission bodies who were designated as being eligible for membership of the LGPS under the terms of the admission agreement were, unlike eligible employees⁶ of other bodies, not automatically brought into the Scheme. If they wished to join they had to make an election to opt to join the Scheme. As from 1 October 2012 this procedure changes so that:
- new employees of admission bodies who are under age 75 and who are designated as being eligible for membership of the LGPS under the terms of the admission agreement, and
 - existing employees (at 30 September 2012) of admission bodies who are first designated on or after 1 October 2012 for membership of the LGPS under the terms of the admission agreement

will automatically be brought into the Scheme (with the right to opt out) if they are employed under a contract that is for a period of 3 months or more (see paragraphs 4 to 9 above regarding employees appointed under a contract that is for less than 3 months duration).

11. The policy intention⁷ is that existing employees (at 30 September 2012) of admission bodies who, on 1 October 2012, were eligible to join the LGPS but had not, prior to that date, elected to do so will not have to be automatically brought into the Scheme on 1 October 2012 (but can elect to join the Scheme if they wish to do so, provided they are under age 75).
12. The change, from 1 October 2012, governing how employees of admission bodies who are eligible to join the LGPS under the terms of the admission agreement are to be brought into the Scheme is a significant change and will have a number of implications for admission bodies. For example:

⁵ The specific facility for such employees employed by a body listed in Part 1 of Schedule 2 to the LGPS (Administration) Regulations 2008 to backdate membership to the first day of employment has been removed from 1 October 2012.

⁶ It should be noted that councillor members are still covered by the LGPS Regulations 1997 and so, if their authority offers them membership, only join if they make an election to join.

⁷ Regulation 46 of the 'Miscellaneous Regulations' does not disapply the amendments to regulation 13 in relation to existing employees. However, it must be the policy intention to do so as, otherwise, regulation 13(2) of the LGPS (Administration) Regulations 2008, operative from 1 October 2012, would mean that an eligible employee who was designated by the admitted body on starting employment 20 years ago (say) would, if they had not taken up the opportunity to opt to join the LGPS, have to retrospectively become a member from the date of designation 20 years ago (unless they choose to opt out). This clearly cannot be the intention of the regulation.

- payroll and HR procedures will need to be amended to take account of the change,
- where an admission body currently offers employees the choice to opt into the LGPS or another pension scheme, the admission agreement might, depending on the wording of the agreement, need to be amended (from 1 October 2012) to provide that the class of employees to whom the agreement applies is those employees who the employer designates from time to time i.e. those employees who choose the LGPS in preference to the employer's alternative scheme will be the employees the employer designates. It would be wise for the employer, in such cases, to ask the employee to make the choice before commencement of employment and for the employer to specify what, in the absence of an express choice being made by the employee, the default enrolment scheme will be, and
- where a new admission agreement is set up on or after 1 October 2012 in respect of a transferee admission body, consideration will need to be given as to how the staff being transferred to that body should be covered in the admission agreement. All the transferred staff could be named in the admission agreement which would mean that upon transfer to the employment of the admission body, all transferred staff under age 75 would be enrolled into the LGPS (even those who had opted out of membership whilst employed by the best value authority prior to the transfer) but with the right to opt out. Alternatively, only those staff who are active members of the LGPS at the point of transfer could be nominated for membership of the LGPS under the terms of the admission agreement at the point of transfer, with those staff who had opted out of membership of the LGPS prior to the transfer retaining the right (under The Best Value Authorities Staff Transfers (Pensions) Direction 2007) to require the admission body to nominate them for membership at any time in the future (whilst they are employed in connection with the provision of the outsourced service).

13. Administering authorities will need to revise their admission agreement procedures and any pro forma admission agreement templates for new admission agreements in the light of the above changes.

Opting out of membership of the LGPS – new rules from 1 October 2012

14. Prior to 1 October 2012 new employees (or newly designated eligible employees of designation bodies) who were eligible for automatic admission to the LGPS could make an election, before commencement of employment (or before the date of designation), not to join the Scheme. As from 1 October 2012, new employees / newly designated employees (including employees designated by an admission body under the terms of the admission agreement) will not be able to make an election to opt out of membership of

the Scheme until the date employment commences⁸ (or the date of designation, if later). This does not mean that contributions have to be collected from pay before they can opt out. It merely means that they cannot sign and date the opt out form until on or after the day they have commenced employment (or the date of designation, if later).

15. In order to simplify matters and to ensure consistency of approach between opt outs under the LGPS rules and opt outs under the 'automatic enrolment' duties when an employer has reached their 'staging date', it is recommended that Administering Authority Pension Sections should discuss with the employers in their Fund applying the following from a common date of the Pension Fund administering authority's choosing (for example, from the date the largest of the employers in the Fund attains its 'staging date'), regardless of when any individual employer's 'staging date' applies and regardless of whether the person is opting out under the LGPS rules or under the 'automatic enrolment' rules:

- the same form (which should comply with the requirements for opt-out forms under the Pensions Act 2008) should be used for all opt outs,
- the opt out form should only be available from the Pensions Section of the Pension Fund administering authority (although this could be available for download on the Pension Section's website),
- the optant out must return the opt-out form to the employer (not the Pensions Section of the Pension Fund administering authority),
- as a person with multiple contracts can opt out in respect of all or some of their contracts, the form should allow for the LGPS member to specify from which contracts they wish to opt out of membership of the LGPS,
- although the Pensions Act 2008 only places a requirement on the employer to retain a copy (for 4 years) of an opt out notice submitted under the 'automatic enrolment' rules of the Pensions Act 2008 and only places a requirement on the Pensions Section of the Pension Fund administering authority to keep a record (for 4 years) of the name of such an optant out and the date they were informed by the employer that the person had opted out, it is recommended that such record keeping requirements are adopted for all optants out, not just for optants out under the 'automatic enrolment' rules of the Pensions Act 2008 but for optants out under the rules of the LGPS as well, and that, subject to any data protection legislation requirements e.g. under the Data Protection Act 1998, records are retained indefinitely, and

⁸ Whilst regulation 13(3) of the LGPS (Administration) Regulations 2008 would appear to permit an opt out notice to be completed before the commencement of employment, DCLG have confirmed that the policy intention is that this regulation only applies to employees who submitted an opt out notification prior to 1 October 2012 (the effective date of regulation 13(3)). At a practical level this makes sense as, once an employer has passed their 'staging date' for automatic enrolment purposes under the Pensions Act 2008, an eligible jobholder who opts out of contractual enrolment before employment commences would have to be automatically enrolled on the first day of employment and would thus need to complete a second opt out form if he / she wished not to be a member of the LGPS. This would, in effect, render as useless any opt out form submitted prior to commencement of employment.

- as a member who opts out within 3 months of being enrolled is treated as not having been a member of the LGPS on that occasion then, for consistency with the opt out provisions of the Pensions Act 2008, any employee **and** employer contributions paid over to the Fund should be recovered from the Fund by the employer (by reducing the next month's pay-over to the Fund).

Calculation of final pay – leavers on or after 1 October 2012

16. Where a member of the LGPS ceases active membership of the Scheme on or after 1 October 2012 (or a calculation is needed for Pension Sharing on Divorce purposes on or after that date) the final pay calculation under regulation 8 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 is to include pensionable pay from membership of the LGPS with a previous employer (or employers) that relates to membership in:
- the 12 months prior to the date of cessation of membership with the current employer (or notional date of cessation for Pension Sharing on Divorce purposes), or
 - the 36 months prior to the date of cessation of membership with the current employer (or notional date of cessation for Pension Sharing on Divorce purposes), if one of the previous 2 years pay is, excluding Pensions Increase, actually greater than the final year's pay.

Flexible retirement

17. Prior to 1 October 2012 regulation 18 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 provided that an employer could agree to all or part of a member's benefits accrued post 31 March 2008 being paid upon flexible retirement. Regulation 18 has been amended from 1 October 2012 to provide that an employer can agree to the release of the following benefits if they agree to flexible retirement:
- in the case of a member who has pre 1 April 2008 membership
 - all of the member's pre 1 April 2008 accrued benefits⁹ (other than benefits already in payment or which are held as a separate deferred benefit), and
 - all, some or none of the member's post 31 March 2008 accrued benefits (other than benefits already in payment or which are held as a separate deferred benefit), and

⁹ Paragraph 2.2 of the current GAD guidance at http://timeline.lge.gov.uk/GAD/E_W_FlexiRet_Guide170811.pdf says "Members can elect to take all or none of their benefits relating to pre-2008 service". DCLG have confirmed that the intention behind regulation 18(1)(a)(i) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 is that if a member has pre 1 April 2008 membership, and the employer agrees to flexible retirement, the benefits from the pre 1 April 2008 membership must be taken together with some, all or none of the benefits from the post 31 March 2008 membership. The GAD guidance will, therefore, need to be updated accordingly.

- in the case of a member who has only post 31 March 2008 membership
 - all, some or none of the member's post 31 March 2008 accrued benefits (other than benefits already in payment or which are held as a separate deferred benefit).

Choice of early payment of pension – administering authority given powers where employing authority has ceased to exist

18. There are a number of scenarios where the consent of the employing authority (or former employing authority) is required before a benefit can be paid or an actuarial reduction due on a benefit can be waived, or where the former employing authority has to obtain an opinion from an Independent Registered Medical Practitioner (IRMP) i.e. –

- an active member wishing to voluntarily retire and draw immediate pension benefits on or after age 55 and before age 60 can only do so with the consent of the employing authority,
- a member with deferred benefits under the LGPS (Benefits, Membership and Contributions) Regulations 2007 can apply to have the deferred benefits brought into payment on or after age 55 but an election prior to age 60 is ineffective unless the former employing authority agrees to the early release of the deferred benefit,
- a member with deferred benefits under the LGPS (Benefits, Membership and Contributions) Regulations 2007 can apply to the former employing authority to have the deferred benefits brought into payment on the grounds that the member has become permanently incapable¹⁰ of discharging efficiently the duties of their former employment because of ill health or infirmity of mind or body and has a reduced likelihood of being capable of gainful employment before Normal Retirement Age or for at least 3 years, whichever is the earlier. The former employing authority has to obtain an opinion from an Independent Registered Medical Practitioner before agreeing to the release of the deferred pension,
- under the LGPS (Benefits, Membership and Contributions) Regulations 2007 an employing authority can agree to waive, on compassionate grounds, any actuarial reduction that would be applied to benefits paid earlier than the member's Normal Retirement Age¹¹,
- a member who has a tier 3 ill health pension that has been suspended can apply to the former employing authority to have the suspended pension brought back into payment on or after age 55 but an election prior to age 60 is ineffective unless the former employing authority agrees to the early release,
- a member who has a tier 3 ill health pension that has been suspended can apply to the former employing authority to have the suspended pension brought back into payment on the grounds that the member has become

¹⁰ Permanently incapable means that the member will, more likely than not, be incapable until, at the earliest, age 65.

¹¹ 'Normal retirement age' means age 65 [apart from in the case of a small number of protected members who have a normal retirement age of 60 e.g. employees who were transferred to local government from the Learning and Skills Council for England on 1 April 2010]

permanently incapable¹² of undertaking any gainful employment¹³. The former employing authority has to obtain an opinion from an Independent Registered Medical Practitioner before agreeing to bring the suspended pension back into payment on these grounds.

There will, however, be some cases where, in the case of a deferred member under the LGPS (Benefits, Membership and Contributions) Regulations 2007 or a suspended tier 3 ill health pension member, the former employing authority has ceased to exist (and there is no successor body to exercise the discretion and to meet any strain on Fund cost). In such cases, regulations 30, 30A and 31 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 have been amended as from 1 October 2012 to provide that the appropriate administering authority may exercise the discretion / obtain the medical opinion from an IRMP.

It is important that administering authorities seek to ensure they hold copies of all employing authorities' statements of policy on the exercise of discretions¹⁴ in order to assist the administering authority in its deliberations in such cases. Where the administering authority exercises a discretion in such cases to release benefits early, any cost would, in the absence of any specific provision in the regulations specifying how such a cost is to be met, presumably have to be spread across all employers in the Fund but, of course, if the administering authority considers the costs are not justifiable, it has the option to turn down such a request to release benefits early.

No equivalent amendment has been made to the LGPS Regulations 1997 or the LGPS Regulations 1995 to give statutory backing to an administering authority, where the former employing authority has ceased to exist (and there is no successor body to exercise the discretion and meet any strain on Fund cost), to agree to:

- the early release of deferred benefits under the LGPS Regulations 1995 or the LGPS Regulations 1997, or
- the waiving, on compassionate grounds, of any actuarial reduction to be applied on the payment of deferred benefits before Normal Retirement Age under the LGPS Regulations 1997, or
- the early release of (unreduced) deferred benefits on compassionate grounds under the LGPS Regulations 1995.

However, administering authorities will, as now, need to continue to use their common sense in making decisions about such cases and may wish to adopt procedures consistent with the amendments made to the LGPS (Benefits, Membership and Contributions) Regulations 2007.

¹² See footnote 10.

¹³ Gainful employment means paid employment for not less than 30 hours in each week for a period of not less than 12 months. It does not have to be employment that is commensurate in terms of pay and conditions with that of the person's former employment.

¹⁴ Employing authorities are already required by regulation 66(2) of the LGPS (Administration) Regulations 2008 to send a copy of their policy statement to the administering authority.

Tier 3 ill health pensions

19. Where a suspended tier 3 ill health pension is brought back into payment at the request of the Scheme member on or after age 60 (or on or after age 55 but before age 60 with the employer's consent) and before the member's Normal Retirement Age¹⁵ (other than on the grounds that the member has become permanently incapable of undertaking any gainful employment¹⁶) the benefits have been subject to an actuarial reduction in accordance with Government Actuary's Department (GAD) guidance, based on the period between the date the benefits are brought into payment and the member's Normal Retirement Age even if the member would have satisfied the 85 year rule before Normal Retirement Age. However, regulation 30A(4) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 has been amended, retrospectively, to 1 October 2008, to provide that where a suspended tier 3 ill health pension is brought back into payment (or was brought back into payment on or after 1 October 2008) before the member's Normal Retirement Age (other than on the grounds that the member has become permanently incapable of undertaking any gainful employment¹⁷) the benefits are subject to any actuarial reduction that is due in accordance with GAD guidance based on the period between the date the benefits are brought into payment and the earlier of member's Normal Retirement Age and the date the member would have satisfied the 85 year rule¹⁸. This change will necessitate a retrospective recalculation of benefits for those case brought back into payment on or after 1 October 2008¹⁹ and the date the 'Miscellaneous Regulations' come into effect (1 October 2012) where the member would have met the 85 year rule before their Normal Retirement Age.
20. It should be noted that the current GAD guidance on actuarial reductions (see guidance on regulations 18(2) and 30(4) at <http://timeline.lge.gov.uk/GAD/gadidx2008.htm>) does not cover the above changes to regulation 30A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 but the LGPC Secretariat is of the view that the GAD guidance on actuarial reductions should nevertheless be followed as if it included a reference to regulation 30A. There is no requirement to take

¹⁵ See footnote 11.

¹⁶ See footnote 13.

¹⁷ See footnote 13.

¹⁸ The former employing authority can agree to waive any actuarial reduction on compassionate grounds.

¹⁹ It should be noted that whilst the amendments made by regulations 19 and 20 of the 'Miscellaneous Regulations' to regulation 3(2)(b) and 10 of the LGPS (Transitional Provisions) Regulations 2008 are operative from 1 April 2008, the amendment to regulation 30A(4) is only retrospective to 1 October 2008. Hence, it appears that the 85 year rule only applies in cases where the suspended tier 3 ill health pension is brought back into payment on or after 1 October 2008 (and not where such a pension was brought back into payment on or after 1 April 2008 and before 1 October 2008 although, in practice, this is probably irrelevant as it is highly unlikely that any tier 3 ill health pension would have been both suspended and brought back into payment in that short period of time).

into account any lump sum already paid (with no actuarial reduction) or the (up to) 3 years' worth of pension already paid (with no actuarial reduction).

21. Regulation 31 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 has also been amended with effect from 1 October 2012 so that a tier 3 ill health pensioner whose pension has been suspended can apply to the former employing authority (or where that employer has ceased to exist and there is no successor body, to the appropriate administering authority) to have the suspended tier 3 ill health pension brought back into payment before Normal Retirement Age²⁰, but only if the member has become permanently incapable²¹ of undertaking any gainful employment²². This could be because the original ill health condition has worsened or the member is suffering from another ill health condition. Before deciding whether to agree to such a request, the former employing authority (or appropriate administering authority, as the case may be) must obtain a certificate from an Independent Registered Medical Practitioner (IRMP) as to whether, in the IRMP's opinion, the member is suffering from a condition that renders the member permanently incapable²³ of undertaking any gainful employment²⁴. The same IRMP who previously advised on the original tier 3 ill health retirement can be asked to complete the certificate. A new certificate will be produced by the LGPC Secretariat for this purpose and added to those shown in Circular 252 at <http://www.lge.gov.uk/lge/aio/14743444>.
22. Note that, if the original ill health condition worsens within 3 years of the pension initially being suspended (or before age 65, if earlier) the former employing authority can, instead of bringing the suspended tier 3 ill health pension back into payment, decide to uplift the tier 3 pension to a tier 2 pension under regulation 20(11) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 if, in the IRMP's opinion, the member is not likely to be capable of undertaking gainful employment²⁵ within three years of the date of leaving (or by their Normal Retirement Age²⁶, if earlier). An amendment to regulation 56 of the LGPS (Administration) Regulations 2008, operative from 1 October 2012, provides that the same IRMP who previously advised on the original tier 3 ill health retirement can be asked to give an opinion and complete the certificate. The relevant certificate in Circular 252 at <http://www.lge.gov.uk/lge/aio/14743444> will be updated in due course to reflect this change. If an employer does decide to uplift a member from tier 3 to tier 2 then the employer is making a determination under regulation 20(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007. Paragraph 44 of the DCLG guidance of 15 July 2011 at http://timeline.lge.gov.uk/Statutory%20Guidance%20and%20circulars/CLG_IHGuide_June2011.pdf says that "the date of the second determination will

²⁰] See footnote 11.

²¹ See footnote 10.

²² See footnote 13.

²³ See footnote 10.

²⁴ See footnote 13.

²⁵ See footnote 13.

²⁶ See footnote 11.

decide the date from which the uplift to the 2nd tier will be put into payment and the enhancement is calculated by adding 25% of membership between the date of that subsequent determination and normal retirement age.” However, it is the Secretariat’s view that the uplift to tier 2 shall include enhancement equal to 25% of potential membership from the date of leaving to age 65, (as per regulations 20(11)(a) and 20(3))with the increased pension (i.e. the pension based on actual membership plus 25% of potential membership from leaving to age 65) being payable, as per regulation 20(11)(b), from the date of the decision to uplift from tier 3 to tier 2.

The 85 year rule

23. An amendment has been made to regulation 10 of, and Schedule 2 to, the LGPS (Transitional Protections) Regulations 2008 to clarify that (effective from 1 April 2008) the 85 year rule applies to benefits drawn upon flexible retirement under regulation 18 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and to benefits drawn early under regulation 30 of the LGPS (Benefits, Membership and Contributions) Regulations 2007. This simply confirms the practice that administering authorities have already been applying.
24. See paragraphs 19 and 20 above concerning suspended tier 3 ill health pensions and the 85 year rule.
25. Prior to 1 October 2012 a service credit derived from a transfer in to the LGPS of pension rights held in another pension scheme would have had a Normal Retirement Age of 65 attached to it. That service credit would, however, have dragged forward the 85 year rule in respect of any LGPS membership the person already had (assuming the member was in the LGPS prior to 1 October 2006) even though the benefits to be paid in respect of the service credit itself would be subject to an actuarial reduction if voluntarily drawn before Normal Retirement Age. However, as from 1 October 2012, regulations 122(6C) and (6D) of the LGPS Regulations 1997 are no longer saved provisions i.e. they have been deleted from the list of saved provisions in Schedule 1 of the LGPS (Transitional Provisions) Regulations 2008. This means that a service credit derived from a transfer in on or after 1 October 2012 will have a Normal Retirement Age of 65 attached to it and the service credit will not drag forward the 85 year rule in respect of any LGPS membership the person already had (assuming the member was in the LGPS prior to 1 October 2006).
26. It should be noted, however, that the service credit derived from a transfer in of in-house AVCs under protected regulation 66(8) of the LGPS Regulations 1997 will count towards the 85 year rule in accordance with the GAD guidance at http://timeline.lge.gov.uk/GAD/E_W_AVCServCredits_GAD_guidance240811.pdf.

Children's pensions

27. The definition of an eligible child in regulation 26 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 is amended so that the ability to treat a dependent child who is disabled within the meaning of the Disability Discrimination Act 1995 as an eligible child now cross refers the correct Act i.e. the Equality Act 2010. The Disability Discrimination Act 1995 was repealed by Part 1 of Schedule 27 to the Equality Act 2010 and the amendment to regulation 26 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 to refer to the Equality Act 2010 is backdated to 1 October 2010 when that Act came into force.
28. Regulation 28 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 is amended from 30 September 2010 to provide that, when calculating the child's pension due to an eligible child following the death in service of a Scheme member, the child's pension:
- takes account of the full amount of any additional survivor's pension purchased or being purchased by the member under regulation 14 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 i.e. via additional regular contributions (ARCs)²⁷,
 - takes account of any additional children's pension being provided for via an AVC or SCAVC contract under regulation 15 of the LGPS (Benefits, Membership and Contributions) Regulations 2007, and
 - ignores any reduction in the deceased's membership if, in the opinion of an Independent Registered Medical Practitioner, the member was in part-time employment at the date of death wholly or partly as a result of the condition that caused or contributed to the member's death and the reduction in membership is attributable to that condition.

In practice, Pension Sections of LGPS administering authorities will probably already have been applying the first two bullet points but will need to reassess any cases to whom the third bullet point applies for deaths in service that occurred on or after 30 September 2010.

29. Regulation 34 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 is amended from 1 October 2012 to provide that, when calculating the child's pension due to an eligible child following the death of a deferred member, the child's pension:
- takes account of the amount of any additional survivor's pension purchased by the member under regulation 14 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulations 23 and 24 of the LGPS (Administration) Regulations 2008 i.e. via additional regular contributions (ARCs), and
 - takes account of any additional children's pension provided for via an AVC or SCAVC contract under regulation 15 of the LGPS (Benefits,

²⁷ Regulation 24(2)(b) of the LGPS (Administration) Regulations 2008 provides that, on death in service, the whole ARC contract is deemed to have been paid up.

Membership and Contributions) Regulations 2007 and regulations 25 and 26 of the LGPS (Administration) Regulations 2008.

Survivor benefits

30. Regulation 33 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 is amended from 1 October 2012 to provide that, when calculating the pension due to a surviving spouse, nominated cohabiting partner or civil partner following the death of a deferred member, the survivor's pension:
- takes account of the amount of any additional survivor's pension purchased by the member under regulation 14 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulations 23 and 24 of the LGPS (Administration) Regulations 2008 i.e. via additional regular contributions (ARCs),
 - takes account of any additional survivor's pension provided for via an AVC or SCAVC contract under regulation 15 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulations 25 and 26 of the LGPS (Administration) Regulations 2008, and
 - takes account of the amount of any pre 6 April 1988 membership that the member had uprated for a nominated cohabitee's pension by the payment of additional survivor benefit contributions (ASBCs) under regulation 14A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulations 24A and 24B of the LGPS (Administration) Regulations 2008.

Elections to pay additional contributions to allow pre 6 April 1988 membership to count for a nominated cohabiting partner's pension

31. Where a Scheme member makes a valid nomination for a cohabiting partner to be entitled to a survivor's pension upon the Scheme member's death, the survivor benefit is based on post 5 April 1988 membership. However, the Scheme member can elect to pay additional survivor benefit contributions (ASBCs) so that pre 6 April 1988 membership can also count towards the calculation of the nominated cohabiting partner's survivor's pension²⁸. Previously, the election to pay ASBCs had to be made before 1 April 2011 but, as from 1 October 2012, the election has to be made before 1 April 2013 or no later than 12 months from the date the Scheme member first signs a nominated cohabitee form in respect of a particular individual, whichever is the later.

²⁸ On 25 September 2012 DCLG issued the Government Actuary's Department (GAD) guidance and factors dated 12 September 2012 for the payment of ASBCs. The factors and guidance are effective from 1 October 2012 and replace the previous ASBC guidance dated 23 December 2009. Existing ASBC contracts should be revised from 1 April 2013 in accordance with Regulation 24A(8) of the LGPS (Administration) Regulations 2008. The new rates for ASB contributions from 1 April 2013 should reflect the rates in the latest GAD guidance note but should be based on the member's age and payment period for the original contract (rather than their age at 1 April 2013 and the remaining payment period).

Commutation of small pensions

32. Regulation 39 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 has been amended as from 1 October 2012 to add a further provision under which a small pension may be commuted for a lump sum. The LGPC Secretariat had requested that commutation of a trivial pension should be allowed where the commutation value was less than £2,000. This is permitted by section 164(1)(f) of the Finance Act 2004 and regulations 11 and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] which say:

11 De minimis rule for pension schemes

- (1) A payment by a public service pension scheme or an occupational pension scheme if-*
- (a) the member has reached the age of 60 ;*
 - (b) the member-*
 - (i) is not a controlling director of a sponsoring employer of this or of any related scheme, and*
 - (ii) is not a person connected to such a person;*
 - (c) the payment does not exceed £2,000;*
 - (d) the commutation value of the benefits to which the member is entitled under this and any related scheme does not exceed £2,000 in total;*
 - (e) the payment extinguishes the member's entitlement to benefits under this scheme; and*
 - (f) no recognised transfer was made out of this or any related scheme in respect of the member during the 3 years preceding the date of the payment.*
- (2) For the purposes of paragraph (1)(d), the commutation value is equal to the amount of the lump sum that, if paid, would extinguish the member's entitlement to benefits under the scheme concerned.*

12 Payments by larger pension schemes

- (1) A payment by a public service pension scheme or an occupational pension scheme if-*
- (a) there are at least 50 members;*
 - (b) any of conditions A, B or C is satisfied;*
 - (c) the member has reached the age of 60 ;*
 - (d) the member-*
 - (i) is not a controlling director of a sponsoring employer of this or any related scheme, and*
 - (ii) is not a person connected to such a person;*
 - (e) the payment does not exceed £2,000;*
 - (f) the payment extinguishes the member's entitlement to benefits under this scheme;*
 - (g) ignoring any transfer within paragraph (5), no excluded transfer was made into this scheme in relation to the member during the 5 years preceding the date of the payment; and*

(h) no recognised transfer was made out of this scheme in respect of the member during the 3 years preceding the date of the payment.

(2) Condition A is that the scheme was in existence on 1st July 2008.

(3) Condition B is that-

*(a) the payment is in respect of a defined benefits arrangement; and
(b) the aggregate amount of the sums and assets held for the purposes of defined benefits arrangements is more than half of the aggregate amount of all the sums and assets held for the purposes of this scheme.*

(4) Condition C is that in respect of at least 20 members the aggregate amount of the sums and assets held for the purpose of the arrangement exceed £2,000.

(5) A transfer is within this paragraph if it is a transfer of sums and assets described in paragraph 12(8)(b), (c) or (d) of Schedule 36 (enhanced protection - permitted transfers).

(6) In paragraphs (3) and (4), the "aggregate amount" is an amount equal to the aggregate of the amount of the sums and the market value of the assets concerned.

33. Unfortunately, the amendment to regulation 39 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 does not achieve this as it refers to regulation 6 (and not regulations 11 and 12) of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]. Regulation 6 provides for trivial commutation of pension entitlements that arise because there has been a belated contribution received by the scheme or the value of the member's rights is discovered to be greater than was initially thought and there has already been a recognised transfer to another registered pension scheme (or to a qualifying recognised overseas pension scheme) in respect of the member or a pension or annuity has already been purchased for the member from an insurance company. Neither DCLG nor business partners consulted in the statutory consultation noticed that the desired reference to regulations 11 and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] had not been made. DCLG will consider whether there is a forthcoming statutory vehicle for making a further appropriate amendment.
34. No amendments have been made to the LGPS Regulations 1997 or the LGPS Regulations 1995 in respect of trivial pensions due under those regulations.
35. Thus, at the present time, administering authorities are still unable to avail themselves of the "less than £2,000 de minimis rule".
36. It should be noted, however, that whereas between 6 April 2006 and 5 April 2012 the standard trivial commutation rules applied where the total of all a person's pension rights did not exceed 1% of the Lifetime Allowance (which,

for 2011/12 resulted in a figure of £18,000), the link to the Lifetime Allowance has been removed from 6 April 2012. The threshold is to be announced each year by the government and for 2012/13 it is £18,000 – see section 67 of, and paragraph 4(2) of Part 1 of Schedule 18 to, the Finance Act 2011.

Admission agreements

37. The provisions relating to admission agreements have been amended by the 'Miscellaneous Regulations'.
38. From 1 October 2012, a transferee admission body performing the functions of a Scheme employer under more than one contract must have a separate admission agreement in respect of each contract. This change does not affect any admission agreement already entered into prior to 1 October 2012.
39. From 1 October 2012 not only transferee admission bodies but also community admission bodies must carry out, to the satisfaction of the administering authority, an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets provided by the admission body by reason of insolvency, winding up or liquidation of the admission body. Where the level of risk identified by the assessment is such as to require it, the admission body shall enter into an indemnity or bond in an approved form with an authorised third party provider. For transferee admission bodies admitted under regulation 6(2)(a) of the LGPS (Administration) Regulations 2008 the risk assessment must, where a bond or indemnity is to be provided, also be to the satisfaction of the Scheme employer outsourcing the work to which the contract relates.

The assessments mentioned above have to be carried out by the admission body, which might suggest that the admission body can / should obtain its own actuarial advice. However, the fact that the assessment has to be carried out "to the satisfaction of the administering authority" and also, where a bond or indemnity is to be provided in the case of a transferee admission body admitted under regulation 6(2)(a) of the LGPS (Administration) Regulations 2008, to the satisfaction of the Scheme employer outsourcing the work, indicates that the administering authority and, where relevant, the letting Scheme employer is able to stipulate how / from where the actuarial advice is to be obtained e.g. from the Fund's actuarial adviser (as it is the Fund / letting Scheme employer that needs to be satisfied as to the level of risk).

If, for any reason, it is not desirable for an admission body to enter into an indemnity or bond, the admission body may provide an alternative guarantee in a form satisfactory to the administering authority from:

- (a) a person who funds the admission body in whole or in part,
- (b) a person who owns, or controls the exercise of the functions of, the admission body, or

(c) the Secretary of State in the case of an admission body which is established by or under any enactment, and where that enactment enables the Secretary of State to make financial provision for that admission body

and the admission agreement must then make a reference to the guarantee secured by the admission body and a warranty from that body that the guarantee is in place.

It would appear that, in the case of a transferee admission body, the letting authority is unlikely to fall into any of the above categories of guarantor as (c) will not apply, (b) is highly unlikely to apply and (a) is also highly unlikely to apply (as the letting authority is not “funding” the admission body but, rather, is simply paying a contract fee for the services provided). Thus, if the letting authority wishes to act as the guarantor the way to achieve this is to determine under regulation 7(4) of the LGPS (Administration) Regulations 2008 that the level of risk is such as to not require a bond or indemnity. As no bond or indemnity would be required under regulation 7(4), regulation 7(5) [the need for a guarantor] would also not apply (as it is a regulation that is contingent upon regulation 7(4)). Thus, in the absence of a bond, indemnity or guarantee under those regulations, the ultimate risk would eventually fall upon the letting authority under regulation 38(3)(a) of the LGPS (Administration) Regulations 2008 should there eventually be any pension costs resulting from the premature termination of the provision of the service by the admission body by reason of insolvency, winding up or liquidation of the admission body.

The statutory requirements in Schedule 3 of the LGPS (Administration) Regulations 2008 setting out the matters to be included in an admission agreement have, from 1 October 2012, been extended to also now cover community admission agreements (with some minor changes), not just transferee admission agreements (as was the situation applying prior to 1 October 2012).

These changes do not affect any admission agreements made in accordance with the LGPS (Administration) Regulations 2008 prior to 1 October 2012.

Administering authorities will need to revise their admission agreement procedures and any pro forma admission agreement templates in the light of the above changes.

Revised Actuarial Valuations for Exiting Scheme Employers

40. As from 1 October 2012 administering authorities are provided with a new power to obtain a closing actuarial valuation and a revised rates and adjustments certificate where an employing authority ceases to be a Scheme employer and a power to obtain a revised rates and adjustments certificate if the administering authority has reason to believe that an employing authority will cease to be a Scheme employer in the future. These general powers replace the previous power that applied only to admission bodies.

Payment of additional contributions during periods of leave

41. Amendments have been made (effective from 1 October 2012) to confirm that during any period of maternity, paternity or adoption leave, during any period of reserve forces service leave, during any period of authorised leave of absence from duty (otherwise than because of illness or injury), and during any period of absence without permission due to a trade dispute an active member must continue to make any of the following contributions the member was making prior to commencing the leave / absence:

- additional regular contributions (ARCs to purchase up to a maximum of £5,000 of additional pension), and
- additional contributions to purchase added years of membership (i.e. old style added years contracts entered into prior to 1 April 2008), and
- additional survivor benefit contributions (ASBCs to allow pre 6 April 1998 membership to count towards a nominated cohabiting partner's survivor pension)

It is the last bullet point above that the 'Miscellaneous Regulations' have clarified (as the regulations prior to amendment already referred to the items in the first two bullet points).

Discretionary Policy Statements

42. Extra discretions have been added to what employing authorities must include in their published policy statement under regulation 66 of the LGPS (Administration) Regulations 2008. Prior to 31 March 2013 each employing authority must also include in their policy statement their policy on the exercise of their discretion to:

- grant an application for reinstatement of a suspended tier 3 ill health pension on or after age 55 and before age 60 (under regulation 30A(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007)
- to waive, on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits paid early under regulation 30A of the LGPS (Benefits, Membership and Contributions) Regulations 2007

Police

43. A police and crime commissioner, and a chief constable within the meaning of section 2 of the Police Reform and Social Responsibility Act 2011, become Scheme employers under Part 1 of Schedule 2 to the LGPS (Administration) Regulations 2008 as from 22 November 2012. A police and crime commissioner can become a member of the LGPS and, if he / she does so, the commissioner must be treated as being in the employment of the police and crime commissioner. Any decision taken by the commissioner in his / her capacity of employing authority which affects the benefits to which the commissioner or a former commissioner is or may be entitled, only has effect if it is confirmed in writing by the person who is head of the commissioner's staff.

Annual Benefit Statements

44. An amendment has been made to regulation 68 of the LGPS (Administration) Regulations 2008 to provide that an administering authority must issue an annual benefit statement to each of its active, deferred and pension credit members by no later than 6 months after the end of the tax year to which the statement relates (i.e. by no later than 5 October) unless the administering authority cannot do so because relevant data is not available. Despite what the Explanatory Memorandum accompanying the 'Miscellaneous Regulations' says, there is no requirement to include on the annual benefit statement information to show whether or not the member has exceeded the annual allowance (see below). Also, the amendment to regulation 68 is effective from 1 October 2012 which would, technically, give administering authorities 5 days to comply with issuing the annual benefit statement for 2011/12 if they have not already done so. Given such a short timescale, it would seem reasonable for any administering authority who has not issued annual benefit statements by 5 October 2012 to be able to rely on regulation 68(2A) of the LGPS (Administration) Regulations 2008 i.e. that relevant data was not available before 6 October 2012.

Annual allowance charge

45. The annual allowance is the amount by which the value of a person's overall pension savings may increase (the Pension Input Amount) in any one year (the Pension Input Period) without having to pay a tax charge. Pension Input Periods in the LGPS run from 1 April to 31 March. For tax years 2011/12 onwards, the annual allowance has been reduced to £50,000 (from £255,000 in 2010/11). Pensions savings which exceed the annual allowance are subject to tax which may be met from the pension scheme. The LGPS (Administration) Regulations 2008 have been amended to allow LGPS funds to pay the tax charge following a request to do so from a member. Where the tax charge is met by the LGPS fund any reduction in accrued pension rights will be carried out in line with guidance to be issued by the Secretary of State. This change is backdated to 6 April 2011.

Fund Changes

46. Where an employing authority is required to contribute to more than one LGPS fund or merges or amalgamates with another employing authority in a different fund or moves its main place of business to a different geographical area, the Secretary of State can, on or after 1 October 2012 and upon application from the employing authority, decide whether to issue a direction substituting one fund for another. The direction can include instructions such as the making of financial adjustments between the funds, the transfer of liabilities from the former to the substituted fund, a requirement to obtain a revised rates and adjustments certificate in respect of each employing authority concerned, etc.

Academies

47. An amendment has been made to Schedule 4 of the LGPS (Administration) Regulations 2008 to clarify that where a local authority maintained school converts to an Academy the appropriate LGPS Fund for that Academy is the one within whose local government area the Academy is located. Where, however, the London Pensions Fund Authority (LPFA) was the administering authority prior to conversion, the LPFA remains the appropriate Fund for the Academy.

Policy Statement under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

48. The 'Miscellaneous Regulations' make a minor amendment (as from 1 October 2012) to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. As from that date a local authority's policy statement relating to the exercise of their discretion to base redundancy pay on actual pay (where actual pay exceeds the weeks pay limit for statutory redundancy payment purposes) and on making a lump sum compensation payment (up to a maximum of 104 weeks pay) to those ceasing employment on the grounds of redundancy or business efficiency must cover not only employees of the local authority but also employees of:
 - a) a voluntary school (within the meaning of the School Standards and Framework Act 1998);
 - b) a foundation school or foundation special school (within the meaning of that Act) maintained by a local authority;
 - c) any technical institute or other similar institution which is for the time being assisted by a local authority under the Education Act 1996; or
 - d) a federated school (within the meaning of the Education Act 2002),

in respect of whom the local authority has, with the consent of the employer, designated the employee, or a class of employees to which the employee belongs, as being eligible for membership of the LGPS.

Prior to 1 October 2012 the authority's policy statement only had to cover employees of the authority and employees covered by (a) and (b) above.

Actions to be taken

49. 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. The changes made by the 'Miscellaneous Regulations' should be notified either before the changes take effect or, in any event, not later than 3 months after the effective date of the change. The notification

should be accompanied by a written statement that further information about the scheme is available, giving the address to which enquiries should be sent.

50. All pension scheme guides, literature, standard letters and computerised pensions administration systems should be updated to reflect the Scheme changes. The LGPC Secretariat plans to update the standard guides on the LGE website by the end of October 2012.
51. The national website for Scheme members (see www.lgps.org.uk) will also be updated to reflect the Scheme changes.
52. Administering authorities in England and Wales are asked to copy this Circular to employers in their Fund 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/lge/core/page.do?pageld=119528> or, in some other way, bring the main messages in this Circular to the attention of the employers in their Fund.

Terry Edwards
Senior Pensions Adviser
September 2012

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