LGPS Scheme Administrator Guide

Trivial commutation and small pot payment limits

Aim of this guide

This guide sets out the provisions governing trivial commutation and small pot payments to members of the LGPS in England, Wales and Scotland i.e. where the value of a member's pension benefits fall below prescribed values and can be commuted into a one-off payment at the discretion of the administering authority. The note sets out who such payments may be made to under the rules of the LGPS, the conditions that must be met before such payments can be made, the method of calculation, and the tax position.

Background

Legislative history

Prior to the provisions of the Finance Act 2004 being introduced, effective from 6th April 2006, trivial pensions were able to be commuted into a lump sum payment under the rules of the LGPS.

The LGPS rules in England and Wales permitted the administering authority to commute a pension if a member had attained state pension age and the pension (including Pensions Increase) was not more than £195[1] per annum (or, if the member was entitled to more than one pension under the Scheme, the pensions did not, in aggregate, exceed £195 per annum). In the case of a Pension Credit member the relevant figure was £195 if the Pension Credit member had received a lump sum grant or £260 if they had not. Note that if a Pension Credit member was entitled to a Pension Credit in the form of a pension only, but was also entitled to a pension in his / her own right (as a result of active membership), there was a conflict in the LGPS Regulations 1997. Regulation 156 of the LGPS Regulations 1997 appeared to allow commutation if the aggregate pensions were not more than £260 per annum but regulation 49 of the LGPS Regulations 1997 appeared to restrict commutation to aggregate pensions of not more than £195 per annum. A long-term spouse's, civil partner's or children's pension could be commuted by the administering authority if the pension (including Pensions Increase) was not more than £260[2] per annum (or, if the survivor was entitled to more than one pension under the Scheme, or there was more than one survivor, the pensions did not, in aggregate, exceed £260 per annum).

The LGPS rules in Scotland permitted the administering authority to commute a pension if a member had attained state pension age and the pension (including Pensions Increase) was not more than £260[3] per annum (not £195) (or, if the member was entitled to more than one pension under the Scheme, the pensions did not, in aggregate, exceed £260 per annum). In the case of a Pension Credit member the relevant figure was also £260 per annum. A long-term spouse's, civil partner's or children's pension could be commuted by the administering authority if the pension (including Pensions Increase) was not more than £260[4] per annum (or, if the survivor was entitled to more than one pension under the Scheme, or there was more than one survivor, the pensions did not, in aggregate, exceed £260 per annum).

The administering authority had to deduct from the lump sum commutation payment any tax that was due under section 599 of the Income and Corporation Taxes Act 1988 (a 20% tax deduction). The commutation payment extinguished all liabilities under the Scheme.

The Finance Act 2004 introduced overriding rules governing the commutation of trivial pensions which, although they raised the limit for payment of a trivial

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[1] The figure was increased from £78 to £195 as from 28th February 1992 by SI 1992/172
[2] The figure was increased from £104 to £260 as from 28th February 1992 by SI 1992/172.
[3] The figure was increased from £78 to £260 as from 30th July 1993 by SI 1993/1593
[4] The figure was increased from £104 to £260 as from 30th July 1993 by SI 1993/1593.

commutation lump sum, also introduced a set of requirements that had to be complied with for such a payment to be an authorised payment.

Regulation 49 (commutation: small pensions) of the Local Government Pension Scheme Regulations 1997 was not amended to refer to the relevant overriding provisions of the Finance Act 2004 until an appropriate amendment was made by the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2007, effective from 6th April 2007. Regulation 156 (commutation: small pensions – Pension Credit members) was not amended to refer to the relevant overriding provisions of the Finance Act 2004 until 1st April 2008 – see regulation 14(3) of the LGPS (Transitional Provisions) Regulations 2008.

Regulation 48 (commutation: small pensions) of the Local Government Pension Scheme (Scotland) Regulations 1998 was not amended to refer to the relevant overriding provisions of the Finance Act 2004 until an appropriate amendment was made by the Local Government Pension Scheme (Scotland) Amendment (No. 2) Regulations 2006, effective from 6th April 2006. The amendment made to regulation 48 also applied the commutation of small pensions for Pension Credit members under regulation 153 (commutation: small pensions).

The commutation payment rule under regulation 6 (payment after relevant accretion) of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] came into force on 1st June 2009 and had effect in relation to payments made on or after 1st December 2009. However, the right to make such payments under the LGPS was only introduced into the LGPS in England and Wales from 1st October 2012 by the Local Government Pension Scheme (Miscellaneous) Regulations 2012 [SI 2012/1989] and only for a post 31st March 2008 leaver (other than a councillor leaver). This was extended on 1st April 2014 by the Local Government Pension Scheme Regulations 2013 [SI 2013/2356] to cover post 31st March 2014 Pension Credit members. In Scotland, the right to make such payments was introduced from 1st February 2013 by the Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2012 [SSI 2012/347] and only for a post 31st March 2009 leaver (including a councillor leaver) and a post 31st March 2009 Pension Credit member.

The de minimis payment rules under regulations 11 and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] came into force on 1st June 2009 and had effect in relation to payments made on or after 1st December 2009. However, the right to make such payments under the LGPS was only introduced into the LGPS in England and Wales from 10th February 2014 (retrospective to 1st April 2013) by the Local Government Pension Scheme (Miscellaneous Amendment) Regulations 2014 [SI 2014/44] and only for a post 31st March 2008 leaver (other than a councillor leaver). This was extended on 1st April 2014 by the Local Government Pension Scheme Regulations 2013 [SI 2013/2356] to cover post 31st March 2014 Pension Credit members. The right to make de minimis payments under regulations 11 and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] was introduced into the LGPS (Scotland) Regulations 2014, effective from 1st April 2015.

Since 2014, various amendments have been made to the provisions governing trivial commutation lump sums, trivial commutation lump sum death benefits and small pot payments. For example, in the 2014 Budget statement of 19th March 2014 it was announced that the limits for trivial commutation lump sums and small pot payments would be increased from £18,000 to £30,000 and from £2,000 to £10,000 respectively for payments made on or after 27th March 2014. The trivial commutation lump sum death benefit limit remained at £18,000.

The Taxation of Pensions Act 2014 introduced further changes, effective from 6th April 2015 i.e.

- it removed the ability to trivially commute, under section 166 of the Finance Act 2004, any Defined Contribution savings and removed the requirement, for Defined Benefit schemes, for the trivial commutation under that section to be in respect of all benefits under the scheme i.e. any benefits from AVCs could continue to be paid but all Defined Benefits under the scheme would have to be commuted.
- it reduced the age at which a member could trivially commute Defined Benefit savings under section 166 of the Finance Act 2004 from 60 to 55 (the normal minimum pension age) or earlier if the ill-health condition is met.
- it increased the trivial commutation lump sum death benefit limit from £18,000 to £30,000.
- it reduced the age at which de minimis payments under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] can be made from 60 to 55 (or earlier if the ill health condition is met i.e. where the scheme administrator has received evidence from a registered medical practitioner that the member is, and will continue to be, incapable of carrying on the member's occupation because of physical or mental impairment, and the member has in fact ceased to carry on the member's occupation).
- it introduced regulation 10 into the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] to provide that a payment by a registered pension scheme to a member which would be a payment that is described in regulations 11, 11A(1)(a) to (c) or 12 of those Regulations but for the continuance (after a payment under those regulations) of an annuity is allowed provided the member has not previously received a payment from the scheme under regulation 10. It should be noted, however, that none of the LGPS Regulations make any reference to regulation 10 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 and so, for members of the LGPS, a payment under that regulation is not relevant.

The Finance Act 2016 partially reversed a change made by the Taxation of Pensions Act 2014, effective for payments made on and after 16th September 2016 i.e.

- it inserted, the ability to trivially commute, under section 166 of the Finance Act 2004, any “in-payment money-purchase in-house scheme pension” . For Defined Benefit schemes, any trivial commutation under that section must be in respect of **all** benefits under the scheme i.e. where a trivial commutation lump sum is paid, it extinguishes any entitlement to defined benefits, **and** any entitlement to payments of in-payment money-purchase in-house scheme pensions, that the member has under the pension scheme, The Finance Act

> 2004 defines an “in-payment money-purchase in-house scheme pension” as “a **scheme pension payable by the scheme administrator** to which the member has become **entitled** under a **money purchase arrangement** “. This is reiterated in PTM063500.

A **scheme pension** is defined in paragraph 2 of Schedule 28 to the Finance Act 2004 as a pension which is payable by the scheme administrator (i.e. by the administering authority) or by an insurance company selected by the scheme administrator. That might appear to catch an annuity purchased by the administering authority for the member from the member’s AVC fund **BUT** the meaning of "in-payment money-purchase in-house scheme pension" qualifies this by saying that it has to be a scheme pension **payable by the scheme administrator** (i.e. by the administering authority). The next crucial part of the definition is that the pension has to be a pension to which the member has become **entitled** under a **money purchase arrangement**. Section 152 of the Finance Act 2004 says:

> *(2) the purposes of this Part an arrangement is a "money purchase arrangement" at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are cash balance benefits or other money purchase benefits.*
>
> *(4) In this Part "money purchase benefits", in relation to a member of a pension scheme, means benefits the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made under the pension scheme by the member or any other person in respect of the member or any other factor).*

So an in-house top-up pension already bought from the LGPS by a scheme member from their in-house AVC fund would be an "in-payment money-purchase in-house scheme pension". The only effect in such a case of the amendment made by the Finance Act 2016 would be to require that when an administering authority trivially commutes a member’s pension it must include any in-house top-up pension bought from the LGPS by the scheme member from their in-house AVC fund. In practice, administering authorities would have been doing that anyway.

But what about members who wish to trivially commute their main LGPS benefits but haven’t yet bought an in-house top-up pension (or done anything else with their AVC fund)? Section 166 of the Finance Act 2004 only applies to defined benefits and an “in payment money-purchase in-house scheme pension”. An uncrystallised AVC fund does not fall into either of these definitions so the only way a member can trivially commute an AVC is after crystallising the AVC pot, either by purchasing an in-house top up pension (in which case it is treated to all intents and purposes as part of the main LGPS pension when calculating the trivial commutation payment) or by purchasing an annuity (in which case any lump sum payment for a trivial annuity would be a matter purely between the person and the annuity provider).

Incentive Exercise Monitoring Board Technical Group Code of Practice on Incentive Exercises

In December 2014, the Incentive Exercise Monitoring Board Technical Group (the “Group”) published a Q&A note confirming that the Code of Practice on Incentive Exercises (the “Code”) applies to one-off trivial commutation / small pot lump sum exercises.
The key points of the note were that:

- The Code would apply to one-off trivial commutation / small pot lump sum exercises (as opposed to “business as usual” activity) where
  - one objective of providing an invitation or inducement to a member to change the form of their accrued defined benefit rights is to reduce risk or cost for the pension scheme or sponsor(s); and
  - the invitation or inducement is not ordinarily available to members of the pension scheme.

- The Group would not expect the Code to apply where members are **not** being given a choice (although the principles of the Code may be helpful).

- The Code (where it applies) is voluntary so compliance, while advisable, is not currently obligatory.

The LGPC Secretariat is of the view that the Code does not directly apply to trivial commutation / small pot lump sum exercises under the LGPS primarily because, although administering authorities may couch a letter to a member as an invitation to commute, the administering authority will be exercising a discretion i.e. the right to decide whether or not to commute a pension rests with the administering authority, not the pensioner. The pensioner is not, therefore, actually being given a choice.

However, there are parts of the Code which, as best practice, would be appropriate for administering authorities to take on board e.g. any exercise should be:

- carried out fairly and transparently; and
- communicated in a balanced way and in terms that members can understand.

Current provisions

LGPS England and Wales

Pre-1st April 2008 leavers (other than councillors)

By virtue of regulation 49 of the LGPS Regulations 1997 and regulation 4 of the LGPS (Transitional Provisions) Regulations 1997, administering authorities in England and Wales may, in respect of benefits due to, or to the survivor of, a **pre-1st April 2008 leaver (other than councillors)**:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004, and
b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004

but **cannot** pay (to a member or survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as:

a) those regulations do not apply to survivor's benefits , and
b) the relevant amendments to the LGPS Regulations 1997 have not been made to allow such payments to a member.

Note: the Local Government Superannuation Regulations 1974 and the Local Government Superannuation Regulations 1986 were consolidated into the Local Government Pension Scheme Regulations 1995. Regulation 4 of the LGPS (Transitional Provisions) Regulations 1997 provided that regulation H5 (commutation: small pensions) of the LGPS Regulations 1995 would not apply to pre 1st April 1998 pensioners or deferred pensioners (or to their survivor's) and that regulation 49 of the LGPS Regulations 1997 would apply to them instead.

Post 31st March 2008 leavers (other than councillors)

Under regulation 39(1) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulation 34 of the LGPS Regulations 2013 administering authorities in England and Wales may, in respect of benefits due to, or to the survivor of, a **post 31st March 2008 leaver (other than councillors)**:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004
b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004, and
c) pay (to a member but not to a survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171].

Councillor leavers

By virtue of regulation 26 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, regulation 13 of the LGPS (Transitional Provisions) Regulations 2008 and regulation 49 of the LGPS Regulations 1997, administering authorities in England and Wales may, in respect of benefits due to, or to the survivor of, a **councillor leaver**:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004, and
b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004

but **cannot** pay (to a member or survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as:

a) those regulations do not apply to survivor's benefits , and
b) the relevant amendments to the LGPS Regulations 1997 have not been made to allow such payments to a member.

Pre-1st April 2014 Pension Credit members

Under regulation 14(2) and (3) of the LGPS (Transitional Provisions) Regulations 2008, administering authorities in England and Wales may, in respect of a **pre-1st April 2014 Pension Credit member** (i.e. where the effective date of the Pension Sharing Order was pre 1st April 2014 or where the effective date of the Pension Sharing Order is after 31st March 2014 but the Debited Member has no post 31st March 2014 membership of the 2014 Scheme[5] or the Debited Member is a **Councillor member**):

a) pay (to a Pension Credit member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004, and
b) pay (to a survivor of a Pension Credit member) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004 (but note that this is irrelevant as, under the LGPS, there are no survivor benefits payable upon the death of a Pension Credit member and thus there is no pension to commute)

but **cannot** pay a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as the relevant amendments to the LGPS (Transitional Provisions) Regulations 2008 have not been made.

Post 31st March 2014 Pension Credit members

By virtue of regulation 34 of the LGPS Regulations 2013 administering authorities in England and Wales may, in respect of a **post 31st March 2014 Pension Credit**

[5] See regulations 20(1) and (2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014

member (i.e. where the effective date of the Pension Sharing Order is after 31st March 2014 and the Debited Member has some post 31st March 2014 membership of the 2014 Scheme[6]):

a) pay (to a Pension Credit member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004
b) pay (to a survivor of a Pension Credit member) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004 (but note that this is irrelevant as, under the LGPS, there are no survivor benefits payable upon the death of a Pension Credit member and thus there is no pension to commute), and
c) pay (to a Pension Credit member) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171].

[6] See regulations 20(1) and (2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014

Current provisions

LGPS Scotland

Pre-1st April 2009 leavers (other than councillors)

By virtue of regulation 48 of the LGPS (Scotland) Regulations 1998 and regulation 4 of the LGPS (Transitional Provisions) (Scotland) Regulations 1998, administering authorities in Scotland may, in respect of benefits due to, or to the survivor of, a **pre-1st April 2009 leaver (other than councillors)**:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004, and
b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004

but **cannot** pay (to a member or survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as:

a) those regulations do not apply to survivor's benefits , and
b) the relevant amendments to the LGPS (Scotland) Regulations 1998 have not been made to allow such payments to a member.

Note: the Local Government Superannuation (Scotland) Regulations 1974 were consolidated into the Local Government Superannuation (Scotland) Regulations 1987. Regulation 4 of the LGPS (Transitional Provisions) (Scotland) Regulations 1998 provided that regulation E21 (power to compound certain small pensions) of the LGPS (Scotland) Regulations 1987 would not apply to pre 1st April 1998 pensioners or deferred pensioners (or to their survivor's) and that regulation 48 of the LGPS (Scotland) Regulations 1998 would apply to them instead.

Leavers between 1st April 2009 and 31st March 2015 (other than councillors)

Under regulation 39(1) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 administering authorities in Scotland may, in respect of benefits due to, or to the survivor of, a member who ceased active membership between 1st April 2009 and **31st March 2015 (other than councillors)**:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004
b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004, and
c) pay (to a member) a lump sum which is a commutation payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]

but **cannot** pay (to a member or survivor) a lump sum which is a de minimis commutation payment under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as:

a) those regulations do not apply to survivor's benefits , and
b) the relevant amendments to the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 have not been made to allow such payments to a member

and **cannot** pay a lump sum which is a commutation payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] to a survivor as that regulation does not apply to survivor's benefits.

Post 31st March 2015 leavers (other than councillors)

Under regulation 33 of the LGPS (Scotland) Regulations 2014 administering authorities in Scotland may, in respect of benefits due to, or to the survivor of, a **post 31st March 2015 leaver (other than councillors)**:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004
b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004, and
c) pay (to a member but not to a survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171].

Pre-1st April 2009 councillor leavers

By virtue of regulation 48 of the LGPS (Scotland) Regulations 1998, administering authorities in Scotland may, in respect of benefits due to, or to the survivor of, a **pre-1st April 2009 councillor leaver**:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004, and
b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004

but **cannot** pay (to a member or survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as:

a) those regulations do not apply to survivor's benefits , and
b) the relevant amendments to the LGPS (Scotland) Regulations 1998 have not been made to allow such payments to a member.

Councillor leavers between 1st April 2009 and 31st March 2015

Under regulation 39(1) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 administering authorities in Scotland may, in respect of benefits due to, or to the survivor of, a **post 31st March 2009 councillor leaver**:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004
b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004, and
c) pay (to a member) a lump sum which is a commutation payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]

but **cannot** pay (to a member or survivor) a lump sum which is a de minimis commutation payment under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as:

a) those regulations do not apply to survivor's benefits , and
b) the relevant amendments to the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 have not been made to allow such payments to a member

and **cannot** pay a lump sum which is a commutation payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] to a survivor as that regulation does not apply to survivor's benefits.

Post 31st March 2015 councillor leavers

Under regulation 33 of the LGPS (Scotland) Regulations 2014 administering authorities in Scotland may, in respect of benefits due to, or to the survivor of, a **post 31st March 2015 councillor leaver**:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004
b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004, and
c) pay (to a member but not to a survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171].

Pre-1st April 2009 Pension Credit members

By virtue of regulations 48 and 153 of the LGPS (Scotland) Regulations 1998, administering authorities in Scotland may, in respect of a **pre-1st April 2009 Pension Credit member** (i.e. where the effective date of the Pension Sharing Order is before 1st April 2009[7]):

a) pay (to a Pension Credit member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004, and
b) pay (to a survivor of a Pension Credit member) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of

[7] See regulation 85 of the LGPS (Administration) (Scotland) Regulations 2008

the Finance Act 2004 (but note that this is irrelevant as, under the LGPS, there are no survivor benefits payable upon the death of a Pension Credit member and thus there is no pension to commute)

if the Pension Credit member has attained state pensionable age, but **cannot** pay a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as the relevant amendments to the LGPS (Scotland) Regulations 1998 have not been made.

1st April 2009 to 31st March 2015 Pension Credit members

Under regulations 39(1) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 and regulation 98 of the LGPS (Administration) (Scotland) Regulations 2008, administering authorities in Scotland may, in respect of a **post 31st March 2009 Pension Credit member** (i.e. where the effective date of the Pension Sharing Order is after 31st March 2009[8] and before 1st April 2015 or where the effective date of the Pension Sharing Order is after 31st March 2015 but the Debited Member has no post 31st March 2015 membership of the 2015 Scheme[9]):

a) pay (to a Pension Credit member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004
b) pay (to a survivor of a Pension Credit member) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004 (but note that this is irrelevant as, under the LGPS, there are no survivor benefits payable upon the death of a Pension Credit member and thus there is no pension to commute), and
c) pay (to a Pension Credit member) a lump sum which is a commutation payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]

if the Pension Credit member has attained state pensionable age, but **cannot** make a de minimis commutation payment under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as:

a) those regulations do not apply to survivor’s benefits , and
b) the relevant amendments to the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 have not been made to allow such payments to a member.

Post 31st March 2015 Pension Credit members

By virtue of regulation 33 of the LGPS (Scotland) Regulations 2014 administering authorities in Scotland may, in respect of a **post 31st March 2015 Pension Credit member** (i.e. where the effective date of the Pension Sharing Order is after 31st

8 See regulation 85 of the LGPS (Administration) (Scotland) Regulations 2008
9 See regulations 20(1) and (2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

March 2015 and the Debited Member has some post 31st March 2015 membership of the 2015 Scheme[10]):

a) pay (to a Pension Credit member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004
b) pay (to a survivor of a Pension Credit member) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004 (but note that this is irrelevant as, under the LGPS, there are no survivor benefits payable upon the death of a Pension Credit member and thus there is no pension to commute), and
c) pay (to a Pension Credit member) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171].

[10] See regulations 20(1) and (2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

Summary table - Current LGPS provisions in England and Wales

	Can a payment be made under the following legislation if the conditions for payment under that legislation have been met?				
Type of member	**Trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004**	**Trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004**	**A commutation payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]**	**A de minimis commutation payment under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009**	**A de minimis commutation payment under regulation 10 of the Registered Pension Schemes (Authorised Payments) Regulations 2009**
Pre 1/4/08 leaver (other than a councillor)	Yes	N/A	No	No	No
1/4/08 to 31/3/14 leaver (other than a councillor)	Yes	N/A	Yes	Yes	No
Post 31/3/14 leaver (other than a councillor)	Yes	N/A	Yes	Yes	No
Pre 1/4/08 councillor leaver	Yes	N/A	No	No	No
1/4/08 to 31/3/14 councillor leaver	Yes	N/A	No	No	No
Post 31/3/14 councillor leaver	Yes	N/A	No	No	No
Survivor of pre 1/4/08 leaver (other than a councillor leaver)	N/A	Yes	N/A	N/A	N/A

Survivor of 1/4/08 to 31/3/14 leaver (other than a councillor leaver)	N/A	Yes	N/A	N/A	N/A
Survivor of post 31/3/14 leaver (other than a councillor leaver)	N/A	Yes	N/A	N/A	N/A
Survivor of pre 1/4/08 councillor leaver	N/A	Yes	N/A	N/A	N/A
Survivor of 1/4/08 to 31/3/14 councillor leaver	N/A	Yes	N/A	N/A	N/A
Survivor of post 31/3/14 councillor leaver	N/A	Yes	N/A	N/A	N/A
Pre 1/4/08 Pension Credit member *	Yes	N/A	No	No	No
1/4/08 to 31/3/14 Pension Credit member *	Yes	N/A	No	No	No
Post 31/3/14 Pension Credit member **	Yes	N/A	Yes	Yes	No
Pension Credit member where the Debited Member was a Councillor member ***	Yes	N/A	No	No	No

* i.e. where the effective date of the Pension Sharing Order was pre 1st April 2014 or where the effective date of the Pension Sharing Order is after 31st March 2014 but the Debited Member has no post 31st March 2014 membership of the 2014 Scheme[11]

** i.e. where the effective date of the Pension Sharing Order is after 31st March 2014 and the Debited Member has some post 31st March 2014 membership of the 2014 Scheme[12]

*** A Councillor member does not have any post 31st March 2014 membership of the 2014 Scheme because a Councillor member is, by virtue of regulation 13 of the LGPS (Transitional Provisions) Regulations 2008 and regulation 26 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, still subject to the LGPS Regulations 1997.

[11] See regulations 20(1) and (2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
[12] See regulations 20(1) and (2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014

Summary table - Current LGPS provisions in Scotland

	Can a payment be made under the following legislation if the conditions for payment under that legislation have been met?				
Type of member	**Trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004**	**Trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004**	**A commutation payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]**	**A de minimis commutation payment under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009**	**A de minimis commutation payment under regulation 10 of the Registered Pension Schemes (Authorised Payments) Regulations 2009**
Pre 1/4/09 leaver (other than a councillor)	Yes	N/A	No	No	No
1/4/09 to 31/3/15 leaver (other than a councillor)	Yes	N/A	Yes	No	No
Post 31/3/15 leaver (other than a councillor)	Yes	N/A	Yes	Yes	No
Pre 1/4/09 councillor leaver	Yes	N/A	No	No	No
1/4/09 to 31/3/15 councillor leaver	Yes	N/A	Yes	No	No
Post 31/3/15 councillor leaver	Yes	N/A	Yes	Yes	No
Survivor of pre 1/4/09 leaver (other than a councillor leaver)	N/A	Yes	N/A	N/A	N/A
Survivor of 1/4/09 to 31/3/15 leaver (other	N/A	Yes	N/A	N/A	N/A

than a councillor leaver)					
Survivor of post 31/3/15 leaver (other than a councillor leaver)	N/A	Yes	N/A	N/A	N/A
Survivor of pre 1/4/09 councillor leaver	N/A	Yes	N/A	N/A	N/A
Survivor of 1/4/09 to 31/3/15 councillor leaver	N/A	Yes	N/A	N/A	N/A
Survivor of post 31/3/15 councillor leaver	N/A	Yes	N/A	N/A	N/A
Pre 1/4/09 Pension Credit member *	Yes, if attained State Pension Age	N/A	No	No	No
1/4/09 to 31/3/15 Pension Credit member **	Yes, if attained State Pension Age	N/A	Yes	No	No
Post 31/3/15 Pension Credit member ***	Yes	N/A	Yes	Yes	No

***** i.e. where the effective date of the Pension Sharing Order is before 1st April 2009[13]

** i.e. where the effective date of the Pension Sharing Order is after 31st March 2009[14] and before 1st April 2015 or where the effective date of the Pension Sharing Order is after 31st March 2015 but the Debited Member has no post 31st March 2015 membership of the 2015 Scheme[15]

[13] See regulation 85 of the LGPS (Administration) (Scotland) Regulations 2008
[14] See regulation 85 of the LGPS (Administration) (Scotland) Regulations 2008
[15] See regulations 20(1) and (2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

*** i.e. where the effective date of the Pension Sharing Order is after 31st March 2015 and the Debited Member has some post 31st March 2015 membership of the 2015 Scheme[16]

[16] See regulations 20(1) and (2) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

Current Compensatory Added Years (CAY) provisions in England, Wales and Scotland

There are no provisions in the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 or the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 to allow annual compensation (CAY) to be commuted under sections 166 or 168 of the Finance Act 2004 or under the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]. Thus, even if the person's benefits under the LGPS are commuted under the aforementioned provisions, the CAY pension must remain in payment.

It should be noted that a payment under regulation 11 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] requires, by virtue of paragraph (1)(d) of that regulation, that the commutation value of the benefits to which the member is entitled under the LGPS **and any related scheme** does not exceed £10,000 in total. Compensatory Added Years could only be awarded to those who were members of, or eligible to be members of, the LGPS, and so it might be assumed that the Compensatory Added Years were awarded under a related scheme. If so, the annual CAY would need to be taken into account when determining whether a commutation payment of the LGPS benefits could be made under regulation 11. However, whether or not the regulations under which CAY were awarded are a "related scheme" is far from clear, as evidenced below.

Regulation 2(4) of the Registered Pension Schemes (Authorised Payments) Regulations 2009 defines a "related scheme" as follows:

(a) a pension scheme is related to another pension scheme if each of them is -
(i) a registered pension scheme that is an occupational pension scheme or a public service pension scheme, and
(ii) a pension scheme relating to the same employment.

The key question, therefore, is whether or not the regulations under which Compensatory Added Years were awarded are a **registered** pension scheme.

Section 150 of the Finance Act 2004 says:

150 Meaning of "pension scheme"

(1) In this Part "pension scheme" means a scheme or other arrangements, comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of persons -

(a) on retirement,

(b) on death,

(c) on having reached a particular age,

(d) on the onset of serious ill-health or incapacity, or

(e) in similar circumstances.

(2) A pension scheme is a registered pension scheme for the purposes of this Part at any time if it is at that time registered under Chapter 2.

Paragraph 1 of Part 1 of Schedule 36 to the Finance Act 2004 (deemed registration of existing schemes) says:

(1) Any pension scheme which, immediately before 6th April 2006, is -

(a) a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,

(c) a relevant statutory scheme, as defined in section 611A of ICTA, or a pension scheme treated by the Inland Revenue on that date as if it were such a relevant statutory scheme,

is to be treated as becoming a registered pension scheme on that date.

Section 611A of the Income and Corporation Taxes Act 1998, before its deletion, said:

611A Definition of relevant statutory scheme

(1) In this Chapter any reference to a relevant statutory scheme is to-

(a) a statutory scheme established before 14th March 1989, or

(b) a statutory scheme established on or after that date and entered in the register maintained by the Board for the purposes of this section, or

(c) a parliamentary pension scheme.

Section 612 defined a “statutory scheme” as:

a retirement benefits scheme established by or under any enactment -

(a) the particulars of which are set out in any enactment, or in any regulations made under any enactment, or

(b) which has been approved as an appropriate scheme by a Minister or government department (including the head of a Northern Ireland department or a Northern Ireland department).

Section 611(1) defined a “retirement benefits scheme” as:

a scheme for the provision of benefits consisting of or including relevant benefits.

And section 612 defined “relevant benefits” as:

any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death , or by virtue of a pension sharing order or provision , or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason.

The relevant trivial commutation and small pot rules

Trivial commutation lump sums payable under section 166 of the Finance Act 2004

From 6th April 2015 the total value of **all** pension pots (LGPS and non-LGPS **defined benefit** and **defined contribution** pots) must not exceed £30,000 if a trivial commutation lump sum under section 166 of the Finance Act 2004 is to be paid. To be paid this type of lump sum the member must:

- be aged 55 or over[17] or meet the ill-health condition[18] (or, in the case of a woman who has a GMP, is aged 60 or over[19] or in the case of a man who has a GMP, is aged 65 or over[20] and, in the case of a Pension Credit member in Scotland, has attained State Pension Age[21] if the Pension Credit was awarded under the 1998 or 2009 Scheme)
- have all or part of their lifetime allowance available
- take a lump sum in respect of **all** their **defined benefits** within the LGPS in England and Wales (for a member of the LGPS in England or Wales who wishes to commute) or **all** their benefits within the LGPS in Scotland (for a member of the LGPS in Scotland who wishes to commute) i.e. the payment must extinguish all their **defined benefit** pension rights in the relevant Scheme including any in-house top-up pension bought from the LGPS by the scheme member from their in-house AVC fund and any other active, deferred, pension or pension credit entitlement, whether or not in the same LGPS pension fund, as well as the contingent benefits that would be paid to dependants on the death of the member,
- not previously have been paid a trivial commutation lump sum from any registered pension scheme or, if such a lump sum has previously been paid, the trivial commutation lump sum from the LGPS must be paid within 12 months of the day on which a trivial commutation lump sum was first paid to the member (from any registered pension scheme),

[17] For:
- a deferred member of the LGPS in Scotland who is aged 55 or over but under age 60 (and does not have a GMP), or
- a deferred member of the LGPS in England or Wales who left prior to 1 April 2014 who is aged 55 or over but under age 60 (and does not have a GMP)

it is not clear from the wording of the LGPS Regulations and section 166 of the Finance Act 2004 whether uncrystallised rights can be commuted without first obtaining the consent of the employer to "early release" of the benefits. As payment of a trivial commutation lump sum could result in a strain on Fund cost in such cases, and as trivial commutation is at the discretion of the administering authority, it is recommended that trivial commutation is not allowed in such cases (unless the agreement of the former employer is obtained).

[18] The ill-health condition is met if (a) the administering authority has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, and (b) the member has in fact ceased to carry on the member's occupation.

[19] The LGPS revalues GMPs by Section 148 orders. GMPs revalued by Section 148 orders cannot be commuted before GMP Pension Age by virtue of regulation 25(1)(a) of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 [SI 2015/1677]. Although regulation 25(3) of that Statutory Instrument relaxes that requirement in the case of early retirements, that relaxation only applies where the GMP is revalued by the Fixed Rate method (which the LGPS does not use). The GMP age for a man is 65; for a woman it is age 60.

[20] The LGPS revalues GMPs by Section 148 orders. GMPs revalued by Section 148 orders cannot be commuted before GMP Pension Age by virtue of regulation 25(1)(a) of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 [SI 2015/1677]. Although regulation 25(3) of that Statutory Instrument relaxes that requirement in the case of early retirements, that relaxation only applies where the GMP is revalued by the Fixed Rate method (which the LGPS does not use). The GMP age for a man is 65; for a woman it is age 60.

[21] See regulation 153(1) of the Local Government Pension Scheme (Scotland) Regulations 1998 and regulation 98(1) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

- have their pension savings in all their pension schemes (LGPS and non-LGPS **defined benefit** and **defined contribution** pots) valued on the same date (the nominated date) which must be no more than three months before they take their first trivial commutation lump sum. The nominated date can be a date specified by the member within that three month period or, if no date is chosen, it will be the date that a trivial lump sum commutation payment is first paid to the member, and
- on the nominated date, have a total value of **all** pension pots (LGPS and non-LGPS **defined benefit** and **defined contribution** pots) which does not exceed £30,000.

If the member is taking a trivial lump sum commutation payment from more than one pension scheme they must take all the trivial commutation lump sums within 12 months of the first trivial commutation lump sum payment (the trivial commutation period under paragraph 7(2) of Schedule 29 to the Finance Act 2004).

As the right to nominate a date is in the Finance Act (and therefore overriding), it is important for administering authorities to ask a scheme member who approaches them with an interest in commuting benefits if there is a nominated date. If there is not, or if the administering authority is instigating the trivial commutation, they will need to tell the scheme member what date is being treated as the nominated date.

The Secretary of State and Scottish Ministers' actuarial guidance on trivial commutation merely provides administering authorities with a table of factors to determine how much a Fund should pay out **IF** the member's benefits are commuted on the grounds of triviality. However, to determine whether a member's benefits **CAN** be commuted on the grounds of triviality, administering authorities need to determine whether or not the value of the member's benefits, **as determined in accordance with Schedule 29 of the Finance Act 2004**, does not exceed the £30,000 limit set by that Schedule (or the £18,000 limit if the first trivial commutation lump sum payment from any pension scheme was made before 27th March 2014).

Under the Finance Act 2004 the value of a member's rights (excluding any survivor's pension or State Pension to which the member is entitled in their own right) are to be calculated as:

(a) the value of the member's relevant crystallised pension rights on the nominated date, which are calculated as:
   i) 25 times the member's pension in payment (if any), including Pensions Increase (if any), on 5th April 2006[22], plus

[22] Paragraph 8(1) of Schedule 29 to the Finance Act 2004 used to say:
(1) The value of the member's relevant crystallised pension rights on the nominated date is the aggregate of-
(a) the value of the member's relevant crystallised pension rights on 5th April 2006, calculated in accordance with paragraph 10 of Schedule 36 (as if the member were the individual mentioned there), as adjusted under sub-paragraph (2)
(2) The adjustment referred to in sub-paragraph (1)(a) is the multiplication of the value of the member's relevant crystallised pension rights on 5th April 2006 by-
CL/15,000
where CL is the commutation limit on the nominated date.
But that adjustment was repealed by section 42(2)(c) of the Finance Act 2014 for commutation periods beginning on or after 27th March 2014, irrespective of whether the nominated date is before, on or after 27th March 2014. Thus, where the first trivial lump sum commutation payment is made on or after 27th March 2014 there is no need to adjust the value of the pension on 5th April 2006 by the formula:
Commutation limit on the nominated date (currently £30,000) / £15,000

ii) the aggregate of the amounts crystallised[23] on benefit crystallisation events in the period beginning with 6th April 2006 and ending with the nominated date, being 20 x the pension in payment at the benefit crystallisation event (ignoring any abatement due to re-employment and any reduction due to an annual allowance scheme pays election, but including any ill health enhancement and any Pensions Increase to the date of the benefit crystallisation event e.g. for formerly deferred members or pensioners where the final pay from an earlier year had been used), plus any automatic 3/80ths lump sum paid (taking account of any actuarial reduction or increase and any Pensions Increase at the benefit crystallisation event) and any lump sum paid by commutation, plus

(b) the value of the member's uncrystallised rights on the nominated date which are calculated as:

i) 20 x the pension the member would be entitled to if the member started to draw the pension (ignoring any actuarial reduction, any ill health enhancement, and before any 12:1 commutation, but including any actuarial increase and any Pensions Increase e.g. for formerly deferred members or pensioners where the final pay from an earlier year had been used), plus the value of any automatic 3/80ths lump sum (ignoring any actuarial reduction but including any Pensions Increase e.g. for formerly deferred members or pensioners where the final pay from an earlier year had been used), plus the realisable fund value of any AVCs on the nominated date.

Where a pension is about to become payable to an active member, a deferred member or a Pension Credit member and a trivial commutation payment could be made under the rules of the LGPS (and section 166 of the Finance Act 2004) it will be necessary to consider the options available i.e.

(1) commute the uncrystallised benefits (before the BCE date)
(2) commute the crystallised benefits – standard package with no 12:1 commutation
(3) commute the crystallised benefits – after taking the maximum 12:1 commutation*
(4) commute the crystallised benefits – after taking something less than the maximum 12:1 commutation*

* Note that the Technical Group debated on 6th October 2009 whether Pension Credit members can commute part of their Pension Credit pension (at 12:1) under the LGPS in England and Wales to increase the lump sum received. It was agreed that if the Debit Member ceased membership before 1st April 2008, the Credit Member is awarded a benefit under the LGPS Regulations 1997 and so cannot

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However, if the first trivial lump sum commutation payment is made before 27th March 2014 the value of the pension on 5th April 2006 has to be adjusted by the formula:
£18,000 / £15,000

[23] Where the first trivial lump sum commutation payment is made on or after 27th March 2014 there is no need to adjust the value of the pension benefits crystallised by the formula:
Commutation limit on the nominated date (currently £30,000) / commutation limit applicable when the pension crystallised.
However, if the first trivial lump sum commutation payment is made before 27th March 2014 the value of the pension benefits crystallised has to be adjusted by the formula:
£18,000 / commutation limit applicable when the pension crystallised.

commute. It was also agreed that where the Debit Member has active membership in the 2008 Scheme but the transfer date following a divorce was prior to 1st April 2008 the Credit Member is awarded a benefit under the LGPS Regulations 1997 and so cannot commute. In both cases this is because regulation 20(3A) of the LGPS Regulations 1997 only allows a “member” to commute and Schedule 1 of the LGPS Regulations says that “member” does not include a Pension Credit Member (except for the purposes of regulation 94 (interest on late payment of certain benefits). Furthermore, regulation 20(3A) of the LGPS Regulations 1997 referred to a member being able to increase the member’s retirement grant but, under regulation 154, a Pension Credit Member was entitled to a lump sum grant, not a retirement grant. Where, however, the Debit Member has active membership in the 2008 Scheme and the transfer date following a divorce is on or after 1st April 2008 [and the effective date of the Order is before 1st April 2014, or it is after 31st March 2014 but the Debited Member has no post 31st March 2014 membership], the Credit Member is awarded a benefit under the LGPS Regulations 1997 but the commutation provisions are those contained in the LGPS (Benefits, Membership and Contributions) Regulations 2007, not those under the LGPS Regulations 1997. Whether or not such a Credit Member can commute hinges on the definition of “member”, but the Benefits Regulations (which contain the commutation provisions) do not contain a definition of “member”. If one takes the view that, in the absence of a definition for “member” in the Benefits Regulations, one must use the definition in the Pensions Act 1995, then a Credit Member would be allowed to commute. If, however, one takes the view that there is a definition for “member” in Schedule 1 of the LGPS (Administration) Regulations 2008 which says "Member" has the same meaning as in section 124(1) of the Pensions Act 1995 but, except in regulation 68 [Annual Benefit Statements], does not include a pension credit member”, then a Credit Member would not be allowed to commute. The Technical Group decided that, for consistency, administering authorities in England and Wales should **not** allow a Pension Credit member to commute part of their pension to increase the lump sum [where the effective date of the Order is before 1st April 2014, or it is after 31st March 2014 but the Debited Member has no post 31st March 2014 membership]. Where the effective date of the Order is on or after 1st April 2014 and the Debited Member has some post 31st March 2014 membership the Pension Credit will, by virtue of regulation 20(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 be awarded in the 2014 Scheme. In such a case the Pension Credit member can make an election under regulation 33 of the LGPS Regulations 2013 to commute some pension into lump sum provided the Debited Member had not made an election to commute part of his / her pension into lump sum before the valuation date used when implementing the Pension Sharing Order.

* In Scotland, Pension Credit Members can, by virtue of regulation 19(3A) of the LGPS (Scotland) Regulations 1998 and regulation 21 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 commute part of their Pension Credit pension (at 12:1) into lump sum provided, by virtue of regulation 150(3) of the LGPS (Scotland) Regulations 1998 and regulation 95(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008, that the Debited Member had not already received a retirement grant before the date of the implementation of the Pension Sharing Order. Unlike the equivalent regulations in England and Wales, the word “member” in regulations 19(3A) of the LGPS (Scotland) Regulations 1998 and regulation 21 of the LGPS (Benefits, Membership

and Contributions) (Scotland) Regulations 2008, as defined in Schedule 1 of the LGPS (Scotland) Regulations 1998 and regulation 2 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008, does not exclude Pension Credit Members. Furthermore, unlike in England and Wales, regulations 19(3A) and 150(3) of the LGPS (Scotland) Regulations 1998 and regulation 95(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 all use consistent terminology (by referring to a retirement grant).

As noted in (a) and (b) above the calculation of the value of the member's pension benefits differs depending on whether the benefits are commuted on the grounds of triviality before or after they have crystallised. In valuing uncrystallised rights it is the value of the pension the member would be entitled to if the member started to draw the pension (ignoring any actuarial reduction, any ill health enhancement, and before any 12:1 commutation, but including any actuarial increase and any Pensions Increase e.g. for formerly deferred members or pensioners where the final pay from an earlier year had been used), plus the value of any automatic 3/80ths lump sum (ignoring any actuarial reduction but including any Pensions Increase e.g. for formerly deferred members or pensioners where the final pay from an earlier year had been used), plus the realisable fund value of any AVCs on the nominated date that is used to determine whether the value does not exceed £30,000 (although the actual trivial commutation payment to be paid, calculated by reference to the factors in the actuarial guidance issued by the Secretary of State / Scottish Ministers', would not ignore any actuarial reduction or ill health enhancement). Conversely, in valuing crystallised rights it is the value of the pension in payment at the benefit crystallisation event (ignoring any abatement due to re-employment and any reduction due to an annual allowance scheme pays election, but taking account of any actuarial reduction or increase and including any ill health enhancement and any Pensions Increase e.g. for formerly deferred members or pensioners where the final pay from an earlier year had been used), plus any automatic 3/80ths lump sum paid (taking account of any actuarial reduction or increase and any Pensions Increase at the benefit crystallisation event), and any lump sum paid by commutation, that is used to determine whether the value does not exceed £30,000.

Under option (1) the amount of the trivial commutation payment (as calculated using the actuarial factors in the Secretary of State / Scottish Ministers' guidance) and any standard 3/80^{ths} lump sum are added together. 25% of this total sum is paid as tax free cash. The remaining 75% of the total is subject to tax. Under option (2) any standard 3/80^{ths} lump sum retirement grant is paid tax free but the amount of the trivial commutation payment (as calculated using the actuarial factors in the Secretary of State / Scottish Ministers' guidance) is taxable. Under option (3) the maximum lump sum retirement grant (i.e. after the 12:1 conversion and including any standard 3/80^{ths} lump sum) is paid tax free and the amount of the trivial commutation payment (as calculated using the actuarial factors in the Secretary of State / Scottish Ministers' guidance and after the reduction for the maximum lump sum retirement grant option) is taxable. The difference between options (2) and (3) is that the maximum lump sum retirement grant is determined using the 12:1 maximum lump sum calculation. However the actuarial factors for commuting trivial pension to lump sum are often higher than 12:1. Therefore, not taking the maximum tax free lump sum via the 12:1 option may give a higher lump sum value to the trivial pension – but subject to tax. Thus, the person's tax liability may be an important issue in determining which option they choose.

Notes:

1. The requirement that a trivial lump sum could not be paid if the member was 75 or over was replaced by a reference to age 60 or over with effect for the tax year 2011-12 and subsequent tax years by section 65 and paragraph 29 of Part 1 of Schedule 16 to the Finance Act 2011. Paragraphs 71(1)(c) and 71(2) of Part 5 of Schedule 1 to the Taxation of Pensions Act 2014 replaced, with effect from 6th April 2015, the requirement for the member to be 60 or over, with a requirement for the member to have met the normal minimum pension age (i.e. 55) or met the ill health condition (i.e. where the scheme administrator has received evidence from a registered medical practitioner that the member is, and will continue to be, incapable of carrying on the member's occupation because of physical or mental impairment, and the member has in fact ceased to carry on the member's occupation).
2. The requirement that the trivial commutation lump sum must not exceed 1% of the standard lifetime allowance on the nominated date was replaced by a requirement that the payment should not exceed £18,000 with effect for the tax year 2012-13. This change was made by section 67 and paragraph 4(2) of Part 1 of Schedule 18 to the Finance Act 2011.
3. The change to £30,000 from the previous limit of £18,000 applies to all trivial commutation periods starting on or after 27th March 2014 i.e. where the first trivial commutation lump sum payment from any pension scheme is made on or after that date. Where the first trivial commutation lump sum payment from any pension scheme was made before 27th March 2014, the £18,000 limit still applies (even to any trivial commutation lump sum payment made on or after 27th March 2014) – see section 42(1) of the Finance Act 2014.
4. The right to trivially commute defined contribution benefits (including AVCs) was removed in respect of commutation periods beginning on or after 6th April 2015 and irrespective of whether the nominated date was before, on or after 6th April 2015 – see paragraphs 71(1)(a) and 71(2) of Part 5 of Schedule 1 to the Taxation of Pensions Act 2014. However, from 16th September 2016 this ban was eased by the Finance Act 2016 to permit trivial commutation of a scheme pension payable by a scheme administrator to which the member had become entitled under a money purchase arrangement (an "in-payment money-purchase in-house scheme pension") e.g. any in-house top-up pension bought from the LGPS by the scheme member from their in-house AVC fund. Such a trivial commutation payment has to be in respect of the all the defined benefits under the LGPS (including any benefits in-house top-up pension bought from the LGPS by the scheme member from their in-house AVC fund.
5. If a member trivially commutes their LGPS defined benefits under section 166 of the Finance Act 2004 and has not bought an in-house top-up pension with their in-house AVC fund they would be able to utilise:
    - regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] in respect of any uncrystallised LGPS AVCs (i.e. which have not been used to purchase an in-house top-up pension from the LGPS or an annuity from an annuity provider) where the AVCs are being commuted at the same

time as or later than their LGPS defined benefits are commuted under section 166 of the Finance Act 2004, or

- regulation 11 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] in respect of any uncrystallised LGPS AVCs (i.e. which have not been used to purchase an in-house top-up pension from the LGPS or an annuity from an annuity provider) where the AVCs are being commuted later than their LGPS defined benefits are commuted under section 166 of the Finance Act 2004 or, provided the total value of their LGPS defined benefits commuted under section 166 of the Finance Act 2004 plus their AVC fund is £10,000 or less, at the same time as their LGPS defined benefits are commuted.

For further information please see the section in this paper on de minimis payments under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009.

6. An equivalent pension benefit (EPB) (contracted-out rights earned between 1961 and 1975 and which are payable from State Pension Age) can be trivially commuted provided, as required by regulation 2(a) of The Registered Pension Schemes (Authorised Payments) Regulations 2006 [SI 2006/209], the member agrees. HM Revenue & Customs legislation does not impose any additional conditions on payments of this type for them to be authorised payments. In particular, no 'trivial commutation'-type valuation test is necessary for the payment of commuted EPBs to be an authorised payment. However, if other pension rights are to be commuted and paid under the trivial commutation lump sum provisions, the value of any EPBs must be taken into account for the purposes of comparing the value of the member's total pension rights with the commutation limit. Payments of commuted equivalent pension benefits are taxed in the same way as trivial commutation lump sums. See PTM061200 at https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm061200#IDAKOZYF for more information.

Examples of how to calculate the trivial commutation lump sum payment:

Where a pension is about to become payable to an active member or a deferred member and the member commutes uncrystallised benefits then the amount of benefits to be paid upon trivial commutation are calculated as follows:

Member's annual pension that would be paid (including any GMP)	x	Sec of State / Scottish Ministers' factor (Table A -Fac1 – gender specific)	+	
Contingent dependant's pension	x	Sec of State / Scottish Ministers' factor (Table A -Fac2 – gender specific)	=	Capitalised pension amount
Capitalised pension amount	+	3/80th Lump sum (if applicable)	=	Gross Trivial Commutation payment

Gross Trivial Commutation payment	x	25%	=	Tax free element of Trivial Commutation payment
Gross Trivial Commutation payment	-	Tax free element of Trivial Commutation payment	=	Taxable element of Trivial Commutation payment

Where a pension is about to become payable to a Pension Credit member and the member commutes uncrystallised benefits then the amount of benefits to be paid upon trivial commutation are calculated as follows:

Member's annual pension that would be paid	x	Sec of State / Scottish Ministers' factor (Table B -Fac1 – gender specific)	=	Capitalised pension amount
Capitalised pension amount	+	3/80th Lump sum (if applicable)	=	Gross Trivial Commutation payment
Gross Trivial Commutation payment	x	25%	=	Tax free element of Trivial Commutation payment
Gross Trivial Commutation payment	-	Tax free element of Trivial Commutation payment	=	Taxable element of Trivial Commutation payment

Where a pension is about to become payable to an active member or a deferred member and the member decides to crystallise the benefits before having them immediately commuted on the grounds of triviality, the benefits to be paid upon trivial commutation are calculated as follows:

Member's post commutation annual pension to be paid (including any GMP)	x	Sec of State / Scottish Ministers' factor (Table A -Fac1 – gender specific)	+	
Contingent dependant's pension	x	Sec of State / Scottish Ministers' factor (Table A -Fac2 – gender specific)	=	Trivial Commutation payment (all taxable)
Trivial Commutation payment (all taxable)	+	3/80th Lump sum (if applicable) and any pension commuted at 12:1	=	Total payment

Where a pension is about to become payable to a Pension Credit member and the member decides to crystallise the benefits before having them immediately commuted on the grounds of triviality, the benefits to be paid upon trivial commutation are calculated as follows:

Member's annual pension to be paid (after commutation, where applicable)	x	Sec of State / Scottish Ministers' factor (Table B -Fac1 – gender specific)	=	Trivial Commutation payment (all taxable)

Trivial Commutation payment (all taxable)	+	3/80th Lump sum (if applicable) and any pension commuted at 12:1 (where applicable)	=	Total payment

Where a pension is already in payment to a scheme member (other than a survivor) the benefits to be paid upon trivial commutation are calculated as follows:

Member's annual pension in payment (including any GMP)	x	Sec of State / Scottish Ministers' factor (Table A -Fac1 – gender specific)	+	
Contingent dependant's pension	x	Sec of State / Scottish Ministers' factor (Table A -Fac2 – gender specific)	=	Gross Trivial Commutation payment (all taxable)

Where a pension is already in payment to a Pension Credit member the benefits to be paid upon trivial commutation are calculated as follows:

Member's annual pension in payment (including any GMP)	x	Sec of State / Scottish Ministers' factor (Table B -Fac1 – gender specific)	=	Gross Trivial Commutation payment (all taxable)

Trivial commutation lump sum death benefit payable under section 168 of the Finance Act 2004

From 6th April 2015 a trivial lump sum commutation death benefit can be made under section 168 of the Finance Act 2004 if the value of **all** the dependant's benefits in the LGPS in England and Wales resulting from the death of **a** member (where the deceased was a member of the LGPS in England or Wales) or of **all** the dependant's benefits in the LGPS in Scotland resulting from the death of **a** member (where the deceased was a member of the LGPS in Scotland) does not exceed £30,000. To be paid this type of lump sum the payment must extinguish **all** of the dependant's entitlement under the relevant Scheme to a dependant's pension or pensions resulting from the death of **a** member (e.g. where the deceased had multiple employments, even if these are in different Funds), other than any short-term survivor's pension, and to any lump sum death grant which is to be paid to the dependant in respect of the deceased member (even though such a payment is completely at the administering authority's discretion). Accordingly, it is important that any lump sum death grant is paid at the same time as, or before, any trivial commutation lump sum death benefit. It would make sense to wait until any short-term pensions have ceased before making any trivial commutation lump sum death benefit payment. It should be noted that if the dependant is in receipt of a pension in respect of more than one deceased member (i.e. a 'serial' survivor) each set of dependant's benefits are treated separately. For example, if the widow of a scheme member remarries another scheme member and the second husband also dies, the widow will be in receipt of two widow's pensions. Each would be treated separately for the purposes of assessing whether a trivial lump sum commutation death benefit can be made under section 168 of the Finance Act 2004. If the value of each separate widow's pension does not exceed £30,000 then a trivial lump sum commutation death benefit can paid in respect of one or both, even if in aggregate the combined values exceed £30,000. Similarly, if the value of one does not exceed £30,000 and the value of the other one does, a trivial lump sum commutation death benefit can paid in respect of the one where the value does not exceed £30,000.

Making a trivial commutation lump sum death benefit payment does not affect the rights of any other dependants – their rights are not extinguished and they are not forced to commute their benefits.

Unlike the trivial commutation lump sum under section 166 of the Finance Act 2004, where the value of the benefits is determined by a formula set out in the Act, the commutation value of the pension for a trivial commutation lump sum death benefit is not determined by a formula set out in the Act [there is no formula set out in section 168 of the Act] but by the amount of the payment to be made (which is determined by the actuarial factors issued by the Secretary of State / Scottish Ministers').

Subject to meeting the above rules, a trivial commutation lump sum death benefit payment can be made in respect of pensions in payment.

Notes:

1. The requirements that a trivial commutation lump sum death benefit could not be paid if the deceased member had reached the age of 75 at the date of death and had to be paid before the day on which the member would have

reached the age of 75 were repealed with effect for the tax year 2011-12 and subsequent tax years by section 65 and paragraphs 39(a) and (b) of Part 1 of Schedule 16 to the Finance Act 2011.

2. The requirement that the trivial commutation lump sum death benefit must not exceed 1% of the standard lifetime allowance on the date the lump sum is paid was replaced by a requirement that the payment should not exceed £18,000 with effect for the tax year 2012-13 and subsequent tax years. This change was made by section 67 and paragraph 6(2) of Part 1 of Schedule 18 to the Finance Act 2011. The figure of £18,000 was replaced by £30,000 in respect of trivial commutation lump sum death benefits paid on or after 6th April 2015 - see paragraphs 74(4) and 74(6) of Part 5 of Schedule 1 to the Taxation of Pensions Act 2014.

Examples of how to calculate the trivial commutation lump sum death benefit payment:

Where a dependant's (long-term) pension, other than a child's pension, is about to be paid or is already in payment, the benefits to be paid upon trivial commutation are calculated as follows:

Annual pension to be paid / in payment (including any GMP)	x	Sec of State / Scottish Ministers' factor (Table B -Fac1 – gender specific)	=	Gross Trivial Commutation payment (all taxable)

Where a child's (long-term) pension is about to be paid or is already in payment, the benefits to be paid upon trivial commutation are calculated as follows:

Annual pension to be paid / in payment	x	Sec of State / Scottish Ministers' factor (Table C -Fac1)	=	Gross Trivial Commutation payment (all taxable)

De minimis payments under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]

This allows de minimis ‘small pot’ payments to be paid without:

- the need to comply with either the 12 month commutation period and nominated date requirements for payments under section 166 of the Finance Act 2004, nor
- the necessity to determine the total value of the member’s benefits under all registered pension schemes (for payments under section 166 of the Finance Act 2004).

It should be noted that regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] allow for de minimis ‘small pot’ payments to “members”. The SI does not define “members” but was made in exercise of the powers conferred by sections 164(1)(f) and (2) of the Finance Act 2004. That section provides that the only authorised payments a registered pension schemes may make to a person who is or has been a member of the pension scheme are the ones set out in that section. Section 151 defines “members” as follows:

151 Meaning of "member"

(1) In this Part "member" in relation to a pension scheme, means any active member, pensioner member, deferred member or pension credit member of the pension scheme.

(3) For the purposes of this Part a person is a pensioner member of a pension scheme if the person is entitled to the present payment of benefits under the pension scheme and is not an active member.

Whilst one might assume that a survivor’s pension (payable to a widow or widower of an opposite or same sex marriage, a civil partner, a cohabiting partner, or child) would be a pension payable to a “person [who] is entitled to the present payment of benefits under the pension scheme” (i.e. a “pensioner member”) and thus fall within the definition of “member” (thereby allowing de minimis ‘small pot’ payments to be made in respect of such survivor benefits), that does not appear to be the case. This is because survivor’s benefits are, under the Finance Act 2004, benefits payable to a “dependant” of the member (not benefits payable to a member). This would fit in with the much clearer definition of a “pensioner member” in section 124 of the Pensions Act 1995 which defines a “pensioner member” as follows:

"pensioner member", in relation to an occupational pension scheme, means a person who in respect of his pensionable service under the scheme or by reason of transfer credits, is entitled to the present payment of pension or other benefits ,

From 27th March 2014 the de minimis ‘small pot’ payment limit for payments under regulations 11 and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] increased from £2,000 to £10,000 for all payments made under those regulations on or after 27th March 2014.

Where:

a) an administering authority in **England and Wales** wishes to utilise the de minimis lump sum payment option under regulation 11 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 for a post 31st March 2008 leaver (other than a councillor leaver), or a post 31st March 2014 Pension Credit member, or
b) an administering authority in **Scotland** wishes to utilise the de minimis lump sum payment option under regulation 11 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 for a post 31st March 2015 leaver (including a councillor leaver), or a post 31st March 2015 Pension Credit member

- the member must be aged 55 or over or meet the ill-health condition (or, in the case of a woman who has a GMP, is aged 60 or over[24] or in the case of a man who has a GMP, is aged 65 or over[25]) the commutation value of **all** the member's benefits[26] in the LGPS in England and Wales and any related scheme must not exceed £10,000[27]
- the commutation payment must not exceed £10,000[28]
- the member must take **all** their benefits[29] in the LGPS in England and Wales as a lump sum i.e. the payment must extinguish all their pension rights in the Scheme including any other active, deferred, pension or pension credit entitlement, whether or not in the same LGPS pension fund, as well as the contingent benefits that would be paid to dependants on the death of the member,
- the member must not have transferred any funds out of the LGPS in England or Wales to another recognised pension scheme in the last three years (i.e. to a registered pension scheme or to a qualifying recognised overseas pension scheme), and
- the member must not be a 'controlling director'[30] - or someone connected with a controlling director - of an employer that participates in the LGPS in England or Wales.

[24] The LGPS revalues GMPs by Section 148 orders. GMPs revalued by Section 148 orders cannot be commuted before GMP Pension Age by virtue of regulation 25(1)(a) of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 [SI 2015/1677]. Although regulation 25(3) of that Statutory Instrument relaxes that requirement in the case of early retirements, that relaxation only applies where the GMP is revalued by the Fixed Rate method (which the LGPS does not use). The GMP age for a man is 65; for a woman it is age 60.
[25] The LGPS revalues GMPs by Section 148 orders. GMPs revalued by Section 148 orders cannot be commuted before GMP Pension Age by virtue of regulation 25(1)(a) of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 [SI 2015/1677]. Although regulation 25(3) of that Statutory Instrument relaxes that requirement in the case of early retirements, that relaxation only applies where the GMP is revalued by the Fixed Rate method (which the LGPS does not use). The GMP age for a man is 65; for a woman it is age 60.
[26] If a person is in receipt of a dependant's pension (i.e. a widow's or widower's pension from an opposite or same sex marriage, a civil partner's pension, a cohabiting partner's pension, or a child's pension) in addition to a pension in their own right, the value of the dependant's pension is not included (because such a pension is not payable to a "member" but to the dependant of a member).
[27] The commutation value of any AVCs that have not been crystallised should be taken as the realisable fund value of the AVCs.
[28] The commutation value and the commutation payment in respect of defined benefits in the LGPS will be the same as they are determined using the same set of actuarial factors issued by the Secretary of State / Scottish Ministers. However, the commutation value of any uncrystallised AVC funds will be the realisable AVC fund value.
[29] If a person is in receipt of a dependant's pension (i.e. a widow's or widower's pension from an opposite or same sex marriage, a civil partner's pension, a cohabiting partner's pension, or a child's pension) in addition to a pension in their own right, the reference to "all their benefits" does not include the dependant's pension (because such a pension is not payable to a "member" but to the dependant of a member).
[30] A person is a controlling director if the person is a director of the company and is within section 452(2)(b) of the Corporation Tax Act 2010 (director able to control 20% of ordinary share capital) in relation to the company.

Where:

a) an administering authority in **England and Wales** wishes to utilise the de minimis lump sum payment option under regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 for a post 31st March 2008 leaver (other than a councillor leaver), or a post 31st March 2014 Pension Credit member, or
b) an administering authority in **Scotland** wishes to utilise the de minimis lump sum payment option under regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 for a post 31st March 2015 leaver (including a councillor leaver), or a post 31st March 2015 Pension Credit member

- the member must be aged 55 or over or meet the ill-health condition[31] (or, in the case of a woman who has a GMP, is aged 60 or over[32] or in the case of a man who has a GMP, is aged 65 or over[33])
- the commutation payment must not exceed £10,000[34]
- the member must take **all** their benefits[35] in the LGPS in England and Wales as a lump sum i.e. the payment must extinguish all their pension rights in the Scheme including any other active, deferred, pension or pension credit entitlement, whether or not in the same LGPS pension fund, as well as the contingent benefits that would be paid to dependants on the death of the member,
- no transfer must have been made into the scheme during the 5 years preceding the date of the commutation payment (other than a transfer in that resulted from a relevant business transfer (being a transfer of an undertaking or a business (or part of an undertaking or a business) from one person to another which involves the transfer of at least 20 employees and in the case of which, if the transferor and the transferee are bodies corporate, they would not be treated as members of the same group for the purposes of Part 5 of the Corporation Tax Act 2010,
- the member must not have transferred any funds out of the LGPS in England or Wales to another recognised pension scheme in the last three years (i.e. to a registered pension scheme or to a qualifying recognised overseas pension scheme), and

[31] The ill-health condition is met if (a) the administering authority has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, and (b) the member has in fact ceased to carry on the member's occupation.

[32] The LGPS revalues GMPs by Section 148 orders. GMPs revalued by Section 148 orders cannot be commuted before GMP Pension Age by virtue of regulation 25(1)(a) of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 [SI 2015/1677]. Although regulation 25(3) of that Statutory Instrument relaxes that requirement in the case of early retirements, that relaxation only applies where the GMP is revalued by the Fixed Rate method (which the LGPS does not use). The GMP age for a man is 65; for a woman it is age 60.

[33] The LGPS revalues GMPs by Section 148 orders. GMPs revalued by Section 148 orders cannot be commuted before GMP Pension Age by virtue of regulation 25(1)(a) of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 [SI 2015/1677]. Although regulation 25(3) of that Statutory Instrument relaxes that requirement in the case of early retirements, that relaxation only applies where the GMP is revalued by the Fixed Rate method (which the LGPS does not use). The GMP age for a man is 65; for a woman it is age 60.

[34] The commutation value and the commutation payment in respect of defined benefits in the LGPS will be the same as they are determined using the same set of actuarial factors issued by the Secretary of State / Scottish Ministers. However, the commutation value of any uncrystallised AVC funds will be the realisable AVC fund value.

[35] If a person is in receipt of a dependant's pension (i.e. a widow's or widower's pension from an opposite or same sex marriage, a civil partner's pension, a cohabiting partner's pension, or a child's pension) in addition to a pension in their own right, the reference to "all their benefits" does not include the dependant's pension (because such a pension is not payable to a "member" but to the dependant of a member).

- the member must not be a 'controlling director'[36] - or someone connected with a controlling director - of an employer that participates in the LGPS in England or Wales.

Unlike the trivial commutation lump sum under section 166 of the Finance Act 2004 where the value of the benefits is determined by a formula set out in the Act, the commutation value of the pension for a de minimis payment is not determined by a formula set out in the relevant Statutory Instrument [there is no formula set out in SI 2009/1171] but, in respect of defined benefits in the LGPS, by the amount of the payment to be made (which is determined by the actuarial factors issued by the Secretary of State / Scottish Ministers) and, in respect of any uncrystallised AVC funds, by the realisable AVC fund value.

Subject to meeting the de minimis rules, a de minimis lump sum payment can be made in respect of pensions in payment.

Notes:

1. The requirement that a de minimis payment could not be paid if the member was 75 or over was replaced by a reference to age 60 or over with effect for the tax year 2011-12 and subsequent tax years by regulations 1(1), 1(2) and 8(5) of the Registered Pension Schemes (Miscellaneous Amendments) Regulations 2011 [SI 2011/1751]. Paragraphs 73(3), 73(4)(a) and 73(4)(b) of Part 5 of Schedule 1 to the Taxation of Pensions Act 2014 replaced, with effect for payments made on or after 6th April 2015, the requirement for the member to be 60 or over, with a requirement for the member to have met the normal minimum pension age (i.e. 55) or met the ill health condition (i.e. where the scheme administrator has received evidence from a registered medical practitioner that the member is, and will continue to be, incapable of carrying on the member's occupation because of physical or mental impairment, and the member has in fact ceased to carry on the member's occupation).
2. Readers may have noted in documents published by other bodies (such as HMRC) references to the fact that the limit on the number of small pension pots that can be taken from a pension scheme has increased from two to three. However, this is a reference to payments under regulation 11A of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171], which the LGPS Regulations make no reference to. That is because regulation 11A of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] places a limit on the number of small pension pots that can be taken from a pension scheme that is **not** a public service pension scheme or an occupational pension scheme (e.g. from a personal pension). It is that limit (which does not apply to the LGPS) which has increased from two to three. There are no restrictions on the number of small pots that a member can take from public service pension schemes and / or from occupational pension schemes.
3. Where a member has trivially commuted their LGPS defined benefits under section 166 of the Finance Act 2004 and wishes to commute the realisable fund value of the uncrystallised AVCs under regulation 11 of the Registered

[36] A person is a controlling director if the person is a director of the company and is within section 452(2)(b) of the Corporation Tax Act 2010 (director able to control 20% of ordinary share capital) in relation to the company.

Pension Schemes (Authorised Payments) Regulations 2009 at the same time, the £10,000 figure will include the value of the LGPS defined benefits commuted under section 166 of the Finance Act 2004 but not if the AVCs are commuted at a later date (because the earlier trivial commutation under section 166 of the Finance Act 2004 will have extinguished the value of the defined benefit rights). If the realisable fund value of the AVCs is commuted under regulation 11 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 after the LGPS defined benefits are commuted under section 166 of the Finance Act 2004, the realisable value of the AVC fund merely has to be £10,000 or less. Please note, only a Pre 1st April 2014 AVC can be deferred beyond payment of the main LGPS benefits.

4. Where a member does not trivially commute their LGPS benefits under section 166 of the Finance Act 2016, the member may utilise the de minimis lump sum payment option under regulation 11 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 to extinguish all their scheme benefits. The £10,000 figure will include the value of both the defined benefits (determined by the actuarial factors issued by the Secretary of State / Scottish Ministers) and the realisable fund value of any uncrystallised AVCs.
5. Where a member has trivially commuted their LGPS defined benefits under section 166 of the Finance Act 2004 and wishes to commute the realisable fund value of the uncrystallised AVCs under regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 at the same time, or later, the £10,000 figure will not include the value of the LGPS defined benefits commuted under section 166 of the Finance Act 2004 (because there is no requirement under regulation 12 for the figure to include the value of any other rights the member had under the scheme).
6. Where a member does not trivially commute their LGPS benefits under section 166 of the Finance Act 2016, the member may utilise the de minimis lump sum payment option under regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 to extinguish all their scheme benefits. The £10,000 figure will include the value of both the defined benefits (determined by the actuarial factors issued by the Secretary of State / Scottish Ministers) and the realisable fund value of the uncrystallised AVCs.

Note:
A member may only utilise regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 in respect of their uncrystallised AVCs, where the main LGPS benefits are either trivially commuted under section 166 of the Finance Act 2004 or extinguished under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009. This is because regulations 11 and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 require that all benefits are extinguished under the Scheme (i.e. not just a category of benefits such a defined benefits or defined contributions).

Examples of how to calculate the ‘small pot’ commutation payment:

Where a pension is about to become payable to an active member or a deferred member and the member commutes uncrystallised benefits then the amount of benefits to be paid upon ‘small pot’ commutation are calculated as follows:

Member's annual pension that would be paid (including any GMP)	x	Sec of State / Scottish Ministers' factor (Table A -Fac1 – gender specific)	+	
Contingent dependant's pension	x	Sec of State / Scottish Ministers' factor (Table A -Fac2 – gender specific)	=	Capitalised pension amount
Capitalised pension amount	+	3/80th Lump sum (if applicable)	=	Gross de minimis 'small pot' payment
Gross de minimis 'small pot' payment	x	25%	=	Tax free element of gross de minimis 'small pot' payment
Gross de minimis 'small pot' payment	-	Tax free element of gross de minimis 'small pot' payment	=	Taxable element of gross de minimis 'small pot' payment

Where a pension is about to become payable to a Pension Credit member and the member commutes uncrystallised benefits then the amount of benefits to be paid upon 'small pot' commutation are calculated as follows:

Member's annual pension that would be paid	x	Sec of State / Scottish Ministers' factor (Table B -Fac1 – gender specific)	=	Capitalised pension amount
Capitalised pension amount	+	3/80th Lump sum (if applicable)	=	Gross de minimis 'small pot' payment
Gross de minimis 'small pot' payment	x	25%	=	Tax free element of gross de minimis 'small pot' payment
Gross de minimis 'small pot' payment	-	Tax free element of gross de minimis 'small pot' payment	=	Taxable element of gross de minimis 'small pot' payment

Where a pension is about to become payable to an active member or a deferred member and the member decides to crystallise the benefits before having them immediately commuted, the benefits to be paid upon 'small pot' commutation are calculated as follows:

Member's post commutation annual pension to be paid (including any GMP)	x	Sec of State / Scottish Ministers' factor (Table A -Fac1 – gender specific)	+	
Contingent dependant's pension	x	Sec of State / Scottish Ministers' factor (Table A -Fac2 – gender specific)	=	Gross de minimis 'small pot' payment (all taxable)

Gross de minimis 'small pot' payment (all taxable)	+	3/80th Lump sum (if applicable) and any pension commuted at 12:1	=	Total payment

Where a pension is about to become payable to a Pension Credit member and the member decides to crystallise the benefits before having them immediately commuted, the benefits to be paid upon 'small pot' commutation are calculated as follows:

Member's annual pension to be paid (after commutation, where applicable)	x	Sec of State / Scottish Ministers' factor (Table B -Fac1 – gender specific)	=	Gross de minimis 'small pot' payment (all taxable)
Gross de minimis 'small pot' payment (all taxable)	+	3/80th Lump sum (if applicable) and any pension commuted at 12:1 (where applicable)	=	Total payment

Where a pension is already in payment to a scheme member (other than a survivor) the benefits to be paid upon 'small pot' commutation are calculated as follows:

Member's annual pension in payment (including any GMP)	x	Sec of State / Scottish Ministers' factor (Table A -Fac1 – gender specific)	+	
Contingent dependant's pension	x	Sec of State / Scottish Ministers' factor (Table A -Fac2 – gender specific)	=	Gross de minimis 'small pot' payment (all taxable)

Where a pension is already in payment to a Pension Credit member the benefits to be paid upon 'small pot' commutation are calculated as follows:

Member's annual pension in payment (including any GMP)	x	Sec of State / Scottish Ministers' factor (Table B -Fac1 – gender specific)	=	Gross de minimis 'small pot' payment (all taxable)

Commutation payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]

This allows a commutation payment to be made where:

- there has been a relevant accretion in respect of the member
- the payment extinguishes the member's entitlement to benefits under the LGPS in England and Wales (for a member of the LGPS in England or Wales) or under the LGPS in Scotland (for a member of the LGPS in Scotland)
- the commutation payment does not exceed £10,000;
- the commutation payment does not exceed the value of the accretion; and
- the commutation payment is made no later than 1st June 2010 if the relevant accretion occurred before 1st December 2009 or, in any other case, no later than six months after the date the accretion occurs.

A relevant accretion occurs if:

(a) after there is a recognised transfer to another registered pension scheme or to a qualifying recognised overseas pension scheme in respect of the member, or

(b) after a scheme pension or annuity is purchased for the member by the pension scheme from an insurance company

- a payment ("the payment in") is received by the scheme in respect of the member, other than a contribution into the pension scheme or an excluded transfer into the pension scheme;
- there is an allocation to the arrangement in the amount by which the value of the sums and assets held for the purposes of the arrangement exceeds the value the scheme administrator had believed they had; and
- the administering authority becomes aware that the member is entitled to a benefit under the pension scheme, provided-
    - (i) the administering authority had not been aware of the entitlement before the event in paragraph (a) or (b), and
    - (ii) the administering authority could not reasonably have been expected to be aware of it before that event.

The value of the accretion in the case of the first bullet point above is the amount of the payment; or in the case of an allocation under the second bullet point above is the amount by which the value of the sums and assets exceeds the value they had been believed to have been; and in the case of the third bullet point above is the value of the benefit to which the member is entitled.

From 27th March 2014 the commutation payment limit for payments under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] increased from £2,000 to £10,000 for all payments made under those regulations on or after 27th March 2014.

It is unlikely that administering authorities will normally encounter situations where a payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] would be paid. However, there are occasionally cases where, for example, a pricing error has occurred in relation to the member's investments resulting in a requirement to make such a payment after the member has used the AVC to purchase a scheme pension or annuity.

Note that "member" for the purposes of regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] does not, for the same reasons set out in the section above on payments under regulations 11 or 12 of those regulations, include a person in receipt of a survivor's pension (i.e. a pension payable to a widow or widower of an opposite or same sex marriage, a civil partner, a cohabiting partner, or child).

Tax

Tax (other than tax on interest)

By virtue of section 636B of the Income Tax (Earnings and Pensions) Act 2003, where a member is paid a trivial commutation lump sum under section 166 of the Finance Act 2004, the member is treated as having taxable pension income for the tax year in which the payment is made equal to the amount of the lump sum. However, if immediately before the trivial lump sum is paid the member has uncrystallised rights under one or more arrangements under the Scheme, the amount of the taxable pension income -

(a) if all of the member's rights under the Scheme are uncrystallised, is 75% of the lump sum, and
(b) otherwise is reduced by 25% of the value of the uncrystallised rights.

"Uncrystallised rights" is defined and calculated in accordance with section 212 of Finance Act 2004.

By virtue of section 636C of the Income Tax (Earnings and Pensions) Act 2003, where a survivor is paid a trivial commutation lump sum death benefit under section 168 of the Finance Act 2004, that person is treated as having taxable pension income for the tax year in which the payment is made equal to the amount of the lump sum.

The guidance on taxation of trivial lump sum payments within PTM063500 at https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063500#IDAGPJBC says:

Operating PAYE on the payment

Where the lump sum payment is in respect of a pension already in payment, use the PAYE code already in operation.

Where the pension being commuted was not already in payment, use the basic rate (BR) tax code.

Where the recipient is not UK tax resident then use the emergency tax code.

Guidance on how to operate PAYE correctly on these lump sums can be found in CWG2 - Employer's further guide to PAYE and NICs. Find links to this and other guidance under heading 'Operating PAYE on the lump sum payment' at PTM061200.

Suggested wording pension payers can use when making the lump sum payment

"Your form P45 details include the amount of tax deducted from your pension commutation lump sum. The tax deducted may not be the right amount due when all of your income for the year is taken into account.

After next 5 April HM Revenue & Customs will check if you have paid the correct amount of tax, and if not they will contact you. But if you think you have paid too much tax you can ask HM Revenue & Customs for a tax refund now - you do not have to wait until 5 April.

To claim a refund you can complete form P53 online without needing to contact HMRC directly. You should find this easier to do than completing the form manually. The form is available on GOV.UK website.

If you prefer to complete the form manually, call the Taxes Helpline on 0300 200 3300 and ask for form P53. It helps if you have your National Insurance number to hand when you call."

The guidance on 'small pot' commutation payments at PTM063600 https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063600 refers readers to the CWG2 guide.

The CWG2 guide for 2017/18 can be found at https://www.gov.uk/government/publications/cwg2-further-guide-to-paye-and-national-insurance-contributions at paragraph 2.2.5 it says:

Trivial commutation payments relating to registered pension schemes
Where a trivial commutation payment is taxable in whole or part as pension income, then tax has to be deducted through PAYE from the taxable amount.

Commutation where pension payments have already started:
- *treat the trivial commutation payment in the same way as the earlier pension payments, and operate PAYE in the normal way*
- *complete form P45 including the taxable commutation payment and the pension payments made in the year*
- *give the P45 to the pension recipient*
- *enter the date of payment as the date of leaving on their payroll record so this is sent to HMRC when you report your payroll information*
- *indicate the trivial commutation type on the Full Payment Submission (FPS)*

— A – Trivial lump sum (TCLS)
— B – Other lump sum (from personal pension schemes)
— C – Other lump sum (from lump sum from occupational/public service pension schemes)
- *enter on the FPS*

— the total amount of the lump sum, or sums, paid in the 'trivial commutation payment' field
— the taxable element of the lump sum, or sums, paid in the 'taxable pay to date' and the 'taxable pay in this period' fields
— any non-taxable element of the lump sum, or sums, paid in the 'non tax or NIC payment' field.

Commutation payment where pension payments have not started:
- *use the basic rate (BR) code on a week 1/month1 basis when putting the trivial commutation payment through your payroll*
- *set the occupational pension indicator*

• use the date of payment as the leaving date on their payroll record so this is sent to HMRC when you report your payroll information – a starting date or an entry in the annual amount of Occupational Pension field is not required
• prepare a P45 and give it to the pension recipient

• indicate the trivial commutation type on the FPS
— A – Trivial lump sum (TCLS)
— B – Other lump sum (from personal pension schemes)
— C – Other lump sum (from lump sum from occupational/public service pension schemes)
• enter on the FPS
— the total amount of the lump sum, or sums, paid in the 'trivial commutation payment' field
— the taxable element of the lump sum, or sums, paid in the 'taxable pay to date' and the 'taxable pay in this period' fields
— any non-taxable element of the lump sum, or sums, paid in the 'non tax or NIC payment' field.

Tax on interest

If payment of the trivial commutation or small pot lump sum is delayed necessitating an interest payment under regulation 81 of the LGPS Regulations 2013 or regulation 79 of the LGPS (Scotland) Regulations 2014 or equivalent provisions in earlier regulations, the interest is treated as a scheme administration member payment.

A scheme administration member payment is not liable to any specific charge under the pension's tax legislation. Instead, interest payments are, in accordance with section 369 of the Income Tax (Trading and Other Income) Act 2005 – known as ITTOIA - (formerly Case III Schedule D) treated as normal taxable income.

HMRC has confirmed that administering authorities must **not** make the necessary deduction of income tax from the interest payment. This is because section 371 ITTOIA places liability for income tax charged on interest on the person receiving or entitled to the interest. There is no provision for tax to be deducted and accounted for by the payer. Nor indeed is there an HMRC process by which a scheme administrator could account for tax so deducted. Furthermore, it is unlikely that the scheme administrator will know the correct rate of tax to deduct; if basic rate tax were deducted this would mean some individuals having to either reclaim overpaid paid tax if they weren't a basic rate taxpayer or account for higher rate tax through a Self-Assessment tax return. And as interest is not employment income, it cannot be paid and tax accounted for through the employer's payroll.

Instead, administering authorities must advise the member that they are responsible for accounting for the tax on the payment and, accordingly, they should declare the payment to HMRC. If the member requests it in writing, the authority processing any payment shall provide a written statement showing the gross amount of the payment, the amount of tax deducted (which will obviously be nil) and the actual amount paid. That is all that is legally required, although the majority of payers of interest in such circumstances will provide the details by way of a voucher or printout automatically to the recipient.

Some administering authorities were concerned that the tax should be deducted in accordance with section 349(2)* and 350 of Income and Corporation Taxes Act 1988 ("ICTA") which broadly requires local authorities to deduct tax from interest. However, following correspondence with HMRC it was concluded that interest from the LGPS is not interest "paid by a local authority", albeit in practice, local authorities might physically process the payments. Accordingly, HMRC reconfirmed that tax should not be deducted from interest on benefits being paid from the LGPS and these payments fall within sections 369-371 of ITTOIA 2005.

[*Now s874 of Income Tax Act 2007]

It is worth noting that there is no requirement to automatically report these scheme administration member payments to HMRC.

The LGPC Secretariat contacted HMRC to determine whether there was a need to report these payments under general local authority requirements (this is covered at https://www.gov.uk/government/publications/type-17-and-18-bank-building-society-interest-and-other-interest-returns-of-interest-and-eusd/bank-and-building-society-bbsi-european-union-savings-directive-eusd-and-other-oi-returns-of-interest#guidance-notes). However, HMRC confirmed that the interest LGPS administering authorities pay does not have to be reported as it is more by way of "compensation" for late payment than true interest (i.e. where a person invests money with the expectation of getting an interest return on the money).

There is information on the HMRC website about scheme administration member payments - see http://www.hmrc.gov.uk/manuals/ptmanual/ptm143000.htm

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