

Local Government Pensions Committee
Secretary, Mike Walker

LGPC BULLETIN NO. 46A – MARCH 2007

OVERSEAS TRANSFERS – POSITION FROM 6 APRIL 2006

1. This Bulletin replaces Bulletin 46 of January 2007 which had set out the statutory provisions covering overseas transfers from 6 April 2006. .
2. Bulletin 46A corrects an error made in paragraphs 20 and 43 of Bulletin 46. The corresponding paragraphs in Bulletin 46A now make it clear that the provisions of regulation 3 of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 [SI 2006/499] do **not** apply to the LGPS. As a result, the second bullet points in paragraphs 27 and 46 of Bulletin 46 are superfluous and have not been replicated in this Bulletin.

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SECTION A - TRANSFERS OUT - ACTIVE AND DEFERRED MEMBERS

Can a transfer out be made from the LGPS to an overseas scheme or arrangement?

Introduction

1. When considering whether a transfer can be made from the LGPS to and overseas scheme or arrangement there are four key matters to consider i.e.
 - is such a transfer permitted by the Local Government Pension Scheme Regulations 1997 or, as appropriate, by the Local Government Pension Scheme (Scotland) Regulations 1998?
 - what conditions have to be met for such a transfer to be covered by the Pension Schemes Act 1993?
 - what HMRC¹ conditions have to be met for such a transfer to be an authorised transfer for the purposes of the Finance Act 2004?
 - what DWP conditions have to be met if the rights to be transferred include a Guaranteed Minimum Pension (in respect of pre 6 April 1997 contracted-out membership), or Section 9(2B) rights (in respect of post 5 April 1997 contracted-out membership), or safeguarded rights (in respect of a Pension Credit)?

The provisions of the Local Government Pension Scheme Regulations

2. By virtue of regulation 4 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 and the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998 the transfer values of members who ceased active membership and became deferred members prior to 1 April 1998 are to be dealt with under the provisions of, respectively, the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Scotland) Regulations 1998.
3. The transfer values of members who ceased active membership and became deferred members on or after 1 April 1998 are also to be dealt with under the provisions of the Local Government Pension Scheme Regulations 1997 or, as appropriate, the Local Government Pension Scheme (Scotland) Regulations 1998.
4. Regulation 116(2) of the Local Government Pension Scheme Regulations 1997 and regulation 116(2) of the Local Government Pension Scheme (Scotland) Regulations 1998 stipulate that, for transfer purposes, Chapter IV of Part IV of the Pension Schemes Act 1993 shall apply to all members of the

¹ It should be noted that HMRC no longer has reciprocal agreements with Jersey, the Isle of Man, Guernsey and the Republic of Ireland. Such transfers are now dealt with in the same way as any other transfer abroad.

Scheme regardless of the date of termination of their pensionable service (i.e. even if they left pre 1 January 1986).

5. However, regulation 124 of the Local Government Pension Scheme Regulations 1997 and regulation 125 of the Local Government Pension Scheme (Scotland) regulations 1998 provide for different treatment in respect of Community Scheme transferees i.e. members who become employed by a Community institution. Such transfers should be dealt with in accordance with guidance from the Government Actuary. Any such cases should be referred on an individual, case by case basis.

The provisions of the Pension Schemes Act 1993

6. Section 93 of the Pension Schemes Act 1993 states that Chapter IV of Part IV of the Pension Schemes Act 1993 (right to a cash equivalent transfer value) applies to any member of an occupational pension scheme (such as the LGPS)
 - a) whose pensionable service has terminated at least one year before normal pension age, and
 - b) who on the date on which pensionable service terminated had accrued rights to benefit under the scheme.
7. The proviso that section 93 of the Pension Schemes Act 1993 only applies if the member ceased pensionable service on or after 1 January 1986 - see regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] - has been disapplied in the LGPS by virtue of regulation 116(2) of the Local Government Pension Scheme Regulations 1997 and of the Local Government Pension Scheme (Scotland) Regulations 1998.
8. Sections 95(2), 95(7) and 95(8) of the Pension Schemes Act 1993 provide that a member who acquires a right to a cash equivalent transfer value may only exercise that right by opting, at least one year before the date on which the member attains normal pension age or, if later, within six months of the termination date, for the managers of the scheme (i.e. the LGPS) to transfer the value so as to
 - a) acquire transfer credits in another occupational pension scheme, or
 - b) acquire rights under a personal pension scheme, or
 - c) purchase one or more annuities from one or more insurers, or
 - d) subscribe to some other pension arrangement which meets prescribed conditions.
9. Section 73(2)(b) of the Pension Schemes Act 1993 states that a scheme **may**, instead of providing a short service benefit (i.e. a deferred pension), provide such alternatives to short service benefit as may be prescribed. Regulation 11A(1) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 [SI 1991/167] stipulates that, for the purposes of section 73(2) of the Pension Schemes Act 1993 a scheme **may**, instead of providing

a short service benefit, provide for the member's accrued rights to be transferred, if the member consents, to an **overseas arrangement** and regulation 11A(2) defines an **overseas arrangement** as a scheme or arrangement, **other than an occupational pension scheme**, which

- a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
- b) is not an appropriate scheme; and
- c) is administered wholly or primarily outside the United Kingdom.

However, there is nothing in the Local Government Pension Scheme Regulations 1997 or the Local Government Pension Scheme (Scotland) Regulations 1998 which specifies that, for the purposes of section 73(2) of the Pension Schemes Act 1993, the LGPS **shall** provide for a transfer to an **overseas arrangement** in place of a short service benefit. Section 73(2) cannot, therefore, be relied upon as giving the statutory power to administering authorities to make a transfer to an **overseas arrangement**.

10. We must, therefore, look to the provisions contained in sections 95(2)(a) and (d) of the Pension Schemes Act 1993.

11. By virtue of section 95(2)(a) of the Pension Schemes Act 1993 a transfer from the LGPS can be made to an **occupational pension scheme**; but does this encompass an overseas occupational pension scheme?

12. An **occupational pension scheme** is defined by section 1 of the Pension Schemes Act 1993 as:

(1)

- a pension scheme -

(a) that -

- (i) for the purpose of providing benefits to, or in respect of, people with service in employments² of a description³, or
- (ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people,

is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force, and

(b) that has its main administration in the United Kingdom or outside the member States,

- or a pension scheme that is prescribed or is of a prescribed description.

² Employment includes any trade, business, profession, office or vocation and "employed" shall be construed accordingly

³ This includes a description framed by reference to an employment being of any of two or more kinds.

- (2) This subsection applies -
- (a) where people in employments of the description concerned are employed by someone, to a person who employs such people,
 - (b) to a person in an employment of that description, and
 - (c) to a person representing interests of a description framed so as to include -
 - (i) interests of persons who employ people in employments of the description mentioned in paragraph (a), or
 - (ii) interests of people in employments of that description.
- (3) For the purposes of subsection (2), if a person is in an employment of the description concerned by reason of holding an office (including an elective office) and is entitled to remuneration for holding it, the person responsible for paying the remuneration shall be taken to employ the office-holder.

The prescribed descriptions for the purposes of sub-paragraph (1) above are set out in regulation 2 of the Pension Schemes (Categories) Regulations 2005 [SI 2005/2401]. This prescribes three descriptions of pension scheme as occupational pension schemes i.e.

- (a) schemes that have their main administration in the United Kingdom or outside the member States and are established by a person other than an employer of persons benefiting from the scheme, but in respect of whom such employers contribute to the scheme;
- (b) pension schemes established pursuant to the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 [S.I. 1999/859] (which might not otherwise be occupational pension schemes because they do not have their main administration in the United Kingdom); and
- (c) schemes fulfilling the criteria set out in the definition of "public service pension scheme" in section 1(1) of the Pension Schemes Act 1993 (except the requirement to be an occupational pension scheme).

13. So, in general, an overseas scheme would only be an **occupational pension scheme** for the purposes of section 95(2)(a) of the Pension Schemes Act 1993 if it had its main administration in the United Kingdom or outside the member States. This would appear to preclude what might otherwise generally be considered to be an occupational pension scheme which is administered in a member State but, as these do not seem to fall within the definition of an occupational pension scheme for the purposes of section 95(2)(a) of the Pension Schemes Act 1993, they will by default be an **overseas arrangement** (see below).
14. By virtue of section 95(2)(d) of the Pension Schemes Act 1993, a transfer from the LGPS might be permissible to an **overseas arrangement** if it is an "other pension arrangement" which meets prescribed conditions.

By virtue of section 95(5)(a) of the Pension Schemes Act 1993, section 95(2)(d) is generally to be omitted, apart from where prescribed circumstances apply. Those prescribed circumstances are set out in regulation 12(4) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847]. Regulation 12(4) of that SI says that if a member who has acquired a right to a cash equivalent transfer value asks the managers of the scheme to use the cash equivalent to subscribe to an **overseas arrangement** then section 95(2)(d) of the Pension Schemes Act 1993 will apply; and regulation 12(6) of that SI specifies that an **overseas arrangement** shall have the same meaning as in the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462]. Regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] defines an **overseas arrangement**⁴ as a scheme or arrangement, **other than an occupational pension scheme**, which

- a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
- b) is not an appropriate personal pension scheme; and
- c) is administered wholly or primarily outside the United Kingdom.

Regulation 12(5) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] specifies that, for the purposes of section 95(2)(d) of the Pension Schemes Act 1993, the prescribed requirements that have to be met for a transfer to an **overseas arrangement** are that the pension arrangement to which the transfer payment is to be made:

- i) is an **overseas arrangement**; and
- ii) if the cash equivalent is or includes section 9(2B) rights, it is a pension arrangement to which a transfer payment in respect of such rights may be made in accordance with regulation 11 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 196/1462]; and
- iii) [if the scheme from which rights are transferred⁵] is registered under section 153 of the Finance Act 2004 [or] is a **qualifying recognised overseas pension scheme** as defined in section 169 of the Finance Act 2004.

15. So, for the purposes of the Pension Schemes Act 1993, a transfer can be made to an overseas **occupational pension scheme** or to an **overseas arrangement**. However, it is also necessary to ensure that:
- HMRC provisions governing overseas transfers are met i.e. the overseas scheme or arrangement is a **qualifying recognised overseas pension scheme** for the purposes of the Finance Act 2004; and
 - DWP provisions governing the transfer of contracted-out rights are met.

⁴ An "overseas" arrangement is also defined in section 181(1) of the Pension Schemes Act 1993. The definition is the same as in SI 1996/1462 with the exception that section 181(1) refers to "Great Britain" rather than "the United Kingdom".

⁵ This requirement is nonsensical. Either the words in the first set of square brackets are incorrect and should be ignored or the word "or" in the second set of square brackets is incorrect and should be ignored.

HMRC conditions - the Finance Act 2004

16. Section 169 of the Finance Act 2004 says that for a transfer from the LGPS to be a **recognised transfer** the transfer must be to another **registered pension scheme** or to a **qualifying recognised overseas pension scheme**.
17. For a scheme to be classed as an **overseas pension scheme** under section 150(7) of the Finance Act 2004 it:
- cannot be a **registered pension scheme**
 - must be established outside the United Kingdom
 - must meet the requirements prescribed in the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 [SI2006/206] i.e. it must be 'recognised for tax purposes' by the country or territory in which it is established and it must be regulated as a pension scheme in the country in which it is established, or, if there is no body by which it could be regulated, then either the scheme must
 - (i) be established in another member State, Norway, Iceland or Liechtenstein; or
 - (ii) provide that at least 70% of a member's UK tax-relieved scheme funds will be designated by the scheme manager for the purpose of providing that individual with an income for life, and the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) are payable no earlier than they would be if pension rule 1 in section 165⁶ applied.
18. Under section 150(8) of the Finance Act 2004 a **recognised overseas pension scheme** is an **overseas pension scheme** that meets the following additional requirements prescribed under The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 [SI 2006/206]. It must:
- be established in a Member State of the European Union, Norway, Liechtenstein or Iceland, or
 - be established in a country or territory with which the UK has a Double Taxation Agreement that contains exchange of information and non-discrimination provisions⁷, or
 - satisfy the requirement that, at the time of the **recognised transfer**, the rules of the scheme provide that:

⁶ Pension rule 1 in section 165 provides that no payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the scheme.

⁷ See <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM14101046.htm>

- at least 70% of the funds transferred will be designated by the scheme manager for the purpose of providing the member with an income for life,
- the pension benefits (and any associated lump sum) payable to the member under the scheme, to the extent that they relate to the transfer, are payable no earlier than they would be if pension rule 1 in section 165⁸ of the Finance Act 2004 applied, and
- membership of the scheme is open to persons resident in the country or territory in which it is established.

19. Under section 169 of the Finance Act 2004 a **recognised overseas pension scheme** is a **qualifying recognised overseas pension scheme** if -

- a) the scheme manager has given to the Inland Revenue notification that it is a **recognised overseas pension scheme** and has provided any such evidence that it is a recognised overseas pension scheme as the Inland Revenue may require,
- b) the scheme manager has undertaken to the Inland Revenue to inform the Inland Revenue if it ceases to be a **recognised overseas pension scheme**,
- c) the scheme manager has undertaken to the Inland Revenue to comply with any prescribed information requirements imposed on the scheme manager, and
- d) the **recognised overseas pension scheme** is not excluded from being a **qualifying recognised overseas pension scheme**⁹.

Note: The "prescribed information requirements" are set out in the Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 [SI 2006/208].

20. Section 169(1B) of the Finance Act 2004 adds a further proviso. It says that the Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent rights in respect of a scheme pension to which a member of a **registered pension scheme** has become **entitled** ("the original scheme pension") -

- (a) the transfer is not a **recognised transfer** unless those sums and assets are, after the transfer, applied towards the provision of a scheme pension (a "new scheme pension"), and

⁸ Pension rule 1 in section 165 provides that no payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the scheme.

⁹ A scheme may be excluded from being a qualifying recognised overseas pension scheme if HMRC decides that there has been a significant failure to comply with any information requirements.

(b) if they are so applied, the new scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original scheme pension.

The regulations referred to in section 169(1B) of the Finance Act 2004 have been made. Regulation 3 of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 [SI 2006/499] says that the transfer will not be a **recognised transfer** unless the transfer is applied towards the provision of a scheme pension (a "new scheme pension").

However, section 169(1B) only applies where the person has become **entitled** to the pension. Section 165(3)(b) of the Finance Act 2004 says that a person becomes **entitled** to a pension under a registered pension scheme when the person first acquires an actual (rather than a prospective) right to receive the pension (and, for this purpose, the abatement of a scheme pension under a public service pension scheme is not to be taken to affect the right to receive it). Thus, section 169(1B) of the Finance Act 2004 and the regulations made under it do not apply to the LGPS as the LGPS does not permit a transfer in respect of a pension that is already in payment.

DWP conditions if the transfer includes a GMP or Section 9(2B) rights

21. Regulation 11 of the Contracting-out (Transfer and Transfer Payments) Regulations 1996 [SI 1996/1462] states that a transfer payment in respect of an earner's section 9(2B) rights may be made to an **overseas scheme** or an **overseas arrangement** if

- a) the earner consents in writing;
- b) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that, where the receiving scheme is an **occupational pension scheme**, the earner has entered employment to which the receiving scheme applies;
- c) the earner has acknowledged in writing that he accepts that the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or its trustees or administrators to provide any particular value or benefit in return for the transfer payment; and
- d) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that the earner has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

22. Regulation 6 of the Contracting-out (Transfer and Transfer Payments) Regulations 1996 [SI 1996/1462] states that a transfer payment including a GMP may be made to an **overseas scheme** or to an **overseas arrangement** if

- a) the earner consents in writing;
- b) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that, where the receiving scheme is an **occupational pension scheme**, the earner is in employment to which the receiving scheme applies;
- c) the transfer payment (whether or not it forms part of a larger payment in respect of both guaranteed minimum pensions and other rights) is of an amount at least equal to the cash equivalent of the earner's accrued rights to guaranteed minimum pensions, as calculated and verified in a manner consistent with regulations made under section 97 of the Pension Schemes Act 1993;
- d) the earner has acknowledged in writing that he accepts that the scheme to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or its trustees or administrators to provide any particular value or benefit in return for the transfer payment; and
- e) the 'trustees' of the transferring scheme have taken reasonable steps to satisfy themselves that the earner has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

23. An **overseas scheme** is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as an **occupational pension scheme** which is administered wholly or primarily outside the United Kingdom but does not include a salary-related contracted-out scheme nor one in respect of which section 53 of the Pension Schemes Act 1993 applies by virtue of section 52(1) of that Act (former contracted-out schemes under the supervision of the Inland Revenue).¹⁰

24. A salary related contracted-out scheme is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as an occupational pension scheme which is contracted-out by virtue of satisfying section 9(2) of the Pension Schemes Act 1993.

¹⁰ Note that regulation 6 of the draft Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 proposes to amend the definition as follows:

(2) In regulation 1(2) (interpretation) for the definition of “overseas scheme” substitute— ““overseas scheme” means—

- (a) an occupational pension scheme which has its main administration outside the member States; or
- (b) a European pensions institution as defined in section 293(8) of the Pensions Act 2004 (functions of Regulator in relation to institutions administered in other member States),

but does not include a salary-related contracted-out scheme nor one in respect of which section 53 of the 1993 Act applies by virtue of section 52(1) of that Act.”.

Overall Summary

25. So, a member of the LGPS may transfer the cash equivalent of his / her accrued pension rights to an **overseas scheme** or to an **overseas arrangement** provided it is a **qualifying recognised overseas pension scheme** which will provide a pension in return for the transfer and, where there are section 9(2B) rights, the requirements set out in paragraph 21 are met and / or where there are GMP rights, the requirements set out in paragraph 22 are met.
26. If a member transfers his / her main LGPS benefits to a **qualifying recognised overseas pension scheme**, any AVC pot will also be transferred to that scheme or arrangement.
27. Administering authorities should
- ask for evidence that the **overseas scheme** or **overseas arrangement** is a **qualifying recognised overseas pension scheme**. The scheme should have a letter of acceptance from HMRC stating that the scheme is a **qualifying recognised overseas pension scheme** and showing the unique QROPS reference number for that scheme. Alternatively, administrators can check if a scheme is a **qualifying recognised overseas pension scheme** by writing to Audit and Pension Scheme Services, Yorke House, Castle Meadow Road, Nottingham, NG2 1BG. It is understood that HMRC intend to provide a list of **qualifying recognised overseas pension schemes** on their internet site (but this will not include any such scheme that does not want its name to be shown there);
 - take the steps set out in paragraphs 21 and / or 22 above;
 - report the transfer on the Event Report to HMRC. The Event Report must be received by HMRC by 31 January following the end of the tax year in which the transfer took place;
 - check that the transfer value does not exceed the member's Lifetime Allowance. If it does there is a tax charge of 25% (see Section C below).
28. Note that a transfer from a **registered pension scheme** to a non-UK pension scheme that is not a **qualifying recognised overseas pension scheme** is not a **recognised transfer**. Such a transfer would be an **unauthorised member payment** and would result in a tax charge to the member of 40% of the transfer payment and a scheme sanction charge of up to 40% on the administering authority.
29. Scheme administrators should notify the Inland Revenue National Insurance Contributions Office if GMP and / or Section 9(2B) rights are transferred abroad by completing form CA1890. The completed form must be sent to HM Revenue and Customs, National Services to Pensions Industry, Benton Park View, Newcastle upon Tyne NE98 1ZZ and should be sent within five weeks of the date of the transfer payment. See Termination of Contracted-out Employment Manual, CA14, for further information.

SECTION B - TRANSFERS OUT - PENSION CREDIT MEMBERS

Can a transfer out be made from the LGPS to an overseas scheme or arrangement in respect of a Pension Credit member?

Introduction

30. When considering whether a transfer can be made in respect of a Pension Credit member from the LGPS to an overseas scheme or arrangement there are four key matters to consider i.e.

- is such a transfer permitted by the Local Government Pension scheme Regulations 1997 or, as appropriate, by the Local Government Pension Scheme (Scotland) Regulations 1998?
- what conditions have to be met for such a transfer to be covered by the Pension Schemes Act 1993 and the Welfare Reform and Pensions Act 1999?
- what HMRC conditions have to be met for such a transfer to be an authorised transfer for the purposes of the Finance Act 2004?
- what DWP conditions have to be met if the rights to be transferred include a Guaranteed Minimum Pension (in respect of pre 6 April 1997 contracted-out membership) or Section 9(2B) rights (in respect of post 5 April 1997 contracted-out membership)?

The provisions of the Local Government Pension Scheme Regulations

31. Regulation 147(1) of the Local Government Pension Scheme Regulations 1997 stipulates that an administering authority may discharge its liability in respect of a pension credit in accordance with either sub-paragraph (2) or sub-paragraph (3) of paragraph 1 of Schedule 5 to the Welfare Reform and Pensions Act 1999.

32. Regulation 144(1) of the Local Government Pension Scheme (Scotland) Regulations 1998 stipulates that an administering authority may discharge its liability in respect of a pension credit in accordance with paragraph 1(2)(b) of Schedule 5 to the Welfare Reform and Pensions Act 1999.

The provisions of the Pension Schemes Act 1993 and the Welfare Reform and Pensions Act 1999

33. Section 101G(2) of the Pension Schemes Act 1993 states that a Pension Credit member may not exercise the right to transfer out a Pension Credit if there is less than a year to go until the Pension Credit member reaches Normal Benefit Age (NBA in the LGPS is age 65).

34. Regulation 7 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053] cross refers to paragraph 1 of Schedule 5 of the Welfare Reform and Pensions Act 1999 which sets out the mode of discharge of liability for a Pension Credit from a funded pension scheme as follows (and which is mirrored in regulations 144(2) and (3) of the Local Government Pension Scheme (Scotland) Regulations 1998):

- " 1.(1) This paragraph applies to a pension credit which derives from-
- (a) a funded occupational pension scheme, or
 - (b) a personal pension scheme.
- (2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit-
- (a) with his consent, or
 - (b) in accordance with regulations made by the Secretary of State.
- (3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if
- (a) the qualifying arrangement is not disqualified as a destination for the credit,
 - (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
 - (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.
- (4) For the purposes of sub-paragraph (2), no account is to be taken of consent of the person entitled to the pension credit unless-
- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under sub-paragraph (3), or
 - (b) it is not withdrawn within 7 days of receipt of such notice."

To summarise, regulation 7 sets out the process to follow where the person entitled to the credit ("ex-spouse") has failed to provide her/his consent to have the pension credit conferred upon her/him. The Scheme can discharge the liability by granting a Pension Credit in the Scheme or by paying the amount of the credit to a qualifying arrangement with a view to acquiring rights under that arrangement for the "ex-spouse" i.e. the Scheme must make a decision on their behalf.

In the LGPS, the default option is a Pension Credit in the LGPS. A transfer to a qualifying arrangement will only be made where the "ex-spouse" so requests.

35. Regulation 10 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053] and regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 [SI 2000/1054] stipulate that the value of the pension credit must be calculated and verified in such a manner as approved by the Government Actuary (or an actuary authorised by the Government Actuary to act on his behalf) using the same methods adopted and assumptions made as when other pension rights are received, and must be consistent with the Guidance Note 11 'Retirement Benefit Schemes – Transfer Values', published by the Institute of Actuaries and the Faculty of Actuaries.
36. Regulation 11 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053], when read in conjunction with paragraph 6 (1) of Schedule 5 of the Welfare Reform and Pensions Act 1999, sets out the qualifying arrangements for the destination of a pension credit (which are mirrored in regulation 145 of the Local Government Pension Scheme (Scotland) Regulations 1998) . These are-
- a) an **occupational pension scheme**¹¹,
 - b) a personal pension scheme,
 - c) an appropriate annuity contract,
 - d) an appropriate policy of insurance, and
 - e) an **overseas arrangement** within the meaning of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.
37. Regulation 12 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053] and Paragraph 7 of Schedule 5 of the Welfare Reform and Pensions Act 1999 disqualifies a pension arrangement as a destination for a pension credit unless, where the credit is derived from a scheme which is a **registered pension scheme** under section 153 of the Finance Act 2004 (e.g. the LGPS), the pension arrangement is
- a) registered to receive pension credits; or
 - b) satisfies such requirements as the Secretary of State may prescribe, i.e. it is:
 - i) an arrangement which carries on pension business as defined by section 431B of the Income and Corporation Taxes Act 1988 (meaning of pension business); or
 - ii) an **overseas arrangement** within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] (citation, commencement and interpretation); or
 - iii) an **overseas scheme** within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462].

¹¹ See definition at paragraph 12.

This is mirrored in regulation 146(1) of the Local Government Pension Scheme (Scotland) Regulations 1998.

38. Regulation 13 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053] and Paragraph 7 of Schedule 5 of the Welfare Reform and Pensions Act 1999 disqualify a pension arrangement as a destination for a pension credit unless, where the rights by reference to which the amount of the credit is determined are or include contracted-out or "safeguarded rights", the pension arrangement is

- 1) of a description prescribed by the Secretary of State, namely:
 - a) a contracted-out salary related occupational pension scheme which satisfies the requirements of section 9(2) of the Pension Schemes Act 1993 (requirements for certification of occupational salary related schemes); or
 - b) a contracted-out money purchase occupational pension scheme which satisfies the requirements of section 9(3) of the Pension Schemes Act 1993 Act (requirements for certification of occupational money purchase schemes); or
 - c) a contracted-out occupational pension scheme to which section 149 of the Pensions Act 1995 (hybrid occupational pension schemes) applies; or
 - d) an appropriate personal pension scheme within the meaning of section 7(4) of the Pension Schemes Act 1993 Act (issue of appropriate scheme certificates); or
 - e) an annuity contract or an insurance policy which satisfies the requirements of paragraph 6 of Schedule 5 to the Welfare Reform and Pensions Act 1999 (qualifying arrangements);
 - f) an **overseas arrangement** within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462]; or
 - g) an **overseas scheme** within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462], and
- 2) satisfies such requirements as the Secretary of State may prescribe, i.e. in relation to the descriptions of pension arrangement referred to in paragraphs (1)(f) and (g) above, the requirements specified in regulation 11 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] (transfer payments to overseas schemes or arrangements in respect of section 9(2B) rights), as if the references in that regulation to -
 - (i) 'earner' were to 'the person entitled to a pension credit'; and
 - (ii) 'accrued section 9(2B) rights' were to 'safeguarded rights'.

These provisions are mirrored in regulation 146(2) of the Local Government Pension Scheme (Scotland) Regulations 1998.

HMRC conditions - the Finance Act 2004

39. Section 169 of the Finance Act 2004 says that for a transfer from the LGPS to be a **recognised transfer** the transfer must be to another **registered pension scheme** or to a **qualifying recognised overseas pension scheme**.

40. For a scheme to be classed as an **overseas pension scheme** under section 150(7) of the Finance Act 2004 it:

- cannot be a **registered pension scheme**
- must be established outside the United Kingdom
- must meet the requirements prescribed in the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 [SI2006/206] i.e. it must be 'recognised for tax purposes' by the country or territory in which it is established and it must be regulated as a pension scheme in the country in which it is established, or, if there is no body by which it could be regulated, then either the scheme must
 - (i) be established in another member State, Norway, Iceland or Liechtenstein; or
 - (ii) provide that at least 70% of a member's UK tax-relieved scheme funds will be designated by the scheme manager for the purpose of providing that individual with an income for life, and the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) are payable no earlier than they would be if pension rule 1 in section 165 applied.

41. Under section 150(8) of the Finance Act 2004 a **recognised overseas pension scheme** is an **overseas pension scheme** that meets the following additional requirements prescribed under The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 [SI 2006/206]. It must:

- be established in a Member State of the European Union, Norway, Liechtenstein or Iceland, or
- be established in a country or territory with which the UK has a Double Taxation Agreement that contains exchange of information and non-discrimination provisions¹², or
- satisfy the requirement that, at the time of the **recognised transfer**, the rules of the scheme provide that:

¹² See <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM14101046.htm>

- at least 70% of the funds transferred will be designated by the scheme manager for the purpose of providing the member with an income for life,
- the pension benefits (and any associated lump sum) payable to the member under the scheme, to the extent that they relate to the transfer, are payable no earlier than they would be if pension rule 1 in section 165¹³ of the Finance Act 2004 applied, and
- membership of the scheme is open to persons resident in the country or territory in which it is established.

42. Under section 169 of the Finance Act 2004 a **recognised overseas pension scheme** is a **qualifying recognised overseas pension scheme** if -

- (a) the scheme manager has given to the Inland Revenue notification that it is a **recognised overseas pension scheme** and has provided any such evidence that it is a recognised overseas pension scheme as the Inland Revenue may require,
- (b) the scheme manager has undertaken to the Inland Revenue to inform the Inland Revenue if it ceases to be a **recognised overseas pension scheme**,
- (c) the scheme manager has undertaken to the Inland Revenue to comply with any prescribed information requirements imposed on the scheme manager, and
- (d) the **recognised overseas pension scheme** is not excluded from being a **qualifying recognised overseas pension scheme**¹⁴.

Note: The "prescribed information requirements" are set out in the Pension Schemes (Information Requirements – Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 [SI 2006/208].

43. Section 169(1B) of the Finance Act 2004 adds a further proviso. It says that the Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent rights in respect of a scheme pension to which a member of a **registered pension scheme** has become entitled ("the original scheme pension") -

- (a) the transfer is not a **recognised transfer** unless those sums and assets are, after the transfer, applied towards the provision of a scheme pension (a "new scheme pension"), and

¹³ Pension rule 1 in section 165 provides that no payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the scheme.

¹⁴ A scheme may be excluded from being a qualifying recognised overseas pension scheme if HMRC decides that there has been a significant failure to comply with any information requirements.

(b) if they are so applied, the new scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original scheme pension.

The regulations referred to in section 169(1B) of the Finance Act 2004 have been made. Regulation 3 of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 [SI 2006/499] says that the transfer will not be a **recognised transfer** unless the transfer is applied towards the provision of a scheme pension (a "new scheme pension").

However, section 169(1B) only applies where the person has become **entitled** to the pension. Section 165(3)(b) of the Finance Act 2004 says that a person becomes **entitled** to a pension under a registered pension scheme when the person first acquires an actual (rather than a prospective) right to receive the pension (and, for this purpose, the abatement of a scheme pension under a public service pension scheme is not to be taken to affect the right to receive it). Thus, section 169(1B) of the Finance Act 2004 and the regulations made under it do not apply to the LGPS as the LGPS does not permit a transfer in respect of a pension that is already in payment.

DWP conditions if the transfer includes safeguarded rights

44. Where a transfer, including "safeguarded rights", is to be made to an **overseas scheme** or an **overseas arrangement**, regulations 19 and 21 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 [SI 2000/1054] require the administering authority to
- a) only do so with the Pension Credit member's consent
 - b) take reasonable steps to satisfy itself that, where the receiving scheme is an **occupational pension scheme**, the person with the pension credit rights has entered employment to which the receiving scheme applies
 - c) ensure the transfer payment (or, if it forms part of a larger payment giving effect to both safeguarded and other rights, that part which gives effect to safeguarded rights) is of an amount at least equal to the cash equivalent of the safeguarded rights to which effect is being given, as calculated and verified in a manner consistent with regulations 3 to 7 of the Pension Sharing (Valuation) Regulations 2000 [SI 2000/1052]
 - d) take reasonable steps to satisfy itself that the person with the Pension Credit rights has received a statement from the receiving scheme or arrangement showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld
 - e) ensure the person with the Pension Credit rights acknowledges that he / she accepts the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or on its trustees or managers to provide any particular value or benefit in return for the transfer payment, and **either**

- f) where the transfer is to an **overseas arrangement** and the transfer includes safeguarded rights, ensure that the arrangement is one to which a transfer payment can be made in accordance with regulation 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000 [SI 2000/1055]. One of the requirements is that the transfer can only be made to another salary related contracted-out scheme or to a money purchase contracted-out scheme, if the person with safeguarded rights is an active member of such a scheme, or to an appropriate personal pension scheme, **or**
- g) ensure the transfer satisfies the requirements of the Inland Revenue.

An **overseas arrangement** is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as a scheme or arrangement, **other than an occupational pension scheme**, which

- a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
- b) is not an appropriate personal pension scheme; and
- c) is administered wholly or primarily outside the United Kingdom.

An **overseas scheme** is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as an **occupational pension scheme** which is administered wholly or primarily outside the United Kingdom but does not include a salary-related contracted-out scheme nor one in respect of which section 53 of the Pension Schemes Act 1993 applies by virtue of section 52(1) of that Act (former contracted-out schemes under the supervision of the Inland Revenue).¹⁵

A salary-related contracted-out scheme is defined in regulation 1 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 [SI 1996/1462] as an occupational pension scheme which is contracted-out by virtue of satisfying section 9(2) of the Pension Schemes Act 1993.

¹⁵ Note that regulation 6 of the draft Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 proposes to amend the definition as follows:

(2) In regulation 1(2) (interpretation) for the definition of “overseas scheme” substitute— ““overseas scheme” means—

- (a) an occupational pension scheme which has its main administration outside the member States; or
- (b) a European pensions institution as defined in section 293(8) of the Pensions Act 2004 (functions of Regulator in relation to institutions administered in other member States),

but does not include a salary-related contracted-out scheme nor one in respect of which section 53 of the 1993 Act applies by virtue of section 52(1) of that Act.”.

Overall Summary

45. So, a Pension Credit member may transfer the cash equivalent of his / her accrued Pension Credit rights to an **overseas scheme** or to an **overseas arrangement** provided it is a **qualifying recognised overseas pension scheme** which will provide a pension in return for the transfer and, where there are safeguarded rights, the requirements set out in paragraph 44 are met.
46. Administering authorities should
- ask for evidence that the **overseas scheme** or **overseas arrangement** is a **qualifying recognised overseas pension scheme**. The scheme should have a letter of acceptance from HMRC stating that the scheme is a **qualifying recognised overseas pension scheme** and showing the unique QROPS reference number for that scheme. Alternatively, administrators can check if a scheme is a **qualifying recognised overseas pension scheme** by writing to Audit and Pension Scheme Services, Yorke House, Castle Meadow Road, Nottingham, NG2 1BG. It is understood that HMRC intend to provide a list of **qualifying recognised overseas pension schemes** on their internet site (but this will not include any such scheme that does not want its name to be shown there);
 - take the steps set out in paragraph 44 above;
 - report the transfer on the Event Report to HMRC. The Event Report must be received by HMRC by 31 January following the end of the tax year in which the transfer took place;
 - check that the transfer value does not exceed the member's Lifetime Allowance. If it does there is a tax charge of 25% (see Section C below).
47. Note that a transfer from a **registered pension scheme** to a non-UK pension scheme that is not a **qualifying recognised overseas pension scheme** is not a **recognised transfer**. Such a transfer would be an **unauthorised member payment** and would result in a tax charge to the member of 40% of the transfer payment and a scheme sanction charge of up to 40% on the administering authority.
48. The National Insurance Contributions Office does not need to be notified of transfers of safeguarded rights.

SECTION C - TAX POSITION ON TRANSFER TO A QUALIFYING RECOGNISED OVERSEAS PENSION SCHEME

Annual allowance

For the purpose of the **member's annual allowance** calculation for the year in which the transfer takes place, the amount transferred in the **pension input period** is to be included in the member's closing value (so the amount transferred is added back in at its value at the time of the transfer).

Lifetime Allowance

The transfer is a **benefit crystallisation event** for the purpose of the member's **lifetime allowance**. The amount crystallised is the amount of the transfer. The taking of benefits relating to the transferred amount from a **qualifying recognised overseas pension scheme** is not a benefit crystallisation event for the purposes of the individual's lifetime allowance. If the amount of the transfer value results in the member's lifetime allowance being exceeded, the rate of tax chargeable is 25%. The 55% rate cannot apply, even though the payment in effect is a "lump sum", because it is not being paid "to the individual", so does not fall within the 55% rate charging provision.

Member payment charge

Any payment made from the overseas scheme in the future (e.g. when the person retires) which relates to the **recognised transfer** will not constitute a further **benefit crystallisation event** but if the payment is a type of payment which would not have been authorised from a UK registered scheme it will give rise to a member payment charge under Schedule 34 Finance Act 2004 on a resident or recently resident individual.

SECTION D - TRANSFERS IN

Active Scheme Members

49. **Registered pension schemes** (such as the LGPS) are not restricted by the Finance Act 2004 to receiving transfer values from only **registered pension schemes** and **qualifying recognised overseas pension schemes**. A **registered pension scheme** may receive a transfer payment from another scheme that is neither a **registered pension scheme** nor a **recognised overseas pension scheme**, for example a pension scheme abroad that does not satisfy the requirements to be treated as a **recognised overseas pension scheme**.

50. However, although the LGPS would not be restricted by the Finance Act 2004 from receiving transfers in from recognised or non-recognised overseas schemes, regulation 121 of the LGPS Regulations 1997 and of the LGPS (Scotland) Regulations 1998 specifically defines (when read in conjunction with Schedule 1 of those Regulations) the types of scheme from which transfers into the LGPS can be accepted i.e. from

- a) an **occupational pension scheme** within the meaning of section 1 of the Pension Schemes Act 1993 (other than certain exceptions – see paragraph 51 below)
- b) a personal pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993) which has been approved under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 or provisionally approved under section 655(5) of that Act
- c) a retirement annuity contract approved by the Commissioners of Inland Revenue under section 620 or 621 of the Income and Corporation Taxes Act 1988, or
- d) a self employed pension arrangement

51. Although the Finance Act 2004 would permit a transfer in from an overseas Personal Pension Scheme type arrangement, regulation 121 of the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Scotland) Regulations 1998 does not provide for a transfer in from such an arrangement i.e. they are not covered by b), c) or d) in the paragraph above.

52. This leaves “an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993, other than

- a) a retirement benefits scheme (as defined in section 611 of the Income and Corporation Taxes Act 1988) which is not of a description mentioned in section 596(1)(a), (b) or (c) of that Act
- b) an additional voluntary contribution scheme
- c) an appropriate policy
- d) a personal pension scheme, or
- e) a self-employed pension arrangement

53. Section 1 of the Pension Schemes Act 1993 defines an **occupational pension scheme** as:

(1)

- a pension scheme -

(a) that -

(i) for the purpose of providing benefits to, or in respect of, people with service in employments¹⁶ of a description¹⁷, or

(ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people,

is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force, and

(b) that has its main administration in the United Kingdom or outside the member States,

- or a pension scheme that is prescribed or is of a prescribed description.

(2) This subsection applies -

(a) where people in employments of the description concerned are employed by someone, to a person who employs such people,

(b) to a person in an employment of that description, and

(c) to a person representing interests of a description framed so as to include -

(i) interests of persons who employ people in employments of the description mentioned in paragraph (a), or

(ii) interests of people in employments of that description.

(3) For the purposes of subsection (2), if a person is in an employment of the description concerned by reason of holding an office (including an elective office) and is entitled to remuneration for holding it, the person responsible for paying the remuneration shall be taken to employ the office-holder.

The prescribed descriptions for the purposes of sub-paragraph (1) above are set out in regulation 2 of the Pension Schemes (Categories) Regulations 2005 [SI 205/2401]. This prescribes three descriptions of pension scheme as occupational pension schemes i.e.

a) schemes that have their main administration in the United Kingdom or outside the member States and are established by a person other than an employer of persons benefiting from the scheme, but in respect of whom such employers contribute to the scheme;

¹⁶ Employment includes any trade, business, profession, office or vocation and "employed" shall be construed accordingly

¹⁷ This includes a description framed by reference to an employment being of any of two or more kinds.

- b) pension schemes established pursuant to the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 [S.I. 1999/859] (which might not otherwise be occupational pension schemes because they do not have their main administration in the United Kingdom); and
- c) schemes fulfilling the criteria set out in the definition of "public service pension scheme" in section 1(1) of the Pension Schemes Act 1993 (except the requirement to be an occupational pension scheme).

54. So, in general, an overseas scheme would only be an **occupational pension scheme** for the purposes of the LGPS Regulations if it had its main administration in the United Kingdom or outside the member States. This would appear to preclude what might otherwise generally be considered to be an **occupational pension scheme** which is administered in a member State. Also, the exclusion in a) in paragraph 52 above removed from the definition of an **occupational pension scheme** in section 1 of the Pension Schemes Act 1993 those retirement benefit schemes which were not an approved scheme, a relevant statutory scheme, or a scheme set up by a Government outside the UK for the benefit, or primarily for the benefit, of its employees. Sections 611 and 596 of the Taxes Act have been repealed, but it is clear that the intention was to exclude virtually all overseas occupational pension schemes.

55. Even if an overseas transfer could meet all the necessary requirements, regulation 121(9) of the LGPS Regulations 1997 and of the LGPS (Scotland) regulations 1998 allows the administering authority to refuse to accept such a transfer.

Pension Credit Members

56. A transfer in from an **overseas scheme** or an **overseas arrangement** cannot be accepted in respect of a Pension Credit member (see regulation 160 of the Local Government Pension Scheme Regulations 1997 which debars such transfers and regulation 155 of the Local Government Pension Scheme (Scotland) Regulations 1998 which does not make any provision for such transfers).

SECTION E – TAX POSITION OF TRANSFERS IN FROM OVERSEAS SCHEMES

Tax treatment of a transfer from a recognised overseas pension scheme

57. Special treatment is given to the **lifetime allowance** of a member who transfers in funds after 5 April 2006 from a **recognised overseas pension scheme** that is not a **registered pension scheme**.
58. No UK tax relief has been received, so it would be unfair if the transferred amount were to use up the member's available lifetime allowance.
59. Therefore, the member's **lifetime allowance** is increased, or "enhanced", by an appropriate factor, from the date of the transfer. The lifetime allowance enhancement factor given in this circumstance is called the recognised overseas scheme transfer factor. The member must claim this enhancement no later than five years after 31 January following the tax year in which the transfer is made, and register the amount with HMRC. This process enables HMRC to verify the amount claimed in appropriate cases.
60. The amount of the enhancement factor is calculated by dividing the amount of the transfer value received by the standard lifetime allowance at the date of transfer. However, if the individual had received UK tax relief in relation to any of the benefits accrued after 5 April 2006 included in the transfer, the amount of the transfer used to calculate the enhancement factor is reduced by an amount relating to the period in which UK tax relief was received. This is covered in more detail on the HMRC website.
61. For the member's **annual allowance**, the transfer value should be subtracted from the closing value of the member's rights for the input period during which the transfer is received.

Tax treatment from an overseas scheme that is not a recognised overseas pension scheme

62. Where a transfer is received from an overseas scheme that is not a **registered pension scheme** and is not a **recognised overseas pension scheme** there will be no enhancement of the **lifetime allowance** as a result of the transfer in.
63. For the member's **annual allowance**, the transfer value should be subtracted from the closing value of the member's rights for the input period during which the transfer is received.

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