

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 49 – April 2008

The LGPC Secretariat is currently reviewing the way information is disseminated to administrators and employers. The first result of the review is the decision to issue a regular Bulletin to Pension Managers (in-house), Pension Managers (outsourced) and Client Managers. The contents will vary from month to month but will cover legislation affecting the administration of LGPS funds (directly or indirectly), newsworthy items affecting pensions in general, case law that affects LGPS administration, annual update information, items from Budgets which affect the administration of Pension Schemes and any other items which are deemed to be relevant.

Please contact Dave Friend with any comments you might have on the contents of this Bulletin or to suggest other items that you would wish to see included in future Bulletins.

Contents

[New member of staff](#)

[LGPS 2008](#)

[LGPS 2008 – Additional Pension GAD Guidance](#)

[LGPS 2008 – AVCs and Flexible Retirement](#)

[LGPS 2008 – Transfer Value Guidance](#)

[TV Disclaimer Forms](#)

[Ill health Certificates](#)

[LGPS 2008 - LGPS members' website](#)

[LGE website](#)

[Tax Guide \(Version 10\)](#)

[Budget 2008 – Trivial Commutation](#)

[Budget 2008 – Other Measures](#)

[Overriding Legislation - IRDP](#)

[Pensions Bill 2007/08](#)

[Disclosure of Information](#)

[CIPFA Investment Survey](#)

[Updating the Myrers Principles](#)

[Code of Data Matching Practice 2008](#)

[Bits and Pieces](#)

[Reminders](#)

New Member of Staff

Dave Friend joined the LGPC on 3 March as a Pensions Adviser. Dave's remit will include providing technical advice on draft or actual LGPS legislation, overriding legislation, consultation documents, publications produced by regulatory bodies, relevant court cases and Employment Tribunal decisions, HMRC procedures and deadlines.

LGPS 2008

The [March edition of CLG's Pension Changes](#) contained:

- an extensive update on the three tier ill-health retirement proposals;

- an update on the publication of GAD guidance;
- confirmation that technical amendments are to be made to the LGPS (Benefits, Membership and Contributions) Regulations 2007 with an Amendment SI being issued “soon”, “shortly” or “imminently”;
- notification that the LGPS (Administration) Regulations 2008 [SI 2008/239] and the LGPS(Transitional Provisions) 2008 [SI 2008/238] were laid before Parliament on 14 February 2008;
- confirmation that CLG will publish a commentary on the new regulations. The commentary will be available from both CLG’s departmental website (www.communities.gov.uk) and on (www.xoq83.dial.pipex.com);
- brief details on the informal consultation on the Admitted Body status provisions. The closing date for submission of comments on the consultation paper was **10 April 2008**;
- a reminder that a consultation document on ‘Sustaining the LGPS in England & Wales’ has been issued. The closing date for responses is **30 May 2008**; and
- confirmation that the papers for the meeting of the Policy Review Group, which was held on 9 April 2008, are available from the PRG page on www.xoq83.dial.pipex.com.

The article on ill-health retirement detailed the framework under which the third tier ill health provisions will operate, including the review mechanism. Regulations to put the policy intentions into effect are awaited as is the Statutory Guidance which is to be issued to complement the regulations.

LGPS 2008 – Additional Pension GAD Guidance

CLG have issued the GAD guidance with respect to the purchase of additional pension (via Additional Regular Contributions by the Scheme member or by way of a lump sum payment from the employer). This has left a number of questions unanswered and we are awaiting definitive answers from CLG.

Indexation of Maximum Permitted Additional Pension

How does the indexation of the maximum permitted £5,000 additional pension work? It is extremely unlikely that the application of RPI to the maximum permitted will lead to an increase in the maximum permitted which is a whole multiple of £250. As the multiple of £250 is a requirement for additional pension paid for by the Scheme member (although not a requirement in relation to additional pension granted by the employer) there are three possible options. The first is to round the maximum permitted to the nearest whole multiple of £250 after each annual RPI has been applied. The next alternative is that the maximum permitted is only increased to the next whole multiple of £250 once the application of cumulative RPI to the maximum permitted increases the base £5,000 figure above a multiple of £250. The final option is that the maximum permitted will simply be increased by PI at each annual review, even though this would result in a maximum that is not a whole multiple of £250.

The Effect on Additional Pension of a Reduction in Pay

What should happen if a member paying ARCs goes on half or nil pay due to sickness or injury?

Regulations 21(1) and 21(4) of the Administration Regulations both say that “If a member is away from his employment with permission (otherwise than because of illness or injury)” “and is receiving reduced pay or no pay” “he must [continue to] make the payments he was making under regulation 23 (additional regular contributions) or regulation 55 of the 1997 Regulations (payments to increase total membership)”. The clear implication is that if the person is

absent with permission because of illness or injury he / she does not have to pay the ARCs (and any added years contributions being made under regulation 55 of the 1997 Regulations) whilst receiving reduced or no pay. CLG have been asked to confirm that this is the intention.

If the member subsequently retires on the grounds of permanent ill-health, under 24(2)(a) of the Administration Regulations the member is treated as having completed the remainder of the ARC contract (i.e. the contributions due beyond the date of leaving) and is granted the additional pension in full.

What happens if a member paying ARCs goes on child-related leave of absence or goes on strike?

In these circumstances the member would have to continue to make the ARCs (and any added years contributions being made under regulation 55 of the 1997 Regulations) in accordance with regulations 18(8) and 20(5) respectively of the Administration Regulations. Regulation 45 of the Administration Regulations permits the employing authority to recover the contributions from pay and, if any of the contributions due up to the point of leaving have not been paid, the regulation permits the administering authority to recover them as a simple contract debt or by way of a reduction to benefits payable under the Scheme. Administering authorities will need to put procedures in place to ensure employing authorities advise them on leaver forms of any contributions that are due but are unpaid at the date of leaving.

How do ARCs and flexible retirement interact?

If a Scheme member who is paying ARCs takes some or all of their accrued benefits upon flexible retirement there are three questions concerning ARCs:

- can the member draw some or all of that part of the ARCs they have paid for?
- where a member chooses to draw some, but not all, of their benefits on flexible retirement how will the amount of additional pension purchased by ARCs (or granted by the employer) be treated?
- if the ARC contract has not been completed and the member has drawn some or all of their accrued additional pension, can the member carry on paying ARCs under the original terms and, if so, should (as seems logical) the same initial PI date which is being used to increase the value of the ARCs being drawn on flexible retirement also be used when the benefits from the remainder of the ARC contract are drawn?

Let's look at the first question – can the member draw some or all of that part of the ARCs they have paid for?

Well, regulation 14 of the Benefits Regulations says:

14 Election in respect of additional pension

(1) A member may choose to pay additional contributions in order to be credited with additional pension, in respect of him alone or in respect of him and any survivor, of £250 a year or multiples thereof to a maximum of £5000.

(2) If he chooses to take the additional pension referred to in paragraph (1) earlier or later than his normal retirement age, it is reduced or, as the case may be, increased.

(3) The amount of the additional contributions to be paid under paragraph (1), and the reduction or increase referred to in paragraph (2), is calculated in accordance with guidance issued by the Government Actuary.

And regulation 18 of the Benefits Regulations says:

18 Flexible retirement

(1) A member who has attained the age of 55 and who, with his employer's consent, reduces the hours he works, or the grade in which he is employed, may make a request in writing to the appropriate administering authority to receive all or part of his benefits under these Regulations, and the authority may pay those benefits to him notwithstanding that he has not retired from that employment.

(2) If the payment of benefits referred to in paragraph (1) takes effect before the member's 65th birthday, the benefits payable are reduced in accordance with guidance issued by the Government Actuary.

(3) But the employer may agree to waive, in whole or in part, any such reduction as is referred to in paragraph (2).

And regulation 50 of the Administration Regulations says:

50 Commencement of pensions

(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable begins with the day after the date on which his employment ends.

So, the critical questions which will determine whether or not a person taking full or partial flexible retirement will be able to access his / her ARCs are "has the member left his / her employment?" and "has employment ended?" Where a person downgrades one would expect the person will then be performing a different role and that a contract of employment will have ended and another commenced. So the ARC benefit can be paid. But where a person reduces their hours, in some cases this may be the result of a cessation of one job and the commencement of another (under a new contract) and in other cases there may not have been a cessation of a job but merely a variation in hours (and a variation in contract) for an existing job. One could argue that in the latter scenario the job had not ended and so the person would not be able to access their accrued ARC pension. However, regulation 50(2) of the Administration Regulations implies that benefits payable under regulation 18 of the Benefits Regulations flow from the cessation of an employment (i.e. that all flexible retirements are treated as if a person has ceased one employment and started another). Given that, the conclusion is (in line with what is understood to be the CLG policy intention) that ARCs can be drawn upon flexible retirement.

The second question that needs to be answered is "Where a member chooses to draw some, but not all, of their benefits on flexible retirement how will the amount of additional pension purchased by ARCs (or granted by the employer) be treated?" We await the GAD guidance on flexible retirement which hopefully will cover this.

The third question which needs to be answered is "If, at the date of flexible retirement, the ARC contract has not been completed and the member has drawn some or all of their accrued additional pension, can the member carry on paying ARCs under the original terms and, if so, should (as seems logical) the same initial PI date which is being used to increase the value of the ARCs being drawn on flexible retirement also be used when the benefits from the remainder of the ARC contract are drawn?". This question has been put to CLG.

Is additional pension purchased by the member or granted by the employer actuarially reduced following retirement on the grounds of redundancy or business efficiency?

Regulations 13 and 14 of the Benefits Regulations refer to what is being granted by the employer or bought by the Scheme member as "additional pension" and regulation 19(1) of the Benefits Regulations says that on redundancy or efficiency retirement a member "is entitled to immediate

payment of retirement pension without reduction". So one might conclude that as the "additional pension" is a retirement pension, no reduction should be applied to the additional pension.

However, regulation 14 of the Benefits Regulations says that any additional pension bought by a member paying ARCs is to be reduced in accordance with GAD guidance if paid before age 65 (unless, regulation 24(2) of the Administration Regulations, the member retires on the grounds of permanent ill health or dies in service). This is confirmed in paragraphs 2.5.3, 4.4 and 4.5 of the GAD guidance. This is logical as the contract terms are devised on the assumption that benefits payable pre 65 (other than on grounds of permanent ill health or death in service) would be subject to an actuarial reduction. So, any additional pension purchased by a member via ARCs up to the point of redundancy or efficiency retirement will be subject to actuarial reduction if paid before age 65 (and, if the contract had not been completed, the additional pension purchased would first need to be pro-rated, with no option to buy-out the balance of the contract – although a generous employer could grant the employee the balance of pension not yet paid for by making an award under regulation 13 of the Benefits Regulations).

Unlike regulation 14 of the Benefits Regulations, regulation 13 of those Regulations does not contain any reference to an actuarial reduction being applied to additional pension granted by the employer if the pension is paid before age 65. However, paragraphs 2.5.3, 4.4 and 4.5 of the GAD guidance state that there would be an actuarial reduction applied to the additional pension if paid before age 65. As the position is less than clear, the LGPC Secretariat has asked CLG for clarification.

Benefit on death in service (where a member has paid ARCs that do not include dependants' benefits)

If a member dies in service and is buying additional pension for just himself / herself then there is no benefit payable from the fund. However, there are a number of inconsistencies in the GAD guidance; for example.

paragraph 2.2 says:

A member may purchase additional pension for the member only or for the member and his or her dependants. When an employer purchases additional pension, it will be additional pension for the member only.

and paragraph 2.5.9 says:

No additional pension benefit is payable if the member dies in service.

This all seems clear and straight forward BUT

paragraph 4.3 says:

..... If a member is awarded an ill health pension or dies early in an additional pension contract then this is likely to cause a strain on the fund. There may also be a strain following payment of a lump sum contribution if a member is awarded an ill health pension from an early age or dies leaving a young spouse, civil partner or nominated cohabiting partner.

With regard to the first sentence of paragraph 4.3 above, if the member is paying ARCs to provide a pension for themselves only, how (given what paragraph 2.5.9 says) can there be a strain on Fund cost upon death in service. Perhaps the first sentence in 4.3 above should be amended to read "If a member is awarded an ill health pension or, having paid ARCs to also purchase dependants' benefits, dies early in an additional pension contract then this is likely to cause a strain on the fund." Additionally, given that only an employer can pay a lump sum contribution (which

does not purchase any spouse's, civil partner's, co-habiting partners or children's pensions), the words "or dies leaving a young spouse, civil partner or nominated cohabiting partner" ought to be deleted from paragraph 4.3

Indexation of Additional Pension

An additional pension granted by the employer will be indexed from the date the lump sum payment is made by the employer and any additional pension purchased by the member via ARCs will be indexed from the moment the contract commenced. When the additional pension is brought into payment, how is the PI to be calculated?

Paragraph 2.5.10 of the GAD guidance says:

The rate of additional pension is increased with reference to the RPI from the date of the first contribution/ lump sum payment to the date of award of benefits. Once in payment, the additional pension is increased with reference to the RPI.

Thus, to fully comply with the GAD guidance, one would have to know what the accrued PI is up to the date the pension commences. The RPI table will not be published until at least a month after leaving so there will be a problem in that, at the point benefits come into payment, administrators will not know exactly how much to pay. If this interpretation is correct then the PI date for the additional pension after it has been brought into payment ought to be the date the pension commences (because the member will already have been paid full PI up to that date). However, it would have been simpler if the guidance had said that when the additional pension comes into payment it should include PI up to the last annual PI Order and then a full years PI would be applied at the following PI Order to the additional pension in payment. If there was no PI at the last PI Order (because the employer made their lump sum payment or person started paying the ARCs after about mid March preceding the Order) then the PI at the following PI Order would be based on a PI date equal to the date the employer made the lump sum payment or the date the person started paying the ARCs.

One further point to cover concerning PI is that some members who were active members at 31 March 2008 will retain the right to receive benefits on or after age 50 and before age 55 if, before 1 April 2010, they are retired on the grounds of redundancy or business efficiency or the employer agrees to early payment of benefits. It is assumed that in such cases, and regardless of the wording of paragraph 2.5.10 of the GAD guidance, PI would not be added to the additional pension until age 55 (as is the case for all other official pensions).

Lastly, there is an issue regarding PI on the additional pension following flexible retirement (see comments in the section above on flexible retirement).

Other Additional Pension Issues

CLG have confirmed that ARCs cannot be paid by a Scheme member in the form of a lump sum; they have to be paid by way of regular deductions from pay.

A scheme member who has an added years contract can also have an ARC contract and can pay AVCs too.

If a Scheme member draws benefits before age 65 (other than on health grounds), even if their main LGPS pension is not reduced (because of the 85 Year Rule protection) the additional pension from their ARCs will be. It does not appear to be possible under the regulations for such members to defer payment of their additional pension, as is possible with AVCS, thereby allowing them to draw the additional pension at age 65 at an unreduced rate.

The following issues have all been raised with CLG (and indirectly GAD).

What happens if a person with an ARC contract has a permanent reduction in pay that reduces their pay to below the monthly ARC amount? Is the contract terminated? If the person wants to carry on paying ARCs, would the member have to take out a new contract based on their current age or could the original contract be scaled down, with the person paying a lower monthly amount to purchase a lower amount of additional pension but based on the factors relevant to their age when they took out the original contract?

Can a Scheme member elect to pay ARCs that exceed normal net pay, and pay the excess by way of (for example) a Standing Order? Note that contributions in excess of 100% of gross taxable pay would not be tax relieviable.

If a member with an ARC contract ceases employment with an employer and rejoins another employer in the same or a different Fund, can the member continue paying the ARCs under the original contract terms? On the basis that there are a number of variables which could make the possibility of continuing with the contract very difficult (e.g. the member may have a break between the employments; the member may not decide to aggregate their LGPS membership; the original administering authority may not have required a medical but the new administering authority's policy might be to require a medical) it is to be assumed, given these issues, the ambiguity of the wording of regulation 24 of the Administration Regulations, and in the absence of any advice in the GAD guidance, that the contract comes to an end and the member is credited with that part of the additional pension purchased up to the date of leaving. The member could then take out a new ARC contract in the new employment if he / she so wished. CLG have been asked to confirm whether this is correct.

If a member who has been granted additional pension by the employer or who has been paying ARCs transfers from one Fund to another, it is reasonable that the receiving Fund should honour the additional pension granted by the employer or purchased by the member up to the date of leaving the former Fund. However, given that we have not yet moved to a simplified CETV approach for Inter Fund Adjustments, how will the receiving Fund be compensated within the IFA for the additional pension liability that is being taken on?

CLG have asked GAD to confirm whether the value of any additional pension purchased by a Scheme member or granted by an employer should be valued using the same factors as for basic LGPS pension (and for any potential survivor benefit) when calculating a CETV for transfer out or pension sharing on divorce purposes.

ARC Factors – Excel Workbook

Administrators can click on [ARC Factors](#) to access an Excel workbook which contains all the factors issued by GAD in respect of ARCS. The LGPC is also investigating the possibility of providing an ARC calculator on the LGPS members' website www.lgps.org.uk once a number of the outstanding issues surrounding ARCs have been clarified.

LGPS 2008 – AVCs and Flexible Retirement

The advice the Secretariat gave in Circular 193 regarding whether, under the terms of the 1997 Regulations, AVCs could be drawn on flexible retirement was that, barring one exception, an accrued AVC pot could not be drawn upon flexible retirement. The one exception was where a member who elected prior to 13th November 2001 to pay AVCs subsequently elected under regulation 60(9) of the 1997 Regulations to stop paying AVCs before the date of flexible retirement. Such a member could then convert the AVC pot into a period of Scheme membership which could be paid upon flexible retirement.

CLG did, however, state that it was not the intention that AVCs could not be put into payment upon flexible retirement. In their view, the GAD guidance on regulation 35 of the 1997 Regulations, issued in October 2006, made it clear that flexible retirement should be treated as full retirement for benefits purposes. CLG noted the concern over the drafting of the 1997 Regulations, which they acknowledged might not have unambiguously met their policy intention, and said that they would consider the need to amend the 1997 Regulations. No such amendment was made.

So, for anyone leaving on or after 1 April 2008, has any of the above changed as a result of the introduction of the Benefits Regulations and the Administration Regulations? The answer is pretty much the same as given earlier in this Bulletin in respect of ARC benefits.

Regulation 15 of the Benefits Regulations says:

15 Elections to pay AVCs

(1) A member who has entered into an arrangement to pay additional voluntary contributions ("AVCs") or to contribute to a shared cost AVC in addition to any other contributions he may pay under these Regulations is entitled to additional benefits in accordance with one of the methods permissible under the Finance Act 2004.

(2) Where a member chooses to take some or all of the benefits referred to in paragraph (1) in the form of a lump sum, that sum forms part of the total amount referred to in regulation 21(2).

And regulation 18 of the Benefits Regulations says:

18 Flexible retirement

(1) A member who has attained the age of 55 and who, with his employer's consent, reduces the hours he works, or the grade in which he is employed, may make a request in writing to the appropriate administering authority to receive all or part of his benefits under these Regulations, and the authority may pay those benefits to him notwithstanding that he has not retired from that employment.

And regulation 21 of the Benefits Regulations says:

21 Election for lump sum in lieu of pension

(1) A member in respect of whom a benefit crystallisation event within the meaning of the Finance Act 2004 occurs on or after 1st April 2008 may choose in writing to the appropriate administering authority before any benefits become payable to commute his pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered.

(2) But the total amount of the member's commuted sum, including any sum received as benefits provided in the form of a lump sum in accordance with regulation 15 shall not exceed 25% of the capital value of his accrued rights.

(3) For the purposes of this regulation, a member's accrued rights include rights accrued in respect of any payments made by or for him in accordance with the 1997 Regulations.

(4) The capital value of a member's accrued rights shall be calculated in accordance with guidance issued by the Government Actuary.

(5) And for the purposes of paragraph (1), a member's pension is his pension after any reduction pursuant to regulation 18 or 30.

So far, so, good - there is nothing to prevent the payment of AVCs upon flexible retirement.

Regulation 26 of the Admin Regulations says:

26 Use of accumulated value of AVCs and SCAVCs

(1) This regulation applies where a person who has paid AVCs or SCAVCs during his employment or made a transfer under regulation 25(8)-

(a) leaves his employment with the employing authority he notified under regulation 25(5)(a)-
(ii) with [immediate] entitlement under regulation18of the Benefits Regulations;

(4) A person mentioned in paragraph (1)(a)(ii) may notify the employing authority in writing that he wishes the accumulated value to be used to provide additional pension for him under the Scheme, or partly to provide such pension for him.

And regulation 50 of the Administration Regulations says:

50 Commencement of pensions

(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable begins with the day after the date on which his employment ends.

So, the critical questions which will determine whether or not a person taking full or partial flexible retirement will be able to access his / her AVCs are "has the member left his / her employment?" and "has employment ended?" Where a person downgrades one would expect that the person will then be performing a different role and that a contract of employment will have ended and another commenced. So, benefits can be paid from the AVC pot. But where a person reduces their hours, in some cases this may be the result of a cessation of one job and the commencement of another (under a new contract) and in other cases there may not have been a cessation of a job but merely a variation in hours (and a variation in contract) for an existing job. One could argue that in the latter scenario the job had not ended and so the person would not be able to access their AVC pot. However, regulation 50(2) of the Administration Regulations implies that benefits payable under regulation 18 of the Benefits Regulations flow from the cessation of an employment (i.e. that all flexible retirements are treated as if a person has ceased one employment and started another). Given that, the conclusion is (in line with what is understood to be the CLG policy intention) the member can accrued AVC pot upon flexible retirement.

Where a member chooses to draw some, and not all, of their benefits on flexible retirement how will this work in relation to the amount of their accrued AVC pot? We await the GAD guidance on flexible retirement which hopefully will cover this.

LGPS 2008 - Transfer Value Guidance

On 14 March, CLG issue updated draft guidance on individual transfers to and from the LGPS with a deadline for comments of 20 March. A summary of the main points from the LGPC's response is provided below.

- Consolidation of the numerous pieces of GAD guidance on how to calculate incoming and outgoing transfers is required.
- As the cost of purchasing a 1/60th pension is greater than that for purchasing a 1/80th pension plus 3/80^{ths} lump sum, should not the factors used to determine the service credit from a transfer in be amended (so as to avoid granting too great a service credit)?
- The guidance should clarify that married factors are to be used in the calculation of non Club transfers in and for all transfers out where the administering authority hold a verified nominated cohabiting partner election form which was signed on or before the Relevant Date.
- Similarly, for Club transfers in, the married factor should be used where there is verified nominated cohabiting partner election form at the date the transfer is received (regardless of the marital status used by the sending scheme).

- The market yield continues to use the factors for 2% even though the true market yield value is below 2%. The PCSPS have been interpolating between the factors for 1% and 2% since 1 April 2005. Should the LGPS be instructed to use factors for 1% as well?
- The expected guidance in respect of early and flexible retirements (which is cross referred to in the transfer guidance) needs to accurately reflect paragraphs 122(6C) and (6D) of the LGPS Regulations 1997. Namely, it is whether or not the member was active immediately before 1 April 2008 (and not the date service is credited) which determines whether the service credit is regarded as Part A or Part D membership.
- There is a conflict between GAD guidance, which says a member can make a request for a transfer out up until age 64, and the provisions of the Pension Schemes Act 1993. Although, because of the way the Act defines “normal pension age”, there would only be an overriding statutory right to a CETV after age 59 or six months after leaving (where the date of leaving occurs after 58 ½ and before age 59), the LGPS – via the GAD guidance – goes beyond this. However, because the LGPS NRD is age 65, the GAD guidance should permit a CETV up to age 64 **or** six months after leaving (where the date of leaving occurs after 63 ½ and before age 64).
- The guidance needs to clarify whether a transfer can be made in respect of a female with a GMP who has attained SPA.
- Paragraph 3.1 of the draft transfer value guidance should be amended to state that, due to the provisions of regulation 84(4) of the Administration Regulations, transfers in are not permitted if the member has attained the age of 65 at the Relevant Date (and not age 64 ½ as currently stated in the draft guidance).
- Paragraph 3.4 of the draft guidance states that for a member who joins the LGPS after 31 March 2008 but has protection under the 85 year rule (due to previous membership before 1 October 2006), the service credit will be based on a Normal Retirement Age of 65 and an accrual rate of 1/60th thereby generating an inflated service credit. However, that inflated service credit would also drag forward the CRA under the 85 year rule (as all membership counts towards the 85 year rule) as per paragraph 3.8 of the guidance. It does not seem correct therefore to say that the service credit for such a person should be based on 60ths and an NRD of 65.
- Paragraph 3.9 of the draft GAD guidance says “Members who were members immediately before 1 April 1998 could count the actual service relating to transferred-in benefits when calculating their rule of 85 age if that service was greater than the service credit. However, this is not possible for credits awarded on or after 1 April 2008.” The LGPS Secretariat has queried whether the last sentence reflects the policy intention? If so, we have suggested that the sentence be amended to read “However, this is not possible for credits awarded on or after 1 April 2008 if the member was not an active member immediately before that date” (i.e. to tie in with regulations 122(6)(C) and (D) of the 1997 Regulations).
- There appears to be a problem in respect of members who joined the LGPS after 30 September 2006 with no previous LGPS membership (and who therefore have an NRD of age 65 and no 85 year rule protection) in respect of whom a transfer is received from a Club scheme that also has an NRD of 65. As the sending scheme will use standard age 65 club factors (issued by the Cabinet Office on 2 February 2006) to calculate the transfer value and administrators of LGPS funds will use adjusted age 60 factors to calculate the service credit, the service credit awarded in the LGPS will be less than the total service in the sending scheme, even though both schemes have an NRD of age 65.

Administering authorities should check with their software suppliers to ascertain how transfer values and service credits are processed on the current release level of their software and will need to consider what actions to take to manage cases until the software is updated to reflect the GAD guidance (when issued).

Transfer Value Disclaimer Forms

The next Bulletin will include an updated set of transfer value disclaimer forms

Ill Health Certificates

The LGPC Secretariat has recently forwarded draft ill health certificates to CLG for their consideration (covering active and deferred members). As a result, the Secretariat understands that CLG will soon be issuing pro forma templates which administering authorities may wish to use or adapt for use by employers in their Fund. CLG will welcome comments on the templates and will, based on any comments received, seek to refine them as and when necessary.

LGPS 2008 - LGPS members' website

The members' website www.lgps.org.uk is currently being worked on to reflect the changes to the LGPS for employees in England and Wales from 1 April 2008. An e-mail will be sent to Pension Managers informing them when the re-write of the website has been completed. In the meantime, those of the existing website pages which are out of date have had a message put on them, directing the user to the "Latest" section for information on how the changes may affect them.

LGE website

You may have noticed that the LGE website (www.lge.gov.uk) has been revamped. Although there is a reference in the top right hand side of the home page to "Sign in | Register" you do not have to do so to view the pension pages which are still freely available on the website.

The layout of the site has changes slightly too. You'll find Pensions under "Local Government" on the LGE home page or by using the "pensions" Quicklink on the LGE home page.

The Pensions part of the website has been divided into the following sections:

- Technical advice which contains Circulars; Bulletins; Minutes of the LGPC, OAG, Technical Group and Pension Officer Groups; Regulations (Timeline and GAD guidance); LGPS reform information; and a table of ARC factors
- Guides, booklets and publications which contains various scheme guides, the tax guide, and branding guidelines
- Training and events which contains details on all the training events the LGPC runs together with an online booking facility and terms and conditions for bookings
- Contact details for all Pension Managers and Client Managers, plus other useful addresses and links, and
- A Latest News section

Tax Guide (Version 10)

The latest version of the [Tax Guide](#) was recently uploaded on to the LGE website. Please note that administrators should, for the time being, still refer to version 9 if the query is in respect of trivial commutation.

Administering authorities might also wish to note that HMRC updated the on-line Registered Pension Scheme Manual (RPSM) on 2 April 2008. Click on [RPSM Amendments](#) to view an index of the latest changes to the RPSM.

The 2008 Budget

There was little in Alasdair Darling's first Budget which directly affects the administration of the LGPS. The Finance Bill 2008 has now been published and the second reading is now scheduled for 21 April. HM Treasury issued [notes to accompany the Budget](#). The amendments which affect pension scheme administration are in pages 103 to 110 inclusive. For those of you who require more detailed information, HM Treasury have issued explanatory notes to accompany the Finance Bill 2008. The pensions section is [from pages 787 to 825 of the Finance Bill 2008 Explanatory Notes](#).

Trivial Commutation

The single biggest change in the 2008 Budget which will affect the administration of LGPS is in respect of trivial commutations. The Finance Bill will include a measure that will simplify the administration of trivial commutation payments where the value of the benefits is less than £2,000. This is to be welcomed as it is slightly less restrictive than the current situation but there is still plenty of room for further simplification.

If the membership is wholly before 1 April 2008, £2,000 equates to annual pension of just under £87 based on 1/80th pension and 3/80^{ths} lump. If the membership is entirely post 31 March 2008, then it equates to a pension of £100 per annum (before any conversion to increase the lump sum). This is far less than the old members' limit of £195 (in England and Wales) and £260 for dependants, or for members and dependants in the LGPS Scotland. The crystallised value of an annual pension of £260 is £5,200 which is 2.6 times the new proposed cut-off limit for trivial commutations. HMRC appeared to have come over all magnanimous but, in reality, the easement is still tighter than the old trivial commutation limit.

The effective date for this amendment will be the date the Finance Bill 2008 receives Royal Assent. The Budget Notes indicate that this amendment might be applicable retrospectively. This can only be verified once the Finance Act 2008 is on the statute book.

Budget 2008 – Other Measures

There were other measures identified in the Budget Notes which affect pension scheme administration. They are included in this Bulletin for completeness but, apart from a change in respect of the treatment of overpaid pensions, are less likely to have any implications for administering authorities.

The Finance Bill 2008 will contain provisions which will permit certain payments from pension schemes to be taxed in the same way as other authorised payments instead of being treated as unauthorised payments. The amendment to permit certain pension scheme payments to become authorised may be retrospective as long as anyone affected is not adversely affected. Full details will be included in a future Bulletin after the Finance Bill receives Royal Assent.

The rules to test whether or not a benefit crystallisation event 3 (BCE 3) has occurred will be amended by the Finance Bill 2008. BCE 3 tests are applied when PI Reviews are applied to members' pensions. The changes include

- allowing pensions increases of less than £250 to be exempt from a BCE 3 test;
- a provision to round the pension, after the application of the PI Review, to the nearest whole number without the need for a further BCE 3 test; and
- permitting schemes to use RPI for any month in the 12 months prior to the date for the PI Review.

The Finance Bill 2008 will include a change to extend the circumstances in which a pension payment, made in genuine error, will be treated as an authorised payment.

Other amendments to be introduced in the Finance Bill 2008 include retrospective changes to the calculation of corporation tax liability in respect of pension scheme costs incurred between 1 April 2004 and 5 April 2006 and changes which will affect workers from abroad who are members of non-UK pension schemes.

Overriding Legislation - IDRP

Two Statutory Instruments were promulgated in March which will affect the procedures for the resolution of disputes. These were The Pensions Act 2004 (Commencement No.11) Order 2008 [SI 2008/627], which sets the effective date for the change as 6 April 2008, and The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 [SI 2008/649].

The salient points are:

- schemes can move to a one stage process if they so desire. Those schemes who wish to retain a two stage process will be able to do so;
- the member or beneficiary must be informed, as soon as possible after raising a complaint under IDRP, that the Pensions Advisory Service (TPAS) is available to assist them in connection with any difficulty with the scheme, and must be given the contact details for TPAS. Schemes can no longer wait until a decision has been taken under IDRP before informing the member or beneficiary about TPAS;
- when notifying an IDRP decision schemes must inform the applicant that the Pensions Ombudsman can investigate and determine any complaint or dispute of fact or law in relation to the scheme and provide the Pensions Ombudsman's contact details. In the case of the LGPS two stage IDRP, the scheme need only inform the member about the Pensions Ombudsman after the second stage decision has been taken.

Note that any disputes that were on-going before 6 April 2008 can continue under the former procedures.

The Pensions Regulator has made available version 11 of the [Code of Practice 11- Dispute Resolution](#). The document details what the Pensions Regulator will deem as reasonable periods in dispute resolution.

A member is expected to make an application within 6 months of the day following the date the member "ceased to be, or claims he ceased to be, a person with an interest in the scheme." This will not be a problem in relation to the LGPS as regulation 58(7) of the Administration Regulations already requires that an application under stage 1 of the IDRP should be made before the end of:

- (a) the period of six months beginning with the relevant date; or
- (b) such longer period as the person giving the decision on the disagreement considers reasonable.

The relevant date is-

- (a) in the case of a disagreement relating to a decision under regulation 55, the date notification of the decision is given under regulation 57; and
- (b) in any other case, the date of the act or omission which is the cause of the disagreement or, if there is more than one, the last of them.

Scheme administrators must take a decision on the dispute within 4 months of receiving the application from the member and must notify the member within 15 working days after the decision has been taken. Again, this should not be an issue for the LGPS. Both regulations 59 (which deals with stage 1 appeal decisions) and 61 of the Administration Regulations (which deals with stage 2 appeal decisions) state that a determination must be issued before the expiry of the period of two months beginning with the date the application was received and that if no such notice is given before the expiry of that period, an interim reply must immediately be sent setting out -

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision

Pensions Bill 2007/08

The [Pensions Bill](#) 2007/08 is now planned to reach the Report Stage on 22 April. The main proposals of the Bill include a duty on employers to automatically enrol job holders into, and to contribute to, a qualifying workplace pension scheme and the concept of personal accounts aimed at moderate to low earners who currently do not have access to a workplace pension scheme.

Personal Accounts are seen as a 'simple, low-cost pension saving scheme' and will be monitored by the Personal Accounts Delivery Authority (PADA). The Bill also sets out a compliance regime for the new duties on employers.

At the time of writing the Bill has had a number of amendments tabled. The amendments cover such areas as the relationship between means-testing and auto-enrolment and what are the guiding principles of the PADA.

Disclosure of Information

(Freedom of Information Act 2000 – sections 41 and 43)

The Information Commissioner has ruled that Tameside MBC (as the administering authority responsible for the management of the Greater Manchester Pension Fund) must reveal all fees paid to investment brokers. The only proviso is that brokers' names and market areas can be redacted to protect commercial sensitivity. The link below is to the Information Commissioner's ruling.

[Information Commissioner's Ruling - Investment Broker Fees](#)

Following the initial findings, the Information Commissioner served decision notices to 36 other councils. Four other councils provided information on fees paid to brokers before the Information Commissioner served a decision notice.

CIPFA Investment Survey

The purpose of the survey is to discover whether the LGPS Regulations place unnecessary constraints on funds with regard to investment opportunities. CIPFA state that the questions within the survey are based on comments from within the LGPS world over the last few years. The attached link is to CIPFA's Pensions Panel page which has further links to a covering letter and the survey itself ([CIPFA Investment Survey](#)).

Consultation on Updating the Myners Principles

The Government is [consulting on updating the Myners principles](#) with comments required by 23 June 2008. Paragraphs 7.10 and 7.11 of the consultation document cover the LGPS and ask whether the proposed updated principles should be adopted by the LGPS and whether LGPS

stakeholders should be involved in the Investment Governance Group process. The CIPFA Pensions Panel, on which the LGPC is represented, will be responding to the consultation.

Code of Data Matching Practice 2008 – Statutory Consultation

The Serious Crime Act 2007 gives the Audit Commission a new statutory power to conduct data matching exercises. At this stage, the purpose of data matching authorised under the Act is to assist in the prevention and detection of fraud.

The Commission is required to prepare a code of practice to govern its data matching exercises, and to [consult on the code](#) before approving and laying it before Parliament. Any comments on the draft Code should be sent to rl-murphy@audit-commission.gov.uk by 30 May 2008.

Bits and Pieces

New Pensions in Payment

From April 2009, HMRC will introduce a new pension notification form P46(Pen) This will replace the existing pension notification forms – P46, P160 and PENNOT. It is possible to submit the current forms electronically via HMRC's online facility.

Administrators should note that from April 2009, HMRC will accept electronic submissions of P46(Pen) via the online facility or EDI. Administrators should contact the providers of their pension payroll software to ensure that they will be able to complete electronic submission of the P46(Pen) by April of next year.

Spreading the News

As part of the drive to improve the dissemination of information, the LGPC is looking to issue all information electronically. All Bulletins will in future be e-mailed to Pension Managers (in-house), Pension Managers (outsourced) and Client Managers.

Also, the next Circular will be the last Circular to be sent to authorities in hard copy format. Thereafter, Circulars will be e-mailed out. Further details will be included in the next Circular.

VAT Charged in respect of Investment Management Services

The VAT charged to pension funds in respect of investment management services is an output tax. Following a House of Lords ruling (Fleming and Conde Nast) HMRC have stated the three-year cap on VAT claims can be ignored with respect to claims of output tax relating to periods ending before 4 December 1996. A three-year cap had previously been applied for output claims.

The HMRC's announcement means that if pension funds can successfully prove exemption from VAT on investment management fees, they should be able to recover VAT fees paid between 1 January 1990 and 4 December 1996 as well as the three years before the date to which the current claim relates. There is a likelihood that there will be a limited time in which funds will be able to submit claims.

Reminders

It is less than a year to 5 April 2009. This is the last date on which HMRC will accept applications for Enhanced Protection, or applications for Primary Protection for those members of pension schemes whose benefits exceeded £1.5 million at 5 April 2006. All members of the LGPS who could apply for Primary Protection should have been identified by now. Nevertheless, it is worth checking to see if any member has fallen through the net.

The closing date for the informal consultation on the Admitted Body status provisions was 10 April 2008 and 30 May 2008 is the last day to send comments to CLG on the 'Sustaining the LGPS in England and Wales' consultation document. The LGPC considered both consultation documents at its meeting on 10 April. The views submitted by the Committee can be viewed under Latest News on the Pensions part of the LGE website at

<http://www.lge.gov.uk/lge/core/page.do?pageld=119455>

And lastly, a suggestion – it might just be worth reminding the authorities in your Fund that Councillors are, at least for the time being, remaining in the CARE scheme (accruing a 1/80th pension and a 3/80th lump sum) and that they are continuing to pay contributions at 6%. They are **not** moving to the banded contribution rates.

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