

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 53 – December 2008

Welcome back to all our readers. Due to a combination of factors this is the first Bulletin since the end of July, hence the bumper edition. 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.

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LGPS 2008 – GAD Guidance on Individual Incoming & Outgoing Transfers

In [Bulletin 51](#), the Secretariat indicated that a review of transfer value factors to be used in CETV calculations to and from the LGPS was expected to be completed in time for 1 October 2008 (the date from which regulations permit transfers to be calculated on a scheme specific basis).

New cash equivalent transfer factors are required to comply with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations [SI 2008/1050] which amended The Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847]. In addition, public service pension schemes are affected by regulation 3(2)(c) of The Occupational and Personal Pension Schemes (Transfer Value) (Amendment) Regulations 2008 [SI 2008/2450]. This SI inserts a new sub-paragraph (6) in regulation 7B of The Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] and a new sub-paragraph (6) into regulation 2B of The Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006 [SI 2006/33]. These two new sub-paragraphs require cash equivalent transfer values from public service pension schemes to be calculated in accordance with guidance that has been prepared, and from time to time revised, by the Treasury for calculating the discount rates. The amendments did not have effect until 13 October 2008 which caused a brief hiatus for the period 1 to 12 October 2008.

In response to these changes:

- a) on 26 September 2008, CLG circulated a note on the processing of individual incoming and outgoing transfers to and from LGPS funds
- b) on 29 September 2008, CLG issued an amendment to paragraph 2 of the note plus new GAD public sector transfer club factors dated 8 September 2008
- c) on 17 October 2008, CLG issued a Q&A sheet giving answers to 2 particular questions that had been raised in relation to the new transfer system. Please note that the answer given to question 2 in the Q&A, concerning yields to calculate the AMC, is no longer correct. The correct answer is as follows:

“A2. There are some technical changes around the yield. Previously, the value used was the yield on index-linked gilts of over 5 years duration using a 0% inflation assumption (but subject to a 2% underpin).

This has now changed to the **average** of the yields on the index-linked gilts series of **over 15 years duration assuming 0% and 5% inflation**; the average is rounded to **the nearest** two decimal places (with no 2% underpin).”
- d) on 19 November 2008, CLG issued a letter dated 18 November 2008, advising that “local authority pension funds should now process all non-club transfer in cases using the approach and factors which applied as at 30 September 2008 **AS LONG AS** the transfer can be completed by 31 December 2008. As this non-club transfer-in process also applies to old style interfund adjustments, they too should be progressed in similar fashion if they can be completed by the end of this year. This advice applies in respect of individuals irrespective of when they started with their current employer and became members of their current fund”
- e) on 21 November 2008, CLG circulated new GAD cash equivalent factors for pensioners undergoing divorce

- f) on 5 December 2008, CLG circulated a letter providing further advice on the practical application of the 31 December 2008 deadline and enclosing updated guidance on transfers out (to club and non-club schemes) and transfers in (from non-club schemes)

and, in Scotland:

- g) on 12 September 2008, SPPA issued the GAD guidance note on transfers from 1 October 2008
- h) on 4 December 2008, SPPA circulated new GAD guidance dated 24 November 2008 on cash equivalent factors for pensioners undergoing divorce and new GAD guidance dated 20 November 2008 on transfers out (to club and non-club schemes) and transfers in (from non-club schemes)
- i) on 9 December 2008 David Lauder (SPPA) e-mailed Scottish Pension Managers confirming that Scottish administering authorities should follow the information in this Bulletin in respect of the conversion of AVCs into a period of membership, and also copied Scottish Pension Managers into e-mail correspondence from GAD confirming that cross border IFAs should be dealt with on a Club basis.

The current position in relation to transfers was discussed in a workshop at the Pension Managers' Conference in Torquay on 26 November 2008 and at the Technical Group on 3 December 2008 at which it was agreed that the following advice, whilst not conforming precisely to the CLG/SPPA and GAD guidance, should be followed by administering authorities in order that transfers can be completed in a practicable and consistent manner.

Club and Non-Club Transfers Out (including cross border¹ IFAs out)

- Quote given with a relevant date pre 1 October 2008 using "old" Club transfer out factor tables and transfer offer accepted and received (either before, on or after 1 October 2008) and within the guarantee period - **payment to be made based on guaranteed figure using "old" Club transfer out factor tables (with the GMP factor applied to 45% of the post 5 April 1988 GMP and yield factors of not less than 2%).**
- Quote given with a relevant date pre 1 October 2008 using "old" Club transfer out factor tables and transfer offer accepted and received before 1 October 2008 but outside the guarantee period, with re-calculation being performed after 1 October 2008 - **recalculation to be performed using revised relevant date (date acceptance received) using "old" Club transfer out factor tables (with the GMP factor applied to 45% of the post 5 April 1988 GMP and yield factors of not less than 2%).**
- Quote given with a relevant date pre 1 October 2008 using "old" Club transfer out factor tables and transfer offer accepted and received after 1 October 2008 and outside guarantee period - **recalculation will be performed using revised relevant date (date acceptance received) using "new" Club transfer out factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used

¹ i.e. transfers from England / Wales to Scotland or Northern Ireland; transfers from Scotland to England / Wales or Northern Ireland; transfers from Northern Ireland to England / Wales or Scotland.

- The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
- A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60
- Quote given with a relevant date on or after 1 October 2008 using “new” Club transfer out factor tables and transfer offer accepted and received within the guarantee period - **payment to be made based on guaranteed figure using “new” Club transfer out factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60
- Quote given with a relevant date on or after 1 October 2008 using “new” Club transfer out factor tables and transfer offer accepted and received outside the guarantee period - **recalculation will be performed using “new” Club transfer out factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60

Notes:

- AMCs – for Club transfers out, administering authorities in England, Wales and Scotland should use Table 5.1 in the GAD guidance. For Non-Club transfers out, administering authorities in Scotland should use Table 5.1 in the GAD guidance but administering authorities in England and Wales should use Table 5.1 in the GAD guidance in respect of that part of the transfer value that relates to pre 1 April 2008 membership and use Table 5.2 in the GAD guidance in respect of that part of the transfer value that relates to post 31 March 2008 membership. This will necessitate a split transfer value calculation in England and Wales.
- ARCs – the amount of additional pension purchased by ARCs should be included in the CETV calculation for a transfer to a Non-Club scheme. However, it is not yet known how any additional pension purchased by ARCs should be dealt with when calculating a CETV to another Club scheme. It is understood that this matter is currently being considered by the Club schemes.
- For transfer out to Club schemes, the above represents the Secretariat’s opinion although the Secretariat is not aware of an agreement across the public sector as to how to proceed. The Secretariat assumes that if the LGPS offered a CETV using the “old” factors, the member opts within the guarantee period, and the LGPS pays the CETV using the “old” factors (even if the payment is made after 30 September) that the receiving Club scheme will perform a reverse calculation using their “old” factors.

- Updated protected rights factors² have not yet been received from GAD (to enable administering authorities to quote the split of the CETV between protected and non-protected rights), although the Secretariat understands these are to be issued shortly. Until such time as new factors are issued, administering authorities will have no option but to continue to use the current protected rights factors.

Club Transfers in (including cross border³ IFAs in)

- Use whichever basis the exporting Club scheme has used, i.e. if they used "old" factors then use "old" LGPS Age 60 Club Factors to calculate the service credit but if they have used "new" factor tables then use the "new" LGPS Age 60 Club Factors. Note that, for the latter cases:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60

However, the Administering Authority ought to challenge the sending Club scheme if they believe that the sending scheme is using the wrong factors i.e. old factors are used when new ones should have been used. For example:

- where the sending scheme offered the transfer pre 1 October 2008 and the member opted to proceed before 1 October 2008, the sending scheme should use the "old" factors
- where the sending scheme offered the transfer pre 1 October 2008 and the member opted within the guarantee period (even if the date of option is post 30 September 2008), the sending scheme should use the "old" factors
- where the sending scheme offered the transfer pre 1 October 2008 but the member did not opt within the guarantee period, and the new relevant date used by the sending scheme is on or after 1 October 2008, the sending scheme should use the "new" factors
- where the sending scheme offered the transfer on or after 1 October 2008 the sending scheme should use the "new" factors

Notes:

- AVCs – as AVCs will purchase a service credit in the LGPS it is understood that the service credit derived from the AVCs should be calculated using non-club transfer in factors.
- ARCs – it is not yet known how any ARCs included in a transfer from another Club scheme (or a cross border IFA) should be dealt with i.e. should the amount included in the transfer value purchase membership or a fixed amount of pension? If the former, should the service credit be calculated using club or non-club factors and, if the latter, how is the fixed amount of pension to be calculated? Early indications are that it should purchase a fixed amount of pension but the Secretariat is awaiting further advice from CLG/SPPA/GAD.
- Cross border IFAs – a person who has a protected 85 year rule (CRA) in England and Wales which is met prior to age 65 and who moves to an authority in Scotland (or vice versa) is joining a new

² See regulation 80 of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 118 of the Local Government Pension Scheme (Scotland) Regulations 1998.

³ i.e. transfers from England / Wales to Scotland or Northern Ireland; transfers from Scotland to England / Wales or Northern Ireland; transfers from Northern Ireland to England / Wales or Scotland.

scheme (as the schemes in England / Wales and in Scotland are contained in separate SIs and are viewed by HMRC as separate schemes). The member's NRD in the new scheme will, therefore, be age 65 and he / she will not have a protected CRA. His / her service credit in the new scheme will therefore be greater than a day for day service credit.

Non-Club Transfers In (including conversion of LGPS AVC pot to scheme membership for a pre 13 November 2001 AVC contributor / pre 30 June 2005 AVC contributor in Scotland)

- Service credit quote given before 1 October 2008 using "old" Non-Club transfer in factor tables and transfer acceptance given and received before 1 October 2008 - **calculate service credit using "old" Non-Club transfer in factor tables.**
- Service credit quote given before 1 October 2008 using "old" Non-Club transfer in factor tables and transfer acceptance given and received on or after 1 October 2008 but prior to 1 January 2009 - **calculate service credit using "old" Non-Club transfer in factor tables (regardless of the date the transfer monies are received).**
- Service credit quote given before 1 October 2008 using "old" Non-Club transfer in factor tables and transfer acceptance given and received on or after 1 January 2009 - **calculate service credit using "new" Non-Club transfer in factor tables (and using AMC Table 5.1).**
- Service credit quote given on or after 1 October 2008 and before 1 January 2009 using "old" Non-Club transfer in factor tables and transfer acceptance given and received before 1 January 2009 - **calculate service credit using "old" Non-Club transfer in factor tables (regardless of the date the transfer monies are received).**
- Service credit quote given on or after 1 October 2008 and before 1 January 2009 using "old" Non-Club transfer in factor tables and transfer acceptance given and received on or after 1 January 2009* - **calculate service credit using "new" Non-Club transfer in factor tables (and using AMC Table 5.1).**

*NB: however, to avoid maladministration claims to the Pensions Ombudsman, the Technical Group suggests that, where a quote is given on or after 1 October 2008 and before 1 January 2009 using the "old" Non-Club transfer in factor tables, administering authorities should agree to calculate the actual service credit using the "old" Non-Club transfer in factor tables **provided** the transfer acceptance is given and received within 3 months of the quote being issued. The member should be informed that if they miss this deadline, the service credit will be calculated using the "new" Non-Club transfer in factor tables which would reduce the potential service credit.

- Service credit quote given on or after 1 January 2009 using "new"* Non-Club transfer in factor tables – **calculate service credit using "new"* Non-Club transfer in factor tables (and using AMC Table 5.1).**

*NB: to avoid maladministration claims to the Pensions Ombudsman, the Technical Group suggests that there may be cases where an administering authority will wish to calculate the service credit using the "old" Non-Club transfer in factor tables. Take the following case, for example: A member joined the LGPS on 26 August 2008 and the administering authority received the transfer quote from the sending non-club scheme on 16 October 2008. The relevant date for the transfer is 26 August 2008 and the transfer value is guaranteed by the sending scheme until 15 December 2008. Due to uncertainty over how to deal with transfers post September 2008, the case is stockpiled by the administering authority until post 31 December 2008 and so the transfer acceptance is not given and received until on or after 1 January 2009. In these situations

administering authorities might wish to provide a quote using the “old” Non-Club transfer in factor tables and should then agree to calculate the actual service credit using the “old” Non-Club transfer in factor tables **provided** the transfer acceptance is given and received within 3 months of the quote being issued. The member should be informed that if they miss this deadline, the service credit will be calculated using the “new” Non-Club transfer in factor tables which would reduce the potential service credit.

Notes:

- **Use of “new” Non-Club transfer in factor tables where the service credit would purchase Part A membership⁴ (i.e. a pension of 1/80th and a lump sum of 3/80ths or, in the case of conversion of a LGPS AVC pot to scheme membership, a pension of 1/80th)** – the new GAD guidance for Non-Club transfers in stipulates that the tables in the guidance are for the sole purpose of calculating service credits for Non-Club incoming transfers in relation to members with an NPA of 65 buying 60ths benefits with a commutation option. Further advice is being sought from CLG and GAD as to how transfers that purchase Part A membership should be dealt with.
- **Conversion of LGPS AVC pot to scheme membership** – the existing GAD guidance includes factors for protected regulation 66(8) cases / protected regulation 65(8) cases in Scotland to adjust the service credits on account of the fact that such service credits produce no lump sum. However, given the fact that the normal Non-Club CETV factors are being updated, the Secretariat assumes that GAD will also issue new protected regulation 66(8) factors / regulation 65(8) factors in Scotland. This guidance will need to clarify, given that the service credit will count as type A membership, whether the service credit will now generate a 1/80th pension and 3/80^{ths} lump sum (as there is no longer any overriding requirement for there to be no lump sum derived from the AVC conversion into membership). Please note that the final entry in the table on page 5 of Bulletin 52 should read as follows:

Service credit under protected regulation 66(8) of the LGPS Regulations 1997 (as amended) ⁵	1/80 (adjusted in accordance with GAD guidance as there is no automatic 3/80ths lump sum) ****	CRA****	A**** but no reduction
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**** but the membership from the service credit (before adjustment to allow for the fact there is no automatic 3/80ths lump sum) will also have the effect of dragging forward the CRA of all the member’s membership.

- **Conversion of LGPS AVC pot to a “top up” pension i.e. a scheme annuity under regulation 26(5) of the LGPS (Administration) Regulations 2008 / regulation 65(4) of the LGPS (Scotland) Regulations 1998** – in these cases, given the change to the Non-Club transfer in factors (reflecting increased life expectancy), the Secretariat assumes that GAD will issue updated factor tables. Until such time as new factors are issued, administering authorities will have no option but to continue to use the current scheme annuity factor tables.

4 See LGPC Bulletin 52

5 Protected regulation 65(8) of the LGPS (Scotland) Regulations 1998

Interfund adjustments out after 30 September 2008 (other than cross border IFAs)

Paragraph 1.5 of the GAD guidance note for England and Wales dated 2 May 2008 said that the guidance covered *“transfers where the member left their old Fund on or after 1 April 2008. Transfers where the member left their old Fund before 1 April 2008 should be treated in line with the previous GAD guidance under Regulation 125 of the Local Government Pension Scheme Regulations 1997 (SI 1997/1612) if complete payment is made before 1 October 2008. This guidance should be used if a member left their old Fund before 1 April 2008 but complete payment is not made until on or after 1 October 2008.”*

So, as at the date of this Bulletin, Funds in England and Wales are now in a position whereby the sum to be transferred from one Fund to another (other than in the case of cross border IFAs) is to be calculated using the non-club transfer in factors. Based on the CLG letter dated 18 November 2008, Funds can continue to use the “old” non-club transfer in factors **provided** the transfer is completed before 1 January 2009. Thereafter, Funds will have to use the “new” non-club transfer in factors (which have not yet been issued).

The Torquay workshop and the Technical Group have considered two questions in relation to IFAs in England and Wales that have been vexing Funds. These are considered below.

Q1. What is the effective date for the calculation of the IFA for members who:

a) left their former Fund on or after 1 April 2008, or

b) left their former Fund before 1 April 2008 but complete payment is not made until on or after 1 October 2008?

The GAD IFA guidance note for England and Wales dated 2 May 2008 says:

“2.1 The transfer amount should be calculated in the same way that a cash equivalent transfer is calculated but based on the non-Club transfer-in factors.

2.4 The effective date of the calculation should be the date of the election that triggers the transfer.”

Under regulation 86(1)(c) of the LGPS (Administration) Regulations 2008 an IFA is payable if a member makes an “election” under regulation 16, 17 or 46(4) of those Regulations or an election is made under regulations 4 or 5 of the LGPS (Transitional Provisions) Regulations 2008. Regulation 16 of the LGPS (Administration) Regulations 2008 says that where a member makes an election it must be made to the administering authority for the new employment and also, if the appropriate fund for the new employment is different to that for the former employment, to the administering authority for the former employment. Clearly, if the two administering authorities each require the member to sign an election form, the date of election to the two administering authorities could, potentially, be different. Given that scheme members usually elect to aggregate by signing a form for the new administering authority (which is then copied to the former administering authority) all Funds should, for the sake of ensuring a consistent approach, use the date on the form signed for the new administering authority as the “effective date” for the calculation.

Administering authorities in England and Wales will, if they haven't already done so, need to amend their IFA (aggregation of membership) election forms in order to ascertain marital / civil partner / nominated co-habiting partner status at the date of election.

Note that the GAD IFA guidance note for England and Wales dated 2 May 2008 says if the IFA “is paid within three months of the effective date, then no interest is payable. If payment is delayed, then interest should be paid in line with regulation 44 of the Administration Regulations”.

With regard to IFAs within Scotland, these should continue for the time being to be paid in accordance with the current method of Service x Pay x Factor. A decision has yet to be taken as to the timing of any move to a CETV approach as applies in England and Wales.

Q2. For the cases falling within Q1 above, should the “old” or “new” non-club CETV in factors be used?

The GAD IFA guidance note for England and Wales dated 2 May 2008 says:

“1.5 This guidance covers transfers where the member left their old Fund on or after 1 April 2008. Transfers where the member left their old Fund before 1 April 2008 should be treated in line with the previous GAD guidance under Regulation 125 of the Local Government Pension Scheme Regulations 1997 (SI 1997/1612) if complete payment is made before 1 October 2008. This guidance should be used if a member left their old Fund before 1 April 2008 but complete payment is not made until on or after 1 October 2008.

2.1 The transfer amount should be calculated in the same way that a cash equivalent transfer is calculated but based on the non-Club transfer-in factors.

2.4 The effective date of the calculation should be the date of the election that triggers the transfer.”

The note on CETVs issued by CLG on 1 October 2008 indicated that where a CETV out quote had been offered before 1 October 2008 [subsequently extended by CLG to 1 January 2009] and the member elected within the 3 month guarantee period, the CETV should be paid using the old CETV factors.

This subject was discussed at the Pension Managers’ Conference in Torquay and was followed up by further discussion at the Technical Group Meeting on 3 December 2008. As a result of these discussions, and with a view to moving to a single approach to calculate outward transfers, CLG will be confirming shortly that the factors and approach made available in the GAD guidance note of 2 May 2008 should continue to be used for IFAs until 31 March 2009 where the effective date is on or before that date.

Note that the “old” yields for October, November and December 2008 were 2% (as a result of the underpin). The actual yields were, respectively, 1.03, 1.68 and 1.77.

Divorce CETV / CEV quotes

- For divorce CETV quotes for active and deferred members where the relevant date for the divorce quote is pre 1 October 2008 – **calculate the quote using the “old” factor tables (with the GMP factor applied to 45% of the post 5 April 1988 GMP and yield factors of not less than 2%)**
- For divorce CETV quotes for active and deferred members where the relevant date for the divorce quote is on or after 1 October 2008 – **calculate the quote using the “new” factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60

- For divorce CEV quotes for a pensioner member where the relevant date for the divorce quote is pre 1 October 2008 – **calculate the quote using the “old” PENSIONER DIVORCE factor tables (see appendices 8 and 5 in the Divorce Guide)**
- For divorce CETV quotes for a pensioner member where the relevant date for the divorce quote is on or after 1 October 2008 – **calculate the quote using the “new” PENSIONER DIVORCE factor tables dated 1 October 2008.**

Notes:

- In essence, divorce CEV quotes for pensioners can proceed. Also, divorce CETV quotes for active or deferred members can proceed, provided the CETV quote is for a member under age 60.
- Where a CETV / CEV quote has already been provided where the relevant date for the divorce quote was pre 1 October 2008 administering authorities might wish to write to the person to whom the quote was sent to point out that if the divorce goes ahead and the actual CETV / CEV valuation date following receipt of the Pension Sharing Order and all the relevant paperwork falls on or after 1 January 2009, the actual CETV / CEV could be significantly lower than the quote provided.
- Updated factors for Adjustments A and B in the GAD guidance in Annex 8 of the Pension Sharing on Divorce guide are also to be supplied shortly.

Divorce - actual Pension Sharing Orders

- Quote given before 1 October 2008 for an active or deferred member and the actual valuation date is before 1 October 2008 - **calculate actual using the “old” factor tables (with the GMP factor applied to 45% of the post 5 April 1988 GMP and yield factors of not less than 2%)**
- Quote given before 1 October 2008 for a pensioner member and the actual valuation date is before 1 October 2008 - **calculate actual using the “old” PENSIONER DIVORCE factor tables (see appendices 8 and 5 in the Divorce Guide)**
- Quote given before 1 October 2008 for an active or deferred member and the actual valuation date is on or after 1 October 2008 - **calculate actual using the “new” factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)
 - Yield factors for less than 2% may now be used
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60
- Quote given before 1 October 2008 for a pensioner member and the actual valuation date is on or after 1 October 2008 - **calculate actual using the “new” PENSIONER DIVORCE factor tables dated 1 October 2008.**
- Quote given on or after 1 October 2008 for an active or deferred member and the actual valuation date is on or after 1 October 2008 - **calculate actual using the “new” factor tables** for which:
 - The age 60 Table of Factors is to be used (with conversion factor if NRD or CRA is after age 60)

- Yield factors for less than 2% may now be used
 - The GMP Factor is to be applied to 25% of the post 5 April 1988 GMP (not, as formerly, 45%)
 - A special GMP conversion is required where the member is female, has a GMP, and has a CRA (or NRD) after age 60
- Quote given on or after 1 October 2008 for a pensioner member and the actual valuation date is on or after 1 October 2008 - **calculate actual using the "new" PENSIONER DIVORCE factor tables dated 1 October 2008.**

Notes:

- The Secretariat understands that GAD will issue updated guidance on the application of Pension Credits and Pension Debits, given that the Pension Credit still currently generates a 1/80th pension plus, in some cases, a 3/80ths lump sum, whereas the Pension Debit member is currently accruing a 1/60th pension (with the option to commute). Updated factors for Adjustments A and B in the GAD guidance in Annex 8 of the Pension Sharing on Divorce guide are also to be supplied shortly.

Augmentation

The current GAD guidance on augmentation (dated 18 December 2006 in England and Wales, and 16 April 2008 in Scotland) stipulates that the cost of augmented membership should be calculated based on Non-Club transfer in tables. Thus, for administering authorities who use the GAD guidance (rather than their own Fund actuary guidance) to calculate the cost of augmented membership:

- For augmentation where the resolution to grant augmented membership is made before 1 January 2009 **calculate the cost using the "old" Non-Club transfer in factor tables**
- For augmentation where the resolution to grant augmented membership is made on or after 1 January 2009 **calculate the cost using the "new" Non-Club transfer in factor tables.**

Notes:

- The current GAD guidance on augmentation does not adequately cover the real cost of augmentation as it assumes that benefits will not be payable until, at the earliest, age 60. Whilst this might be appropriate in the limited number of cases where an employer grants augmented membership to an active scheme member as, for example, a bonus or inducement to join / remain with the employer, the vast majority of cases are where augmentation is granted immediately prior to early retirement on redundancy or efficiency grounds. In the latter cases, the methodology used in the GAD guidance materially underestimates the true cost of augmentation. New guidance is needed to cover this. Also, the existing GAD guidance draws a distinction between cases where the augmentation affects a member's CRA and cases where it does not. However, any augmentation granted under the new Scheme in England and Wales (regulation 12 of the Benefits Regulations) does not affect a member's CRA - see paragraph 3(2) of Schedule 2 to the LGPS (Transitional Provisions) Regulations 2008. Paragraphs 1.5.3 to 1.5.5 and Example 2 in the current GAD guidance should, therefore, now be ignored in England and Wales (and paragraphs 2.3.3 to 2.3.5 and Example 2 of the Scottish guidance should be ignored from 1 April 2009 in respect of any augmentation awarded under regulation 12 of the Benefits Regulations in Scotland).
- Administering authorities using their own Fund actuary guidance (rather than GAD guidance) to calculate the cost of augmented membership should follow the advice from their Fund actuary.

Interest on late payment of pensions and lump sums

Administering authorities in England and Wales should note that the interest provisions in the current regulations are not entirely the same as those that applied under the LGPS Regulations 1997. The Secretariat has produced the following to explain the current interest provisions and to highlight (in plum in the tables below) where they differ from the previous provisions.

The following is an extract from the LGPS (Administration) Regulations 2008

51 Interest on late payment of certain benefits

(1) Where all or part of a pension or lump sum payment due under these Regulations, the Benefits Regulations or the Earlier Regulations is not paid within the relevant period after the due date, the appropriate administering authority must pay interest on the unpaid amount to the person to whom it is payable (see regulation 44(4)).

(2) The relevant period is -

(a) in the case of a pension under regulation 24(1), 27(1), 33(1) or 36(1) of the Benefits Regulations, the period ending one month after the date on which the administering authority receives notification of the member's death;

(b) in the case of any other pension, one year;

(c) otherwise, one month.

(3) The due date is -

(a) in the case of a pension, the date on which it becomes payable;

(b) in the case of a lump sum under the Transitional Regulations or regulation 21 of the Benefits Regulations (election for lump sum in lieu of pension), the benefit crystallisation date;

(c) in the case of a death grant under regulation 23, 32 or 35 of the Benefits Regulations, the date on which the member dies or, where notification of death is received more than two years after the date of death, the date of notification; and

(d) in the case of a payment of a lump sum under regulation 39 (commutation: small pensions) of the Benefits Regulations, the date of the commutation election or, if later, the nominated date (within the meaning of paragraph 7(3) of Part 1 of Schedule 29 to the Finance Act 2004).

44 Interest

(4) Interest due ... to a person under regulation ... 51 (interest on late payment of certain benefits) must be calculated at one per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

Notes:

Regulation 51 says that where all or part of a pension or lump sum payment due under these Regulations, the Benefits Regulations **or the Earlier Regulations** is not paid within the relevant period after the due date, the appropriate administering authority must pay interest on the unpaid amount to the person to whom it is payable. Schedule 1 of the LGPS (Administration) regulations 2008 defines "the Earlier Regulations" as meaning "all or any of the Local Government Superannuation Regulations 1974, the 1986 Regulations, the 1995 Regulations, the 1997 Regulations or the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 as appropriate". The Secretariat's understanding is that:

- the Local Government Superannuation Regulations 1974 were revoked in their entirety by regulation S3 of, and Schedule 20 to, the Local Government Superannuation Regulations 1986
- the Local Government Superannuation Regulations 1986 were themselves revoked by regulation M9 of, and Schedule M5 to, the Local Government Pension Scheme Regulations 1995 - except Parts K (gratuities) and L (injury allowances) of the 1986 Regulations and the other provisions of the 1986 Regulations in so far as they continued to be required for the purposes of those Parts - and subject to the provisions in Schedule C6 of the 1995 Regulations and the savings in Schedule M4 of the 1995 Regulations
- by virtue of regulation 4 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 the benefits for pre 1 April 1998 deferred and pensioner members continued to be subject to the 1995 Regulations – except regulations C1, C21, H1, H3 to H7, M4, M5, M6 and Parts J, K and L of and Schedules C1, K1, K2 and L1 to the 1995 Regulations – and to regulations 49 and 50 and Part IV of the 1997 Regulations. Thus, all interest payments for pre 1 April 1998 leavers were, by virtue of regulation 4(1)(b) of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997, to be calculated under regulation 94 of the 1997 Regulations (as was interest for benefits due to post 31 March 1998 leavers).
- regulation 94 of the 1997 Regulations has, in turn, been superseded by regulation 51 of the LGPS (Administration) Regulations 2008 (as it covers interest on pensions and lump sums due under the Administration Regulations, the Benefits Regulations and the Earlier Regulations). Thus, all interest payments listed in the table below are, for both pre 1 April 2008 and post 31 March 2008 leavers, to be calculated under regulation 51 of the LGPS (Administration) Regulations 2008 where the payment is made post 31 March 2008 (although in some circumstances it is still necessary to refer to regulation 94 of the 1997 Regulations to determine the “relevant period” or “due date”).

The following table summarises:

- a) the position that applied up to 31 March 2008
- b) the position that applies from 1 April 2008

Where there are differences, these are highlighted in purple within the table.

Regulation 44 exactly mirrors the wording of regulation 82(2) of the 1997 Regulations which said:

82 Interest

(2) Interest under ...regulation ... 94 must be calculated at one per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

Interest under regulation 44 is payable if payment is not made within the relevant period after the due date.

	Position that applied up to 31 March 2008			Position that applies from 1 April 2008		
Benefit	1997 Regs	Relevant period [after]	Due date	2008 Regs	Relevant period [after]	Due date
Member's pension and Pension Credit member's pension	94(1A)(a) & (2) and 152	1 year after	Date pension became payable	Covered by 51(2)(b) & (3)(a) – same relevant period and due date as under regs 94(1A)(a) & (2) of 1997 Regs	1 year after	Date pension became payable
Survivor's pension – pre 1 April 2008 leaver	94(1A)(a) & (2)	1 year after	Date pension became payable	Covered by 51(2)(b) & (3)(a) – same relevant period and due date as under regs 94(1A)(a) & (2) of 1997 Regs	1 year after	Date pension became payable
Survivor's pension – post 31 March 2008 leaver	N/A	N/A	N/A	51(2)(a) & (3)(a)	1 month after AA receives notification of death	Date pension became payable
Lump sum – pre 1 April 2008 leaver	94(1A)(c) & (2A)	1 month after	Date lump sum became payable	The "relevant period" is covered by 51(2)(c) and is the same as under the 1997 Regs but the "due date" is not covered by 51(3)(b). Thus the "due date" is still that in reg 94(2A) of the 1997 Regs	1 month after	Date lump sum became payable
Lump sum – post 31 March 2008 leaver	N/A	N/A	N/A	51(2)(c) & (3)(b)	1 month after	BCE date
Lump sum – Pension Credit member	152 & 94(1A)(c) & (2A) & (6)	1 month after	Date lump sum became payable	The "relevant period" is covered by 51(2)(c) and is the same as under the 1997 Regs but the "due date" is covered by 51(3)(b) because a Pension Credit lump sum falls within the saved provisions in Schedule 1 of the Transitional Regulations and is thus "a lump sum under the Transitional Regulations".	1 month after	BCE date

Interest under regulation 44 is payable if payment is not made within the relevant period after the due date.						
	Position that applied up to 31 March 2008			Position that applies from 1 April 2008		
Benefit	1997 Regs	Relevant period [after]	Due date	2008 Regs	Relevant period [after]	Due date
Trivial commutation lump sum – pre 1 April 2008 leaver	94(1A)(c) & (5)	1 month after	Date pension would otherwise have become payable	The “relevant period” is covered by 51(2)(c) and is the same as under the 1997 Regs but the “due date” is not covered by 51(3)(d). Thus the “due date” is still that in reg 94(5) of the 1997 Regs	1 month after	Date pension would otherwise have become payable
Trivial commutation lump sum – post 31 March 2008 leaver	N/A	N/A	N/A	51(2)(c) & (3)(d)	1 month after	Date of commutation election or, if later, the nomination date
Trivial commutation – Pension Credit member Note: this category has been included on the grounds that reg 156 of the 1997 Regulations is a saved provision in Schedule 1 of the Transitional Regs and also seems to be referred to in reg 14(3) of the Transitional Regs, despite reg 14(2) saying that reg 156 of the 1997 Regs does not continue to apply.	152 & 94(1A)(c) & (5)	1 month after	Date pension would otherwise have become payable	The “relevant period” is covered by 51(2)(c) and is the same as under the 1997 Regs. Although the “due date” is not covered by 51(3)(d) it appears to be covered by 51(3)(b) because a Pension Credit trivial commutation lump sum falls within the saved provisions in Schedule 1 of the Transitional Regulations and is thus “a lump sum under the Transitional Regulations”.	1 month after	BCE date

Interest under regulation 44 is payable if payment is not made within the relevant period after the due date.

	Position that applied up to 31 March 2008			Position that applies from 1 April 2008		
Benefit	1997 Regs	Relevant period [after]	Due date	2008 Regs	Relevant period [after]	Due date
Serious ill health lump sum – pre 1 April 2008 leaver	94(1A)(c) & (5)	1 month after	Date pension would otherwise have become payable	The “relevant period” is covered by 51(2)(c) and is the same as under the 1997 Regs but the “due date” is not covered by 51(3). Thus the “due date” is still that in reg 94(5) of the 1997 Regs	1 month after	Date pension would otherwise have become payable
Serious ill health lump sum – Pension Credit Member	152 & 94(1A)(c) & (5)	1 month after	Date pension would otherwise have become payable	The “relevant period” is covered by 51(2)(c) and is the same as under the 1997 Regs but the “due date” is covered by 51(3)(b) because a Pension Credit lump sum falls within the saved provisions in Schedule 1 of the Transitional Regulations and is thus “a lump sum under the Transitional Regulations”.	1 month after	BCE date
Death grant – pre 1 April 2008. leaver	94(1A)(b) & (3)	1 month after AA receives notification of death	Date of death	The “relevant period” is covered by 51(2)(c) but the “due date” is not covered by 51(3)(c). Thus the “due date” is still that in reg 94(3) of the 1997 Regs.	1 month after	Date of death
Death grant – post 31 March 2008 leaver	N/A	N/A	N/A	51(2)(c) & (3)(c)	1 month after	Date of death or date AA receives notification of death if received more than 2 years after death

Interest under regulation 44 is payable if payment is not made within the relevant period after the due date.

	Position that applied up to 31 March 2008			Position that applies from 1 April 2008		
Benefit	1997 Regs	Relevant period [after]	Due date	2008 Regs	Relevant period [after]	Due date
Death grant – Pension Credit member	152 & 94(1A)(b) & (3)	1 month after AA receives notification of death	Date of death	The “relevant period” is covered by 51(2)(c). Although the “due date” is not covered by 51(3)(c) it appears to be covered by 51(3)(b) because a lump sum death grant due in respect of a Pension Credit member falls within the saved provisions in Schedule 1 of the Transitional Regulations and is thus “a lump sum under the Transitional Regulations”.	1 month after	BCE date

Interest on late payment of refunds

The following is an extract from the LGPS Regulations 1997

87 Rights to return of contributions

(1) If a member with less than three months' total membership-

(a) ceases to be employed by a Scheme employer or to be an active member without becoming entitled to a retirement pension, or

*(b) ceases to be an active member by reason of a notification under regulation 8(2),
he is entitled to be repaid his contributions from the appropriate fund .*

(2A) If repayment of the contributions has not been made before the expiry of the period of one year beginning with the date when active membership ceases, the person is entitled to interest on the repayment which should have been made, calculated as provided in regulation 82(2), the due date being the date when active membership ceased.

82 Interest

(2) Interest under...regulation 87(2A)... must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

The following is an extract from the LGPS (Administration) Regulations 2008

46 Rights to return of contributions

(1) If a member with less than three months' membership ceases to be employed by an employing authority or to be an active member without becoming entitled to a retirement pension he is entitled to be repaid his contributions from the appropriate fund.

(2) If repayment of the contributions has not been made before the expiry of the period of one year beginning with the date when active membership ceases, the person is entitled to interest on the repayment which should have been made, calculated as provided in regulation 44(4), the due date being the date when active membership ceased.

44 Interest

(4) Interest due ... to a person under regulation ... 46(2) (rights to return of contributions) ... must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

Notes:

The Secretariat's understanding of the transition from the Local Government Superannuation Regulations 1974 through to the Local Government Pension Scheme Regulations 1997 is set out earlier in this Bulletin. All refunds and interest payments on refunds for pre 1 April 1998 leavers were, by virtue of regulation 4(1)(a) of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997, to be calculated under regulation 87 and 82(2) of the 1997 Regulations (as were refunds and interest thereon due to leavers between 1 April 1998 and 31 March 2008). Refunds and interest thereon for post 31 March 2008 leavers are calculated under regulations 46 and 44 of the LGPS (Administration) Regulations 2008.

The relevant period, due date and method of calculating interest is, therefore exactly the same under the 2008 Regulations and the 1997 Regulations.

Interest is payable if payment is not made within the relevant period after the due date.						
Benefit	Position that applied up to 31 March 2008			Position that applies from 1 April 2008		
	1997 Regs	Relevant period [after]	Due date	2008 Regs	Relevant period [after]	due date
Refund of contributions – pre 1 April 2008 leavers	87(2A)	1 year after	Date ceased active membership	Not covered by 46(1) and (2) so 87(2A) of 1997 Regs still applies	1 year after	Date ceased active membership
Refund of contributions – post 31 March 2008 leavers	N/A	N/A	N/A	46(1) and (2)	1 year after	Date ceased active membership

Interest on incorrectly deducted employee contributions

The following is an extract from the LGPS Regulations 1997

89 Deduction and recovery of member's contributions

(5) If -

- (a) an employing authority deduct any amount in error from a person's pay or any other sum due to him in respect of contributions, other than contributions due to be repaid to him by virtue of his having left without any rights under the Scheme (which are dealt with under regulation 87), and
- (b) the amount has not been repaid to him before the expiry of the period of one month beginning with the date of deduction,

the appropriate body must pay him interest on that amount calculated as provided in regulation 82(2), the due date being the date of deduction.

82 Interest

(2) Interest under ... regulation ... 89(5) must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

The following is an extract from the LGPS (Administration) Regulations 2008

45 Deduction and recovery of member's contributions

(5) If-

- (a) an employing authority deduct in error any amount in respect of contributions from a person's pay or any other sum due to him; and
- (b) the amount has not been repaid to him before the expiry of the period of one month beginning with the date of deduction,

the appropriate body must pay him interest on that amount; and the due date for the calculation of the interest under regulation 44(4) is the date of deduction.

44 Interest

(4) Interest ... payable to a person under regulation 45(5) (deduction and recovery of member's contributions) ... must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

So there has been no change.

Interest on pay-over of employee and employer contributions

The following is an extract from the LGPS (Administration) Regulations 2008

44 Interest

(1) An administering authority may require an administering or employing authority from which payment of any amount due under regulations 39 to 42 (employers' contributions or payments)... is overdue to pay interest on that amount.

(2) The date on which any amount due under regulations 39 to 41 is overdue is the date one month from the date specified by the administering authority for payment.

(3) The date on which any amount due under regulation 42 (other than any extra charge payable under regulation 40 or 41 and referred to in regulation 42(1)(c)) is overdue is the day after the date when that payment is due.

(4) Interest due under paragraph (1)... must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

So, the following applies:

Interest under regulation 44 is payable if payment is not made within the relevant period after the due date.

Type of payment due	Position that applies from 1 April 2008			Comments
	2008 Regs	Overdue if not paid	Due date	
Employee's contributions	42	Within 1 day of	date specified by AA for pay over of employee contributions, but this date cannot be later than the 19 th of the month after the contributions were collected from pay (see reg 42(2)(a))	Differs from 1997 Regs under which payment was overdue if not paid within 1 month of the date specified by the Administration Authority.
Employer's contributions	39	Within 1 month of	date specified by AA for pay over of employer contributions, but as employer contributions have to be paid over at same time as employee contributions (see reg 39(3)(a)) this date effectively cannot be later than the 19 th of the month after the employees' contributions were collected from pay	Same as 1997 Regulations
Employer's payment for award of augmented membership under Benefits Reg 12 or additional pension under Benefits Reg 13	40	Within 1 month of	date specified by AA for pay over of payment due	Differs from 1997 Regs under which payment for augmented membership was overdue if not paid within 2 months of (i.e. a month after a month after) the date of the resolution to award the membership
Employer's further payments for ill health benefits, preserved into payment on health grounds, flexible retirement, redundancy or efficiency pensions, waiving reductions on flexible retirement	41	Within 1 month of	date specified by AA for pay over of payment due	Same as 1997 Regulations

LGPS GAD guidance – Broad Comparability

On 6 October 2008, GAD issued guidance on Broad Comparability where members are transferred from the LGPS. The guidance clarifies the definition of the minimum pension age for members.

LGPS Children's Pensions (England and Wales)

Regulation 5 of the LGPS (Miscellaneous) Regulations 2008 (SI 2008/2425) replaced regulation 44 of the LGPS Regulations 1997 which redefined the meaning of an "eligible child" including raising the age to which a child's pension is automatically payable from age 17 to age 18. The effective date for this amendment was backdated to 6 April 2006. As a consequence, arrears of children's pensions are now due for the period up to age 18 where the payment of pension was, on or after 6 April 2006, stopped at or after age 17 and prior to age 18.

LGPS (Scotland) – Withdrawal of GAD Passport

GAD issued an Important Notice on 13 August 2008. It announced the withdrawal of GAD passport certificates showing that a contractor's pension scheme is broadly comparable to the LGPS (Scotland). This is as a consequence of the promulgation of The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations [SSI 2008/230].

The withdrawal of the GAD passport certificates in Scotland replicates the withdrawal of the GAD passport certificates in England and Wales. The Secretariat issued Circular 202 in June 2007 when GAD withdrew the passport certificates in England and Wales and has issued an equivalent Circular in relation to the withdrawal in Scotland. [See Circular 217 for further details.](#)

The LGPS – Trivial Commutations

Back-dated Pay Awards

As a result of a query the Secretariat contacted HMRC regarding the commutation of benefits on the grounds of triviality where the member subsequently receives a back-dated pay award. In the case in question, the member had already trivially commuted benefits prior to receiving further pensionable pay due to a back-dated pay award. This gave rise to a number of questions.

In normal circumstances, where a member has not commuted a trivial pension, the administering authority would re-calculate the member's benefits and then pay the adjusted pension together with the arrears. However, where a member has commuted a trivial pension, if the administering authority re-calculates the member's pension based on a final pensionable pay including the back-dated pay award and:

- (1) the value of the member's re-calculated pension is still less than 1% of the SLA at the nominated date, can the balance of the trivial commutation be paid to the member?
- (2) if the additional payment in (1) is made, is it an authorised payment and, if so, is the original trivial commutation still an authorised payment?
- (3) does the balance of the trivial commutation need to be paid with 12 months of the nominated date or can it be paid later because it is a correction?
- (4) if the value of the re-calculated pension exceeds 1% of the SLA, does the trivial commutation become an unauthorised payment?

HMRC's response is reproduced below in the italic font.

" . . . The key to answering this is whether the pay revision was expected. If it was, that could affect the level of benefits originally due under the scheme, and could call into question whether the original triviality payment had "extinguished the member's entitlement to benefits under the pension scheme", as was required under paragraph 7(1)(d) of Schedule 29 FA04. If it turns out the conditions for making the original payment authorised were not met, then the original payment may be seen to have been unauthorised.

If on the other hand everyone understood that the earlier benefit payment had extinguished the member's entitlement to benefits under the scheme, and the later pay revision creates a new 'further' entitlement under the scheme, then the status of the original payment stands as before - i.e. it remains authorised.

An authorised further payment still has to be paid within the same 12 month commutation period that was established at the time the first payment was made. The test for the 1% limit on the previously established nominated date has to be revisited. In effect, both payments will share the same nominated date for a test, but use different figures for their respective tests.

If the retested rights (crystallised and uncrystallised rights) go above the 1% limit on the second test, then no further authorised trivial commutation lump sum may be paid. Any further payment would have to be authorised using other authorised payment rules, such as regular member's scheme pension or lifetime annuity.

Taking [the] questions in turn:

(1) Yes, if still within the 12 month window

(2) Yes

(3) It has to be paid within the 12 months of the commutation period, i.e. within 12 months from the first trivial commutation payment.

(4) Yes, no further trivial commutation payment can be made - the entire payment becomes unauthorised, not just the portion above 1%."

HMRC's responses clearly have implications for the processing of trivial commutations. If there is a pending back-dated pay award, the member will need to exercise caution when selecting the nomination date. In addition, administering authorities will need to be careful to ensure that the total value of the member's crystallised and uncrystallised benefits does not exceed 1% of the SLA.

Stand-alone pots valued at less than £2,000

In [Bulletin 49](#), it was reported that the Government was considering easement of the administration of trivial commutations by allowing benefits, which are valued at less than £2,000, can be commuted. The Secretariat have confirmed with HMRC that the necessary legislation has not yet been passed by Parliament. At the moment, HMRC are unable to state when the necessary legislative amendments will be made.

The LGPS - Internal Disputes Resolution Procedure (IDRP)

As reported in [Bulletin 51](#), the Pensions Act 2004 (Commencement No.11) Order 2008 [SI 2008/627] set the effective date for changes to the resolution of disputes procedures as 6 April 2008 and The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 [SI 2008/649] made various changes in consequence, for

the most part, of section 273 of the Pensions Act 2004. The Pensions Act 2004 (Code of Practice) (Dispute Resolution) Appointed Day Order 2008 [[SI 2008/1882](#)] was made on 16 July 2008. It sets the appointed day for the purposes of section 91(9) of the Pensions Act 2004 (procedure for issue and publication of codes of practice) for the coming into effect of [the Pensions Regulator Code of Practice No. 11: Dispute resolution – reasonable periods](#), as 28 July 2008. The key changes are that occupational pension schemes can now operate a one or two-stage IDR, while the time limits, which are now in a code of practice rather than regulations, have been relaxed. Also, when the trustees or managers of an occupational pension scheme receive (or, as the case may be, the specified person receives) an application under the relevant procedure, they must as soon as is reasonably practicable -

- (a) inform the applicant that TPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of the scheme in connection with any difficulty with the scheme; and
- (b) give the applicant the contact details for TPAS.

In [Bulletin 51](#) we stated that CLG were seeking advice as to whether an amendment would be required to the Local Government Pension Scheme (Administration) Regulations in consequence of the above. Equivalent changes would also be required to the LGPS (Scotland) Regulations 1998. CLG are still considering whether any amendment is appropriate.

Draft statutory guidance on best value and procurement: Workforce matters in best value authority procurement

During October, Communities and Local Government published [a consultation document on Best Value and Procurement: Workforce Matters in Best Value Authority Contracting: Statutory Guidance](#). The consultation paper seeks views on updating and re-issuing existing guidance which sets out how staff who work on best value authority contracts are treated.

CLG Pensions Changes No.6

CLG issued the sixth edition of Pensions Changes on 24 October 2008. It made reference to the first version of the [FAQ document](#) on third tier ill-health retirements which was issued last month. CLG have also issued the [statutory guidance on ill-health retirements](#).

The newsletter also contains an “indicative table” of the new contribution bands which will apply from 1 April 2009 in England and Wales. The Timeline Regulations will be updated accordingly as and when the updated contribution bands are formally published.

The LGPS (England and Wales) - Statistics

CLG have issued the latest statistics relating to membership of the LGPS in England and Wales. The headline figures are:

- there were more than 1.6 million employees in the Local Government Pension Scheme at the end of March 2008, an increase of 1 per cent from March 2007;
- the number of former employees entitled to deferred benefits rose to over 1 million in 2007-08, an increase of 52 per cent over 2003-04;
- over the same period the number of pensioners has increased by 7 per cent
- the number of former employees entitled to deferred benefits now exceeds the number of pensioners;

- income from employees' contributions to the Local Government Pension Scheme in 2007-08 was nearly £1.7 billion which represents an increase of 5 per cent on 2006-07;
- income from employers' contributions to the scheme rose by 8 per cent to £5.0 billion in the same period;
- investment income rose by 5 per cent on 2006-07 to £3.2 billion; and
- the expenditure incurred on benefits in 2007-08 was £5.2 billion, compared with £4.8 billion in 2006-07.

The [full statistical report](#) is available online.

Report from the Pensions Policy Institute

On 16 October, the [Pensions Policy Institute issued a report](#) which assessed the recent Government reforms to the public sector pension schemes. The report looks at the effect of the reforms on public sector employees, the sustainability of the public sector schemes and undertakes a comparison between pay and pensions in the public and private sectors. The report concludes that any savings from the reforms are likely to be modest and the provision of retirement benefits in the public sector are, on the whole, better than those offered in the private sector.

Overriding Legislation – DWP Consultations

DWP has published [a consultation document](#) entitled The Occupation Pension Schemes (Contracting-out) (Amendments) Regulations 2009. The Pensions Act 2007 introduced sections 24A to 24H to the Pension Schemes Act 1993 which will enable the conversion of GMPs to scheme benefits subject to certain conditions. The draft regulations will add further provisions to those made by the Pensions Act 2007 and the new provisions are planned to be effective from 6 April 2009.

There are currently no plans to convert GMPs to scheme benefits in the LGPS.

The DWP has also issued its [response to the consultation on the draft Pension Sharing \(Pension Credit Benefit\) \(Amendment\) Regulations](#) 2008. These regulations will remove restrictions on safeguarded rights which are based on the member's contracted-out benefits following a Pension Sharing Order. The implementation date has been postponed to 6 April 2009, which is when the provisions in the Pensions Bill abolishing safeguarded rights are likely to take effect.

Overriding Legislation – the 'Heyday' Case

In *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform* [Case C-338/07], the Advocate General has given his opinion and finds that it is legitimate to allow a defence of justification to direct age discrimination, in particular to compulsory retirement at age 65 under the Employment Equality (Age) Regulations 2006 (the Age Regulations).

The National Council on Ageing (NCoA), operating under its names Age Concern and Heyday, challenged the Age Regulations on two key issues: (1) that regulation 30 of the Age Regulations, which allows employers to compulsorily retire employees at age 65, does not comply with the EC Equal Treatment Framework Directive 2000/78/EC (the Directive); and (2) that the ability to justify direct age discrimination under the Age Regulations has not been implemented properly in compliance with the Directive. On application to the High Court, it decided to refer the matter to the European Court of Justice, to determine the issues. In advance of the ECJ's judgment, the Advocate General has published his opinion on the questions raised, which the ECJ may use as guidance in arriving at its judgment.

Before looking at the issue of whether the compulsory retirement age under the Age Regulations complied with the Directive, the Advocate General examined first the question of whether or not the compulsory retirement provisions under the Age Regulations fell within the scope of the Directive and concluded that they did. In doing so the Advocate General relied on the ECJ's decision in the Spanish case of *Palacios de la Villa v Cortefiel Servicios SA*, in which the ECJ held that national rules regarding compulsory retirement fell within the Directive.

Having decided that issue, the Advocate General's opinion was that a rule which permits employers to compulsorily retire employees at age 65, can in principle be justified, if it is objectively and reasonably justified by a legitimate aim relating to employment policy and the labour market, and it is not apparent that the means put in place to achieve that aim are inappropriate and unnecessary. In coming to that view, the Advocate General again considered the ECJ's decision in *Palacios*, in which the ECJ held that the Directive does not affect the ability of the Member State to determine retirement age. Therefore the Directive does not prevent the Age Regulations specifying a compulsory retirement age, and such a rule is capable of being justified.

The Advocate General rejected Age Concern's challenge that the UK implementation of the Directive was defective, in that the Age Regulations fail to specify a list of circumstances in which direct discrimination could be justified. The Age Regulations simply state that it will be permitted where it is "a proportionate means of achieving a legitimate aim", whereas the Directive sets out examples where it may be justified, such as the fixing of a maximum age for recruitment which is based on training requirements. Again, the Advocate General referred to the *Palacios* case, in which the ECJ held that it was not necessary for the national legislation to refer expressly to the legitimate aims of the kind set out in the Directive, being employment policy, labour market and vocational training objectives. It is enough that the national legislation enables the underlying aim of the Directive to be identified.

The Advocate General also rejected Age Concern's argument that the test for direct discrimination under the Directive is more stringent than the one for indirect discrimination, in that direct discrimination is allowed if it is "objectively and reasonably" justified by a legitimate aim, whereas article 2 of the Directive which deals with indirect discrimination does not include the reference to reasonably. The Advocate General's view was that "no importance should be attached to the use of the word reasonably in addition to objectively". Accordingly, he found there is no practical difference in the application of the tests for indirect and direct discrimination under the Directive.

The ECJ's decision is expected at the end of this year, or early next year. Although not binding on the ECJ, in the majority of cases the ECJ take the same view as the Advocate General. However, whatever the ECJ's decision, the case will be referred back to UK High Court for the appropriate action. If the ECJ's judgment is the same as the Advocate General's opinion, then the High Court will determine whether or not compulsory retirement at age 65 passes the justification test. If the ECJ's view differs from the Advocate General's view and it finds compulsory retirement unlawful and the Age Regulations defective, the High Court will have to decide whether to declare the Age Regulations void.

The Advocate General's opinion is welcome news for employers, as it gives a strong indication that the ECJ will find that compulsory retirement at age 65 or over in the Age Regulations is capable of being justified, and that the Age Regulations are compliant with the Directive. The news is particularly welcome for local authorities because of the possibility that the Directive could have direct effect against local authorities. This is because local authorities fall within the category of "emanations of the state", and European Directives can be enforced directly against such bodies. Therefore, local authorities relying on the Age Regulations to compulsorily retire employees at age 65 face the risk of being guilty of age discrimination, unless the ECJ and High Court conclude that the retirement provisions are lawful.

However, before employers can breathe a sigh of relief, it will be necessary to overcome two hurdles. First the ECJ will have to come to the same conclusion as the Advocate General, and secondly, on referral back to the UK, the High Court will have to find that compulsory retirement at age 65 is objectively justified, based on factors such as employment policy and the labour market. Although, employers can hope that the ECJ will find in its favour and the High Court will conclude that the retirement provision is justified, that result is not a foregone conclusion.

SIPPs can hold Protected-Rights from October 2008

As foreshadowed in Bulletin 52, regulations have now been made that allow self-invested personal pensions to hold protected-rights from 1 October 2008. The relevant regulations are the Personal and Occupational Pension Schemes (Amendment) Regulations 2000 [2008/1979].

Financial Reporting Council

CLG has confirmed that individual funds are expected to pay the Financial Reporting Council (FRC) Levy for the year 2008/09. Unless informed otherwise, Administering Authorities should continue to pay the levy as per the invoices issued by the FRC.

The FRC have issued a consultation paper which sets out [proposals for the funding](#) of certain aspects of its activities. The amount that public sector organisations which do not currently contribute to FRC costs will be expected to pay under the proposals will be reduced to reflect the fact that not all of the FRC's activities are relevant to them.

National Insurance Services to Pensions Industry (NISPI) Guide

HMRC have issued a new [information guide](#) with respect to NISPI. The guide identifies NISPI's functions and contains a small frequently asked questions section, the contracted-out rebates for 2008/09, a list of useful contacts' details, a list of acronyms used by NISPI and a glossary of terms. The guide also details the enquiry services available to assist employers, scheme administrators and pension providers in fulfilling their contracting-out obligations.

Bits and Pieces

LGPC Circulars

The Secretariat issued [Circular 215](#) in August 2008 relating to maternity and adoption leave, etc. It details the pensions implications resulting from the Sex Discrimination Act 1975 (Amendment) Regulations 2008 (SI 2008/656) and the Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008 (SI 2008/1966). The changes affect those women whose expected week of childbirth begins on or after 5 October 2008 and those people adopting a child where the child is expected to be placed on or after 5 October 2008 or, for overseas adoptions, where the child enters the United Kingdom on or after that date.

The Circular includes a table which summarises the pension position according to the type of leave being taken. It provides details on what contributions are due from the member, on what basis the employer pays contributions and how the service counts under the LGPS.

[Circular 216](#) advertised training events for the new look LGPS in Scotland and [Circular 217](#) covers the withdrawal of GAD passport certificates for contractor's pension schemes in relation to the LGPS in Scotland.

[Circular 218](#) has also been issued. It provides information on the pensionable status of casual employees in England and Wales. An equivalent draft Circular has been prepared for Scottish administering authorities and will be issued in due course.

[Circular 219](#) reminds users of the change to the method of distributing LGPC Circulars. In future, Circulars will be e-mailed rather than sent out in the post.

Timeline Regulations

The update of the Timeline Regulations has been completed and the updated and revamped version can now be viewed on the [LGE website](#).

Tax Guide (version 11)

[Version 11 of the tax guide](#) has now been added to the website. It includes an updated section on trivial commutations.

Communications update

The updated suite of Employees' Guides to the LGPS in England and Wales are now on the [LGE website](#). The Guide is in sections, so that Funds can use the text provided for either a composite booklet or for separate leaflets as they wish.

In the lead up to the introduction of the new look scheme in Scotland the Secretariat will be updating the [national LGPS members' website](#) and the suite of employee guides to the LGPS in Scotland, so that both are ready for 1 April 2009. The LGPC is also producing a DVD / CD Rom explaining the new scheme and how existing members are affected by the changes, together with the text for an explanatory leaflet that Fund administering authorities / employers can use if they so wish. It is planned that these will be ready in January 2009.

Pensions Act 2008

The Pensions Bill 2007 received the Royal Assent on 26 November 2008 and, therefore, passed into law as the Pensions Act 2008. DWP have issued [a brief overview](#) on the main features of the new act.

RPI – September 2008

The RPI figure for September 2008 was recently announced as 5.0%. This is the figure which underlies the increase to the State Pension benefits, the section 148 Revaluation Order, the Pensions Increase (Review) Order and the GMP Increase Order.

HMRC Leaflet IR121 – Approaching Retirement: A Guide to Tax and National Insurance Contributions

HMRC have issued a [new edition](#) of this leaflet which contains lots of useful information for members who are nearing their intended retirement date.

Pre-Budget 2008 Report

The pre-budget 2008 report included details on the Standard Lifetime Allowances (SLA) and the Annual Allowances for the tax years 2011/12 to 2015/16 inclusive. The SLA will be frozen at the allowance for 2010/11 which is £1.8 million. Similarly, the Annual Allowance will remain at its rate for 2010/11 which is £255,000. The freezing of the SLA at the level in tax year 2011/2012 for a further five tax years could mean that more members might wish to consider applying for Enhanced Protection. Any member who is considering applying for Enhanced Protection only has until 5 April 2009 to do so. Administering authorities might wish to bring this to scheme members' attention.

Annual Allowance

One administering authority recently discovered that five members of their fund exceeded the annual allowance for tax year 2008/09 and have thus incurred a tax charge. Although it is the individual's responsibility to monitor the pension input for a tax year, it is good practice to inform the member that the increase in the value of their benefits has exceeded the annual allowance for the year. Ideally, members should be made aware of the potential tax charge that could be incurred as a result of accepting a new post especially where this involves a substantial increase in pensionable pay in conjunction with a large amount of past service. [Chapter 6 of the Tax Guide](#) contains further information on the annual allowance.

Legislation

Bulletins 51 and 52 detailed the pensions legislation which had been promulgated since the beginning of this year. This bulletin details the pensions legislation that has been promulgated in the UK since Bulletin 52 was published.

United Kingdom

SI Reference Title

2008/1735	The Statutory Sick Pay (General) (Amendment) Regulations 2008
2008/1810	The Pension Protection Fund (Entry Rules) Amendment Regulations 2008
2008/1882	The Pensions Act 2004 (Code of Practice) (Dispute Resolution) Appointed Day Order 2008
2008/1887	The Police Pensions (Amendment) Regulations
2008/1903	The Financial Assistance Scheme (Miscellaneous Amendment) Regulations 2008
2008/1946	The Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) Regulations 2008
2008/1966	The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008
2008/1979	The Personal and Occupational Pension Scheme (Amendment) Regulations 2008
2008/2101	The Welfare Reform Act 2007 (Commencement No.7, Transitional and Saving Provisions) Order 2008
2008/2301	The Pensions Act 2007 (Actuarial Guidance) (Consequential Provisions) Order 2008
2008/2429	The Social Security (Miscellaneous Amendments)(No.4) Regulations 2008
2008/2425	The Local Government Pension Scheme (Miscellaneous) Regulations 2008
2008/2450	The Occupation and Personal Pension Schemes (Transfer Values) (Amendment) Regulations 2008
2008/2776	The Fixed-term Employees (Prevention of Less Favourable Treatment) (Amendment) Regulations 2008
2008/2989	The Local Government Pension Scheme (Amendment) (No.2) Regulations 2008
2008/2990	The Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2008
2008/3023	The Income Tax (Indexation)(No.3) Order 2008
2008/3024	The Income Tax (Indexation)(No.4) Order 2008

Scotland

SSI Reference Title

2008/293 The Divorce etc. (Pensions)(Scotland)(Amendment) Regulations 2008

Northern Ireland

SR Reference Title

2008/256 The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008
2008/303 The Pension Protection Fund (Entry Rules) (Amendment) Regulations (Northern Ireland) 2008
2008/305 The Pensions (2005 Order) (Code of Practice) (Dispute Resolution) (Appointed Day) Order (Northern Ireland) 2008
2008/326 The Fixed-tern Employees (Prevention of Less Favourable Treatment) (Amendment) Regulations (Northern Ireland) 2008
2008/339 The Welfare Reform (2007 Act) (Commencement No.6 and Transitional and Saving Provisions) Order (Northern Ireland) 2008
2008/356 The Statutory Sick Pay (Amendment) Regulations (Northern Ireland) 2008
2008/364 The Personal and Occupational Pension Schemes (Amendment) Regulations (Northern Ireland) 2008
2008/365 The Pensions (2008 Act)(Actuarial Guidance)(Consequential Provisions) Order (Northern Ireland) 2008
2008/370 The Occupation Pension Schemes (Transfer Values) (Amendment) Regulations (Northern Ireland) 2008
2008/381 The New Firefighters' Pension Scheme (Amendment) Order (Northern Ireland) 2008
2008/382 The Firefighters' Pension Scheme (Amendment) Order (Northern Ireland) 2008
2008/388 The Occupation and Personal Pension Schemes (Transfer Values) (Amendment) Regulations (Northern Ireland) 2008
2008/416 The Fixed-tern Employees (Prevention of Less Favourable Treatment) (Amendment)(No.2) Regulations (Northern Ireland) 2008
2008/444 Pensions Appeal Tribunals (Northern Ireland)(Amendment) Rules 2008

Useful Links

[The LGE Pensions page](#)

[The LGPS members' website](#)

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in England and Wales, and Scotland.

[Qualifying Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

[Tax Guide \(Version 11\)](#)

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Distribution sheet

Pension managers (internal) of administering authorities
Pension managers (outsourced) and administering authority client managers
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