LGE
Local Government Employers

Local Government House, Smith Square, London SW1P 3HZ
Tel 020 7187 7373
Fax 020 7664 3030
pay, pensions and employment solutions

Local Government Pensions Committee
Secretary, Terry Edwards

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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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This month Bits and Pieces includes items on Circular 228, the Timeline Regulations, LGPC Communications, the LGPC Levy, and Pensions Pro.

Email info@lge.gov.uk
www.lge.gov.uk
Managing Director Jan Parkinson

LGPS - Liabilities of Former Employers

A recent Court of Appeal case has implications for the LGPS. In a decision dated on 7 April 2009, the Court of Appeal ruled in South Tyneside MBC v The Lord Chancellor and Secretary of State for Justice and Another that former employing authorities with no active members are not liable to make good any funding deficit in respect of their deferred and pensioner members.

On 1 April 2000, the former committees of five magistrates' courts in the North East which participated in the Tyne and Wear Pension Fund were abolished and the staff and their liabilities were transferred to the committee which replaced them, the Northumbria Magistrates' Courts Committee (which participated in the Northumbria County Council Pension Fund).

The Tyne and Wear Pension Fund made a transfer payment to the Northumbria County Council Pension Fund, but no deduction was made to cover liabilities in respect of the deferred and pensioner members which remained in the Tyne and Wear Pension Fund.

On 1 September 2004, by virtue of the Courts Act 2003, magistrates' court committees, including Northumbria MCC, were abolished and the liabilities of magistrates' court committees passed to the Lord Chancellor's department. Thus, on that date the department inherited the liabilities of Northumbria MCC.

The Court of Appeal had to decide whether or not the Northumbria Magistrates' Courts Committee (and, consequently, the Lord Chancellor's department) had a liability under the LGPS Regulations 1997 to make good any deficit in the funding of benefits in the Tyne and Wear Pension Fund for the deferred and pensioner members of the abolished committees.

Having considered "the exasperating opacity of the regulations" the Court of Appeal resolved that only employers with active members of the LGPS had a liability to contribute to a LGPS fund under the LGPS Regulations 1997 and that no mechanism existed within those regulations for former employers with no active members to be charged with liabilities for their deferred or pensioner members. Thus, as the Northumbria Magistrates' Courts' Committee had no active members of the Tyne and Wear Pension Fund, there was no liability for the Committee nor, subsequently, the Lord Chancellor, to make payments to the Tyne and Wear Pension Fund for liabilities in respect of the deferred and pensioner members. The Court of Appeal held that the liability for the former employees' benefits falls on the employers who currently have active members in the Fund and have the responsibility for maintaining the solvency of the fund.

Although the Court of Appeal's decision was made in relation to the provisions of LGPS Regulations 1997, the corresponding provisions of the LGPS (Administration) Regulations 2008 are essentially the same. The Court of Appeal's decision, therefore, remains relevant for the new LGPS.

In cases where an Act, or Statutory Instrument made under an Act, has not specified that the pension liability transfers to a new body, and unless the LGPS Regulations are amended to close the loophole, the decision has significant implications for Administering Authorities of, and employers participating in, those LGPS funds that have non-admission agreements employing authorities with deferred and pensioner members but no active members.

Note, however, that there are provisions within the current LGPS Regulations for an Administering Authority to obtain an actuarial valuation and revised rates and adjustments certificate where an admission agreement ceases to have effect.

LGPS 2008 – Interfund Adjustments

The most recent CLG communication with respect to the calculation of interfund adjustments between Funds in England and Wales expired on 31 March 2009. In the absence of any subsequent notification on how to process interfund adjustments, Administering Authorities in England and Wales are advised to stockpile these calculations where the date the member elects to aggregate membership is on or after 1 April 2009.

GAD Press Release – Broad Comparability

On 6 April, GAD issued a Press Release entitled, "Changes to revaluation in deferment and validity of certificates of Broad Comparability". The Pensions Act 2008 permits occupational pension schemes to limit the revaluation of deferred benefits to 2.5% per year over the period of deferment for benefits that accrued after 5 April 2009.

GAD's Press Release reminded both contractors and public sector contracting authorities that where changes are made to a contractor's broadly comparable pension scheme before the GAD certificate expires, a new certificate may be required for employees who are to transfer from the public sector.

GAD stated where a contractor reduces the cap on revaluation of deferred benefits below the level described in its current GAD certificate, that certificate would be withdrawn by GAD. GAD would then undertake a reassessment of the broad comparability of the benefits package as a whole. GAD believe it is unlikely that contractors will be able to compensate members with other benefits of a sufficient value where the revaluation of deferred benefits are reduced to the minimum level.

LGPS 2008 – GAD Guidance on AVC Service Credits, and on Transfers In and Transfers Out

On 24 April 2009, CLG issued the following:

- Administration Regulation 26 – Use of accumulated AVCs to provide additional pension under the Scheme – GAD guidance dated 6 April 2009
- Protected Regulation 66(8) – Adjustment of Transfer Credits granted from accumulated AVCs – GAD guidance dated 6 April 2009
- CLG covering letter dated 24 April 2009 in respect of the above two documents
- CLG explanatory noted dated 24 April 2009 headed "GAD Guidance on use of AVC Monies"
- Actuarial Factors for Incoming Cash Equivalent and Club Transfers from 1 October 2008 – GAD guidance (version 1.3) dated 23 March 2009

The Secretariat is currently considering the guidance but, following a first read through, has made the following observations to CLG:

When converting an AVC pot to scheme membership, or accepting a non-club transfer in for a pre 1 April 2008 member, the calculation is based on an NRD of 65 and uses age 65 equivalent factors. This will generate a larger service credit than using the old age 60 factors linked to the members CRA (where this fell before age 65). Although the service credit will itself be subject to an actuarial reduction if drawn before age 65, it will nonetheless count as membership for the purposes of paragraph 3(1)(b) of Schedule 2 to the LGPS (Transitional Provisions) Regulations 2008 and so will drag forward the CRA for all of the member's existing Part A, B or C membership by more than the old calculation (because the old calculation, based on age 60/CRA factors, produced a lower service credit). This appears to be a hit on the Fund and, unless CLG amend the LGPS (Transitional Provisions) Regulations 2008 to provide *that such membership will not count for the purposes of paragraph 3(1)(b) of Schedule 2 to those Regulations, administering authorities and, in particular, employers agreeing to extend the normal 12 month time limit to permit a non-club transfer in for a pre 1 April 2008 member who was also a member prior to 1 October 2006, will need to be aware of the additional cost.*

Also, does the membership purchased (although based on an NRD of 65 and age 65 equivalent factors) nonetheless count as Part A membership (because these members must, by necessity, have commenced pre 1 April 2008) or is the intention that the membership should count as Part D membership. If the latter, where is this spelled out? If the former, how would this work, given that Part A membership has a CRA but the service credit, if drawn for example at age 60, would be subject to a 5 year actuarial reduction and not a reduction based on the shortfall to the CRA?

Note: the Secretariat understands from CLG the intention is that the membership should count as Part D membership. This contrasts with membership transferred in from a Club scheme for a pre 1 April 2008 member which we believe counts as Part A membership.

LGPS 2008 AVC Service Credit – Correction

The following table (being an updated version of a table originally printed in Bulletin 52) was included in Bulletin 54.

Service credit under protected regulation 66(8) of the LGPS Regulations 1997 (as amended)	*1/80 (adjusted in accordance with GAD guidance as there is no automatic 3/80ths lump sum) *****	*CRA*****	*A**** but no reduction*

***** 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.*

As a result of a query raised by an administering authority, the table and note in respect of AVC conversions completed prior to the newly issued GAD guidance (see section above) should now read:

Service credit under protected regulation 66(8) of the LGPS Regulations 1997 (as amended)	*1/80 (adjusted in accordance with GAD guidance as there is no automatic 3/80ths lump sum) *****	*CRA*****	*A*****

***** 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.*

As a result of the newly issued GAD guidance on conversion of AVCs into membership (see section above), the table and note in respect of AVC conversions completed after the newly issued GAD guidance should now read:

Service credit under protected regulation 66(8) of the LGPS Regulations 1997 (as amended)	*1/80 (adjusted in accordance with GAD guidance as there is no automatic 3/80ths lump sum) *****	*Age 65*****	*D*****

**** but the membership from the service credit will also have the effect of dragging forward the CRA of all the member's membership.*

The LGPS (Amendment) Regulations 2009 [SI 2009/1025]

CLG issued a letter on 23 April 2009 advising that the above regulations have now been laid. These set out the timescales and processes for the submission of data for the Dummy Model Fund (DMF) which will inform the cost sharing process.

The Policy Review Group is currently discussing the specific types of data to be gathered and the assumptions which should be used by the DMF.

Next month's update of the Timeline Regulations will incorporate the amendments to the LGPS Regulations 2007/2008 included in SI 2009/1025.

CLG Consultation - Amendment of Accounts and Audit Regulations 2003 (SI 2003/533)

CLG issued a letter dated 30 March 2009 which announced a consultation on proposed amendments to the above regulations. At present, the regulations only require relevant public bodies[1] (that have expenditure or income in excess of £1 million per year) to disclose, when producing their annual statement of accounts, the number of staff earning over £50,000 a year in £10,000 bandings. The proposed amendments would break this down to £5,000 bandings and extend the reporting requirements to include additional information about the remuneration of senior employees. This would include information on salary, bonuses, additional payments, benefits in kind, compensation or ex-gratia payments, and pension entitlements.

CLG are seeking views on:

- whether the proposed extent and focus of remuneration reporting, when presented together, will fulfil the objective of providing a true and fair view of each senior employee's package of benefits
- whether there would be any barriers or costs to collecting and reporting the information in published annual accounts
- how the term "senior" should be defined in the regulations and whether it should encompass those whose position may not be permanent e.g. interim managers, consultants, etc.
- whether the reduction to £5,000 bandings is appropriate.

Given that the proposals contain items on pension entitlement and on compensation / ex-gratia payments, Pension Managers will wish to ensure they have an input to their authority's response. The

[1] Including Councils, Joint Authorities, the Greater London Authority (and its bodies including TFL), Transport Authorities, National Park Authorities, Waste Authorities, and Police and Fire Authorities.

LGE will be submitting a response to the proposals. The closing date for responses to the consultation exercise is 22 June 2009.

CLG Consultation - the draft LGPS (London Pension Fund Authority) Regulations 2009

CLG issued the above draft regulations and a covering letter on 15 April 2009. The draft regulations are primarily concerned with how deficits that have arisen in the fund administered by the London Pension Fund Authority, and which relate to members who were formerly employed by various bodies having a connection with the London Boroughs, are to be dealt with.

The closing date for responses to the consultation exercise is 15 June 2009.

NI Contributions and Upper Accrual Point

From tax year 2009/10 onwards, the CEP and CA will be calculated on contracted-out earnings between the Lower Earnings Limit (LEL) and the Upper Accrual Point (UAP) and not between LEL and the Upper Earnings Limit (UEL). This is inferred in the article on the UAP in the HMRC Newsletter 35 and the Secretariat has confirmed this to be the case with HMRC. Administering Authorities will therefore have to amend their leaver forms to ask employers for contracted-out earnings between the LEL and the UAP for tax years from 2009/10 onwards.

DWP Consultation – Auto-enrolment

The DWP have commenced a consultation exercise on draft regulations for the proposed auto-enrolment process which is required under the new employer obligation to be introduced in 2012. Employers will be required to automatically enrol eligible job holders into a qualifying workplace pension saving scheme, with a minimum employer contribution. Employers will be free to choose the qualifying workplace pension scheme or schemes they wish to adopt to discharge this obligation e.g. a Group Personal Pension, a Stakeholder Pension, a Group Self-Invested Personal Pension or (as in the case of the LGPS) an Occupational pension Scheme. Eligible job holders who decide they do not wish to participate in pension saving will have the right to opt out. The main features of the proposed rules are:

- a scheme "joining window" of up to 14 days;
- a "information provision window" of up to 14 days which will run concurrently with the joining window;
- a subsequent opt-out period for members of up to 30 days;
- an option for certain schemes to postpone auto-enrolment for up to 90 days.

The closing date for the consultation exercise is 3 June 2009. The LGPC will be submitting a response to the consultation document.

Budget – pension implications

In his Budget statement on 22 April 2009 the Chancellor of the Exchequer announced the following changes to tax rates and allowances for taxpayers with income over £100,000:

- from 2010/11 the basic personal allowance for income tax will be gradually reduced to nil for individuals with "adjusted net incomes" above £100,000;
- from 2010/11, there will be an additional higher rate of 50 per cent for taxable income above £150,000;
- from 2011/12 higher rate tax relief for individuals with an annual income of £150,000 or more will be tapered away so that for those earning over £180,000 relief will be worth 20 per cent;
- from 22 April 2009 there will be a new special annual allowance charge for those whose "relevant income" is £150,000 or higher who change their normal ongoing regular pension savings and their total pension savings exceed £20,000; and
- the measures includes new powers to vary the income tax rates for the charges that apply to registered pension schemes.

These changes replace the announcements made at the 2008 Pre-Budget Report. The reduction of personal allowances affects those with incomes over £100,000 and the new tax rate affects those with incomes over £150,000.

As announced at the 2008 Pre-Budget Report, the lifetime allowance will be maintained at the 2010/11 level of £1.8 million for a further five years, up to and including 2015/16. The annual allowance will also be held constant at £255,000 over the same period.

The HM Treasury document "Budget 2009 – Building Britain's Future - Economic and Fiscal Strategy Report and Financial Statement and Budget Report - April 2009" contains the following statement:

Pensions tax relief

5.90 *Tax relief, estimated to be worth around £30 billion in 2007-08, is provided on pension contributions to support pension saving and help individuals produce an income in retirement. This represents an important component of the Government's support for pension saving among low and middle-income earners. In 2006 the Government introduced a new simplified tax regime, responding to criticism that the tax regime for pension saving had become so complex that it was discouraging saving. In reforming the regime the Government sought to strike a balance between the interests of pension savers and the interests of the wider taxpayer. Seeking to achieve this, the Government maintained tax relief at the marginal rate but set two limits – a lifetime allowance, currently standing at £1.75 million, and an annual allowance currently standing at £245,000 or 100 per cent of income whichever is the lower.*

5.91 *Those on highest incomes benefit disproportionately from this relief, and the personal tax changes announced in this Budget would increase the value of the reliefs given to individuals with the highest incomes. This would exacerbate the current situation whereby in 2008-09 individuals with income over £150,000 represented 1.5 per cent of pensions savers, yet received a quarter of all tax relief on contributions (£6.1 billion). This amounted to an average of £27,000 per person, an amount in excess of median earnings, and compares with £1,000 for people who pay income tax at the basic rate.*

5.92 *The 2008 Pre-Budget Report announced that the Government would maintain the lifetime allowance at £1.8 million for five years up to and including 2015-16. To ensure fairness, affordability and sustainability of tax reliefs, Budget 2009 announces that, in addition, from April 2011, tax relief on* *pension contributions will be restricted for those with incomes of £150,000 and over. From that level of income, the value of pensions tax relief will be tapered down until it is 20 per cent for those on incomes over £180,000, making it worth the same for each pound of contribution to pension entitlement as for a basic rate income taxpayer. This restriction applies to all contributions, including employers', but employers will continue to receive full relief on their contributions into employees' pensions through corporation tax and NICs.*

5.93 *The Government will consult business, pension fund trustees, the insurance and pensions industries, and other stakeholders to ensure that defined benefit pension schemes are treated fairly in relation to defined contribution pension schemes and personal pensions. It will want to arrive at the most appropriate method of valuing pension benefits of those with over £150,000 in defined benefit pension schemes and of valuing the related employer contributions. The Government will use this consultation to engage with stakeholders to introduce the new system in a way that minimises administrative burdens.*

5.94 *Given the importance of consulting on this measure, introduction before 2011-12 would be inappropriate. This means that, in the absence of any further changes, it would be possible for individuals to take advantage of the pensions tax relief while it is still available to them at the higher rate by making substantial additional pension contributions prior to the restriction taking effect. The Government's assessment is that unless it takes action significant revenues would be at risk over the two years before implementation. In anticipation of the change, the Government is therefore including legislation in this year's Finance Bill to prevent forestalling in this way whilst permitting individuals to continue to receive tax relief at the higher rate on the higher of £20,000 or their normal pattern of contributions. This legislation will apply with effect from 22 April 2009. Those who have never earned in excess of £150,000 a year are unaffected, as are those who continue with their regular, at least quarterly, pattern of contributions or normal benefit accrual.*

5.95 *Following changes to the personal tax system, the Government will consider consequential changes to pension tax charges which are designed to recover the tax relief provided in certain circumstances. Pension tax charges apply, for example, when allowances are exceeded and in connection with unauthorised payments. The Government will provide details in the 2009 Pre-Budget Report.*

The following information is based on guidance on the HMRC website. The guidance, in turn, is based on draft legislation which may be amended as it goes through the Parliamentary process. HMRC point out that the guidance itself is, therefore, draft and may need to be amended to reflect any such changes.

Removal of basic personal allowance

This change applies from **6 April 2010** and only affects those with "adjusted net income" over £100,000 in 2010/11. Those with "adjusted net income" of £100,000 or below will be unaffected by the changes.

For those who are affected, their personal allowance will be reduced by £1 for every £2 that their income exceeds £100,000 until the personal allowance is reduced to Nil. This is instead of the two-stage reduction announced at the Pre-Budget Report.

The point at which the personal allowance is fully reduced will depend on the level of the personal allowance for 2010/11.

"Adjusted net income"[2] is calculated in a series of steps. The starting point is "net income" which is the total of the individual's income subject to income tax, reduced by the grossed-up amount of the individual's Gift Aid contributions and the grossed-up amount of the individual's pension contributions which have received tax relief at source. The final step is to add back any relief for payments to trade unions or police organisations deducted in arriving at the individual's net income. The result is the individual's adjusted net income.

Example 1 – restricted personal allowance and pension contributions

Income	114,000		allowance	6,475
LGPS Conts (7.5%)	8,550			
	105,450			
Limit	100,000			
Excess	5,450		restrict ½	2,725
			Allow	3,750
Income	105,450			
Allowance	3,750			
Chargeable	101,700			
	37,400 x 20% =	7,480.00		
	64,300 x 40% =	25,720.00		
Tax due		33,200.00		

Example 2 – restricted personal allowance and pension contributions

Income	122,160		allowance	6,475
LGPS Conts (7.5%)	9,162			
	112,998			
Limit	100,000			
Excess	12,998		restrict ½	6,499
			Allow	Nil
Income	112,998			
Allowance	0			
Chargeable	112,998			
	37,400 x 20% =	7,480.00		
	75,598 x 40% =	30,239.20		
Tax due		37,719.20		

Higher rate tax charge of 50 per cent for taxable income above £150,000

This change applies from **6 April 2010**. From 2010/11 there will be 3 main rates of income tax:

- the basic rate (20%),
- the higher rate (40%), and
- a new additional rate (50%).

The new additional rate of tax will only apply to the amount by which someone's income for 2010/11 exceeds £150,000 and this replaces the 45% rate announced at the Pre-Budget Report that would have applied from 2011/12.

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[2] See definition in section 58 of the Income Tax Act 2007

The following example is for the tax year 2010/11 but uses the 2009/10 figure of personal allowance and basic rate band. No account has been taken of any effect which the proposed changes to tax relief on pension contributions might have (see the next heading below).

Tax due will be collected in the usual way through a combination of PAYE deductions during the year and payment through Self Assessment.

Example 3 – 50% rate and pension contribution

Income	170,000	allowance	6,475
LGPS Conts (7.5%)	12,750		
	157,250		
Limit	100,000		
Excess	57,250	restrict ½	28,625
		Allow	Nil
Income	157,250		
Allowance	0		
Chargeable	157,250		
	37,400 x 20% =	7,480.00	
	112,600 x 40% =	45,040.00	
	7,250 x 50% =	3,625.00	
Tax due		56,145.00	

Tax relief for high earners to be tapered away

The Government intends from **6 April 2011** to restrict tax relief for individuals with an annual income of £150,000 or more. This restriction applies to all contributions, **including employers'**. Tax relief will be tapered away so that for those earning over £180,000 relief will be worth 20 per cent, the same as to a basic rate taxpayer. No detail on this has been published but the Government has stated that it wants to arrive at the most appropriate method of valuing pension benefits of those with over £150,000 in defined benefit pension schemes (such as the LGPS) and of valuing the related employer contributions. It has promised to consult on the practical implications and to engage with stakeholders to introduce the new system in a way that minimises administrative burdens.

New special annual allowance charge

In anticipation of the above intended new restriction on tax relief for high earners, the Government is introducing anti-forestalling measures effective from **22 April 2009** to restrict higher rate tax relief on pension contributions for individuals. The restrictions apply to people

- whose "relevant income" in a tax year (or any of the previous two tax years[3]) is or has been £150,000 or higher
- who change their normal ongoing regular pension savings on or after 22 April 2009, and
- whose total "pension savings" in a tax year (including any increases from 22 April 2009) exceed £20,000.

[3] So, for 2009/10, income for 2007/08 and 2008/09 will also be considered.

All three of the above conditions have to have been met for the special annual allowance charge to apply.

The introduction of the special annual allowance charge will remove, for those affected, the advantage to them of increasing their pension contributions in excess of their normal pattern.

The vast majority of pension scheme members will, of course, be unaffected by the proposed changes which only apply to individuals with "relevant income" of £150,000 or more. Of those people, only those who increase their "pension savings" may be affected, and even then, only if their overall annual "pension savings" are £20,000 or more, and if they make changes to their normal pattern of "pensions savings" or to the way in which pensions benefits accrue.

The special annual allowance, which is set at £20,000, sets an upper limit on the amount of additional "pension savings" for which full tax relief at the higher rates of tax can be given. Tax relief on additional "pension savings" above the amount of this allowance will, via the special annual allowance tax charge, be at the basic rate of tax only. The special annual allowance tax charge which restricts relief on additional contributions to basic rate is a charge on the individual, collected via their Self Assessment tax return. The rate of charge is the difference between the highest rate of income tax and basic rate (20% for 2009/10).

Scheme administrators and employers will not be involved actively in the administration of this.

The following is based on the information on the HMRC website but the Government has promised that it will consult on the practical implications.

What is "relevant income"?

Broadly, for the purposes of the special annual allowance, "relevant income" is

- total income subject to income tax (i.e. after deduction of LGPS pension contributions, AVCs, ARCs etc, where tax relief is given under the net pay arrangement),
- plus pension contributions and AVCs / ARCs made,
- less any normal deductions for reliefs (such as trading losses)
- less deductions for pension contributions and AVCs / ARCs but up to a maximum of £20,000,
- less any gift aid deductions

But in calculating "relevant income" any amount of employment income foregone by salary sacrifice in return for pension contributions[4] or additional pension benefits must be added back if the agreement was put in place on or after 22 April 2009.

What are "pension savings"?

This is all of a scheme member's pension savings that receive UK tax relief and includes:

- savings in all registered pension schemes including
  - defined benefit schemes, and
  - money purchase schemes (also known as defined contribution schemes), and
  - contributions paid both by individuals and anyone on their behalf and by employers
- savings in non-UK pension schemes that benefit from UK tax relief

[4] Salary sacrifice in return for pension contributions is not possible under the LGPS

The value of a member's pension savings (the pension input amount) in a specified period (the pension input period) is valued in a similar way to the existing annual allowance.

For money purchase arrangements (including AVCs), this generally means the total contributions, including any from the employer, paid in to the pension scheme during the pension input period.

For defined benefit arrangements, this means any increase in the value of the member's accrued rights during the pension input period.

Note: augmented membership granted by an employer under the LGPS does not appear to fit the wording above (i.e. pension savings that receive UK tax relief) and so would appear not to be included. However, an employer might, for example, grant the augmented membership to offset the effect of some of the Budget's proposed tax changes, and this could potentially be seen by HMRC as a forestalling measure. The Secretariat is of the view, therefore, that it will be necessary to clarify how augmented membership should be treated.

What is the pension input period?

The pension input period for the special annual allowance will always be the tax year. This differs from the pension input period for the existing annual allowance (which in the LGPS currently ends on 31st March).

Why cannot the input periods be the same as for the annual allowance?

If the pension input period was not aligned to the tax year, this would allow individuals to have three input periods covering two tax years, and they would therefore be able to put in an additional £20,000 over that intended.

So, specifying that the pension input period for the special annual allowance will always be a tax year prevents double dipping e.g. someone putting in, for example, £11,000 in year ending 31 March 2010 and a further £10,000 before the 5 April 2010. A strict reading of the LGPS regulations would not permit this within the scheme as contributions have to be from monthly pay. But if a member tried to use an outside vehicle there would be a tax charge on this extra saving if the pension savings in the pension input period to 5 April exceeded £20,000.

What are normal, ongoing, regular pension savings?

The special annual allowance will apply only to increases to normal, ongoing, regular pension savings made on or after 22 April 2009. Normal, ongoing regular pension savings will be known as 'protected pension inputs'.

If the regular pension contributions of a member of a scheme provided by the employer go up only because the member has had a pay rise or a promotion, these will be 'protected pension inputs'.

For members of a final salary arrangement, all their pension savings in the final salary scheme will be a 'protected pension input' provided that the way their benefits are calculated under the scheme does not change on or after 22 April 2009.

If a member has a money purchase arrangement, the 'protected pension input' will be

- the annual amount of their total contributions (including any employer contributions) to the arrangement providing that the contributions were made at least quarterly before 22 April 2009, plus
- any increase in the contributions that was agreed before 22 April 2009

If the member increases their contributions but the increase was not agreed before 22 April 2009, the increase will not be a 'protected pension input' and will be tested against the special annual allowance. Pension input amounts that are tested against the special annual allowance are called 'total adjusted pension input amounts'. These will be pension input amounts that were made only in the 2009/10 or 2010/11 tax years but they will not include 'protected pension input' amounts.

<u>Example 4 – No liability to special annual allowance charge</u>

G is in a final salary scheme on 22 April 2009 which pays her a pension of 1/60 of her salary for each year of service. At 6 April 2010 her salary after 5 years of service is £210,000 and by 5 April 2011 it has risen to £230,000. The rate at which she accrues her pension in the scheme does not change. This is therefore a 'protected pension input'.

If G's only pensions savings are in this final salary scheme, the value of this is calculated by working out the difference in the capital value of her pension savings between the start of the period and the end of the period.

The calculation is as follows:

Opening Value: £210,000 x 1/60 x 5 (years of service) x 10 (factor to give capital value1) = £175,000
Closing Value: £230,000 x 1/60 x 6 (years of service) x 10 (factor to give capital value) = £230,000

Her 'protected pension input' is therefore £230,000 - £175,000 = £55,000. Although this is more than £20,000 she will not liable to a special annual allowance charge as she does not have any 'non-protected pension input'.

[Note: The factor of 10 used to work out the value of rights in a defined benefit scheme is set in legislation i.e. section 234(4) of the Finance Act 2004.]

Pre 22 April 2009 (Budget day) Pension Savings

Any non regular pension savings from 6 April 2009 to 21 April 2009 will reduce the member's special annual allowance, but those non regular pension savings will not themselves be subject to the special annual allowance tax charge. Regular pensions savings will not be subject to the special annual allowance tax charge and also will not reduce the special annual allowance.

Increases in Pension Saving

The special annual allowance charge will affect individuals in a tax year if they have "relevant income" of £150,000 or more in that tax year or in either of the two previous tax years and increase the level of their annual pension savings.

This increase may be as a result of the individual making large additional pension contributions over and above their normal regular ongoing pension savings or by changes to the way their pension benefits are calculated. This might be, for example, where the rate at which benefits accrue in a final salary scheme changes from 1/60 of salary per year to 1/40 of salary per year but where this only applies to certain members.

Exceeding the Special Annual Allowance

If a member exceeds the special annual allowance, then they will have to pay a special annual allowance charge on the excess at the difference between the top rate of tax and basic rate (20% for 2009/10). This will be collected through the member's Self-Assessment tax return.

The amount of the excess will be either:

- the increase in their pension savings - if their normal annual pension savings at 22 April 2009 plus any contributions made before 22 April 2009 were more than £20,000, or
- their total pension savings less £20,000 - if their normal annual pension savings at 22 April 2009 plus any contributions made before 22 April 2009 were £20,000 or less.

Example 5 – Liability to special annual charge

L is in a final salary scheme which will provide a pension of 1/60 of her salary for each year of service. At 6 April 2010 her salary after 5 years of service is £210,000 and by 5 April 2011 it has risen to £230,000.

L therefore has a pension input amount for 2010/11 of ((£230,000 x 6/60) – (£210,000 x 5/60)) x 10 = £55,000. Although this exceeds the special annual allowance of £20,000, there will not be a charge as the rate at which she accrues her pension in the scheme has not changed and is therefore a protected pension input.

L also makes a one-off payment in October 2010 of £60,000 to a personal pension scheme. Because her normal pension savings in her final salary scheme exceed £20,000, her special annual allowance is nil, so all of this additional contribution is a non-protected pension input and will be taxed. She will therefore be liable to tax on the full £60,000.

How will the increase in a member's pension savings be calculated if the member is in a final salary scheme and also pays additional contributions?

That depends on the type of arrangement the additional contributions are being paid to.

AVCs should be counted as a money purchase arrangement.

Additional contributions to purchase added years should be counted as part of a defined benefit arrangement.

The Secretariat assumes that ARCs should count as a money purchase arrangement (albeit that the contributions provide a defined benefit).

Does the Special Annual Allowance apply to members with Enhanced Protection?

If a member has relevant income of £150,000 or more, even if they have Enhanced Protection, they will still be subject to the special annual allowance if they increase their pension savings on or after 22 April 2009. In such cases there is a risk that enhanced protection status may be lost.

How does the special annual allowance interact with the existing annual allowance?

The new special annual allowance will run alongside the existing annual allowance. In practice this means that all increases in pension savings – 'pension input amounts' - will continue to be tested against the existing annual allowance in the usual way. However, any pension input amounts that represent new saving that is taken out by, or in respect of, an individual in the period starting with 22 April 2009 and ending on 5 April 2011 will be tested against the special annual allowance as well.

Pension input amounts that represent normal, regular, ongoing contributions, or benefit accruals, under arrangements that were in place before 22 April 2009 will not be tested against the special annual allowance. Such pension inputs are called 'protected pension input amounts'. These pension input amounts will, however, continue to be tested against the existing annual allowance in the usual way.

Although unlikely, it is possible for an individual to be liable to tax under either the existing annual allowance or the new special annual allowance or under both. To ensure that tax relief is not recovered twice, where an individual exceeds both allowances, the special allowance charge will be reduced by the excess over the annual allowance.

Further details

Full details on tax relief on pension contributions and a technical guide can be found on the HMRC website.

Income tax rates for the charges that apply to registered pension schemes

The tax rates for charges applying to registered pension schemes are generally linked to the highest rate of income tax. There are powers in Finance Act 2004 to vary the rate for several of the charges by Treasury Order, and the Finance Bill 2009 will include legislation extending that power to the rates for the other charges, again through secondary legislation. For example, the special allowance charge for 2009/10 is set at 20% (the difference between higher rate and basic rate). When the 50% additional rate comes in for 2010/11, the Government might decide that the special annual allowance rate should go up 30%.

Bits and Pieces

Circular 228

The Secretariat has issued Circular 228 which lists the *Understanding* workshop courses to be held in 2009. This year's topics are Retirement Benefits, Death and Survivor Benefits and Pension Sharing on Divorce.

Timeline Regulations

The April 2009 update of the Timeline Regulations website included:

- the upload of an appeal confirming that, in respect of part-time buy-back cases, the calendar-length of the period bought back counts towards the rule of 85. The reference number is 875;
- a new browser window will open when users click on hyperlinks to appeals; and
- a letter from SPPA (dated 20 February 2009) in respect of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2008. This has been added to the Statutory Guidance and Circulars page.

LGPC Communications

The DVD/CD-Rom on the new-look LGPS in England and Wales is in the final stages of being updated for April 2009.

The full guide for the new-look LGPS for employees in Scotland is almost complete. The brief guide for Scotland and the section of the website for Scottish members is also being updated. This in turn has led to the need for a review/ update of the English and Welsh guides for employees and the section of the LGPS website for England and Wales.

Pension Funds will be notified when the updated guides are available on the LGE's website.

LGPC Levy

Subject to final approval from the LGPC, the LGPC levy included in the annual subscription fee will not increase for this financial year (2009/10). However, there will be a small increase in the overall fee due to an increase in the Pensions Pro element of the annual subscription

Pensions Pro

The Secretariat is currently in discussions with Lexis Nexis over the Pensions Pro service (a pensions legislation service) which is provided to Administering Authorities as part of their annual subscription fee to the LGPC. Only about a fifth of Administering Authorities appear to have made use of the service in recent months and the Secretariat is therefore discussing with Lexis Nexis a roll out programme to remind Administering Authorities of the facilities available in Pensions Pro and to offer each authority site training. If usage of Pensions Pro does not increase as a result, the Secretariat will need to consider whether or not to renew the Pensions Pro contract for 2010/11.

Legislation

United Kingdom

SI Reference	Title
2009/692	The Pensions Increase (Review) Order 2009
2009/794	The Occupational Pension Schemes (Levy Ceiling) Order 2009
2009/795	The Pension Protection Fund (Pension Compensation Cap) Order 2009
2009/809	The Pensions Act 2008 (Commencement No.3 and Consequential Provisions) Order 2009
2009/846	The Occupational Pensions Scheme (Contracting-out) (Amendment) Regulations 2009
2009/1025	The LGPS (Amendment) Regulations 2009

Northern Ireland

SR Reference	Title
2009/497	The Social Security Benefits Up-rating Order 2009
2009/591	The Social Security (Contributions) (Amendment No.2) Regulations 2009
2009/592	The Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2009
2009/593	The Social Security (Contributions) (Re-rating) Order 2009
2009/109	The Pensions Increase (Review) Order (Northern Ireland) 2009

2009/110	The Social Security Pensions (Upper Accrual Point: Prescribed Equivalent) Regulations (Northern Ireland) 2009
2009/111	The Social Security Pensions (Lower Threshold) Order (Northern Ireland) 2009
2009/112	The Social Security Revaluation of Earnings Factors Order (Northern Ireland) 2009
2009/113	The Pensions (2008 Acts) (Consequential Provisions) Order (Northern Ireland) 2009
2009/115	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2009
2009/139	The Occupational Pension Schemes (Levy Ceiling) Order (Northern Ireland) 2009
2009/140	The Pension Protection Fund (Pension Compensation Cap) Order (Northern Ireland) 2009
2009/149	The Occupational Pensions Scheme (Contracting-out) (Amendment) Regulations (Northern Ireland) 2009

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)

The Timeline Regulations

LGPC Contact Details

Terry Edwards (Head of Pensions)

Telephone: 01954 202 787 or 0207 187 7346
Email: terry.edwards@lge.gov.uk

Tim Hazlewood (LGPC Training & Development Manager)

Telephone: 01530 242 777
Email: tim.hazlewood@lge.gov.uk

Irene Wass (LGPC Communications Officer)

Telephone: 01246 414 902
Email: irene.wass@lge.gov.uk

Elaine English (LGPC Executive Officer)

Telephone: 0207 187 7344
Email: elaine.english@lge.gov.uk

Dave Friend (LGPC Pensions Adviser)

Telephone: 01457 859 016
Email: david.friend@lge.gov.uk

Alison Hazlewood (Part-time Administration Assistant - Training & Development)

Email: alison.hazlewood@lge.gov.uk

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Pension managers (internal) of administering authorities
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LGPC
Local Government Employers
Local Government House
Smith Square
London, SW1P 3HZ

or email: david.friend@lge.gov.uk
tel: 01457 859016