

Local Government Pensions Committee  
Secretary, Terry Edwards

## **LGPC Bulletin 60 – July 2009**

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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## Review of default retirement age brought forward to 2010

The Government, in a wide-ranging consultation document [Building a society for all ages](#), has announced a series of proposals to help encourage a major cultural shift and help Britain prepare for demographic change which is seeing people live longer lives. A key feature of the document is the statement that the government intends to bring forward its review of the age 65 default retirement age (DRA) to 2010.

On the pensions front, there is no longer anything in the Local Government Pension Scheme rules that precludes a person remaining in the Scheme beyond age 65, although benefits have to be drawn by age 75. A move away from an age 65 default retirement age would, however, mean that many of the various exemptions for Pension Schemes contained in the Employment Equality (Age) Regulations would need to be amended or deleted and this could have an impact on some employers' policies on compensation. So, it is not just a simple case of removing the age 65 default retirement age; many of the interconnected issues in the Employment Equality (Age) Regulations will also need to be considered.

### Background

The default retirement age of 65, introduced by the Employment Equality (Age) Regulations 2006, was originally scheduled for review in 2011 but has been brought forward to reflect the change in economic landscape since the DRA was introduced.

Authorities will know that the High Court began hearing the Age Concern legal challenge to the 65 default retirement age on 16 July 2009. The National Council on Ageing (operating under the names Heyday and Age Concern) believes that the default DRA in the Regulations, which allows employers to retire individuals at 65 or over, makes the Regulations incompatible with the EC Equal Treatment Framework Directive. The ECJ disagreed, and held that the relevant provisions of the Regulations are not inherently incompatible with the Framework Directive and can be justified 'by legitimate social policy objectives, such as those related to employment policy, the labour market or vocational training', provided that it is an 'appropriate and necessary' means of achieving such an objective. The High Court is now considering whether a legitimate social need to justify the DRA does exist within the UK.

### Retirement in local government

Key findings from a recent survey conducted by LGE (March 2009) of retirement policies and practices of local authorities in England and Wales showed that:

- 93% of authorities surveyed have maintained a Normal Retirement Age (NRA);
- The most popular reasons for authorities to have an NRA is to enable employees to plan a controlled exit from working life and to assist the organisation in workforce planning and career development;
- The evidence suggests that having an NRA and a point of reviewing whether to continue the employment suits authorities and the planned retirement process (contained in the statutory right to request to work beyond retirement age) is not difficult to comply with, with the majority of authorities having a policy of generally agreeing to requests to work beyond their NRA;
- Despite reporting many positive aspects of operating an NRA, authorities who participated in the survey foresee many positive effects of increasing or abolishing the default retirement age of 65, and these positive effects have already been experienced by the authorities who already operate without an NRA, who have reported no negative effects from this policy;
- The evidence suggests that, with some adjustments and training for managers, authorities could respond positively to any change to the default retirement age by central government;

## The Consultation

The Government has now started the process of consulting with key stakeholders in order to inform the review. In addition, the [Age Positive](#) initiative, a Government scheme that works with employers to promote the retention and recruitment of older workers, will be extended to encourage more employers to give employees more choice over their retirement. The Government's consultation closes on 12 October 2009.

LGE will be responding to the government's consultation on behalf of local government. As a sector, Local government is a major employer, employing over 2 million people in the UK. Local authorities' ability to deliver services is directly linked to having the right people with the right skills to deliver future services. A big challenge for the local government sector is that a third of the workforce will be eligible to retire in the next 10 years and so the government's policies on age and retirement will be important for many councils' plans.

All of this means that it is vital for authorities to contribute their views and preferences on retirement to LGE. Your authority can do this by answering this simple question:

### **Would your council prefer the Government to:**

- 1. Retain current default retirement age of 65, together with the statutory right to request to work beyond retirement age; or**
- 2. Increase the default retirement age (e.g. from age 65 to age 67) and maintain the statutory right to request to work beyond retirement age; or**
- 3. Abolish the default retirement age?**

## How to respond

Authorities can submit their response by visiting the [default retirement age survey](#) on the LGE website and completing the three questions on the simple survey form on that page by **Friday 12 August 2009**.

LGE will use the information provided by local authorities to contribute into an overall response to the government's consultation being co-ordinated by the Local Government Association and to also represent the sector's issues relating to retirement.

If you have any questions about the consultation or about LGE's response to the consultation please contact [luann.donald@lge.gov.uk](mailto:luann.donald@lge.gov.uk) or [joan.seaton@lge.gov.uk](mailto:joan.seaton@lge.gov.uk).

## **LGPS – Frozen refunds (Technical Group Meeting - 8 July 2009)**

The Group were asked whether there was support for a request that frozen refunds unclaimed for a number of years should be cancelled and retained by the Funds. 6 years was proposed as the cut off period. After discussion, the Group agreed that it could not support the request for the following reasons:

- it is not normal practice to amend the law to adversely affect existing rights (unclaimed frozen refunds in this case). Where changes to scheme rules are made, existing leavers have to be given the right to opt out of such changes
- many of the frozen refunds will never be claimed and actuaries could be instructed for valuation purposes to assume that such members who are over 110 should be assumed to be dead
- the number and size of new frozen refunds should be relatively insignificant (due to the current 3 month vesting period)

Thus, there should be no change to the current position of an open ended time period to claim the refund plus interest.

### LGPS 2008 – Inward transfers (Technical Group Meeting – 8 July 2009)

The meeting discussed two issues with respect to inward transfers:

(A) changes of employment within the LGPS and the 12 month time limit;

It was agreed that promotion with the same employer should not re-open the 12 month period, but taking up a new (genuine) concurrent employment would present a fresh opportunity to ask for a transfer within 12 months of taking up that new post as would a move to a new employer. This is explained in more detail below.

Regulation 83 of the Administration Regulations (regulation 78 in Scotland) says:

Inward transfers of pension rights

(1) If a person who becomes an active member has relevant pension rights, he may request his fund authority to accept a transfer value for some or all of those rights from the relevant transferor.

(7) A request from a transferring person under paragraph (1) must be made by notice in writing.

(8) That notice must be given before the expiry of the period of 12 months beginning with the date he became an active member (or such longer period as his employer may allow).

(9) Where a request under paragraph (1) is duly, made the fund authority may accept the transfer value and credit it to its pension fund.

So, the member must give notice “before the expiry of the period of 12 months beginning with the date he became an active member (or such longer period as his employer may allow)”. Unfortunately it does not specify whether it is 12 months from the date he **first became** an active member or 12 months from the date he **last became** an active member.

Regulation 17(3) of the LGPS (Transitional Provisions) Regulations 1997 and the LGPS (Transitional Provisions) (Scotland) Regulations 1998 used similar wording when dealing with the repayment of a refund of contributions. It said that the “repayment must be made before the expiry of the period of six months beginning with his return to local government employment or such longer period as the authority who returned the contributions and, if different, his appropriate administering authority in his new employment may allow”. Again, the regulation does not specify whether the repayment has to be made within 6 months of the date he **first**

**returned** to local government employment after receiving the refund or from the date he **last returned** to local government employment. There was a CLG appeal decision on this and the Secretary of State determined that it meant the latter.

The current Club rules state that:

“4.1 An individual must apply for a Club transfer in writing to the receiving scheme within 12 months of becoming eligible to join, or, subject to (i) below, re-join the scheme. (A request for an estimate of a transfer value should not be regarded as an application to transfer benefits.) The application should be copied to the previous scheme. Applications should not be accepted where either:

- (i) an individual resigns from employment and rejoins the same scheme within 6 months, except during any period after rejoining which falls within 12 months of first becoming eligible to join the scheme; or
- (ii) an individual has joined the Club scheme from another Club scheme as a consequence of a compulsory transfer of employment, or of pension scheme (see 2.6). ”

So, the Club rules are helpful if the transfer is from a Club scheme and offer a possible steer for us to consider when looking at a transfer from a non-Club scheme.

There are a number of potential scenarios where a person joins the LGPS, decides for whatever reason (possibly a good reason) not to transfer in other pension rights, and then:

- (a) gets promoted / demoted with same employer (no break in service), or
- (b) gets promoted / demoted with different employer in same Fund (no break in service), or
- (c) gets promoted / demoted with different employer in a different Fund (no break in service), or
- (d) gets promoted / demoted with same employer (but there is a break in service), or
- (e) gets promoted / demoted with different employer in the same Fund (and there is a break in service), or
- (f) gets promoted / demoted with different employer in a different Fund (and there is a break in service), or
- (g) takes on an additional (concurrent) post with the same employer in the same Fund, or
- (h) takes on an additional (concurrent) post with a different employer in the same Fund, or
- (i) takes on an additional (concurrent) post with a different employer in a different Fund, or
- (j) opts out of the scheme and then opts to re-join the scheme, or
- (k) leaves to go elsewhere (say to the private sector), and returns some time later

The view of the Technical Group was that:

In scenario (a), Funds should **not** permit a transfer in outside of the 12 months period from the date the member first joined the scheme (unless the employer agrees to extend the 12 month time limit). The reasoning is that the member did not opt to transfer within 12 months of becoming a member (and there has been no break in service).

In scenarios (b) and (c), Funds should permit a transfer in within 12 months of joining the new employer, or such longer period as the employer may allow (although whether or not this would be logical compared to scenario (a) is debatable).

In scenarios (d), (e) and (f), Funds should permit a transfer in within 12 months of joining the new employer, or such longer period as the employer may allow, This would certainly align with the principle set out in the appeal decision referred to above i.e. as there had been a break, the 12 months starts running from the start of the new job. However, under the Club rules, the transfer could not be treated as a Club transfer if the member resigned and left the LGPS and returned within 6 months (unless the transfer was completed within 12 months of first joining the LGPS).

In scenario (g), it was felt that, on balance, as regulation 11 of the Administration Regulations 2008 (regulation 8 in Scotland) requires separate employments with a single employer to be treated as if they were separate employments with different employers, Funds should allow a transfer into the new employment provided the option was made within 12 months of starting that new employment (or such longer period as the employer may allow), provided it was a genuine concurrent contract (rather than, for example, a concurrent contract that some schools enter into purely as a result of the splitting of a funding source for the post). Of course, if the employee were to cease the concurrent post to which the transfer had been made, the member could then aggregate the membership into the ongoing concurrent post (which they hadn't originally transferred pension rights into).

In scenarios (h) and (i), Funds should follow the same approach as for scenario (g).

In scenario (j), Funds should **not** permit a transfer in (even if they have to utilise Benefits Regulation 83(9), or regulation 78(9) in Scotland, to block it). The reasoning is that the member has not ceased to hold a local government employment and should not, merely by opting out and then opting back in, artificially be able to get around the 12 month period specified in Benefits Regulation 83(8), or 78(8) in Scotland. Administering authorities need to protect the Fund (and the employer) from potential abuse i.e. if a member facing redundancy, efficiency, or ill health retirement thinks that by opting out and then back in he will be able to transfer in benefits from another scheme he would undoubtedly do so in order to get immediate payment of benefits based on his LGPS membership and the transferred in service. This would potentially be extremely expensive for the employer as the service credit derived from the transfer in would have been based on a retirement age of 65 or, where appropriate, the 85 year rule date, whereas the benefits from the transferred in service would be paid out, unreduced, before then.

In scenario (k), Funds should permit a transfer in, provided the option was made within 12 months of rejoining the LGPS (or such longer period as the employer allows). This would follow the Club view.

(B) if a new opportunity to transfer in other pension rights is allowed upon changing employers and total LGPS amalgamated service commenced before 1 April 2008 should the inward transfer buy 80ths or 60ths?

The case in question concerned a member with the following service:

Employment 1 10/10/2005 to 15/06/2008

Employment 2 16/06/2008 to ongoing

On joining employer 2 the employee requested a transfer be accepted from a non-LGPS pension scheme.

After a long discussion the Technical Group felt that, on balance, the transfer should purchase 80ths if the member aggregated the LGPS membership but 60ths if the member did not

aggregate the previous LGPS membership. If the person had not made up their mind whether or not to aggregate at the point the transfer is received he or she should be given the transfer information for both 60ths and 80ths and informed that he or she should make a decision on aggregation before the transfer would be completed.

The Technical Group pressed CLG to issue guidance from GAD which clearly states that from a future specified date all transfers would purchase 1/60<sup>th</sup> pension only, Part D membership with a Normal Retirement Date of age 65. This membership would not affect the Critical Retirement Age of any existing LGPS membership. This would considerably simplify matters.

### **LGPS – Delayed inward transfer decision and cost of obtaining additional quote (Technical Group Meeting – 8 July 2009)**

It was felt that where a member missed the three month guarantee period on a transfer in and the sending scheme administrators request a fee to provide a further calculation, the costs should be borne by whoever is responsible for the delay i.e. either the employee or the Administering Authority.

It was also agreed that administering authorities had no statutory power to charge a fee for a CETV out re-quote / re-calculation.

### **LGPS – Interfunds and date to which interest is calculated (Technical Group Meeting – 8 July 2009)**

The Group was asked to agree upon the date that should be used for the calculation of interest on Interfund transfer payments. Some Funds have been asking for interest to the date payment is received or cleared.

GAD guidance says interest should be paid in accordance with regulation 44 (4) of the LGPS (Administration Regulations) 2008 (as amended) which provides for the interest to 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. "Date of payment" is not defined but it was felt this should be the date the cheque is due to be despatched or the BACS file is sent (not the date the Pensions Section send a request to their payments section or the date the payment is expected to clear). This would be consistent with the way in which Funds pay interest on late payment of lump sums on retirement.

### **LGPS 2008 – Refund of contributions where there is concurrent employment (Technical Group Meeting – 8 July 2009)**

A member has two concurrent Local Government employments. He then leaves one employment with a total membership of less than three months. The Tax Guide indicates that a refund of contributions in respect of the ceased employment should extinguish all benefits for that member in the LGPS. As a result, some administering authorities are automatically amalgamating the concurrent employments. If, however, the refund is paid, Funds could class it as an unauthorised payment and declare it to HMRC. This would result in an unauthorised payment tax charge on the refund but enable benefits from the continuing employment not to be extinguished and to be paid as authorised payments in the future.

To avoid such problems occurring, the Technical Group requested that the LGPS (Administration) Regulations be amended to prevent a refund of contributions where the member has a continuing concurrent employment. The LGPC has written to CLG and the SPPA requesting such an amendment.

## LGPS 2008 – Calculation of interfund transfers

The CLG letter of 22 December 2008 confirmed that administering authorities could continue to use the “old” (i.e. pre October 2008) non-Club transfer in factors and the approach set out in the GAD guidance note of 2 May 2008 **until 31 March 2009**. The implication, based on the earlier CLG letter of 18 November 2008, was that this should apply to cases **completed** by that date.

On 27 July 2009 CLG issued a letter and a note from GAD reconfirming that it is the intention that, for **elections made on or after 1 April 2009**, the calculation of the transfer amount for an interfund adjustment should follow the calculation for an outward Club transfer value (as set out in Version 1.3 of the transfer factor suite dated 23 March 2009 and associated guidance). For interfunds within England and Wales the membership history transfers with the individual concerned, so there is no need to calculate a Club service credit. A Club service credit calculation will be needed only in cases of transfers to or from the LGPS in Scotland or Northern Ireland, where historic differences in benefit structures may affect the calculation. GAD expect to issue formal guidance to this effect shortly<sup>1</sup>.

This appears to leave one group not covered by either of the CLG letters i.e. members who **elected before 1 April 2009** but where the transfer is **completed on or after 1 April 2009**. The possibilities for this group are:

- a) the calculation of the transfer amount should continue to use the “old” (i.e. pre October 2008) **non-Club transfer in** factors and the approach set out in the GAD guidance note of 2 May 2008
- b) the calculation of the transfer amount should follow the calculation for an **inward non-Club** transfer value using the “new” factors as set out in Version 1.3 of the transfer factor suite dated 23 March 2009 and associated guidance; or
- c) the calculation of the transfer amount should follow the calculation for an **outward Club** transfer value using the “new” factors as set out in Version 1.3 of the transfer factor suite dated 23 March 2009 and associated guidance

The Secretariat is seeking clarification from CLG as to which is the correct approach.

## LGPS 2008 – Calculation of CETV for a Pension Credit member in England and Wales

The Secretariat has received a number of queries regarding the calculation of a CETV for a Pension Credit member since the new actuarial factors for individual cash equivalent and Club transfers were issued in October of last year. The Secretariat’s understanding of the current position is detailed below.

The original calculation of the Pension Debit for a member and the Pension Credit for the ex-spouse or ex-civil partner was covered by GAD guidance issued on 29 November 2000 and 26 January 2001. The LGE Divorce Guide incorporated both those items of GAD guidance. As far as a transfer out for a Credit Member is concerned, paragraph 77 on page 50 of the guide says that where a person awarded a

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<sup>1</sup> Given that GAD has not yet issued formal guidance, where does this leave administering authorities? Well, the Secretary of State (as the Scheme Manager) is now responsible under The Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996 No. 1847] as amended by The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 [SI 2008 No. 1050] for determining how transfers should be dealt with (so a letter CLG, representing the Secretary of State, should suffice). However, regulation 86(7) of the LGPS (Administration) Regulations 2008 still says that administering authorities must process interfunds in accordance with GAD guidance – and we haven’t yet received the formal GAD guidance (so, based on the LGPS (Administration) Regulations 2008 a letter from CLG does not suffice). In other words, we’re currently stuck between a rock and a hard place. However, to avoid stockpiling, the Secretariat is of the view that as the letter from GAD clearly sets out their intention, administering authorities should act in accordance with that letter.



Pension Share “stipulates at the outset that he / she wishes to transfer the value of the [pension share] to a qualifying arrangement the sum credited to the [ex-spouse / ex-civil partner] is payable to the qualifying arrangement (less any charges).” Paragraph 79 on page 50 of the guide deals with the situation where the ex-spouse / ex-civil partner has been formally awarded a Pension Credit in the LGPS i.e. they did not ask for a transfer at the outset, were formally awarded a Pension Credit in the LGPS and subsequently request a transfer out. Paragraph 79 states, “The transfer is calculated using the factors in Tables 4 and 5 at annex 5”. Annex 5 of the Divorce Guide reproduced the GAD guidance on how to calculate Pension Credits and Debits.

Following the publication of the new actuarial CETV factors, a second version of the 'CLG Clarification - Pensions & Divorce' was issued on 12 March of this year. The opening paragraph of this document states:

*This circular is to confirm that, notwithstanding the effects of the April 2008 scheme changes and the introduction of new club and cash equivalent transfer factors from October 2008, the methodologies described in GAD's 29 November 2000 and 26 January 2001 guidance on pension sharing calculations and on pension credit calculations continue to apply subject to some minor amendments and clarifications.*

The current version for the individual transfer factors is now version 1.3 dated 23 March 2009, and not version 1.2 dated 18 November 2008 mentioned below. Point 4 of the CLG clarification, issued on 12 March, states:

*(4) pension credit calculation for ex-spouse below age 65: use the NPA60 Club tables as they would be used in a standard inward Club calculation for somebody with pension age 65 (following the latest version – currently 1.2 - of the tables and instructions dated 18 November 2008, with the exception that a pension-only AMC factor is used in type b) cases below), using the gender and age of the ex-spouse (that is the pension credit member):*

*a) where no right to any retirement lump sum (whether a retirement grant or by means of commutation) has previously crystallised, the ex-spouse is entitled to a retirement grant of three times the initial pension on reaching age 65 – therefore this retirement grant should be included in the calculation, and the mixed pension/lump sum AMC factors should be applied to both the pension and retirement grant;*

*b) where a retirement grant has already been paid (or a right to a retirement lump sum by means of commutation has crystallised, even if not taken up), the ex-spouse is not entitled to a retirement grant - therefore the calculation should exclude any retirement grant and the pension-only AMC factors should be used;*

The GAD guidance on 'Individual Incoming & Outgoing Transfers: members in service on or after 1 April 2008' nor version 1.3 of the transfer guidance make any reference to a CETV out for a Pension Credit member. Therefore, it is reasonable to assume that the methodology for the calculation of a CETV for a Pension Credit member remains as it was. That is, where a person awarded a pension share stipulates at the outset that he / she wishes to transfer the value of the pension share to a qualifying arrangement the sum payable to that arrangement is that proportion of the Debited Member's divorce CETV awarded to the ex-spouse / ex-civil partner under the Pension Sharing Order. But where the ex-spouse / ex-civil partner has been formally awarded a Pension Credit in the LGPS i.e. they did not ask for a transfer at the outset, were formally awarded a Pension Credit in the LGPS and subsequently request a transfer out, the factors used to calculate the Pension Credit member's benefits are used in a subsequent CETV out (i.e. as per (4) above).

In summary, the following methodology applies to the calculation of a CETV out for a person who has been formally awarded a Pension Credit in the LGPS:

- (1) use the standard inward Club factors from the NPA60 Club tables i.e. tables 1.1 and 1.2 from version 1.3 of the transfer guidance;
- (2) apply conversion factors because the Pension Credit is payable from age 65 and NPA60 Club table factors have been used; and
- (3) use the AMC factors as per (4)(a) or (b) above i.e. AMC tables 5.1 and 5.2, respectively, from version 1.3 of the transfer guidance.

## **LGPS 2009 – Calculation of CETV for a Pension Credit member in Scotland**

The Secretariat's understanding of the current position is detailed below.

The original calculation of the Pension Debit for a member and the Pension Credit for the ex-spouse or ex-civil partner was covered by GAD guidance issued on 29 November 2000 and 26 January 2001. The LGE Divorce Guide incorporated both those items of GAD guidance. As far as a transfer out for a Credit Member is concerned, paragraph 77 on page 50 of the guide says that where a person awarded a Pension Share "stipulates at the outset that he / she wishes to transfer the value of the [pension share] to a qualifying arrangement the sum credited to the [ex-spouse / ex-civil partner] is payable to the qualifying arrangement (less any charges)." Paragraph 79 on page 50 of the guide deals with the situation where the ex-spouse / ex-civil partner has been formally awarded a Pension Credit in the LGPS i.e. they did not ask for a transfer at the outset, were formally awarded a Pension Credit in the LGPS and subsequently request a transfer out. Paragraph 79 states, "The transfer is calculated using the factors in Tables 4 and 5 at annex 5". Annex 5 of the Divorce Guide reproduced the GAD guidance on how to calculate Pension Credits and Debits.

Following the publication of the new actuarial CETV factors, a second version of the 'Clarification on application of GAD guidance on sharing and pension credit calculations' was issued by SPPA on 6 March of this year. The opening paragraph of this document states:

*This circular is to confirm that, notwithstanding the effects of the April 2009 and earlier scheme changes and the introduction of new club and cash equivalent transfer factors from October 2008, the methodologies described in GAD's 29 November 2000 and 26 January 2001 guidance on pension sharing calculations and on pension credit calculations continue to apply subject to some minor amendments and clarifications.*

*However, the factors to use in such calculations have been updated following the October changes to the Club/CETV factors. Although there is no change in the underlying principles as to which sections of the factor tables should be used for which purposes, for the avoidance of any doubt, this is clarified below. Note that references to mixed pension/lump sum AMC factors are to those set out in Table 5.1 of the latest version – currently 1.1 - of the Scotland transfer factor suite dated 20 November 2008, whilst references to pension-only AMC factors are to those set out in Table 5.2 of the latest version – currently 1.2 – of the England & Wales transfer factor suite dated 18 November 2008.*

The current version for the individual transfer factors in England and Wales is now version 1.3 dated 23 March 2009, and not version 1.2 dated 18 November 2008 mentioned above. Point 4 of the SPPA clarification, issued on 6 March, states:

*(4) pension credit calculation for ex-spouse below age 65: use the NPA60 Club tables as they would be used in a standard inward Club calculation for somebody with pension age 65 (following the latest version – currently 1.1 - of the tables and instructions dated 20 November 2008, with the exception that a pension-only AMC factor is used in type b) cases below), using the gender and age of the ex-spouse (that is the pension credit member):*

*a) where no right to any retirement lump sum (whether a retirement grant or by means of commutation) has previously crystallised, the ex-spouse is entitled to a retirement grant of three times the initial pension on reaching age 65 – therefore this retirement grant should be included in the calculation, and the mixed pension/lump sum AMC factors should be applied to both the pension and retirement grant;*

*b) where a retirement grant has already been paid (or a right to a retirement lump sum by means of commutation has crystallised, even if not taken up), the ex-spouse is not entitled to a retirement grant - therefore the calculation should exclude any retirement grant and the pension-only AMC factors should be used;*

Neither version 1.1 of the Scottish or 1.3 of the English and Welsh transfer guidance make any reference to a CETV out for a Pension Credit member. Therefore, it is reasonable to assume that the methodology for the calculation of a CETV for a Pension Credit member remains as it was. That is, where a person awarded a pension share stipulates at the outset that he / she wishes to transfer the value of the pension share to a qualifying arrangement the sum payable to that arrangement is that proportion of the Debited Member's divorce CETV awarded to the ex-spouse / ex-civil partner under the Pension Sharing Order. But where the ex-spouse / ex-civil partner has been formally awarded a Pension Credit in the LGPS i.e. they did not ask for a transfer at the outset, were formally awarded a Pension Credit in the LGPS and subsequently request a transfer out, the factors used to calculate the Pension Credit member's benefits are used in a subsequent CETV out (i.e. as per (4) above).

In summary, the following methodology applies to the calculation of a CETV out for a person who has been formally awarded a Pension Credit in the LGPS:

- (1) use the standard inward Club factors from the NPA60 Club tables i.e. tables 1.1 and 1.2 from version 1.1 of the Scottish transfer guidance;
- (2) apply conversion factors because the Pension Credit is payable from age 65 and NPA60 Club table factors have been used; and
- (3) use the AMC factors as per (4)(a) or (b) above i.e. respectively, AMC table 5.1 from version 1.1 of the Scottish transfer guidance and AMC table 5.2 from version 1.3 of the English and Welsh transfer guidance.

## **Consultations**

### **SPPA Consultation**

SPPA are consulting on proposed amendments to the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998 and the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

The proposals are contained in a letter from the SPPA dated 16 July 2009 and follow a recent consultation in England and Wales by CLG on proposed changes to the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998. The SPPA is consulting on the possibility of introducing similar changes to the Scottish Regulations. These include:

- ensuring there is a separate bank account for the pension fund
- an administering authority should have an explicit, but limited, power to borrow for the purposes of its pension fund
- the statement of investment principles (SIP) should include information about the administering authority's policy on the lending of stocks or other securities from its pension fund
- an administering authority's policy on risk, included in its statement of investment principles, should include the ways in which risks are to be measured and managed
- an administering authority should prepare and publish an annual pension fund report.

The consultation closes on 9 October 2009.

### CLG consultation on "Delivering Affordability, Viability and Fairness"

On 25 June 2009, CLG issued an informal consultation letter setting out initial suggestions for stakeholders to consider as a feasible and balanced response to the impact of the current stock market on LGPS pension fund liabilities which are likely to be identified in the forthcoming 2010 valuation exercise.

The consultation considers a possible new approach to dealing with fund solvency, via funds preparing financing plans covering short, medium and long-term pension liabilities and / or administering authorities being allowed to set local funding targets. It also considers the possibility of amending the current employee contribution rates for members who earn in excess of, say, of £75,000 per annum, together with a widening of the salary band for the lower 5.5% contribution rate.

The LGPC will be making a response to the informal consultation prior to the consultation deadline of 30 September 2009.

The consultation letter also points out that a parallel, separate consultation exercise will shortly commence on the broader debate about the longer term future of the Scheme, and how it might best respond to changes in the workplace, workforce and economy.

### LGPC Subscriptions

As foreshadowed in [Bulletin 57](#) the LGPC has agreed that there should be no increase in the LGPC subscription rates for 2009/10. The invoices for 2009/10 will shortly be issued to Funds.

### Response to consultation on amendments to the Accounts and Audit Regulations 2003

The Secretariat has [responded](#) to the CLG consultation on amending the Accounts and Audit Regulations 2003 to improve the transparency of reporting of remuneration of senior officers in public bodies. The response includes comments on the need for clarity on how and when an individual's pension benefits are to be valued; who is to be responsible for providing the valuation; whether it is necessary to project a value to Normal Retirement Age; whether and how the value of injury benefits and various forms of compensation should be calculated; and whether, as well as local government staff, those to be covered by the reporting requirements are also to include senior teaching staff, and senior uniformed and non-uniformed staff of Police and Fire Authorities.

## Request to revert back to a 2 year vesting period

The LGPC has sought an amendment to the LGPS Regulations in England and Wales to revert back to a 2 year vesting period. A [copy of the letter](#) will shortly be available on the Latest News page of the LGE website.

## QROPS and the Island of Guernsey

There have been concerns of potential misuse of Qualifying Recognised Overseas Pension Schemes which are registered on the Island of Guernsey. The island's authorities have contacted HMRC to establish precisely what their concerns are and to identify how any potential misuse can be prevented. The Island of Guernsey's government website issued a [press release](#) last year which gives further information.

## Finance Act 2009

As reported in [Bulletin 57](#), from 22 April 2009 the new special annual allowance charge will apply if an individual whose "relevant income" is £150,000 or higher changes their normal ongoing regular pension savings and their total pension savings ("special annual allowance") exceed £20,000. Section 72 and schedule 35 of the Finance Act 2009 modify this slightly where the mean for those whose infrequent money purchase contribution amounts for the tax years 2006-07, 2007-08 and 2008-09 ("the relevant mean") exceeds £20,000. Infrequent money purchase contributions are money purchase contributions paid less frequently than quarterly. In these cases, where the "relevant mean" is greater than £20,000 but less than £30,000, the "special annual allowance" will be the "relevant mean" but where the "relevant mean" is £30,000 or more, the "special annual allowance" will be £30,000.

## Update on VAT on investment management services test case

In the [Bits and Pieces section of Bulletin 51](#), the Secretariat reported that the NAPF and the Wheel Common Investment Fund, which is a multi-employer scheme for the Ford Motor Company and its affiliates, were jointly making a legal challenge to HMRC's decision to apply VAT to investment management services in the UK.

The VAT tribunal has now set a date by which both sides must produce their evidence. The case should be heard within a year and the tribunal will then release its first instance decision.

## GAD Newsletter – Life Expectancy

In the July 2009 edition of their Newsletter, GAD has included an article entitled "[Improving life expectancy: will current trends continue?](#)"

## Bits and Pieces

Circulars,

Since the last Bulletin was issued, the Secretariat has published [Circular 230](#). It contains an update on the LGPS Trustees' Conference and the Trustees Training 'Fundamentals' Course.

## Timeline Regulations

There was no update to the [Timeline Regulations](#) this month.

## Pension provision as an employee benefit

AON Consulting have issued a [press release](#) after they had conducted a survey into what benefits an employer can offer a potential recruit to encourage him or her to join the company. The number one inducement an employer can offer is a good pension scheme. The survey also revealed the older the potential recruit the more important the provision of a pension benefit will become.

[Furthermore, The Sunday Times in an article on 28 June reported that one large employer plans to keep its defined benefits pension scheme open on the grounds that the cost is justified by the benefits in recruitment and retention of staff and enhancement to the company's reputation.]

## Legislation

### United Kingdom

#### SI Reference Title

2009/1488	The Social Security (Equalisation of State Pension Age) Regulations 2009
2009/1490	The Social Security (Miscellaneous Amendment) (No.2) Regulations 2009
2009/1542	The Pensions Act 2004 (Commencement No.13) Order 2009
2009/1552	The Pension Protection Fund (Entry Rules) (Amendment) Regulations 2009
2009/1565	The Pensions Act 2004 (Code of Practice) (Material Detriment Test) Appointed Day Order 2009
2009/1566	The Pensions Act 2008 (Commencement No.4) Order 2009
2009/1851	The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009

### Northern Ireland

#### SR Reference Title

2009/240	The Social Security (Miscellaneous Amendment) (No.2) Regulations (Northern Ireland) 2009
2009/242	The Pensions (2005 Order) (Commencement No.13) Order (Northern Ireland) 2009
2009/245	The Pension Protection Fund (Entry Rules) (Amendment) Regulations (Northern Ireland) 2009
2009/249	The Pensions (2008 No.2 Act) (Commencement No.3) Order (Northern Ireland) 2009
2009/250	The Pensions (2005 Order) (Code of Practice) (Material Detriment Test) (Appointed Day) Order (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](#)

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**Distribution sheet**

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