

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 74 – September 2010

This month's Bulletin contains a number of general items of information.

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. [LGPC contacts](#) can be found at the end of this Bulletin.

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This month, [Bits and Pieces](#) includes an update on a [LGPC Circular](#), [LGPC Communications](#) and [the Timeline Regulations](#).

**The Local Government Pension Scheme (Miscellaneous) Regulations 2010
[SI 2010/2090]**

[The Local Government Pension Scheme \(Miscellaneous\) Regulations 2010 \[SI 2010/2090\]](#) were laid before Parliament on 25 August 2010. Last month's Bulletin promised that the regulations would be discussed in more depth in this month's Bulletin. We have therefore produced a table providing our comments.

The following abbreviations are used in the table:

AR: the LGPS (Administration) Regulations 2008 (as amended);
BR: the LGPS (Benefits, Membership and Contributions) Regulations 2007;
s97R: the saved provisions from the LGPS Regulations 1997; and
TPR: the LGPS (Transitional Provisions) Regulations 2008

Regulation Number	Regulation Amended	Effective Date	Comment
1	N/A	N/A	This regulation sets out the dates the various amendments made by the LGPS (Miscellaneous) Regulations take effect.
3	154 of s97R	6 April 2009 being the date on which amendments made by the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009 [SI 2009/615] to the Pension Sharing (Pension Credit Benefit) Regulations 2000 [SI 2000/1054] gave effect to a general relaxation in the rules relating to when a Pension Credit can be paid.	<p>The normal benefit age for a Pension Credit member is age 65. This amendment now permits Pension Credit members to elect in writing to the administering authority to receive benefits at or after age 60. Pension Credit benefits paid before age 65 will be subject to actuarial reduction in accordance with guidance issued by the Secretary of State. Although the GAD guidance dated 11 April 2008 on actuarial reductions to be applied under regulations 18(2) and 30(4) of the BR does not mention early payment to Pension Credit members, we believe the actuarial reductions in that guidance should be applied to Pension Credit benefits paid before age 65 as if the benefits all related to Part D membership.</p> <p>The LGPC comments on the draft LGPS (Miscellaneous) Regulations suggested that regulation 93 of s97R should also be amended to refer to the date from which a Pension Credit is payable following an election under regulation 154(4) of s97R. No such amendment has been made by CLG. CLG have commented that they do not consider carrying out ongoing updating of the 1997 Regulations for an amendment such as this is necessary or desirable.</p>
4	155 of s97R	6 April 2009	This is a consequential amendment resulting from the amendment to regulation 154 of s97R and provides that a

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			death grant of 3 times the Pension Credit member's annual pension is payable if the Pension Credit member dies <i>before the Pension Credit has become payable</i> .
6	1 of BR	30 September 2010	<p>Inserts a definition of "local government employment" (which is the same definition as used in Schedule 1 of the AR) and also inserts a definition for "IRMP" – independent registered medical practitioner.</p> <p>Also, as requested by the LGPC, the definition of "the Scheme" is amended so that it now refers to the AR, BR and TPR.</p>
7	2(2) and 2(3) of BR	1 April 2008	<p>These amendments provide that a person who was an active member of the 1997 Scheme (on 31 March 2008) is an active member of the 2008 Scheme for so long as that person is in employment that makes him / her eligible for membership of the 2008 Scheme.</p> <p>The LGPC comments on the draft Miscellaneous Regulations 2010 said that as, technically, an opted-out member is still in employment which makes him or her <i>eligible</i> to be an active member of the scheme the regulation would appear to suggest that an active member of the 1997 Scheme would have to remain an active member of the 2008 Scheme for so long as he or she remains eligible for membership of the 2008 Scheme and so cannot not opt out of membership. Furthermore, Councillor members are still subject to s97R and so regulation 2(2) of the BR does not apply to them. To overcome these issues, the LGPC had commented that regulation 2(2) of the BR should commence with the</p>

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			words “Subject to regulation 14 of the Administration Regulations, an active member of the 1997 Scheme (other than a Councillor member) is an active member of the Scheme”. This wording has not been used by CLG but clearly the intention is that a member of the 1997 Scheme who became an active member of the 2008 Scheme can opt out of membership and that Councillor members remain subject to the LGPS Regulations 1997 in accordance with regulation 13 of the TPR.
8(a) and (b)	3(3) of BR and insertion of new regulation 3(3A) into BR	30 September 2010	Regulation 3 of the BR is amended as requested by the LGPC to clarify that the pay band ranges in the contribution table are increased each year on the first day of the pay period in which 1 April falls and that the increase is to be the same as that by which a pension would be increased on the first Monday falling on or after 6 April of that year if the pension had begun on 1 April 2008.
8(c)	3(9) of BR	30 September 2010	Clarifies that a member cannot pay contributions “on and after” the day before his / her 75 th birthday. Prior to the amendment the regulation had only debarred contributions “after” the day before his / her 75 th birthday. The LGPC sought this change for consistency with regulation 17(4) of the BR which says that benefits must be paid no later than the day before age 75 and regulations 50(2) and 50(6) of the AR which say that payment of benefits can be deferred until no later than the day before age 75. The LGPC had suggested the words “on or after” were used but CLG have used the words “on and after”. Regulation 12(4) of the AR, however, still says “A person may not become a member after the day before

Regulation Number	Regulation Amended	Effective Date	Comment
			his 75 th birthday". To be consistent with the rest of the regulations it should say "A person may not become a member <i>on or after</i> the day before his 75 th birthday".
8(d)	3(11) of BR	30 September 2010	Deletes regulation 3(11) of the BR as suggested by the LGPC. The regulation had somewhat strangely specified that the administering authority could decide the intervals at which employees should pay contributions.
9	4(2)(g) of BR	1 April 2008	An amendment to ensure that only genuine compensation payments in respect of equal pay are excluded from the definition of pensionable pay. Sums which represent arrears of pay are not excluded from the definition of pensionable pay.
10	7(3) of BR	1 April 2008	An amendment as requested by the LGPC to ensure that, where a member has part-time membership, it is the full calendar length of membership which is used to determine whether the member has three months membership for immediate vesting purposes.
11	11 of BR	30 September 2010	Where the final pay of a variable-time member includes fees and the employee has less than 3 years membership this amendment requires the fees to be averaged over the period of membership as requested by the LGPC.
12	13 of BR	1 April 2008	An amendment as requested by the LGPC to clarify that an employing authority can only resolve to award additional pension of up to £5,000 to an active member.

Regulation Number	Regulation Amended	Effective Date	Comment
13	14 of BR	1 April 2008	An amendment as requested by the LGPC to clarify that only active members can elect to pay additional contributions to purchase additional annual pension of up to £5,000.

Regulation Number	Regulation Amended	Effective Date	Comment
14(a)	14A of BR	1 April 2008	<p>An amendment as requested by the LGPC to clarify that only active members can elect to pay additional contributions to uprate pre 6 April 1988 membership to count towards a nominated co-habitee's survivor pension. Note that the deadline of 31 March 2011 for elections to pay additional contributions remains in place. However, this would debar any member with pre 6 April 1988 membership who enters into a co-habiting relationship after 31 March 2011 from being able to make an election to uprate their pre 6 April 1988 membership. It might also prevent those who have entered into a co-habiting relationship after 1 April 2009 from making such an election, as they will not be in a position to nominate a co-habiting partner for 2 years from the date they began co-habiting (with the date the 2 year period ends falling after 31 March 2011). The LGPC had suggested, therefore, that it would be helpful if the following words were added to the end of regulation 14A(2) "or within 12 months of the date of a nomination being made under regulation 25, whichever is the later". No such amendment has been made but the LGPC Secretariat assumes that a further amendment to regulation 14A will be made to this effect.</p> <p>The LGPC has also requested that:</p> <p>a) in order to be consistent with regulation 24B of the AR, the words "occurring after 5th April 1988 plus any period" in regulation 14A(5) be amended to "occurring after 5th April 1988 plus, subject to regulation 24B of the Administration Regulations, any period".</p> <p>b) regulations 18(8), 19(4), 20(5)(b), 21(2)(b) and 21(5)(b) of the AR should be amended to refer to ASBCs</p> <p>CLG have commented that they are not convinced that the cross-reference mentioned in (a) is necessary but will consider making amendments in relation to (b).</p>

Regulation Number	Regulation Amended	Effective Date	Comment
14(b)	14A(6) of BR	30 September 2010	<p>Deletes regulation 14A(6) of the BR. When regulation 14A of the BR was introduced by the LGPS (Miscellaneous) Regulations 2009 [SI 2009/3150] the LGPC pointed out that it was not clear why regulation 14A(6) provided for the member to be granted additional pension if he / she revoked a co-habitee nomination form. The LGPC felt it might be more logical and consistent with other provisions if the payment of contributions to uprate pre 6 April 1988 membership was looked upon as a type of insurance cover with non-refundable premiums. For example, members paying ARCs including prospective spouse's cover are not awarded extra pension in respect of the prospective survivor benefit element of the ARCs if their spouse dies before them, so why should a member paying extra contributions to increase a prospective co-habitee's pension get additional pension if the nomination ceases to have effect? CLG have taken this on board and deleted regulation 14A(6) with effect from 30 September 2010. However, if a member had commenced payment of ASBCs and revoked the co-habitee nomination before 30 September 2010, the member must still be awarded extra membership in accordance with regulation 14A(6). Where a member commenced payment of ASBCs before 30 September 2010, is still paying the ASBCs, and had been informed of the provisions of regulation 14A(6) in the literature / letter sent to him / her, the administering authority will need to inform the member of the change to the ASBC terms (i.e. the deletion of regulation 14A(6)). In any case where it can be shown that the member is, ultimately, adversely affected by this change, the employing authority could determine to grant a period of augmented membership under regulation 12 of the BR.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
15	15 of BR	30 September 2010	An amendment as requested by the LGPC clarifying that the provisions of regulation 15 of the BR (benefits from AVCs) are subject to regulation 26 of the AR (use of accumulated value of AVCs).
16	16 of BR	1 April 2008	<p>Amendments as requested by the LGPC. The term “local government employment” is now defined in regulation 1 of the BR. Actuarial increases are applicable where the member defers immediate payment of benefits beyond normal retirement age in accordance with regulation 50 of the AR.</p> <p>Note: this amendment has retrospective effect if such a member started to draw benefits on or after 1 April 2008 and has not been given an actuarial increase.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
17	17 of BR	1 April 2008	<p>An amendment as requested by the LGPC to clarify that a person may join the LGPS after age 65. Actuarial increases are applicable where a member joins the scheme after age 65.</p> <p>Note: this amendment has retrospective effect if such a member left on or after 1 April 2008 and has not been given an actuarial increase.</p> <p>The draft Miscellaneous Regulations had inserted the words “Subject to regulation 50 of the Administration Regulations” at the beginning of regulation 17(3) of the BR to reflect the fact that a member who leaves post age 65 may elect under regulation 50(6) of the AR to defer payment of a benefit under regulation 17 of the BR until, at the latest, the day before age 75. This tidying-up amendment has not been carried forward into the actual Miscellaneous Regulations.</p>
18	18(3A) of BR	1 April 2008	<p>Amendment as requested by the LGPC. Actuarial increases are applicable where a member takes flexible retirement after age 65.</p> <p>Note: this amendment has retrospective effect if such a member has taken flexible retirement on or after 1 April 2008 and has not been given an actuarial increase.</p>
18	18(5) of BR	1 April 2008	<p>An amendment as requested by the LGPC. The value of any benefits taken on flexible retirement shall be taken into account in accordance with GAD guidance if the member takes a further flexible retirement.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
19(a), (b), (c) and (d)	20(1)(b), (2), (3), (4) and (5) of BR	30 September 2010	Replaces references to “obtain” and “obtaining” any gainful employment and replaces them with references to a member being capable of “undertaking” any gainful employment.
19(d)	20(5) of BR	30 September 2010	Introduces an abbreviation – “IRMP” – for an “independent registered medical practitioner”. The LGPC had requested that the reference in regulation 20(5) of the BR to “an authority must obtain a certificate” should be amended to “the employing authority must obtain a certificate” in order to tie in with regulation 31(2) of the BR. CLG have not made this minor amendment to regulation 20(5) of the BR.
19(e)	20(7) of BR	30 September 2010	This amendment makes it clear that an 18 month review of a tier 3 ill-health pension is not required where the member has, by then, already attained normal retirement age.
19(f)	20(8) of BR	30 September 2010	Replaces the reference to “obtaining” gainful employment with a reference to a member being capable of “undertaking” gainful employment. Also provides that a tier 3 pension in payment shall not be discontinued at the end of 3 years if the member has by then attained age 65.

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19(g)	20(11) of BR	30 September 2010	<p>After an initial determination of tier 3 ill-health benefits, the former employing authority can, under regulation 20(11) of the BR, make a subsequent determination to upgrade a member to tier 2 ill-health benefits. A new regulation 20(11)(aa) has been inserted into the BR. It provides that a determination by the former employing authority to uplift a member from a tier 3 to a tier 2 pension must be made:</p> <ul style="list-style-type: none"> a) within 3 years of the date the tier 3 is suspended, if it was suspended under regulation 20(8)(b) of the BR, or before the member attains age 65 if earlier, or b) before age 65 if the tier 3 pension was suspended under regulation 20(8)(a) of the BR – even if the pension has been suspended for more than three years. <p>The LGPC believes the reference in regulation 20(11)(aa) to “paragraph (8)(b)” should simply have been to “paragraph (8)”. This would mean that whether a tier 3 pension is suspended under regulation 20(8)(a) or (b) an uplift from tier 3 to tier 2 could only be made in either case within 3 years of the date the tier 3 is suspended or before the member attains age 65 if earlier This would chime with paragraph 7.15 of the CLG Explanatory Memorandum that accompanied the Miscellaneous Regulations.</p>

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			<p>If a member is moved from tier 3 to tier 2, the tier 2 benefits are payable from the date the employer determines to move the member from tier 3 to tier 2. However, no additional lump sum will be payable. A move from tier 3 to tier 2 could have tax implications (see Q15 and Q28 of the FAQs at http://timeline.lge.gov.uk/Statutory%20Guidance%20and%20circulars/IH_3tier_FAQv2_May09.doc).</p> <p>If an employer decides to uplift a member from tier 3 to tier 2 utilising regulation 20(11)(a) of the BR, then the employer is making a determination under regulation 20(3) of the BR. Regulation 20(3) says that an award under tier 2 shall include enhancement equal to 25% of potential membership from the date of leaving to age 65. The increased pension (i.e. the pension based on actual membership plus 25% of potential membership from leaving to age 65) is then payable, as per regulation 20(11)(b), from the date of the decision to uplift from tier 3 to tier 2.</p> <p>Regulation 56 of the AR has not been amended to permit an IRMP who was previously involved in the case to advise on the same case where a ill-health certificate is required as part of a review to move a member from tier 3 to tier 2.</p> <p>There is still no facility for the employer to determine to move a tier 3 member to tier 1.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
19(h)	Inserts new regulation 20(11A) into the BR	30 September 2010	<p>Inserts a new regulation 20(11A) into the BR. This provides that if a member is awarded a tier 1 or tier 2 ill health pension and had previously been awarded a tier 1 or tier 2 ill-health pension, his / her active membership from the first employment plus the active membership from the second employment must not exceed the total membership the person would have had if he / she had been awarded a tier 1 pension from the first employment.</p> <p>This raises a number of issues:</p> <ul style="list-style-type: none"> <li data-bbox="1160 699 1906 914">i) it only places a limit on total membership if a tier 1 or tier 2 pension had previously been awarded under the BR. If an ill health pension had been awarded under regulation 28 the LGPS Regulations 1997 or the equivalent in earlier regulations, no limit is imposed <li data-bbox="1160 954 1935 1321">ii) if one assumes that the references to active membership are read literally, then the only members who will be affected by this regulation will be those whose period of active membership in the second employment exceed the period between leaving the first employment and age 65. This period could only be exceeded by members who remain in active membership in the second employment beyond age 65.

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			<p>iii) if, however, one assumes that references to active membership are meant to include the periods of enhancement (even though regulations 20(2) and (3) of the BR do not refer to the enhancement as active membership), then those members awarded a tier 1 ill health pension from the first employment and who are again retired under tier 1 or tier 2 can receive no pension benefits in respect of the second period of employment. If this interpretation is correct then, in order to get a benefit from the second period of employment, the member would simply have to opt out of the scheme before the second ill health retirement, or resign from that employment rather than be dismissed on the grounds of permanent ill health, or retire on grounds other than permanent ill health.</p> <p>iv) although this amendment applies to a member retiring for a second time with a tier 1 or tier 2 pension, no limitation has been placed on the amount of enhancement used to calculate a survivor benefit under regulations 24 or 28 of the BR in cases where the member was retired under tier 1 or tier 2, rejoins the scheme and then dies in service.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
			<p>Note: The ill health monitoring group had requested that where a member retires under tier 1 or tier 2 (or under regulation 28 of the LGPS Regulations 1997 or the equivalent in earlier regulations), subsequently returns to local government employment, and is again retired under tier 1 or tier 2, the total membership from the first employment (including ill health enhancement), plus the total membership from the second employment (including ill health enhancement) should not exceed the membership the person could have achieved had they remained in the first employment to age 65. Where this limit is exceeded, the ill health enhancement from the second employment would be reduced by the excess.</p> <p>CLG will seek to clarify the application of regulation 20(11A) of the BR within the ill health guidance or FAQs.</p>
19(i)	20(12)(b) of BR	30 September 2010	A clarifying amendment to tidy up previous incorrect drafting.
19(j)	20(13) of BR	30 September 2010	<p>An amendment to clarify that the ill-health enhancement protection provided for under regulation 20(13) of the BR only applies to those members who were aged 45 before 1 April 2008, were active members on 31 March 2008, have had continuous LGPS membership and have not received any benefits in respect of that membership. Thus, a break in membership will negate the ill-health enhancement protection. The LGPC Secretariat is of the view that only a break occurring on or after 1 April 2008 (and not breaks occurring before that date) would negate the protection.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
19(k)	20(14) of BR	30 September 2010	Substitutes a slightly different introduction to the definition of “qualified in occupational health medicine”.
20	23(4) of BR	30 September 2010	An amendment requested by the LGPC to ensure there is consistency of approach with regulation 20(12)(b) of the BR. The amendment provides that if, at the date of death in service, a member was in part-time employment wholly or partly as a result of the medical condition that caused or contributed to the member’s death, no account is to be taken of any reduction in pay due to such reduction in service as is attributable to that condition. The employing authority would need to obtain a certificate from an IRMP to this effect.

Regulation Number	Regulation Amended	Effective Date	Comment
21	24 of BR	30 September 2010	<p>Amendments as requested by the LGPC clarifying that following a death in service a spouse's, civil partner's or nominated co-habiting partner's pension is payable from the day immediately following the date of death and that the calculation of the survivor's pension is subject to regulation 14 of the BR (additional survivor pension provided via ARCs), 14A of the BR (additional nominated co-habiting partner's pension provided via ASBCs), 15 of the BR (additional survivor pension provided via an AVC or SCAVC arrangement), and regulations 20(4)(a) and 20A of the s97R (reduction of benefits due to a Pension Debit).</p> <p>The amendment also inserts new regulation 24(2A) into the BR which provides that if, at the date of death in service, a member was in part-time employment wholly or partly as a result of the medical condition that caused or contributed to the member's death, no account is to be taken of any reduction in membership* due to such reduction in service as is attributable to that condition.</p> <p>The employing authority would need to obtain a certificate from an IRMP to this effect. The amendment corresponds to the similar protection provided under new regulation 23(4A) of the BR. Where such a certificate is obtained then, when calculating the survivor benefits under regulation 24 of the BR, both the membership to the date of death and the enhancement of membership to age 65 are calculated as if the reduction in hours had not occurred – see the analogous situation covered in Q23 of the CLG ill health FAQ document of May 2009.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
			<p>It should be noted that the equivalents of amended regulation 24(2) of the BR and new regulation 24(2A) of the BR have not been inserted into regulation 28 of the BR (children's pensions following death in service of an active member). CLG have commented that this point could be followed up during any future statutory amendments.</p> <p>It is not clear why the equivalent of the provisos included in regulation 24(2)(b) of the BR have not been added to regulations 33 and 36 of the BR (even though such amendments had been included in the draft Miscellaneous Regulations)</p> <p>*Note that regulation 24(2A) of the BR incorrectly refers to a reduction in pay but should refer instead to a reduction in membership.</p>
22	27 of BR	30 September 2010	An amendment requested by the LGPC clarifying that a child's pension is payable from the day immediately following the date of death of the scheme member.

Regulation Number	Regulation Amended	Effective Date	Comment
23	29(5) of BR	30 September 2010	<p>An amendment as requested by the LGPC to remove the words “or any part of it” from regulation 29(5) of the BR as those words were irrelevant i.e. members cannot choose to receive only part of their benefits on attaining normal retirement age.</p> <p>The LGPC had also suggested that:</p> <ul style="list-style-type: none"> a) regulation 29(3) of the BR should be amended to commence “Subject to regulations 30 and 31 and to regulation 50(2) of the Administration Regulations” in order to recognise that the member can defer payment beyond age 65 b) whereas regulation 29(1) of the BR says that the regulation only applies to a member who leaves his employment and regulation 29(2) of the BR says that a deferred benefit can only be calculated at the date of leaving the employment, which would suggest that deferred benefits for an optant out cannot be calculated until such time as the member leaves his employment, this conflicts with regulation 55(7)(b) of the AR (which requires that a decision on benefit entitlement must be made as soon as is reasonably practicable after the date of opting out) and conflicts with: <ul style="list-style-type: none"> i) the provisions of regulation 27A of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 [SI 1991/167] which requires that members be informed of their leaver rights and options within 2 months of making a request or of the member notifying the administering authority that pensionable service has terminated; and

Regulation Number	Regulation Amended	Effective Date	Comment
			<p>ii) Part IV of the Pension Schemes Act 1993 : Protection for Early Leavers (including the right to a cash equivalent transfer value); and</p> <p>iii) Regulation 3 of the Occupational Pension Schemes (Transfer Value) Regulations 1996 [SI 1996/1847] which provides for the right to a CETV of post 5 April 1988 benefits upon opting out.</p> <p>Under the Pensions Act 1995 a member is either an active member, a deferred member, a pensioner member or a pension credit member. In the view of the LGPC Secretariat, an optant out becomes a deferred member (as none of the other categories under the Pensions Act 1995 are appropriate). Regulations 29(1) and (2) of the BR ought, therefore, to be amended to clarify that the deferred benefits are calculated and awarded upon opting out. The deferred benefit for an optant out would then be treated in the same way as for any other deferred benefit, except that the regulations should not permit payment until such time as the optant out ceases his / her local government employment. An optant out who is made redundant or whose employment is terminated on the grounds of ill health would be dealt with as a normal deferred member (and not as if the person were still an active member unless, of course, the person opts back into the LGPS prior to termination of their contract on the grounds of redundancy or ill health).</p> <p>The suggestion to amend regulations 29(1) and (2) of the BR for the reasons given above has not, however, been taken on board by CLG as CLG concluded that such amendments were unnecessary.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
24	30 of BR	<p>1 April 2008</p> <p>Although this amendment has retrospective effect to 1 April 2008, in practice the member would have had to have made an election for early payment of benefits with employer permission prior to 1 April 2010. As this date has already passed, the amendment can only affect any pre 1 April 2010 elections that for some reason are still being processed.</p>	<p>An amendment as requested by the LGPC to provide consistency of approach with the wording of regulations 18(4A) and 18(4B) of the BR.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
25	Inserts new regulation 30A into the BR	1 October 2008 being the day following the date transitional protection applied. However, the earliest a tier 3 pension would normally have been suspended would have been 2 October 2009 (following the 18 month review of a tier 3 pension awarded on 2 April 2008).	<p>New regulation 30A has been introduced into the BR. It provides that a suspended tier 3 pension will be brought into payment at normal retirement age unless the member elects to receive payment of benefits at or after 55 and before normal retirement age. An election made before age 60 is ineffective without the consent of the former employing authority. It should be noted that, unlike early payment before age 60 under regulation 30 of the BR, there is currently no requirement under regulation 66 of the AR for an employer to have a written policy on the exercise of its discretion under regulation 30A of the BR. CLG have commented that they may consider consulting on an appropriate amendment during any future consultation on draft amending regulations.</p> <p>Benefits brought into payment before normal retirement age (65) under regulation 30A of the BR will be actuarially reduced as per GAD guidance. For a normal deferred beneficiary the notional period of membership between the date of leaving and the date the deferred pension is brought back into payment count towards the 85 year rule by virtue of regulation 10 of, and paragraph 3(1)(c) of Schedule 2 to, the Transitional Provisions Regulations. However, regulation 10 of, and Schedule 2 to, the Transitional Provisions Regulations make no reference to regulation 30A of the BR. The implication, therefore, is that the 85 year rule is not to be applied where a suspended tier 3 “pensioner with a deferred pension” elects for reinstatement of the tier 3 pension before age 65. This means that the actuarial reduction to be applied would, in all such cases, be by reference to the period between the date the benefits come into payment and age</p>

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			<p>65 (and not by reference to the period between the date the benefits come into payment and the shortfall to the 85 year rule if this falls before age 65). This difference in approach might best be explained by the fact that a “pensioner with a deferred pension” is not the same beast as a normal deferred pensioner in that the former type of member will already have received an unreduced pension for somewhere between 18 months and 3 years when the tier 3 pension was first paid following termination of employment and will already have received an unreduced lump sum at the time of leaving employment. Of course, an employer might wish to consider discussing the merits or otherwise of retiring with a tier 3 pension if the member is aged 58½ or older who would have met the 85 year rule before age 65. The discussion would be around whether to:</p> <p>a) award a tier 3 pension which might only be in payment for 18 months. If the member then wanted payment from age 60 this would be at an actuarially reduced rate; or</p> <p>b) award a deferred benefit that the member could apply for from age 60 with a lesser or no actuarial reduction (i.e. because the 85 year rule would be met before age 65)</p> <p>This is similar to the situation mentioned in Q39 of the CLG ill health FAQ document of May 2009.</p>

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			<p>It should be noted that a tier 3 pension must be reinstated by no later than normal retirement age. There is no provision for a tier 3 member who attains the normal retirement age to defer having a tier 3 pension brought into payment.</p> <p>It should also be noted that Q29 in the CLG ill health FAQ document of May 2009 says that “a pensioner member whose 3rd tier benefits have ceased and who has ‘deferred’ benefits is not precluded from applying under Regulation 31 to have the suspended “deferred pension” brought into payment as a result of a medical condition <u>unrelated</u> to the condition that resulted in 3rd tier payments”.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
26	31(1) and (2) of BR	30 September 2010	<p>Replaces the original version of regulation 31(2) of the BR. The reference in the original regulation 31(2) to “obtaining” gainful employment has been replaced with a reference to being “capable of undertaking” any gainful employment and it has been made clear that it is the employing authority’s responsibility to obtain a certificate from an IRMP.</p> <p>The word “immediately” (i.e. immediately from the date of election) has been deleted from regulation 31(1) of the BR. The proposal in the draft Miscellaneous Regulations to amend regulation 50(4) of the AR to provide that a deferred benefit cannot be brought into payment on health grounds from a date earlier than the date of application has not been taken forward. Regulation 50(4) of the AR simply states that a deferred benefit can be brought into payment from the date the member became permanently incapable as determined under regulation 31 of the BR. Given this wording and the deletion of the word “immediately” from regulation 31(1) of the BR it appears that a deferred benefit could be brought into payment on health grounds from a date which could be before the date of the application from the scheme member. This is a significant change from the position that applied under the LGPS Regulations 1997 and under regulation 31 of the BR before its amendment by the Miscellaneous Regulations and reflects the position that applied under the 1995 Regulations.</p> <p>The regulation still does not specify to whom the member should make an election for payment of deferred benefits on ill health grounds but the clear inference from regulation 31(2) of the BR is that the election should be to the former employing authority.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
27	32 of BR	1 October 2008	Amendments which set out the amount of death grant payable in respect of a suspended ill health tier 3 pensioner i.e. a pensioner member with deferred benefits. The death grant payable is 5 times the (post commutation) pension less the amount of pension and lump sum retiring allowance already paid.
28	33 of BR	30 September 2010	An amendment requested by the LGPC clarifying that a spouse's, civil partner's or nominated co-habiting partner's pension is payable from the day immediately following the date of death of a deferred member.

Regulation Number	Regulation Amended	Effective Date	Comment
29	35(3) of BR	30 September 2010	<p>An amendment as requested by the LGPC so that, when calculating the death grant of a pensioner member, the death grant is 10 times the pension in payment (or that would have been in payment if it had not been suspended or abated under regulation 71 of the AR) less the amount of pension paid (or that would have been paid had the member's pension not been suspended or abated at any time under regulation 71 of the AR)</p> <p>The LGPC Secretariat assumes that, subject to the abatement provisions mentioned above, where:</p> <ul style="list-style-type: none"> a) a member dies whilst in receipt of the tier 3 ill health pension before any suspension under regulation 20 the death grant will be that payable under regulation 35 i.e. 10 times the post commutation pension in payment less the amount of pension paid; b) a member dies after a suspended tier 3 ill health pension has been brought back into payment at age 65, the death grant would be that payable under regulation 35 of the BR i.e. 10 times the post commutation pension in payment less the amount of pension paid before the pension was suspended and the amount of pension paid after the pension had been brought back into payment;

Regulation Number	Regulation Amended	Effective Date	Comment
			<p>c) a member dies after a suspended tier 3 pension has been brought back into payment at an actuarially reduced rate under regulation 30A of the BR, the death grant would be that payable under regulation 35 of the BR i.e. 10 times the actuarially reduced post commutation pension in payment less</p> <ul style="list-style-type: none"> i) the amount of actuarially reduced pension paid since the pension was brought back into payment under regulation 30A of the BR, and ii) the amount of unreduced pension paid before the pension was suspended under regulation 20(8) of the BR.
29	35(4) of BR	30 September 2010	An amendment as requested by the LGPC which provides that if a death grant in respect of a pensioner member has not been paid within 2 years of the date of death or the date the administering authority could reasonably be expected to have become aware of the member's death, the administering authority must pay the death grant to the member's personal representatives. This amendment mirrors the provisions already contained in regulations 23(5) and 32(4) of the BR.
30	36 of BR	30 September 2010	An amendment requested by the LGPC clarifying that a spouse's, civil partner's or nominated co-habiting partner's pension is payable from the day immediately following the date of death of a pensioner member.

Regulation Number	Regulation Amended	Effective Date	Comment
31	38 of BR	1 April 2008	Various amendments which confirm administering authorities' powers to reclaim pensions increase costs from various employing bodies in the circumstances set out in regulation 38 of the BR.
33	1 of TPR	30 September 2010	The definition of "the Scheme" is amended as requested by the LGPC so that it now refers to the AR, BR and TPR.
34	3 of TPR	1 April 2008	As requested by the LGPC this amendment adds regulation 31 of BR to the list of regulations in regulation 3(2)(b) of the TPR. This means that when benefits are paid to a deferred member under regulation 31 of the BR, the payment will include that element of the deferred benefits which had accrued before 1 April 2008.
35	10(1)(b) of TPR	1 April 2008	<p>A correction to reflect the fact that it is the employing authority and not the administering authority which is permitted to give consent to early payment of benefits under regulation 30 of the BR.</p> <p>However, regulation 10(1)(b) of the TPR still appears to require further amendment as it only covers cases where the employing authority has given consent to early payment of benefits under regulation 30 of the BR (i.e. for payment on or after age 55 and before age 60). It needs to be amended to also refer to cases where the consent of the employing authority for payment of benefits under regulation 30 of the BR does not have to be given (i.e. for payment on or after age 60 and before age 65).</p>

Regulation Number	Regulation Amended	Effective Date	Comment
36		1 April 2008	Inserts a new regulation 15 into TPR to cover the position of civil servants who were transferred the Environment Agency. The regulation restores the retirement age transitional provisions for this group of members which were previously included in the LGPS (Transitional Provisions) Regulations 1997.
37	Schedule 1 to TPR	30 September 2010	Correction of a typographical error. The reference in Schedule 1 of the TPR to “regulation 108(A)” has been amended to “regulation 108A”.
39	7(5) of AR	30 September 2010	Removes the ability of parties to an admission agreement to refer a dispute about the construction of the admission agreement to the Secretary of State.

Regulation Number	Regulation Amended	Effective Date	Comment
40	8 of AR	30 September 2010	<p>Permits a non-teaching employee of a federated school, as defined in section 24(2) of the Education Act 2002, to be eligible for membership of the LGPS if the Local Education Authority has, with the consent of the employer, designated the employee, or a class of employees to which he belongs, as being eligible for membership of the scheme.</p> <p>CLG have not taken forward the proposal in the draft regulations which removed the need for the LEA to obtain the consent of the governing body of a foundation school or foundation special school before passing a resolution to provide non-teaching staff of the school with access to the LGPS. Although the LGPC had requested the removal of the need to obtain the consent of the governing body, on the grounds that the governing body should not be in a position to deny staff access to the LGPS, the LGPC raised the point that, as drafted, the wording of the draft amendment regulation would have meant that the local authority could designate employees, including existing employees who had, due to the actions of the governing body, not previously been able to have access to the LGPS. This could have had implications for the school and the employees, particularly if the school had already entered into other pension arrangements for their existing employees. CLG have therefore decided not to proceed with the amendment for the time being as they wish to consider the potential implications in more detail.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
41	10 of AR	1 April 2009	An amendment replacing the reference to “Secretary of State” with a reference to “Commissioner for Her Majesty’s Revenue and Customs” in respect of the officials who may appoint rent officers.
42	13(5) of AR	30 September 2010	Amendments as requested by the LGPC specifying to whom and within what time frame an employee of a body listed in Part 1 of Schedule 2 to the AR who initially had a contract of employment for less than 3 months which is extended to 3 months or more may elect to backdate their membership to the first day of employment. Such an election must be made to the employing authority within 3 months of the date the contract is extended, or such longer period as the employer may allow.

Regulation Number	Regulation Amended	Effective Date	Comment
43	16(3) and (4) of AR	30 September 2010	<p>At first glance these amendments appear to allow members to aggregate any other periods of former membership within 12 months of joining the scheme or longer if the employer permits. Existing members have until 1 October 2011 to aggregate any periods of previous membership which they have not aggregated previously (not just “leapfrogging cases”).</p> <p>However:</p> <ol style="list-style-type: none"> 1. If a deferred benefit was awarded under the 1997 or earlier Regulations and rejoins the LGPS on or after 1 April 2008, the provision governing the aggregation of such a deferred benefit are set out in regulation 4 of the TPR. Technically, that regulation always did allow a member with any number of deferred benefits to aggregate them all (even ones that had previously been kept separate) with a new period of membership that commenced on or after 1 April 2008, provided the election to aggregate was made within 12 months of starting that new period of membership. The 12 month time limit in regulation 4 of the TPR has not, unlike the time limit in regulation 16 of the BR, been extended. 2. If a deferred benefit was awarded under the BR (i.e. to a post 31 March 2008 leaver), the amendment made to regulation 16 of the AR permits the member to aggregate periods of membership from <u>any</u> deferred benefit awarded under the BR. <p>So, let's take the following case:</p>

Regulation Number	Regulation Amended	Effective Date	Comment
			<p>Employment 1 (EMP1): Member leaves 31 January 2007 and is awarded a deferred benefit (DB1).</p> <p>Employment 2 (EMP2): Member rejoins 1 December 2007, decides not to aggregate, leaves 30 June 2008 and is awarded a second deferred benefit (DB2).</p> <p>Employment 3 (EMP3): Member rejoins 1 September 2008, decides not to aggregate.</p> <p>The effect of the amendment made by the Miscellaneous Regs would appear to be that the person can, on or after 30 September 2010 (the date the amendment to regulation 16 of the AR takes effect) and before 1 October 2011, elect to aggregate DB2 with EMP3 (even though the original 12 month notice period expired on 31 August 2009) but cannot aggregate DB1 with EMP3 (because DB1 is covered by regulation 4 of the TPR which has not been amended to extend the 12 month time limit).</p> <p>We suspect that most Funds would have given the employee the option, on starting EMP3 of aggregating DB2 with EMP3, but not of aggregating DB1 with EMP3 (even though regulation 4 of the TPR appears to have provided the employee with the right to aggregate DB1 with EMP3). If our suspicions are correct, it would place the administering authority in an awkward position when asked by the member why he / she can now aggregate DB2 with EMP3 but not DB1 with EMP3 and why hadn't the administering authority given him / her the option to aggregate DB1 with EMP3 within 12 months of starting EMP3?</p> <p>However, CLG have provided the following note to the LGPC Secretariat:</p>

Regulation Number	Regulation Amended	Effective Date	Comment
			<p><i>“MISC SI 2010, Regulation 43, amending AR 16, deals with that group of members covered by either regulation 3 or regulation 4 of the Transitional Regulations 2008. It appears to CLG that although continuously employed through the period 31 March -1 April 2008 (and so covered by reg 3 of the Transitional Regs) there might have been earlier non-aggregated periods of membership. Also, a member who has re-joined post 1 April 2008 (and covered by the Transitional Provision Reg 4) might have periods of non-aggregated membership. In both cases, it was considered prudent to provide a one off, time limited, opportunity to address possible scheme transition issues following the introduction of the new look scheme from 1 April 2008. The amendment does this by allowing all re-employed and rejoining deferred members ie current active members, the chance, in the period 30 September 2010 to 30 September 2011, to aggregate any non aggregated membership ie have pre 2008 membership calculated against post 2008 final salary. In some instances this may allow the member who had chosen previously not to aggregate membership, to now have the opportunity to reverse this decision. Whilst this was not the policy intention of the change there is no specific provision to exclude this eventuality.”</i></p> <p>This will clearly have some major implications. Due to the current financial situation, many employers are seeking to implement redundancies. Scheme members who have not aggregated membership but who are issued with notice of redundancy to leave on or before 1 October 2011 will clearly wish to consider the merits of aggregating. Employers will not have any power of</p>

Regulation Number	Regulation Amended	Effective Date	Comment
			<p>veto. This window of opportunity for scheme members to aggregate benefits could therefore lead to additional strain on Fund costs for employers.</p> <p>It should be noted that if a scheme member is considering aggregating membership, it might be wise for them to do so before 6 April 2011 in order to avoid any potential tax implications associated with the proposal to reduce the Annual Allowance to somewhere between £30,000 and £45,000 and to use a factor of between 15 and 20 to value a pension.</p> <p>If a member has two deferred benefits in different Funds and wants to aggregate them in the new (third) Fund, CLG have expressed an opinion that the IFA from the first Fund can be paid straight to the third Fund i.e. it does not have to be paid to the second Fund who would then pay an IFA to the third Fund.</p>
44	17 of AR	30 September 2010	<p>Amendment as requested by the LGPC to cover cases where a member ceases to hold a concurrent employment and has less than 3 months membership but is nonetheless entitled to a deferred benefit under regulation 5 of the BR in respect of that membership (e.g. they have had a transfer in of other pension rights). The aggregation of membership for such a member who elects to aggregate is to be dealt with in accordance with regulation 17 of the AR.</p>

Regulation Number	Regulation Amended	Effective Date	Comment
45	26 of AR	30 September 2010	Amendments to the provisions on the use of accumulated AVCs for optants out, and for leavers who do not have an entitlement to immediate payment of benefits.
46	36A of AR	30 September 2010	Inserts new regulation 36A(4A) into the AR which provides that the assumptions used in valuing the 2010 Model Fund for the purposes of cap and share will be set by the Secretary of State after consultation with GAD and such other parties as the Secretary of State desires.
47	47 of AR	30 September 2010	Adds a further exclusion to eligibility for a refund of contributions as requested by the LGPC. Members will no longer be permitted to receive a refund where they cease one concurrent employment and remain in active membership in another LG employment.
48	50 of AR	1 October 2008	A consequential amendment as a result of the introduction of regulation 30A (choice of payment of pension: pensioner member with deferred benefits) into the Benefits Regulations. It should be noted that there is no provision for an ill health tier 3 member who attains the normal retirement age to defer having their tier 3 pension brought into payment after normal retirement age.

Regulation Number	Regulation Amended	Effective Date	Comment
49	50A of AR	31 December 2009	<p>As requested by the LGPC the reference to paragraph (5) in regulation 50A(2) is removed.</p> <p>Regulations 50A(2), (3) and (4) deal with cases where the member attains pensionable age whilst in local government employment, whereas regulation 50A(5) deals with cases where a member attains pensionable age whilst not in local government employment. Therefore, the incorrect cross-reference in regulation 50A(2) to paragraph (5) has been deleted.</p> <p>Regulation 50A(6) appeared to permit a member to postpone the payment of their GMP indefinitely. However, sections 13(4) and (5) of the Pension Schemes Act 1993 only appear to permit postponement for so long as the member remains in employment beyond pensionable age. The LGPC therefore suggested that the words “for any period during which the member remains in employment beyond pensionable age” should be added at the end of regulation 50A(6). CLG have not done so but have, instead, added words at the beginning of regulation 50A(6) referring to regulation 17 of the BR. The LGPC Secretariat is currently considering what the effect of this amendment is.</p> <p>It should be noted that regulation 36 of the LGPS Regulations 1997 and regulation D17 of the LGPS Regulations 1995 have not been amended to ensure that those regulations correlate with the provisions in regulation 50A of the AR.</p> <p>The LGPC requested that the following provisions in the LGPS Regulations 1997 should be added to the LGPS (Administration) Regulations 2008 or added to the list of saved provisions in Schedule 1 of the LGPS (Transitional Provisions) Regulations 2008:</p>

Regulation Number	Regulation Amended	Effective Date	Comment
			<ul style="list-style-type: none"> • regulation 37 (revaluation of guaranteed minimum); • regulation 43 (surviving spouse's or civil partners' guaranteed minimum pension); and • regulation 114 (protection of GMP rights). <p>CLG have not made such amendments and have commented that they do not consider carrying out ongoing updating of the 1997 or earlier Regulations to be necessary or desirable in this case.</p>
50	51(3)(b) of AR	1 April 2008	An amendment as requested by the LGPC in order to ensure consistency with regulation 51(1) of the AR.
51	Inserts new regulation 52A into the AR	30 September 2010	Inserts new regulation 52A (payments for persons incapable of managing their affairs - other than an eligible child) into the AR. Part of the regulation allows the administering authority to pay some or all of the benefits in respect of such a person to someone else for the benefit of the member. It will be for each administering authority to determine its processes for deciding whether or not a beneficiary (other than an eligible child) is incapable of managing his / her affairs by reason of mental disorder or otherwise e.g. obtain a certificate or statement from the pensioner's doctor. The administering authority will also wish to liaise closely with close relatives to keep them informed if the authority intends to utilise regulation 52A of the AR.

Regulation Number	Regulation Amended	Effective Date	Comment
52	56 of AR	30 September 2010	<p>Amendments made:</p> <p>a) to permit an IRMP who was previously involved in a case to advise on the same case where a ill-health certificate is required as part of the 18 month review of a third tier ill-health benefit in accordance with regulation 20(7) of the BR. Note that no such exemption has been provided for decisions required under regulation 20(11) i.e. to move a member from tier 3 to tier 2. This seems incongruous, particularly as a decision to move a member from tier 3 to tier 2 might be taken at the 18 month review. CLG have commented that they are willing to consider this.</p> <p>b) to clarify that the IRMP must have regard to the statutory guidance issued by the Secretary of State when giving an opinion under regulations 20(5) or 31(2) of the BR.</p>
53	58(9) of AR	30 September 2010	An amendment as requested by the LGPC to correct an incorrect cross-reference.
54	87 of AR	30 September 2010	An amendment as requested by the LGPC to set out how membership will be adjusted where an interfund is paid in respect of a variable-time employee who transfers to a full or part-time employment.

Regulation Number	Regulation Amended	Effective Date	Comment
55	Part 1 of Schedule 2 to AR	30 September 2010	<p>Part 1 of Schedule 2 is amended to include the Greater London Authority in the list of scheduled bodies, and to amend the entry relating to Academies as a result of the Academies Act 2010. It should be noted that although the first of the new style Academies came into being on 1 September 2010, the amendment to the definition of an Academy in Part 1 of Schedule 2 to the AR does not come into effect until 30 September 2010.</p> <p>CLG have also provided the following comment in relation to Academy Trusts:</p> <p><i>An "Academy Trust" is not a term that is expressly recognised in the Education legislation that underpins Academies and Academy arrangements. Furthermore, an "Academy" is not of itself a legal entity and so will not be an employer. The legal entity that will run an Academy (or a group of Academies - known as "the Academy Trust") and employ staff is the "proprietor". Both 'Academy' and 'proprietor' are defined at section 579 (as amended by Schedule 2, para 6 of the Academies Act 2010) of the Education Act 1996 as follows:</i></p> <p><i>"proprietor", in relation to a school, means the person or body of persons responsible for the management of the school (*or schools - see section 6(c) of the Interpretation Act 1978) (so that, in relation to a community, foundation or voluntary or community or foundation special school, or a maintained nursery school, it means the governing body);</i></p> <p><i>"Academy" means a school to which Academy arrangements relate;</i></p>

Regulation Number	Regulation Amended	Effective Date	Comment
			<p><i>"Academy arrangements" has the meaning given by section 1 of the Academies Act 2010.</i></p> <p><i>*Section 6(c) of the Interpretation Act 1978 provides:</i></p> <p><i>"In any Act, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular."</i></p> <p><i>Paragraph 21 of the LGPS (Administration) Regulations 2008 (as amended) is, therefore, drafted by reference to "a proprietor of an Academy" which will also include a body or persons responsible for the management of more than one Academy i.e. an "Academy Trust".</i></p>
56	Schedule 4 to AR	30 September 2010	Amendments as requested by the LGPC to correct an error in the original version of Schedule 4 and to remove the word "active" from the notes to the Table in Part 1 of the Schedule.

LGPS – Broad Comparability

GAD have issued an [update](#) on the actuarial assumptions for broad comparability assessments. The update was issued as a result of the Chancellor's Emergency Budget Statement of 22 June 2010 and the change in indexation from RPI to CPI.

Guidance on the Academies Act 2010

It was agreed, at the Technical Group meeting of 16 September 2010, that Terry Edwards, Head of Pensions at the Local Government Employers, should liaise with CLG and DfE to produce guidance on the Academies Act 2010.

Payment of CEPs

The Secretariat has received a query regarding the date by which CEPs should be paid. Section 55(2)(b) of the Pension Schemes Act 1993 refers to "before the earner attains the scheme's normal pension age or (if earlier) the end of the tax year preceding that in which the earner attains pensionable age". The scheme's normal pension age is 65. Pensionable age is defined in section 181 of the Act as:

"pensionable age" -

(a) so far as any provisions (other than sections 46 to 48) relate to guaranteed minimum pensions, means the age of 65 in the case of a man and the age of 60 in the case of a woman, and

(b) in any other case, has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.

If a member's entire total membership accrued after 5 April 1997, he or she will only have s9(2B) rights, and will have not accrued a GMP. It is (b) above and not (a) that applies in these circumstances. Thus, the CEP can be paid provided the member leaves before age 65 or (if earlier) the end of the tax year preceding that in which the member attains the new state pensionable age.

If a member has any period of membership which accrued before 6 April 1997, then a GMP will have accrued. In this case, it is (a) which applies and the CEP can be paid provided the member leaves before age 65 or (if earlier) before the end of the tax year preceding that in which the member attains the old state pensionable age (60 for a woman and 65 for a man).

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Restriction of pensions tax relief

In last month's Bulletin, there was an article on the Secretariat's [response](#) to the Government's discussion document on an alternative approach to restriction of tax relief on pensions contributions. The Secretariat has subsequently submitted an [additional response](#) in the light of further concerns.

The Secretariat agreed in its initial response that, for the sake of simplicity, flat factors should be used to value pension rights. We recognised that flat factors

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have the disadvantage that they value benefit accrual at the same level irrespective of the age at which a scheme provides unreduced benefits or the age of the member when the retirement benefits are drawn. Clearly, an unreduced pension payable from age 55 (due to redundancy) is far more valuable than a pension brought into payment at age 65.

A number of articles in pensions industry publications have suggested that the non-application of an actuarial reduction to pensions brought into payment following redundancy could be viewed as an “enhancement” to a member’s benefits. As a consequence, the “enhancement” would be included in Annual Allowance calculations to determine what tax charge, if any, the member might face under the Government’s alternative proposals for restriction of pensions tax relief.

The Secretariat, in its additional response, made it clear that it was opposed to such an approach “as there would be serious implications for the public sector at the current time given that most local authorities are, due to financial constraints, looking to reduce the numbers of staff”. Local government employers usually request volunteers for redundancy to avoid compulsory redundancies. The number of volunteers post 5 April 2011 will be far fewer if the early payment of retirement benefits without actuarial reductions leads to a significant tax charge.

NAPF have also responded to the Government’s consultation. NAPF acknowledged that the alternative set of proposals was “less damaging than the previous Government’s proposed restrictions for high earners.” Nevertheless, the NAPF response requests HM Treasury to:

- reconsider whether to include pre 6 April 2011 accrued membership in the calculation of pension input;
- gradually discontinue using the LTA over the longer term as it will conflict with the new proposed regime;
- clarify the planned provisions with respect to ill-health retirements;
- permit individuals, who receive ‘one-off’ benefits due to early retirement or redundancy to carry some of those benefits forward against the Annual Allowance for up to 5 years;
- exclude deferred members from the reduced Annual Allowance check; and
- review the plan to cap pensions tax relief on employee pensions contributions at 40%.

Overall, we and the NAPF are concerned that the Government’s alternative proposals for restriction of tax relief on pension contributions represents a big change in tax policy. As a consequence, the Government needs to finalise the details so that any unintended consequences will not result from the proposals.

HMRC QROPS List

HMRC have notified an administering authority that the **Beazley Consulting Pension Scheme**, a Qualifying Recognised Overseas Pension Scheme (QROPS) that is registered in Hong Kong, is about to have its QROPS status revoked by HMRC. It is currently on the HMRC's [QROPS list](#), but is likely to be removed in the near future. The scheme was given QROPS approval in September 2007.

The removal of its QROPS status will mean that any transfers to this scheme will be considered as an unauthorised payment and therefore subject to penal tax charges on the member and scheme. The decision to remove its status is being challenged legally, so HMRC may view sympathetically transfers which have been processed since A-Day and decide not to collect any unauthorised tax charges if it can be proved the transfer took place in good faith to what was considered to be a QROPS.

The Secretariat believe the matter should be brought to the attention of administering authorities in case any transfers have been paid to the Beazley Consulting Pension Scheme or have any transfers to that scheme in the pipeline. If the Secretariat receives any further update, it will inform administering authorities.

Bulletin 72, in an [article on QROPS](#), listed a number of pension schemes over which HMRC had concerns. As at 20 September, four of the schemes no longer appear on the HMRC QROPS lists. They are:

- Amstel Pulitzer Stichting Pensioenfond (transfers via Windsor Pensions);
- Brewer Collins Pension Scheme;
- Esprit Power Yacht Charter Pension Scheme: and
- Wennis International Pension Scheme.

The Equality Act (Age Exceptions for Pension Schemes) Order 2010 [SI 2010/2133]

The Equality Act (Age Exceptions for Pension Schemes) Order 2010 [SI 2010/2133] comes into force on 1 October 2010. Article 3 provides that it is not a breach of the non-discrimination rule if employers, trustees or managers of an occupation pension scheme continue to maintain or use, in relation to the scheme, the rules, practices, actions and decisions set out in Schedule 1 to the order.

The Equality Act (Age Exceptions for Pension Schemes) Order 2010 was subsequently amended by [The Equality Act \(Age Exceptions for Pension Schemes\) \(Amendment\) Order 2010](#) [SI 2010/2285]. The amendment order inserted a new sub-paragraph into article 3 of the original order and added a new article to cover length of service exceptions.

The Equitable Life (Payments) Bill

Sir John Chadwick, in a report to the Government, recommended that compensation to current and former members of Equitable Life should be limited to 10% of the losses incurred by individuals. The Equitable Life (Payments) Bill will permit the payment of compensation to former and current members of Equitable Life.

During the [second reading of the Bill](#) MPs indicated that they were unhappy that the level of compensation would be set at 10% of losses incurred. Mark Hoban MP, the Financial Secretary to the Treasury, understood the concerns of the MPs but reminded them of the current pressures on public finances. Mark Hoban added that the level of compensation, which will be paid to Equitable Life members, is due to be announced as part of the Comprehensive Spending Review on 20 October.

Increasing the State Pension Age

In September, Iain Duncan Smith (the Secretary of State for Work and Pensions) appeared before the Work and Pensions Select Committee. Among the topics covered during the session was the State Pension Age.

The Government has proposed increasing the State Pension Age (SPA) to age 66 by 2016 at the earliest. In a response to a question from Karen Bradley MP, Iain Duncan Smith confirmed that the Government will publish its response to the Increasing the SPA review by the end of October.

Bits and Pieces

Circulars

Since the publication of the last Bulletin, the LGPC has issue [Circular 240](#). It is an update on the annual trustees' conference and the programme of 'fundamental' training courses for LGPS trustees.

LGPC Communications

As a result of the Local Government Pension Scheme (Miscellaneous) Regulations 2010 which came into force on 30 September 2010, the LGPC will be issuing updated versions of the guides and leaflets for employees in England and Wales as soon as possible. The LGPC will also provide an update leaflet for Funds to use if they wish to communicate the changes introduced by the Regulations to their scheme members.

Timeline Regulations

England and Wales

The September update of the [Timeline Regulations](#) included all the amendments to the regulations made by The Local Government Pension Scheme (Miscellaneous) Regulations 2010 [SI 2010/2090].

Scotland

There was no update of the LGPS (Scotland) Regulations in the September update.

Legislation

United Kingdom

SI Reference	Title
2010/1794	The Social Security(Exemption from Claiming Retirement Pension) Regulations 2010
2010/1825	The Transfer of State Pensions and Benefits (Amendment) Regulations 2010
2010/1925	The State Pension Credit Pilot Scheme Regulations 2010
2010/1929	The Pensions Regulator (Contribution Notices) (Sum Specified following Transfer) Regulations 2010
2010/1930	The Occupational Pension Schemes (Levies) Regulations 2010
2010/2133	The Equality Act (Age Exceptions for Pension Schemes) Order 2010
2010/2235	The Police Pensions (Additional Voluntary Contributions) (Amendment) Regulations 2010
2010/2285	The Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2010

Scotland

SSI Reference	Title
2010/320	The Police Pensions (Additional Voluntary Contributions) Amendment (Scotland) Regulations 2010

Northern Ireland

SR Reference	Title
2010/249	The Occupational Pension Schemes (Levies) Regulations (Northern Ireland) 2010
2010/259	The Pensions Regulator (Contribution Notices) (Sum Specified following Transfer) Regulations (Northern Ireland) 2010

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
Officer advisory group
Local Government Pensions Committee
Trade unions
CLG
COSLA
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