Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 103 – May 2013

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

Please contact Mary Lambe with any comments on the contents of this Bulletin or with suggestions for other items that might be included in future Bulletins. LGPC contacts can be found at the end of this Bulletin.

This month's Bits and Pieces includes LGPC Bulletins, LGPC Circulars and Timeline Regulations.

Contents

LGPS 2014

Shadow Scheme Advisory Board

The LGA in conjunction with the Shadow Scheme Advisory Board working group issued a letter on the 20 May 2013 to all Chairs of Pension Committees in England and Wales (with the letter being copied to Chief Executives and Heads of Pensions and an email issued to Pension Managers) to ask for nominations for the following Shadow Board members:

- Elected members to serve on the Shadow Board
- Fund practitioner to serve on the Shadow Board
- Fund practitioners to serve on the Sub-Committees

The nomination pack is available under the latest news section of the LGA website and includes:

- Terms of Reference for the Shadow Board
- Terms of Reference for the Sub-Committees
- LGPS Fund Practitioner Role Profile/Person Specification for the Sub-Committees

Full details on how to nominate candidates for each of the roles listed above are detailed in the covering letter. Nominations should be emailed to Elaine.English@local.gov.uk by Friday 7 June 2013.

Consultation on draft regulations

The LGA/LGPC responses to the following consultations as well as annotated versions of each set of draft regulations are available on the latest news section of our website:

- draft LGPS Regulations 2013 (closed 3 May 2013)
- draft LGPS (Transitional Provisions and Savings) Regulations 2013, and
- draft LGPS (Miscellaneous Amendments) regulations 2013 (both closed 24 May 2013)

In addition, regular updates have been made to a number of draft papers produced by the LGA detailing the current position on items for the new scheme and these are available on the latest news section of our website. These include draft papers on revaluation of benefits, treatment on leave of absence and certificates of protection (both compulsory reduction in pay and ill health cases).

DCLG have informed the LGA that a further iteration of the draft LGPS Regulations 2013 will be issued for consultation in June and will include the first draft of the Administration Section of those Regulations and a discussion paper on governance requirements for the new scheme.

Communications – First Video Launched

The first of a series of short videos on the LGPS 2014 is now available website www.LGPS2014.org.

This is a short lively graphics based video with music and is intended to engage scheme members and introduce them to the high level changes being made to the LGPS from next April. This video has been produced by the LGA, London Pensions Fund Authority, and members of the Communications Working Group.

Further short topic based videos on the LGPS 2014 are also planned to be available later this year. These will cover:

- When can I retire/take my benefits?
- How is my pension worked out /pension accounts?
- Contribution Flexibility – including the 50/50 option
- If you joined the LGPS before 1 April 2014

It is also intended to produce a Promotional Video on the new scheme only.

A Welsh version of the video is currently being produced and pension managers will be notified when this is available.

Funds may wish to add a link to the video via the LGPS2014.org website or should funds wish to add the video directly to their website we do have a variety of file types available (including WMV,MOV and MP4). These are available from the LGA. Please email Irene.Wass@local.gov.uk or Mary.Lambe@local.gov.uk should you require one of these file types.

Local Government Minister – Speech to NAPF Conference

The Local Government Minister Brandon Lewis delivered a speech on the LGPS to delegates at the National Association of Pension Funds (NAPF) annual conference on 23 May 2013. The speech covered a number of areas including progress on LGPS reform, a need for efficiencies and cost effectiveness across the LGPS, the need for quality data for the scheme to compare funding levels with the idea of a single LGPS annual report being suggested. A ‘root and branch’ funding review of the Scheme’s investment regulations was also announced as well as identifying a clear strategy for the LGPS on the issue of fund deficits.

The area of fund mergers was also put forward by the Minister. He referred to the recent discussions which took place at a roundtable event held on the 16 May 2013 jointly organised by DCLG and the LGA. The Minister stated that following this event “there was clear agreement that doing nothing was not an option”. The Minister then announced ‘a call for evidence’ into a merger of LGPS funds and that DCLG will consult later this year on a number of broad principles for change, ruling nothing in or out at this stage. To read the speech in full please visit the DCLG website.

News and Updates

Recovery of overpayments

The LGPC Secretariat has been asked by one of the Pension Officer Groups to give a view on the recovery of overpayments of pension benefits.

There is no general provision in the LGPS regulations dealing with recovery of overpayments resulting from mistakes that lead to an overpayment of pension benefits. The only specific reference is a limited one and is contained in regulation 20(8) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007. That regulation permits a former employer who has discontinued a Tier 3 ill health pension to recover Tier 3 pension payments made in respect of any period before the pension was discontinued if the employer considers the recipient to have been in gainful employment during that period[1].

The person in receipt of an overpayment of pension benefits cannot use regulation 53 of the Local Government Pension Scheme (Administration) Regulations 2008 or regulation 49 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 in their defence as they only preclude a “benefit to which the person is entitled under the Scheme” from being charged with the person’s debts or other liabilities. The person is not “entitled” to the overpayment, only to the correct level of benefits.

Where an overpayment relates to compensation, regulation 8 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 requires that where any compensation is paid in error (including any overpayment), the paying employer must, as soon as possible after discovering the error, write to the recipient to inform him / her of the error, provide details of any relevant calculations and specify a reasonable period for repayment. The recipient is required under regulation 8(2)(b) to repay the sum of the overpayment within the reasonable period of time specified by the paying employer. If the recipient has not repaid an overpayment within the specified period, regulation 8(2)(c) provides that the paying employer may take such steps as it considers appropriate to recover the overpayment. It must, however, take into account the recipient's circumstances so far as these are known or can be reasonably ascertained (regulation 8(3)).

Equivalent provisions to those set out in the paragraph above were included in regulation 29 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 in respect of any overpayments of compensation awarded under those Regulations.

Regulation 29 of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 provides that any overpayment of compensation paid under Part III of those Regulations shall be repaid by the recipient to the paying employer as soon as practicable and that the paying employer may recover it, without prejudice to any other means of recovery, by deduction from any compensation payable to (or in respect of) the person.

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1 Although the regulation allows the former employer to recover the overpayment it was, of course, the administering authority that had made the payment from the Pension Fund (net of any tax due on the payment). The regulations are silent on how any tax paid on the overpayment should be recovered and on what the employer should do with any money recovered i.e. whether to retain it or pass it to the Pension Fund. These are matters the employer may wish to discuss and agree with the administering authority.

Case law etc.

Whether an overpayment is made under the LGPS Regulations or under the Compensation Regulations, the paying employer will need to consider the position of estoppel. The starting point used to be that if an overpayment had been made under a mistake of law it was generally not recoverable but if the employer could establish that the mistake was a mistake of fact, the money was potentially recoverable. The Law Commissions in England, Wales and Scotland recommended that the distinction between mistakes of law and mistakes of fact should be removed. The House of Lords has already decided cases on this basis (see ***Kleinwort Benson v Lincoln City Council and others*** 1998 4 All ER 513). So, whether an overpayment results from a mistake of fact or law, it would seem that, potentially, it could now be recoverable unless estoppel applies (although, in the absence of an employee's consent to repayment, legal advice should be sought before instigating any formal recovery action).

The recipient may lodge the defence of estoppel if he / she can show that:

- the employer made a representation of fact that led him / her to believe that he / she was entitled to treat the money as his / her own;
- he / she has changed his / her position, in good faith, in reliance of that representation; and
- the overpayment was not caused by the fault of the recipient.

However, estoppel is an inflexible, all or nothing defence. A successful plea of estoppel acts as a total bar to recovery. This can lead to unjust enrichment so that the recipient can keep all of the money even if it exceeds the detriment he / she has suffered. In recognition of this, the courts have developed the more flexible 'change of position' defence. This means that it is no longer necessary to show that there had been a representation made by one party on which the other had placed reliance and had acted to his detriment. More importantly, it only prevents recovery of that part of the overpayment in respect of which the recipient has changed his position and the requirement for him / her to repay the sum would outweigh the injustice of denying the paying employer restitution - see ***Lipkin Gorman v Karpnale Ltd*** [1991] 2 AC 548. Even if the recipient had spent some of the money, this would not necessarily prevent recovery if he / she would have incurred such expenditure anyway. This concept was followed in ***Derby v Scottish Equitable*** [Court of Appeal, Civil Division, 16 March 2001] which limited the use of the defence of estoppel to the amount used in changing the recipient's position. In this case, Mr Derby was only able to retain the sum he spent on improving his lifestyle (£9,661) and not the full sum of the overpayment (£172,000). However, in the determination in the case of Professor B Kenny and Teachers Pensions Scheme [determination 28034/5] the Pensions Ombudsman placed a further limit on the change of position test. Professor Kenny had been quoted a pension of £13,000 a year but was paid £21,000 a year. The Pensions Ombudsman found that "one of the essential elements of a defence of change of position is that the individual must have changed his position in good faith. In other words, Professor Kenny could not rely on such a defence if he was either aware of the error, or should have been........ I am happy to accept that Professor Kenny was not 'a pensions expert'. Nevertheless, the discrepancy is so great that I find that Professor Kenny should have been aware that something was amiss. I find, therefore, that the defence of change of position cannot succeed in Professor Kenny's case. So far as the Limitation Act is concerned, Teachers' Pensions were just within the six year limit."

In its determination in the case of ***Capita ATL Pension Trustees Ltd v Gellately*** [2011] EWHC 485 (Ch) the High Court found that "In view of the small scale of the problem, the distress that any attempt to recover the sums would inevitably cause, and the likelihood that the exercise would anyway not be cost-effective" it was not necessary for the Trustees to take any steps to recoup the overpayments." In this case, the amount of the overpayments to three widows were relatively small (no more than £10,200 in total).

Guidance

Both the Pensions Ombudsman and The Pensions Advisory Service (TPAS) websites contain guidance on how to deal with recovery of overpayments.

The Pensions Ombudsman guide "How to avoid the Pensions Ombudsman" (see http://www.pensions-ombudsman.org.uk/Publications/docs/HowToAvoidThePO.pdf#zoom=100) which contains the following:

Overpayments and errors
Sometimes, the consequences of a miscalculation can be far-reaching. If it is some time before the miscalculation comes to light, considerable benefits may have been overpaid. The Ombudsman would usually expect any recovery of an overpayment to take place over at least no shorter period of time than the mistake had gone undetected.

Case Study
Ms F retired early due to ill-health. After her pension came into payment, the Scheme made a mistake in processing a payment increase. This resulted in an overpayment which, when it was discovered a year later, amounted to almost £3,000. The Scheme proposed recovering the overpayment by making deductions from Ms F's pension, which would recover the overpayment over 18 months.

The Ombudsman found that it was entitled to do this, but criticised the Scheme for using standard letters for debt recovery despite Ms F's correspondence attempting to understand why the overpayment had occurred and why it had to be repaid.

Case Study
An enhanced pension had been paid to Miss W for a number of years. The Scheme claimed that the decision to enhance the pension had been incorrect in law and that the enhancement would be withdrawn.

The Ombudsman found that the evidential burden lay on the Scheme to show that the decision to enhance the pension had been incorrect. The Ombudsman also found that the Scheme had not provided sufficient evidence to show that the decision was incorrect and directed that the enhancement should continue to be paid.

The Pensions Advisory Service (TPAS) website contains a section on mistakes and overpayments (see http://www.pensionsadvisoryservice.org.uk/common-areas-of-concern/mistakes-and-overpayments) and a very helpful leaflet entitled "Mistakes and Overpayments" (see http://www.pensionsadvisoryservice.org.uk/media/943398/mistakes_and_overpayments.pdf). The leaflet points out that whilst, in a few cases, it might be possible for the recipient not to have to repay some, or all, of the overpayment if because of the mistake they have changed their situation, the general position is that the law recognises that no-one should benefit from a mistake.

If a mistake is found, the usual basis, applied by the courts, is that the recipient should only receive the benefits to which they were due. It is expected that all parties should take steps to try to put the recipient in the position they would have been if no mistake had happened.

The leaflet also states that compensation is sometimes available if the recipient can prove they have suffered distress or inconvenience as a direct result, but these awards are normally quite modest – usually in the region of £50 to £250. However, see the Pensions Ombudsman determination M00888 which concerned an LGPS abatement case in which the claimant, although not disputing he had been overpaid pension due to the level of his re-employment earnings, claimed compensation for distress and inconvenience. The claim was not upheld as the Ombudsman determined that the complainant was "not without some responsibility for the original repayment" because, although he had been informed upon retirement that he should notify the administering authority of any re-employment with an employer offering membership of the LGPS, he had not done so. Contrast this with determination 78877/3, a case relating to abatement and clawback of Compensatory Added Years, where although it was determined the overpayment had to be repaid, the amount to be repaid was reduced by £750 for "distress and disappointment suffered".

HMRC

The last matter to take into consideration is the HMRC position - see http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM12101040.htm, http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM09108000.htm and, in particular, http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM09108010.htm.

Reminder to employers of their duty to contractually enrol employees into the LGPS

Following a number of queries recently received by the Secretariat regarding options available to employers in respect of contractual enrolment of staff into the LGPS, the LGA/LGPC would like to remind employers who offer the LGPS of the following:

England and Wales

- Employers/ bodies covered by Part 1 of Schedule 2 of the LGPS (Administration) Regulations 2008 (scheduled bodies) have to contractually enrol new starters (under age 75) into the LGPS, if they have a contract that is for at least 3 months. Regulations 4(1) and (2) of the LGPS (Administration) Regulations 2008 provide these employees with the legal right to LGPS membership. In addition regulation 13(1) of the LGPS (Administration) Regulation 2008 provides for the contractual enrolment of these employees into the LGPS. So there is no choice for a body listed in Part 1 of Schedule 2 of the LGPS (Administration) Regulations 2008 - they must contractually enrol all new employees from day 1 (except for employees with contracts of less than 3 months who are excluded from this requirement, but they still have the right to opt in).

  In addition any existing employee of a scheduled body who is not an active member but who is eligible to join the LGPS may elect, at any time, to join the Scheme and become an active member from the first day of the payment period following their election. Employers have no choice but to allow them entry.

- New employees of a body listed in Part 2 of Schedule 2 of the LGPS (Administration) Regulations 2008 or of a body covered by regulation 8 of those

Regulations (designated body) should, where they are covered by the designation, be contractually enrolled into the LGPS (provided they are under age 75 and have a contract of employment that is for 3 months or more).

In addition any existing employee who is covered by the designation but is not an active member may, provided they are under age 75, elect at any time to join the Scheme (and become an active member from the first day of the payment period following their election). Employers have no choice but to allow them entry.

- New employees of an admission body (i.e. a body participating in the LGPS under an admission agreement via regulations 5, 6 or 12(6) of the LGPS (Administration) Regulations 2008) should, where they are eligible for membership under the terms of the admission agreement, be contractually enrolled into the LGPS (provided they are under age 75 and have a contract of employment that is for 3 months or more).

  In addition any existing employee who is covered by the admission agreement but is not an active member may, provided they are under age 75, elect at any time to join the Scheme (and become an active member from the first day of the payment period following their election). Employers have no choice but to allow them entry.

Scotland

- Employers/ bodies covered under Schedule 2 of the LGPS (Administration) (Scotland) Regulations 2008 (scheduled bodies) have to contractually enrol new starters (under age 75) into the LGPS, if they have a contract that is for at least 3 months. Regulation 3 of the LGPS (Administration) (Scotland) Regulations 2008 provides these employees with the legal right to LGPS membership. In addition regulation 10(1) of the LGPS (Administration) (Scotland) Regulations 2008 provides for the contractual enrolment of these employees into the LGPS. So there is no choice for a body listed in Schedule 2 of the LGPS (Administration) (Scotland) Regulations 2008 - they must contractually enrol all new employees from day 1 (except for employees with contracts of less than 3 months who are excluded from this requirement, but they still have the right to opt in).

  In addition any existing employee of a scheduled body who is not an active member but who is eligible to join the LGPS may elect, at any time, to join the Scheme and become an active member from the first day of the payment period following their election. Employers have no choice but to allow them entry.

- New employees of an admission body (i.e. a body participating in the LGPS under an admission agreement via regulation 4 and 5 of the LGPS (Administration) (Scotland) Regulations 2008), should, where they are eligible for membership under the terms of the admission agreement, be contractually enrolled into the LGPS (provided they are under age 75 and have a contract of employment that is for 3 months or more).

  In addition any existing employee who is covered by the admission agreement but is not an active member may, provided they are under age 75, elect at any time to join the Scheme (and become an active member from the first day of the payment period following their election). Employers have no choice but to allow them entry.

Further information is available in paragraphs 118 to 123 of the automatic enrolment guide.

Transfer out option forms – amendments

Bulletin 102 was issued this month and contained amendments to the transfer out declaration forms previously included in Bulletin 97. It was noted in last month's bulletin (Bulletin 101) that the LGPC Secretariat suggested a number of amendments be made to the transfer out declaration forms included in Bulletin 97. However, upon further consideration it was decided that the wording on the original transfer out declaration forms should be retained but with the option for the receiving scheme to delete the wording if it's not applicable. Appropriate wording has been added to Part B of the Receiving Scheme Discharge Forms in Annex 2, Annex 6B and Annex 6D and to Part B of the Receiving Scheme Discharge Form in Annex 4 of Bulletin 102. Please read Bulletin 102 for more information.

NAPF: LGPS Report

NAPF published a report in May 2013 entitled 'Local Government Pension Scheme 2013: investing in a changing world' which examines the changes that LGPS funds are currently going through and considers what this might mean for local authority fund investment strategies and trends. It also considers the implications for the governance and regulation of the scheme and makes a number of recommendations for Government and regulators. To read the report in full please visit the NAPF website.

Flat rate single tier pension

The Minister for Pensions, Steve Webb MP, announced on the 10 May 2013 in a written ministerial statement the publication of the Pensions Bill. The Bill had its first reading in the House of Commons on the same day. To view the Bill's progress through parliament please visit parliament's website.

Bulletin 100 outlined the acceleration from April 2017 to April 2016 for the new single tier state pension. The House of Commons Work and Pensions Committee have now published a report on its pre-legislative scrutiny of these reforms. This report details the impact on different groups of people and also refers to the lack of clarity in particular surrounding the minimum number of qualifying years needed to receive a minimum level of pension. In addition, the change in the proposed implementation date was cited as another concern with a recommendation from the committee being that the new implementation date of April 2016 is specified in the Pensions Bill to provide certainty.

To read the House of Commons Work and Pensions Committee report, 'the single-tier state pension: part 1 of the draft Pensions Bill' please visit parliament's website.

Public Health Transfer: Information for Employers

The Business Services Authority (BSA) has created a specific area on their homepage (http://www.nhsbsa.nhs.uk/Pensions.aspx) for Local Authority Employers following the public health transfer which took place on the 1 April 2013. The area called 'Local Authority Employers' can be access from the section titled 'Quicklinks for Employers'.

In addition, further guidance relating to the Public Health Transfer will be issued by the Concordat Steering Group in the coming weeks and will include information on NHS

Pension Direction Orders and the new NHS Injury Allowances Scheme introduced on the 31 March 2013.

Institutions for Occupational Retirement Provision (IORP) Directive: Removal of Solvency

On the 23 May 2013 the European Commission announced that a European directive (IORP) will not now cover the area of scheme solvency/funding and its focus will now be on scheme governance and disclosure.

In 2012 the European Commission published a paper which laid out its agenda for “adequate, safe and sustainable pensions” in the European Union. In doing so, the proposal was to extend to IORPs the rigorous governance and funding regime which currently applies to insurers under Solvency II. Over a number of months, during which a Quantitative Impact Study (QIS) was published, a coalition of interest parties (at both a national and European level), including the LGA, lobbied for the removal of the issue of Solvency II from the IORP given the impact it would have on defined benefit schemes across Europe. Were Solvency II to have been extended to IORP it would have replaced the current solvency requirements with significant financial impact on defined benefit schemes. With figures for UK deficits quoted in the region of between 15% and 45% this would have required an additional €225bn to €963bn in funding. The LGPS represents approximately around 9% of UK assets which could have meant an increase deficit to the LGPS of circa €87 bn (£75bn) meaning funds would have had to find approximately another £25bn to meet funding requirements under Solvency II.

Whilst the announcement by the European Commission on the 23 May 2013 is a very welcome one for UK defined benefit schemes a note of caution must be given as Commissioner Barnier has made clear his intention to leave the issue of solvency ‘open’ to be reassessed once further information becomes available. For now, however, the IORP will focus on governance and transparency with the aim of being in place by October this year.

Full details of the European Commission’s announcement is available on the European Union website.

Report: Pensions Policy Institute on the potential impact of public service pension reforms

In May 2013 the Pensions Policy Institute (PPI) issued a report setting out their assessment of the potential impact of the proposed reforms to public service pension schemes including the LGPS, the NHS Pension Scheme, the Teachers’ Pension Scheme and the Civil Service Pension Scheme. To read the report in full please visit the PPIs website.

The Pensions Regulator: Corporate Plan 2013-2016

The Pensions Regulator has published its Corporate Plan for 2013-2016. Within their strategic plan one of the themes mentioned is that of ‘Improving Governance and Administration’ where they outline that they will focus on the preparation needed for their new role in public service pensions from 1 April 2015. They mention that this preparation will include ‘producing educational tools to support the new scheme managers and pension boards, and drafting a code of practice on nine key areas including internal controls and transparency. They state that they 'will also develop a regulatory strategy which will include our compliance and enforcement approach. When the schemes are established, we will work proactively to identify areas of prioritisation for the future, which may include carrying out thematic reviews'. To read the Corporate Plan in full please visit the Pensions Regulator's website.

Annual Allowance

As administering authorities will be aware, the LGPC Secretariat has previously produced a draft guide to Annual Allowance. The Secretariat has met with HMRC to discuss a number of the issues that were outstanding when the draft guide was prepared. The outcome of the meeting is shown below. All references to "the Act" are references to the Finance Act 2004. When time permits, the Secretariat will update the guide to reflect the information below (including worked examples relating to note (ii) under paragraph 6 below).

1. **Interfund Adjustments**
   Conclusion: HMRC do not object to the methodology set out in the draft guide for dealing with inter-fund adjustments.

2. **Club Transfers**
   HMRC view: only the amount of benefit that a Club transfer would 'buy' in the scheme (using non-Club factors) should be added back or disregarded, as the case may be. As a Club transfer provides a service credit greater than would have been purchased using non-Club factors, the pension deriving from the additional service credit in the receiving scheme (which, in effect, is a cost to the receiving Scheme) should be included as part of the pension input amount.

   LGPC Secretariat's view: Whilst the Secretariat morally agrees with the HMRC view, the Secretariat does not believe s236(5) of the Act backs up the HMRC position and, in the Secretariat's opinion, an amendment to the Act would need to be made before the HMRC view could be applied. A simpler alternative would be for HMRC to legislate for the sending Club Scheme to tell the receiving Scheme what the Closing Value in the sending Scheme was, and the receiving scheme would uprate that by CPI and compare to the Closing Value in the receiving Scheme (which would include the transferred in membership).

   Conclusion: The Secretariat and HMRC disagree on how Club transfers should be treated for the purposes of the annual allowance test. The LGPC will now consider seeking Counsel's opinion on the matter. If the Counsel's opinion were to support the Secretariat's view we would notify HMRC accordingly to let them consider whether to change their position or make an amendment to the s236(5) of the Act to deliver their intention.

3. **Closing Value – Retirees – Commutation**
   HMRC view: for the purposes of PE and LSE the annual rate of pension and the lump sum for a retiree should, by reason of s236(8) of the Act, ignore any reduction to the pension or increase to the lump sum as a result of an election to commute pension for an increased lump sum.

   LGPC Secretariat's view: retirees do not have a Closing Value under s234(5) of the Act and, therefore, s277 of the Act is not applicable. The nil Closing Value is then adjusted under s236(8B)(a) and (c) of the Act which, because they do not mention ‘valuation assumptions’, and because a BCE 6 occurs before a BCE2, means that only the benefits that are actually drawn (post commutation) are to be valued. Sections 236(8) to (8B) of the Act are not relevant as they say:

(8) If, during the pension input period, the annual rate of the pension, or the amount of the lump sum, to which the individual would be entitled under the arrangement has been **reduced** by **any surrender** made in return for any other entitlement, **any allocation** made, **or any similar action** taken, pursuant to an option available to the individual under the arrangement, the amount of **the reduction** (**to the extent that it is not reflected in an amount added under subsection (8A)**) **is to be added to PE or LSE**.

(8A) If, during the pension input period-
(a) benefit crystallisation event 2 occurs in relation to the individual and the arrangement,
(b) benefit crystallisation event 3 occurs in relation to the individual and the arrangement otherwise than by reason of a provision contained in, or made under, any enactment, or
(c) benefit crystallisation event 6 occurs in relation to the individual and the arrangement by virtue of the individual becoming entitled to a pension commencement lump sum or a lifetime allowance excess lump sum, the relevant amount is to be added to PE or LSE.

(8B) In subsection (8A) "the relevant amount" is-
(a) in the case of benefit crystallisation event 2, the annual rate of the pension to which the individual became entitled,
(b) in the case of benefit crystallisation event 3, the increase in the annual rate of the pension, and
(c) in the case of benefit crystallisation event 6, the amount of the lump sum.

The Secretariat’s rationale for saying that sections 238(8) to (8B) of the Act do not apply is as follows:

a) s236(8) of the Act uses the words “surrender”, “allocation”, “or any similar action”. In pension terms, “surrender” and “allocation” generally have a particular meaning, being giving up something in favour of another person (e.g. a spouse or dependant), and so “any similar action” would, to our mind, mean another action by which the scheme member gives up something in favour of another person. See, for example, s172A of the Finance Act 2004 which was introduced by paragraph 38 of Schedule 10 to the Finance Act 2005 under the heading “Surrender and allocation of rights etc.”. Interestingly, and perhaps crucially, s238(8) of the Act does not use the word “commutation”, which other sections of the Act do e.g. s234(4) and s234(5). So, if s236(8) of the Act was intended to also cover “commutation” why did it not specifically do so, given that other section of the Act do so?
b) if one were to follow the HMRC line, s236(8) of the Act is quite specific in saying that if the pension or lump sum is reduced, **the reduction** (to the extent that it is not reflected in an amount added under subsection (8A)) is to be added to PE or LSE. S236(8) of the Act clearly does not require that a lump sum paid by the scheme (under s236(8A)(c) and s236(8B)(c) of the Act) should be reduced by the **increase** in the lump sum derived from commutation. That would produce a

bizarre result in that we would be including the value of the commuted lump sum amount twice; once by valuing the pension prior to commutation and once by adding in the lump sum derived from the commutation.

The Secretariat's interpretation would mean that the value of a member's benefits in the LGPS goes down if a member commutes (because the commutation rate is 12:1) whereas the value of a member's benefits in, for example, the Police or Fire schemes goes up (because their commutation rates are significantly greater than 16:1). That seems reasonable as the valuation of benefits in previous PIPs has assumed a factor of 16:1. Thus, if the member does not commute, the value of their accrued benefits will still be 16:1; but if a member commutes, the real value of their benefit in the LGPS actually does decrease (at 12:1) – so why should they pay tax on a value they haven't actually received - or actually does increase (for factors above 16:1 in schemes such as Police and Fire) – so shouldn't they pay tax on the value of benefits they have actually received?

Conclusion: it was agreed that it was a matter of interpretation as to whether s236(8) Act supported the HMRC view or the Secretariat's view but HMRC are not going to change their view, as published on their website. The LGPC will now consider seeking Counsel's opinion on the matter. If the Counsel's opinion were to support the Secretariat's view we would notify HMRC accordingly to let them consider whether to change their position or make an amendment to s236(8) of the Act to deliver their intention. In the meantime, the LGPC annual allowance guide will be written to set out both the HMRC and LGPC Secretariat's views.

4. Opening and Closing Values – Actuarial Increases
LGPC Secretariat's view:
The Opening Value should take into account any actuarial increase that would have applied had the benefits been brought into payment at the end of the immediately preceding Pension Input Period (ending 31 March).

The Closing Value for an active member (or deferred member who was an active member for part of the Pension Input Period) should take into account any actuarial increase that would have applied had the benefits been brought into payment at the end of the current Pension Input Period (ending 31 March).

The Closing Value for an active member who became a pensioner member in the Pension Input Period (or who became both a deferred and then a pensioner member in the Pension Input Period) should take into account any actuarial increase that was applied to the benefits brought into payment during the current Pension Input Period (ending 31 March).

An actuarial increase applied to a deferred pension that is deferred throughout the whole of the Pension Input Period (PIP) is ignored (as all of the conditions in s234(5B) of the Act are met – i.e. the actuarial increases are given to deferred members generally and the rate of increase is in accordance with scheme rules in place on 14 October 2010). However, an actuarial increase is to be included in the Closing Value if the member was an active member for part of the PIP and a deferred member for part of the PIP, and during the part of the PIP in which they were a deferred member they attained age 65 but decided not to draw their benefits.

Conclusion: it was agreed that, as the LGPS stipulates that if an active member remains in employment beyond age 65 they continue to accrue membership AND get an actuarial increase too, both the extra accrual AND the actuarial increase should be valued (other than an actuarial increase applied to a deferred pension that is deferred throughout the whole of the Pension Input Period). Whilst it is clear to the Secretariat why additional membership post age 65 should count towards the Annual Allowance test, the Secretariat recognises that an actuarial increase does not really represent an increase in the value of a member's benefits but, rather, it reflects the fact that the benefit will be drawn for a lesser period of time (and so it is illogical to include the actuarial increase in the valuation). Nevertheless, the legislation requires that the actuarial increase is included and HMRC have no plans at present to change from this position.

5. **Closing Value – Retirees – Actuarial Reductions**

HMRC view: Where there is a BCE 2 the annual rate of pension to which the member became entitled is added back to PE and where there is a BCE 6 the lump sum is added back to LSE. Thus, any actuarial reduction would be reflected in the annual rate of pension and lump sum payable to the member. In effect, for the purposes of PE and LSE, the annual rate of pension and the lump sum for a retiree should take account of any actuarial reduction.

LGPC Secretariat's view: we agree that the legislation supports the HMRC view. Retirees don't have a Closing Value under s234(5) of the Act and, therefore, s277 of the Act is not applicable. The nil Closing Value is then adjusted under s236(8B)(a) and (c) of the Act which, because they do not mention 'valuation assumptions', means that any actuarial reduction is not ignored i.e. the benefits are valued after any actuarial reduction has been applied.

Conclusion: The views of HMRC and the Secretariat on the application of the legislation agree. The Secretariat nevertheless recognises that an actuarial reduction does not really represent a reduction in the value of a member's benefits but, rather, it reflects the fact that the benefit will be drawn for a longer period of time (and so it is illogical to take account of the actuarial reduction in the valuation). However, the legislation requires that the valuation is post the actuarial reduction and HMRC have no plans at present to change from this position.

Note: compare this answer (where HMRC says it is the value of the benefits post actuarial reduction that are to be valued) with the HMRC view set out in 3 above that it is the value of benefits pre commutation that are to be valued (whereas the Secretariat's view is that it is the value of benefits post commutation that are to be valued).

6. **Pay - how should retrospective payments be dealt with?**

Conclusion: See RPSM06107120. This is best dealt with by a worked example (and represents a fundamental and significant shift away from what the Secretariat had previously understood the position to be) –

PIP ending 31/3/12: a member's benefits in the LGPS are (generally) based on the pensionable pay due for (not paid in) the 12 months to the date of leaving/retirement. So, let's take the example of a person who had the following salary in the period 1/4/11 to 31/3/12:

Salary from 1/4/11: £20,000

The member was due a pay award from 1/1/12 but no agreement on the pay award had been reached by 31/3/12. So, as at 31/3/12 the value of the member's benefits (assuming he had been in the scheme for 1 year at that time) would be:

1/60 x £20,000 = £333.33 x 16 = £5,333.28

The pay award was agreed and paid in May 2012 with the member's salary being retrospectively increased from 1/1/12 to £21,000. Arrears of pay of £333.33 were paid in May 2012 (being £250 for the period 1/1/12 to 31/3/12 and £83.33 for the period 1/4/12 to 30/4/12). For the purposes of this example, there was no pay award due on 1/1/13.

PIP ending 31/3/13: the opening value is the previous closing value of £5,333.28 plus CPI.
The closing value is calculated based on the pensionable pay due for (not paid in) the period to 31/3/13 i.e. on £21,000 even though the member had received pensionable pay of £21,250.00 in the year to 31/3/13 (as there was back pay paid in that year which related to the period 1/1/12 to 31/3/12).
The closing value would be:

2/60 x £21,000 = £700.00 x 16 = £11,200.00

and **not** 2/60 x £21,250.00 = £708.33 x 16 = £11,333.28

The fact that the £250 of pensionable pay relating to the period 1/1/12 to 31/3/12 was not included in the Closing Value for the PIP ending 31/3/12 nor in the PIP ending 31/3/13 is simply the way the cookie crumbles and that sum is not included in the valuation of the member's benefits for the annual allowance calculation.

Notes:

i) In the example quoted above, the pension fund may not actually perform the annual allowance calculation for the PIP ending 31/3/12 until, say, September 2012. One might wonder whether it would be acceptable / reasonable / fair to calculate the Closing Value for the period to 31/3/12 on pensionable pay of £20,250 because, although the pay award had not been agreed by 31/3/12, the effect of it was known by the time the annual allowance calculation was performed in September 2012. However, that could produce inequitable results as, if the backdated pay rise was paid in, say, September 2012 instead of May 2012, the person who had received a statement in August would not have had the backpay included in their annual allowance calculation but the person who did not get their statement until October would. In any event, the HMRC position is clear and neither should have the backpay included in their statement for the PIP ending 31/3/12. The calculation should be performed as set out in the example above as, when the PIP ended on 31/3/12, the Closing Value is to be based on the benefits payable at that time. At that time – i.e. on 31/3/12 – the benefits payable would be 1/60 x £20,000 because the outcome of the pay award due from 1/1/12 was not known on 31/3/12.

ii) Many authorities have performance related bonus schemes that assess performance over the year to, say, 31 March, but the assessment is not undertaken until, say, June with any payment being made in, say, July. So, to take an example, a person’s performance for the year ending 31/3/12 is assessed in June 2012 and a £1,000 bonus relating to the year 1/4/11 to 31/3/12 is paid in July 2012. Given that, in this example, the pension fund may not actually perform the annual allowance calculation for the PIP ending 31/3/12 until, say, September 2012 one might wonder whether it would be acceptable / reasonable / fair to calculate the closing value for the period to 31/3/12 on pensionable pay including the £1,000 bonus for that scheme year since, although the performance bonus had not been agreed by 31/3/12, the effect of it was known by the time the annual allowance calculation was performed in September 2012. However, that could produce inequitable results as if the bonus was paid in, say, September 2012 instead of July 2012, the person who had received a statement in August would not have had the bonus included in their annual allowance calculation but the person who did not get their statement until October would. In any event, the HMRC position is clear and neither should have that bonus included in their statement for the PIP ending 31/3/12. When the PIP ended on 31/3/12, the Closing Value is to be based on the benefits payable at that time (which, if bonuses had been paid in previous years, might be based on an earlier year’s pay ending 31 March).

7. Opening and Closing Values – Pensions Increase

The LGPS is a final salary scheme. It **requires** that, when benefits are calculated, whichever is the highest of the last 3 years pay should be used to calculate the benefits.

When calculating the Opening Value:

a) must the LGPS administering authority calculate the Opening Value using the highest of the last 3 years pay (even though, in practice, that year’s pay may not eventually be used in the calculation of actual benefits, and the pay used for the Closing Value may well relate to a different year)?

   Answer: The Secretariat believes there is no choice as the Finance Act 204 requires that administering authorities calculate the benefits that would have been paid had the member left with a benefit on 31 March (the end of the Scheme PIP)

b) if the member is 55 or over, does the Opening Value include Pensions Increase (PI) where a previous years pay has been used (in best of the last 3 years cases)? If the person is 55+, PI is added to the benefits based on earlier year’s PI date. The PI is awarded under the Pension (Increase) Act 1971, not under the Scheme, although it would be paid out of the Scheme. In years gone by, the PI was not paid out of the Scheme, it was billed to the employer but, in recent years, it has been paid out of the Scheme. The question, therefore, is whether PI counts for the Annual Allowance test (given that it is not a Scheme benefit per se).

   Answer: Yes, PI is to be included.

c) if the member is under age 55, does the Opening Value include ‘notional’ Pensions Increase (PI) where a previous years pay has been used (in best of the last 3 years cases)? If the person is under 55, PI is added on attaining age 55, again based on the earlier year's PI date. The PI is awarded under the Pensions (Increase) Act 1971, not under the Scheme, although it would be paid out of the Scheme. In years gone by, the PI was not paid out of the Scheme, it was billed to the employer but, in recent years, it has been paid out of the Scheme. The questions, therefore, are whether PI counts for the Annual Allowance test (given that it is not a Scheme benefit per se) and, if it is nonetheless deemed to be a Scheme benefit, does the 'notional' PI count as a benefit that the member would have become entitled to for the purposes of section 234(4) of the Finance Act 2004, given that the member is under age 55?

Answer: PI is not included if under 55. The 'notional' PI would not appear to meet the definition of "entitled" in s165(3) of the Act. This has the unfortunate effect that, by excluding it from the Opening Value, a person who attains 55 during the year would see a significant increase in value in that PIP as the PI would be included in the Closing Value, even though the real value of the benefits had not increased and even though the member may not benefit from PI when they do eventually retire because their final year's pay might be higher than one of the previous 2 years pay.

When calculating the Closing Value:

d) must the LGPS administering calculate the Closing Value using the highest of the last 3 years pay in all cases, or only in cases where the member is no longer an active member at the end of the Pension Input Period?

   Answer: as (a) above.

e) if the member is 55 or over (or under 55 and retired on ill health grounds), does the Closing Value include Pensions Increase (PI) where a previous years pay has been used (in best of the last 3 years cases) or an average of 3 years pay has been used (for a non-active member) which falls earlier than the date of leaving? If the person is 55+ (or under 55 and retired on ill health grounds), PI is added to the benefits based on earlier year's PI date. The PI is awarded under the Pensions (Increase) Act 1971, not under the Scheme, although it would be paid out of the Scheme. In years gone by, the PI was not paid out of the Scheme, it was billed to the employer but, in recent years, it has been paid out of the Scheme. The question, therefore, is whether PI counts for the Annual Allowance test (given that it is not a Scheme benefit per se). Note that PI does count for the LTA test.

   Answer: as (b) above.

f) if the member is under age 55 (and has not retired on ill health grounds), does the Closing Value include 'notional' Pensions Increase (PI) where a previous years pay has been used (in best of the last 3 years cases) or an average of 3 years pay has been used (for a non-active member) which falls earlier than the date of leaving? If the person is under 55 (and has not retired on ill health grounds), PI is added on attaining age 55, again based on the earlier year's PI date. The PI is awarded under the Pensions (Increase) Act 1971, not under the Scheme, although it would be paid out of the Scheme. In years gone by, the PI was not paid out of the Scheme, it was billed to the employer but, in recent years, it has been paid out of the Scheme. The questions, therefore, are whether PI counts for the Annual Allowance test (given that it is not a Scheme benefit per se) and, if it is nonetheless deemed to be a Scheme benefit, does the 'notional' PI count as a benefit that the member would have become entitled to for the purposes of section 234(4) of the Finance Act 2004, given that the member is under age 55?

Answer: as (c) above

g) if PI is deemed to be a Scheme benefit, but for cases in (f) is not to be included until the Pension Input Period in which the member attains age 55, does payment of PI at age 55 in a Pension Input Period after that in which the member ceased to be an active or deferred member constitute a further BCE2 and BCE6? If so, presumably it will have to be taken into account for the AA test. Or is it a BCE 3? HMRC have previously confirmed that under section 238(7) of the Finance Act 2004, when a member becomes entitled to all their benefits under an arrangement, that will be the last Pension Input Period for that arrangement and, therefore, after this has ended there will be no need to test the benefits in payment against the annual allowance. This means that if a BCE3 occurs in respect of the member, then this will only need to be included in the Pension Input Amount if it occurs after the member has become entitled to their benefits but before the end of the final Pension Input Period. A BCE3 that occurs after the end of the last Pension Input Period is, therefore, not included in calculating the Pension Input Amount.

Answer: It appears the PI increase at age 55 will be a BCE2 and BCE 6 and so there would be a further annual allowance test in the PIP in which the PI is paid. This ties in with the LTA check where, in cases where an earlier years pay is used, PI at 55 on the pension is a further BCE2 and PI on the lump sum is a further BCE6.

8. Closing Value – Retiree – Timing of Completion of Forms

What if, for a March retiree, the member does not complete the retirement paperwork until April and so the BCE does not occur until the PIP after leaving? In such a circumstance, s236(8A) of the Act would not apply and so there will be a PIA for the PIP of retirement (i.e. treated as not retired but, presumably, only based on membership and pay to date of leaving but ignoring any actuarial reduction or commutation – and presumably pay is the LGPS definition of final pay for last 12 months rather than pay received in the PIP) and a PIA for the following PIP (when s236(8A) of the Act would apply). The value of the benefits in that PIP would be the benefits actually drawn i.e. after any actuarial reduction or commutation). This does not feel right at all as we will value the benefits in the PIP of leaving and value those same benefits in the PIP after leaving (even though there has been no further membership accrual). Is our understanding correct? If our understanding is correct then quite how this will stack up in practice might be interesting (say for someone who retires on 30/3/12 but whose benefits did not crystallise until a couple of weeks later on 12/4/12 when they completed their pension application forms with a big actuarial reduction – that person could suffer a tax charge for the PIP ending 31/3/12 whereas they wouldn't have done if they had completed their forms 2 weeks earlier; or someone who retires on 30/3/12 on health grounds with an entitlement to a tier 1 or tier 2 enhanced benefit but whose benefits did not crystallise until a couple of weeks later on 12/4/12 when they completed their pension application forms – that person might have suffered a tax charge for the PIP ending 31/3/12 if they had completed their pension paperwork 2 weeks earlier but would not pay a tax charge because they delayed completing their paperwork and the increase in benefits for the PIP ending 31/3/13 does not generate a tax charge). It seems bizarre that the way a member is assessed for annual allowance purposes depends on when they complete their pension paperwork.

Answer: this is just an unfortunate effect of the Act.

9. Opening and Closing Values – Pension Schemes Act 1993 Additions

Are the additions shown below, which are required under the Pension Schemes Act 1993, to be included in the Opening and Closing Values? These relate to all contracted-out schemes, not just the LGPS.

- anti-franking addition (including GMP increments where appropriate)
- PI on post 5.4.88. GMP

Answer: Yes, the above are to be included.

10. Pension Debits

Case 1

A Pension Sharing Order is received in April but with an effective date (the Transfer Day) two months earlier (February) and is implemented in August when all the relevant documentation has been received (the Valuation Day). Under the GAD guidance for the LGPS the pension debit is to be applied from the Transfer Day (i.e. effective date of the Order, being February). Presumably, therefore, in this example it is the Pension Input Period prior to the date of receipt of the Order in which the pension debit has to be added back to PE and LSE. If so, what if the Pension Savings Statement for that PIP has already been issued? If, however, the pension debit has to be added back to PE and LSE in the PIP in which it is implemented (the Valuation Day), what happens if it is implemented in a PIP after that in which the member leaves / retires (which could happen where all the relevant paperwork / fees have not been received until a PIP after that in which the member left / retired)?

Answer: where it is the case that the Transfer Date falls within one pension input period (PIP 1) and the implementation date falls within the next pension input period (PIP 2), the debit is added back into the rights of the member at the end of PIP 2 (i.e. the pension input period in which the implementation date occurred) as the actual reduction to the member's rights as a consequence of having become subject to the pension debit occurs during PIP 2 rather than in PIP 1. This is true even though the debit has retrospective effect to the previous PIP. If the debit is implemented in the PIP after that in which the member leaves (and the member is a deferred member throughout the whole of that later PIP – see section 234(5B) of the Act - or deferred and pensioner member throughout the whole of that later PIP) or retires (i.e. draws all benefits) this is ignored and there is no annual allowance check in that PIP.

Case 2

A Pension Sharing Order is received in August, effective from July, but the pension debit member retires in October of the same year on the grounds of, say, redundancy aged 57. Is it the value of the debit at the effective date (July) that is added back to PE and LSE, or the adjusted value of the debit actually applied to the member's benefits in October in accordance with GAD guidance? If the member had been an active member throughout the whole of the Pension Input Period the

Secretariat would have assumed the former as the general principle is that we should ignore any prospective adjustments to take account of early retirement, but where a person retires in the same year as the Pension Sharing Order is issued it could be argued that the amendments made to s236(8B)(a) of the Act suggest that in such a case we should take the latter approach. What is the correct answer?

Answer: Assuming the member becomes entitled to all benefits there would be no PE/LSE at the end of the PIP. Instead there would be the BCE amount to add back but there would also be the amount of further pension/lump sum (if any separate lump sum) that the member would have got had there not been the pension debit and that amount is also added back (taking account of any actuarial reduction or increase to that debit in accordance with GAD guidance, reflecting early or late payment of the member's benefits).

Case 3
Although the Pension Debit is applied in full in subsequent PIPs during which the person is an active member, what about the PIP (after the PIP in which the Pension Debit was applied) in which the member ceases to be an active member and draws the benefits in that PIP e.g. if there is an actuarial reduction to the member's benefits and to the debit; or no actuarial reduction to the member's benefits on ill health retirement before CRA or on redundancy between 55 and CRA but there is an actuarial reduction to the debit; or an actuarial increase to the member's benefits and the debit on retirement post age 65; or the member draws some but not all of the accrued benefits on flexible retirement? In the PIP within which the member's benefits are drawn there would be no PE / LSE (except in relation to any amount of benefits not drawn on flexible retirement) and the Closing Value would merely be the amount of pension and lump sum drawn at the BCE (subject to the normal provisos re actuarial reductions, commutation, etc.). Is the Secretariat's understanding correct?

Answer: Yes

11. Conversion of AVC pot to membership
What happens if a member leaves or retires in the March of one Pension Input Period, makes an election to convert the AVC pot to Scheme membership before leaving / retiring, but the AVC transfer is not received until mid-April in the next Pension Input Period? The AVCs paid in the previous PIP(s) will have been included in the Pension Input Amount(s) for the previous PIP(s). It would not seem correct to say there has been a further Pension Input Amount in the PIP after leaving / retiring as this would, in effect, be double counting the AVCs as they had already been counted in the previous Pension Input Amount(s).

Answer: If the AVC pot had been used to purchase an annuity it would not have been a pension input amount. What the member converts the AVC pot into is irrelevant (even if purchasing membership). There would not be a pension input amount in the circumstances of the AVCs buying a defined benefit of equivalent value to the AVCs so there would not be double counting.

12. **Closing Value – Benefit Appeals**

Case 1

What if a person leaves with a deferred benefit but, on appeal, it is determined they should have left with an immediate ill health pension but the determination is not made until the PIP after that in which the member left?

Case 2

What if a person leaves with a tier 3 ill health pension which, on appeal, is uplifted to a tier 2 pension, or leaves with a tier 2 pension which, on appeal, is uplifted to a tier 1 pension but, in both cases, the determination to uplift is not made until the PIP after that in which they retired?

Answer: if the award of the increased level of payment is made after the end of the PIP in which the member otherwise became entitled to all benefits under the scheme then there is no Pension Input Amount (you cannot retrospectively amend a PIA). Note that Case 2 would be caught by the anti-avoidance provisions in section 236A of the Act if the member and employer conspired to put the member in the lower tier to avoid an annual allowance charge but with a view to putting them into the higher tier in the subsequent PIP. Note also that Case 1 might not be not be caught by section 236A of the Act because that section only covers a "post-entitlement enhancement" which is "an increase in the annual rate of a scheme pension under the arrangement, at a time after the member has become entitled to the scheme pension" i.e. after "the person first acquires an actual (rather than a prospective) right to receive the pension".

Would the answer be different if the date of leaving was in 2010/11 (i.e. before the current annual allowance regime commenced) and the appeal determination made in 2011/12?

Answer: answer outstanding.

13. **Closing Value – Redundancy Retirees etc, plus the issue re No Tax Relief**

A member buying added years of membership in the LGPS can, if made redundant or retired on efficiency grounds, buy out the balance of the membership they have not yet completed payment for.

What if, for a March redundancy or efficiency retirement, the balance of the contract is paid off in the subsequent Pension Input Period under regulation 83 of the LGPS Regulations 1997? One would expect that no benefits will be paid until the member has made a decision on whether or not to buy-out the balance of the added years contract and so there will not have been a BCE. In such a circumstance, s236(8A) of the Act would not apply and so, presumably, there will be a PIA for the PIP of retirement (i.e. treated as not retired but, presumably, only based on membership and pay to date of leaving but ignoring any commutation – and presumably pay is the LGPS definition of final pay for last 12 months rather than pay received in the PIP) and a PIA for the following PIP (when s236(8A) of the Act would apply). The value of the benefits in that PIP would be the benefits actually drawn. Is the Secretariat's understanding correct?

Answer: Yes, the Secretariat's understanding is correct (assuming, of course, that there was no BCE in the March).

If, however, there was a BCE in March (i.e. the main Scheme benefits were paid in March) and following the election to buy-out the balance of the added years contract, there was a resulting recalculation of benefits, how should this be treated? Will this:

- be a BCE3? This is unlikely, as buying out the added years contract would, in most cases, generate an additional pension **and** lump sum. BCE3 only covers cases where only the pension increases. If it is a BCE 3, HMRC have confirmed that, "under s238(7) of the Finance Act 2004, when a member becomes entitled to all their benefits under an arrangement, that will be the last Pension Input Period and, therefore, after this has ended there will be no need to test the benefits in payment against the annual allowance. This means that if a BCE3 occurs in respect of the member, then this will only need to be included in the Pension Input Amount if it occurs after the member has become entitled to their benefits but before the end of the final Pension Input Period. A BCE3 that occurs after the end of the last Pension Input Period is, therefore, not included in calculating the Pension Input Amount." This, however, would be subject to anti-avoidance measures in section 236A of the Act, if the main purpose, or one of the main purposes, in delaying paying off the balance of the added years contract until the following Pension Input Period was to avoid or reduce a liability to the annual allowance charge; or
- be a further BCE 6 and / or BCE 2, as further benefits will have accrued as a result of paying off the added years contract, in which case there will be a Pension Input Amount in the Pension Input Period in which the added years contract is paid off.

Answer: At the time of the BCE in the March only membership that has been paid for at that time will be included. If the member subsequently makes a contribution in return for additional membership then it would appear that the granting of that additional membership constitutes an accrual of benefit for the member in the scheme triggering a pension input amount, BCE2/BCE6

Note that no tax relief will have been due on contributions paid to buy-out the balance of the added years contract, or to buy- out the balance of a part-time buy-back contract, because section 188(1) of the Finance Act 2004 only allows tax relief on pension contributions paid by active members (although some might argue that if the member accrues benefits in the scheme resulting from the payment of the contributions then wouldn't that appear to again make the member an active member). If no tax relief is given on the contributions would this make any difference to the answer given above?

Answer: No, it makes no difference.

14. Reduction of benefits on account of the Scheme paying the annual allowance tax charge on behalf of the member

Where a member becomes entitled to all their benefits in the Scheme in the tax year (including on attainment of age 75) and elects, before becoming entitled to all their benefits in the Scheme, that the Scheme should pay the tax charge on their behalf, the reduction in benefits is not to be added back to PE or LSE. The Secretariat are unsure as to the rationale behind this as it produces a chicken and egg situation. To work out whether there is a tax charge and, if so, how much, one has to look at the value of PE and LSE before the tax charge, but the above says that we don't add the tax charge back to PE and LSE – which could then take the member back below the annual allowance figure resulting in no tax charge. We get stuck in a loop.

Answer: see the guidance in Example 1 at http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM06107091.htm re the current situation. However, this is a known anomaly and is being corrected by regulation 7(c) of the draft Annual Allowance Charge (Amendment) Order 2013.

15. Scheme pays election

LGPC Secretariat's view: Where a member could make a 'Scheme pays' election but, before an election is made, the member transfers **all** of their rights in the Scheme to another registered pension scheme, the member cannot then make a 'Scheme pays' election to the sending Scheme, but can make an election to the receiving scheme.

Answer: the Secretariat's view is currently not correct as the reference in s237B(9) of the Act to "a transfer of all of the sums or assets-
(a) held for the purposes of, or
(b) representing accrued rights under,
the pension scheme so as to become held for the purposes of, or to represent rights under, another registered pension scheme" is not a reference to an individual transfer, but to a bulk transfer from one scheme to another i.e. a transfer of all the sums or assets relating to all the members of the sending scheme being transferred to the receiving scheme.

However, the amendment contained in regulation 8(b) of the draft Annual Allowance Charge (Amendment) Order 2013 changes this and the Secretariat's view will, once the amendment is promulgated, be correct.

LGPC Secretariat's view: Although the Act does not specifically preclude it, a Scheme member cannot, with one exception, make a 'Scheme pays' election before the end of the tax year in which the annual allowance charge arises as the member will not know what the annual allowance charge will be until the Scheme year has ended. The exception is that if a Scheme member approaching retirement becomes entitled to **all** of their benefits from the Scheme (not just from the Fund) in the tax year and wants the Scheme to pay the tax charge for that tax year on their behalf from their benefits, the member **must** make a 'Scheme pays' election **before** their benefits crystallise (see s237B(6) of the Act). A member taking flexible retirement cannot utilise this 'Scheme pays' option unless they flexibly retire on, say, 28 February, take all of the benefits accrued up to that point, opt out of the Scheme from 1 March, and re-join on 1 May. This is so they can show that they have become entitled to all their benefits from the Scheme in the tax year (as no further benefits start to accrue until 1 May). Is the Secretariat's understanding correct?

Answer: The Secretariat's view was correct until the making of The Registered Pension Schemes (Reduction in Pension Rates, Accounting and Assessment) (Amendment) Regulations 2013 [SI 2013/1111] which came into force on 31 May 2013. Those regulations permit a pension in payment to be reduced on account of a scheme pays election. Thus, the member taking flexible retirement in the above scenario does not have to make a scheme pays election before the BCE (as the member has not become entitled to all of their benefits from the Scheme) and can make a scheme pays election after the end of the tax year without having to have

had the break in service (and the pension will subsequently be reduced accordingly). Alternatively, the member could elect for the scheme pays option and have the benefits that accrue in the on-going employment reduced (although these may not be large enough in the year the member seeks to make a scheme pays election to cover the tax due).
Note: paragraph 2.33 of the scheme pays GAD guidance may need to be amended to reflect the above answer.

Bits and Pieces

Circulars

Circular 271 was issued in May 2013 and contains details on the forthcoming Fundamentals training course aimed at elected members serving on pension committees/panels. This year's course 'Fundamentals XII' will be delivered in three locations around the UK with each venue holding the course over three days. Full details including booking information are available in Circular 271.

Bulletins

Bulletin 102 was issued this month and contains amendments to the transfer out declaration forms previously included in Bulletin 97.

Timeline Regulations

The following updates have been made to the Timeline Regulations (http://timeline.lge.gov.uk/) website in May 2013.

Scotland

Scottish Statutory Instrument 2012/236 has been reflected in the following regulations:

- Local Government Pension Scheme (Administration) (Scotland) Regulations 2008

Scottish Statutory Instrument 2012/347 has been reflected in the following regulations:

- Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008
- Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008
- Local Government Pension Scheme (Administration) (Scotland) Regulations 2008

England and Wales

The following GAD guidance has been added to the post 31 March 2008 GAD guidance page:

- Election for lump sum in lieu of pension - Lifetime Allowance and Additional Cash Commutation (Benefit Regulation 21) (issued 16 April 2013, effective from 1 March 2013)
- Limit on Total Amount of Benefits - Lifetime Allowance (Benefit Regulation 22) (issued 16 April 2013, effective from 1 March 2013)

Statutory Instrument 2013/410 has been reflected in the following regulations:

- The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009

Legislation

United Kingdom

Acts

2013/c25	Public Service Pensions Act 2013

SI Reference Title

2013/1114	The Pension Schemes (Miscellaneous Amendments) Order 2013
2013/736	The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2013
2013/735	The Firefighters' Pension Scheme (Wales) (Contributions) (Amendment) Order 2013

Useful Links

The LGA Pensions page

The LGPS members' website

The LGPS 2014 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.

The Timeline Regulations

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