



Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 116 – June 2014

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 information on [LGPC Circulars](#).

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LGPS 2014

Secretary of State Guidance

DCLG issued the following items of Secretary of State guidance on the 18 June 2014 which are now available on the [LGPS regulations website](#):

- Limit on total amount of Benefits - Lifetime Allowance (dated 31 March 2014)
- Flexible Retirement (dated 31 March 2014)
- Annual Allowance Charges: Calculation of Scheme Pays Offset (dated 1 April 2014)
- Interfund Transfers (dated 1 April 2014)

In addition, at the bottom of the actuarial guidance page on the [LGPS regulations website](#), users will find guidance that was issued under earlier regulations but which continues to apply from April 2014 for certain cases. The following guidance will also be added to this list:

- Increase of Membership by Employing Authority (dated 19 February 2013)

In addition the LGPC Secretariat is seeking confirmation from DCLG that the following actuarial guidance issued under earlier regulations continues to apply from April 2014. Once confirmation has been received the guidance will be added to the extant old guidance listed at the bottom of the actuarial guidance page on the [LGPS regulations website](#) (it already all sits on the [Timeline Regulations website](#)):

- Use of accumulated AVCs to provide additional pension under the Scheme (20 March 2012) - where the AVC contract was entered into before 1 April 2014. The LGPC secretariat understands from DCLG that the pension bought by contracts entered into before 1 April 2014 buy additional pension under the GAD guidance dated 20 March 2012. However, that guidance contains different factors to the guidance dated 28 March 2014 and so the LGPC secretariat has asked DCLG to confirm whether the factors should be harmonised given that life expectancy should be the same regardless of whether the AVC contract was taken out pre or post April 2014 or whether the guidance dated 28 March 2014 should be used for contracts entered into before 1 April 2014 as well as for contracts entered into after 31 March 2014 .

- Annual Allowance Charges: Calculation of Scheme Pays Offset (dated 6 September 2012) and amending errata slip (dated 21 February 2014) - where the offset election was made before 1 April 2014.
- Actuarial Factors for individual cash equivalent and club transfers from 1 January 2012 (dated 22 February 2012) - where the relevant date is before 1 April 2014, to be read in conjunction with the Individual Incoming and Outgoing transfers guidance (dated 26 March 2010).
- Pension Credit guidance (dated 5 October 2012) on the calculation of the pension credit for the former spouse or civil partner (the "pension credit member") following a divorce proceedings (where the pension debit member has not be a member of the 2014 Scheme as at the Transfer day or the pension debit member has been a member of the 2014 Scheme but the Transfer day is before 1 April 2014)
- Added years contracts: the guidance on payments to increase total membership (dated 17 January 2007) for added years contracts entered into before 1 April 2008 (as there are still existing added years contracts that are ongoing and, presumably, the Secretary of State could amend the factors from time to time for existing contracts).

Following a software suppliers meeting on 13 May 2014, and recent e-mails between administering authorities, DCLG and the LGPC secretariat there are a number of points where clarity has been sought regarding Secretary of State Guidance and these are outlined below.

General Clarification

DCLG have been asked to issue a note to confirm that Secretary of State guidance issued for the 2014 CARE scheme also applies to members who left before 1 April 2014 but where this is not already explicitly stated in the guidance including:

- Trivial Commutation
- Limit on Additional Cash Commutation

Early payment of pension guidance

1. Point raised: The reference in paragraph B.1 to "1 April 2014" should be to "1 October 2006".

Response: Having raised this point with GAD they pointed out that the section under which paragraph B.1 falls is headed "Transitional Provisions". The section applies to all members covered by the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 and therefore applies to members who joined before 1 April 2014. It is not solely concerned with members subject to the Rule of 85 (i.e. members who joined the scheme before 1 October 2006). GAD do not consider the point to be of any real significance and do not see a need to change the guidance at present. They will, however, consider clarifying the wording at the next review of this guidance.

2. Point raised: Paragraphs 2.10 and 2.13 – amend "the date of the member's 60th birthday" to "the day before the date of the member's 60th birthday". This is because paragraphs 1(1)(b) and 1(3) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 deal with members who have attained age 60 and paragraphs 1(1)(c) and 1(4) of Schedule 2 to the LGPS (Transitional Provisions, Savings

and Amendment) Regulations 2014 deal with members who have not attained age 60. Given that paragraph 1(4) cannot apply to a member who has attained age 60 the actuarial reduction should be for the period to the day before age 60.

Response: DCLG have been asked to issue an amendment slip for the Secretary of State guidance to cover this point. An amendment to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 has also been requested so that the Regulations also require the reduction period is to the day before age 60.

3. Point raised: Paragraph 2.18 – this will need to be updated to reflect the following:

Where a member's pension includes an underpin "guarantee amount", both:

- a) the underpin "guarantee amount", and
- b) the amount of the pension in the member's post-14 pension account accrued prior to the member's 2008 Normal Pension Age (NPA), but excluding any element of that post-14 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence),

are treated as if they were pension accrued under the 2008 Scheme for the purposes of determining any actuarial reduction due on them.

Furthermore -

- c) any element of the member's post-14 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence)

is treated as pension accrued under the 2014 Scheme for the purposes of determining any actuarial reduction due on them (related to the member's NPA in the 2014 Scheme).

The rationale for (c) is twofold. Firstly, regulations 4(5)(b)(i), 4(5)(c) and 4(5)(d) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 exclude the elements in (c) from the underpin calculation (and so they must, therefore, be paid in addition). Secondly, the amount of pension credited to the member's account from a transfer in and the amount of the additional pension purchased via the APC / SCAPC were based on the member's NPA under the 2014 Scheme.

Response: DCLG have been asked to issue an amendment slip for the Secretary of State guidance to cover this point.

Individual Incoming and Outgoing transfer guidance

4. Point raised: In paragraph 2.8 the guidance confirms that State Pension Age (SPA) used for the purpose of calculating transfer value factors should be based on current stated Government policy on SPA and not legislation in force at the guarantee date. It was not clear to the LGPC secretariat what the legal basis for this statement was but this is not an issue for the time being given that royal assent of the Pensions Act 2014 has aligned legislated SPA's with government policy.

It should also be noted that section 7 of the guidance does not include a requirement to use the SPA set out in Government policy rather than the legislated SPA. Instead, paragraph

7.3 states "Incoming transfer credits (for club transfers-in) should be calculated by reference to PA65" and paragraph 7.4 states "Transfer credits (for non-club transfers-in) should be calculated by reference to NPA". Thus, for non-club transfers in, the NPA to be used is the member's SPA under legislation at the relevant date (not the SPA in the current stated Government Policy). This seems inconsistent with the line taken in relation to CETVs out.

Also, it is assumed that the NPA that will apply to the transfer credit CARE pension at retirement will be the member's State Retirement Age at the date of retirement, even if this is earlier (or later) than the one used in the transfer credit calculation.

Response: DCLG have been asked to issue an amendment slip for the Secretary of State guidance to ensure the treatment of non-club transfers in is consistent with the treatment of non-club transfers out in relation to using the Government's stated policy intention for SPA (at any given point in time) rather than the legislated SPA (if different). This is not a current concern but may be an issue in the future when Government's stated policy differs from legislated SPA.

5. Point raised: It was noted that for Club transfers out, where they include both pre and post 31 March 2014 benefits that it would be appropriate to provide a split of the transfer value (i.e. the pre and post 2014 CETV amounts) as well as the total CETV amount.

Response: Software suppliers noted this point at the software suppliers' meeting held 13 May 2014.

6. Point raised: Paragraph 7.1 – although it is stated that DCLG policy is not to allow transfer credits less than 6 months before NPA, this is not backed up in the regulations. Regulation 100 in the LGPS Regulations 2013 would need to be amended to introduce such a time limit. However, it is not clear why there should be such a limit in a CARE Scheme and transfers in ought to be allowed up to age 75 (which the regulations, as currently written, do allow). Thus, it appears that Secretary of State guidance and not the regulations need to be amended.

Response: DCLG have been asked to issue an amendment slip for the Secretary of State guidance. Alternatively, if DCLG wish to maintain their policy line of not permitting transfer credits less than 6 months before NPA they should amend the LGPS Regulations 2013 to reflect this policy.

7. Point raised: This guidance does not include any reference to paragraph 2.3 of the current Club guidance which states:

2.3. It is not a requirement of Club membership to use the approach described in this Memorandum for non-Club transfers. In the rest of this Memorandum, any reference to a Club transfer means a transfer from one Club scheme to another Club scheme which falls within the Club arrangements. However, if a service credit calculated on non-Club terms would be greater than a credit calculated on Club terms, the receiving scheme may award a non-Club service credit. Such cases are expected to be infrequent and are most likely to arise when an individual has taken a large drop in salary when moving. Club schemes may wish to consult their actuarial advisers on the criteria to adopt if they wish to test whether a non-Club transfer would be more advantageous for the scheme member.

The query stemming from its omission is whether DCLG's view is that administering authorities should adopt that approach in relation to the part of the CETV which relates to a member's final salary benefits and, if so, what factors should be used?

Furthermore, where the relevant date for a Club transfer is after 1 April 2014, should funds be comparing a final salary 60th pension with a 49th CARE value using the new non club transfer factors? The secretariat cannot see how funds could compare a membership credit with a CARE pension and, in any case, the Public Service Pensions Act 2013 itself gives entitlement to a final-salary link (subject to the 5 year break rule) so a CARE pension could not be awarded anyway.

Response: At the software suppliers' meeting held on 13 May 2014 it was agreed that as paragraph 2.3 of the Club memorandum is permissive, administering authorities should not apply that paragraph unless (or until) DCLG issue guidance on how this could be applied now that the LGPS is operating a CARE scheme.

8. Point raised: Paragraph 10.4 – this refers to pension debits being payable from age 65 and the debit being revalued before 65 and indexed by Pensions Increase after age 65. The LGPC secretariat is unsure as to why:

- a) reference is made to 65 when, for example, a pension credit awarded in the 2014 Scheme will be payable from NPA under the 2014 Scheme, which can be after 65. Shouldn't the reference to 65 be amended to NPA?
- b) the pension debit is referred to as being revalued prior to 65 (which implies revaluation under HM Treasury Orders) and indexed after 65 by Pensions Increase under the Pension Increases Act 1971 provisions. The secretariat believes that a debit should be indexed before NPA by Pensions Increase, not revalued under HM Treasury Orders.

Response: In answer to point a) above the reference is correct because paragraph 10.4 is dealing with pre 2015 transfers in from a Club Scheme (which will purchase pre 2014 membership with an Normal Pension Age of 65).

In answer to point b) GAD confirmed that the use of the word "revalued" is not meant to imply revaluation under HM Treasury Orders.

9. Point raised: Paragraph 10.5 of the guidance refers to annual allowance scheme pays offset being payable from age 65. The LGPC secretariat are unsure as to why reference is made to age 65 when, for example, a member making a scheme pays election under the CARE scheme will have an NPA under the 2014 Scheme which can be after 65. Shouldn't the reference to 65 be amended to NPA?

Response: The above reference is correct because paragraph 10.5 is dealing with pre 2015 transfers in from a Club Scheme (which will purchase pre 2014 membership with an NRD of 65).

10. Point raised: Page 27 – (example of a Group 2 member) the first line in the table for "Service after 1 April 2014" shows an adjustment of "x 0.94" (for adjustment NRA 65 to NRA 66). This adjustment does not seem to appropriate as the member left on 30 June 2015 and so the membership between 1 April 2014 and 30 June 2015 is all subject to a taper based on an NRA of 65. Thus it would appear that the table should show:

	Calculation	Result
Pension	$500.00 \times (1 - 0.1406) \times 13.22 \times 1.31$	£7,441.63
Dependant's Pension	153.13×3.60	£551.27
Total Amount		£7,992.90

Response: Agreed that this is an error and DCLG have been asked to issue an amendment slip for the Secretary of State guidance.

Late retirement

11. Point raised: Paragraph 2.5 – where a member draws benefits post 31 March 2014 and after SPA (or age 65 if higher), the accrued post 1 April 2014 pension has not, at the date of leaving, been subject to HM Treasury Order increase for the part-year to the date of leaving. That part-year's HM Treasury Order increase is added at one second after midnight of the 31 March following the date of leaving. Should that balancing amount of increase to the pension under the HM Treasury Order itself be subject to actuarial increase?

Response: GAD confirmed that the answer is "No" as the balancing amount is not due until one second after midnight on 31 March.

If the answer is "Yes", is the increase due for the period from SPA (or age 65 if later) to the date the main benefits were originally drawn, or from SPA (or age 65 if later) to the 31 March? Regulations 24(7), 25(6) and 27(5) in the LGPS Regulations 2013 are not clear on this question and the actuarial guidance issued by the Secretary of State is silent on the matter.

Response: Not applicable, as the answer was "No". The increase due at one second after midnight on 31 March is simply applied to whatever is in the member's pension account (including any amount in that account arising from any actuarial increase that had been applied at the date the benefits were drawn).

Use of accumulated AVCs to provide additional pension under the scheme

12. Point raised: Paragraph 3.2 – delete the words "which are in the same form as the additional pension provided under other regulations". This is because it is inconsistent with the guidance on APCs.

The Secretary of State guidance on Additional Pension dated 27 March 2014 states at paragraph 2.3 that "All additional pension purchased provides benefits for member only, i.e. there are no attaching spouse's benefits".

The Secretary of State guidance on AVC Conversion dated 28 March 2014 states at paragraph 3.2 that "...DCLG have confirmed the details of additional benefits described below which are in the same form as the additional pension provided under other regulations" and then goes on to describe the attaching dependant's benefits.

Response: DCLG have been asked to issue an amendment slip for the Secretary of State guidance.

Application of a Pension Credit to the Former Spouse or Civil Partner of a Member

13. Point raised: Paragraph 1.9 appears incorrect. The LGPC secretariat's interpretation of regulations 20(1) and (2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 and regulation 8(1) of the LGPS Regulations 2013 is that:

1. A pension credit should be given under the 1998 Scheme calculated in accordance with the guidance in force prior to 1 April 2014 where:
 - a. the pension debit member has not been a member of the 2014 Scheme as at the effective date of the Pension Sharing Order (PSO); or
 - b. the pension debit member has been a member of the 2014 scheme but the effective date of the PSO was prior to 1 April 2014.

2. A pension credit should be given under the 2014 Scheme calculated in accordance with the guidance in force from 1 April 2014 where the pension debit member has been a member of the 2014 scheme (irrespective of whether they have built up benefits prior to 1 April 2014 which are aggregated or not aggregated with the CARE benefits) and the effective date of the PSO is on or after 1 April 2014.

However, paragraph 1.9 says that guidance must be used where the Transfer Date is on or after 1 April 2014. That will be true for all cases in 2 above and, obviously, the old guidance will apply in the case of 1(b) above. However, in the case of 1(a) above the effective date of the PSO might be before, on or after 1 April 2014. Where it is before 1 April 2014 the old guidance will apply. But where it is on or after 1 April 2014 paragraph 1.9 says that the new guidance should be used whereas, in fact, the old guidance should be used because the Pension Credit will be awarded under the 1998 Scheme (where the Normal Benefit Age was 65) and not under the 2014 Scheme (where the Normal Benefit Age / Normal Pension Age is equal to State Pension Age with a minimum of age 65). Thus, paragraph 1.9 needs to be amended to read "This guidance replaces the previous guidance dated 5 October 2012 where the debited member has been a member of the 2014 Scheme and the Transfer day is on or after 1 April 2014, but uses the same assumptions on which that guidance was based. The guidance dated 5 October 2012 should be used in all other cases (i.e. where the pension debit member has not be a member of the 2014 Scheme as at the Transfer day or the pension debit member has been a member of the 2014 Scheme but the Transfer day is before 1 April 2014)."

Response: DCLG have been asked to issue an amendment slip for the Secretary of State guidance.

Annual Allowance Charges: Calculation of Scheme Pays Offset

14. Point raised: Paragraph 1.10 states that elections for scheme pays offset made prior to 1 April 2014 are not affected by this guidance but paragraph 2.23 goes on to state that the most recent Early Retirement and Late Retirement actuarial factors are to be applied. What happens if the Early Retirement and Late Retirement actuarial factors shown in the old guidance differ from the most recent Early Retirement and Late Retirement actuarial factors?

Response: The LGPC secretariat responded that the factors in both the new and old guidance are the same at present. However, the point raised regarding paragraph 1.10 is pertinent should the new guidance ever be revised and differ from the old guidance, Paragraph 1.10 would seem to suggest the factors in the old guidance should be used whereas paragraph 2.23 states that whatever the latest factors are should always be used. It makes sense to follow paragraph 2.23 but the LGPC secretariat have asked DCLG to confirm the above understanding is correct.

15. Point raised: Does this guidance apply to an election made now for the 2013/14 Pension Input Period (ending 31 March 2014). Whilst the relevant date to be used would be

1 April 2014 (as per paragraph 2.3) it isn't clear as to whether new NPA conversation factors in table A2 should be applied to the pre 2014 benefits only, with a NPA of 65.

Response: The LGPC secretariat is of the view that paragraph 1.10 applies as the election arose before 1 April 2014 (even though the offset would not be applied until 1 April 2014) but the secretariat has sought confirmation from DCLG that this understanding is correct.

16. Point raised: The LGPC secretariat is of the opinion that the Relevant Date (quoted in paragraph 2.3) should be 31 March (not 1 April). This view was shared by the members of the software suppliers' group at the meeting held on 13 May 2014.

Response: DCLG have been asked to issue an amendment slip for the Secretary of State guidance.

Flexible Retirement

17. Point raised: The LGPC secretariat received a query regarding example 4 where the tapered reduction is shown as 22.5% (it should in fact be 21%), which when calculated appears to be the taper reduction to SPA, not to age 65 as shown in paragraphs 2.10 to 2.16 of the Early Retirement guidance.

Response: The LGPC secretariat agree that the figure should be 21% and not 22.5%. DCLG have been asked to issue an amendment slip for the Secretary of State guidance.

Application of a Pension Debit for divorced members

18. Point raised: Should the ill-health factors shown in Appendix A of this guidance also be used where the member draws deferred benefits early on ill-health grounds?

Response: DCLG confirmed that the ill-health factors shown in Appendix A should be used where a member draws deferred benefits early on ill-health grounds.

In a future Bulletin the LGPC secretariat will confirm any replies received from DCLG regarding the requests made for clarification and correction slips above. In the meantime if pension fund administering authorities have any queries regarding Secretary of State Guidance please contact a member of the LGPC team.

Aggregation

The LGPC secretariat sent a paper (non-aggregation and the final salary link - see annex A at the end of this Bulletin for details) to HM Treasury concerning the provisions of s20 and paragraph 1 of Schedule 7 of the Public Service Pensions Act 2013. The paper set out a number of complications that would arise if a member who does not aggregate LGPS membership (in England and Wales) retains an ongoing final salary link (where there has not been a continuous break in active membership of a public service pension scheme of more than 5 years). A number of questions were posed with the aim of seeking a written response as to whether in the various cases outlined in the paper there is, or is not, an ongoing final salary link.

DCLG have now responded to confirm that HM Treasury's view is that there is an ongoing final salary link even where:

- a) a member who was an active member on both 31 March 2014 and 1 April 2014 elects to keep their deferred benefits separate under regulation 22(7) and (8) of the LGPS Regulations 2013, or

- b) a member who was not an active member on both of those dates does not elect under regulation 5(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 to be treated as if he / she had been a member on those dates and does not elect to aggregate their benefits.

A written response to the individual questions posed in the paper has not been provided.

This confirmation has a number of implications for administering authorities and these are set out in detail in the paper at Annex A to this Bulletin.

DCLG have confirmed to the LGPC secretariat that they intend to consult with administering authorities as to how the issues raised in the paper (Annex A) should be addressed and that they will be seeking views as part of the forthcoming consultation on draft amending regulations. The LGPC secretariat will now commence work in conjunction with the Communications Working Group on a leaflet for scheme members covering the matters they will need to consider when deciding whether or not to aggregate.

The LGPC secretariat would like to particularly draw to the attention of administering authorities the information in section H of the paper (Annex A) and to stress the need for a consistent approach across all administering authorities in England and Wales in order to avoid a schism.

Tell Us Once

The LGPC secretariat is aware that companies are marketing products to administering authorities under which the company would maintain a database of LGPS members in order to check whether or not the member has benefits in more than one Fund. These services were recently discussed at the Technical Group meeting held 13 June 2014 to help gauge whether they had merit and would achieve the desired outcomes for administering authorities. At that same meeting a discussion also took place about the option of extending the DWP 'Tell Us Once' facility for notification of deaths to public service pension schemes including the LGPS and how such an extension could work in practice for a multi-site administered scheme such as the LGPS. During all these discussions it was identified that a central database of LGPS members could assist in the following areas:

- where there is an ongoing final salary link for members who retain separate benefits, details on a centrally held database could be used to notify the respective pension fund where there is a match on an NI number in more than one pension fund,
- where a deceased member was a member of more than one pension fund, information on a centrally held database could be used to notify each pension fund of that fact to avoid double death grants being incorrectly paid,
- as a method to compare data sent from the Tell us Once facility (were that to be extended in the future to public service pension schemes) so that notification of the death of a member/pensioner could then be issued to the relevant pension fund(s).

Given the apparent need which appears to exist for a centrally located database of LGPS active, deferred and pensioner members the LGPC secretariat have been tasked with investigating whether such a database facility could be provided centrally for funds through the Secretariat to achieve the outcomes outlined above. The Technical Group felt that the ability to provide the service through the LGPC secretariat would be most beneficial to funds. As yet no commitment has been made by the Secretariat as to whether we can provide such a service and once investigations have been completed we will be in a

position to update funds on what central facility we could provide and consult with funds as to their thoughts on the options available.

LGPS (Amendment) Regulations Consultation - Governance

On the 23 June 2014, DCLG commenced a consultation on the draft LGPS (Amendment) Regulations 2014 which cover the establishment and operation of local pension boards and the Scheme Advisory Board, as required by the Public Service Pension Scheme Act 2013. The consultation can be found on the [Government's website](#). Responses to the consultation are invited by the 15 August 2014.

HR, Payroll and Administration Guides

To reflect the changes in the method of apportioning the underpin amount between Part B2, Part C and Part D2 membership for the purposes of the 85 year rule the following papers were updated and issued on 6 June 2014:

- Underpin Paper (version 1.3)
- 85 year rule paper (version 1.6)
- Practitioners' guide (version 2.2)

In order to clarify that a member with a pre-2014 AVC contract, where they have elected to pay a percentage of their pay, should pay that percentage based on their pre-2014 definition of pensionable pay each pay period the following guides were updated and issued on 6 June 2014:

- HR Guide (version 3.2)
- Payroll Guide (version 3.1)

A number of updates were also made to the Additional Pension Contributions (APC) Guidance paper (version 1.2 - issued 6 June 2014).

Updates were made to the Survivor Benefits paper and version 1.3 was issued on the 4 July 2014.

These updated guides are all available from the [LGPS regulations website](#).

The Secretariat is updating the Discretions Policies paper and version 1.3 of this will be issued shortly.

AVCs

The latest AVC scenarios paper (version 7) is available on the [LGPS regulations website](#). Initially version 6 of this paper had been issued to DCLG seeking their agreement on the various scenarios which are outlined in the paper. The Technical Group at its meeting on 13 June 2014 took the view that confirmation from DCLG is not required and the position outlined in the LGPC paper should be followed by administering authorities. The LGPC secretariat are also aware of discussions between DCLG and HM Treasury on the provisions relating to AVCs in the LGPS in England and Wales following the recent "Freedom and Choice in Pensions" consultation. As yet no further details are available.

LGPS 2015

LGPS (Scotland) Regulations 2014

The LGPS (Scotland) Regulations 2014 [SSI 2014/164] were made on the 5 June and laid before the Scottish Parliament on the 9 June 2014. These regulations for the new LGPS in

Scotland from 1 April 2015 will be made available online by the LGPC secretariat in due course. In the meantime they can be found on the [Government's legislation website](#).

LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014

The Scottish Public Pensions Agency (SPPA) commenced a consultation in June on the draft LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014. The consultation document, accompanying consultation letter and annexes A & B can be found on the [SPPA website](#).

SPPA have informed the LGPC secretariat that draft regulation 8(1) is incomplete and consideration will be given to including the relevant bodies prior to amending the draft. In addition draft regulation 24(4) requires amendment to include reference to the Scottish Environment Protection Agency (and possibly others). Responses to this consultation are invited by 7 August 2014.

Shadow Scheme Advisory Board

Annual Benefit Statement Guidance

The Shadow Scheme Advisory Board requested that members of the Administration and Communications sub-committee consider what information should be provided on the 2013/14 Annual Benefit Statements for active members and the information that should be provided on such statements from 2014/15. Annual Benefit Statement guidance, approved by the Board, has now been released and can be found on the Shadow Advisory Board guidance section of the [LGPS regulations website](#). Please note this guidance contains the same information that was part of the LGPC's Annual Benefit Statement guidance issued earlier this year.

Governance Guidance

As outlined earlier in this Bulletin, a recent consultation commenced on draft governance regulations for the LGPS in England and Wales. An area of work which was identified by the Shadow Scheme Advisory Board as part of its work plan for this year was the creation of guidance to assist scheme managers (administering authorities) on the creation and maintenance of local pension boards, a requirement from 1 April 2015. At present the Governance and Standards sub-committee of the Shadow Scheme Advisory Board is working to create guidance on local pension boards in conjunction with DCLG as well as the Pensions Regulator (tPR) to ensure it also fits with the forthcoming tPR code of practice no.14 'Governance and administration of public service pension schemes'. In addition this sub-committee are planning on creating LGPS implementation guidance for the tPR code of practice no.14 to assist scheme managers. Both the local pension board guidance and the implementation guidance is expected to be ready for release in Autumn 2014 in line with laid and made governance regulations and tPR code of practice no.14. For updates on the progress of this guidance please visit the [Shadow Board's website](#) for the actions and agreements as well as discussion papers for the Governance and Standards sub-committee.

Shadow Advisory Board Valuation Summary and Full Report

The Shadow Scheme Advisory Board issued a summary and detailed report on the 2013 LGPS fund valuations on 13 June 2014. Both these documents can be found on the [Shadow Board's website](#).

Shadow Advisory Board Chair's address to 2014 LGPC Conference

The chair of the Shadow Scheme Advisory Board, Joanne Segars made a keynote address on 20 June 2014 at the LGPC's annual conference. To read the address please visit the [Shadow Board's website](#).

Shadow Advisory Board Ill-health Review

The Administration and Communications sub-committee of the Shadow Scheme Advisory Board has prepared a paper which was considered by the Board on 9 June 2014. The [paper](#) (see agenda item 8 - appendices) set out a range of options for changes to the ill health arrangements under the LGPS in England and Wales (including the pros and cons of each option). The Board has asked the sub-committee to undertake further work to narrow the options down and report back to the Board to further progress the review of ill-health in the LGPS in England and Wales.

Other News Items

Trivial Commutation

A paper on trivial commutation has been prepared and issued to all pension funds. It is available on the administration guides section of the [LGPS regulations website](#) and on the Technical Guides page of the [LGA's website](#). Please note an updated version was issued on 4 July 2014 and a tracked changed version is also available on the [LGPS regulations website](#).

GAD - Broad Comparability Announcement

On 1 July 2014 GAD issued an announcement regarding broad comparability. Two documents were released, the first "Actuarial assumptions for broad comparability assessments" sets out the actuarial assumptions which are used by GAD in carrying out broad comparability assessments under the Government's new Fair Deal policy issued in October 2013. The second "Changes to the passport certificate system for broad comparability" details changes being made to the broad comparability passport certificate system operated by GAD under the new Fair Deal policy. For further details please see the [Government's website](#).

Councillors' Guides - England and Wales

An updated version of the "Guide to the LGPS for Eligible Councillors" as well as an update leaflet on the position for councillor members of the LGPS in England following changes introduced on 1 April 2014 were released in June. This includes background details on the changes to councillors' pensions in England, the impact of these changes on councillors' access to the LGPS and the options available to councillors' on leaving the scheme.

In addition the introductory leaflet to the LGPS for eligible councillors in England and Wales has also been updated and now only covers Councillors in Wales given the changes introduced on 1 April 2014. These three documents are available on the [LGA's website](#).

LGPS Scotland - Employee Guides

Please note that the full and brief guide for employees in Scotland have been updated to reflect the recent royal assent of the Pensions Act 2014. The Act legislated for the acceleration of SPA from age 66 to 67 for both men and women between 6 April 2026 and 5 April 2028. This was originally announced as part of the Autumn Statement 2011 and the Pensions Act 2014 means that this change is now contained within schedule 4 of the Pensions Act 1995. In addition to the updates to reflect this change, page numbers have been added to the full guide. These updated versions as well as tracked changed version are available on the [LGA website](#).

In addition the following leaflets have been updated:

- Choice and Joining
- Leave of Absence and the LGPS
- Increasing your Benefits
- Leaving your Job before Retirement
- Life Cover – protection for your family
- Your LGPS retirement benefits
- Pensions and Divorce or Dissolution of a Civil Partnership
- Help with Pension problems

Updated guides for councillors in Scotland will be issued shortly.

Freedom and Choice in Pensions - Consultation Response

The LGA/LGPC's response to HM Treasury's "Freedom and Choice in Pensions" consultation (announced as part of the 2014 Budget) has been uploaded to the [Drafts and Consultations](#) page of the LGPS regulations website.

Recovery of Public Sector Exit Payments

In May 2014 the government announced that the Small Business, Enterprise and Employment Bill will include legislative provisions to ensure exit payments are recovered when high earners return to the same part of the public sector within twelve months of leaving. A consultation paper has now been issued and is available on the [Government's website](#).

The consultation paper outlines the government's proposal to underpin exit payment recovery across the public sector. The government expects any changes brought about as part of this consultation to support existing or ongoing changes to exit payment arrangements to ensure they are fair and promote value for money more widely.

The government would like to gather views on its proposals and would particularly, but not exclusively, be interested in hearing from:

- bodies within the scope of this policy
- public sector employers and their representative bodies
- employees and their representative bodies
- members of the academic community with expertise in this area
- pay, pension, remuneration and HR professionals in both the private and public sectors
- anyone else who may be impacted by this consultation.

The consultation closes on the 17 September 2014 the government will consider all responses and publish a summary of these responses and decide on how best to achieve its aims in relation to the proposals set out in this consultation.

The Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 – Government response

On 3 July 2014 the Government issued its [response](#) to the consultation on the draft Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014.

The original consultation ran from 10 December 2013 to 17 February 2014 and sought views on the draft regulations which:

- a) set out the records that public service pension schemes covered by the Public Service Pensions Act 2013 would be required to keep from April 2015, and
- b) amended Regulation 16A of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996 No. 1715) to remove an exemption to the late payment reporting requirements for public service schemes.

Pension Schemes Bill

On 26 June 2014 the first reading of a new bill, "Pension Schemes Bill" took place in the House of Commons. In relation to the LGPS the Bill provides for HM Treasury to make regulations to ban transfers from public service pension schemes (Section 13). Any specific requirements for the LGPS would eventually be made through a future amending Statutory Instrument. The LGA continues to lobby DCLG and HM Treasury as to whether the intention is to include the funded LGPS in the ban on transfers from public service pension schemes. For more details on this Bill please visit [Parliament's website](#).

Actuarial Guidance to accompany the LGPS (Offender Management) (Amendment) Regulations 2014

In [Bulletin 115](#) details on the recently laid and made LGPS (Offender Management) (Amendment) Regulations 2014 was included and reference was made to actuarial guidance expected from DCLG/GAD. This guidance was issued on 1 June 2014 and details the calculation of the transfer of assets between LGPS funds. The guidance is available from the [LGPS Regulations website](#).

HMRC Scheme Reconciliation Service

[Bulletin 110](#) included information on the introduction of a Scheme Reconciliation Service by HM Revenue and Customs (HMRC). As advised in [Bulletin 115](#) an update has now been published (9 May 2014) on this new Scheme Reconciliation Service for contracted-out pension schemes including the provision of data, the process for raising queries and information relating to contributions and earnings. For further information please visit [HMRC's website](#). It is recommended that administering authorities sign up for this service as soon as possible as HMRC will deal with registrations on a first come first served basis. Administering authorities will need to ensure that HMRC records match theirs i.e. that HMRC records do not show the Fund as holding a GMP for a member who is not in the Fund or for whom the GMP liability had been transferred out, or incorrectly show that the Fund is responsible for a GMP accrued between X date and Z date when, in fact, the Fund is only responsible for a GMP accrued between Y date and Z date, or that there is no GMP liability in the Fund for a scheme member when, in fact, there is (e.g. from a transfer in to the Fund which included a GMP), etc. Failure to reconcile GMPs before the end of 2018 could leave the Fund potentially holding responsibility for an incorrect GMP or responsibility for paying PI on the full pension when, in fact, there is a GMP. A case can certainly be made for Pension Sections to employ additional temporary staff to undertake this exercise as the cost would be offset by longer term savings e.g. putting PI on full pension when, in fact, there should be a GMP (with no increases on the pre 6 April 1988 GMP and no increases above 3% on the post 5 April 1988 GMP) will lead to additional pensions increase payments that are not due. The savings made from preventing those long-term overpayments should offset the cost of the additional temporary staff.

If administering authorities have any feedback on the reconciliation service the LGPC secretariat would be grateful if these could be shared to allow us to feedback to HMRC the current experience of this service.

Officer Advisory Group of the LGPC

The LGPC agreed on 9 June 2014 that, consequent upon the winding up of the separate LGPC Officer Advisory Group, officers should attend the LGPC meetings in an advisory capacity. The Technical Group has nominated Bob Claxton (London Borough of Wandsworth), Janet Caiazzo (Staffordshire Pension Fund) and Kevin Gerard (Dyfed Pension Fund). NILGOSC will nominate one representative for Northern Ireland, and COSLA or SPLG or the Technical Group will nominate one representative for Scotland.

Pensions Ombudsman Corporate Plan 2014-2017

In June the Pensions Ombudsman (PO) published the corporate plan for 2014 to 2017. The PO has outlined that three of its key priorities for the next year include sharing more about the decisions they make, becoming a more accessible organisation and becoming more flexible in the ways they communicate. For a full version of the plan including their performance targets please visit the Corporate and Policy section of the [Pensions Ombudsman's website](#).

New State Pension Communication Forum

The LGA has been invited by DWP to take part in a Stakeholder engagement forum. This group, set up by DWP and comprised of employer representative organisations, citizens advice groups and pension trade organisations, is tasked with assisting DWP in the identification, shaping, delivery and evaluation of communications and products for the introduction of the new State Pension Scheme and associated changes.

In particular the LGA is keen to ensure that any messages developed for citizens considers carefully the risk of opt-outs or increases in the number of LGPS members electing for the 50/50 section of the scheme given the removal of the contracting-out rebate. If administering authorities have ideas, comments or feedback from scheme members in relation to the abolition of contracting-out and the introduction of the new State Pension Scheme please email Mary.Lambe@local.gov.uk.

Amendment to the Public Service Pensions (Valuation and Employer Cost Cap) Direction 2014

In June HM Treasury issued the Public Service Pensions (Valuations and Employer Cost Cap) (Amendment) Direction 2014 order. Details can be found on [LGPS regulations website](#).

HMRC Newsletter Number 63

HMRC released newsletter number 63 on 3 July 2014 covering the topics of:

- Pension Schemes Services forms converting to iForms
- Individual Protection 2014
- An update on Fixed Protection 2014
- Qualifying Recognised Overseas Pension Scheme – form APSS262
- Registration figures
- Relief at source

The newsletter is available from the [HMRC website](#) (news item 3 July 2014).

Bits and Pieces

Circulars

[Circular 282](#) was issued in June 2014 and covers clarifications to information

previously included in [Circular 277](#) (issued March 2014) relating to ill-health certification in the Career Average scheme from April 2014.

[Circular 283](#) was also issued in June 2014 and covers absence due to a trade dispute. It covers the position for employers in England and Wales and is updated in line with the requirements of the LGPS Regulations 2013. [Circular 253](#) issued in November 2011 continues to apply to employers who participate in the LGPS in Scotland in relation to absences due to a trade dispute.

Circular 284

[Circular 284](#) was issued on 4 July 2014 and details the forthcoming training events being delivered by the LGPC in Scotland due to the forthcoming introduction of LGPS 2015 on 1 April 2015. The events taking place in September 2014 are aimed at assisting employers to understand the new career average scheme and are particularly relevant to staff dealing with the day-to-day administration of the LGPS (e.g. payroll, HR etc.). The events are taking place over the following dates and venues:

- 16 September 2014 - Glasgow Marriott Hotel
- 23 September 2014 - Aberdeen Copthorne Hotel
- 25 September 2014 - Edinburgh Apex City Hotel

For further details please read [Circular 284](#) and to make a booking please visit the [LGA's website](#).

Legislation

United Kingdom

SI	Reference Title
2014/1636	Pensions Act 2004 (Commencement No. 15) Order 2014

Scotland

SSI	Reference Title
2014/164	LGPS (Scotland) Regulations 2014

Useful Links

[LGA Pensions page](#)

[LGPS members' website](#)

[LGPS 2014 members' website](#)

[LGPS Advisory Board website](#)

[LGPS 2014 Regulations and Guidance website](#)

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

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

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

[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
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Annex A - Non-aggregation and the final salary link paper

A: Introduction

This paper considers:

- a) whether, from 1 April 2014, the Public Service Pension Act 2013 requires that when an active member of the LGPS in England or Wales does **not** aggregate membership from a LGPS deferred benefit in England and Wales which includes pre 1 April 2014 final salary membership (i.e. retains separate deferred benefits) and does **not** have a continuous break of more than 5 years in active membership of a public service pension scheme (as defined in section 1 of the Public Service Pensions Act 2013), the unaggregated deferred benefit retains an **ongoing** final salary link, and
- b) how, if the unaggregated deferred benefit retains an **ongoing** final salary link, administering authorities should deal with this at a practical level (e.g. for annual benefit statements, annual allowance calculations, triennial valuations, when the member ceases active membership in Employment B before drawing the deferred benefits from Employment A, when the member draws deferred benefits from Employment A before ceasing active membership in Employment B, what if the final pay in Employment A is higher than that in Employment B, what if the final pay in Employment B is higher than that in Employment A)

B: The requirements of the LGPS Regulations

Under the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 there are two categories of member who, having become entitled to a deferred benefit in the LGPS in England or Wales can, upon rejoining the LGPS in England or Wales after 31 March 2014 (or upon continuing in an LGPS employment in England or Wales that was concurrent with the employment that ceased on or after 1 April 2014 and which gave rise to the deferred benefit), elect to retain that deferred benefit i.e. the membership is not aggregated.

The two categories are set out below.

Category 1 – these are active members of the LGPS in England or Wales who:

- a) have a deferred benefit from a period of membership of the LGPS in England or Wales which ceased after 31 March 2014 or have a deferred benefit from the cessation (after 31 March 2014) of a concurrent LGPS employment in England or Wales, **where**
- b) the deferred benefit includes pre 1 April 2014 and post 31 March 2014 membership, **and**
- c) the member was an active member on both 31 March 2014 and 1 April 2014, **and**
- d) since becoming entitled to the deferred benefit, the member **has not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

In such a case:

- a) the amount in the member's (post 31 March 2014) deferred pension account **must** automatically be aggregated with the active pension account or, if there is more than one, with whichever of the active accounts the member chooses, **and**
- b) the pre 1 April 2014 final salary membership will automatically be attached to the relevant active pension account (with an ongoing final salary link), **unless**
- c) within 12 months of the date the member rejoined the Scheme (or such longer period as the employer in relation to the new employment allows) or within 12 months of the date the concurrent employment ceased (or such longer period as the employer in relation to the ongoing employment allows), the member makes an election to the appropriate administering authority to retain the deferred benefit as a separate benefit.

[See regulations 22(7) and 22(8) of the LGPS Regulations 2013].

If the member makes such an election, the member will retain a deferred benefit in respect of the employment that had ceased, made up of the post 31 March 2014 pension account and the pre 1 April 2014 final salary membership. The element of the deferred benefit that relates to the pre 1 April 2014 final salary membership may still retain an **ongoing** final salary link [s20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013]. This is discussed in **section D** below.

Category 2 - these are active members of the LGPS in England or Wales who:

- a) have a deferred benefit from a period of membership of the LGPS in England or Wales which ended prior to 1 April 2014, **and**
- b) rejoin the LGPS in England or Wales on or after 1 April 2014, **and**
- c) since becoming entitled to the deferred benefit, **have not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

Such a member can make an election to the appropriate administering authority within 12 months of rejoining the Scheme to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014. [See regulation 5(5) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014]

Where the member:

- a) does **not** make an election to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014, and
- b) does **not** elect for the transfer value in respect of the pre 1 April 2014 membership to be used to purchase an amount of earned pension in the member's active pension account [See regulation 10(6) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014]

the pre 1 April 2014 final salary membership will remain as a deferred benefit. That deferred benefit may still retain an **ongoing** final salary link [s20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013]. This is discussed in **section D** below.

C: The requirements of the Public Service Pensions Act 2013

The relevant parts of the Public Service Pensions Act 2013 are reproduced below.

1 Schemes for persons in public service

- (1) *Regulations may establish schemes for the payment of pensions and other benefits to or in respect of persons specified in subsection (2).*
- (2) *Those persons are-*
 - (a) *civil servants;*
 - (b) *the judiciary;*
 - (c) *local government workers for England, Wales and Scotland;*
 - (d) *teachers for England, Wales and Scotland;*
 - (e) *health service workers for England, Wales and Scotland;*
 - (f) *fire and rescue workers for England, Wales and Scotland;*
 - (g) *members of police forces for England, Wales and Scotland;*
 - (h) *the armed forces.*

20 Final salary link

Schedule 7 contains provision for a "final salary link" in relation to schemes to which section 18(1) applies

18 Restriction of existing pension schemes

- (1) *No benefits are to be provided under an existing scheme to or in respect of a person in relation to the person's service after the closing date.*
- (2) *In this Act "existing scheme" means a scheme listed in Schedule 5 (whether made before or after this section comes into force).*
- (3) *Subsection (1) does not apply -*
 - (a) *in relation to an existing scheme which is a defined contributions scheme;*
 - (b) *to benefits excepted by Schedule 5.*
- (4) *The closing date is -*
 - (a) *31 March 2014 for an existing scheme which is a relevant local government scheme, and*
 - (b) *31 March 2015 in any other case.*
- (10) *In subsection (4), "relevant local government scheme" means regulations under section 7 of the Superannuation Act 1972 which relate to persons in England and Wales.*

Schedule 7
Final Salary Link
Sections 20 and 31

Persons who remain in an old scheme for past service

1

- (1) *This paragraph applies in a case where -*
 - (a) *a person is a member of an existing scheme to which section 18(1) applies or a scheme to which section 31(2) applies ("the old scheme") by virtue of his or her pensionable service for that scheme ("the old scheme service"), and*
 - (b) *the person is also a member of a scheme under section 1 or a new public body pension scheme ("the new scheme") by virtue of his or her pensionable service for that scheme ("the new scheme service").*
- (2) *If, in a case where this paragraph applies -*
 - (a) *the old scheme service and the new scheme service are continuous, and*
 - (b) *the person's employer in relation to the old scheme service is the person's employer in relation to the new scheme service (or any other employer in relation to the new scheme),*

then, in determining the person's final salary for any purpose of the old scheme -

 - (i) *the old scheme service is to be regarded as having ended when the new scheme service ended, and*
 - (ii) *such earnings as scheme regulations for the new scheme may specify, being earnings derived by the person from the new scheme service, are to be regarded as derived from the old scheme service (subject to sub-paragraph (3)).*
- (3) *The amount of the earnings that are to be regarded as derived from the old scheme service must not be materially less than the amount of the earnings that would have been the person's pensionable earnings derived from that service had the new scheme service been old scheme service.*

Persons whose benefits under an old scheme are transferred to another closed scheme

2

- (1) *This paragraph applies in a case where -*

- (a) a person has been a member of an existing scheme to which section 18(1) applies or a scheme to which section 31(2) applies ("the old scheme") by virtue of his or her pensionable service for that scheme ("the old scheme service"),
 - (b) the person is also a member of a scheme under section 1 or a new public body pension scheme ("the new scheme") by virtue of his or her pensionable service for that scheme ("the new scheme service"),
 - (c) the person's rights to benefit under the old scheme have been transferred after the date referred to in section 18(1) or 31(2) to an existing scheme to which section 18(1) applies or a scheme to which section 31(2) applies ("the transfer scheme"), and
 - (d) the old scheme service is treated, by virtue of that transfer, as pensionable service of the person for the transfer scheme ("the deemed transfer scheme service").
- (2) If, in a case where this paragraph applies -
- (a) the deemed transfer scheme service and the new scheme service are continuous, and
 - (b) the person's employer in relation to the new scheme service is an employer in relation to the transfer scheme,
- then, in determining the person's final salary for any purpose of the transfer scheme -
- (i) the deemed transfer scheme service is to be regarded as having ended when the new scheme service ended, and
 - (ii) such earnings as scheme regulations for the new scheme may specify, being earnings derived by the person from the new scheme service, are to be regarded as derived from the deemed transfer scheme service (subject to sub-paragraph (3)).
- (3) The amount of the earnings that are to be regarded as derived from the deemed transfer scheme service must not be materially less than the amount of the earnings that would have been the person's pensionable earnings derived from that service had the new scheme service been deemed transfer scheme service.
- (4) In sub-paragraph (1)(c), the reference to a transfer of rights to benefit includes the making of a transfer payment in respect of such rights.

Continuity of employment

3

- (1) For the purposes of paragraphs 1(2)(a) and 2(2)(a), there are to be disregarded -
- (a) any gap in service where the person was in pensionable public service;
 - (b) a single gap of service where the person was not in pensionable public service, if that gap does not exceed five years;
 - (c) two or more gaps in service where the person was not in pensionable public service, if none of the gaps exceeds five years.
- (2) In this paragraph, "pensionable public service" means service which is pensionable service in relation to -
- (a) a scheme under section 1, or
 - (b) a new public body pension scheme.

Movement between new schemes

4

Where the condition in sub-paragraph (1)(b) of paragraph 1 or 2 applies by virtue of periods of pensionable service for two or more different schemes -

- (a) identify the last period of pensionable service by virtue of which that paragraph applies and the scheme to which that service relates, and
- (b) disregard, for the purposes of that sub-paragraph, periods of pensionable service relating to other schemes.

Final salary link not to apply again to a pension in payment

5

- (1) *Scheme regulations may provide that where a pension in payment under a scheme to which section 18(1) or 31(2) applies has been calculated by reference to this Schedule, the pension cannot be recalculated by reference to this Schedule where there is a subsequent period of pensionable public service (within the meaning of paragraph 3).*
- (2) *Provision made under sub-paragraph (1) may in particular be made by amending the scheme under which the pension is in payment.*

D: Is there an ongoing final salary link?

Where a member in category 1 or category 2 in **section B** above retains a separate deferred benefit does the pre 1 April 2014 element of that deferred benefit retain an **ongoing** final salary link i.e. linked to the salary in the new / ongoing employment and, if so:

- (i) does that link only apply if the member ceases active membership of the new / ongoing employment before drawing the deferred benefit, or
- (ii) does that link also apply if the member draws the deferred benefit before ceasing active membership in the new / ongoing employment?

Regulations 3(6) and 10 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 do not provide for an ongoing final salary link.

However, there is an argument that there is an **ongoing** final salary link in the case of (i) above because the overriding requirements of paragraphs 1(1) and (2) of Schedule 7 to the Public Service Pensions Act 2013 have been met i.e.:

- a) the member has been a member of 'the old scheme' (i.e. the pre 1 April 2014 Scheme), and
- b) the member is a member of 'the new scheme' (i.e. the 2014 Scheme), and
- c) the member has not had a continuous break in active membership of a public service pension scheme of more than 5 years, and
- d) the person's employer in relation to 'the old scheme' service is the person's employer in relation to 'the new scheme' service, or any other employer in relation to 'the new scheme' service.

Where those conditions are met, paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 requires that, in determining the person's final salary **for any purpose** of 'the old scheme', 'the old scheme' service is to be regarded as having ended when 'the new scheme' service ended and the pensionable pay from 'the new scheme' service is to be regarded as derived from 'the old scheme' service. That pensionable pay must not be materially less than what the member's pensionable pay would have been under 'the old scheme'. A member's pensionable pay in the 2014 Scheme will not be less than it would have been under 'the old scheme' because the definition of pensionable pay in the 2014 Scheme is wider than under 'the old scheme'.

Thus, when the period of active membership in the new employment in 'the new scheme' ends it would appear that the separate deferred benefit has to be recalculated based on the final pay on ceasing that new employment, using the 2008 Scheme definition of final pay as protected by regulation 3(1) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

There is a counter view which hinges on the meaning, in paragraph 1(2) of Schedule 7 to the Public Service Pensions Act 2013, of the phrase "in determining the person's final salary for any purpose of the old scheme".

It is argued that the words "in determining" imply a current or future usage i.e. there is something that has yet to be determined. The final pay figure used to calculate a deferred benefit has already been determined and as such does not need to be determined again. Paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 simply tells administering authorities what to do if they have

to calculate a final pay figure for a member whose ceases active membership after 31 March 2014 with an entitlement to a benefit that includes pre 1 April 2014 final salary membership, but it does not, in itself, require the administering authority to re-calculate a final pay figure that has already been determined and upon which an unaggregated deferred benefit has been based.

Thus, if the administering authority for **Employment A** holds a deferred benefit and the administering authority for **Employment B** holds an active pension account for the same member, then the administering authority for **Employment A** will have no need to determine a final salary “for any purpose of the old scheme”, since there is no such purpose i.e. the benefits in respect of the pre 1 April 2014 deferred membership have already been awarded based on the final pay applicable to them.

As such, paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 only has effect in the context of a member with deferred benefits (which include pre 1 April 2014 final salary membership) if the member has aggregated that membership with the membership in the active employment i.e. it is the act of aggregation which creates the ‘purpose under the old scheme’ which obliges administering authorities to then apply paragraph 1 of Schedule 7 to the Act.

This would mean that administering authorities in England and Wales would not have to recalculate a deferred benefit for those members falling within category 1 or 2 in **section B** above when a new period of active membership in the LGPS in England or Wales ends. However, “the Scheme” is a single Scheme (which just happens to be divided into 89 Funds administered by separate administering authorities) and so it can be argued that Schedule 7 of the Public Service Pensions Act 2013 applies to a member’s benefits in the Scheme as a whole.

In the case of (ii) above it is the view of the LGPC Secretariat that there is no ongoing final salary link because, at the point of drawing the deferred benefit the member is still in active membership of the LGPS in the new / ongoing employment. Paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 requires that, in determining the person’s final salary for any purpose of ‘the old scheme’, ‘the old scheme’ service is to be regarded as having ended when ‘the new scheme’ service ended. At the point of drawing the deferred benefit ‘the new scheme’ service has not ended and so paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 cannot apply.

E: Which is the correct interpretation?

HM Treasury is asked:

- in relation to (i) in **section D** above, to confirm the correct interpretation of Schedule 7 to the Public Service Pensions Act 2013 (i.e. is there, or is there not, an **ongoing** final salary link in relation to the deferred benefit), and
- in relation to (ii) in **section D** above, to confirm that the LGPC Secretariat’s interpretation is correct (i.e. that there is no ongoing final salary link when the deferred benefit is brought into payment).

F: Examples (if there is an ongoing final salary link)

The following examples show the results, and raise a number of questions, in relation to a number of scenarios if the response from HM Treasury is that there is an ongoing final salary link in relation to the deferred benefit.

Example 1 (category 1 member who does not aggregate)

Member left with a deferred benefit in respect of **Employment A** on 30 April 2014:

- deferred pension at 30 April 2014 = £3,000 made up of £43 post 31 March 2014 CARE pension and £2,957 pre 1 April 2014 final salary benefit

- final salary (for year ending 30 April 2014) used to calculate the pre 1 April 2014 final salary element of the deferred pension was £25,000
- Pensions Increase (PI) date for deferred benefit: 1 May 2014.

Member rejoins the LGPS on 1 August 2014 in **Employment B** on £24,000 and, because pay has dropped, elects not to aggregate (i.e. elects to retain separate deferred benefits and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years).

Member subsequently gets promoted to a higher paid job.

Member ceases active membership in **Employment B** on 31 July 2016.

Final pay in **Employment B** (for year ending 31 July 2016, based on 2008 Scheme definition of final pay) = £27,000.

April 2016 Pensions Increase (Review) Order for a PI date of 1 May 2014 = 4%.

Final pay used in original deferred benefit calculation in respect of **Employment A**: £25,000 + 4% = £26,000.

*[NB: Schedule 7 of the Public Service Pensions Act 2013 makes no mention of Pensions Increase. Pensions Increase is payable on the pension and is not, technically, used to recalculate the member's final pay. Furthermore, Pensions Increase is payable under the Pensions (Increase) Act 1971 and not under the Local Government Pension Scheme Regulations. Nevertheless, for the reasons shown in Examples 3 and 4, Pensions Increase must surely have to be taken into account when determining whether the deferred benefit in respect of **Employment A** has to be recalculated on the final pay from **Employment B**. Do HM Treasury agree?]*

The pre 1 April 2014 element of the deferred benefit in respect of **Employment A** would have to be recalculated based on a new final pay figure of £27,000 and would have a PI date of 1 August 2016. Note, however, that the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment A** would have a PI date of 1 May 2014.

In April 2017 a full year's PI would be 2.5% but the part year's PI from 1 August 2016 would be 1.67%. If the deferred benefit in respect of **Employment A** had not been recalculated based on the final pay from **Employment B** it would have received a full year's PI, meaning it would have been based on the equivalent of £25,000 + 4% + 2.5% = £26,650. However, the recalculated deferred benefit in respect of **Employment A** would be calculated on the equivalent of £27,000 + 1.67% = £27,450.90. Thus, the deferred benefit in respect of **Employment A** is still worth more than it would have been had it not been recalculated based on the final pay from **Employment B**.

Example 2 (category 1 member who does not aggregate)

Member left with a deferred benefit in respect of **Employment A** on 30 April 2014:

- deferred pension at 30 April 2014 = £3,000 made up of £43 post 31 March 2014 CARE pension and £2,957 pre 1 April 2014 final salary benefit
- final salary (for year ending 30 April 2014) used to calculate the pre 1 April 2014 final salary element of the deferred pension was £25,000
- Pensions Increase (PI) date for deferred benefit: 1 May 2014.

Member rejoins the LGPS on 1 August 2014 in **Employment B** and elects not to aggregate (i.e. elects to retain separate deferred benefits and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years).

Member ceases active membership in **Employment B** on 31 July 2016.

Final pay in **Employment B** (for year ending 31 July 2016, based on 2008 Scheme definition of final pay) = £26,010.

April 2016 Pensions Increase (Review) Order for a PI date of 1 May 2014 = 4%.

Final pay used in original deferred benefit calculation in respect of **Employment A**: £25,000 + 4% = £26,000.

*[NB: Schedule 7 of the Public Service Pensions Act 2013 makes no mention of Pensions Increase. Pensions Increase is payable on the pension and is not, technically, used to recalculate the member's final pay. Furthermore, Pensions Increase is payable under the Pensions (Increase) Act 1971 and not under the Local Government Pension Scheme Regulations. Nevertheless, for the reasons shown in Examples 3 and 4, Pensions Increase must surely have to be taken into account when determining whether the deferred benefit in respect of **Employment A** has to be recalculated on the final pay from **Employment B**. Do HM Treasury agree?]*

The pre 1 April 2014 element of the deferred benefit in respect of **Employment A** would have to be recalculated based on a new final pay figure of £26,010 and would have a PI date of 1 August 2016. Note, however, that the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment A** would have a PI date of 1 May 2014.

In April 2017 a full year's PI would be 2.5% but the part year's PI from 1 August 2016 would be 1.67%. If the deferred benefit in respect of **Employment A** had not been recalculated based on the final pay from **Employment B** it would have received a full year's PI, meaning it would have been based on the equivalent of £25,000 + 4% + 2.5% = £26,650. However, the recalculated deferred benefit in respect of **Employment A** would be calculated on the equivalent of £26,010 + 1.67% = £26,444.37. Thus, the deferred benefit in respect of **Employment A** is now worth less than it would have been had it not been recalculated based on the final pay from **Employment B**. HM Treasury is asked for a view on what should happen in such a case? Should the recalculation be undone? What if the recalculated benefit had already been brought into payment before April 2017? Would reducing a pension in payment make subsequent payments unauthorised payments as the Finance Act 2004 only permits a reduction to a pension in payment in limited circumstances – see <http://www.hmrc.gov.uk/manuals/rpsmmanual/rpsm09101500.htm> - or would reducing the pension in payment be seen as a correction of a pension level that was not legally due - see <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM09101570.htm> ?

Example 3 (category 1 member who does not aggregate)

Member left with a deferred benefit in respect of **Employment A** on 30 April 2014:

- deferred pension at 30 April 2014 = £3,000 made up of £44 post 31 March 2014 CARE pension and £2,956 pre 1 April 2014 final salary benefit
- final salary (for year ending 30 April 2012 – best one of the last 3 years) used to calculate the pre 1 April 2014 final salary element of the deferred pension was £25,100
- Pensions Increase (PI) date for deferred benefit: 1 May 2012 (April 2013 PI = 2.02%, April 2014 PI = 2.7% and April 2015 PI = 2.5%).

Member rejoins the LGPS on 1 August 2014 in **Employment B** and elects not to aggregate (i.e. elects to retain separate deferred benefits and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years).

Member ceases active membership in **Employment B** on 31 July 2016.

Final pay in **Employment B** (for year ending 31 July 2016, based on 2008 Scheme definition of final pay) = £27,000.

April 2016 Pensions Increase (Review) Order for a PI date of 1 May 2012 = 9.54%.

Final pay used in original deferred benefit calculation in respect of **Employment A**: £25,100 + 9.54% = £27,494.54.

*[NB: Schedule 7 of the Public Service Pensions Act 2013 makes no mention of Pensions Increase. Pensions Increase is payable on the pension and is not, technically, used to recalculate the member's final pay. Furthermore, Pensions Increase is payable under the Pensions (Increase) Act 1971 and not under the Local Government Pension Scheme Regulations. Nevertheless, Pensions Increase must surely have to be taken into account when determining whether the deferred benefit in respect of **Employment A** has to be recalculated on the final pay from **Employment B** as, otherwise, in this example the deferred benefit in respect of **Employment A** would have to be calculated on a final pay figure of £27,000 from **Employment B** even though the final pay of £25,100 on which the deferred benefit in respect of **Employment A** had originally been calculated on is, in real terms (after allowing for inflation) higher at £27,494.54. Do HM Treasury agree?]*

The pre 1 April 2014 element of the deferred benefit in respect of **Employment A** would **not*** have to be recalculated based on a new final pay figure of £27,000 and would retain a PI date of 1 May 2012 and the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment A** would have a PI date of 1 May 2014.

In April 2017 a full year's PI would be 2.5% but the part year's PI from 1 August 2016 would be 1.67%. The deferred benefit in respect of **Employment A** will receive a full year's PI of 2.5% and the deferred benefit in respect of **Employment B** will receive a part year's PI of 1.67%.

* Do HM Treasury agree with this statement? If not, how should the member's benefits be calculated without having a detrimental effect on the member's accrued deferred benefit? In this example the pay from the later period of membership is lower than the pay (plus Pensions Increase) on which the deferred benefit was based, which raises the question of how to treat the deferred benefit in respect of **Employment A** if it retains a final salary link and yet the pay from **Employment B** is lower. In practice the administering authority responsible for the deferred benefit from **Employment A** would pay the actual deferred benefits (plus Pensions Increase) and the administering authority responsible for the benefits from **Employment B** (which could be a different administering authority) would pay separate benefits based on the lower final pay figure. This appears to be allowable as paragraph 1(3) of Schedule 7 to the Public Service Pensions Act 2013 requires that the final pay cannot be materially less than it previously was.

Example 4 (category 2 member who does not aggregate)

Member left with a deferred benefit in respect of **Employment A** on 30 April 2012:

- deferred pension at 30 April 2012 = £2,500
- final salary (for year ending 30 April 2012) used to calculate the deferred benefit was £25,100
- Pensions Increase (PI) date for deferred benefit: 1 May 2012.

Member rejoins the LGPS on 1 August 2014 in **Employment B** in a lower paid job. The member does **not** make an election to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014, and does **not** elect for the transfer value in respect of the pre 1 April 2014 membership to be used to purchase an amount of earned pension in the member's active pension account. Thus, the member retains a separate deferred benefit in respect of **Employment A** for membership to 30 April 2012 and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years.

Member ceases active membership in **Employment B** on 31 July 2016.

Final pay in **Employment B** (for year ending 31 July 2016, based on 2008 Scheme definition of final pay) = £20,000.

April 2016 Pensions Increase (Review) Order for a PI date of 1 May 2012 = 9.54%.

Final pay used in original deferred benefit calculation in respect of **Employment A**: £25,100 + 9.54% = £27,494.54.

*[NB: Schedule 7 of the Public Service Pensions Act 2013 makes no mention of Pensions Increase. Pensions Increase is payable on the pension and is not, technically, used to recalculate the member's final pay. Furthermore, Pensions Increase is payable under the Pensions (Increase) Act 1971 and not under the Local Government Pension Scheme Regulations. Nevertheless, Pensions Increase must surely have to be taken into account when determining whether the deferred benefit in respect of **Employment A** has to be recalculated on the final pay from **Employment B** as, otherwise, in this example the deferred benefit in respect of **Employment A** would have to be calculated on a final pay figure of £20,000 from **Employment B** even though the final pay of £25,100 on which the deferred benefit in respect of **Employment A** had originally been calculated on is, in real terms (after allowing for inflation) higher at £27,494.54. Do HM Treasury agree? Although the ongoing final salary link is derived from an Act (the Public Service Pensions Act 2013), the sentiments contained in section 12 of the Superannuation Act 1972 should surely be honoured. Do HM Treasury agree? That section provides as follows:*

12 Further provisions as to regulations.

- (1) Any regulations made under section 7, 8(2), 9 or 10 of this Act may be framed so as to have effect as from a date earlier than the making of the regulations.*
- (2) Subject to subsection (4) below, any regulations made under section 7, 9 or 10 of this Act may be framed-*
 - (a) so as to apply in relation to the pensions which are being paid or may become payable under the regulations to or in respect of persons who, having served in an employment or office service in which qualifies persons to participate in the benefits for which the regulations provide, have ceased to serve therein (whether or not they have subsequently recommenced any such service) or died before the regulations come into operation; or*
 - (b) so as to require or authorise the payment of pensions to or in respect of such persons.*
- (3) Subsection (2) above shall apply in relation to regulations under the said section 7, being regulations made by virtue of section 8(3) of this Act, as if for the first two references to those regulations in paragraph (a) there were substituted references to the local Act scheme affected by the regulations.*
- (4) No provision shall be made by any regulations by virtue of subsection (2) above unless any person who is placed in a worse position than he would have been in if the provision had not applied in relation to any pension which is being paid or may become payable to him is by the regulations given an opportunity to elect that the provision shall not so apply in relation to that pension except as provided by subsection (4A) below .*
- (4A) If, at the coming into force of the provision mentioned in subsection (4) above, a person who makes such an election as is mentioned in that subsection is serving in an employment or office to which the regulations governing the pension apply, or if he subsequently recommences service in such an employment or office, then-*
 - (a) the election shall have effect in relation to the pension only to the extent that it accrues or has accrued-*
 - (i) by virtue of periods of service rendered before the cessation referred to in subsection (2) above (or, if there has been more than one such cessation, the last of them before the coming into force of the provision in question); or*
 - (ii) by virtue of contributions paid in respect of any such periods of service; and*

(b) *in determining entitlement to, or the amount of, the pension to that extent, he shall (without prejudice to the application of this subsection) be treated as if he had never recommenced service in such an employment or office at any time after the cessation referred to in paragraph (a) above;*
and the provision in question shall apply accordingly.

(5) *In the foregoing provisions of this section "pension" includes allowance and gratuity.*

(6) *Regulations made under section 7, 8, 9 or 10 of this Act shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]*

The deferred benefit in respect of **Employment A** would **not*** have to be recalculated based on a new final pay figure of £20,000 and would retain a PI date of 1 May 2012.

In April 2017 a full year's PI would be 2.5% but the part year's PI from 1 August 2016 would be 1.67%. The deferred benefit in respect of **Employment A** will receive a full year's PI of 2.5% and the deferred benefit in respect of **Employment B** will receive a part year's PI of 1.67%.

* **Do HM Treasury agree with this statement? If not, how should the member's benefits be calculated without having a detrimental effect on the member's accrued deferred benefit?** In this example the pay from the later period of membership is lower than the pay (plus Pensions Increase) on which the deferred benefit was based, which raises the question of how to treat the deferred benefit in respect of **Employment A** if it retains a final salary link and yet the pay from **Employment B** is lower. In practice the administering authority responsible for the deferred benefit from **Employment A** would pay the actual deferred benefits (plus Pensions Increase) and the administering authority responsible for the benefits from **Employment B** (which could be a different administering authority) would pay separate benefits based on the lower final pay figure. This appears to be allowable as paragraph 1(3) of Schedule 7 to the Public Service Pensions Act 2013 requires that the final pay cannot be materially less than it previously was.

Example 5 (category 1 member who does not aggregate)

Member left with a deferred benefit in respect of **Employment A** on 30 April 2014, having originally joined the Scheme on 1 May 1996:

- deferred pension at 30 April 2014 = £6,267.32 made up of £43 post 31 March 2014 CARE pension and £6,224.32 pre 1 April 2014 final salary benefit (plus a £11,172.95 automatic lump sum)
- final salary (for year ending 30 April 2014) used to calculate the pre 1 April 2014 final salary element of the deferred pension was £25,000
- Pensions Increase (PI) date for deferred benefit: 1 May 2014.

Member rejoins the LGPS on 1 August 2018 in **Employment B** on £35,000 and, even though the pay is much higher in real terms (after allowing for inflation) than the pay upon which the deferred benefit has been based, elects not to aggregate (i.e. elects to retain separate deferred benefits and there has not been a continuous break in active membership of any public service pension scheme of more than 5 years). The reason the member elects not to aggregate is because the member is aged 63½ on 1 August 2018 and met the 85 year rule on 30 April 2018. If the member aggregates, the date he meets the 85 year rule is delayed (because of the break in membership) whereas if he does not aggregate he still retains an 85 year rule date of 30 April 2018 on the deferred benefit.

Member ceases active membership in **Employment B** on 31 December 2018.

Final pay in **Employment B** (for year ending 31 December 2018, based on 2008 Scheme definition of final pay) = £35,000.

April 2018 Pensions Increase (Review) Order for a PI date of 1 May 2014 = 8%.

Final pay used in original deferred benefit calculation in respect of **Employment A**: £25,000 + 8% = £27,000.

*[NB: Schedule 7 of the Public Service Pensions Act 2013 makes no mention of Pensions Increase. Pensions Increase is payable on the pension and is not, technically, used to recalculate the member's final pay. Furthermore, Pensions Increase is payable under the Pensions (Increase) Act 1971 and not under the Local Government Pension Scheme Regulations. Nevertheless, for the reasons shown in Examples 3 and 4, Pensions Increase must surely have to be taken into account when determining whether the deferred benefit in respect of **Employment A** has to be recalculated on the final pay from **Employment B**. Do HM Treasury agree?]*

The pre 1 April 2014 element of the deferred benefit in respect of **Employment A** would have to be recalculated based on a new final pay figure of £35,000 and would have a PI date of 1 January 2019. Note, however, that the post 31 March 2014 CARE element of the deferred benefit in respect of **Employment A** would have a PI date of 1 May 2014.

By electing to retain separate benefits the member has managed to protect the 85 year rule on the deferred benefit from **Employment A** (even though there has been a 4¼ year break and has that deferred benefit recalculated upon leaving **Employment B** based on a final pay figure of £35,000. The member is getting the best of all worlds (but at the expense of the former employer).

G: Costs – the implications if there is an ongoing final salary link

If there is an ongoing final salary link it raises the question of who should pay for the increase in the value of the deferred benefit (over and above CPI) when the deferred benefit is recalculated if:

- a) the employer from the new employment, and
- b) the employer for whom the member previously worked (and in respect of which the deferred benefit was awarded)

are different. At present, it would appear that the cost would fall to the former employer, even though that employer had not paid the member at the higher salary level. This could constitute a major cost to that former employer – see, for instance, example 5 in **section F** above – being a cost over which that former employer has no control. This does not seem appropriate in the LGPS where, unlike in other public service pension schemes, each employer has a separately assessed employer contribution rate (i.e. there is not a standard employer contribution rate that all employers pay). *How would HM Treasury suggest this is dealt with (assuming there is an ongoing final salary link) as it seems wholly inappropriate that the cost should fall to the former employer?*

Furthermore, the new employer can, under regulation 22(8) of the LGPS Regulations 2013, extend the 12 month time limit within which a member can elect to retain separate benefits. The new employer might be tempted to do so where this reduces its pension liability and places liability on a former employer – see, for instance, example 5 in **section F** above. Whilst this seems to be morally wrong, there is nothing to prevent this. *How would HM Treasury suggest this is dealt with (assuming there is an ongoing final salary link) as it seems wholly inappropriate that the cost should fall to the former employer?*

There is also the potential problem of who should pick up the additional cost where the former employer has ceased to be a Scheme employer (e.g. if, for example, the former employer was an admitted body and has become insolvent). It would currently appear from regulation 64 of the LGPS Regulations 2013 that the cost would have to be spread across all employers participating in the Fund in which the former employer had participated. Thus, the cost would be met by employers who not only have not paid the employee the higher salary but who have had no link with that employee whatsoever. *How would HM Treasury suggest this is dealt with (assuming there is an ongoing final salary link) as it seems wholly inappropriate that the cost should fall to those employers?*

Lastly, as a former employer's ultimate liability will not be known until the member ceases active membership in the new / ongoing employment, actuaries will presumably need to make some allowance when assessing the employers' contribution rates at each triennial valuation.

H: Administration – the implications if there is an ongoing final salary link

If HM Treasury confirm there is an ongoing final salary link in relation to the deferred benefit in the case of members falling within (i) in **section D** above, this will have major implications for administration.

This was discussed at length at the Technical Group meeting on 14th March 2014 and the following was agreed upon.

At the outset of employment the member must complete a form detailing whether they have deferred benefits within the LGPS in England or Wales and / or service in any other public service pension scheme. The member should also be asked to re-confirm on the cessation of their active membership in that employment whether they have deferred benefits within the LGPS in England or Wales and / or service with any other public sector body. In addition, each year when annual benefit statements are issued, members should be reminded of the importance of disclosing this information. Annual deferred benefit statements issued by an administering authority would have to be based on the same final pay figure used for the active annual benefits statement relating to the new / ongoing employment (where that pay figure is higher than the final pay figure on which the deferred benefit was calculated, as increased by Pensions Increase).

For Annual Allowance purposes it is the scheme member's responsibility to notify the current Fund of any other deferred benefits held in the LGPS in England or Wales, in order for the administering authority to correctly calculate the Pension Input Amount (as, if the deferred benefit has an ongoing final salary link, the value of the deferred benefit at each 31 March may have increased by more than CPI). Failure to disclose any deferred benefits held within the LGPS in England or Wales and / or service with any other public service pension scheme could lead to statutory rights (to a final salary link) not being applied and, in the case of a failure to disclose any deferred benefits held within the LGPS in England or Wales, the possibility that the Pension Input Amount calculation for Annual Allowance purposes will be incorrect. Where a member retains separate deferred benefits in the LGPS in England and Wales the administering authority for the Fund in which the member is an active member will (if they are aware of those deferred benefits) need to determine the Pension Input Amount (if the deferred benefit has, at each 31 March, increased by more than CPI because of the ongoing final salary link).

Although the member has 12 months to elect to retain separate deferred benefits (in the case of a category 1 member in **Section B**) or 12 months to retain a separate deferred benefit by not electing to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014 (in the case of a category 2 member in **Section B**), administering authorities will wish to get a signed decision from members as soon as possible (confirming whether they do not wish to aggregate) in order to avoid:

- having to delay aggregation (and payment of any Inter-Fund Adjustment payable) until the 12 month period has elapsed, or
- having to unpick membership (and repay any Inter-Fund Adjustment paid) if the benefits have been automatically aggregated before the 12 month period elapses and the member subsequently elects, after they have been aggregated but before the 12 month deadline has elapsed, to retain separate benefits.

If no decision can be obtained from the member, the administering authority should delay aggregation (and the request for any Inter-Fund Adjustment) until the 12 month period has elapsed (or, for practical administrative reasons, until the member ceases active membership in the Fund, if earlier) in order to avoid having to unpick membership (and refund any Inter-Fund Adjustment

received). A consistent approach is required across all LGPS administering authorities to avoid a situation where a receiving administering authority has a policy to request an Inter-Fund Adjustment if the member has not made a decision within, say, 4 months of commencement but the sending administering authority has a policy not to make any payments until 12 months have elapsed (where a member has not made an election within 12 months). If different administering authorities adopt different policies this will simply lead to confusion and disputes between administering authorities. Furthermore, paying an Inter-Fund Adjustment before the 12 month period has elapsed (in the absence of an election from the member at the point the IFA is paid) and then having to unpick membership if the member subsequently elects within the 12 month period to retain separate benefits could cause complications (e.g. if a cash equivalent transfer value had been provided for divorce purposes in the period between the benefits being aggregated and unpicked).

The Technical Group decided that once an election had been made the member should not be able to seek to rescind it within the 12 month period (e.g. in order to, for example, benefit from aggregation if termination of employment in the new job on health or redundancy grounds suddenly looked likely). It was also agreed that the Regulations should not be amended to permit aggregation on termination of employment outside the normal 12 month window.

When a person who has retained separate benefits and who has an ongoing final salary link on the deferred benefit leaves their current employment, the administering authority for the current Fund will need to write to the administering authority of the former Fund (where this is different) to provide details of the final pay (2008 Scheme definition) and the administering authority for the former Fund will need to recalculate the deferred benefit based on that pay if it produces a higher benefit than the deferred benefit plus CPI. It would also be wise for administering authorities to ask leavers “do you have any other preserved Local Government Pension Scheme benefits elsewhere in England or Wales?” in order to ensure they capture any cases they are not already aware of.

If a member has 2 new employments which terminate at the same date but each has a different final pay figure, the member will have to choose which final pay figure they wish to be used in the recalculation of the earlier deferred benefit.

It will be necessary to go through this process each time a member moves employer. However, once they draw a benefit there is no further ongoing final salary link if the member has a subsequent period of membership.

In order that this procedure is followed throughout England and Wales it was agreed that, if there is an ongoing final salary link, statutory guidance should be issued by the Secretary of State.

Where an Inter-Fund CETV is to be paid, it is assumed that the relevant date for the purposes of the CETV should be:

- a) in the case of a category 1 member (see **section B**), the date the member commenced active membership in the new employment or, where relevant, the day following the cessation of the concurrent employment, and
- b) in the case of a category 2 member (see **section B**), the date the member elected to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014.

I: Conclusion

Where a category 1 or category 2 member in **Section B** retains a separate deferred benefit in the LGPS there are two possible interpretations of paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013.

The first is that there is an **ongoing** final salary link in relation to the deferred benefit. This would, as outlined in this paper, have significant administrative implications, would have major cost implications for the former employer, would provide some members with the ability to “hedge their bets” at the cost of their former employer, and would provide current employers with the ability to

reduce their costs by loading costs onto a former employer (see example 5 in **section F** above). It would also be inconsistent with paragraph 2 of Schedule 7 to the Public Service Pensions Act 2013 where, if a member moving between public service pension schemes does not aggregate membership, the deferred benefit retained in the former Scheme does not have an **ongoing** final salary link (i.e. linked to the final salary in the LGPS).

The counter argument is that there is no **ongoing** final salary link in relation to the deferred benefit. If a member chooses to retain a separate deferred benefit and not to have that membership aggregated with the new employment in the LGPS then that is a personal decision which the member will have taken, having weighed up the advantages and disadvantages of aggregating or retaining a separate deferred benefit. If they decide not to aggregate there is no **ongoing** final salary link, no inappropriate cost falling to the former employer and no administrative complexity. It would also be consistent with the treatment of members who move between public service pension schemes and do not aggregate membership. By virtue of paragraph 2 of Schedule 7 to the Public Service Pensions Act 2013, the deferred benefit retained by such members in the former Scheme does not have an **ongoing** final salary link (i.e. linked to the final salary in the LGPS).

It is hoped that HM Treasury will agree that, for the reasons set out in the paragraph above and covered in detail in this paper, there is no **ongoing** final salary link in relation to the deferred benefit where a category 1 or category 2 member in **Section B** retains a separate deferred benefit in the LGPS. **Do HM Treasury agree that in such cases there is no ongoing final salary link?**

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