Local Government Association query list with DLUHC

The index sets out the query type together with the regulations under which the query has been raised.

Index

Regulatory abbreviations

Name of regulation	Abbreviation
Local Government (Transitional Provisions, Savings and Amendment) Regulations 2014	TP 2014
Local Government Pension Scheme Regulations 2013	LGPS 2013
Public Service Pensions Act 2013	PSPA 2013
Local Government (Management and Investment of Funds) Regulations 2016	LGPS Investment 2016
Local Government (Discretionary Payments)(Injury Allowances) Regulations 2011	LGPS Injury Allowances 2011
Local Government Pension Scheme (Administration) Regulations 2007	LGPS Admin 2008
Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007	LGPS BMC 2007
Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and predecessor regulations	LGPS Discretionary Compensation - followed by the year number
Local Government Pension Scheme Regulations 1997	LGPS 1997
Local Government Pensions Scheme (Transitional Provisions) 1997	TP 1997
Local Government Pension Scheme Regulations 1995	LGPS 1995

Aggregation

LGPS 2013 – regulation 22(8)

Pension accounts - former query 125

It is not clear why there should be a difference in treatment between optants out pre and post 11 April 2015. It would make far more sense, administratively, if the difference was removed so that, regardless of when the opt out occurred, the member cannot aggregate membership. It should also be noted that, as presently drafted, the regulation allows a post 11 April 2015 optant out to aggregate if the opt out occurred in a concurrent employment and the member wishes to aggregate with the ongoing employment i.e. the regulation only debars from aggregation those who opt out on or after 11 April 2015 and subsequently re-join the scheme. Is that intended?

LGPS 2013 – regulation 22(8) / TP 2014 – paragraph 8(2)(a) schedule 2

Pension accounts - former query 186

The query we have concerns the loss of 85-year rule protection on aggregated 2014 CARE benefits where the member has had a disqualifying break. This will be in respect of Group 1 or 2 members who retain 85-year rule protection on benefits potentially up to 2020 (their 85-year rule protection includes 2014 CARE benefits).

Paragraph 8(2)(a) of schedule 2 of TP 2014 states that where the member has re-joined the 2014 scheme, has had a disqualifying break, and aggregates their earlier membership which attracts 85 year rule protections (this could be in the 1998, 2008 and 2014 schemes), the member loses 85 year rule protection on the aggregated membership, though it is retained for any ongoing relevant membership.

Where a member aggregates their benefits in the above circumstances regulation 22(8) of LGPS 2013 is used to purchase earned pension in the receiving LGPS pension fund. This simply takes the benefits in the deferred member's pension account and drops them into the active member's pension account, without any adjustment for the loss of the 85-year rule.

However, when the final salary benefits are aggregated in such circumstances, earned pension is derived from the value of the non-club CETV (see regulation 10(4) of TP 2014 and paragraph 3.4 of the Interfund transfers guidance dated 14 April 2016). The non-club CETV includes a conversion adjustment to account for the 85-year rule. So, when the non-club CETV is converted into earned pension, the loss of the 85-year rule has been account for.

So, in this scenario, it seems that whilst earned pension derived from final salary benefits are compensated for their loss of the 85-year rule, 2014 CARE benefits are not.

Please can you clarify the policy intention?

Update from MHCLG on 28 July 2020

"Thanks for flagging this and setting out the issues so thoroughly. I've had a chance to look through and discuss with Brian (GAD). We came to the same conclusion essentially, which is that we cannot think of a good reason for the difference in treatment and it isn't possible to discover whether it reflected the policy intent at that time as our records aren't sufficiently detailed to reconstruct that".

LGA response 28 July 2020

From a priority perspective not sure how much of a priority this is? It only affects:

- group 1 who have protected CARE membership up to the latest of 31 March 2016, or
- group 2 who have protected CARE membership up to the latest of 31 March 2020 on a taper basis since 1 April 201), and
- who leave active membership of the scheme after 31 March 2014, and
- who re-join the scheme having had a disqualifying break.

If we get a live query, then we can discuss again.

TP 2014 – regulations 10(1) and 10(8)

Interfund adjustments - former query 136

Regulation 10(8) sets out the treatment of concurrent employments, where the member was an active member in two concurrent employments, leaves one and continues in the other employment in which the member had become an active member by virtue of regulation 5(1). It provides that the formula in regulation 17(3) (concurrent employments) or, as the case may be, regulation 46(4) (rights to return of contributions) of the LGPS Admin 2008 must be applied in order to determine the rights the member is entitled to for the purposes of paragraph 10(2) in the ongoing employment. Paragraph 10(2) preserves pre 14 final salary rights.

However, regulation 10(8) of TP 2014 does not cover the scenario by where an active member of the LGPS, who joined by virtue of paragraph 5(1) of TP 2014 (first employment), thereafter becomes concurrently an active member of the 2014 scheme by virtue of regulation 3 of the LGPS 2013 (ie takes up a concurrent active

membership of the LGPS 2013 (second employment)) and subsequently leaves their first employment. In this situation, the member would be entitled to a deferment of their pre 14 rights as final salary benefits (adjusted by the aforementioned formula).

There is also a problem with the wording of regulation 10(1) when read in conjunction with regulation 10(8). Regulation 10(1) envisages that a person who was subject to regulation 5(1) leaves with a deferred benefit or deferred refund and subsequently re-joins the scheme. However, for a member with concurrent employments who was subject to regulation 5(1) and leaves one of the employments with a deferred benefit or deferred refund they do not subsequently re-join the scheme (because they are already a member of the scheme in the ongoing concurrent employment) – and yet regulation 10(8) says it (ie regulation 10(8)) applies where regulation 10(1) applies. As shown, however, regulation 10(1) cannot (as presently drafted) apply where a member ceases a concurrent employment.

We would suggest the following revision to regulation 10(8):

"(8) Where deferred benefits or a deferred refund under paragraph (1) arise from the cessation of a concurrent employment and the member continues as an active member in a continuing employment in which the member became an active member either by virtue of regulation 5(1) of these Regulations (membership of the 2014 Scheme) or by virtue of regulation 3 of the 2013 Regulations (active membership), the formula in regulation 17(3) (concurrent employments) or, as the case may be, regulation 46(4) (rights to return of contributions) of the Administration Regulations must be applied in order to determine the rights the member is entitled to for the purposes of paragraph (2)".

And the following amendment is made to regulation 10(1):

- at the end of sub-paragraph (c) amend "and" to "or"
- after sub-paragraph (c) add "(ca) who became a deferred member or deferred refund member of the 2014 Scheme upon cessation of a concurrent employment whilst remaining an active member in a continuing employment, and"

See recommendations made by the National LGPS Technical Group and agreement by SAB on 18 November 2019.

TP 2014 – regulation 10(6)

Interfunds – former query 122

Where a member holds a pre-1 April 2014 deferred benefit and re-joins the scheme on or after 1 April 2014, it is not clear why, if the member does not elect to be treated

as if they had been an active member on 31 March 2014 and 1 April 2014 and elects to aggregate, regulation 10(6) of TP 2014 requires that the transfer value in respect of the pre 1 April 2014 membership to purchase an amount of earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of schedule 7 to, the PSPA 2013).

In the first instance if we start with the principles of the PSPA 2013.

Schedule 7 paragraph 1 covers persons who remain in the 'old scheme' for past service and defines those individuals in paragraph 1(1) as being a person who:

- was a member of an existing scheme (defined in section 18(2) and schedule 5, in the case of the LGPS as a scheme set up under section 7 of the Superannuation Act 1972) – old Scheme, and
- is a member of a scheme under section 1 (defined in the case of the LGPS as a scheme set up under section 1 of the Public Service Pensions Act 2013) – new Scheme.

Member is not defined and accordingly this could be construed as an active, deferred or pensioner member (though paragraph 5 of schedule 7 makes clear that final salary protection does not apply to a pension in payment).

Paragraph 1(2) moves on to qualify that if the 'old scheme' service and the 'new scheme' service are continuous (paragraph 1(2)(a)) then the 'old scheme' service is regarded as having ended when the 'new scheme' service ended and the earnings in the 'new scheme' are derived as earnings from the 'old scheme'. Paragraph 1(3) qualifies that those earnings must not be less than what would have been achieved under the 'old scheme'.

So at this stage in the proceedings, the pre 1 April 2014 final salary benefits of a member who was continuously in the LGPS both on 31 March 2014 and 1 April 2014 retained final salary protection when ending their 2014 Scheme membership.

If we then move onto paragraph 3, this deals with continuity of employment and defines continuous for the purpose of paragraphs 1(2)(a) and 2(2)(a). Where there is a gap in LGPS service for the purpose of determining continuity, ignore:

- any gap in LGPS service, where the person was in one of the new public service schemes (set up under section 1 of the PSPA 2013)
- a single gap of LGPS service of five years or less, where the person was not in one of the new public service schemes (set up under section 1 of the PSPA 2013)

- two or more gaps in LGPS service of five years or less (where any one gap does not exceed five years), where the person was not in one of the new public service schemes (set up under section 1 of the PSPA 2013).

It seems that where a member aggregates pre 1 April 2014 benefits with post 31 March 2014 benefits and meets one of the continuity conditions set out in paragraph 3 of schedule 7, the Act prescribes that the aggregated benefits must be provided with final salary protection.

However, regulation 10(6) of TP 2014 seems to provide an initial choice for the member (ie CARE or final salary) and for the member to receive final salary protection, the member has to elect under regulation 5(5).

We believe the default position should be that in the first instance, the member is awarded final salary protection, and only thereafter, if DLUHC wish to extend this option to instead provide earned pension, the member should have to elect for the alternative to that prescribed within the PSPA 2013.

However, even if they were to initially elect for the aggregated earlier service to purchase CARE pension the member would, under the PSPA 2013, still be entitled to a final salary benefit if this was higher because the underpin would have to be applied in all such cases (even where the member was not over age 55 / within 10 years of NRD in 2012) – why would DLUHC want to do that?

Death grants

LGPS 2013 – regulation 40(5)

Death grants - former query 126

Active members - as it is the aggregate of any benefits under regulations 43 and 46 that should be paid, if higher than the death grant under regulation 40, amend the words “under any of those regulations” to “under those regulations”.

Also, the wording of regulation 40(5) leaves the Fund in which the member dies as an active member to meet the cost of the death grant, even if the death grant payable is in respect of a deferred pension or pension in payment in another Fund.

Take, for example, a chief executive who retires from fund A with an annual pension of £340,000 and shortly afterwards takes up a job as a road crossing patrol in fund B on £10,000 a year. He gets knocked over and killed on his first day at work. Fund b would have expected to have paid out a £30,000 death in service grant but, due to the 10 year guarantee on the pension in fund A, fund B has to pay out a death grant

of £400,000 (based on a period of service and a rate of pay that the employer in fund B had no responsibility for). If the employer in fund B is a small employer, the payment of such a large death grant could have significant implications for their employer contribution rate.

We would therefore suggest that regulation 40(5) simply requires the fund, or funds, in which the member dies in service to pay the death in service grants if the aggregate death in service grants are higher than the aggregate deferred and pension death grants; and for the fund, or funds, holding the deferred and pension death grants each pay their respective death grants if the aggregate of those is higher than the aggregate of any death in service death grants.

LGPS 2013 – regulation 40(5)

Death grants active members - former query 171

Where an active member dies (for ease on or after 11 April 2015) who also holds a pension credit entitlement, does the restriction on multiple death grants apply?

On reading through the regulations, the following appears to apply:

Scenario	**Does the restriction on multiple death grants apply?**
An active member dies. At that point, the member also had a pension credit which had not become payable. The pension credit was awarded under LGPS 1997.	No. The fund will pay death grants in respect of both the active record and, provided the member had not attained age 70, the pension credit record.
An active member dies. At that point, the member also had a pension credit which had become payable. The pension credit was awarded under LGPS 1997.	No. The fund will pay death grants in respect of both the active record and, provided the member had not attained age 70, the pension credit record.
An active member dies. At that point, the member also had a pension credit which had not become payable. The pension	No.

Scenario	Does the restriction on multiple death grants apply?
credit was awarded under LGPS 2013.	The fund will pay death grants in respect of both the active record and the pension credit record.
An active member dies. At that point, the member also had a pension credit which had become payable. The pension credit was awarded under LGPS 2013.	Yes. The fund will only pay the largest of the death grants in respect of the active record and the pension credit record.

Our interpretation, in respect of the highlighted scenario, is based on the following:

Regulation 40(5)

(5) In the case of an active member who is also a deferred member, pensioner member or deferred pensioner member of the Scheme, no death grant is payable under regulations 43 (death grants: deferred members) or 46 (death grants: pensioner members) but if the amount that would be payable under any of those regulations would be higher than the amount payable under this regulation, the amount payable under this regulation is that higher amount.

Firstly, the death grant in respect of the pension credit would be payable under Regulation 46.

So, the key question is whether the member, in respect of the pension credit, is a "pensioner member"?

Paragraph 1 of schedule 1 defines the term "pensioner member".

"pensioner member" has the meaning given by regulation 7(1);

Regulation 7(1) says –

(1) A person is a pensioner member of the Scheme if that person—

(a) was an active member; or

(b) was a pension credit member,

and is in receipt of a benefit from the Scheme relating to that membership.

As the highlighted scenario produces an inconsistent result without an obvious reason, we wonder whether the outcome correctly reflects the intention?

TP 2014 – regulation 17(7)

Survivor benefits - former query 97

There is some debate around whether, where the death grant due under regulations 32 and 35 of LGPS BMC 2007 (or the corresponding provisions under any of the Earlier Regulations) is greater than the death in service death grant under regulation 40 of the LGPS 2013, the Fund in which the active member died is responsible for paying the death grant or the Fund within which the deferred pension and / or pension in payment is held is responsible for paying the death grant.

We read regulation 17(6) to say that the death grant for an active member is calculated under LGPS 2013 apart from where paragraph (7) applies. Paragraph (7) says that if the death grant that would have been payable had regulations 32 and 35 of LGPS BMC 2007 still applied (or equivalent provisions in the Earlier Regulations) is higher, the death grant payable is that higher amount. Although it is not entirely clear, we read this to mean that the death grant is payable under those Regulations, which means it is payable by the authority holding that deferred or actual pension.

However, as others seem to interpret it as saying the Fund in which the active member dies is responsible for paying the amount of the deferred / balance of pension death grant it would be helpful if an amendment could be made to make the position clear.

Postscript: at meeting with DLUHC on 22 April 2015 it was agreed that this regulation and regulation 40(5) of LGPS 2013 should both follow a consistent approach.

Employee additional contributions

LGPS 2013 – regulation 17

AVCs - former query 183

There is no provision within regulation 17 for a member who has stopped paying AVCs with provider A and has started paying AVCs with provider B (all within the same administering authority and same employment) to transfer the AVC fund accumulated with provider A to provider B. Yet had the same question arose under LGPS BMC 2007 and LGPS 1997, the answer would have been ‘Yes’ (see background below) We request that DLUHC consider changing the regulations to provide for this facility?

2014 Scheme - No for both active and deferred

The LGPS 2013 for both active and deferred members do not provide for this request, because there is nothing in regulation 17 that seems to allow them to transfer accumulated AVC funds from between providers within the administering authority within the same employment, except where a deferred member re-joins the LGPS with that authority sometime later and aggregates benefits – regulation 17(11).

The only possible get out clause under LGPS 2013 is to rely on the administering authority's duty to ensure that investment returns are reasonable having regard to the amount of AVCs paid. If the administering authority thinks they are not reasonable then they might rely on their overriding fiduciary duty to agree to move the accumulated AVC funds from provider A to provider B. However, if the administering authority is still offering both AVC providers to active members it would indicate that they are not dissatisfied with the investment returns of either provider, and so the fiduciary duty argument for agreeing to transfer the funds would fall away.

2008 Scheme – Yes for active – No for deferred

Had the question arisen under LGPS BMC 2007, there would have been no issue under the LGPS Admin 2008 for active members because regulation 25(8) permitted a transfer of the accumulated AVC fund from provider A to provider B for active members. However, it did not cover deferred members and, as there was no equivalent of regulation 64(1) of the LGPS 1997, it would appear that a deferred member could not ask for the accumulated AVC fund to be moved between providers (unless the member re-joined the LGPS with that Administering Authority sometime later and aggregated benefits).

1998 Scheme – Yes for both

Had the question arisen under LGPS 1997, there would have been no issue because, under regulation 64(1), it was for the administering authority to decide where AVCs were to be invested. They could, therefore, simply have agreed to move the accumulated AVC funds from provider A to provider B (and, indeed, could have done so for a deferred member also making such a request).

LGPS 2013 – regulation 17 / TP 2014 – regulation 15

AVCs - former query 158

The Government published the Registered Pension Schemes (Authorised Payments) (Amendment) Regulations 2017 (SI2017/397) which introduced a new

type of authorised payment, the pension advice allowance payment (PAAP) from 6 April 2017.

The new payment allows an individual to use up to £500 from their pension pot to pay towards the cost of receiving retirement financial advice and/or the cost of implementing such advice. The introduction of the allowance was recommended by the Financial Advice Market Review (FAMR), which found that high quality financial advice can have a significant impact on retirement income if received early.

Insofar as the PAAP relates to the LGPS, whilst LGPS members will not be able to take such a payment from their main scheme benefits, it is our understanding that an individual could take a PAAP from their in-house AVC fund subject to an amendment to the LGPS Regulations and the AVC provider being able to facilitate this.

Reasons behind the need for a change to the LGPS Regulations to facilitate PAAP

Payments made under the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171]

Section 164 of the Finance Act 2004 provides that:

1. The only payments a registered pension scheme is authorised to make to or in respect of a person who is or has been a member of the pension scheme are:

a) pensions permitted by the pension rules or the pension death benefit rules to be paid to or in respect of a member (see sections 165 and 167)
b) lump sums permitted by the lump sum rule or the lump sum death benefit rule to be paid to or in respect of a member (see sections 166 and 168)
c) recognised transfers (see section 169)
d) scheme administration member payments (see section 171)
e) payments pursuant to a pension sharing order or provision, and
f) payments of a description prescribed by regulations made by the Board of Inland Revenue.

The Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] are regulations falling under section 164(1)(f) of the Finance Act 2004 and set out a list of authorised payments that may be made from a registered pension scheme in accordance with that section. Crucially, these regulations do not amend or modify the scheme rules to provide for the payment to be made; they simply provide that where the scheme rules permit such a payment it will be an authorised payment.

For the purpose of the explanation below we are concentrating on the following provisions:

- regulation 6 - payment after relevant accretion
- regulation 11 - de minimis rule for pension schemes
- regulation 12 - payments by larger pension schemes
- regulation 21 – pension advice allowance payment

In order to determine whether or not such a payment may be made without the LGPS regulations being amended we must first look at the vires contained in the Registered Pension Schemes (Splitting of Schemes) Regulations 2006 [SI 2006/569].

- regulation 2(1)(a) and schedule 1 confirm that both the LGPS (England & Wales) and the LGPS (Scotland) shall be treated as a split scheme
- regulation 2(4) and schedule 2 confirm that each LGPS administering authority named in the schedule is to be a sub scheme administrator
- regulation 3(1) states that "*The sub-scheme administrator of a sub-scheme shall assume the liabilities and responsibilities set out in Schedule 3 to these Regulations in relation to that scheme*" and regulation 3(2) states "*In the provisions referred to in that Schedule any reference to the scheme administrator shall be read as a reference to the sub-scheme administrator*"
- schedule 3 sets out the legislation for which the scheme administrator (or in this case the sub-scheme administrator) is to be responsible for making a decision. Part 2 of schedule 3 contains a list of secondary legislation but, crucially, the list does not include the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171].

Therefore, in order to have the vires to make a payment under the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] the scheme rules would need to be amended. The only party that can amend the LGPS scheme rules is the Secretary of State/Scottish Ministers, under the following legislation:

- PSPA 2013 confirms in section 2 that (1) "*The persons who may make scheme regulations are set out in Schedule 2*" and (2) "*In this Act, the person who may make scheme regulations for any description of persons specified in section 1(2) is called the "responsible authority" for the scheme for those persons*".
- paragraph 3 of schedule 2 of PSPA 2013 confirms that " *Scheme regulations for local government workers may be made by (a) the Secretary of State, in or as*

regards England and Wales; (b) the Scottish Ministers, in or as regards Scotland".

Description of PAAP

Under the amendment regulations, a payment made by an arrangement (money purchase or hybrid) is a PAAP subject to the following conditions being met:

- the payment is made for retirement financial advice provided to the person or for the implementation of such advice
- the payment is requested in writing containing a declaration by the person confirming that the following conditions are satisfied:

  - no more than two pension advice allowance payments have been requested and made in respect of the person
  - no pension advice allowance payment has been requested and made in respect of the person in the tax year in which the request is made, and
  - the advice is regulated financial advice, provided by a financial advisor regulated and authorised by the Financial Conduct Authority to provide such advice, and

- the payment must be made by a registered pension scheme directly to the financial advisor and the payment must not exceed £500.

LGPS 2013 – regulation 17(8)

AVCs - former query 180

Although regulation 33(2) (Election for lump sum instead of pension) was amended by SI 2018/493 (effective from 14 May 2018) to ensure that the tax free lump sum from post 31 March 2014 AVC arrangements is limited to 100% of the value of the AVC pot (rather than 125% as the regulations previously suggested) (see query 157), we have discovered that a similar amendment is also needed to be made to regulation 17(8).

Regulation 17(8) currently states that if the member elects to commute pension to lump sum, then the value of the AVC fund should not be taken into account. Clearly, this is not in line with the policy intention nor the amendments made by SI 2018/493. We suggest that a simple adjustment to regulation 17(8) (remove the word 'not') would achieve the policy intent.

TP 2014 – regulation 8(4)

Pensionable pay - former query 127

At the National LGPS Technical Group meeting held 12 December 2014 a discussion took place about how APC contracts to buy “lost” pension should be dealt with if the member does not complete payment of the contract. The view taken at that meeting was that if the member does not complete payment of the APC contract it should be treated as a debt. This would mean that the full amount of “lost” pension the member elected to purchase would be credited to the member's pension account when the member left the scheme and the member would have an outstanding amount of contributions still to pay which would be dealt with as an outstanding debt to the administering authority. However, when this was discussed with DLUHC they were not keen to introduce a “debt” provision into the Regulations. The matter was, therefore, referred back to the group.

At their meeting on 5 June 2015 the National LGPS Technical Group decided that where payment of APCs to purchase “lost” pension had not been completed the member should be credited with the amount of “lost” pension they had bought at the date they ceased paying the APCs.

For example, if a person had a period of absence of 15 days resulting in “lost” pension of £17.01 which they were covering by payment of APCs and left having paid £101.45 out of a total of £243.48 they were due to pay, they would be credited with an amount of CARE pension of £17.01 x £101.45 / £243.48 = £7.09.

Furthermore, if they have any pre 1 April 2014 membership of the LGPS they will, for the purposes of:

- the final year’s pay calculation
- the underpin
- the 85 year rule

be treated as having paid for that proportion of the period of absence they were covering (calculated as the number of days absence x amount of APCs paid / total amount of APCs due to be paid). It was also agreed that:

- where the above calculation results in a part day being purchased, the part day will always be rounded up, and
- the period purchased will always count from the beginning of the period of absence.

Using the example above, the period purchased would be 15 x 101.45 / 243.48 = 6.25 days which would be rounded up to 7 days and the person would be deemed to have bought the first 7 days of the period of absence.

TP 2014 regulation 8(4) will, in consequence of the group's decision, need to be amended as, presently, it only allows the period of absence to count as membership and for final pay purposes if the member has purchased additional pension under regulation 16 of LGPS 2013 equivalent to the pension the member would have accrued but for the absence. In other words, the period can only count if the member completes payment of the contract. The regulation will need to be amended to reflect the National LGPS Technical Group decision.

TP 2014 – regulation 15

Additional contributions - former query 87

Needs an additional paragraph added to state that the £6,500 additional pension limit referred to in regulations 16(5), 16(6), 31(1) & 31(2) of LGPS 2013 include, respectively, the amount of any additional pension being purchased / granted under regulations 13 &14 of LGPS BMC 2007 and regulation 23 of LGPS Admin 2008.

TP 2014 – regulation 15(3)

Additional contributions - former query 181

We think the wording of this regulation gives additional AVC options to certain members that we do not believe were intended. If a member to whom regulation 5(1) of TP 2013 applies, leaves on or after 1 April 2014, and re-joins without a five year break in public service pension scheme membership they can:

- choose not to aggregate an AVC, even if it is a post 2014 AVC. We would expect this provision only to apply if the AVC started before 1 April 2014 – ie if it is a protected post 2014 AVC plan
- retain the right to choose not to aggregate an AVC if they subsequently leave and re-join. In all other scenarios we assume that following a post 2014 aggregation 'event', the aggregated AVC becomes a post 2014 AVC. Meaning that there is no option to leave an 'orphan' AVC when a subsequent transfer aggregation event occurs.

Current wording:

(3) Notwithstanding regulation 17(11) of the 2013 Regulations (additional voluntary contributions), a person to whom regulation 5(1) applies (membership of the 2014

Scheme) who has had no continuous break in active membership of a public service pension scheme of more than five years, may elect not to transfer the realisable value in any deferred AVC account to an arrangement under regulation 17 of the 2013 Regulations.

Our view is that the provisions in 15(3) should only apply:

- if the member entered into the AVC arrangement before 1 April 2014; and
- this is the first aggregation event occurring after 31 March 2014.

Employer additional contributions

LGPS 2013 – regulations 16(2)(e) & 16(4)(d)

APCs - former query 50

If an employer wishes to award extra pension at their whole cost this can be done under regulation 31. So why is there a need for regulation 16(4)(d) (purchase of APC by way of lump sum) to provide that the employer can fund an APC under regulation 16 “in whole or in part”? We think that regulation should be amended to simply refer to “in part” as, if the employer wished to fully pay for extra pension via a lump sum payment, they would utilise regulation 31 instead.

That leaves regulation 16(2)(e) (purchase of APC by way of regular contributions). Why, given regulation 31 exists, is there a need for regulation 16(2)(e) to provide that the employer can fund an APC under regulation 16 “in whole or in part”? An employer might want the flexibility to spread the cost to the employer over a period of time. However, we think regulation 16(2)(e) should be amended too to simply refer to “in part” as, if the employer wished to fully pay for extra pension they could utilise regulation 31 instead but if they wished to spread payments, the employer could utilise the amended regulation 16(2)(e) but specify that their part of the cost would be 99.99% leaving the member to meet a minimal cost. Amending regulation 16(2)(e) in that way would also ensure that it would not, as it currently seems to do, conflict with regulation 15(5).

Employer contributions

LGPS 2013 – regulation 15(4)

Employer contributions during absences - former query 52

Amend "has an arrangement under regulation 16 (additional pension contributions) the employer contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions) remain payable if that regulation applies." to read:

"has an arrangement under regulation 16 (additional pension contributions) or is making contributions under regulation 17 (additional voluntary contributions) the employer contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions) or, as appropriate, to a shared cost AVC under regulation 17, remain payable if ~~that~~ the relevant regulation applies".

LGPS 2013 – regulation 15(6)

Employer contributions during absences - former query 91

There is nothing in LGPS 2013 that actually says how the amount of 'lost' pension for absences should be calculated. All there is, is an oblique reference to APP within regulation 15(6) and that only refers to a limitation of how much an employer should pay. One can understand from that that the employee should pay a one third cost based on APP. However, what about an APC to cover pension 'lost' during a strike. There are no employer contributions to an APC in those cases, so regulation 15(6) is not relevant and there is nothing in the regulations saying how the cost of the lost pension should be determined.

It has been suggested that regulation 15(6) should be amended to read something like *"…..as receiving their pensionable remuneration for the period of absence from work up to a maximum period of 36 months, or assumed pensionable pay where the amount of pensionable remuneration cannot be determined".*

However this might cause some issues in child related leave cases. Let's say that someone is on annual salary only and goes on maternity leave. The employer will know exactly what pay the member would have received during the unpaid additional maternity leave, even to the extent of knowing what the pay would have risen as a result of an increment or pay rise the member would have received had they not been on unpaid additional maternity leave. However, where a person works variable hours, the employer cannot know what the lost pay would have been and so would have to use APP. That figure would be an average of the last three months / 12 weeks' pay (and not, as in the annual salary case, the actual pay due) and would not

increase by any increment of pay award due during the period of unpaid additional maternity leave (because APP is only increased after two 31 March dates have been passed).

So, being too prescriptive in the regulation does not give employers the wriggle room needed to be able to deal with any cases raised on equality grounds. We think it might be preferable for the regulation to say something like:

"as receiving their pensionable remuneration for the period of absence from work up to a maximum period of 36 months, calculated in accordance with guidance to be issued by the Secretary of State where the amount of pensionable remuneration cannot be determined".

The Secretary of State guidance can then be written in such a way to give employers the wriggle room needed. Of course, simply amending regulation 15(6) means that there still wouldn't be anything in the regulations about how the employee contributions should be determined (particularly for strikes). Perhaps that could be dealt with through the suggested Secretary of State guidance too.

Overall, therefore, we think we need to delete the word "assumed" from regulation 15(6) and add at the end of regulation 15(6):

"calculated in accordance with guidance to be issued by the Secretary of State where the amount of pensionable remuneration cannot readily be determined."

Also, we need to add a new paragraph at the end of regulation 16 to say something like:

"Where the member elects to pay an APC to cover the amount of pension that would otherwise have accrued but for an absence of the type mentioned in regulations 11(4)(b) or 11(4)(c), the amount of pension that would have accrued during that absence shall be calculated on the pensionable pay the member would have received but for the absence or in accordance with guidance to be issued by the Secretary of State where that amount of pensionable remuneration cannot readily be determined."

LGPS 2013 – regulation 68(3)

Employer's further payments - former query 32

Amend "an award under regulation 31 (award of additional pension" to "an award under regulation 15(5) (employer contributions during absences) or regulation 31 (award of additional pension)".

Employer costs

LGPS 2013 – regulation 70(2)(c)

Additional costs arising from Scheme employers level of performance - former query 34

After “regulation 59” insert “(pension administration strategy).

Employer discretions

LGPS 2013 - regulation 17

AVCs - former query 7

Should there be a provision in regulation 17(1) to say that an employer may choose to contribute to a SCAVC (ie it is an employer discretion)? Otherwise, it appears from the way the regulation is written that the member can simply make an election to contribute to a SCAVC and, by default, the employer would have to make a contribution. Alternatively, we could simply amend the definition of SCAVC in Schedule 1 to read “SCAVC means an arrangement established under regulation 17 to which the Scheme employer has chosen to make a contribution in addition to contributions that the active member contributes;”

TP 2014 – paragraph 2(2) of schedule 2

Protections - former query 86

Replace the words “and to this paragraph” with the words “and to sub-paragraph (1) of this paragraph”. This is because a written policy is only required on the question of whether or not to waive an actuarial reduction on compassionate grounds [i.e. sub-paragraph (1)]; a policy is not required on whether or not the administering authority may require the employer to pay any resulting strain fund up front under sub-paragraph (3).

TP 2014 – paragraph 2(3) of schedule 2

Protections - former query 130

The reference to “sub-paragraph (1)” should be amended to read “sub-paragraphs (1) or (1A)” (paragraph 1A refers to the waiving of an actuarial reduction by the employer re flexible retirement).

Employer forfeiture

LGPS 2013 – regulation 91

Forfeiture of pension rights after conviction of employment-related offences

The National LGPS Technical Group recommended to SAB in 2018, to change the policy behind the application of the forfeiture regulations.

Currently an individual must have left employment because they have been convicted of an offence in relation to that employment, for forfeiture to apply. In the majority of cases, the only part of the definition satisfied is “an offence committed in connection with an employment in which the person convicted”. The wording does not address historical events coming to light, which are now more frequent in today’s society.

The group believes that where an individual is convicted of an offence in relation to a former employment, the former Scheme employer should be able to apply for a forfeiture certificate, regardless as to the reason as to why the individual is no longer in that employment (i.e. this would close the loop hole, so that an individual who voluntarily leaves employment before conviction, may still be subject to a forfeiture certificate at some point in the future, whilst retaining the link to a conviction in relation to that employment).

Employer guarantees

LGPS 2013 – schedule 2

Scheme employers - former query 135

At the National LGPS Technical Group meeting on 11 September 2015 it was requested that an amendment be made to the regulations to require that, in the case of a body covered by paragraph 5 of Part 2 of Schedule 2 to the LGPS Regulations 2013 (*An entity connected with a local authority listed in paragraphs 1 to 5 of Part 1 of this Schedule where "connected with" has the same meaning as in section 212(6) of the Local Government and Public Involvement in Health Act 2007*), the local authority should act as guarantor for any deficit should the connected entity cease to exist.

Employer interest on late payments

LGPS 2013 – regulation 71

Interest on late payments by scheme employers

Regulation 71(2) says that interest is payable on payments due under regulation 70 (Additional costs arising from Scheme employer's level of performance) which are more than a month overdue. However, regulation 71(3) says that interest is payable on payments due under regulation 69 (Payment by Scheme employers to administering authorities) which are more than a day overdue. Regulation 69(1)(d) covers payments due under regulation 70.

This means that payments due under regulation 70 are covered by both regulation 71(2) [one month late] and 71(3) [one day late]. They can't both be correct so either, depending on what the policy line is:

- the reference to regulation 70 in regulation 71(2) should be deleted, or
- in regulation 71(3) the words "in regulation 69(1)(b)" should be amended to "in regulations 69(1)(b) or (d)".

LGPS 2013 – regulation 81(4)

Interest of late payment of benefits

Regulation 81(4) states "Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests."

We wonder whether a typo was made when adapting the wording in the 2008 regulations for the 2013 regulations. For example, whether:

1. "to the date" was incorrectly not included in the 2013 regulation wording, or
2. "of payment" was incorrectly included.

The key question is what is meant by "due date of payment". Does it have the same meaning as "due date" in 81(3).

It has been suggested that, as it says "due date of payment" rather than just "due date" it must mean something different than simply the "due date" in 81(3). For death grants, it has been further suggested that this must therefore mean date of death (as this would be the "due date for payment"). However, we disagree. This interpretation assumes that the LGPS regulations otherwise prescribe a "due date for payment" for death grants. They do not. They simply set out where a death grant is payable

without prescribing any date on which it should be paid. For example, regulation 40(1) says:

“If an active member dies before attaining the age of 75, an administering authority shall pay a death grant.”

It does not then set the date on which it is due to be paid. In fact, regulation 40(5) accommodates the scenarios where the death grant is paid:

1. within two-year period beginning with date of death / the date the authority could reasonably have known of the death
2. after this period.

Therefore, in the absence of such prescription on the specific date on which a death grant should have been paid, the only reasonable interpretation of the definition of “due date of payment” in 81(4) is that it must mean the same date as the “due date” in 81(3).

This would then align with how interest is calculated for benefits under the earlier regulations (which simply refers to “due date”).

“Interest due under paragraph (1) or payable to a person under regulation 45(5) (deduction and recovery of member's contributions), 46(2) (rights to return of contributions) or 51 (interest on late payment of certain benefits) must be calculated at one per cent. above base rate on a day to day basis from ‘the due date’ to the date of payment and compounded with three-monthly rests.”

Investments

LGPS Investment 2016 – regulation 3(2)

Investment - former query 188

As a result of regulation 29 of the Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2019 [SI 2019/192] regulation 3(2) of LGPS Investment 2016 needs to be amended to reflect the post Brexit position.

LGPS Investment 2016 – regulation 6(2)

Separate bank account - former query 187

As a result of regulation 3 of the Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2019 [SI 2019/192] sub-paragraph (b) of regulation 6(2) of LGPS Investment 2016 needs to be deleted and, in sub-paragraph

(c) of regulation 6(2), the words after “Bank of England” to “United Kingdom” need to be deleted.

Pay

LGPS 2013 – regulation 21(1)

APP - former query 68

Replace “regulations 9 to 14” with “regulations 9 to 12 and 14, but excluding regulations 11(2) and 13” because contributions payable by a member on reserve forces service leave are payable by way of APP.

LGPS 2013 – regulation 21

Definition of revaluation adjustment for APP

We recommend that a specific definition of revaluation adjustment for the purpose of regulation 21(6) is added to regulation 21. This is because the definition of revaluation adjustment in schedule 1 refers to an amount applied to ‘a pension account’, this does not happen when applying revaluation adjustment to APP.

LGPS BMC 2007 – regulation 9(1)

Final pay: reserve forces

For the purpose of calculating final pay under regulations 1(4), 1(5), 3(1), 3(2), 3(6), 3(7), 4, 8(4), 9, 10(2) & 17(2)(b) of the TP 2014, pre 1 April 2014 final salary benefits are calculated using the definition of final pay in LGPS BMC 2007 (and, where appropriate, applying a Certificate of Protection under regulation 23 of LGPS 1997).

Under LGPS 2013 a member on reserve forces leave pays contributions on APP, regardless of the level of their reserve forces pay. However, LGPS BMC 2007 regulation 9(1) says that if a member was on reserve forces service leave and had continued to pay contributions in respect of it (i.e. in respect of the period of leave) his final pay:

a) includes his reserve forces service pay where this equals or exceeds what he would have received as pay from his local government employer, or
b) includes the pay he would have received from his local government employer if his reserve forces service pay was less than that.

That leaves us with a conundrum.

If the reserve forces pay is equal to or higher than the local government pay, do we include the reserve forces pay even though the member has only paid on APP (which is likely to have been less than his reserve forces pay)?

If the reserve forces pay is less than the local government pay, do we simply include the pay they would have received from their local government employer (even though that figure might be more, or potentially less given that APP includes overtime, than the APP he has paid contributions on?

Our view is that APP is a red herring and is of no relevance when it comes to a final pay calculation. Thus:

- in the case of those falling within (b) above, it is a straightforward case of simply including in final pay the pay the member would have received from their local government employer, and
- in the case of those potentially falling within (a) above our inclination would be to construct an argument that the member has not continued to pay contributions during the period of reserve forces leave in the sense meant by LGPS BMC 2007 regulation 9 and LGPS Admin 2008 regulations 19(2) & (3) - ie the member had not paid contributions on the higher reserve forces service pay as required under LGPS Admin 2008 regulations 19(2) & (3), but had, instead, paid contributions on APP. Using this line or argument, the member would not then fall within (a) above but would, instead, fall within (b) above and we would, therefore, simply include in final pay the pay they would have received from his local government employer (which seems more logical to us).

LGPS BMC 2007 – regulation 9(2)

Final pay: maternity leave etc

For the purpose of calculating final pay under regulations 1(4), 1(5), 3(1), 3(2), 3(6), 3(7), 4, 8(4), 9, 10(2) & 17(2)(b) of the TP 2014, pre 1 April 2014 final salary benefits are calculated using the definition of final pay in LGPS BMC 2007 (and, where appropriate, applying a Certificate of Protection under regulation 23 of LGPS 1997).

Regulation 9(2) of LGPS BMC 2007 makes no reference to shared parental leave, which came into effect from 31 December 2014, or to parental bereavement leave, which came into effect from 6 April 2020.

Although the references are absent, we will read that regulation as if it contained such references (on the grounds that it would be discriminatory to do otherwise and it is simply a case that the regulations haven’t kept pace with changes in the law).

Pension accounts

LGPS 2013 – equivalent of LGPS Admin 2008 regulations 11(2) to (6)

Separate employments - former query 128

LGPS Admin 2008 regulations 11(2) to (6) have not been carried forward into the LGPS 2013. All we have is regulation 22(2) which requires that separate accounts are held for separate employments.

However, it is virtually always the case that the duties of returning officer / acting returning officer are encompassed within a single contract of employment with the main job (eg as a Chief Executive). Thus, from 1 April 2014 the regulations no longer require the duties to be treated separately and there would be a single CARE account.

This means that the person cannot opt of the scheme in respect of the returning officer / acting returning officer duties without also opting out in respect of the main duties (and vice versa).

It would also mean that the death in service death grant and any ill health enhancement would get skewed depending on whether the member had received fees in the three months before death / ill health retirement. However, due to regulation 3 of TP 2014, the member would have to be treated as holding separate employments for the pre 14 membership. Which one would the post 14 CARE pension be attached to?

We're not certain what the impact on deferred and pensioner death grants would be. It seems that the simplest solution would be to re-introduce the equivalent of LGPS Admin 2008 regulations 11(2) to (6), as they have done in Scotland.

LGPS 2013 – regulation 23(6)

Active member's pension accounts - former query 19

Should the list of pension account adjustments in regulation 23(6)(a) to (f) make reference to regulation 23(10) (where pensionable pay relating to a period before a member ceased to be an active member is paid after the period of active membership has ended) as it is another reason for an adjustment to an active accounts?

LGPS 2013 – regulations 24(7), 25(6) and 27(5)

Deferred member's / deferred refund member's / retirement / flexible retirement pension accounts

When a member ceases active membership on 31 March the regulations do not provide for annual revaluation to be applied in the scheme year before leaving. This is because the member leaves active membership in one scheme year but changes status in the next. We recommend references are made to the 'member's last day of active membership' (or 'the member's notional last day of active membership' for regulation 27(5)) instead of, as the case may be, when the member becomes a deferred / pensioner member or entitled to immediate payment.

LGPS 2013 - regulations 26 & 28

Retirement pension accounts - former query 143

Deferred, deferred pensioner and pension credit members, deferred pensioner member accounts:

Regulations 44(5) and 45(12) provide that if a member ceases to be an active member, becomes a deferred member and dies all within the same Scheme year, the survivor accounts are still credited with a proportion of the revaluation adjustment that the member would have received in the Scheme year following cessation of active membership.

Unfortunately, we overlooked the need to have the same provision in regulation 26 to deal with cases where a member ceases to be an active member, becomes a deferred member and starts to draw pension all within the same Scheme year. Thus, an additional paragraph is needed in regulation 26.

Similarly, regulation 28 needs an additional paragraph added to deal with cases where a member ceases to be an active member, becomes a Tier 3 pensioner member and has the Tier 3 pension stopped all within the same Scheme year.

Additionally, due to changes to regulation 24(7), a new type of case has emerged where the regulations also do not provide for the final Treasury revaluation. This applies to members who became deferred in a scheme year and then become a pensioner on 1 to 5 April in the next scheme year. Before MHCLG changed the revaluation date, the member would have received the final Treasury revaluation on 1 April in the scheme year following the scheme year in which they became deferred. The increase would therefore have been part of the deferred CARE balance that was

transferred to the pension account. After the changes, the regulations are silent on the final Treasury revaluation.

LGPS 2013 – regulation 33

Election for lump sum instead of pension - former query 142

Where an active member retires on, say 20 February 2023 and all the paperwork required to process the benefits is received on, say 6 April 2023 that would be the date of the BCE. The member's benefits would include the Treasury Order revaluation applied on 6 April 2023 and so the member could, under regulation 33, commute up to 25 per cent of the value of benefits at that BCE.

However, if all the necessary paperwork had been received on 26 February 2023 that would be the BCE date and the member would, at that time, only have been able to commute up to 25 per cent of the value of the benefits at that BCE. The subsequent application of the Treasury Order on 6 April 2023 would constitute a second BCE and so the member should, technically, be given an option to commute up to 25 per cent of the increase in value of the CARE pot resulting from the implementation of the treasury order. However, due to the timing of the treasury order and the Pension (Increase) Review Order it would be virtually impossible to give the member that option ie the pensions increase programme is run after the March payroll has been run, the Treasury Order is not applied until 6 April and then the April payroll is run which produces a very tight, virtually impossible, timeline ie the administering authority would have to apply the Treasury Order, calculate the increase in value, write to the member to give them the option of commuting up to 25 per cent of the increase in value, get the member's additional commutation decision before the April payroll is closed and then overwrite the pensions increase that had been calculated when the pensions increase programme was run following the March payroll.

In order to avoid this we seek an amendment to regulation 33 to provide that the increase in value or a member's CARE pot derived from the application of a Treasury Order on 6 March following the date of cessation of active membership is excluded from the amount of pension that the member can commute under regulation 33.

This amendment would also apply to deferred members drawing the deferred pension (ie having a BCE) in a Scheme year subsequent to the one in which they ceased to be an active member. Thus an additional exclusion should be added to sub-paragraph (4):

(d) the amount by which the member's account is adjusted by the revaluation adjustment applicable at the beginning of the Scheme year following that in which the member ceased to be an active member.

LGPS 2013 – regulation 33(1)

Election for lump sum instead of pension - former query 148

Regulation 33(1) only allows the retirement pension to be commuted.

Schedule 1 says that "retirement pension" includes earned pension and additional pension but it is not entirely clear whether this includes the revaluation adjustment.

It might be helpful, therefore, to add a clarifying amendment to regulation 33(1) ie after the words "retirement pension payable" add the words "*(including any revaluation adjustment)*".

This, when coupled with the pension account amendments requested to regulations 26 and 28, would ensure that any revaluation adjustment added to the member's pension account up to the point of leaving active membership could be included within regulation 33 (1), but would exclude any revaluation adjustment added thereafter.

LGPS 2013 – regulations 37(7), 37(10) & 39(8)(a) & (b)

Uplift from Tier 3 to Tier 2 - former query 153

There are two types of uplift, this query concerns the first type of uplift regarding regulations 37(7) & (10).

Uplift type 1 - from tier 3 to tier 2 following a review

The first type of uplift is the one mentioned in paragraphs 50 & 51 of the DLUHC guidance at https://www.lgpslibrary.org/assets/statgui/ew/20140917IHG.pdf which says:

Scheme Employers' ability to uplift the member from tier three to tier two following the review (regulations 37(7)& (10))

50. At the 18 month review or, at the request of the Scheme member either whilst tier three benefits are in payment or at any time up to 3 years after the payment of the tier three benefit has been discontinued, the Scheme employer can uplift the member to tier two benefits. To achieve this, regulation 37(7) & (10) specifies that a member would need to satisfy either the tier one or tier two test first before an upgrade of benefits is awarded. Payment of tier two benefits would commence on

the date of the review decision under regulation 37(7)(b) (when reviewing Tier Three benefits) and on the date of the determination under regulation 37(10) (when an uplift of benefits is being sought up to three years after tier three benefits have ceased) where a medical certificate justifies this. (See regulation 32(9)). The enhancement is calculated as for that of a tier one except that the member's pension account is adjusted so that a quarter of the sum calculated in accordance with regulation 39(1)(a) is added. As a consequence, the member's pension account will need to be adjusted and regulation 39(8)(a) & (b) sets out how this should be applied.

51. There is no provision to make a determination for a tier one payment at the review or a subsequent occasion. If at the tier three review or subsequently, the independent registered medical practitioner judges that the member is, because of the condition resulting in tier three benefits, now permanently incapable of their local authority employment and is unlikely to be capable of undertaking gainful employment before normal pension age or is unlikely to be capable of undertaking any gainful employment within three years of leaving employment but is likely to be able to undertake gainful employment before normal pension age, the employer only has powers to award a tier two pension.

Uplift type 2 - to tier 1 or 2 following an IDRP appeal

The second is an uplift to tier 1 or tier 2 following an IDRP appeal – see paragraphs 65 & 66 of the DLUHC guidance.

Resolution of disagreements and Internal Dispute Resolution Procedure (IDRP)

65. Regulations 72-78 of LGPS 2013 enable a Scheme member to make an application for the resolution of any disagreement between themselves and a Scheme employer or an administering authority about a matter in relation to the Scheme. This includes any decision taken by a Scheme employer or administering authority under the Local Government Pension Scheme Regulations regarding entitlement to an ill health retirement benefit at the date employment was terminated, or the early payment of deferred benefits or early payment of benefits to a deferred pensioner member on ill health grounds (regulation 38). The Internal Dispute Resolution Procedure arrangements also apply in cases where a Scheme employer or administering authority has failed to make a decision within any period prescribed by the Scheme's regulations.

66. Other decisions which fall within the Scheme's Internal Dispute Resolution Procedure provisions include:-

a) any disagreement with the entitlement level of tier one, two or three pension (regulation 35(5), (6) & (7));

b) whether a certificate has been obtained from an independent registered medical practitioner in compliance with the Scheme's regulations (regulations 36(1), 37(6), (10), 38(3) & (6));

c) whether the Scheme employer has had regard to this guidance in carrying out their functions under regulations 36-38; and

d) whether a tier three pension should be suspended because the member has obtained gainful employment or, if not, is judged to be capable of undertaking such employment (regulation 37(3) & (4)).

Query

Looking at the second type (IDRP challenge) first of all, the uplifted benefit has to be treated as if it had been awarded from the day after the date of leaving. This is not an increase to a pension in payment, merely a correction to a benefit that had incorrectly been paid at the wrong rate and so does not constitute a BCE 3 (see https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm088630).

The administering authority should simply recalculate the benefit that would have been paid had the member retired with a tier two benefit from the day after the date of leaving and pay the arrears of pension and any lump sum. So the steps would be:

Step 1	Calculate tier two uplift on the day after leaving active membership as if member had been awarded uplift on that date
Step 2	Drop into pension account on day after leaving active membership (as per regulation 39(2))
Step 3	Adjust value by treasury order one second after midnight on the following 1 April (as per regulation 25(6))
Step 4	Apply pensions increase on 6 April (or first Monday thereafter if 6th is not a Monday) (as per regulation 25(7))
Step 5	Apply any further pensions increase depending upon whether or not a further pensions increase date has been passed (as per the Pensions Increase Act 1971)

Looking at the first type of uplift (following a review of benefits), as with the second type of uplift (IDRP challenge), the starting position is to look at regulation 38(8)(b) which says that the member's account is to be treated, on the date of the review decision under regulation 37(5) or the date of the determination under regulation

37(10) as if it were an active pension account for the purposes of the calculation of benefits to which the member is entitled.

This is supplemented by regulation 25(5)(b) which says that when the active account is closed the retirement pension account must include the increase resulting from an uplift to tier two.

Regulation 25(6) then says that in the year in which the member becomes a pensioner member (ie when the active account is closed) the account has to be adjusted by the treasury order revaluation and regulation 25(7) says that the revalued amount is then subject to pensions increase.

If we follow the wording of the regulations as they stand it would mean that (for a person who initially left in one year and was uplifted to tier two in the following year) we would have to treat them as an active member at the end of the year in which they left, meaning that they would get a full year's treasury order revaluation increase and, presumably, treat them as becoming a pensioner from the date of the uplift to tier two meaning that at the end of that year they would get a part year's treasury order revaluation and a part year's pensions increase. This would, on the face of it, produce the same answer as if we followed the steps shown in the proposal below but has two fatal flaws:

- firstly, it only produces the same answer if inflation is not negative (as an active account can be reduced on account of a negative treasury order but a pension cannot be reduced)
- secondly, it fails to meet the requirements of the Pensions Increase Act 1971 which, in section 8, says that the pensions increase date is to be the day following the last day of service in respect of which the pension is payable.

The regulations as presently drafted will not, therefore, produce the correct answer / comply with the Pensions Increase Act in all cases. To ensure that the correct answer is produced and that we comply with the Pensions Increase Act the only practical way to deal with these cases is as follows:

Step 1	Calculate tier two uplift on the day after leaving active membership as if member had been awarded uplift on that date
Step 2	Notionally drop this amount into the pension account on the last day of active membership. Note that although regulations 25(2)(e) & 25(5)(b) technically require that the amount should be dropped into the pension account on the

	first day the pension account is opened this would mean that, in the case of a person who retired on a 31 March, the amount of ill health enhancement would not get any treasury order revaluation on the following 6 April (but they should do). Thus, to ensure the correct increases are awarded, the amount is dropped into the active pension account on the last day of active membership (which is what happens if an active member retires with an immediate tier two pension ie regulation 39(1) requires that the active pension account is increased by the amount of ill health enhancement)
Step 3	Adjust (notional) value in pension account by treasury order revaluation on the following 6 April
Step 4	Apply pensions increase to (notional) amount of pension on 6 April (or first Monday thereafter if 6th is not a Monday)
Step 5	Apply any further pensions increase depending upon whether or not a further pensions increase date has been passed (as per the Pensions Increase Act 1971)
Step 6	Increase amount in pension account from the date of the review decision under regulation 37(5) or the date of the determination under regulation 37(10) to the value derived under steps 1 to 5

In order to achieve the above result we need the regulations to be changed.

TP 2014 – regulation 13(2)

Lump sum commutation - former query 98

This regulation makes it clear how commutation is to be apportioned across the pre and post 14 pension for the purposes of calculating a death grant.

However, there are other situations where it is necessary to define the same method of apportionment. For example:

- where the pre 14 pension has been calculated on an earlier year's pay. In this situation there is a balancing pensions increase payment in the following April on the pre 14 commuted lump sum. It is therefore necessary to determine how much of the commuted lump sum relates to the pre 14 pension, as it is only this lump sum that is due the further pensions increase award – there is no further

pensions increase due on the commuted lump sum derived from the post 14 pension.

- early payment of a suspended tier three pension (where the member has already commuted pension from the gross tier three pension (ie before reductions) so when we wish to apply the different early payment reduction to pre and post 2008 rights it will be necessary to determine what part of the commuted pension related to pre 2008 accruals and what related to post 2008 rights).

Perhaps the answer is to simply delete the words “to death grant” from regulation 13(2) of TP 2014. This would mean that the apportionment calculation works in relation to any benefit calculation (not just death grants).

Refund of contributions

LGPS 2013 – regulation 3(7)(f)

Active membership

We wonder whether it would be a good idea to amend regulation 3(7)(f) so that instead of reading:

“the member already holds a deferred benefit or is in receipt of a pension (other than a survivor’s pension or a pension credit member’s pension) under these Regulations”

it reads

“the member already holds a deferred benefit, or a Pension Credit or is in receipt of a pension (other than a survivor’s pension) under these Regulations”.

The reason we say this is because paying a refund to a member who holds or is in receipt of a pension credit pension would, we believe, make the refund an unauthorised member payment (because the refund doesn’t wipe out all the “member’s” rights as is required under paragraph 5 schedule 29 of the Finance Act 2004).

We think we are okay to still leave in the reference to survivor’s pensions because, although the definition of “member” in section 151 of the Finance Act 2004 would appear to include anyone in receipt of a pension from the scheme, it seems clear that “member” does not include survivors who are in receipt of a survivor’s pension.

This is because when one looks at section 164(1) of the Act it talks about benefits payable to or in respect of a member, and section 167(1) of the Act talks about pension death benefits payable in respect of the member. These clearly suggest that

a survivor in receipt of a survivor's pension is not a member but is simply a person in receipt of a benefit in respect of a member.

The wording of regulation 7(4) of TP 2014 would need to be amended too from:

"A member of the 2014 Scheme who has a deferred benefit or a pension in payment under the Earlier Schemes"

to

"A member of the 2014 Scheme who has a deferred benefit, or a Pension Credit or is in receipt of a pension (other than a survivor's pension) under the Earlier Schemes".

LGPS 2013 - regulation 18

Rights to return of contributions - former query 145

We have exchanged emails with HMRC regarding the entitlement to a benefit for a member who joins the LGPS over normal pension age (NPA) and leaves with less than two years' membership. We think the matter now needs further consideration by DLUHC with a view to a possible change to our regulations. We have set out a summary of the issue below:

- where a member joins the LGPS after NPA and leaves with less than two years' membership, regulation 3(7) of the LGPS 2013 do not permit the member to take a benefit from the scheme
- the Pension Schemes Act 1993 does not require the LGPS to provide either a short or long term benefit to the member, as set out in sections 70 & 71 of the Act, and furthermore the member is not entitled to a transfer out (under sections 93 or 101AB of the Pension Schemes Act 1993)
- our opinion is that as there is no overriding requirement to provide a benefit or a transfer out, that only leaves a right to a refund, however, the payment of a refund does not fall within the definition of a short service refund lump sum which is contained in paragraph 5 of schedule 29 to the Finance Act 2004; this means if we pay a refund of contributions, it would be an unauthorised payment.

We raised a query with HMRC asking if there was any possibility of getting the words *"before normal pension age"* removed from para 5 (1)(b) of schedule 29 of the Finance Act 2004 and received the response below:

"I confirm that the wording in the legislation is deliberate and meets the policy intent.

Once an individual has reached normal pension age (as defined in section 181 of the Pension Schemes Act 1993), then they can take benefits in pension form which will

be taxable in the normal way. There is therefore no need to pay such benefits as a short service refund lump sum which would be taxed in full at, at least 20 per cent, rather than 25 per cent being payable tax free, with the rest charged at the recipient marginal rate, if paid in pension form. What the scheme actually does will of course be determined by the scheme's rules. If the scheme pays a lump sum that does not fall within any of the definitions of authorised lump sums set out in the pensions tax legislation then that lump sum will be an unauthorised payment".

We did go back and point out that HMRC policy appears to be inconsistent with Government's policy on who has the right to a pension benefit as set out in Pensions Schemes Act 1993 and received the response below:

"As previously stated the legislation meets the Governments policy intention. The monies can be paid out to the individual as an authorised pension benefit as the individual has reached pension age, therefore it is not necessary to extend the short service refund lump sum rules to cover these individuals, particularly as for all practical purposes, individuals will always be worse off receiving a short service refund lump sum than a payment that is 25 per cent free with the balance charged at marginal rate. Tax legislation is a matter for Ministers but I can confirm that there are no plans to change this".

Of course, it is possible that funds could process a refund of contributions for these members under LGPS 2013 and make payment of the refund amount as a de minimis payment under regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] provided:

- the payment does not exceed £10,000 and
- the payment extinguishes the member's entitlement to benefits under the scheme.

However, under the de minimis payment approach, 25 per cent of the payment is treated as tax free and the rest is chargeable to income tax as if it had been pension income. This is different to the calculation of tax on a short service refund lump sum where tax at 20 per cent is applied to the refund.

Can DLUHC confirm how funds should be processing these cases and if a change to the regulations is required to provide such members a right to a benefit under the scheme, in line with HMRC policy?

LGPS 2013 – regulation 18

Rights to return of contributions

Where a member leaves an employment and is entitled to a refund of contributions, if they are concurrently an active member as a Welsh Councillor, they are unable to have a short service refund lump sum under the Finance Act 2004. This is because payment of the lump sum would not extinguish all the benefits in the scheme. Equally, they are unable to aggregate their short service entitlement to their councillor membership because the regulations do not provide for this scenario. If a lump sum were to be paid, whether as a refund of contributions or a small pot payment, the lump sum would be unauthorised under the Finance Act 2004 and will attract unauthorised payment charges. We believe the regulations need amending to correct this anomaly.

LGPS 2013 – regulation 18(1)(d)

Rights to return of contributions - former query 10

The words *"any contributions"* could be misleading and lead some members to claim that employer contributions included in the transfer should also be refunded. If the transfer is from a normal occupational pension scheme the employer contributions would not be refundable. However, employer contributions to some defined contribution schemes might be. Clearly, we do not want a member to demand repayment of employer contributions that would not have been refundable in the previous scheme, so we suggest some extra wording is added at the end of regulation 18(1)(d) so that it reads:

"any contributions included in a transfer payment received from a registered pension scheme or from a pension scheme or arrangement of a European Pensions Institution that could have been refundable under that scheme or arrangement."

LGPS 2013 – regulation 18(5)

Rights to return of contributions

The National Technical Group recommended to SAB in 2019, to change the regulations concerning the payment of a refund to reflect the position prior to 1 April 2014 (ie to remove the prescription that requires an administering authority to pay a refund on the expiry of a period of five years beginning with the date the person's active membership ceased if no request is made before then – regulation 18(5) of the LGPS 2013.

In making this recommendation the group acknowledged that interest would be added up to the date of payment, as opposed to on the expiry of five years.

LGPS 2013 – regulation 18(7)

Rights to return of contributions

Regulation 18(7) requires an administering authority to deduct a Contributions Equivalent Premium (CEP) from a refund of contributions prior to payment. However, HMRC will no longer accept the payment of CEPs (following the extension of the phase 7 re-run financial reconciliation exercise to 4 June 2019).

It was initially envisaged that the extension of the phase 7 re-run would sweep up all un-notified CEPs to HMRC. These could then be paid by the administering authority once they had received their final reconciliation schedule. Though potentially there will always be cases where an administering authority has simply missed identifying a refund case and it was missed from the phase 7 re-run.

However, we have identified a potential scenario that can occur as a direct result of the Scheme's three month vesting period from 2004 to 2014, that can occur in the future and will cause a problem as a CEP should be paid but cannot be paid, as follows:

Where a member:

- with a deferred benefit of less than two years membership (or less than two years deemed membership)
- re-joins the scheme after 4 June 2017 (the cut off point for HMRC notification of a CEP is 4 June 2019 – so this issue will affect members who re-join after 4 June 2017, all other such members should have been included within the phase 7 re-run)
- aggregates the deferred benefit of less than two years membership (or less than two years deemed membership) with their active membership, and
- subsequently leaves the scheme with less than two years membership (or less than two years deemed membership)

the member is entitled to a refund of contributions.

From that refund the administering authority may deduct any tax due under the Finance Act 2004 or certified amount due under section 61 of the Pension Schemes Act 1993 from any repayment of contributions and where any such deduction is made shall secure that the money withheld is used to discharge the tax liability or is included in the contributions equivalent premium liability due under section 55 of the

Pensions Schemes Act 1993. However, there is no facility to pay a CEP to HMRC (so essentially the contracted-out element of the refund cannot be discharged).

In this situation, the administering authority cannot pay a:

- full refund because HMRC will have contracted-out liability retained against the scheme member, and
- partial refund because this would not meet the definition of a 'Short service refund' under schedule 29 of the Finance Act 2004. Any such payment would be unauthorised.
- the LGPS 2013 do not provide for payment of partial refunds.

Essentially, LGPS 2013 are 'out of line' with HMRC processes in a 'post contracted-out' environment.

TP 2014 – regulation 7(4)

Qualifying service for the 2014 scheme - former query 169

In regulation 7(4) of TP 2014 we need to add *"(other than a survivor's pension or pension credit member's pension) or that would have been in payment but for regulation 3(13) or is a deferred pensioner"* after the words *"pension in payment".*

The words have been added to mirror the words in regulation 3(7)(f) of LGPS 2013 and to cater for pre 14 pensioners whose pension is currently not in payment due to abatement. But see our suggestion to update the wording in regulation 3(7)(f).

This is to ensure that a member with a suspended Tier 3 pension under the earlier schemes is treated as having met the two year criteria under regulation 3(7) of LGPS 2013. Without this amendment, such a member who re-joins the LGPS and leaves with less than two years membership under the 2014 Scheme would be entitled to a refund (but this would be an unauthorised payment as it wouldn't wipe out all the member's benefits in the Scheme).

Retirements

LGPS 2013 – regulations 3(7)(a) & 3(7)(c)

Active membership of Welsh Councillor members under the 1997 Regulations

Regulation 3(7) defines the circumstances by when a member has qualifying service for a period of two years. Regulation 3(7)(a) sets out that the first reason as if the

member has spent two years as an active member of the Scheme and 3(7)(c) looks at the aggregate period the person has spent as an active member of the Scheme. Crucially, an active member of the Scheme is defined as a person paying contributions under the 2013 Regulations, it does not include Welsh Councillor members who pay contributions under the 1997 Regulations. We believe Welsh councillors who pay contributions after 31 March 2014 should be included within the definition of 'active member' for the purpose of regulations 3(7)(a) and (c).

LGPS 2013 - regulation 3(7)(e)

Active membership - former query 131

This regulation deals with members who we have to pay a benefit to because we cannot pay a contributions equivalent premium (CEP). However, as:

- there is no CEP in respect of females who paid reduced rate national insurance (NI), and
- there will be no CEP for members who have no pre 6 April 2016 membership (because contracting out ceases from that date and so there will be no contracted-out NI contributions paid after 5 April 2016)

amend sub-paragraph (e) to read:

"the member has paid contracted-out National Insurance contributions (other than at the married woman's / widow's reduced rate) whilst an active member and ceases active membership after the end of the tax year preceding that in which the member attains pensionable age".

Future policy consideration

Due to the fact that we can no longer pay a CEP (last payments 4 June 2019), we might want to add an extra catch-all entry into regulation 3(7) along the lines that a member should be deemed to have met the two year qualification criteria where sub-paragraphs (a) to (i) do not apply and we cannot pay a CEP.

See recommendations made by the National LGPS Technical Group and agreement by SAB on 18 November 2019.

LGPS 2013 – regulations 30 & 32

Retirement benefits / commencement of pensions - former query 138

Regulations 30(1) & 30(3) only cover members who are *"not an employee in local government service"* as defined in schedule 1. There is nothing in regulation 30 that

covers employees who are in local government service (as defined in schedule 1) and who attain age 75 ie those who remain contributing to the LGPS until age 75 or who opted out of the Scheme before then but have remained in the employment from which they opted out until age 75. Their benefits should be payable from age 75 but there is nothing in regulation 30 that states this.

We therefore suggest that a new paragraph (3A) is added to say:

"A member who is an employee in local government service on the day before attaining age 75 must have their retirement pension paid from age 75 even if the member remains in local government service beyond that age".

A consequential amendment will also be necessary to regulation 32 ie a new sub-paragraph (1A) should be added to say:

"The first pay period for which any retirement pension is payable in accordance with regulation 30(3A) begins with the member's 75th birthday."

LGPS 2013 – regulation 30(1)

Retirement benefits - former query 58

Add the words *"in that employment"* after *"in local government service"*.

Otherwise the regulation reads as if the member has to cease all local government service rather than just the local government service within that employment, in order to be entitled to payment of benefits.

LGPS 2013 – regulations 30(6) & 27(1) / TP 2014 – regulations 11(2) & 11(3)

Flexible retirement - former query 162

Regulations 11(2) & (3) of TP 2014 provide that where a member who became an active member of the scheme on 1 April 2014 by virtue of regulation 5(1) of TP 2014 exercises a flexible retirement option under regulation 30(6) of LGPS 2013, that member must elect to draw all, some or none of the aggregated pre 1 April 2014 benefits. It is clearly intended that an election can only be made to draw pre 1 April 2014 aggregated benefits and not unaggregated benefits, else there would have been no need to have made reference to aggregated benefits.

However, where a member is not a member of the 2014 Scheme by virtue of regulation 5(1) of TP 2014 and holds both a deferred benefit and active membership relating to the same employment, and exercises a flexible retirement option under regulation 30(6), the picture is not so clear.

This could be where a member first joins the scheme after April 2014, opts out with a deferred benefit entitlement, re-joins in the same employment (being unable to aggregate their benefits if they made an election to opt out on or after 11 April 2015) and subsequently makes an application for flexible retirement under 30(6).

Regulation 30(6) of LGPS 2013 (regulation 27(1) also makes a similar statement) states:

"An active member who has attained the age of 55 or over who reduces working hours or grade of an employment may, with the Scheme employer's consent, elect to receive immediate payment of all or part of the retirement pension to which that member would be entitled in respect of that employment if that member were not an employee in local government service on the date of the reduction in hours or grade, adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State".

We understand that in the past, it was not the intention to provide for deferred benefits (built up in relation to the same employment as those of the active membership), to be brought into payment upon flexible retirement.

However, as currently worded regulation 30(6) (and regulation 27(1)) appears to contradict this policy for those members who first join the scheme after 1 April 2014 opts out with a deferred benefit entitlement, re-joins in the same employment (being unable to aggregate their benefits if they made an election to opt out on or after 11 April 2015) and subsequently makes an application for flexible retirement under 30(6).

LGPS 2013 – regulation 30(9)

Retirement benefits - former query 21

The reference to *"paragraphs (1) to (8)"* should be to *"paragraphs (1) to (7)"* (regulation 30(9) defines 'member' for the purposes of regulations 30(1) to (7) and regulation 30(8) provides that the administering authority may agree to waive an actuarial reduction where the former employer has ceased to be a scheme employer).

LGPS 2013 – regulations 30(10)& (11)

Retirement benefits

There are cases where, at the effective date of the pension sharing order, the pension credit member is already over normal pension age and, in some cases, already over age 75.

To cater for these cases regulation 30(10) should be amended by adding after the words *"normal pension age"* the words *"or who is, at the effective date of the pension sharing order, already at or over normal pension age".*

LGPS 2013 – regulation 30(11)

Retirement benefits - former query 59

After *"may"* add *"before attaining normal pension age or, if later, the effective date of the pension sharing order".* And immediately after *"normal pension age"* add "*or, if later, the effective date of the pension sharing order"*

This would make regulation 30(11) consistent with the changes requested for regulation 30(10) which suggests a pension credit member must take payment of their benefits from normal pension age or, if later, the effective date of the pension sharing order.

LGPS 2013 – regulations 37(6) & 37(10)

Special provision in respect of members receiving Tier 3 benefits - former query 24

These should contain the same proviso as in regulations 36(3) & 38(7) - that the IRMP has to be approved by the administering authority.

LGPS 2013 – regulation 37(8)

Special provision in respect of members receiving Tier 3 benefits - former query 113

At the end of regulation 37(8) add *"in respect of the discontinued pension"*.

This is because DLUHC have previously confirmed that, as presently drafted, a member who retires with a Tier 3 pension who subsequently returns to local government (perhaps many years later) and is again retired on health grounds without meeting the Tier 1 or Tier 2 criteria would not be entitled to a Tier 3 pension. Is that really the policy intention?

TP 2014 – regulation 3(5A)(a)(i)

Membership before 1 April 2014 - former query 175

Prior to the above amendments made by The Local Government Pension Scheme Miscellaneous Amendment) Regulations 2018 effective from 17 April 2018, a member who had opted out of the scheme must have ceased all local government employment in order to make an election under D11(2)(d) and D11(4). Following the

amendments they no longer need to do so (because regulation D4 is not set down as an exclusion from regulation D11(4)).

An optant out with a deferred benefit under the LGPS 1995 can now, therefore, draw their deferred benefit prior to their NRD, even if they are still in the job they opted out from.

We do not believe that this is the intention of the change and that it is most likely an error although the number of cases are likely to be minimal. We would be grateful if DLUHC could amend the regulations to prevent a member who had opted out of an employment from electing for early payment of their benefits in respect of that employment, else make their intentions clear in statutory guidance.

TP 2014 – regulation 3(6)

Membership before 1 April 2014 - former query 102

After *"the Earlier Schemes"* insert ", other than additional pension under regulations 13, 13A or 14 of LGPS BMC 2007," as those benefits are not final salary benefits.

TP 2014 – regulation 7(5)

Qualifying service for the 2014 Scheme - former query 88

Needs to be amended by adding at the end, beneath paragraph (c):

"and where the member elects for paragraph (b) or (c) to apply, the member shall be treated as having qualifying service for a period of 2 years for the purposes of regulation 3(7) of the 2013 Regulations (active membership)."

The wording mirrors that in regulation 7(4) and is needed for the following reason.

Take the case of a member who is in the scheme on 31 March 2014, who leaves post 31 March 2014 with less than two years and elects for a deferred benefit. They are aged 55, or subsequently reach that age, and wish to claim their deferred benefit on an actuarially reduced basis.

Regulation 30(5) of the LGPS Regulations 2013 says:

(5) A member who has not attained normal pension age but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.

Regulation 30(9) then says:-

(9) In paragraphs (1) to (8) of this regulation the expression "member" means a member with qualifying service for a period of two years and does not include a pension credit member.

Qualifying service for a period of two years is set out in Regulation 3(7).

However, unlike regulation 7(4) of TP 2014 there is currently nothing in regulation 7(5) of TP 2014 which says that a person with less than two years *is treated as having* qualifying service for a period of two years, only that they can choose to elect for a deferred benefit.

TP 2014 – regulation 11(4)(b)

Retirement benefits - former query 115

At the end add ",*where the member makes an election to draw the realisable value in the AVC arrangement at the same time.*"

This is to make it clear that, although paragraph (2) uses the word *"must"* the member has a choice over whether to take the AVC value (in accordance with the actuarial guidance issued by the Secretary of State).

TP 2014 - paragraphs 1(4)(a) & (b) of schedule 2

Protections - former query 84

Amend *"age 60"* in both paragraphs to *"the day before age 60"*.

This is because paragraphs 1(1)(b) & 1(3) deal with members who have attained age 60 and paragraphs 1(1)(c) & 1(4) 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.

The Secretary of State actuarial guidance on "Early Payment of Pension" has been updated to correct this anomaly.

LGPS Injury Allowances 2011 – regulation 6

Allowances for pensioners

Regulation 6 only permits an injury allowance equal to the difference between the annual rate of pension payable to the person under the LGPS in respect of pre 1 April 2014 final salary benefits and the pension that would have been payable in

respect of pre 1 April 2014 final salary benefits, if the injury allowance under regulation 3 that had been in payment as a result of a reduction in remuneration during the final pay period, had formed part of the person's remuneration during that period.

There is no scope for the post 31 March 2014 CARE benefits to be increased. Is this the policy intention?

LGPS Discretionary Compensation 2000 & 1996

Abatement - former query 117

The rules governing abatement and claw-back of compensatory added years will need to be considered by DLUHC.

This is because, given that pensionable pay in the 2014 Scheme includes pay in respect of additional hours worked in excess of contractual hours, it will not be known what the level of annual pensionable pay will be during the period of re-employment.

Furthermore, where re-employment ends after 31 March 2014, should the claw-back be based on the level of pension the person would have achieved during re-employment had the 2008 Scheme continued, or on the level of pension the person actually achieves from the period of re-employment?

LGPS 1997

De minimis lump sum commutation payments - former query 182

Regulation 34(1)(c) of the LGPS 2013 allows the commutation of a small pension 'under regulations 6 (payment after relevant accretion), 11 (de minimis rule for pension schemes) or 12 (payments by larger pension schemes) of the Registered Pension Schemes (Authorised Payments) Regulations 2009.' 39(1)(c) allows the same for leavers from 1 April 2008.

We recommend changes to LGPS 1997 that would allow leavers before 1 April 2008 to opt for a de minimis payment instead of a small pension.

We don't believe an amendment is needed to the LGPS 1995 because regulation 4(1)(b) of TP 1997 when read with the definition of "the common provisions" in regulation 2(1) of those regulations, applies regulations 49 & 50 of the LGPS 1997 to deferred benefits held under the LGPS 1995. So by making an amendment to regulation 49 of LGPS 1997 would automatically capture deferred benefits held under the LGPS 1995.

LGPS 1995 – regulation D11(4)(a)

Entitlement to deferred retirement benefits - former query 177

As a result of the changes made by regulation 4(a)(iv) of The Local Government Pension Scheme Miscellaneous Amendment) Regulations 2018 effective from 17 April 2018, regulation D11(4)(a) now reads "*the date on or after which he attains the age of ~~60~~55"*

This seems to read that the only date a member may elect for early payment of benefits before NRD is *'the'* date the member reaches age 55. We believe that D11(40(a) should read "***a*** *date on or after which he attains the age of 55".*

We would be grateful if DLUHC could amend the regulations to that effect, else make their intentions clear in statutory guidance.

Statutory underpin

LGPS 2013 - regulations 41, 42, 44, 45, 47 & 48

Survivor benefits - former query 29

By virtue of regulation 4(4) of TP 2014 an active member's pension account is to be increased at the underpin date by any underpin amount.

What is not clear is whether / how the underpin amount dropped into the active member's account feeds through to any survivor benefit.

It should do so (because if the member had remained in the 2008 Scheme the survivor would have benefited from that amount). Whilst one can possibly read some of the survivor regulations in the LGPS 2013 to include the underpin amount (eg regulation 41(4)(a)(i)) there are others where it does not seem possible to do so (e.g. reg 47(4)(a)).

Furthermore, even where it is possible to read some of the survivor regulations in the LGPS 2013 to include the underpin amount, the amount would be incorrect (because the underpin was based on a 60th accrual rate, not a 49th, and the survivor benefits should be based on a 160th or 1/320th etc accrual rate). Thus, to overcome these problems we suggest the following:

- add 41(4)(a)(vi) to read *"the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160"*

- add 42(4)(a)(vi) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/320”*
- add 42(5)(a)(vi) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160”*
- add 42(9)(a)(vi) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/240”*
- add 42(10)(a)(vi) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/1202*
- add 44(4)(g) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160”*
- add 45(4)(g) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/320”*
- add 45(5)(g) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160”*
- add 45(9)(g) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/240”*
- add 45(10)(g) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/120”*
- add 47(4)(g) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/1602*
- add 48(4)(g) to read “the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/320
- add 48(5)(g) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160”*
- add 48(9)(g) to read *“the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/240”*

- add 48(10)(g) to read *"the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/120"*

TP 2014 – regulation 4

Statutory underpin - former query 120

If a member retires with immediate benefits at age 64 with an NPA of 65 in the 2008 Scheme and an NPA of 66 in the 2014 Scheme, should the underpin calculation which is performed to be a comparison between:

a) the unreduced Final Salary (FS) benefits at the date of cessation of membership and the unreduced CARE benefits at the date of cessation of membership, or
b) the FS benefits at the date of cessation of membership with a 1 year reduction to 65 and the CARE benefits at the date of cessation with a 2 year reduction to 66?

At the present time, the underpin calculation would be performed as in (a) above and, if the FS benefit was higher, that would be the amount of pension payable to which a 1 year reduction would be applied (as the member is drawing immediate benefits at age 64). However, this can produce inequitable results.

For example, the amount of CARE pension calculated under (a) could be marginally higher than the amount of FS pension, so the CARE pension would be payable. However, when the 2 year reduction to age 66 is applied to that pension, it reduces the pension to below the level of the FS pension with a 1 year reduction to age 65.

As the intention is to give the member no less than they would have received had they remained in the 2008 Scheme it appears that, whilst the regulations require the comparison to be performed as per (a) above, the calculation ought to be as per (b) above. This would require an amendment to regulation 4 of TP 2014.

Similarly, where a member has an NPA of 66 in the 2014 Scheme and an NPA of 65 in the 2008 Scheme retires and draws immediate benefits at 65½, should the underpin calculation which is performed be a comparison between:

a) the unreduced Final Salary (FS) benefits at the member's 2008 Scheme NPA (65) and the unreduced CARE benefits at the member's 2008 Scheme NPA (65), or
b) the unreduced FS benefits at the member's 2008 Scheme NPA (65) and the actuarially reduced CARE benefits at the member's 2008 Scheme NPA (65) (ie with a 1 year actuarial reduction to 66), or

c) the actuarially increased FS benefits at the date of drawing the benefits (including the increase for 6 months deferment beyond age 65) and the actuarially reduced CARE benefits at the date of drawing the benefits (ie a 6 month reduction in respect of the period from 65½ to 66)?

At the present time, the underpin calculation would be performed as in (a) above and, if the FS benefit was higher, that would be held as the underpin amount (which would receive an actuarial increase for the 6 month period of deferment beyond age 65) and the CARE benefit accrued post age 65 would be subject to a 6 month actuarial reduction (for the period from 65½ to 66)[1].

However, as in the previous example, this can produce inequitable results. As the intention is to give the member no less than they would have received had they remained in the 2008 Scheme it appears that, whilst the regulations require the comparison to be performed as per (a) above, the calculation ought to be as per (c) above. This would require an amendment to regulation 4 of TP 2014.

TP 2014 – regulation 4(2)

Statutory underpin - former query 50

This should be amended to also include members who die in service. A share of the underpin would then feed through into the survivors' accounts.

Postscript: at meeting with DLUHC on 22 April 2015 it was agreed that if this is dealt with in the same way as in Scotland there would be no need for an amendment to TP 2014.

TP 2014 – regulation 4(6)

Statutory underpin - former query 119

Where:

a) a member re-joins the Scheme on or after 1 April 2014 (eg on 1 February 2015)
b) chooses to retain separate deferred benefits in the LGPS in England and Wales, and
c) meets the criteria for the underpin ie:

1 Or, if the member had remained an active member beyond their NPA in the 2014 Scheme, an actuarial increase for the period of deferment beyond their NPA in the 2014 Scheme.

- they were an active member of the 2008 Scheme on 31 March 2012 (ie in respect of their deferred benefit record) and were, on 1 April 2012, 10 years or less from their normal retirement age under the 2008 scheme and
- they were an active member immediately before the underpin date (ie in their active pension account), and
- they receive payment of benefits under the 2014 Scheme on or after the underpin date, and
- they do not have a disqualifying break in service (ie a continuous break in active membership of public service pension schemes of more than five years), and
- prior to the underpin date have not drawn benefits under the 2013 Regulations in relation to an employment (which they haven't because the deferred benefit does not relate to the new employment)

then is it the policy intention that they should have the underpin applied to their further benefits built up in the career average scheme? Our conclusion is that, for the reasons set out below, the underpin would apply to the further benefits built up in the career average scheme.

The wording of regulation 4(1)(a) of TP 2014 says the member has to have been an active member on 31 March 2012 (which the member was in relation to their deferred benefit) but was not in their current period of membership. However, regulation 4(1)(a) does not require the person was an active member in relation to the current period of membership and so this suggests that the underpin applies.

Regulation and 4(6)(a) of the TP 2014 says that the underpin is calculated based on membership between 1 April 2014 and the underpin date (based on periods of membership for which the person has paid contributions under regulations 9 or 10 and ignoring unpaid leave of absence for which the member has not paid an APC/SCAPC). There are three scenarios we can think of:

3. if the member had left with a deferred benefit pre 1 April 2014 and re-joined post 31 March 2014 without a disqualifying break of more than 5 years, they would get an underpin on the post 31 March 2014 membership (regardless of whether or not they had aggregated the pre 1 April 2014 membership)
4. if the member had left post 31 March 2014, re-joined post 31 March 2014 (without a disqualifying break of more than five years) and aggregated membership, they would get an underpin on the aggregated post 31 March 2014 membership
5. if the member had left post 31 March 2014, re-joins post 31 March 2014 (without a disqualifying break of more than five years) and does not aggregate membership, they would get an underpin on the deferred benefit. It appears

that they would also get an underpin on the second period of membership as, even if the deferred benefits had been paid prior to the underpin date that applies to the new employment, the benefits that had been paid were not in relation to the new employment. Regulation 4(1)(d) only debars an underpin if the member has already received benefits *"in relation to an employment"* (eg on flexible retirement). However, technically, we believe an amendment to regulation 4(6) is needed in this case to debar the membership from the unaggregated period being taken into account when assessing the underpin in relation the new period of employment (as, currently, regulation 4(6) does not seem to do so).

TP 2014 – regulation 9(1A)

Transfers - former query 164

There are some cases where, despite being eligible to remain in the final salary scheme, individual members of other public service pension schemes have opted to move to the CARE Scheme for future (post-15) accrual. Such members should not be subject to the underpin. We would therefore suggest the following revision:

"(1A) Regulation 4 (statutory underpin) applies to a person of the description in paragraph (1) if that person –

(a) was, at the date of cessation of membership in the public service pension scheme from which they transferred benefits to the Local Government Pension Scheme, accruing benefits under that scheme's existing scheme in accordance with section 18(5) of the Public Service Pensions Act 2013, and

(b) would have met the condition in regulation 4(1)(a) if that person had been an active member of the 2008 Scheme in respect of any period of service that, under the different public service pension scheme, entitled them to final salary benefits."

Survivor benefits

LGPS 2013 / earlier regulations

Survivor benefits - former query 146

As you may be aware, SPPA made changes to the Scottish regulations to deal with survivor benefits following gender reassignment - see SSI 2015/448.

The only change made to the LGPS in England and Wales was the insertion of regulation 42D into the LGPS 1997 - inserted by regulations 11(2) & 11(3) of

statutory instrument (SI) 2014/3061). This only covers male to female gender reassignment. What we don't understand is why:

a) it was felt appropriate not to also cover female to male gender reassignments (as, for example, the Teachers' Pension Scheme did – see regulations 11(2) & 11(4) of SI 2014/3061 – and as the LGPS in Scotland has done – see SSI 2015/448), and
b) why, unlike in the LGPS in Scotland, no change was made to LGPS BMC 2007 or TP 2014 to cover survivor benefits upon gender reassignment (ie the only change that has been made is to insert regulation 42D into LGPS 1997).

1 July 2016 – Email from Bob Holloway (DLUHC)

Terry – I have discussed this with Jon. He doesn't recollect the particular issue but has agreed that it is not on his list of things that we shouldn't do by way of scheme amendments. Which is his way of saying that it is up for consideration and should therefore be added to your list of corrections.

LGPS 2013 – regulation 42(5)(a)(ii)

Children of active members - former query 189

There appears to be an error in regulation 42(5)(a)(ii) (Children of active members) of LGPS 2013.

It refers to an *"actuarial reduction"* but we believe it should refer to an *"actuarial adjustment"* in order to cover actuarial increases and to be consistent with all the other equivalent regulations ie regulations 41(4)(a)(ii), 42(4)(a)(ii), 42(9)(a)(ii), 42(10)(a)(ii), 44(4)(b), 45(4)(b), 45(5)(b), 45(9)(b), 45(10)(b), 47(4)(b), 48(4)(c), 48(5)(c), 48(9)(c) and 48(10)(c) which refer to an *"actuarial adjustment".*

LGPS 2013 – Regulation 42(12)

Children of active members - former query 144

Children of active members - amend the word *"valuation"* to *"revaluation"*

LGPS 2013 – Regulation 45(9A)

Children of deferred members

New regulation 45(9A) was inserted into LGPS 2013 by the LGPS (Amendment) Regulations 2013. The change is to reflect the annual revaluation date change. We believe new regulation 45(9A) should state "…in which the member ceased to be an active member" in paragraphs (a) and (b). This is to be consistent with new

regulations 45(4A), 45(5A) and 45(10A) to ensure annual revaluation is not missed when calculating the child's pension where the member dies between 1 to 5 April.

TP 2014 – regulation 17(3)

Survivor benefits - former query 112

To ensure that survivors of a death in service benefit from the protection referred to in regulation 12(1) (Ill Health enhancement protection under the 1997 Scheme for those members aged 45 before 1 April 2008) of TP 2014, please amend regulation 17(3) of TP 2014 to read:

"(3) 2014 Scheme survivor pensions for the purposes of paragraph (1) are calculated in accordance with the 2013 Regulations or, where the deceased member would have benefited from the protection in regulation 20(13) of the Benefits Regulations (transitional protection for those aged 45 before 1st April 2009) if that regulation had applied on the date of the member's death, are calculated as the higher of

(a) the pension calculated in accordance with the 2013 Regulations, and

(b) the benefits the survivor would have received under sub-paragraph (a) if the amount to be added under regulations 41(4)(b), 42(4)(b), 42(5)(b), 42(9)(b) or 42(10)(b) of the 2013 Regulations (calculation of enhancement) were calculated by reference to the period that would have been added had regulation 28 of the 1997 Regulations (amounts of ill-health pension and grant) applied and if

(i) the period of membership the member had accrued under the Earlier Schemes and the 2014 Scheme had counted as a period of membership of the 1998 Scheme,

(ii) the amount added under regulations 41(4)(b), 42(4)(b), 42(5)(b), 42(9)(b) or 42(10)(b) of the 2013 Regulations were calculated by reference to the accrual rates referred to in those regulations."

LGPS Injury Allowances 2011 – regulation 7

This regulation still makes reference to and defines what is, a nominated co-habiting partner. This needs updating to reflect the Brewster judgement.

Tax

LGPS 2013 – regulations 17(13), 17(14), 40(4), 43(4) & 46(5) / TP 2014 - regulation 17(5)

Death grants / survivor benefits - former query 150

At the present time, regulations 40(4), 43(4) and 46(5) of the LGPS 2013 require that if a member dies before age 75, any defined benefits lump sum death benefit, if not paid before the expiry of the period of two years from the member's date of death, or where the authority did not know about the member's death before the expiry of that period, beginning with the date on which the administering authority could reasonably have been expected to have become aware of the member's death, has to be paid to the member's personal representatives (i.e. to the deceased's estate).

The wording of the regulations was to ensure that payment was made within the prescribed two year period as, otherwise, any lump sum paid after that period would have been an unauthorised payment.

However, it has been brought to our attention that regulations 40(4), 43(4) and 46(5) LGPS 2013 can be misconstrued as they are currently written.

Prior to the change made by the Finance (No.2) Act 2015, the Finance Act 2004 set out the relevant period for payment of an authorised defined benefit lump sum death benefit as:

"it is paid before the end of the period of two years beginning with the day on which the member died, earlier of the day on which the scheme administrator first knew of the member's death and the day on which the scheme administrator could first reasonably be expected to have known of it"

However, LGPS 2013 stated something similar it wasn't the same, they stated:

"If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives"

which could be oddly interpreted to mean:

- Scenario 1 – where the fund knew about the death within the two year period beginning with the date of death

– the fund must pay the death grant to the personal representatives where it is not paid within the two year period beginning with the date of death

- Scenario 2 – where the fund did not know about the death within the two year period beginning with the date of death

– the fund must pay the death grant to the personal representatives where it is not paid within the two year period beginning with the date upon which the fund could reasonably be expected to have become aware of the death.

Clearly the above is incorrect and we would have suggested a change to correct the position, however, events have somewhat moved on by the changes brought about by the Finance (No.2) Act 2015.

The Finance (No.2) Act 2015 introduced three new rules to make the system fairer:

Rule change 1

The Finance (No.2) Act 2015 removed the requirement for the lump sum death benefit to be paid within two years of the members death in order to be tax free and expanded this provision to state that the lump death benefit would not be taxable if:

“the lump sum death benefit is not paid before the end of the period of two years beginning with the earlier of the day on which the scheme administrator of the scheme first knew of the member's death and the day on which the scheme administrator could first reasonably have been expected to have known of it”

Rule change 2

The Finance (No.2) Act 2015 specifies that defined benefit lump sum death benefits paid on or after 6 April 2016 do not have to be made within the 2 year period to be authorised defined benefits lump sum death benefits. They can now be made outside that time limit and still be an authorised defined benefit lump sum death benefit

Rule change 3

The Finance (No.2) Act 2015 removed the rule that stated that defined benefit lump sum death benefits would only be authorised if paid within the relevant two year period after the member’s death, where the member died before age 75. This a

defined benefit lump sum death benefit could be paid in respects of a deceased member who died after age 75.

Proposals for change

Policy review 1

With regards to rule changes 1 and 2, as a payment no longer has to be made within the prescribed two year period (especially as the definition of this period has now changed to "*two years beginning with the earlier of the day on which the scheme administrator of the scheme first knew of the member's death and the day on which the scheme administrator could first reasonably have been expected to have known of it"*) we would support a change to the regulations to reflect this - ie the deletion of regulations 40(4), 43(4) and 46(5) of the LGPS Regulations 2013.

Such a change would have two major benefits.

Firstly, it would mean that administering authorities would have time to deal with difficult cases without having to resort to making a payment to the estate at the end of two years.

Secondly, it would result in a fairer tax treatment (which was one of the purposes of the change made by the Act).

Instead of being forced to pay the lump sum to the personal representatives (ie to the deceased's estate) at the end of two years, the administering authority could, instead, make a payment beyond the two year period to an individual or individuals (other than someone who is receiving the payment in their capacity as a trustee, personal representative, director of a company, partner in a firm or member of a limited liability partnership).

Where they make a payment to an individual or individuals, rather than to someone who is receiving the payment in their capacity as a trustee, personal representative, director of a company, partner in a firm or member of a limited liability partnership, the payment would be treated as the recipient's pension income and tax deducted under PAYE (which in most cases would be less than 45 per cent).

If payment was made to someone who is receiving the payment in their capacity as a trustee, personal representative, director of a company, partner in a firm or member of a limited liability partnership, it would be taxed at the rate of 45 per cent.

For the same reasons, regulations 17(13) and 17(14) of LGPS 2013 (which relate to an uncrystallised funds lump sum death benefit) should be deleted.

Any tax on defined benefits lump sum death benefits or uncrystallised funds lump sum death benefits which the administering authority may be responsible for would be covered by regulation 87 of the LGPS 2013.

Regulation 17(5) of the TP 2014 would also need to be amended for the same reasons set out above by adding at the end *"with the exception of regulations 32(4) and 35(4) of the Benefits Regulations, regulations 38(6) and 155(5) of the 1997 Regulations and regulation E8(5) of the 1995 Regulations".*

Policy review 2

With regards to rule change 3, regulation 46(1) of the LGPS 2013, regulation 35(1) of LGPS BMC 2007, regulation 38(1) LGPS 1997 all state that *"If a pensioner member dies before attaining the age of 75 an administering authority shall pay a death grant."*

Given that the over-riding restriction that prescribed for death grants to be authorised that the member must have died prior to age 75 has been removed for payments on and after 6 April 2016, we think that it would be appropriate to reconsider the current LGPS provisions.

This is because, a member who took payment of their pension within 10 years of age 75 and who dies within 10 years of payment yet on or after age 75, cannot be paid the death grant.

LGPS 2013 – regulations 18 & 17 / TP 2014 - regulations 15 & 17

Right to a return of contributions / AVCs / survivor benefits - former query 159

Deferred Refund

We have received several queries concerning how a deferred refund of contributions, should be treated for tax purposes, where the member has died prior to payment.

For members who left active membership of the scheme prior to 1 April 2008 the form by which such payments were made was prescribed within regulation 87(2B) of LGPS 1997, which stated *"If a member dies before repayment of the contributions have been made, these shall be treated as a lump sum death benefit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004"* and regulation 95 (Payments due in respect of deceased persons) allows for payment to the deceased's estate.

Therefore, people who left on or after:

- 1 April 1997 and prior to 1 April 2008, and
- 1 April 1974 and prior to 1 Apri1 1997 (this group are covered by regulation 29 of TP 1997)

are dealt with in accordance with the LGPS 1997. Accordingly, the deferred refund, paid in respect of a deceased member is paid as a defined benefit lump sum death benefit (DBLSDB) under section 168 of the Finance Act 2004.

However, such prescription was omitted from LGPS Admin 2008 and LGPS 2013 and is causing confusion and inconsistency amongst LGPS Funds.

In order to provide clarity, consistency and the correct tax deduction, we suggest that DLUHC include the following statement *"If a member dies before repayment of the contributions have been made, these shall be treated as a lump sum death benefit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004"* within:

- regulation 18 of the LGPS 2013 (in respect of members who left active membership of the scheme on or after 1 April 2014), and
- regulation 17 of TP 2014 (in respect of members who left active membership of the scheme on or after 1 April 2008 and prior to 1 April 2014)

Non-life assurance AVC pots attached to a frozen refund

In addition, payment of a non-life assurance AVC pot attached to a frozen refund, where the member has died prior to payment, is not addressed anywhere within the LGPS regulations.

In such circumstances, we believe that the payment of a non-life assurance AVC pot attached to a deferred refund, where the member has died prior to payment, should be paid as an uncrystallised funds lump sum death benefit (UFLSDB) under section 168 of the Finance Act 2004.

Accordingly, in order to provide clarity, consistency and the correct tax deduction, We suggest that DLUHC include the following statement *"If a member dies before repayment of the non-life assurance AVC pot, these shall be treated as an uncrystallised funds lump sum death benefit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004"* within:

- regulation 17 of LGPS 2013 (in respect of members who left active membership of the scheme on or after 1 April 2014), and
- regulation 15 of TP 2014 (in respect of members who left active membership of the scheme prior to 1 April 2014)

Further background information

Members who left active membership on and after 1 April 2008 and before 1 April 2014 - Unfortunately, the LGPS Admin 2008 were completely silent and, indeed, regulation 46 only seems to allow a deferred refund direct to the member

However, regulation 52 (Payments due in respect of deceased persons) allows for payment to the deceased's estate, though as with the LGPS 2013 the regulation does not specifically state that the payment should be treated as a DBLSDB.

Members who left active membership on and after 1 April 2014 - LGPS 2013 (regulations 18(6) and (7)), state:

"(6) If a person entitled to a repayment under paragraph (1) dies before the payment is made, the administering authority must pay the sum due to the person's estate.

(7) The administering authority may deduct any tax due under the Finance Act 2004 or certified amount due under section 61 of the Pension Schemes Act 1993 (17) from any repayment under paragraph (1) and where any such deduction is made shall secure that the money withheld is used to discharge the tax liability or is included in the contributions equivalent premium liability due under section 55 of the Pensions Schemes Act 1993"

So whilst the regulations permit the deferred refund to be paid to the deceased's estate and for any tax liability due under the Finance Act 2004 to be deducted, the regulation does not specifically state that the payment should be treated as a defined benefit lump sum death benefit (DBLSDB).

Finance Act 2004

Having reviewed the Finance Act 2004 it is quite clear that section 166(1)(c) only covers refunds paid direct to the member as it states:

"This is the rule relating to the payment of lump sums by a registered pension scheme to a member of the pension scheme ("the lump sum rule")".

One can conclude, therefore, that a refund paid to the estate must fall within section 168 (this would tie in with regulation 87(2B) of the LGPS Regulations 1997) and be a DBLSDB, as it states *"This is the rule relating to the payment of lump sum death benefits by a registered pension scheme in respect of a member of the pension scheme ("the lump sum death benefit rule")".* You will note that section 168 does not define to whom the payment is made and the definition of lump sum death benefit is equally broad as section 168(2) states:

"In this Part "lump sum death benefit" means a lump sum payable on the death of the member , or a lump sum payable in respect of the member on the subsequent death of a dependant, nominee or successor of the member".

Summary

We appear to have a situation whereby deferred refunds paid in respect of a deceased member who left active membership of the scheme:

- Prior to 1 April 2008 are paid as a DBLSDB, and we feel regulation 95 (Payments due in respect of deceased persons) of LGPS 1997 allows for payment to the deceased's estate.
- On or after 1 April 2008 and prior to 1 April 2014, whilst the LGPS Admin 2008 are silent on this matter we feel that regulation 52 (Payments due in respect of deceased persons) allows for payment to the deceased's estate, though as with the LGPS 2013 the regulation does not specifically state that the payment should be treated as a DBLSDB.
- On or after 1 April 2014, whilst LGPS 2013 permit the deferred refund to be paid to the deceased's estate and for any tax liability due under the Finance Act 2004 to be deducted , the regulation does not specifically state that the payment should be treated as a DBLSDB.

Non-life assurance AVC pot attached to a deferred refund

Another area not covered within the LGPS regulations is that concerning "non-life-assurance AVC pots attached to a deferred refund".

Although it is highly unlikely that we will have someone with a deferred refund who has paid AVCs (let alone a case where that person then dies before the deferred refund is paid), if we do, the AVC pot would not be a defined benefit lump sum death benefit, but an uncrystallised funds lump sum death benefit.

LGPS 2013 – regulation 33(1)

Election for lump sum instead of pension - former query 72

Replace *'any benefits in relation to the benefit crystallisation event become payable'* with *'the benefit crystallisation event in respect of which benefits are payable'.*

This is because a BCE can occur after the date the pension is due to commence (ie after the date the benefits become payable) (eg because all the necessary paperwork from the member or the employer is not received until after the date the

pension is due to commence); an election to commute need only be made prior to the BCE.

LGPS 2013 – regulation 33(4)(a) & LGPS 1997 – regulation 147(3)

Election for lump sum instead of pension - former query 134

We believe this is not restrictive enough as it allows a pension credit member to commute pension to lump sum if the pension debit member's pension is in payment but the debit member had not commuted any pension for lump sum.

However, under the Finance Act 2004 a pension credit member cannot commute pension for lump sum if, at the time the pension credit was created, the member's ex-spouse or former civil partner's pension that was being shared was in payment - see http://www.hmrc.gov.uk/manuals/ptmanual/ptm063230.htm which says

Payment of a pension commencement lump sum where there is a disqualifying pension credit

Paragraphs 2(1) to (5), 3(2), (5)(b) and (8)(b) Schedule 29 Finance Act 2004

If all or part of the benefit entitlement from a registered pension scheme comes from a 'disqualifying pension credit', those pension credit rights are not included when calculating the maximum applicable amount of pension commencement lump sum that can be paid.

As the permitted maximum is the lower of the applicable amount and the available portion of the member's lump sum allowance then, where all the member's rights under an arrangement relate to a disqualifying pension credit, the permitted maximum is nil (as the applicable amount is nil). So a lump sum cannot be treated for tax purposes as a pension commencement lump sum in such cases. This will not change no matter how high the available portion of the member's lump sum allowance is.

Where only part of the arising benefit entitlement represents a disqualifying pension credit the applicable amount is discounted proportionately.

Definition of a disqualifying pension credit

Paragraph 2(3) and (4) Schedule 29 Finance Act 2004

A pension credit is a disqualifying pension credit if at the time the pension credit was created, the member's ex-spouse or former civil partner's pension that was being shared with the member was actually in payment.

If the pension credit arose from the member's ex-spouse or former civil partner's benefit that had not yet come into payment at that time, it is not a disqualifying

pension credit. The position is not affected where the member's ex-spouse's or former civil partner's benefits come into payment after the creation of that pension credit.

Reason for exclusion

The purpose behind this exclusion is to ensure that where a pension in payment is split through a pension sharing order, the person who is provided with the pension credit will not be able to take a tax-free lump sum from the benefit rights that are acquired.

This is on the basis that when the member's ex-spouse or former civil partner's benefits first came into payment, that ex-spouse or former civil partner will have taken (or had the opportunity to take) a tax-free lump sum in respect of the benefits, so it would not be appropriate to allow a lump sum to be taken free of income tax from the pension credit rights.

This applies regardless of whether a lump sum was actually taken by the pension debit member.

LGPS 2013 – regulations 40, 43, & 46 / TP 2014 – regulation 17

Death grants / survivor benefits - former query 174

Can DLUHC consider if it is their intention to allow an LGPS member who has used up their available lifetime allowance on retirement, to specify that any death grant that becomes payable, should they die within 10 years of retiring, be treated as a pension protection lump sum death benefit rather than a defined benefits lump sum death benefit (as per PTM073300)?

If this is the case the regulations will need to be amended to provide for this provision.

Background

Paragraph 14 of part 2 of schedule 29 to the Finance Act 2004 defines pension protection lump sum death benefits. Paragraph 14(1) says

(1) For the purposes of this Part a lump sum death benefit is a pension protection lump sum death benefit if

(b) it is paid in respect of a defined benefits arrangement,

(c) it is paid in respect of a scheme pension to which the member was entitled at the date of the member's death, and

(d) the member has specified that it is to be treated as a pension protection lump sum death benefit (instead of a defined benefits lump sum death benefit).

The conditions in paragraph 14(1)(b) and (c) would be met in respect of the LGPS.

The problem is the condition set out in paragraph 14(1)(d). This requires that the member, at some point before death, has specified that the death grant should be treated as a pension protection lump sum death benefit (instead of a defined benefits lump sum death benefit).

The question then becomes whether a LGPS member is legally able to make this election.

In Hyman's Guide on tax simplification in respect of the LGPS, on this point, it notes 443 The Finance Act also provides an alternative treatment to the payment of a death grant. It provides that a pensioner can specify that he or she wishes the lump sum death grant to be treated in a different way for tax purposes, referred to as a 'pension protection lump sum death benefit' in the Finance Act […]

444. HMRC has confirmed that for this to be permitted, the LGPS Regulations would need to be amended to allow members to elect for this. This is, however, optional and as at the time of writing there is no indication that MHCLG intend to amend the LGPS Regulations to allow this.

To conclude, it seems that LGPS members are unable to specify that any potential death grant will be classified as a pension protection lump sum death benefit, rather than as a defined benefits lump sum death benefit, on the grounds that the regulations do not make provision for this.

For your information, some public service pension schemes have made such provision. As examples, see

1. Regulation 125 - Public Service (Civil Servants and Others) Pensions Regulations 2014
2. Regulation F2(3)&(4) - National Health Service Pension Scheme Regulations 1995
3. Regulation 8(3) - National Health Service Pension Scheme Regulations 2008
4. Paragraph 16(5), part 7 of schedule 3 - National Health Service Pension Scheme Regulations 2015
5. Regulation 157 - Police Pensions Regulations 2015
6. Regulation 116 - Judicial Pensions Regulations 2015.

LGPS 2013 - regulations 44, 45, 47 & 48

LTA charge - former query 184

Regulations 44(4), 45(4), 45(5), 45(9), 45(10), 47(4), 48(4), 48(5), 48(9) & 48(10) of the LGPS 2013 are not explicit that an LTA charge (deducted from the deceased member's pension in payment) should be excluded from the calculation of dependents benefits and we request that a change to the regulations is duly made.

This would make the regulations consistent with the:

- GAD guidance, that is also extant for members who take payment of their deferred benefits from earlier schemes.
- Finance Act 2004 which states that the persons liable to the lifetime allowance charge are the individual and the scheme administrator of the pension scheme [section 217(1)]. The individual is defined as the individual in relation to whom the benefit crystallisation event giving rise to the charge occurs [section 214(5)]. The definition of 'individual' does not include a dependent of the individual to whom the benefit crystallisation event gave rise to the charge (unless an LTA occurs due to the dependent being designated an annuity - BCE5C and BCE 5D – [section 217(2A)].

LGPS 2013 – regulation 56(2)

Accounts and audit - former query 137

The reference to 31 March will need to be amended to 5 April in order to comply with the amendments made to the Finance Act 2004 which prescribe that the pension input period for all schemes ends on 5 April.

Transfers - Bulk transfers

LGPS 2013 – regulations 98(1)(c)(i) & 98(2)

Bulk transfers (transfers of undertakings etc) - former query 172

As a result of the amendments made to the Pension Schemes Act 1993 by the Pension Schemes Act 2015 in regulations 98(1)(c)(i) and 98(2) amend *"Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993"* to *"Chapter 1 or 2 of Part 4ZA or Chapter II of Part IVA".*

Chapters 1 and 2 of Part 4ZA cater, respectively, for those entitled to a deferred benefit and those with 3 or more months membership who are not entitled to a

deferred benefit; and Chapter II of Part IVA caters for transfers out for Pension Credit members.

LGPS 2013 – regulations 100 & 101

Inward transfers of pension rights / effect of acceptance of a transfer value - former query 38

We need some form of bulk transfer in provision just as we have a bulk transfer out provision (see regulation 98).

Transfers – In

TP 2014 – regulation 9

Transfers - former query 163

Regulation 9 of TP 2014 caters for cases where a transfer from a different public service pension scheme includes final salary benefits. However, we believe there are cases where, under the Club rules, the LGPS will have to accept a transfer from a Club Scheme that is not a public service pension scheme and which includes final salary benefits.

Under the Club rules the LGPS will, in such cases, have to grant pre-14 final salary benefits if the break between leaving the sending Scheme and joining the Fund was not more than 5 years – see paragraphs 1.1b and 4 and section 5 of the Club Memorandum at http://www.lgpsregs.org/images/OtherGuidance/PSTC-MemoMar2015UpdatedDec2015.pdf.

If a transfer including final salary benefits is received from such a Club scheme the transfer will not be covered by regulation 9 of TP 2014 (because that regulation only covers transfers from Club schemes that are public service pension schemes).

According to DLUHC the transfer will, instead, have to be dealt with under regulation 100(8) of the LGPS 2013 which says that an administering authority must comply with the requirements of the Club memo (i.e. give final salary benefits in the pre-14 Scheme). However, the DLUHC line does not hold water because regulation 101 says that if a transfer is received from a Club Scheme the admin authority must credit the active member's pension account with the appropriate amount of earned pension, calculated in accordance with the Club memo. Clearly, we can't credit an active account under the 2014 Scheme with final salary membership; we can only credit it with earned pension. So, regulation 9 of the TP 2014 needs to be amended to cater for such cases.

TP 2014 – regulation 9(1)

Transfers - former query 149

Paragraph (1) provides that where a transfer payment includes a payment in respect of final salary benefits “such payment” shall purchase pre-14 final salary benefits.

However, as the words “such payment” could be construed as referring to the “transfer payment” (which might include CARE benefits too) rather than just to that part of the payment that relates to final salary benefits, it would be helpful if the words “such payment” were amended to “that part of the transfer payment that relates to final salary benefits”.

TP 2014 – regulation 9(1)

Transfers final salary protection

We are unsure whether Northern Irish public service pension schemes fall under the definition of public service pension scheme (PSPS) for the purpose of retaining final salary protection upon transfer under the PSPA2013.There does not appear to be any link with PSPA 2013 and the Public Service Pensions Act (Northern Ireland) 2013.

However, TP 2014 does appear to provide a final salary link when transferring into the LGPS benefits from Northern Irish public service schemes. Public service pensions schemes are defined in regulation 9(1) of TP 2014 as having the same meaning as in section 1 of the Pension Schemes Act 1993. Section 192(2) of the Pension Schemes Act 1993 says that section 1 extends to Northern Ireland.

This seems to lead us to the conclusion that membership in Northern Irish public service pension schemes appears to count towards determining whether there has been a continuous break for the purposes of the underpin and the final salary link under regulation 9 of TP 2014 (and in determining whether there has been a continuous break for the purposes of regulation 10 of TP 2014) even though it would not appear to count towards the final salary link under the Public Service Pensions Act 2013.

If the conclusion is that membership of Northern Irish public service pension schemes does not count towards final salary protection under the Public Service Pensions Act 2013 then we believe regulation 9 of TP 2014 will need to be amended.

Transfers – Out

LGPS 2013 - regulation 17(10)

AVCs - former query 124

Delete regulation 17(10), following the changes introduced to the Pension Schemes Act 1993 under the Freedom and Choice legislation.

The changes provide for the transfer of AVCs without having to transfer main scheme benefits.

LGPS 2013 – regulation 96(1)

Rights to payment out of pension fund - former query 132

As a result of the amendments made to the Pension Schemes Act 1993 by the Pension Schemes Act 2015 regulation 96(1) was amended from "*Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993"* to *"Chapter 1 or 2 of Part 4ZA or Chapter II of Part IVA"*.

Chapters 1 and 2 of Part 4ZA cater, respectively, for those entitled to a deferred benefit and those with three or more months membership who are not entitled to a deferred benefit.

However, the amendment should also have include *"Chapter II of Part IVA"* to cater for transfers out for pension credit members.

Valuations

LGPS 2013 – regulations 64(7B)(a) & (7E)(a)

Special circumstances where revised actuarial valuations and certificates must be obtained / employer contributions

Regulation 64(1) says that an exiting employer is one that:

a) has no employees who are eligible for membership of the Scheme, or
b) has no active members in a Fund, even if they have some in another Fund

it seems that, as a result of (b) above:

- the reference at the end of new regulation 64(7B)(a) to *"has left the Scheme"* should have said *"has left the relevant Fund"*

- the reference at the end of new regulation 64(7E)(a) to *"new active members"* should have said *"new active members in the relevant Fund"*

LGPS 2013 – regulations 64(7G)

Special circumstances where revised actuarial valuations and certificates must be obtained

The reference in new regulation 64(7G) to *"under paragraph (7E)"* should read *"under paragraphs (7E)(b) to (e)".*

This is because if the employer enrols someone into membership of the scheme in the relevant Fund under (7E)(a) the employer would not be an exiting employer in that Fund.

LGPS 2013 – regulation 67(1)

Employer's contributions - former query 31

The words *"(circumstances in which"* should be amended to *"(special circumstances in which"* in order to reflect the heading to regulation 64.

TP 2014 – regulation 25A(1)

Employer contributions for historic liabilities

We think, as result of the introduction of new regulation 64(7A) to (7F), regulation 25A(1) ought to be amended by adding a new sub-paragraph (e) ie

"(e) does not have a current deferred debt agreement with the relevant fund under regulations 64(7A) to 64(7F) of the 2013 Regulations in respect of those liabilities and is not currently subject to a suspension notice under regulation 64(2A) of the 2013 Regulations in respect of those liabilities"

Definitions

LGPS 2013 – schedule 1

Interpretation / automatic enrolment - former query 41

The "automatic re-enrolment date" is defined in schedule 1 as:

"automatic re-enrolment date" means the automatic re-enrolment date chosen by a member's employer in accordance with section 5 of the Pensions Act 2008(2) and regulation 12 of the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010(3) for those of its eligible jobholders who are not active members (or the date the employer would have chosen if the employer does not have any such employees);"

The definition is used for two purposes.

Firstly to deal with the automatic re-enrolment of eligible jobholders on the employer's chosen re-enrolment date in accordance with regulation 3(6)(b).

Secondly to shift any employees (be they eligible jobholders, non-eligible jobholders or entitled workers) who are in the 50/50 section back into the main section on the employer's chosen re-enrolment date in accordance with regulation 10(5)(a).

The wording of the definition seems to work in relation to the second category but the words in brackets at the end of the definition (which are necessary in relation to the second category) have the unintended consequence of bringing in all eligible jobholders, non-eligible jobholders or entitled workers under regulation 3(6)(b) when, in fact, we thought the policy intention was that only eligible jobholders should be brought in under that regulation (as required under the Pensions Act 2008). The solution would be to amend the definition of "automatic re-enrolment date" in schedule 1 to read:

"automatic re-enrolment date means

for the purposes of regulation 3(6)(b), the automatic re-enrolment date chosen by a member's employer in accordance with section 5 of the Pensions Act 2008 and regulation 12 of the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010 for those of its eligible jobholders who are not active members; and

for the purposes of regulation 10(5)(a), the automatic re-enrolment date chosen by a member's employer in accordance with section 5 of the Pensions Act 2008 and regulation 12 of the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010 for those of its eligible jobholders who are not active members (or the date the employer would have chosen if the employer does not have any such employees);"

(**2**) Section 5 was substituted by the Pensions Act 2011 and there have been further amendments which are not relevant to this instrument.
(**3**) S.I. 2010/772.

and to amend the beginning of regulation 3(6)(b) to read *“an eligible jobholder becomes”.*

It may be that making the amendment at the beginning of regulation 3(6)(b) would negate the need to amend the definition of “automatic re-enrolment date” but we think splitting the definition as suggested also helps to make the intention clearer.

LGPS 2013 - schedule 1

Interpretation / eligible child - former query 129

The wording of the definition of “eligible child” in Schedule 1 of the LGPS Regulations 2013 was an attempt to cover all the cases we wished to cover whilst complying with the requirements of the Finance Act 2004.

Paragraph 15 of schedule 28 to the Act defines a dependant as follows:

“Meaning of "dependant"

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(1) A person who was married to, or a civil partner of, the member at the date of the member's death is a dependant of the member.

(1A) If the rules of the pension scheme so provide, a person who was married to, or a civil partner of, the member when the member first became entitled to a pension under the pension scheme is a dependant of the member.

(2) A child of the member is a dependant of the member if the child

(a) has not reached the age of 23, or

(b) has reached that age and, in the opinion of the scheme administrator, was at the date of the member's death dependant on the member because of physical or mental impairment.

(3) A person who was not married to, or a civil partner of, the member at the date of the member's death and is not a child of the member is a dependant of the member if, in the opinion of the scheme administrator, at the date of the member's death

(a) the person was financially dependent on the member,

(b) the person's financial relationship with the member was one of mutual dependence, or

(c) the person was dependant on the member because of physical or mental impairment.”

However, the wording used in Schedule 1 may need further tweaking on account of the following:

1. In condition C sub-para (ii), the determination of somebody's 'physical or mental impairment' is undertaken by an IRMP, but there is no reference to who determines that an individual has a 'physical or mental impairment' for the purposes of sub-para (i). Should the line commencing 'Condition C' instead start, '*Condition C is that the person is unable to engage in gainful employment due to, in the opinion of an IRMP, physical or mental impairment and either…'*
2. If somebody begins to receive a pension under condition C sub-para (i) ie as somebody under the age of 23 with a physical or mental impairment (perhaps not deemed to be permanent at that time) and subsequently reaches the age of 23 and the physical or mental impairment is then deemed to be permanent, can the basis for the award of the child's pension then be changed from C(i) to C(ii), thereby allowing the pension to be paid beyond age 23?
3. What if an impairment under condition C sub-para (ii) is deemed to be 'likely to be permanent' at the time the pension is initially awarded, but subsequent medical advances mean that the impairment is, at a later date, no longer permanent or likely to be so – can / should the pension be reviewed / stopped and do the regulations permit this? How should / can the award of the child's pension be reviewed?
4. A member dies leaving two eligible natural children, one aged 9 and one aged 17. A single pension account is opened under regulation 42 from which the children's pensions are paid. The child's pension payable to the elder child is paid until age 18 when the child leaves education and goes to work. The child has an accident at work when aged 24 leaving the child permanently unable to engage in gainful employment because of physical or mental impairment. At that point, the younger child is aged 16 and still in receipt of a child's pension from the pension account. We can't seem to find anything that would prevent a pension again being paid to the older child (although I'm sure that was not the intention) as that child:

- was an eligible child at the member's date of death,
- the pension account has not been closed under regulation 22(4)(e), because an account is only closed when all of the pensions due from it have ceased (and the pension to the younger child is still being paid from it), and
- the elder child again meets the definition of being an eligible child.

It is, admittedly, an odd case and we suspect that common sense would prevail ie the administering authority would not resurrect and pay a child's

pension to the elder child. However, if the case were taken through IDRP and then to the Pensions Ombudsman we wonder what the outcome would be?

LGPS 2013 - schedule 1

Interpretation – eligible child - former query 161

The definition of condition B within the definition of eligible child in Schedule 1 of the LGPS Regulations 2013 appears to be causing a problem due to the inclusion of 3 words '*in a course of'* which don't appear in any of the earlier regulations definition of condition B. There doesn't seem to be any definition of what 'in a course of' means? and accordingly Funds are unsure as to how to interpret. Does in a course of mean:

- one course of education, eg an A 'level course, or a degree course?
- continuous education from age 18 prior to age 23?
- any form of education, be there breaks between courses?

As far as we understand it the intention is to provide administering authorities with the discretion to suspend payment of a child's pension, during the period that the child has a break in full time education or training. We think this confusion could be easily resolved by the removal of the words *'in a course of'* and in effect move back to the position of the Earlier regulations.

To make things absolutely clear we have also suggested below how condition B could be phrased to remove all doubt:

"(b) he is aged 18 or over and under age 23 and, since he became 18, he has been engaged in full-time education or full-time training for a trade, profession or vocation vocational training and was so engaged at the date of the member's death, or

(c) he is aged 18 or over and under age 23 and, since he became 18, he has been engaged in full-time education or full-time vocational training but was not so engaged at the date of the member's death, and the appropriate administering authority have determined to treat him as an eligible child".

LGPS 2013 – schedule 1

Interpretation / reserve forces pay - former query 173

The 2014 scheme changed the method by which a member pays contributions whilst on reserve forces leave (ie it removed the need to make reference to reserve forces pay).

However, there is still a definition of *"reserve forces pay"* in schedule 1 of LGPS 2013, yet there is no reference to *"reserve forces pay"* anywhere else in the regulations. It appears to be a completely superfluous definition.

TP 2014 – schedule 2

Scheme employers - former query 168

The amendments made to paragraph 1 of schedule 2 of TP 2014 by the LGPS (Amendment) Regulations 2018 appear to have thrown up some issues that require amendment:

- the additional wording added into paragraph 1(1)(c) appears to be superfluous because it seems to duplicate the wording in newly added paragraph 1(1)(aa)
- why do newly inserted paragraphs 1(1)(aa) and 1(1)(f) make reference to the situation where the former scheme employer has ceased to exist? The wording is not in paragraph 1(1)(c) and the reason for that is because paragraph 1(5) already covers it. There is, therefore, no need for the wording to be included in paragraphs 1(1)(aa) and 1(1)(f) because paragraph 1(5) already deals with the situation.
- paragraph 2(2) only cross-refers to paragraph 1(1)(c). Thus, there is no requirement for an employer to publish its policy on the discretion to be exercised under paragraphs 1(1)(aa) and 1(1)(f). This is because neither are cross-referred to in paragraph 2(2) and Admin Regulation 66(1) requires a policy to be published in relation to the employer's functions under regulations 30 & 30A of LGPS BMC 2007, but the function is not, strictly, a function under these regulations – the function is under paragraph 1(1)(aa) of TP 2014; and regulation 106(1) of LGPS 1997 requires a policy to be published in relation to the employer's functions under regulation 31, but the function is not, strictly, a function under that regulation – the function is under paragraph 1(1)(f) of the TP 2014. The solution would be to add some extra wording to regulation 3(5A)(b) of the TP 2014 to say that regulation 106(1) of the LGPS 1997 also includes a reference to paragraph 1(1)(f) of schedule 2 of TP 2014 and add some extra wording to regulation 3(5A)(c) of TP 2014 to say that regulation 66(1) of LGPS Admin 2008 also includes a reference to paragraph 1(1)(aa) of schedule 2 to TP 2014. An alternative would be to amend paragraph 2(2) of the TP 2014 to also cross-refer to paragraphs 1(1)(aa) and 1(1)(f) but we feel this would not be the best solution as regulation 60 of LGPS 2013 (which paragraph 2(2) is talking about) should only really be about discretions to be exercised in relation to benefits accrued under LGPS 2013.

- because sub-paragraph (f) has been inserted into paragraph 1(1) there should also have been an amendment made to paragraph 1(3)(a) so that it also referred to regulation 31(4) of the LGPS 1997.

LGPS Injury Allowances 2011 – regulations 7(4) & 7(5)

Death benefits - former query 44

We replace the definition of eligible child contained in the LGPS BMC 2007 and earlier regulations and the definition of nominated co-habiting partner contained in the LGPS BMC 2007 with the definitions contained in LGPS 2013.

Regulation 7(4) of LGPS Injury Allowances 2011 contains a definition of nominated co-habiting partner and regulation 7(5) contains a definition of dependant (which includes a child). It seems that both regulations 7(4) and (5) need to be amended to align with LGPS 2013.

Cross references

General

Former query 41

References in other extant regulations to provisions in the earlier regulations will, at some point, need to be amended to, or to incorporate, references to the appropriate regulations in the LGPS 2013.

For example:

- The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009
- The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011
- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

Furthermore, regulation 6(1)(b) of The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 will presumably need to be amended to also add a further sub-paragraph:

“(iii) an additional pension under regulation 31 of the LGPS Regulations 2013.”

In the meantime we think section 17 of the Interpretation Act 1978 can be relied upon to enable regulation 6(1)(b) to be read as if it already incorporated a reference to regulation 31 of the LGPS Regulations 2013.

LGPS 2013 – part 2 of schedule 3

Pension funds - former query 152

Regulation 32(a) and (b) of SI 2015/755 the Local Government Pension Scheme (Amendment) Regulations 2015 amended part 2 of schedule 3 of LGPS 2013.

We believe that there is an error in the reference of regulation 31(a) & (b), regarding the line within the table that should be amended. Regulation 32(a) & (b) both make reference to amending the “second entry”. However, if the “first” entry is to be the header line (as with the amendments noted below to lines six and seven) then the reference within regulation 32(a) & (b) should be to the “third” entry.

Paragraphs 32(c) and (d) make reference to amending the “sixth” and “seventh” entry which is correct if the “1st” entry is the header.

TP 2014 - regulation 1(6)

Citation, extent, commencement and interpretation - former query 141

The definition of “Earlier Schemes” includes reference to the 1974 and 1986 Schemes.

However, the 1974 Regulations were revoked by the Local Government Superannuation Regulations 1986. Regulation S2 of the 1986 Regulations provided that the 1986 Regulations should apply to those who had left with entitlements under the 1974 Regulations. Similarly, the 1986 Regulations were revoked by LGPS 1995 and the effect of regulations M8, M9, Schedule M4 and Schedule M5 was, in our view, that the 1995 Regulations should apply to anyone who had left with entitlements under the 1974 or 1986 Regulations. We can provide a very detailed explanation if required. Thus the references in regulation 1(6) of the TP Regs to “the 1974 Regulations”, “the 1974 Scheme”, “the 1986 Regulations” and “the 1986 Scheme” should be deleted, as should the reference to the 1974 and 1986 Schemes in the definition of “Earlier Schemes”.

TP 2014 – regulation 24(2)

Special cases - former query 165

As a result of regulation 15(2A)(a), introduced by the LGPS (Amendment) regulations 2018, the beginning of regulation 24(2) of the TP 2014 should be amended to read “Subject to paragraph (4) and regulation 15(2A)(a)”

TP 2014 – paragraph 1(3)(a) of schedule 2

Protections - former query 185

Sub-paragraph (f) (this refers to regulation 31(9)) of LGPS 1997) was inserted into paragraph 1(1) of schedule 2 to TP 2014 by the Local Government Pension Scheme (Amendment) Regulations 2018 [SI 2018/493] with effect from 14 May 2018.

We believe there needs to be an amendment made to paragraph 1(3)(a) of schedule 2 to TP 2014 so that it also refers to regulation 31(4) of the LGPS 1997 when looking at whether a member satisfies the 85-year rule before age 60.

LGPS Injury Allowances 2011

Teachers

A specific regulation needs to be added to exclude teachers. They were always excluded under all the previous regulations:

- regulation Q2(2) of the Local Government Superannuation Regulations 1974 [SI 1974/520]
- regulation L2(2) of the Local Government Superannuation Regulations 1986 [SI 1986/24], and
- paragraph 3(3) of Part II of Schedule 2 to the Local Government (Discretionary Payments) Regulations 1996 [SI 1996/1680].

We suspect that where the exclusion was hidden away in schedule 2 to the 1996 regulations is why an exclusion was inadvertently not included in the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 [SI 2011/2954].

There was no mention in the consultation documents leading up to the 2011 Regulations, nor in the explanatory memo or letter from DLUHC accompanying the actual regulations (which listed changes that had been made compared to the 1996 Regulations) of any policy shift to include teachers.

LGPS Injury Allowances 2011 – regulation 6(1)

General interpretation

Regulation 2(1) (general interpretation) needs to be updated to include reference to the LGPS Regulations 2013 and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014. Also, the definition of “LGPS employer” needs to be updated to include the appropriate references to the LGPS Regulations 2013.

Similarly regulation 3(5)(b) needs to be updated to refer to regulation 20 of the LGPS Regulations 2013 and regulation 6(1)(c) presumably needs to be updated to at least refer to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

In the meantime, we think we can rely on section 17(2) of the Interpretation Act 1978 to read the regulations as if those references were already included.

LGPS Injury Allowances 2011 – regulation 6(1)

Allowances for pensioners

We think the cross reference to regulation 8 (Considerations in determining amount of allowances) in regulation 6(1) should be deleted.

This is because regulation 8 only applies to regulations 3 (Reduction in remuneration), 4 (Loss of employment through permanent incapacity) and 7 (death benefits).