

Completed - Queries with SPPA

KEY	
YELLOW	Regulations amended
BLUE	No longer needed as a result of policy position being clarified, etc
Green	Awaiting consideration from elsewhere e.g. from the Technical Group or AVC provider
White	Matter still to be dealt with

1. LGPS (Scotland) Regulations 2014 - Regulation 3(6)(g) – Active membership

The words “received from” should be amended to read “paid to”. This is because paragraph 5(1)(c) of Schedule 29 of the Finance Act 2004 says that a refund is only an authorised refund if “there has been no previous benefit crystallisation event in relation to the member and the pension scheme”. A QROPS transfer out is a BCE8 and so paying a refund to a member who had had a QROPS transfer, returned to the UK, rejoined the LGPS, and left again with less than 2 years membership would be an unauthorised payment. So we should not allow a refund and have to provide, instead, a deferred benefit. Thus the wording needs to be amended from “received from” to “paid to”.

Status: regulations amended.

2. LGPS (Scotland) Regulations 2014 - Regulation 4(4) – Restriction on eligibility for active membership

Is this paragraph still required? Don't such staff now have access to the FPS in Scotland?

Status: regulations amended.

3. LGPS (Scotland) Regulation 2014 - Regulation 9(3)(a) – Contributions

This means that the ranges will be increased on the first Monday on or after the 6th April each year, and not on 1st April each year. Is that the policy intention? It would mean that an assessment of the employee contribution rate on 1 April would be made against the pre PI'd pay ranges. What is needed is an additional paragraph which says "(c) and are to be applied from week 1 / month 1 of the tax year in which the increase is applied."

Postscript: above probably not needed as paragraphs 5(a) and 5(e) of the guidance issued by Scottish Ministers - see <http://www.lgpsregs.org/images/2015HRPayroll/Appendix1v1.2.pdf> - which, by virtue of regulation 9(2)(b) employers must have regard to, make it plain that whilst the employee contribution rate is to be assessed by reference to the member's rate of pensionable pay as at 1st April the rate is to be applied from

- Week1/Month1 of each new tax year, or
- the first full pay period in each new tax year

as determined by the scheme employer with the agreement of the administering authority.

Status: regulations No longer needed as a result of policy position being clarified, etc.

4. LGPS (Scotland) Regulations 2014 - Regulation 9(5) – Contributions

Delete the words "Where an active member is a part-time employee" as those words are superfluous.

Status: regulations amended.

5. LGPS (Scotland) Regulations 2014 - Regulation 10(3) – Temporary reduction in contributions

For consistency with paragraph (1) add at the end ", and the scheme employer must notify the fund of the election."

Status: regulations amended.

6. LGPS (Scotland) Regulations 2014 - Regulation 11(4) – Contributions during absence from work

Delete “and if in receipt of any pay, the member continues to accrue earned pension in accordance with regulation 23(4) or (5) (active member’s pension account).” Anyone in receipt of any pay will automatically be credited with earned pension on that pay under regs 23(4) or (5) and anyone under 11(1) to (3) should be credited with earned pension based on the pensionable pay they are deemed to have earned under regulation 21. If the words are not deleted they could be read as meaning that only those in receipt of pay can get credited with earned pension under regs 23(4) or (5) because regulation 21 says members are treated as being in receipt of pay except for the purposes of regs 9 to 14.

Status: regulations amended.

7. LGPS (Scotland) Regulations 2014 - Regulations 15(1) and 65(4) – Employer contributions during absences / temporary reductions in contributions & Employer contributions

These say the employer must pay contributions on the APP when a member is on child related leave. However, for consistency with regulation 21(2)(b), regulation 15(1) should have added at the end “or on actual pay received where this is greater than assumed pensionable pay”. Similarly, in regulation 65(4)(a) the words “regulations 9 to 12 and 14” should be amended to “regulations 9 to 12, 14 and 15” and regulation 65(4)(b) should have added at the end “except where actual pay received during child-related leave is greater than assumed pensionable pay”.

Status: regulations amended.

8. LGPS (Scotland) Regulations 2014 - Regulation 15(4) - Employer contributions during absences / temporary reductions in contributions

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.

Status: regulations amended.

9. LGPS (Scotland) Regulations 2014 - Regulation 15(5) – Employer contributions during absences / temporary reductions in contributions

Amend “employer may” to “employer must” and, at the end of the paragraph add “to meet two thirds of the cost of the arrangement”. Having the employer payment as optional:

a) will lead to inconsistency of approach across employers, with many not making a contribution and, of those that do, the amount of the contribution varying (e.g. some might pay 5%, others 20%, yet others 33% etc)

b) will lead to equality issues (as, if the employer is not required to meet 2/3rds of the cost, the cost to the employee will be higher than under the 2009 scheme), and

c) will cause issues with the unions (as under the 2009 Scheme the employer had to pay the employer share of contributions if the employee made an election within 30 days of the return to work and the unions have not, as far as I am aware, agreed to move away from this in the 2015 Scheme).

Status: regulations amended.

10. LGPS (Scotland) Regulations 2014 - Regulation 15(5) – Employer contributions during absences / temporary reductions in contributions

There is nothing in the 2014 Regulations that actually says how the amount of ‘lost’ pension for absences should be calculated. All there is an oblique reference to APP within reg 15(6) and that only refers to a limitation of how much an employer should pay. One can deduce 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 reg 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 reg 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 3 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 31st 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. I 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 reg 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, I think we need to delete the word “assumed” from reg 15(6) and add at the end of reg 15(6) “calculated in accordance with guidance to be issued by the Scottish Ministers where the amount of pensionable remuneration cannot readily be determined.” Also, we need to add a new paragraph at the end of reg 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.”

Status: regulations amended.

11. LGPS (Scotland) Regulations 2014 - Regulation 15(8) – Employer contributions during absences / temporary reductions in contributions

Delete as it has been agreed that the employer should continue to pay at the full employer's contribution rate. Also delete the words “/Temporary reduction in contributions” in the heading to regulation 15.

Status: regulations amended.

12. LGPS (Scotland) Regulations 2014 - Regulations 16(2)(d) and (e) – Additional Pension Contributions

If an employer wishes to award extra pension at their whole cost this can be done under regulation 30. So why is there a need for regulation 16(4)(d) to provide that the employer can fund an APC under regulation 16 “in whole or in part”? I 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 30 instead. That leaves regulation 16(2)(e). Why, given regulation 30 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”? Well, I suppose an employer might want the flexibility to spread the cost to the employer over a period of time. However, I think that 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 30 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).

Status: regulations amended.

13. LGPS (Scotland) Regulations 2014 - Regulation 17(7) – Additional voluntary contributions:

After “or regulation 34(1) (early payment of retirement pension on ill-health grounds: active members)” add “or regulation 36(1) (early payment of retirement pension on ill-health grounds: deferred members).”

Status: regulations amended.

14. LGPS (Scotland) Regulations 2014 - Regulation 17(10) – Additional voluntary contributions

This regulation makes it clear that if the main scheme benefits are transferred out, the AVCs must be transferred too. It does not make it clear that the AVCs cannot be transferred out if the main scheme benefits are not transferred out. I'd suggest, therefore that reg 17(10) is amended to read:

“(10) A member

must transfer the realisable value in a deferred AVC account to another registered pension scheme or qualified recognised overseas pension scheme if making a transfer under regulation 94 (rights to payment out of pension fund) of the rights in the pension account to which the AVC is attached, and

can only transfer the realisable value in a deferred AVC account to another registered pension scheme or qualified recognised overseas pension scheme if making a transfer under regulation 94 (rights to payment out of pension fund) of the rights in the pension account to which the AVC is attached.”

Status: regulations amended.

15. LGPS (Scotland) Regulations 2014 - Regulation 18 – Rights to return of contributions

There is an issue raised by HMRC over reg 18(1)(c) over whether a repayment of a contribution made by an employer under a salary sacrifice SCAVC arrangement can be repaid to the employee. The matter needs to be resolved with HMRC and, if necessary, amendments will need to be made to reg 18.

The matter raised by HMRC isn't anything to die in the ditch over. There are, as far as I know, only two employers using a salary sacrifice SCAVC arrangement (Northumberland CC and an employer in the NE Scotland Pension Fund). So, in reg 18(1)(c) we could delete “, or SCAVCs paid by the Scheme employer under a salary sacrifice scheme,”.

That would simply mean that a member who went for a SCAVC salary sacrifice and who left within 2 years would lose the benefit of the salary sacrificed if they take a refund of their main LGPS contributions (and this

would need to be pointed out in the SCAVC salary sacrifice literature handed out to people thinking about joining such a SCAVC arrangement). It does beg the question, however, of what happens to those SCAVC contributions. Do they just get lost / sit in limbo with the AVC provider? Or can they be returned to the employer? The only way the member could avoid losing the money is by not taking a refund and to transfer their accrued rights to another scheme instead.

We also need clarification from HMRC on reg 18(2). If an employer agrees to enter into a SCAVC arrangement (but nothing to do with salary sacrifice) and the member leaves within 2 years and claims a refund, can the employer contributions to the SCAVC be paid back to the employer, as provided for in reg 18(2), or are HMRC saying that is not allowed? If it is not allowed, what happens to that money? Is it just lost, sitting in limbo with the AVC provider?

Status: Awaiting consideration from elsewhere SPPA.

16. (Scotland) Regulations 2014 - Regulation 18(3) – Rights to return of contributions:

This says that interest is payable if a refund has not been paid within 12 months. Reg 18(5) says that a refund must be paid at the end of 5 years. What happens if the Fund cannot trace the person at the end of 5 years but does so after, say, 10 years. Reg 18(3) would appear to not have a limit on the number of years of interest that is payable but I think I would argue that the refund was paid after 5 years – it was not the Fund's fault that the member didn't cash the cheque that was sitting on the shelf, and so only 5 years interest is due. What is the policy intention?

03/11/17 Policy intention confirmed by SPPA - The policy intention is that the refund should attract the correct amount of interest subject to the delay in payment. The fund is gaining interest from having the refund in the bank – this should be passed on to the member. KL

Status: regulations No longer needed as a result of policy position being clarified, etc.

17. LGPS (Scotland) Regulations - Regulation 21 – Assumed pensionable pay

Regs 21(1) and (2) say that the pensionable pay a member is treated as receiving for the purposes of the regulations during ordinary and paid additional child related leave, reserve forces service leave or sick leave on reduced contractual pay or no pay is, other than for the purposes of regs 9 to 14 (contributions) excluding 11(2), APP (except where actual pay received whilst on child related leave is greater than APP).

Regs 23(4) and (5) say that the amount to be credited to the active member's account is $\frac{1}{49^{\text{th}}}$ or $\frac{1}{98^{\text{th}}}$ of the member's pensionable pay received which, by virtue of regs 21(1) and (2) will be the pay the member was treated as having received (except where actual pay received whilst on child related leave is greater than APP).

Regs 12 to 14 say that the member must pay contributions on the actual pensionable pay received.

Regs 15(1) and 65(4) say the employer must pay contributions on the APP (except, if the changes requested above to those regulations are made, where actual pay is greater than APP during child related leave).

Thus, if a member is being credited with APP during reserve forces service leave or sick leave on reduced contractual pay or no pay, and whilst on APP gets, for example, payment for a backdated pay award, the member will pay contributions on that back pay but the back pay will not get credited to the member's cumulative pensionable pay (whereas if the member had not been on APP or had received the payment before or after going onto APP, the back pay would have been included in their pensionable pay cumulative. Thus, a person on APP may be put in a worse position than an individual who receives a backdated pay award and is not on APP or in a worse position than if the pay award had been agreed and paid before or after they went onto APP. This is clearly not equitable.

Postscript: at meeting with DCLG on 22/4/15 it was agreed that it is not possible to cover every possible APP scenario within the regulations and that a solution is already available within the regulations i.e. if an employer is ever challenged in such a case, the employer can simply agree to make up the difference in 'lost' pension by way of a whole cost APC under reg 31. This

solution could be inserted into the HR guide. It would seem appropriate to adopt the same line in Scotland.

Status: regulations No longer needed as a result of policy position being clarified, etc.

18.LGPS (Scotland) Regulations 2014 - Regulation 21(4)(a)(i) – Assumed pensionable pay

Regulation 21(4)(a)(i) and 21(4)(b)(i) refer to APP being calculated on “the pensionable pay the member received relating to that employment in the three months [or 12 weeks] preceding the commencement of the pay period in which the” child-related leave, reserve forces service leave or leave due to sickness or injury on reduced contractual pay or no pay began.

Let’s look at the following example:

Member goes on authorised leave on 01 January 2016

Member returns from authorised leave on 1 April 2016

Member goes on maternity leave on 16 April 2016

Where the member is monthly paid, assumed pensionable pay would be calculated on the 3 months from 1 January 2016 to 31 March 2016. However, in this scenario no pensionable was received by the member for the duration of those months.

Therefore, what pay should be used to calculate assumed pensionable pay that applies from the outset of maternity leave on 16 April 2016?

Thus, we have a problem if, for example, immediately prior to going on to maternity leave, the member had been on leave of absence for more than 3 months [or 12 weeks]. Reg 21, as written, says that APP is the pay received in the 3 months [or 12 weeks] immediately preceding the pay period in which the child related leave commences – but in the example I’ve given the person received no pay during that period. Thus APP would be nil. The member would accrue a 49th (or 98th) of the maternity pay being received during the maternity leave but as this is nearly all cases would be less than what the APP figure would otherwise have been we would be breaking the overriding requirement not to treat those on maternity leave less favourably than if they had been at work. We therefore have a problem and so regulations 21(4)(a)(i)

and 21(4)(b)(i) need to be amended to add in a proviso that if the member received no pensionable pay relating to that employment in the three months [or 12 weeks] preceding the commencement of the pay period in which the absence commenced, APP should be calculated on the pensionable pay the member received relating to that employment in the 3 months [or 12 weeks] preceding the pay period in which they last received pensionable pay in that employment.

Postscript: at meeting with DCLG on 22/4/15 it was agreed that it is not possible to cover every possible APP scenario within the regulations and that a solution is already available within the regulations i.e. if an employer is ever challenged in such a case, the employer can simply agree to make up the difference in 'lost' pension by way of a whole cost APC under reg 31. This solution could be inserted into the HR guide. It would seem appropriate to adopt the same line in Scotland.

We also have the problem that APP is needed where a member wishes to pay an APC to cover the amount of 'lost' pension during a period of absence (see regulation 15(6)). Take the following example.

Member goes on maternity leave on 01 January 2016

Unpaid additional maternity leave commences 1 October 2016

Member returns to work 1 January 2017 for one week then goes on authorised leave of absence for the rest of January 2017

To work out the amount of pension 'lost' during the period 8 – 31 January 2017 and the amount of APC to cover that period, we need to calculate the APP. Where the member is monthly paid, assumed pensionable pay would be calculated on the 3 months from 1 October 2016 to 31 December 2016. However, in this scenario no pensionable was received by the member for the duration of those months.

Therefore, what pay should be used to calculate assumed pensionable pay?

The amendment to reg 21 suggested above would also deal with this situation.

Postscript: the amendment made to reg 15(6) (i.e. deleted the word "assumed") has solved this issue.

Status: No longer needed as a result of policy position being clarified, etc.

19. LGPS (Scotland) Regulations 2014 - Regulation 21(4)(b)(i) – Assumed pensionable pay

The reference to “13 weeks” should be amended to “12 weeks” as, although there are 13 weeks in a 3 month period rather than 12 weeks, it seems to us that it would cause problems in calculating APP where employees are paid fortnightly or 4 weekly.

Status: regulations amended.

20. LGPS (Scotland) Regulations 2014 - Regulation 21(4)(b)(i) – Assumed pensionable pay

Before the reference to “40(4)(b)” add “39(4)(b) (Survivor benefits: partners of active members),”

Status: regulations amended.

21. LGPS (Scotland) Regulations 2014 - Regulations 21(4) and (5) – Assumed pensionable pay

If a returning officer dies in service as an active member and had not received any fees in the last 3 months or in the previous 12 months then APP would be £nil and so there would be no death grant payable (whereas one would have been payable under the 2009 Scheme if fees had been paid in, normally, the last 3 years).

If a fee of, say, £6,000 had been paid in the last 3 months, that fee would be divided by 3 and multiplied by 12 to arrive at an APP figure of £24,000. The death grant would be $3 \times \text{APP} = £72,000$. That is twelve times more than what would have been payable under the 2009 Scheme. Under the 2009 Scheme the death grant would have been based on the average fees paid in, normally, the last 3 years which, assuming there had only been one election during that period, would have been $£6,000 / 3 = £2,000$. The death grant would have been $3 \times £2,000 = £6,000$.

If there had been no fees paid in the last 3 months but a fee of, say, £6,000 had been paid in the last 12 months then

- if one takes the view that it is not a “regular lump sum” as defined in reg 21(5) (because it is not paid on a regular basis) then the death grant would be £nil, and
- if one takes the view that it is a “regular lump sum” as defined in reg 21(5) (because there has to be an election at least every three years) and the employer decides to add the payment into APP then the death grant would be £6,000 x 3 = £18,000 (which is still 3 times more than would have been paid under the 2009 Scheme)

The same problem identified above would equally apply to the calculation of APP for a Tier 1 or Tier 2 ill health pension or the survivor benefits for a member who dies in service.

An amendment to regulation 21 is, therefore, needed to set out how APP should be calculated for the purposes of death grants, Tier 1 or Tier 2 ill health pensions, or the survivor benefits resulting from a death in service, where the member is a returning officer.

Status: regulations amended.

22. LGPS (Scotland) Regulations 2014 - Regulation 22(4)(g) – Pension accounts

Amend to read “a payment under regulation 33 has been made”. This is because payments under reg 33 cover more than just trivial commutation cases. They also include small pension pot cases.

Status: regulations amended.

23. LGPS (Scotland) Regulations 2014 - Regulation 22(4) – Pension accounts

Add a new sub-paragraph “(h) the member’s benefits are transferred to another Fund under regulation 100”. This is needed because 22(4)(a) only covers cases where a transfer value payment has been made to another registered pension scheme (i.e. other than the LGPS in Scotland) – see definition in Schedule 1 of “transfer value payment”.

Status: regulations amended.

24. LGPS (Scotland) Regulations 2014 - Regulations 22(7) and (8) - Pension accounts

The equivalents of regs 22(7) and (8) of the LGPS Regulations 2013 in England and Wales have not been included in the Scottish Regs. I'm not sure why. In their absence there is nothing which says the benefits are automatically aggregated and there is equally no regulation that says aggregation only happens if the member elects to do so within 12 months - a 12 month time limit would be required to prevent members electing to aggregate some year later, just before redundancy or ill health retirement.

The comment I had on the E & W Regs which equally applies in Scotland is that the regulation should provide that the option to retain deferred benefits does not apply where the cessation of the concurrent employment, or the cessation of the concurrent employment giving rise to the deferred benefits, occurs because of –

- a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations") apply; or
- a transfer which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

(i.e. to mirror regulation 13(11) of the Administration Regulations 2008)

Status: regulations amended.

25. LGPS (Scotland) Regulations 2014 - Regulations 22(8) - Pension accounts

This should be amended to provide that the option to retain deferred benefits does not apply if the deferred benefits arose following an election under reg 5 to opt out of membership of the LGPS and the member rejoins the Scheme in the same local government employment (i.e. local government service as defined in Schedule 1).

03/11/17 Update from SPPA - To be discussed at the next SAB

Status: Awaiting consideration from elsewhere SPPA.

26. LGPS (Scotland) Regulations 2014 - Regulation 23(6) – Active member’s pension accounts:

Should the list in regulation 23(6)(a-f) have somehow made reference to 23(10) as it is another reason for an adjustment to an active accounts?

Status: regulations amended.

27. LGPS (Scotland) Regulations 2014 - Regulation 29(1) – Retirement benefits

After “local government service” insert “in that employment”

Status: regulations amended.

28. LGPS (Scotland) Regulations 2014 - Regulation 29(7) – Retirement benefits

Under reg 29(7) any additional pension bought by the employer (or bought by the member) under reg 16 is subject to actuarial reduction, but additional pension bought by the employer under reg 30 is not subject to actuarial reduction. Thus, if the employer gives £1,000 additional pension under regulation 16 at whole cost to the employer it would be subject to an actuarial reduction under reg 29(7)(a) but if the employer gives £1,000 additional pension under regulation 30 at whole cost to the employer it would not be subject to an actuarial reduction under reg 29(7)(b). This seems illogical. If, and only if, it is the policy intention that additional pension granted under reg 30 should be subject to actuarial reduction on redundancy / efficiency retirement then please amend the words “under regulations 16 (additional pensions contributions)” in reg 29(7)(a) to read “under regulations 16 (additional pensions contributions) or 30 (award of additional pension)”.

Postscript: no amendment is necessary as the regulations reflect the policy intention.

Status: No longer needed as a result of policy position being clarified, etc.

29. LGPS (Scotland) Regulations 2014 - Regulation 34(1) – Early payment of retirement pension on ill health grounds: active members

What benefits are due to a person retired on ill health grounds after age 65 and before normal pension age? Presumably they just get a deferred benefit that they can draw under reg 29(5).

My question basically really relates to members who had met the 2 year qualifying service entitlement. However, what about those who have not met the 2 year qualifying period? Are they only entitled to a refund of contributions or will they be entitled to immediate payment of an unenhanced pension. If the latter, I assume that you will be adding a provision into regulation 3(6) to say that such members meet the 2 year qualifying period. However, I'm not sure why such a member should be deemed to have met the 2 year qualifying period if they don't already fall within any of the other criteria in reg 3(6). For example, if the member joins the Scheme at 65½ and is retired on health grounds at 66, after 6 months membership, why should they get an unenhanced pension when, if they had simply left at 66 or been made redundant at 66, they would only have been entitled to a refund? Also, none of these members would have been entitled to benefits under the 2009 Scheme either – see Benefits reg 6(1).

Status: regulations amended.

30. LGPS (Scotland) Regulations 2014 - Regulation 35(1)(b) – Role of IRMP

The words “before age 65” should be added at the end of this paragraph to tie in with reg 34(4).

Status: regulations amended.

31. LGPS (Scotland) Regulations 2014 - Regulation 35(2) – Role of IRMP

Amend this regulation to make it clear (following the Pension Ombudsman decision in the case of Mr. Damien Kelly v Merseyside Pension Fund and Sefton Council) that the IRMP can be employed by the same company or work in the same practice as a person who has previously advised on, or given an opinion on, or otherwise been involved in the particular case.

Postscript: this amendment is no longer necessary as the Kelly case has been overturned by a subsequent decision in the case of *Climie-Somers v Suffolk CC* (PO-2246).

Status: No longer needed as a result of policy position being clarified, etc.

32. LGPS (Scotland) Regulations 2014 - Regulation 37(7)(a) – Calculation of ill health pension accounts

Should this be deleted? The provision was not part of the 2009 Scheme and looks like it has inadvertently been copied over from the E&W Regs.

If it is left in, we have received comments from some people in E&W that it currently reads as if APP is only to be reduced if the IRMP certifies the reduction in hours is due to illness (and, consequently, is not to be reduced if the IRMP does not certify the reduction in hours is due to illness). We have responded that we read it to mean that when APP is calculated the authority can take account of the reduction in pay (i.e. take into account the pay the person would have received had they not been working part-time) if the IRMP certifies they were working part-time due to their ill health. However, to overcome the confusion it would be helpful if reg 37(7)(a) was amended to say something along the lines of “no account is taken of any reduction...” or “any reduction is ignored/disregarded...”.

Status: regulations amended.

33. LGPS (Scotland) Regulations 2014 - Regulation 38(3) – Death grants: active members

This has been worded incorrectly. It should say “The death grant is the amount of three times the member’s annual assumed pensionable pay calculated in accordance with regulation 21(4) as at the date of the member’s death or, if higher, the aggregate of the amount of any death grant payable under regulation 41 and the amount of any death grant payable under regulation 44.”

Status: regulations amended.

34. LGPS (Scotland) Regulations 2014 - Regulations 39(4)(a)(iii) – Survivor benefits: partner’s of active members, 40(4)(a)(iii), 40(5)(a)(iii), 40(9)(a)(iii), 40(10)(a)(iii) – Survivor benefits: children of active members, 42(4)(c) – Survivor benefits: partners of deferred members, 43(4)(c), 43(5)(c), 43(9)(c), 43(10)(c) – Survivor benefits: children of deferred members, 45(4)(d) – Survivor benefits: partners of pensioner members, 46(4)(e), 46(5)(e), 46(9)(e) and 46(10)(e) – Survivor benefits: children of pensioner members:

These all exclude APCs/SCPACs under reg 16 (because APCs do not include any element for survivor benefits). This seems a bit harsh if the APC/SCAPC was being paid to cover 'lost' pension (rather than additional pension) i.e. the member can buy back the 'lost' pension for themselves but not for their survivor. However, given that the sums involved are likely to be small I guess we just accept this as part and parcel of the new scheme provisions.

Status: regulations amended.

35. LGPS (Scotland) Regulations 2014 - Regulations 39 – Survivor benefits: partner’s of active members, 40 – Survivor benefits: children of active members, 42 – Survivor benefits: partners of deferred members , 43 – Survivor benefits: children of deferred members, 45 – Survivor benefits: partners of pensioner members and 46 – Survivor benefits: children of pensioner members :

By virtue of reg 4(4) of the Transitional Provisions and Savings Regs 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 2009 Scheme the survivor would have benefitted from that amount). Whilst one can possibly read some of the survivor regulations in these Regs to include the underpin amount (e.g. reg 39(4)(a)(i)) there are others where it does not seem possible to do so (e.g. reg 45(4)(a)). Furthermore, even where it is possible to read some of the survivor regulations in these Regs 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 I would suggest the following:

add 39(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 40(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 40(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 40(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 40(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 60/120

add 42(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 43(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 43(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 43(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 43(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 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 60/160

add 46(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 46(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 46(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 46(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

Status: regulations amended.

36. LGPS (Scotland) Regulations 2014 - Regulation 41(1) – Death grants: deferred and pension credit members

The words “before attaining the age of 75” should be deleted as they are superfluous (because a deferred member cannot die after age 75 - any scheme member must have their benefits in payment by age 75 so cannot be a deferred member at or after 75).

03/11/17 SPPA update – Agreed KL

Status: Matter still to be dealt with

37. LGPS (Scotland) Regulations 2014 - Regulation 41(5) - Death grants: deferred and pension credit members

The factor should be amended from “3” to “5” to mirror Admin reg 95(4) and Benefits reg 32.

Status: regulations amended.

38. LGPS (Scotland) Regulations 2014 - Regulations 42(4)(d) – Survivor benefits: partners of deferred members, 43(4)(d), 43(5)(d), 43(9)(d) and 43(10)(d) – Survivor benefits: children of deferred members

Delete as these are not possible in Scotland. The references were correct in England and Wales but only because there are deferred pensioner members (i.e. suspended Tier 3 pensions) in England and Wales and these do not exist in Scotland.

Status: regulations amended.

39. LGPS (Scotland) Regulations 2014 - Regulations 42(4)(d), 43(4)(d), 43(5)(d), 43(9)(d), 43(10)(d), 45(4)(e) - Survivor benefits: partners of pensioner members, 46(4)(f), 46(5)(f), 46(9)(f), and 46(10)(f) - Survivor benefits: children of pensioner members:

At the end of each add “which included provision for a survivor’s pension.” The reason is that there has been what, in my view, is an inadvertent and unintended change in the position that applied prior to 1 April 2015. So, under the 2009 Scheme and GAD guidance the member had the choice of buying a top-up pension with or without an in-built survivor benefit. The 2015 scheme gives no choice – the top-up pension includes a survivor benefit (whether the member wants it or not, and even if the member is single). I do not think there was any policy decision to make this change. Hence the suggested amendments to the regulations mentioned above.

Status: regulations amended.

40. LGPS (Scotland) Regulations 2014 - Regulation 43(4)(d) - Survivor benefits: children of deferred members

For consistency amend “15.3125%” to “49/320”

Status: regulations amended.

41. LGPS (Scotland) Regulations 2014 - Regulation 43(5)(d) - Survivor benefits: children of deferred members

For consistency amend “30.625%” to “49/160”

Status: regulations amended.

42. LGPS (Scotland) Regulations 2014 - Regulation 43(9)(d) - Survivor benefits: children of deferred members

For consistency amend “20.41667%” to “49/240”

Status: regulations amended.

43. LGPS (Scotland) Regulations 2014 - Regulation 43(10)(d) - Survivor benefits: children of deferred members

For consistency amend “40.8333%” to “49/120”

Status: regulations amended.

44. LGPS (Scotland) Regulations 2014 - Regulation 44(4) – Death grants: pensioner members

The factor of “5” should be amended to “10” to mirror Admin reg 95(4) and Benefits reg 35.

Status: regulations amended.

45. LGPS (Scotland) Regulations 2014 - Regulation 45(4)(e) - Survivor benefits: partners of pensioner members

For consistency amend “30.625%” to “49/160”

Status: regulations amended.

46. LGPS (Scotland) Regulations 2014 - Regulation 46(4)(f) - Survivor benefits: children of pensioner members

For consistency amend “15.3125%” to “49/320”

Status: regulations amended.

47. LGPS (Scotland) Regulations 2014 - Regulation 46(5)(f) - Survivor benefits: children of pensioner members

For consistency amend “30.625%” to “49/160”

Status: regulations amended.

48. LGPS (Scotland) Regulations 2014 - Regulation 46(9)(f) - Survivor benefits: children of pensioner members

For consistency amend “20.41667%” to “49/240”

Status: regulations amended.

49. LGPS (Scotland) Regulations 2014 - Regulation 46(10)(f) - Survivor benefits: children of pensioner members

For consistency amend “40.8333%” to “49/120”

Status: regulations amended.

50. LGPS (Scotland) Regulations 2014 - Regulations 45(4)(a) - Survivor benefits: partners of pensioner members, 46(4)(a), 46(5)(a), 46(9)(a) and 46(10)(a) – Survivor benefits: children of pensioner members

These do not appear to include the amount of enhanced pension awarded under regulation 37(1)(a) or 37(2)(a) when calculating the survivor’s pension of a member who had previously retired on ill health grounds with a Tier 1 or Tier 2 pension. I can construct an argument to say that the IHE falls within 45(4)(a), 46(4)(a), 46(5)(a), 46(9)(a) and 46(10)(a) because, by virtue of regulation 37(1)(a) and 37(2)(a) the amount of IHE is treated as if it were earned pension. However, this is a bit tenuous, and it would be better if either:

- each of regulations 45(4)(a), 46(4)(a), 46(5)(a), 46(9)(a) and 46(10)(a) included, after the words “earned pension”, the words “(including any amount awarded under regulations 37(1)(a) or 37(2)(a))”, or
- at the end of the definition of “earned pension” in Schedule 1 there were added the words “or, for the purposes of regulations 45(4)(a), 46(4)(a), 46(5)(a), 46(9)(a) and 46(10)(a), awarded under regulations 37(1)(a) or 37(2)(a)”

Status: regulations amended.

51. LGPS (Scotland) Regulations 2014 - Regulation 48(2) – Limit on total amount of benefits

This regulation needs to be amended now that the Finance Bill has become the Finance Act 2014 to allow for Individual Protection 2014.

Status: regulations amended.

52. LGPS (Scotland) Regulations 2014 - Regulation 56(4)(a) – Funding strategy statement

The reference to the March 2004 CIPFA document entitled “CIPFA Pensions Panel Guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance issue note No. 6)” needs to be updated to reflect the revised guidance issued by CIPFA in 2012 – see <http://www.cipfa.org/policy-and-guidance/publications/p/preparing-and-maintaining-a-funding-strategy-statement-in-the-local-government-pension-scheme-2012>

Status: regulations amended.

53. LGPS (Scotland) Regulations 2014 - Regulation 58 – Statement of policy about exercise of discretionary functions

Needs to include a requirement for employers to have a policy on regulation 29(5) / (13) i.e. a policy on whether or not they will agree to early retirement under the age of 60) [as it is currently a requirement under Administration Regulation 61]. Note that paragraph 2(1) of Schedule 2 to the Transitional regulations does not deal with the above as it only covers having to have a policy on whether or not, for those members where consent to early retirement is given, to switch the 85 year rule on.

Status: regulations amended.

54. LGPS (Scotland) Regulations 2014 - Regulation 66(2) – Employer’s further payments

Amend “regulation 29(6) (flexible retirement) or (7) (early leavers on grounds of redundancy or business efficiency)” to “regulation 29(5) (early retirement), (6) (flexible retirement) or (7) (early leavers on grounds of redundancy or business efficiency)”. This is to cater for cases where, for example, the employer gives agreement under regulation 29(13) to early retirement under regulation 29(5) and switches on the 85 year rule under paragraph 1(1)(c) of Schedule 2 to the Transitional Regulations, leading to a strain on fund cost. Presently, Administration Regulation 37(2) refers to Benefit Regulation 30 and so the administering authority can currently charge for pensions strain when an employer gives consent to retirement before age 60 – so reg 66(2) needs to match this.

Status: regulations amended.

55. LGPS (Scotland) Regulations 2014 - Regulation 67(1) – Payment of scheme employers to administering authorities

Add a further sub-paragraph as follows:

“(e) all amounts received from time to time from the Ministry of Defence in respect of employee and employer contributions for a member on reserve forces service leave.” This is to cover any cases where the MoD pay the contributions to the employer rather than direct to the Fund under reg 15(3)(b) as, I gather, MoD might want to pay the contributions to the employer to hand over to the Fund.

Status: regulations amended.

56. LGPS (Scotland) Regulations 2014 - Regulation 83(1) – Deduction and recovery of members contributions

Amend “must” to “may” because a member can pay APCs and AVCs direct to the Fund (i.e. not by deduction from pay) – see, for example, reg 17(4).

Status: regulations amended.

57. LGPS (Scotland) Regulations 2014 - Regulation 87(4) – Annual benefit statements:

Amend “Services” to “Service”.

Status: regulations amended.

58. LGPS (Scotland) Regulations 2014 - Regulation 88(2)(a) – Information to be supplied by employees

Delete “local government” because the Fund must seek to find out about other pension rights that the member may wish to transfer in but, more importantly, must seek to find out whether the member has, or has had, pension rights in another public service pension scheme (as this info is necessary in order to determine whether or not the member has had a continuous break of more than 5 years in active membership of public service pension schemes). As a minimum, delete “local government employment” and replace with “membership of a public service pension scheme (including the Local Government Pension Scheme)”.

Status: regulations amended.

59. LGPS (Scotland) Regulations 2014 - Regulation 93 – Certificate of protection

Should this regulation be disapplied to councillor members (in the same way as paragraph 1 of Schedule 5 to the Administration Regulations provided that Certificates of Protection did not apply to councillor members)? NB. Not necessary as already listed in Schedule 5.

Status: No longer needed as a result of policy position being clarified, etc.

60. LGPS (Scotland) Regulations 2014 - Regulation 93(2) – Certificate of protection

After “is reduced” add “or restricted”.

Status: regulations amended.

61. LGPS (Scotland) Regulations 2014 - Regulation 94 – rights to payment out of pension fund

This provides that a member may apply for a CETV transfer under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993. However, there are two problems.

Firstly, chapters 4 and 5 of Part 4 of the PSA 1993 give an entitlement to a CETV if the member leaves at least a year before NPA (see section 93(1)(a)(i) of the Act) – but section 180 of the Act defines NPA as follows:

“180 Normal pension age

(1) In this Act "normal pension age", in relation to a scheme and a member's pensionable service under it, means-

(a) in a case where the scheme provides for the member only a guaranteed minimum pension, the earliest age at which the member is entitled to receive the guaranteed minimum pension on retirement from any employment to which the scheme applies; and

(b) in any other case, the earliest age at which the member is entitled to receive benefits (other than a guaranteed minimum pension) on his retirement from such employment.

(2) For the purposes of subsection (1) any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise is to be disregarded.”

One could argue that a member has an unrestricted right to draw benefits from age 55 and so must leave before age 54 to be entitled to a CETV. I think reg 94 needs to be rewritten to clarify who has entitlement to a CETV i.e. that members have an entitlement beyond that set out in the PSA 93, and that for the purposes of the LGPS, the reference to NPA in the PSA 93 is to be taken to mean the person’s NPA as defined in the LGPS Regulations.

Secondly, if we take NPA to have the meaning in the LGPS Regulations, a member will have an NPA of 65 on their pre 2014 benefits and, say, and NPA of 67 on their post 2014 benefits. Which of these do we use to determine whether or not the member has left at least 12 months before NPA? I think the answer, given that the transfer will occur post 31 march 2014, is the NPA under the 2014 Scheme. Thus, reg 94 needs to be rewritten to clarify who has entitlement to a CETV i.e. that members have an entitlement beyond that set out in the PSA 93, and that for the purposes of the LGPS, the reference to NPA in the PSA 93 is to be taken to mean the person’s NPA as defined in the LGPS Regulations 2014.

Para (4) is an attempt to resolve the above issues but needs to be re-worded as it doesn’t quite do the trick.

Postscript: following confirmation from DWP regarding the definition of NPA, the LGPC Secretariat is of the view that the member would only have a CETV entitlement if the member had both ceased membership and elected for a transfer to proceed at least 12 months prior to the later of the two Normal Pension Ages.

Status: No longer needed as a result of policy position being clarified, etc.

62.LGPS (Scotland) Regulations 2014 - Regulation 98 – Inward transfers of pension rights

We need some form of bulk transfer in provision under regs 98 and 99 just as we have a bulk transfer out provision (see regs 96 and 97).

03/11/17 Policy update SPPA - Our legal advice is to the contrary. KL

Status: No longer needed as a result of policy position being clarified, etc.

27 (published on 14 March 2024)

63. LGPS (Scotland) Regulations 2014 - Regulation 98(6) - Inward transfers of pension rights

I don't know why reg 98(6) requires the initial application to be made to the scheme employer as well as the administering authority. I can understand the reason why SPPA may have required an extension beyond 12 months to be agreed by the administering authority as well as the scheme employer e.g. to prevent an admitted body that is about to become insolvent from agreeing to late transfers in for its chief executive and director of finance who within a few months will be redundant, and when the administering authority goes to that body for the strain of Fund cost (which is now larger due to the transfer in) there is no body to get the money from. However, as under reg 98(1) the member only has to make a request to the administering authority and because only the administering authority has the power under reg 98(7) to refuse to accept a transfer request made within 12 months, there is no reason for reg 98(6) to require the member to make a transfer request to the scheme employer as well as the administering authority. That is just a pointless administrative overhead. An application made within 12 months should only have to be made to the administering authority. Therefore, in regulation 98(6) please delete the words "and the Scheme employer".

Status: regulations amended.

64. LGPS (Scotland) Regulations 2014 - Regulation 98(6) – Inward transfers of pension rights

In the 2009 Scheme an election for a transfer in had to be made within 12 months of becoming a member "or such longer period as the Scheme employer may allow". In these regulations it says "or such longer period as the Scheme employer and administering authority may allow". Was this a deliberate change and, if so, what is the reasoning given that reg 98(7) already allows the administering authority to refuse a transfer in (both within and outside the 12 month time limit)?

Status: regulations amended.

65. LGPS (Scotland) Regulations 2014 - Regulation 102 – Separate employment

Reg 102 needs to be inserted into the regulations as follows:

“102.- (1) Where a person holds separate employments under one Scheme employer, these Regulations and the Benefits Regulations apply as if each of them were under a different employer.

(2) This regulation also applies where a whole time or a part-time employee of a Scheme employer is also employed to carry out one or more of the additional duties.

(3) The additional duties are duties as–

(a) a returning officer at–

(i) local government elections; or

(ii) elections for the Scottish Parliament; or

(b) a returning officer (including as a regional or local returning officer at a European Parliamentary election).

Status: regulations amended.

66.LGPS (Scotland) Regulations 2014 – Schedule 1 - interpretation

Move the definition of “SCAVC” to the correct position in the alphabetical listing.

03/11/17 SPPA update – Agreed KL

Status: regulations amended.

67.LGPS (Scotland) Regulations 2014 - Schedule 4, Part 1 – Appropriate funds

This appears to have not taken account of the amendments made by SSI 2012/347 i.e.

- for paragraph 2 substitute-

“2A This paragraph applies where an employing authority-

(a) has members in respect of whom but for this paragraph, it would be required to contribute to more than one fund;

(b) merges or amalgamates with another employing authority and in respect of which there is specified a different fund for the respective members of each employing authority; or

(c) moves its main place of business to a different geographical area.

2B Where paragraph 2A applies, the Scottish Ministers may upon application by the employing authority, by direction substitute another fund ("the substituted fund")."

(ii) in paragraph 3 for "2" substitute "2B"; and

(iii) for paragraph 5 substitute-

5 It may also contain provision as to the transfer of liabilities to the substituted fund, may require a revised rates and adjustment certificate in respect of each employing authority concerned, to take account of the effect of the direction, and may make provision for any other consequential or incidental matters.

Status: regulations amended.

68. LGPS (Scotland) Regulations 2014 - Schedule 5, paragraph 4 – Councillor members

What about where a councillor is on unpaid additional maternity leave, or on leave of absence? Does a councillor still get paid full allowances whilst on unpaid addl maternity leave, or whilst on leave of absence? If so, then there is no need for SCAPC. If not, then why are councillor members not allowed a SCAPC to cover such absences? If it is intended they should be allowed a SCAPC to cover such absences add at the end "other than where regulation 15(5) applies".

Postscript: I think the view is that councillors continue to receive full allowances and so no change to para 4 of Sched 5 is needed.

Status: No longer needed as a result of policy position being clarified, etc.

69. LGPS (Scotland) Regulations 2014 - Schedule 5, paragraph 6 - Councillor members

Is it correct / equitable that APP does not apply to a councillor? Does a councillor still get paid full allowances whilst sick, or on maternity? If so, then

there is no need for APP in those cases. If not, then why are councillor members not granted APP when employees are? Also, if a councillor goes on reserve forces service leave surely APP should apply (because any allowance paid by the authority is, by virtue of reg 20(2)(i), non-pensionable).

Also, Schedule 5, paragraph 6 should not omit regulation 21 for the purposes of regulations 37, 38(3), 39(4)(b), 40(4)(b), 40(5)(b), 40(9)(b) and 40(10)(b) because it is necessary to calculate APP upon ill health retirement or death in service.

Postscript: I think the view is that councillors continue to receive full allowances whilst sick or on maternity and so no change to para 6 of Sched 5 is needed in respect of such absences. However, APP would still be necessary for councillors on reserve forces service leave (as even if councillors continue to receive full allowances from the authority whilst on such leave, those allowances would be non-pensionable by virtue of reg 20(2)(i). So, para 6 of Sched 5 needs to be amended by adding at the end "except whilst a councillor is on reserve forces service leave".

03/11/17 SPPA update – Agreed KL

Status: regulations amended.

70. LGPS (Scotland) Regulations 2014 - Regulation 16(15) – Additional pension contributions (16(15) of LGPS (Scotland) Regulation 2018

To avoid problems of apportionment of APC contracts for the purposes of the underpin and the 85 year rule, the Technical Group at its meeting on 12th December 2014 decided that if contributions under an APC contract to cover a period of absence from work with no pensionable pay in consequence of a trade dispute, a period of absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave had not been completed at the time a member ceased to be an active member, the outstanding balance of pension being purchased under the contract should be credited to the pension account and the remaining contributions would be due from the member. If not paid, the contributions would be held as a "debt" against the member and recovered from the member when benefits become payable. An appropriate amendment to regulation 16(15) would need to be made to deliver this.

Postscript: at meeting with DCLG on 22/4/15 DCLG felt regulations could not be amended to deliver this. It was agreed to put this question back to the Technical Group to get a further view. See update in entry 22 under Transitional Regs

Status: Awaiting consideration from elsewhere SPPA.

71. LGPS (Scotland) Regulations - Schedule 1 - Interpretation:

Definition of “eligible child” – it has been suggested that there needs to be a definition within the definition of “eligible child” to define what is meant by “natural child”. This is because on searching for a legal definition there appear to be a number of variations including

“In the phraseology of the English or American law, natural children are children born out of wedlock, or bastards, and are distinguished from legitimate children; but in the language of the civil law, natural are distinguished from adoptive children, that is, they are the children of the parents spoken of, by natural procreation.”

It is interesting to note that it was felt necessary to define “natural children” in section 6 of the Judicial Pensions and Retirement Act 1993, which says:

“6 Grant and payment of a children's pension

(8) For the purposes of this section the “natural children” of any person are any children of whom that person is the genetic father or mother.”

Perhaps we should adopt that definition.

03/11/17 Legal update from SPPA - Our Legal advice is to the contrary KL

Status: No longer needed as a result of policy position being clarified, etc.

72. LGPS (Scotland) Regulations 2014 - Regulation 17(10) – Additional voluntary contributions:

Delete following changes introduced to the Pension Schemes Act 1993 under the Freedom and Choice legislation.

Status: regulations amended.

73. LGPS (Scotland) Regulations 2014 – Schedule 5 – Councillor members

We're not sure why paragraph 6B of Schedule 5 of the LGPS (Scotland) Regulations 2014 refers to regulation 22(7). That regulation simply deals with how aggregated CARE benefits are to be revalued where there is a break of less than 5 years. We think what paragraph 6B of Schedule 5 of the LGPS (Scotland) Regulations 2014 is trying to say, without quite achieving it, is that benefits accrued as a councillor member cannot be aggregated with benefits accrued as an employee member, and vice versa. If that is what is intended (and we think it must be, as that was the position prior to April 2015 and the ability to aggregate would cause difficulties if a member has some pre 2015 accrued rights) then we believe a simple statement to that effect should be made in Schedule 5.

Status: regulations amended.

74. LGPS (Scotland) Regulations 2014 – Schedule 5 – Councillor members

We have identified an issue relating to Councillor members who, before becoming a Councillor, had accrued rights in a Club Scheme. Prior to April 2015, any such transfer would have been treated as a non-Club transfer because the Councillors' pre-15 career average pay scheme was not able to participate in the Club. Of course, now that we have moved beyond 31st March 2015 all the main public service pension schemes are CARE schemes and the post 2015 CARE benefits accrued in those schemes can be transferred between Club schemes. However, for councillor members, we have the problem of how to deal with any final salary benefits the councillor wishes to transfer from the other public service pension scheme (including from the LGPS in England, Wales or Northern Ireland), because we can't give them final salary membership. Logic tells me that we should either provide that either:

- all transfers from Club schemes will be treated as non-Club transfers in and will purchase post 15 Care benefits only, or
- any transfer of CARE benefits from a CLUB scheme will be treated as an Inner Club transfer purchasing post-15 CARE pension with revaluation being at the rate applicable in the sending scheme (where there is a break of no more than 5 years between leaving the sending scheme and joining

the LGPS as a councillor) and any transfer of final salary benefits from a Club scheme will be treated as a non-Club transfer in purchasing post-15 CARE pension with revaluation being at the LGPS rate, as will any transfer of CARE benefits from a CLUB scheme where the break was more than 5 years, or

- transfers in for Councillor members are not allowed.

A policy decision will need to be taken on this matter. We've not had time to give any thought to whether / how any of the above options stack up with the Club rules and the requirements of the Public Service Pensions Act 2013.

Update email to Annette on 29 June 2017

Prior to 1 April 2015, the Club Memorandum dated March 2012 stated the following with regards to Club CARE schemes that were introduced prior to 1 April 2015. As a result transfers to and from the LGPS Scotland prior to 1 April 2015, on behalf of Scottish Councillor, were treated as non-club.

"Transfers to or from career average revalued earnings (CARE) schemes

7.22 As a general rule, schemes that provide benefits on a „career average revalued earnings“ (CARE) basis cannot belong to the Club. This is because the main purpose of the Club is to retain the final salary linkage of transferred benefits, which does not apply in a CARE scheme. However, some such schemes (for example PCSPS nuvos and those schemes that operate by analogy to it) are willing to provide final salary benefits for service transferred in on Club terms, notwithstanding the fact that ongoing benefits in the scheme will accrue on a career average basis. Public Sector Transfer Club 25 March 2012

7.23 Club transfers to CARE schemes are calculated in exactly the same way as any other Club transfer out. The receiving CARE scheme converts the transfer value using Club factors into a reckonable service credit, which is used to provide final salary benefits when the member leaves the receiving scheme.

7.24 Career average benefits transferred in from CARE schemes that participate in the Club are transferred on non-Club terms. However, if the member also has final salary benefits in that scheme (for example, from a previous Club transfer in), those will be transferred on Club terms.

7.24a Some schemes that participate in the Club do not accept non-Club transfers in. If a member with mixed CARE (or Added Pension – see paragraphs 7.26 – 7.28) and final salary benefits wishes to take a Club transfer to such a scheme and that scheme will not accept the non-Club element, the member will have to either preserve the CARE/Added Pension benefits in the sending scheme (if it allows this), or transfer them to a separate pension arrangement (e.g. a personal pension).”

However, with the introduction of the new ‘inner Club CARE schemes’ across the public service from 1 April 2015 (although the LGPS E&W moved to CARE on 1 April 2014, the CARE element remained non-club until 1 April 2015) the Club memorandum deleted the above text and it would now appear that all public service CARE schemes are ‘inner Club’ schemes.

The Public Service Pensions Act (PSPA) 2013, prescribes that any transfer out of an ‘old scheme’ into a ‘new scheme’ containing final salary benefits should purchase service and retain a final salary link providing there has not been either a: single gap of service where the person was not in [pensionable public service](#), that does not exceed five years; or two or more gaps in service where the person was not in [pensionable public service](#), if none of the gaps exceeds five years.

As you are aware, the Club rules are slightly more restrictive, they prescribe that in order for a transfer to be a Club transfer the gap between leaving the ‘old scheme’ and joining the ‘new scheme’ should not exceed five years (paragraph 4.4 of the Club memorandum dated March 2017). However, simply because the transfer fails to be a Club transfer does not mean to say that the transfer, where it contain final salary membership, does not retain a final salary link under the PSPA 2013.

Setting the preamble aside, we have reviewed the Scottish LGPS regulations in relation to Councillors, and concluded that:

Prior to 1 April 2015 – the CARE element of the LGPS Scotland was a non-club scheme and any transfers accepted into the CARE element of the scheme, on behalf of a Scottish Councillor, purchased accrued pension as per GAD Guidance dated 27 March 2014 paragraphs 1.4 and 2.1 – 2.5.

On and after 1 April 2015, the Councillor CARE scheme became an ‘inner club’ scheme by default of the Club rules. The Councillor CARE scheme within the Scottish LGPS 2015 Regulations is simply a modification (see

regulation 101 of the LGPS (Scotland) Regulations 1998) of the 'normal' CARE scheme and as such if the 'normal' CARE scheme is an 'inner Club' scheme then in our view, so must the Councillor CARE scheme.

In addition, members of the Scottish LGPS 2015 Scheme became subject to the final salary protection under the PSPA 2013, and in our view this would also include Councillor members.

Outcome

As far as we can tell this leaves a number of policy matters to consider (there may be more, this is simply our initial thoughts) : -

Any Councillor who transfers 'protected' final salary benefits into the LGPS Scotland Councillor CARE element, could enjoy final salary protection under the PSPA 2013. However, regulation 9(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 prescribes that any transfers into the scheme on behalf of a Councillor should purchase accrued pension. Therefore, in order to provide the protection set out in the PSPA 2013, this rule would need to be removed and a new rule inserted stating that 'any 'protected' final salary transfer received on behalf of a Councillor should be treated as if the Councillor were an employee and entitle that Councillor to final salary benefits under the 2009 Scheme so long as the Councillor in respect of whom the transfer payment is received has had no continuous break in active membership of any public service pension scheme of more than five years since ceasing active membership in the scheme from which the transfer payment is received'.

The PSPA 2013 sets out the final salary protection rules within Schedule 7. However, these rules only apply if the Scheme chooses to accept the transfer (see paragraph 2 of Schedule 7) on those terms. You could seek an amendment to the Club memorandum to exclude the Councillor element of the LGPS Scottish CARE scheme from being an 'inner Club' CARE scheme and

continue to accept transfers into the LGPS Scottish Councillor CARE scheme as 'accrued pension' (as is currently the case within TP 2014 regulation 9(1)). Though I'm not entirely sure how this would sit with the policy intent behind the PSPA 2013, or

debar transfers in that would be subject to a final salary link (i.e. only accept transfers in where there is no final salary link).

All in all, we appear to be in a bit of a pickle and I do wonder what is happening practically within LGPS Administering Authorities? Maybe this has never happened?

Jayne

03/11/17 SPPA update - To be discussed at the next SAB KL

Postscript email from SPPA 15/05/20 - If I've understand the issue correctly, Regulation 9(1) of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 requires that any transfers into the scheme on behalf of a Councillor should purchase accrued pension.

The PSPA 2013 sets out the final salary protection rules within Schedule 7, but these rules only apply if the Scheme chooses to accept the transfer according to paragraph 2 of Schedule 7.

At the moment, according to the Transitional regulations, the LGPS Scotland does not accept transfers on this basis.

The Club memorandum does not specifically include the Councillor element of the LGPS Scottish CARE scheme as an 'inner Club' CARE scheme and Councillors are treated differently to ordinary members of the scheme in other areas of the regulations.

We have not had any questions from members or funds querying this approach. Following GAD guidance up until now has not thrown up any issues which would cause us to consider

whether non-club transfers remain the correct approach.

Status: No longer needed as a result of policy position being clarified, etc.

75. LGPS (Scotland) Regulations 2014 - Regulations 9(4), 9(10) - Contributions, 29(13) – Retirement benefits, 72(6)(b) – Applications to resolve disagreements, 74(5) – Reference of disagreement for reconsideration by Scottish Ministers, 77(2) – Appeals by administering authorities, 93(4A) – Certificate of protection and paragraphs 2A, 2B, 5 of, and the last entry in the Table at Part 1 to, Schedule 4 – Appropriate funds

All refer to the “employing authority”. There is no definition of employing authority in Schedule 1 and everywhere else in the regulations we refer to the Scheme employer. Therefore, please amend all the references to “employing authority” to read “Scheme employer”.

Status: regulations amended.

76. LGPS (Scotland) Regulations 2014 - Regulation 16(18) – Additional pension contributions

Makes a cross reference to regs 11(1) and 11(3). Those cross references should be deleted because no-one on child-related leave (as defined in schedule 1) or sick leave has to buy back ‘lost’ pension via an APC because they are automatically credited with full pension under regs 23(4) or (5) by virtue of regs 21(1) and (2) and reg 12.

Status: regulations amended.

77. LGPS (Scotland) Regulations 2014 - Regulation 48(1) – Limit on total amount of benefits

This appears to restrict a member’s pension benefits under the scheme (calculated in accordance with actuarial guidance issued by Scottish Ministers) to the member’s lifetime allowance i.e. it specifically restricts the benefits to ensure they do not exceed the member’s LTA and the member appears to lose the right to any excess benefits. Therefore, please revert to the previous position which says that the member cannot have benefits in excess of the LTA “except in accordance with actuarial guidance issued by Scottish Ministers”.

Status: regulations amended.

78. LGPS (Scotland) Regulations 2014 - Schedule 1 - Interpretation

The wording of the definition of “eligible child” in Schedule 1 of the LGPS (Scotland) Regulations 2014 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"

15

(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:

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..."

If somebody begins to receive a pension under Condition C sub-para (i) i.e. 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?

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?

A member dies leaving two eligible natural children, one aged 9 and one aged 17. A single pension account is opened under reg 40 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. I 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 reg 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 I suspect that common sense would prevail i.e. the administering authority would not resurrect and pay a child's pension to the elder child. However, if the case were taken through IDRPs and then to the Pensions Ombudsman I wonder what the outcome would be?

03/11/17 Legal update from SPPA - Legal advice is to the contrary KL

Status: No longer needed as a result of policy position being clarified, etc.

79. LGPS (Scotland) Regulations 2014 - Regulation 3(6)(e) – Active membership

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

- there is no CEP in respect of females who paid reduced rate 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 “paid National Insurance contributions” to “paid contracted-out National Insurance contributions”.

03/11/17 SPPA update – Agreed KL

Status: regulations amended.

80. LGPS (Scotland) Regulations 2014 - Regulation 94(4) – Rights to payment out of pension funds

Should be deleted (effective from 6 April 2015) as the rules under the PSA93 governing transfers of certain benefits no longer impose such time limits. We can simply rely on the wording of regulation 94(1) i.e. only those entitled to a payment under the PSA93 can have a transfer.

Status: regulations amended.

81. LGPS (Scotland) Regulations 2014 - Regulation 21 – Assumed pensionable pay (regulation 21 of LGPS (Scotland) Regulations 2018:

To cater for a number of cases that have been notified to us recently where a member has had no pay on the preceding 3 months or 12 weeks (e.g. a monthly paid member joins the scheme on 1st October and dies in service on 41 (published on 14 March 2024)

6th October; or a monthly paid employee joins on 1st October and goes on to maternity leave 2 weeks later) add a new sub-paragraph (8) to read “(8) Subject to paragraph (7), where the member received no pensionable pay relating to the employment in the period referred to in paragraphs (4)(a)(i) and 4(b)(i) , the assumed pensionable pay shall be the member’s annual contractual pay on the day preceding the date the circumstances specified in paragraph (2) began or, as appropriate, the ill-health retirement or death occurred, to which any regular lump sum payment received in the 12 months preceding the date specified in paragraph (4)(a)(i) and 4(b)(i) should be added.” Paragraph (4) would then need to be amended to commence with the words “Subject to paragraphs (7) and (8)” and paragraph (5) would need to be amended to change the words “paragraph (4)” to “paragraphs (4) and (8)”.

03/11/17 SPPA update – Agreed KL

Status: Matter still to be dealt with

82. LGPS (Scotland) Regulations 2014 - Regulation 32(4)(a) – Election for lump sum instead of pension (32(4)(a) of LGPS (Scotland) Regulations 2018)

I believe this is not restrictive enough as it allows a Pension Credit member to commute 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.

03/11/17 Policy update from SPPA - Covered by overriding legislation KL and Agreed – to be discussed at next SAB KL

Status: Awaiting consideration from elsewhere.

43 (published on 14 March 2024)

83. LGPS (Scotland) Regulations 2014 - Regulation 29(10) – 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 reg 29(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”.

03/11/17 SPPA update – Agreed KL

Status: regulations amended.

84. LGPS (Scotland) Regulations 2014 - Regulation 54(2) – Accounts and audit

The reference to 31st March will need to be amended to 5th April in order to comply with the amendments being made to the Finance Act 2004 by the Finance Bill 2015/16.

03/11/17 SPPA update – Agreed KL

Status: regulations amended.

85. LGPS (Scotland) Regulations 2014 - Regulation 29 – Retirement benefits

Regulations 29(1) and 29(3) only cover members who are “not an employee in local government service” as defined in Schedule 1. There is nothing in regulation 29 that covers employees who are in local government service (as defined in Schedule 1) and who attain age 75 i.e. those who remain contributing to the Scheme 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 29 that states this. I’d 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”.

03/11/17 Policy update from SPPA – Policy decision discuss at SAB

Status: regulations amended.

86. LGPS (Scotland) Regulations 2014 - Regulation 31 – Commencement of pensions

As a result of the entry at 85 above a consequential amendment is necessary to regulation 31 i.e. 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 29(3A) begins with the member’s 75th birthday.”

03/11/17 Policy update from SPPA – Policy decision discuss at SAB

Status: regulations amended.

87. LGPS (Scotland) Regulations 2014 - Schedule 1 – Interpretation

The definition of “additional maternity or adoption leave” has been retained in Schedule 1 of the LGPS (Scotland) Regs 2014. I assume that was deliberate and that you took the view that the deletion of that definition from Schedule 1 in the E&W Regs was probably a mistake given that “additional maternity or adoption leave” is still referred to in the definition of “child-related leave” in Schedule 1. Is my assumption correct?

03/11/17 SPPA update – Yes KL

Status: No longer needed as a result of policy position being clarified, etc.

88. LGPS (Scotland) Regulations 2014 - Schedule 1 – Interpretation

In the definition of “statutory pay” in Schedule 1 of the LGPS Regulations 2013 (E&W) the words “, shared parental” were added after the word “paternity”. An equivalent amendment has not been made to the definition in Schedule 1 in Scotland. Am I correct in assuming that was an oversight and a correction needs to be made?

03/11/17 SPPA update – Agreed KL

Status: regulations amended.

89. LGPS (Scotland) Regulations 2014 - Regulation 37(7)(b) – Calculation of ill health pension amounts

This was inadvertently deleted by SSI 2015/87 and needs to be reinstated.

90. LGPS (Scotland) Regulations 2014 - Regulation 32 – Election for lump sum instead of pension (regulation 32 of LGPS (Scotland) Regulations 2018)

Where an active member retires on, say 20th February 2016 and all the paperwork required to process the benefits is received on, say 3rd April 2016, that would be the date of the BCE. The member's benefits would include the Treasury Order revaluation applied at one second after midnight of 31st March 2016 and so the member could, under regulation 32, commute up to 25% of the value of benefits at that BCE. However, if all the necessary paperwork had been received on 26th February 2016 that would be the BCE date and the member would, at that time, only have been able to commute up to 25% of the value of the benefits at that BCE. The subsequent application of the Treasury Order at one second after midnight of 31st March 2016 would constitute a second BCE and so the member should, technically, be given an option to commute up to 25% 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 i.e. the PI programme is run after the March payroll has been run, the Treasury Order is not applied until one second after midnight of 31st March and then the April payroll is run which produces a very tight, virtually impossible, timeline i.e. 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% of the increase in value, get the member's additional commutation decision before the April payroll is closed and then overwrite the PI that had been calculated when the PI programme was run following the March payroll. In order to avoid this we seek an amendment to regulation 32 to provide that the increase in value or a member's CARE pot derived from the application of a Treasury Order at one second after midnight of the 31st March following the date of cessation of active membership is excluded from the amount of pension that the member can commute under regulation 32. Note that this amendment would also apply to deferred members drawing the deferred pension (i.e. 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) i.e. "(c) 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”.

03/11/17 SPPA update - Put in guidance?

Status: Matter still to be dealt with

91. LGPS (Scotland) Regulations 2014 - Regulation 26 – Retirement pension accounts: deferred and pension credit members

Regulations 42(5) and 43(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 at the beginning of 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 i.e. “(8) If the member ceased to be an active member, became a deferred member and a pensioner member all within the same Scheme year, the balance in the member's retirement pension account at the end of the Scheme year in which the retirement pension account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the retirement pension account was opened, in accordance with actuarial guidance issued by the Scottish Ministers.”

Status: regulations amended.

92. LGPS (Scotland) Regulations 2014 - Regulation 40(12) – Survivor benefits: children of active members

Amend the word “valuation” to “revaluation”

Status: regulations amended.

93. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 - Regulations 1(6) - Citation, 3(1) – Membership before 1 April 2015, 4(5) – Statutory underpin, 4(6)(c) – Statutory underpin, 10(2)(a) – Interfund adjustments and 17(2)(b) - Survivor benefits

We will eventually need to consider if any change to the wording of these regulations is necessary once it has been agreed how Certificates of Protection issued in respect of pre 1 April 2015 pay cuts / restrictions will work going forward (e.g. will they impact on post 2015 CARE accrual) and whether Certificates of Protection issued in respect of post 31 March 2015 pay cuts / restrictions will impact on pre 1 April 2015 final salary benefits.

Status: regulations amended.

94. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 - Regulation 3 - Membership before 1 April 2015

I've asked that regulation 35(2) of the LGPS (Scotland) Regulations 2014 be amended to put it beyond any doubt whatsoever that (following the Pension Ombudsman decision in the case of Mr. Damien Kelly v Merseyside Pension Fund and Sefton Council) the IRMP can be employed by the same company or work in the same practice as a person who has previously advised on, or given an opinion on, or otherwise been involved in the particular case. According to regulation 3(1)(a) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, the regulations listed in Schedule 1 (which includes the Administration Regulations) continue to have effect so that "any rights and obligations imposed on any person under the" Earlier Schemes are preserved. On the face of it that means Administration regulation 52(1)(b) continues to have effect in relation to 2009 to 2015 leavers. An appropriate amendment should therefore be made to also make it clear that, for the purposes of Administration regulation 52(1) the IRMP can be employed by the same company or work in the same practice as a person who has previously advised on, or given an opinion on, or otherwise been involved in, or acted for any party to, the particular case.

Postscript: this amendment is no longer necessary as the Kelly case has been overturned by a subsequent decision in the case of Climie-Somers v Suffolk CC (PO-2246).

Status: No longer needed as a result of policy position being clarified, etc.

95. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 - Regulations Regulation - Regulation 9(1) – Transfers

This regulation is simply trying to deliver the intention behind paragraph 2 of Schedule 7 to the Public Service Pensions Act 2013 which requires that the transfer shall purchase final salary benefits provided there has been no continuous break of more than 5 years in active membership of a public service pension scheme since leaving the scheme from which the transfer is being received. It would be helpful, therefore, if the following words were added at the end of reg 9(1) to make the position clear - “since ceasing active membership in the scheme from which the transfer payment is received”. Otherwise, as presently drafted, a person who was in a public service pension scheme for, say, 6 months and took a refund, had a 6 year break, joined another public service pension scheme (say the Teachers’ Pension Scheme) for a period of time and then moved without a break to the LGPS and requested a transfer from the TPS to the LGPS would not be entitled under reg 9(1) to have that transferred service counted as pre 2015 final salary membership (because of the earlier 5 year break). This would run counter to the requirement of paragraph 2 of Schedule 7 to the Public Service Pensions Act 2013.

Status: regulations amended.

96. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 Regulation 9(3) – Transfers

If the relevant date is before 1 April 2015, would a five year break exclude a member from having a club transfer in if the member elects for that transfer after 31 March 2015?

Example

Joined current LGPS post 22/09/14 - so would have until 21/09/15 to elect for a club transfer

Has previous LGPS membership 07/02/06 – 26/09/11

Left PCSPS scheme 16/06/94

Could member have a club transfer from PCSPS to current post?

Answer

The first thing to consider is paragraph 4.1 of the Club rules which states:

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

(i) an individual resigns from employment and rejoins the same scheme within 6 months, except during any period after rejoining which falls within 12 months of first becoming eligible to join the scheme; or

(ii) an individual has joined the Club scheme from another Club scheme as a consequence of a compulsory transfer of employment, or of pension scheme.”

If the member had made the transfer election before 1st April 2015 it would have been treated as a Club transfer (as the period between leaving the LGPS in 2011 and rejoining it in 2014 was more than 6 months) and it would have bought 60ths final salary membership under the 2009 Scheme, regardless of the fact that there had been a continuous break in active membership of public service pension schemes of more than 5 years.

However, if the member makes the transfer election on or after 1st April 2015, regulation 9(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 provides that the transfer can only purchase 60ths final salary membership under the 2009 Scheme if there had not been a continuous break in active membership of public service pension schemes of more than 5 years. In this particular case there had been such a break and so the transfer would, according to the last draft of the document covering Club transfers that we have seen, be treated as a non-Club transfer. It would not fall within regulation 9(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 (because the break had been for more than 5 years) but, equally, it would not fall within regulation 9(3) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 because the transfer is from a public service pension scheme. The member therefore seems to fall down a black hole.

Although regulation 9(1) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 is quite specific, it seems to have produced an inequitable result in this particular case given that the member is still within

the original 12 month window for applying for a transfer. An appropriate amendment should be made to regulation 9(3) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 along the lines of:

(3) Where a transfer payment is received **in respect of a member of the 2015 Scheme** from –

(a) a registered pension scheme which is not a public service pension scheme, or

(b) a registered pension scheme which is a public service pension scheme and the person in respect of whom the transfer payment is received has had a continuous break in active membership of any public service pension scheme of more than five years since ceasing active membership in the scheme from which the transfer payment is received, or

(c) a European Pensions Institution ~~in respect of a member of the 2015 Scheme,~~

if the relevant date ~~in either case~~ was before 1st April 2015, that transfer payment shall be dealt by the appropriate administering authority as if it had been received in respect of membership of the 2009 Scheme.

Status: regulations amended.

97. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 Regulation 7 – Qualifying service for the 2015 scheme

An equivalent of regulations 7(5) and 7(6) of the Transitional Provisions Regulations in England and Wales is required in the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014. These would read as follows:

(5) A person who became a member of the 2015 Scheme by virtue of regulation 5(1) of these Regulations (membership of the 2015 Scheme), and for whom a transfer value was credited under the Earlier Regulations who ceases to be an active member of the 2015 Scheme before achieving qualifying service for a period of two years may elect—

(a) to have regulation 18 of the 2014 Regulations (rights to return of contributions) deemed to apply to the contributions paid both into the Earlier Schemes and the 2015 Scheme (where the period in respect of which

contributions to the Earlier Schemes were paid has been aggregated with membership of the 2015 Scheme); or

(b) to be a deferred member of the 2015 Scheme notwithstanding regulation 6(1) of the 2014 Regulations (deferred members); or

(c) if the member has reached the normal retirement age applicable to that member under the 2009 Scheme, to draw retirement pension immediately upon cessation of local government service, notwithstanding regulation 6(1) (deferred members) of the 2014 Regulations.

(6) An election under paragraphs (5)(a) or (b) must be made in writing to the member's administering authority within the period of six months beginning with the date on which the active membership ceased and an election under paragraph (5)(c) must be made to that authority within the period of six months beginning with the date of the cessation of local government service, and in default of any election being made the member shall be awarded a deferred benefit in the 2015 Scheme, or an immediate pension, as appropriate.

I've un-deleted the above (and tweaked the wording in (5)(c)) as I realised certain members are not covered by regs 7(2) and (3). For example, a member who had a transfer in under the 2009 Scheme from another occupational pension scheme was not entitled to a refund by virtue of reg 6(1)(b) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008, even if the qualifying period in that scheme was only, say, 6 months. Such a person would fail to meet the requirements of reg 3(6)(b) of the LGPS (Scotland) Regulations 2014 and would thus be entitled to a refund; whereas, having been entitled to a deferred or actual pension under the Earlier Regulations, the member should be given the choice of a refund or, as appropriate, a deferred pension or actual pension.

Also, as you will know, I have requested that regulation 3(6)(g) of the LGPS (Scotland) Regulations 2014 is amended to read :

"a transfer value payment has been ~~received from~~ paid to a qualifying recognised overseas pension scheme;"

This is because paragraph 5(1)(c) of Schedule 29 of the Finance Act 2004 says that a refund is only an authorised refund if "there has been no previous benefit crystallisation event in relation to the member and the pension

scheme". A QROPS transfer out is a BCE8 and so paying a refund to a member who had had a QROPS transfer, returned to the UK, rejoined the LGPS, and left again with less than 2 years membership would be an unauthorised payment. So we should not allow a refund and have to provide, instead, a deferred benefit. Thus the wording in the Regulations needs to be amended from "received from" to "paid to". I've realised that regulation 7(3) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 also needs to be amended for the same reason and should read:

"(3) A transfer value payment made under the Earlier Schemes ~~from~~ to a qualifying recognised overseas pension scheme counts as qualifying service in the 2015 Scheme for the purpose of regulation 3(6)(g) of the 2014 Regulations (active membership)."

Status: regulations amended.

98. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 - Regulation 15 – Additional contributions

Needs an additional paragraph added to state that the £6,500 additional pension limit referred to in regulations 16(5) and (6) and the £5,000 limit referred to in regulations 30(1) and (2) of the LGPS (Scotland) Regulations 2014 include, respectively, the amount of any additional pension being purchased / granted under regulations 13 and 14 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 and regulation 20 of the LGPS (Administration) (Scotland) Regulations 2008.

Status: regulations amended.

99. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 - Regulation 17(13) - Survivor benefits

Delete the full stop at the end of paragraph (b) and, underneath paragraph (b) add "and, for the purposes of paragraph (12) the reference in regulation 41(4)(a) of the 1998 Regulations to "5th April 1988" shall be amended to "5th April 1978"."

And in reg 17(13)(a) amend "41(a) to (d)" to "41(4)(a) to (d)".

Status: regulations amended.

**100. LGPS (Transitional Provisions and Savings) (Scotland)
Regulations 2014 - Regulation 20(2) – Pension sharing**

This appears to require that the share of a member's AVC pot is used to purchase an amount of pension in a pension account in the 2015 Scheme for the Credit Member (not an AVC arrangement – unless the Scottish Ministers' guidance states otherwise). Is that the policy intention?

Status: Matter still to be dealt with

**101. LGPS (Transitional Provisions and Savings) (Scotland)
Regulations 2014 - Paragraph 2(1) of Schedule 2 – Transitional
Provision – the 85 year rule**

The intention behind this paragraph was to simplify the process for waiving actuarial reductions. In particular we were seeking to avoid a situation whereby those retiring under regulations 29(5) of the LGPS Regulations 2014 would only have been able to have the actuarial reduction on the pre 1 April 2015 element of their benefits waived on compassionate grounds and the actuarial reduction on their post 31 March 2015 benefits waived in whole or in part on any grounds. We have achieved this simplification for members subject to the 85 year rule (and who are thus covered by paragraph 2(1) of Schedule 2 to the Transitional Provisions Regulations) as, in such cases, the employer can waive the reduction on both pre and post 2015 pension rights in whole or in part (although I think that Transitional Reg 3(5) needs a consequential amendment – see below). However, we have unfortunately overlooked those members who have pre and post 2015 benefits and who retire under reg 29(5) of the LGPS Regulations 2014. In such cases, the employer appears, by virtue of regulation 3(1)(a) of the Transitional Regulation 2014, to only be able to waive the actuarial reduction on the pre 1 April 2015 benefits on compassionate grounds and the actuarial reduction on the post 31 March 2015 benefits in whole or in part on any grounds. We need to ensure that these cases, too, can have the actuarial reduction on the pre and post 2015 benefits waived in whole or in part (i.e. get rid of the compassionate grounds requirement on the pre 2015 element of the pension). The way to achieve this, and the consequential amendment I referred to above, would be to insert after the word "if" the words ", subject to paragraph (12) and to paragraph 2(1) of Schedule 2," and to insert a new regulation 3(12) saying "(12)

Where benefits are payable under regulation 29(5) of the 2014 Regulations, the employer may waive any actuarial reduction in whole or in part.”

Status: regulations amended.

102. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 Regulation 17(11)(a) – Survivor benefits

Amend to read “the surviving civil partner of a member” i.e. delete the words “where the civil partnership was entered into after the member’s active membership ceased”. This is because the words to be deleted reflect the position in England and Wales where those words were needed to correct an inadvertent error in the 2008 Scheme under which the benefits for the survivor of both a pre and post leaving civil partnership were based on all the deceased member’s membership. Reg 17(11)(a) in England and Wales means the benefits for the survivor of a pre leaving civil partnership are based on all the deceased member’s membership and the benefits for the survivor of a post leaving civil partnership are based on the deceased member’s post 5th April 1988 membership. However, in Scotland (under the 2009 Scheme) the benefits for the survivor of both a pre and post leaving civil partnership are based on the deceased member’s post 5th April 1988 membership only and I assume that the policy intention is to carry forward that position rather than move to the position that applies in England and Wales. Hence, the need to delete the superfluous wording.

Postscript: policy intention subsequently clarified – does not follow the line adopted in E&W.

Status: No longer needed as a result of policy position being clarified, etc.

103. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 - Regulation 26(6) Final pay certificate of protection

I think the words “regulation 22 of the 1998 Transitional Regulations (former NHS scheme members) and” should be deleted as those provisions in that regulation were carried forward into regulation 14 of the LGPS (Transitional Provisions) (Scotland) Regulations 2008.

Status: regulations amended.

**104. LGPS (Transitional Provisions and Savings) (Scotland)
Regulations 2014 - Regulation 21 – Mis-sold personal pensions**

This regulation “preserves” regulations 108 and 124 of the 1998 Regulations. However, I’m not certain this is legally possible as, unlike in England and Wales, those provisions were revoked by the LGPS (Transitional Provisions) (Scotland) Regulations 2008. Is it legally possible to “preserve” regulations that have already been revoked?

Status: regulations amended.

**105. LGPS (Transitional Provisions and Savings) (Scotland)
Regulations 2014 - regulation 17(3) – Survivor benefits**

To ensure that survivors of a death in service benefit from the protection referred to in Transitional reg 12(1), please amend reg Transitional reg 17(3) to read:

(3) 2015 Scheme survivor pensions for the purposes of paragraph (1) are calculated in accordance with the 2014 Regulations or, where the deceased member would have benefited from the protection in regulation 20(5) of the Benefits Regulations (transitional protection for persons who were members immediately 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 2014 Regulations, and

(b) the benefits the survivor would have received under sub-paragraph (a) if the amount to be added under regulations 39(4)(b), 40(4)(b), 40(5)(b), 40(9)(b) or 40(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 2015 Scheme had counted as a period of membership of the 1998 Scheme,

(ii) the amount added under regulations 39(4)(b), 40(4)(b), 40(5)(b), 40(9)(b) or 40(10)(b) of the 2014 Regulations were calculated by reference to the accrual rates referred to in those regulations.

Status: regulations amended.

**106. LGPS (Transitional Provisions and Savings) (Scotland)
Regulations 2014 - regulation 10(6) – Interfund adjustment**

Unlike [regulation 22(8) of the LGPS Regulations 2013 in England and Wales] and regulation 5(5) of the Transitional Regulations, regulation 10(6) of the Transitional Regulations does not impose a 12 month time limit. This means that a member with a deferred benefit from an Earlier Scheme can choose to aggregate those benefits to purchase an amount of earned pension in the 2015 Scheme at any point whilst they are a Scheme member. This leaves Scheme employers at risk as the member could choose to transfer those rights several years after re-joining the Scheme and just before redundancy or ill health retirement (leaving the scheme employer to meet the resulting strain costs). To avoid this, and to ensure consistency with [regulation 22(8) of the LGPS Regulations 2013 in England and Wales] and regulation 5(5) of the Transitional Regulations, amend the words “may elect to receive a transfer value payment” to

“may -

within 12 months of the active member’s pension account being opened; or

such longer time as the Scheme employer in relation to that active member’s pension account permits,

elect to receive a transfer value payment”

Status: regulations amended.

**107. LGPS (Transitional Provisions and Savings) (Scotland)
Regulations 2014 - regulation 3(1)(a) – Membership before 1 April
2015**

Where a deferred member who ceased active membership prior to 1 December 2006 rejoins the LGPS and aggregates membership (without having had a continuous break in active membership of public service pension schemes of more than 5 years i.e. they have been in another public service pension scheme(s) in the intervening period) Transitional reg 3(1)(a) provides that the rights accrued as at 31 March 2015 are preserved. The Normal Pension Age for the deferred benefit of a pre 1 December 2006 leaver is

- age 60 if, by that age, the member would have had 25 or more years membership of the scheme if they had remained in the scheme until then, or
- the date the member would have achieved 25 years membership, if that date would fall after age 60 and before age 65, or
- age 65 if, by that age, the member would not have had 25 years membership of the scheme if they had remained in the scheme until then.

If the member had re-joined the LGPS prior to 1 April 2015 and aggregated membership, the aggregated membership would all have had an NPA of 65 i.e. the NPA of the earlier membership for which the member had been awarded a deferred benefit would have shifted to age 65, even though the NPA for the deferred benefit may have been earlier. That was a factor the member had to consider when deciding whether or not to aggregate.

However, regulation 3(1)(a) appears to inadvertently protect the earlier NPA where such a member aggregates after 31 March 2015 (and Transitional reg 24(2) only provides for the post 31 March 2015 membership to have an NPA of 65 (for those who were active members on 31 March 2015). Regulation 3(1)(a) therefore needs to be amended to provide that where a deferred member who ceased active membership prior to 1 December 2006 rejoins the LGPS and aggregates membership (without having had a continuous break in active membership of public service pension schemes of more than 5 years i.e. they have been in another public service pension scheme(s) in the intervening period) the NPA for the pre 1 April 2015 aggregated membership is age 65.

Status: regulations amended.

108. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 - regulation 4(6) – Statutory underpin:

Where:

a member re-joins the Scheme on or after 1 April 2015 (e.g. on 1 February 2016),

chooses to retain separate deferred benefits in the LGPS in Scotland, and

meets the criteria for the underpin i.e.:

they were an active member of the 2009 Scheme on 31 March 2012 (i.e. in respect of their deferred benefit record) and were, on 1 April 2012, 10 years or less from their normal retirement age under the 2009 scheme and

they were an active member immediately before the underpin date (i.e. in their active pension account), and

they receive payment of benefits under the 2015 Scheme on or after the underpin date, and

they do not have a disqualifying break in service (i.e. a continuous break in active membership of public service pension schemes of more than 5 years), and

prior to the underpin date have not drawn benefits under the 2014 Regulations in relation to an employment (which they haven't because the deferred benefit do 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?. The LGPC Secretariat's 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 the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 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 LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 says that the underpin is calculated based on membership between 1 April 2015 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 the LGPC Secretariat can think of:

If the member had left with a deferred benefit pre 1 April 2015 and rejoined post 31 March 2015 without a disqualifying break of more than 5 years, they

would get an underpin on the post 31 March 2015 membership (regardless of whether or not they had aggregated the pre 1 April 2015 membership)

if the member had left post 31 March 2015, rejoined post 31 March 2015 (without a disqualifying break of more than 5 years) and aggregated membership, they would get an underpin on the aggregated post 31 March 2015 membership

if the member had left post 31 March 2015, rejoins post 31 March 2015 (without a disqualifying break of more than 5 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 debar an underpin if the member has already received benefits "in relation to an employment" (e.g. on flexible retirement). However, technically, the LGPC Secretariat believes 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).

Status: No longer needed as underpin being reviewed as part of the McCloud remedy.

109. LGPS (Transitional Provisions and Savings) (Scotland)

Regulations 2014 - regulation 4 – Statutory underpin

If a member retires with immediate benefits at age 64 with an NPA of 65 in the 2009 Scheme and an NPA of 66 in the 2015 Scheme, should the underpin calculation which is performed to be a comparison between:

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

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 2009 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 the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

Similarly, where a member has an NPA of 66 in the 2015 Scheme and an NPA of 65 in the 2009 Scheme retires and draws immediate benefits at 65½, should the underpin calculation which is performed be a comparison between:

the unreduced Final Salary (FS) benefits at the member's 2009 Scheme NPA (65) and the unreduced CARE benefits at the member's 2009 Scheme NPA (65), or

the unreduced FS benefits at the member's 2009 Scheme NPA (65) and the actuarially reduced CARE benefits at the member's 2009 Scheme NPA (65) (i.e. with a 1 year actuarial reduction to 66), or

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 (i.e. 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 an 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 2009 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 the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

Status: No longer needed as underpin being reviewed as part of the McCloud remedy.

110. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 regulations 10(5) and (6) – Interfund adjustments etc

Aggregation of Pre 1 April 2014 benefits (deferred / deferred refund) to benefits of a member who joined the LGPS on or after 1 April 2014

We have raised the following questions in footnotes 1 and 2 of the aggregation document (adjusted for the purpose of LGPS (Scotland) herein).

“Scenario D1

It is not clear why, where a member left prior to 1 April 2015 with a deferred refund and rejoins the Scheme on or after 1 April 2015 and has not had a continuous break in active membership of a public service pension scheme of more than 5 years, regulation 10(5) of the LGPS (Transitional Provisions and Savings)(Scotland) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2015 membership should 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 Public Service Pensions Act 2013). Clarification has been sought from Scottish Ministers”

¹ Or, if the member had remained an active member beyond their NPA in the 2015 Scheme, an actuarial increase for the period of deferment beyond their NPA in the 2015 Scheme.

Scenario D2

“It is not clear why, if the member does not elect to be treated as if he / she had been an active member on 31 March 2015 and 1 April 2015 and elects to aggregate, regulation 10(6) of the LGPS (Transitional Provisions and Savings)(Scotland) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2015 membership should 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 Public Service Pensions Act 2013). Clarification has been sought from Scottish Ministers.”

The Secretariat has further investigated this subject and we have set out below the basis for what we believe to be the overall outcome, based on the current wording of the LGPS Regulations.

Summary of the Secretariat’s understanding of the Public Service Pensions Act 2013 (PSPA2013)

In the first instance if we start with the principles of the PSPA2013.

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 s18(2) and Schedule 5, in the case of the LGPS as a scheme set up under s.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 s.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'.

Summary: So at this stage in the proceedings, the pre 1 April 2015 Final Salary Benefits of a member who was continuously in the LGPS both on 31 March 2015 and 1 April 2015 retained final salary protection when ending their 2015 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 s.1 of the PSPA2013)

A single gap of LGPS service of 5 years or less, where the person was not in one of the new public service schemes (set up under s.1 of the PSPA2013)

Two or more gaps in LGPS service of 5 years or less (where any one gap does not exceed 5 years), where the person was not in one of the new public service schemes (set up under s.1 of the PSPA2013)

Summary: It seems that where a member aggregates Pre 1 April 2015 benefits with Post 31 March 2015 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 the Transitional Provisions 2014 seems to provide an initial choice for the member (i.e. CARE or final salary) and for the member to receive final salary protection, the member has to elect under regulation 5(5). Accordingly we believe the statement within the aggregation guide is correct as the default position should be that in the first instance, the member is awarded final salary protection, and only thereafter, if Scottish Ministers wish to extend this option to instead provide earned pension, the member should have to elect for the alternative to that prescribed within the PSPA2013. 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 i.e. the underpin would have to be applied in all such cases (even where the member

was not over 55 / within 10 years of NRD in 2012) – why would Scottish Ministers want to do that?

Similarly regulation 10(5) of the Transitional Provisions 2014, simply appears incorrect as the member is awarded 'earned pension' upon aggregation of a deferred refund, which does not seem to comply with the PSPA2013 at all? Accordingly we believe the statement within the aggregation guide is correct as the default position should be that in the first instance the member is awarded final salary protection, and only thereafter, if Scottish Ministers wish to extend this option (why would they want to?) to instead provide earned pension, the member should have to elect for the alternative to that prescribed within the PSPA2013.

The Secretariats understanding of the impact to Administering Authorities

At the moment we believe we have two problems:

If Funds are following the Transitional Provisions Regulations 2014 and our aggregation guide they will be giving

i) deferred refund cases, and

deferred benefit cases who did not elect to be treated as if they were an active member on 31/3/15 and 1/4/15

a CARE benefit in respect of the aggregated service.

If that eventually turns out to be greater than the final salary guarantee under the PSPA2013 then the member won't complain and the Fund can justify paying a benefit higher than that provided for under the PSPA2013 on the grounds that our TP Regulations require us to pay that benefit. However, if the CARE pension from the aggregated service turns out to be less than the final salary benefit provided for under the PSPA2013 the member could complain that the Fund had not complied with the PSPA2013 and demand the higher, final salary benefit (to which they are entitled under the PSPA2013).

If Funds are following the PSPA2013 and ignoring our aggregation guide and the Transitional Provisions Regulations 2014, they will be giving

deferred refund cases, and

deferred benefit cases who did not elect to be treated as if they were an active member on 31/3/15 and 1/4/15

a final salary benefit in respect of the aggregated service.

If that eventually turns out to be greater than the CARE benefit under the Transitional Provisions Regulations 2014 then the member won't complain and the Fund can justify paying a benefit higher than that provided for under the Transitional Provisions Regulations 2014 on the grounds that the PSPA2013 requires the Scheme to pay that benefit. However, if the final salary pension from the aggregated service turns out to be less than the CARE benefit provided for under the Transitional Provisions Regulations 2014 the member could complain that the Fund had not complied with the Transitional Provisions Regulations 2014 and demand the higher, CARE benefit (to which they are entitled under the Transitional Provisions Regulations 2014).

Thus, whichever stance an administering authority is currently taking, there will be cases where the member is due a higher payment. This will remain the case unless / until Scottish Ministers amend the Transitional Provisions Regulations 2014.

Postscript: On further review and confirmed by the Cabinet Office, paragraph 3 of schedule 7 to the Public Service Pensions Act 2013 makes reference to "pensionable service" when defining continuity of employment. "Pensionable service" is defined in section 37 as "pensionable service, in relation to the a pension scheme, means service which qualifies a person to a pension or other benefits under that scheme." A refund does not qualify a person to a pension and is thus not protected under the Act nor does it count when determining continuity of pensionable service.

No longer needed as a result of policy position being clarified

111. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 regulation 17 – Survivor benefits

Annette sent me the following regarding the policy intention for survivor benefits:

Survivor benefits

“The Heads of Agreement for the 2015 scheme clearly states “Pensions for partners who cohabit and civil partners equal to those benefits afforded to married couples. There will be no requirement to nominate a cohabitee.”

Under the 2009 scheme, survivor benefits for civil partners (introduced in 2005, therefore part of the 1998 scheme) and for (nominated) cohabiting partners (introduced in 2009) are calculated based on post-1988 membership only, whether the relationship commenced pre-leaving or post-leaving. The 2009 scheme differentiates between pre-leaving and post-leaving marriages, with widow’s survivor benefits based on post-78 membership for post-leaving marriages, and widower’s survivor benefits based on post-88 membership for post-leaving marriages. All membership qualifies for survivor benefits for pre-leaving marriages, for both widows and widowers.

The 2009 scheme sees the addition of same-sex marriage, from 16/12/2014, though the first same sex marriages did not take place until 31/12/2014. Up until the scheme ceases on 31/03/2015, survivor benefits for same sex spouses will be calculated on post-88 membership (i.e., same sex spouses to be treated the same as civil partners for the purposes of survivor benefits).

Under the 2015 scheme, survivor benefits are equalised for all types of relationships. Survivor benefits, like pensions, are calculated separately for final salary benefits and CARE benefits. By default, CARE benefits will all be post-88. Final salary benefits are calculated as under the earlier scheme regulations, with retention of final salary link (unless a person has a continuous break in excess of five years out of active membership of any public sector pension scheme and then aggregates their former deferred benefit entitlement with their current membership of the scheme; note that the 85 year rule of protection is not lost). The 2014 main regulations set out how CARE benefits are calculated. The 2014 transitional regulations set out how final salary benefits are calculated for 2015 scheme members. The transitional regulations retain the post-88 restrictions only for post-leaving relationships (note: post-78 for widows of post-leaving opposite sex marriages).

The policy intent in the 2015 scheme is to equalise survivor benefits for civil partners, cohabiting partners and married couples. Because post-leaving marriage restrictions are applied to married couples under the 2009 scheme, they will continue to apply in the 2015 scheme (the Heads of Agreement does not specify/make the distinction between pre- and post-leaving).”

If I've read it correctly, where:

a) a member leaves after 31/3/15 and dies after that date, the policy intention is for the survivor's pension of a pre-leaving civil partnership, pre-leaving same sex marriage or pre-leaving cohabitation to be based on all the deceased member's pre-15 membership i.e. only post leaving civil partners, post-leaving same sex partners and post-leaving cohabiting partners should have the pre-15 benefits based on post 5/4/88 membership only; and

b) a member leaves before 1/4/15 but dies after 31/3/15, the policy intention is for the survivor's pension of a pre-leaving civil partnership, pre-leaving same sex marriage or pre-leaving cohabitation to be based on the deceased post 5/4/88 membership (i.e. the same as for a post leaving civil partner, post-leaving same sex partner and post-leaving cohabiting partner).

Have I understood that correctly? If so, then the Transitional Regulations 2014 deliver this policy intention in respect of (b) [or, rather, will do so when an amendment is introduced to the 2009 Benefits Regs to cover same sex marriages] but I don't believe they do so in respect of (a). That is because TP regs 17(1) and (2) require that, subject to paragraphs (9) to (13), the pre-15 benefits are calculated under the Earlier Schemes. The starting position is, therefore, to look at paragraphs (9) to (13). They do not mention survivors of pre-leaving civil partnerships, pre-leaving same sex marriages or pre-leaving cohabitation. Thus, they do not apply. That leaves us with TP regs 17(1) and (2) which require that the pre-15 benefits for such survivors are calculated under the Earlier Schemes i.e. based on post 5/4/88 membership only. If the policy intention is as set out in (a) above then TP reg 17 will need a further paragraph added to say that where a member leaves after 31/3/15 and dies after that date, the survivor's pension of a pre-leaving civil partnership, pre-leaving same sex marriage or pre-leaving cohabitation is to be based on all the deceased member's pre-15 membership.

Status: regulations amended.

112. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 regulations 9(3A) and 9(3B) - Transfers

These were inserted in response to entry 4 above. However, following e-mail correspondence with Colin Hennem at the Cabinet Office (who manages the Public Sector Transfer Club) it appears that there is a further category that needs to be added i.e.

68 (published on 14 March 2024)

(3C) Where an Outer Club transfer payment (under the rules of the Public Sector Transfer Club) is received in respect of a member of the 2015 Scheme, that transfer payment shall be dealt with by the appropriate administering authority as if it had been received in respect of membership of the 2009 Scheme.

The above applies even if all of the membership from the Outer Club scheme had accrued post 31 March 2015.

Status: matter still to be dealt with.

113. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 regulation 17 – Survivor benefits

We have a case where a member who left in 2010 and who has a cohabiting partner. He is thinking of getting married shortly and wants to know what difference this will make to his beneficiary's benefits.

This member had a transfer in back in 1988 and another in 1991 and also has 2 purchase of service (added years) contracts.

If he remains as a cohabiting partner all his service will count towards his beneficiary pension as relevant additional membership (RAM) is included by virtue of TP reg 17(13)(a)(ii). However, if he were to get married to his partner, and become a post retirement marriage, she would not get the RAM membership included in her benefits should he predecease her. This is because by virtue of TP reg 17(13)(a)(i), RAM would only be included if he was previously married to (or in a civil partnership with) the same person whilst an active member (which he wasn't). This anomaly (which equally applies to female members who have a cohabiting partner to whom they are planning to get married or enter into a civil partnership) requires amendment as it means that upon marrying, the pension for the survivor of a post-leaving marriage or civil partnership would, currently, become inferior to the contingent cohabitee's pension.

Status: For widows, issue is still to be dealt with. Issue dealt with for widowers, civil partners and same-sex spouses.

**114. LGPS (Transitional Provisions and Savings) (Scotland)
Regulations 2014 regulation 8(4) – Pensionable pay**

At the LGPC 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 (see entry at 70 above) 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 Pension Fund Administering Authority. However, when this was discussed with DCLG they were not keen to introduce a “debt” provision into the Regulations. The matter was, therefore, referred back to the Technical Group. At their meeting on 5 June 2015 the 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 $\text{£}17.01 \times \text{£}101.45 / \text{£}243.48 = \text{£}7.09$. 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, and

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 $15 \times 101.45 / 243.48 = 6.25$ 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.

Transitional reg 8(4) will, in consequence of the Technical Group 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 reg 16 of the 2013 Regulations 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 Technical Group decision.

Status: Matter still to be dealt with.

115. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 regulation 17(11)(d) – Survivor benefits

Following the amendment made to this regulation by SSI 2015/87 what should administering authorities do in respect of members who are paying, or who have paid, ASBCs to count pre 6 April 1988 membership so that it counts for a survivor's pension in respect of a person they are / were cohabiting with as an active member? Should their contract cease and should they be given a refund of ASBCs already paid? Will SPPA be issuing any advice on this matter?

Status: No longer needed. Picked up as part of a later query.

116. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 regulations 10 - interfund adjustments etc:

Sub-paragraph (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 reg 5(1). It provides that the formula in regulation 14(4) (concurrent employments) or, as the case may be, regulation 41(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 10(2) in the ongoing employment. Paragraph 10(2) preserves pre-15 final salary rights.

However, regulation 10(8) of the Transitional Provisions Regs does not cover the scenario by where an active member of the LGPS, who joined by virtue of paragraph 5(1) of the Transitional Provisions Regs 2014 (1st employment), thereafter becomes concurrently an active member of the 2015 Scheme by virtue of regulation 3 of the LGPS (Scotland) Regulations 2014 (i.e. takes up a concurrent active membership of the 2015 Scheme (2nd employment)) and subsequently leaves their 1st employment. In this situation, the member would be entitled to the preservation of their pre-15 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 reg 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 reg 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 reg 10(8) says it (i.e. reg 10(8)) applies where reg 10(1) applies. As shown, however, reg 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 2015 Scheme) **or by virtue of regulation 3 of the 2014 Regulations (active membership)**, the formula in regulation 14(4) (concurrent employments) or, as the case may be, regulation 41(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 2015 Scheme upon cessation of a concurrent

employment whilst remaining an active member in a continuing employment, and”

Update 03/12/18 – Email from SPPA that confirms *“Unfortunately it is clear that the regulations do not currently address this scenario correctly. The policy intent is that any pre-1 April 2015 membership should be adjusted when adding it to the membership for a continuing employment. There is no break in service here; therefore we will be revising regulation 10(8) as suggested by the LGA. We do intend to amend the regulations as per LGA’s correction list, when the Transitional Regulations are updated, which will be in the New Year”*

Status: matters still to be dealt with.

117. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 regulation 1(4) – Citation:

The definition of “Earlier Schemes” includes a reference to the 1974 Scheme. However, the 1974 Regulations were revoked by the Local Government Superannuation (Scotland) Regulations 1987 [SI 1987/1850]. Reg S2 of the 1987 Regulations provided that the 1987 Regs should apply to those who had left with entitlements under the 1974 Regs. Thus the references in reg 1(4) of the TP Regs to “the 1974 Regulations” and to “the 1974 Scheme” should be deleted, as should the reference to the 1974 Scheme in the definition of “Earlier Schemes”.

Other extant regulations – References to Earlier Regulations.

Status: matters still to be dealt with.

118. 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 (Scotland) Regulations 2018.

*For example:

The Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 2010

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

Furthermore, regulation 35(1) of The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 will presumably need to be amended to also refer to an additional pension under regulation 30 of the LGPS (Scotland) Regulations 2018.

In the meantime I think section 17 of the Interpretation Act 1978 can be relied upon to enable regulation 35(1) to be read as if it already incorporated a reference to regulation 30 of the LGPS (Scotland) Regulations 2018.

Status: matters still to be dealt with.

119. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 regulation 17(9) - Survivor benefits:

We replace the definition of eligible child contained in the Benefits Regs and Earlier Regs with the definition contained in the 2014 Regs. Reg 5(2) of The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 contains a definition of “eligible child” which will need to be amended to align with the definition in the LGPS (Scotland) Regulations 2014.

Status: matters still to be dealt with.

120. Earlier regulations – Abatement and clawback:

The rules governing abatement and claw-back of compensatory added years will need to be considered by SPPA. This is because, given that pensionable pay in the 2015 Scheme includes pay in respect of additional hours worked in excess of contractual hours (up to the full time hours for the job), it will not be known what the level of annual pensionable pay will be during the period of re-employment. Furthermore, for CAY awarded to pre 1 April 2015 leavers, should the claw-back be based on the level of pension the person would have achieved during re-employment had the 2009 Scheme continued, or on the level of pension the person actually achieves from the period of re-employment?

Status: matters still to be dealt with.

121. LGPS (Scotland) Regulations 2014 - regulation 18 – Rights to return of contributions

We have recently exchanged emails with HMRC regarding the entitlement to a benefit for a member who joins the LGPS over NPA and leaves with less

than 2 years' membership. We think the matter now needs further consideration by Scottish Ministers with a view to a possible change to our regulations. I have attached the email exchange for your information and set out a summary of the issue below:

where a member joins the LGPS after NPA and leaves with less than 2 years' membership the LGPS regulations do not permit the member to take a benefit from the scheme (regulation 3(6) of the LGPS 2014 regulations).

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 and 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 Sch 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%, rather than 25% 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 Government's 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% 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 the LGPS 2014 regulations 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% 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% is applied to the refund.

Can Scottish Ministers 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?

03/11/17 Policy intention from SPPA - It seems that this is intentional on behalf of HMRC. Suggest this may be a way forward? KJ

Status: No longer needed as a result of policy position being clarified, etc.

122. LGPS(Administration)(Scotland) Regulations 2008 - Regulation 95(3) – "Appropriate Rights"/"Pension credit benefits" under the Scheme

LGPS (Scotland) Regulations 1998 - Regulation 150(3) — "Appropriate Rights"/"Pension credit benefits" under the Scheme

76 (published on 14 March 2024)

As per correction 82 (Regulation 32(4)(a) of the LGPS (Scotland) Regulations 2014), whether or not a pension credit member can commute pension for lump sum depends on whether or not the debit member was in receipt of benefits prior to the effective date of the Pension Sharing Order (as, where that was the case, the pension credit member is not entitled to a pension commencement lump sum – see paragraph 2 of Schedule 29 to the Finance Act 2004). We believe regulation 95(3) of the 2008 Regulations and regulation 150(3) of the 1998 Regulations are not restrictive enough as they allow a pension credit member to commute where the pension debit member's pension is in payment provided the debit member had not received a retirement grant. Regulation 95(3) of the 2008 Regulations and 150(3) of the 1998 Regulations should therefore be amended to read:

“The amount of the retirement grant to which a pension credit member shall be entitled shall be calculated on the same basis as if the pension credit member's pension were a deferred pension under the Scheme, except that no retirement grant shall be paid to the pension credit member **if at the effective date of the Pension Sharing Order that gave rise to the pension credit, the pension debit member was in receipt of benefits to which the Pension Sharing Order relates** ~~the corresponding pension debit member has already received a retirement grant from the Scheme before the date of the implementation of the pension sharing order~~”.

03/11/17 Policy intention from SPPA - Overriding UK govt legislation KL

Status: No longer needed as a result of policy position being clarified.

123. LGPS (Scotland) Regulations 2014 - regulation 32(1) - Election for lump sum instead of pension

Regulation 32(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 32(1) i.e. after the words “retirement pension payable” add the words “(including any revaluation adjustment)”. This, when coupled with the amendment requested in correction 90, 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 32 (1), but would exclude any revaluation adjustment added thereafter.

03/11/17 SPPA – Agreed KL

Status: regulations amended.

**124. LGPS (Transitional Provisions and Savings) (Scotland)
Regulations 2014 - regulation 9(1) – Transfers**

Paragraph (1) provides that where a transfer payment includes a payment in respect of final salary benefits “such payment” shall purchase pre-15 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”.

Status: matter still to be dealt with.

125. LGPS (Scotland) Regulations 2014 Regulations 38(4) – Death grants: active members, 41(4) – Death grants: deferred members and pension credit members, 44(5) - Death Grants: pensioner members

LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 - Regulation 17(5), 17(13) & 17(14) – Survivor Benefits

At the present time, regulations 38(4), 41(4) and 44(5) of the LGPS (Scotland) Regulations 2014 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 2 years from the member’s date of death, or from the date 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 2 year period as, otherwise, any lump sum paid after that period would have been an unauthorised payment.

However, the Finance (No.2) Act 2015 introduced two new rules to make the system fairer. Firstly, the Act requires specifies that defined benefit lump sum death benefits made on or after 6 April 2016 (where the member is under 75 at their death) 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. As a payment no longer has to be made within the prescribed 2

year period we would support a change to the regulations to reflect this i.e. the deletion of regulations 38(4), 41(4) and 44(5) of the LGPS (Scotland) Regulations 2014. 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 2 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 (i.e. to the deceased's estate) at the end of 2 years, the administering authority could, instead, make a payment beyond the 2 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%). 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%.

For the same reasons, regulations 17(13) and 17(14) of the LGPS (Scotland) Regulations 2014 (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 85 of the LGPS (Scotland) Regulations 2014.

Regulation 17(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 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, regulation 37(9) of the 1998 Regulations and regulation E11ZA(6) of the 1987 Regulations". Note that regulations 32(4) and 35(4) of the Benefits Regulations also cover pension

credit members by virtue of regulation 95(4) of the Administration Regulations and regulation 37(9) of the 1998 Regulations covers pension credit members by virtue of regulation 150(4) of the 1998 Regulations. Also, we believe regulations 94(7) of the Administration Regulations and 149(5) of the 1998 Regulations should not be included in the exceptions listed at the end of regulation 17(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014.

Postscript: amends made to 2018 Regulations. Amends still needed on Transitional Regulations.

Status: matter still to be dealt with. Amends made to 2018 Regulations, but amends still needed for earlier regulations.

126. LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 – Regulation 15(1)(b) – Additional Contributions

Regulation 15(1)(b) refers to regulation 59(10) of the LGPS (Scotland) Regulations 1998, when it should refer to regulation 59(1) of the LGPS Regulations (Scotland) 1998 (election to pay AVC contributions).

Status: matter still to be dealt with.

127. LGPS (Scotland) Regulations 2014 - Regulation 22(6B) – Pension accounts

Currently, when a member with a deferred pension account becomes an active member again, the two accounts are automatically aggregated and the member has 12 months to opt to separate the former deferred account from the new active account. This has proved to be complex to administer and to allocate earned pension into the correct tax year as the 12 month option period can mean decisions are made outside specific tax years. To remedy the position, it is proposed that Regulation 22(6B) is amended to give the member the option to aggregate their deferred and active pension accounts within 12 months of becoming an active member. This prevents situations occurring where automatically aggregated pensions accounts have to be disaggregated and follows the policy in the 2009 Scheme which worked more smoothly.

Note: correction 110 has been updated with new wording, though impact remains the same

03/11/17 Policy intention from SPPA - This remains Scottish Govt policy KL

Status: No longer needed as a result of policy position being clarified.

128. LGPS (Scotland) Regulations 2014 – Regulation 17 – Additional Voluntary Contributions

LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 – Regulation 15 – Additional Contributions

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 the LGPS Secretariat's 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:

The Public Service Pensions Act 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 the Public Service Pensions Act 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

03/11/17 Policy intention from SPPA - STSS Policy have advised that after discussion with Pru they will not implement. We will follow their lead for now

Status: No longer needed as a result of policy position being clarified.

129. LGPS (Scotland) Regulations 2014 – Regulation 18 – Right to a return of contributions, LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 – Regulation 17 – Survivor benefits, LGPS (Scotland) Regulations 2014 – Regulation 17 - Additional Voluntary Contributions, LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 – regulation 15 - Additional Contributions

Deferred Refund

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

In order to provide clarity, consistency and the correct tax deduction, the Secretariat suggests that Scottish Ministers 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 (Scotland) Regulations 2014 (in respect of members who left active membership of the scheme on or after 1 April 2015), and

regulation 17 of the Transitional Provisions 2014 (in respect of members who left active membership of the scheme prior to 1 April 2015)

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.

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 also not addressed anywhere within the LGPS (Scotland) 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, the Secretariat suggests that Scottish Ministers include the following statement “If a member dies before repayment of the non-life assurance AVC pot, 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 17 of the LGPS (Scotland) Regulations 2014 (in respect of members who left active membership of the scheme on or after 1 April 2015), and

regulation 15 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 (in respect of members who left active membership of the scheme prior to 1 April 2015)

Further background information

Members who left active membership before 1 April 1998

Unfortunately, the LGPS (Scotland) Regulations 1998 were completely silent and indeed, regulation 86 only seems to allow for a deferred refund direct to the member. However, regulation 94 (Payments due in respect of deceased persons) allows for payment to the deceased’s estate, though 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 2009 and before 1 April 2015

Unfortunately, the LGPS (Administration) (Scotland) Regulations 2008 were completely silent and, indeed, regulation 41 only seems to allow a deferred refund direct to the member. However, regulation 48 (Payments due in respect of deceased persons) allows for payment to the deceased's estate, though 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

The LGPS (Scotland) Regulations 2014 (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:

86 (published on 14 March 2024)

“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 2009, whilst the LGPS (Scotland) Regulations 1998 are silent on this matter we feel that regulation 94 (Payments due in respect of deceased persons) allows for payment to the deceased’s estate, though the regulation does not specifically state that the payment should be treated as a DBLSDB

On or after 1 April 2009 and prior to 1 April 2015, whilst the LGPS (Administration) (Scotland) Regulations 2009 are silent on this matter we feel that regulation 48 (Payments due in respect of deceased persons) allows for payment to the deceased’s estate, though the regulation does not specifically state that the payment should be treated as a DBLSDB.

On or after 1 April 2015, whilst they 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.

03/11/17 SPPA update - DBLSDB To be discussed with other policy managers

Postscript: changes made to regulation 18 of the 2018 Regulations. Changes still needed in Transitional regulations.

Status: matter still to be dealt with. Changes made to 2018 Regulations, but changes still needed for earlier regulations.

130. LGPS (Scotland) Regulations 2014 - Regulation 38(4) – Death grants: active members, LGPS (Scotland) Regulations 2014 - Regulation 41(4) – Death grants: deferred members, pension credit members and deferred pensioner members, LGPS (Scotland) Regulations 2014 – Regulation 44(5) – Death grants: pension members

Prior to the enactment of the LGPS (Scotland) Regulations 2014, predecessor LGPS Regulations require that where a death grant is not paid within 2 years of the date of the death, or within 2 years of the date on which the administering authority could reasonably be expected to have become aware of the member's death payment must be made to personal representatives.

For some reason the words “where the administering authority did not know about the member's death within that period, beginning with” were inserted into the 2014 Regulations and can be oddly interpreted as follows:

Scenario 1 – where the fund knew about the death within the 2 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 2 year period beginning with the date of death.

Scenario 2 – where the fund did not know about the death within the 2 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 2 year period beginning with the date upon which the fund could reasonably be expected to have become aware of the death.

The above interpretation is clearly incorrect and we believe that the following words should be removed from the LGPS (Scotland) Regulations 2014 (as set out below) to avoid misinterpretation:

“38 (4) 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”.

“41(4) 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 member's 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 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”.

“44(5) 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 member's 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 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”.

03/11/17 SPPA update – removed KL

Status: regulations amended.

131. LGPS (Scotland) Regulations 2018 - Regulation 3(6)(b) & (c) – Active membership

Regulation 3(6)(b) and (c) of the 2014 Regulations had the effect that active service in a different occupational pension scheme in respect of which a transfer-in has been received counted towards the two-year vesting period. The 2018 Regulations has amended the references from an ‘occupational pension scheme’ to a ‘registered pension scheme’. This would suggest that transferred-in service from a personal pension scheme would also be counted for this purpose. This doesn’t feel correct as normally references to “service in respect of which that person accrued benefits” refer to service in an employment in respect of which the person accrued benefits in an occupational pension scheme. We would therefore suggest that the references to “registered pension schemes” should revert back to references to “occupational pension schemes” in regulation 3(6)(b) and (c) of the 2018 Regulations.

Status: matter still to be dealt with.

132. LGPS (Scotland) Regulations 2018 - Regulation 10(5) – Temporary reduction in contributions

Regulation 10(5) says –

“An active member's election under paragraph (1) is cancelled from the beginning of the first pay period after—

(a) the automatic re-enrolment date; or

(b) going on to no pay as a result of long-term sickness or injury provided that the member is still on no pay at the beginning of that pay period; or

(c) going on to no pay during ordinary maternity, paternity, parental bereavement or adoption leave,

and the contribution rate payable on the member's pensionable pay in relation to that employment is as provided by regulation 9 from that date.”

Firstly, we assume that the reference to “the first pay period” should refer instead to “the first payment period”, as ‘payment period’ is a defined term in schedule 1, whereas ‘pay period’ is not.

Secondly, as APP doesn't apply to unpaid parental bereavement leave, it is unclear to us the rationale for treating such leave in the same way as other types of unpaid leave which does attract APP protection.

Status: matter still to be dealt with.

133. LGPS (Scotland) Regulations 2018 - Regulation 11(5) – Temporary reduction in contributions

Regulation 11(5) was inserted on 28 June 2019 (with backdated effect to 1 June 2018) by the Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019.

We believe that the reference to “reduced or no pay” should refer to “reduced or no pensionable pay”. This means that the provision applies where the member receives no pensionable pay but does receive non-pensionable pay.

The new regulation applies where the member is “absent from work with permission”, other than by reason of illness or injury. It is our understanding that regulation 11(5) is designed to mirror the effect of regulation 18(1) of the 2008 Administration Regulations, which did not apply to child-related leave, reserve forces leave and strike leave. We assume that regulation 11(5) also does not apply to these types of leave. However, the wording only excludes sick leave. We would therefore recommend that regulation 11(5) explicitly excludes these types of leave.

For the purposes of applying the other provisions, do we need to add that where reg.11(5) applies –

- (1) the contributions are paid in accordance with reg.9 or 10
- (2) for all purposes of the regulations (other than for reg.11(5)), the notional pay is treated as if it was pensionable pay received on the date it would otherwise have been received and earned for the period it would otherwise have been earned.
- (3) For all purposes of the regulations (other than reg.11(5)) and the Transitional regulations, the member is treated as if they did not take such period of leave.

The above would mean that the member would continue to pay added years, ARCs, APCs and ASBCs. It would also mean that the member would continue to pay AVCs. Under reg.18 of the Admin regulations, members were given a choice. What’s the intention in this area? If the member is given a choice, this would need to be reflected in the regulations.

A couple of final questions:

- (1) Do the new rules apply to leave that started before 1 June 2018 and ended thereafter?
- (2) What should employers do if they have applied the old rules between 1 June 2018 and 28 June 2019?

Status: matter still to be dealt with.

134. LGPS (Scotland) Regulations 2018 – paragraph 7 of schedule 5 – councillor members

Under the 1998 and 2008 Administration Regulations, a councillor member was only allowed to aggregate previous councillor membership to new councillor membership where both periods were held in the same Fund. See regulation 31(1A) of, and paragraphs 10 of schedule 7 to, the 1998 Regulations and regulation 13(2) of, and paragraphs 2 and 3 to, the 2008 Administration Regulations.

Paragraph 6B of schedule 5 to the 2014 Regulations attempted to replicate the position:

“Regulation 22(7)(Aggregation of deferred and active pension accounts) shall only apply to a councillor member in respect of any councillor membership where both the former membership and the membership as an active member referred to in that paragraph are councillor membership in the same appropriate fund”.

We raised the following query about paragraph 6B:

73. LGPS (Scotland) Regulations 2014 – Schedule 5 – Councillor members

We’re not sure why paragraph 6B of Schedule 5 of the LGPS (Scotland) Regulations 2014 refers to regulation 22(7). That regulation simply deals with how aggregated CARE benefits are to be revalued where there is a break of less than 5 years. We think what paragraph 6B of Schedule 5 of the LGPS (Scotland) Regulations 2014 is trying to say, without quite achieving it, is that benefits accrued as a councillor member cannot be aggregated with benefits accrued as an employee member, and vice versa. If that is what is intended (and we think it must be, as that was the position prior to April 2015 and the ability to aggregate would cause difficulties if a member has some pre 2015 accrued rights) then we believe a simple statement to that effect should be made in Schedule 5.”

In response, regulation 31(b) of the Local Government Pension Scheme (Scotland) Amendment (No.2) Regulations 2015 revoked paragraph 6B with backdated effect to 1 April 2015. Regulation 31(c) of the same regulations inserted paragraph 6C into the 2014 Regulations.

“In the case of a deferred member who has been a councillor member, an election under paragraph 6A or 6B may only aggregate councillor membership with former councillor membership, and, as the case may be, membership which is not councillor membership with former membership which is not councillor membership.”

Paragraph 6C is re-enacted in the 2018 Regulations as paragraph 7 of schedule 5.

Regulation 35 of the 2015 Amendment Regulations also inserted paragraph 11 into regulation 10 of the 2014 Transitional Regulations.

“In the case of a deferred member who has been a councillor member, the member may only aggregate councillor membership with former councillor membership and, as the case may be, membership which is not councillor membership with former membership which is not councillor membership.”

The new wording no longer included a requirement that only councillor membership can be aggregated under paragraph 6A or 6B with councillor membership in the same appropriate fund.

After looking through the documents at the time, I am struggling to see whether it was the Scottish Government’s intention to remove the requirement that the two periods of councillor membership must be in the same LGPS fund.

SPPA confirmed in phone call on 26 February 2021 that they do not intend to reinstate the requirement that the periods of membership must be in the same fund.

Status: No longer needed as a result of policy position being clarified.

135. LGPS (Scotland) Regulations 2018 – regulation 12(2) – contributions during child-related leave

Regulation 12(2) says that an active member on unpaid ordinary maternity leave, unpaid paternity leave or unpaid adoption leave is treated for the purposes of the 2018 Regulations as if the member had paid contributions for that unpaid period under regulation 12(1).

The purpose of regulation 12(2) is so that -

- the unpaid period is included when working out the underpin amount under regulation 4(6)(b)(i) of the 2014 Transitional Regulations
- the unpaid period is included when working out the rule of 85 under paragraph 4(2)(a)(ii) of schedule 2 to the 2014 Transitional Regulations
- the pensionable pay (2008 Scheme definition) the member would have otherwise earned during the unpaid leave is used under regulation 10(2) of the 2008 Benefit Regulations when working out the final pay.

With effect from 6 April 2020, regulation 41(3) of the Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 added unpaid parental bereavement leave to regulation 12(2).

As unpaid parental bereavement leave is not treated in the same way as the other types of unpaid leave covered in regulation 12(2) (eg unpaid parental bereavement leave is not covered by APP), we believe that it should not be included in regulation 12(2).

Status: matter still to be dealt with.

136. LGPS (Scotland) Regulations 2018 – regulation 15(4) – contributions during child-related leave

Regulation 15(4) of the 2014 Regulations said:

“(4) Where an active member—

(a) on reserve forces service leave;

(b) on child-related leave, which for this regulation includes any period of additional maternity leave, additional adoption leave or shared parental leave during which the member receives no pay;

(c) absent from work due to illness or injury where regulation 14(1) (contributions during absence for illness etc) applies; or

(d) absent from work with permission from the member's Scheme employer,

has an arrangement under regulation 16 (additional pension contributions) or regulation 17 (additional voluntary contributions) the employer contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension

contributions) or, as appropriate, under an SCAVC under regulation 17, remain payable if the relevant regulation applies.”

The 2018 Regulations re-enacted regulation 15(4) as:

“(4) Where an active member—

(a) on reserve forces service leave;

(b) on child-related leave, which for this regulation includes any period of additional maternity leave, additional adoption leave, parental bereavement leave or shared parental leave during which the member receives no pay;

(c) absent from work due to illness or injury where regulation 14(1) (contributions during absence for illness etc) applies; or

(d) absent from work with permission from the member's Scheme employer,

has an arrangement under regulation 16 (additional pension contributions) or regulation 17 (additional voluntary contributions) or, as appropriate, under an SCAVC under regulation 17, the employer contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions) remain payable if the relevant regulation applies.”

We believe that the revised wording is incorrect. Firstly, it is superfluous to mention, as conditions, whether the member has an arrangement under regulation 17 and an SCAVC under regulation 17. Secondly, if the member does have a SCAVC arrangement, the main part of the clause only requires that the “employer contributions under regulation 16(2)(e) or (4)(d) remain payable...”. There is no mention of the employer contributions under a SCAVC arrangement remaining payable.

Should the wording revert back to that under the 2014 Regulations?

Status: matter still to be dealt with.

137. LGPS (Scotland) Regulations 2018 – regulation 16(5) – additional pension contributions

Regulation 15(4) of the 2018 Regulations says:

“The amount of additional annual pension that is to be credited to the active member's pension account pursuant to arrangements under this regulation must not exceed the additional pension limit.”

Firstly, it is unclear the reason why we refer to “additional annual pension”, rather than “additional pension”, which is a defined term.

Secondly, the wording has not replicated the wording in the 2014 Regulations, which referred to “...the active member's pension accounts”. The revised wording appears to test the limit based on the amount that is to be credited to a particular active member pension account. For example, a member could in theory have up to the limit credited to active member account 1 and up to the limit credited to active member account 2. We understand that this is not the policy intent.

We would therefore recommend that the wording reverts back to the wording used in the 2014 Regulations.

Status: matter still to be dealt with.

138. LGPS (Scotland) Regulations 2018 – regulation 17(6)(b)(ii) and 17(12) – additional voluntary contributions

Regulation 17(6)(b)(ii) allows a member to use the realisable value of their AVCs (to the extent that it has not been taken as a lump sum or used to purchase additional pension under the Scheme) to purchase an annuity from one or more insurance companies.

Regulation 2(10)(a)(iv) of the Local Government Pension Scheme (Miscellaneous Amendments)(Scotland) Regulations 2019 provides for members to also use the AVC fund to purchase “additional pension” from one or more insurance companies. The change came into force on 28 June 2019, but with backdated effect to 1 June 2018.

It is unclear what “additional pension”, within this context, means? For example, the Finance Act 2004 makes no references to “additional pension”. Is this an error?

As a consequence, regulation 2(10)(c) of the Local Government Pension Scheme (Miscellaneous Amendments)(Scotland) Regulations 2019 provides for situations where the member has elected to purchase an “additional pension” from an insurance company but dies before the “additional pension”

is actually purchased. In which case, the administering authority has discretion to pay the realisable value to the member's nominee, personal representative or any person appearing to the authority to have been a relative or dependent of the member.

If it was an error to have included "additional pension" in regulation 17(6)(b)(ii), you will also need to amend regulation 17(12)(e).

Lastly, regulation 17(12) does not capture cases where an active member died with an AVC fund to which they were not contributing at the time of their death and members who died as a pensioner member who had not made their AVC election before death.

Status: matter still to be dealt with.

139. LGPS (Scotland) Transitional Regulations 2014 – regulation 17(4) – Survivor benefits (non-councillors)

Scenario - 1987 Scheme – widow's pension for survivor of a post leaving opposite-sex marriage where the widow was also married to the member at some point whilst he was in active membership after 31 March 1972 and the member died after 31 March 2015

Regulation E5 of the 1987 Regulations provides for a widow's entitlement to short-term and long-term pensions. Regulation E5(4)(a) switches off this entitlement where the widow was not married to the deceased member while he was in local government employment after 31 March 1972. Regulation E5(5) says that the widow is, instead, entitled to a pension calculated in accordance with regulation E6(4). Regulation E6(4) modifies the normal calculations by only including service in respect of contracted-out employment.

Therefore, in a case where the widow married the member while in local government employment after 31 March 1972, divorced and then later re-married the same person after the member left, the widow's pension would be worked out on all membership.

For deaths that occur after 31 March 2015, we must apply the 2014 Transitional Regulations. Under reg.17(4), we must work out the survivor pension under the earlier schemes. However, this is subject to regulations 17(9) to (15).

Regulation 17(12) says that where a male deferred or pensioner member marries and dies, any calculation of any survivor pension payable under the earlier regulations to a female survivor is only to take account of membership accrued by the member after 5 April 1978.

In this scenario, as the member married while a deferred or pensioner member, regulation 17(12) applies, meaning that the survivor pension is only based on post 5 April 1978 membership (rather than all membership).

We would therefore suggest an amendment is needed to the 2014 Transitional Regulations to ensure that the survivor pension in this scenario is based on all membership. Otherwise, for deaths occurring after 31 March 2015, the 2014 Transitional Regulations have reduced the widow's survivor pension.

The number of cases affected are expected to be small, as the scenario covers a case where a couple married, divorced and then re-married after leaving.

Status: regulations amended.

140. LGPS (Scotland) Transitional Regulations 2014 – regulation 17(13) – Survivor benefits (non-councillors)

Scenario - 1987 Scheme – widower's pension for survivor of a post leaving opposite-sex marriage where the widower was also married to the member at some point whilst she was in active membership after 31 March 1972 and the member died after 31 March 2015.

Regulation E6(3)(a) of the 1987 Regulations says that a widower's pension is only calculated by reference to the wife's period of reckonable service after 5 April 1988. Where the widower was married to the member at some time while she was in local government employment after 31 March 1972, the reckonable service includes reckonable service treated as a period of reckonable service after 5 April 1988 under reg.E6(3A) and any pre-6 April 1988 membership for which the member paid additional contributions/notice given.

For deaths that occur after 31 March 2015, we must apply the 2014 Transitional Regulations. Under reg.17(4), we must work out the survivor

pension under the earlier schemes. However, this is subject to regulations 17(9) to (15).

Regulation 17(10) says that any calculation of the survivor pension payable under the earlier regulations to a person specified in paragraph 11 is only to take account of membership accrued after 5 April 1988. Regulation 17(11)(b) references a female survivor of an opposite-sex marriage where the marriage took place after ceasing active membership. Regulation 17(13) then says that the membership includes additional membership referred to in regulation 41(4)(a) to (d) of the 1998 Regulations where the spouse was married to the member at any time while the deceased was in active membership after 31 March 1972.

In our view, for this scenario, it is not appropriate to refer to the additional membership in the 1998 Regulations, as the member is not subject to those regulations. Also, the position is inconsistent against a pre-leaving widower pension under the 1987 Scheme who dies after 31 March 2015, which still refers to including the relevant additional service as set out in regulation E6(3)(a) of the 1987 Regulations (this is because, as the case is a pre-leaving widower case, regulation 17(10) of the 2014 Transitional Regulations does not apply, so neither does regulation 17(13)).

We would therefore suggest that the 2014 Transitional Regulations are amended so that, for this scenario, the membership for the purposes of paragraph 10 includes any period referred to in regulation E6(3)(a)(i) to (iii) where the widower was married to the deceased at any time while the deceased was in active membership of the Scheme after 31 March 1972.

The number of cases affected are expected to be low, as the scenario covers a case where a couple married, divorced and then re-married after leaving.

Status: regulations amended.

141. LGPS (Scotland) Transitional Regulations 2014 – regulation 17(10) – Survivor benefits (non-councillors)

Scenario - 1987 Scheme – pension for survivor of post-leaving same-sex civil partnership where the member died after 31 March 2015

The Local Government Pensions etc (Civil Partnership)(Scotland) Amendment Regulations 2005 incorporated civil partnerships into the LGPS.

For members entitled to benefits under the 1987 Scheme, the 2005 Amendment Regulations inserted regulation 4A into the Local Government Pension Scheme (Transitional Provisions)(Scotland) Regulations 1998.

Regulation 4A(1) provided that the member's civil partner would be treated as being a person who is or may become entitled to benefits under the 1987 scheme in respect of the member. Further, the survivor pension payable to the civil partner would be calculated as if the couple were married. Regulation 4A(2), however, says that only membership after 5 April 1988 should be taken into account when calculating the survivor pension. Regulation 4A(3) says that any period referred to in regulation E6(3A) of the 1987 Regulations also counts as membership after 5 April 1988. Unlike for widowers of opposite-sex marriage, there is no requirement for the couple to be in a civil partnership while the member was an active member after 31 March 1972: the periods referred to in E6(3A) automatically count. Which makes sense, as regulation 4A of the 1998 Transitional Regulations came into force on 5 December 2005, making it impossible for a member under the 1987 Scheme to have been able to have met such a condition.

For deaths that occur after 31 March 2015, we must apply the 2014 Transitional Regulations. Under reg.17(4), we must work out the survivor pension under the earlier schemes. However, this is subject to regulations 17(9) to (15).

Regulation 17(10) says that any calculation of the survivor pension payable under the earlier regulations to a person specified in paragraph 11 is only to take account of membership accrued after 5 April 1988. Regulation 17(11)(a) references a surviving civil partner where the civil partnership was entered into after the member's active membership ceased.

Regulation 17(13) only applies where the civil partner was in a civil partnership with the deceased at any time whilst the deceased was in active membership of the Scheme.

Therefore, as regulation 17(10) says that the survivor pension is "only" to take account of membership accrued after 5 April 1988 and regulation 17(13) does not apply, it appears that where the death occurred after 31 March 2015, the periods referred to in E6(3A) of the 1987 Regulations must not be counted. This represents a worsening position for survivor benefits under the 1987 Scheme payable to civil partners.

We would therefore suggest that the 2014 Transitional Regulations need to be amended putting such survivors back into the position they would have been in had the death occurred before 1 April 2015. When doing this, please also note our comments previously about how references to E6(3A) of the 1987 Regulations should be used, rather than relying on regulation 41 of the 1998 Regulations.

SPPA will also need to review survivor pensions for civil partners when implementing the Walker v Innospec judgment. When doing this, SPPA will need to recognise that in some situations placing a civil partner in the same position as a widow of an opposite-sex marriage may place them in a worse position – for example, when considering whether E6(3A) membership is included in post-leaving cases.

Status: regulations amended.

142. LGPS (Scotland) Transitional Regulations 2014 – regulation 17(10) – Survivor benefits (non-councillors)

Scenario - 1987 Scheme – pension for survivor of post-leaving of a same-sex marriage

The Local Government Pension Scheme (Scotland) Amendment (No.2) Regulations 2015 amended the previous regulations due to the introduction of same-sex marriages on 16 December 2014. The Amendment Regulations inserted new regulation 41A into the 1998 Regulations.

Regulation 41A says that references in “this scheme” to civil partners is taken to include same-sex spouses. The “scheme” is defined in schedule 1 as meaning “the occupational pension scheme constituted by these regulations, the transitional Regulations and the 1987 Regulations”. Therefore, the reference in regulation 4A(3) to civil partners in the 1998 Transitional Regulations is taken to include same-sex spouses. This means that survivor pensions payable in this situation is based on membership after 5 April 1988 plus the periods referred to in E6(3A) of the 1987 Regulations.

For deaths that occur after 31 March 2015, we must apply the 2014 Transitional Regulations. Under reg.17(4), we must work out the survivor pension under the earlier schemes. However, this is subject to regulations 17(9) to (15).

Regulation 17(10) says that any calculation of the survivor pension payable under the earlier regulations to a person specified in paragraph 11 is only to take account of membership accrued after 5 April 1988. Regulation 17(11)(b) and (c) capture survivors of same-sex marriages where the marriage took place after the member's active membership ceased.

Regulation 17(13) only applies where the civil partner was in a civil partnership with the deceased at any time whilst the deceased was in active membership of the Scheme.

Therefore, as regulation 17(10) says that the survivor pension is "only" to take account of membership accrued after 5 April 1988 and regulation 17(13) does not apply, it appears that where the death occurred after 31 March 2015, the periods referred to in E6(3A) of the 1987 Regulations must not be counted. This represents a worsening position for survivor benefits under the 1987 Scheme payable to civil partners.

We would therefore suggest that the 2014 Transitional Regulations need to be amended putting such survivors back into the position they would have been in had the death occurred before 1 April 2015. When doing this, please also note our comments previously about how references to E6(3A) of the 1987 Regulations should be used, rather than relying on regulation 41 of the 1998 Regulations.

SPPA will also need to review survivor pensions for same-sex spouses when implementing the Walker v Innospec judgment. When doing this, SPPA will need to recognise that in some situations placing a survivor of a same-sex marriage in the same position as a widow of an opposite-sex marriage may place them in a worse position – for example, when considering whether E6(3A) membership is included in post-leaving cases.

Status: regulations amended.

143. LGPS (Scotland) Transitional Regulations 2014 – regulation 17(10) – Survivor benefits (non-councillors)

Scenario - 1998 Scheme – pension for survivor of either a post-leaving same-sex marriage or a post-leaving same-sex civil partnership where the member died after 31 March 2015.

In accordance with regulation 41A of the 1998 Regulations, survivors of same-sex marriages are treated in the same way as survivors of civil partnerships.

Regulations 39 (short-term pensions) and 40 (long-term pensions) provide for survivor pensions. For civil partners (and for same-sex spouses), these are subject to regulation 41(3A) and (3B). Regulation 41(3A) says that the survivor pension is calculated as if the member's retirement pension were only so much of their actual pension as is attributable to the member's membership after 5 April 1988. Regulation 41(3B) says that relevant additional membership (RAM) counts as membership after 5 April 1988.

Therefore, in this scenario, whether the civil partnership was entered into (or the same-sex marriage occurred) after leaving active membership, the survivor pension was calculated using post-5 April 1988 membership and RAM.

For deaths that occur after 31 March 2015, we must apply the 2014 Transitional Regulations. Under reg.17(4), we must work out the survivor pension under the earlier schemes. However, this is subject to regulations 17(9) to (15).

Regulation 17(10) says that any calculation of the survivor pension payable under the earlier regulations to a person specified in paragraph 11 is only to take account of membership accrued after 5 April 1988. Regulation 17(11)(a) specifies a surviving civil partner, where the civil partnership was entered into after the member's active membership ceased. Regulation 17(11)(b) and (c) cover surviving spouses of same-sex marriages where the marriage took place after the active membership ceased.

Regulation 17(13) only applies where the civil partner/same-sex spouse was in a civil partnership/same-sex marriage with the deceased at any time whilst the deceased was in active membership after 31 March 1972.

Therefore, as regulation 17(10) says that the survivor pension is "only" to take account of membership accrued after 5 April 1988 and regulation 17(13) does not apply, it appears that where the death occurred after 31 March 2015, RAM must not be counted. This represents a worsening position for survivor benefits under the 1998 Scheme payable to civil partners/survivors of same-sex marriages.

We would therefore suggest that the 2014 Transitional Regulations need to be amended putting such survivors back into the position they would have been in had the death occurred before 1 April 2015.

SPPA will also need to review survivor pensions for same-sex spouses/civil partners when implementing the Walker v Innospec judgment. When doing this, SPPA will need to recognise that in some situations placing a survivor of a same-sex marriage/civil partnership in the same position as a widow of an opposite-sex marriage may place them in a worse position – for example, when considering whether RAM is included in post-leaving cases.

Status: regulations amended.

144. LGPS (Scotland) Transitional Regulations 2014 – regulation 17(4) – Survivor benefits (non-councillors)

Scenario - 2009 Scheme – pension for survivor of either a pre-leaving same-sex marriage or a pre-leaving same-sex civil partnership.

In accordance with regulation 24A of the 2008 Benefit Regulations, survivors of same-sex marriages are treated in the same way as survivors of civil partnerships.

Regulations 24, 33 and 36 set out how to work out a survivor pension. For this purpose, they say to use “the member’s total membership”. Regulation 7(1) of the 2008 Transitional Regulations says that all membership (including membership accrued before 1 April 2009) is included as total membership for this purpose. However, for the purposes of regulations 24, 33 and 36 of the 2008 Benefit Regulations, as they apply to civil partners (in line with regulation 24A of those regulations, the reference is to include same-sex spouses), only periods of membership after 5 April 1988 are to be taken into account.

Regulation 7(3) of the 2008 Transitional Regulations allows RAM to also be included; however, regulation 7(3) only applies where the civil partnership/same-sex marriage occurred after leaving active membership.

Therefore, for deaths before 1 April 2015, RAM is not included in this scenario. This seems an odd outcome when you consider the position under the 1998 Scheme.

For deaths that occur after 31 March 2015, we must apply the 2014 Transitional Regulations. Under reg.17(4), we must work out the survivor

pension under the earlier schemes. However, this is subject to regulations 17(9) to (15), none of which apply to pre-leaving civil partnerships/same-sex marriages. Meaning that, where the death occurred after 31 March 2015, the outcome is the same as for deaths occurring before 1 April 2015 (ie. Post 5 April 1988 membership only and RAM excluded).

Regulation 2 of the 2014 Transitional Regulations revokes the 2009 Regulations (including regulation 3(4) of the 2008 Transitional Regulations). Regulation 3(1) says that regulation 3(4) of the 2008 Transitional Regulations does not continue to have effect for the purposes of pre-April 2015 membership. We understand that the intention of this is so that all membership is included when working out pensions for this scenario where the death occurred after 31 March 2015. However, in our view, this is not achieved. Under regulation 17(4), the survivor pension under the earlier schemes is calculated under those earlier schemes “notwithstanding the revocations effected by regulation 2”. So, in this instance, ignoring that regulation 2 has revoked regulation 3(4) of the 2008 Transitional Regulations.

When implementing the Walker v Innospec judgment, we understand that survivors in this scenario will be placed in the same position as widows. As all membership is used for pre-leaving widow pensions, we would expect the same outcome for this scenario, which would resolve the issues identified above.

The outcome here will also feed into the scenarios where the member left after 31 March 2015.

Status: regulations amended.

145. LGPS (Scotland) Transitional Regulations 2014 – regulation 17(10) – Survivor benefits (non-councillors)

Scenario - 2009 Scheme – pension for survivor of either a post-leaving same-sex marriage or a post-leaving same-sex civil partnership

In accordance with regulation 24A of the 2008 Benefit Regulations, survivors of same-sex marriages are treated in the same way as survivors of civil partnerships.

Regulations 24, 33 and 36 set out how to work out a survivor pension. For this purpose, they say to use “the member’s total membership”. Regulation 7(1) of

the 2008 Transitional Regulations says that all membership (including membership accrued before 1 April 2009) is included as total membership for this purpose. However, for the purposes of regulations 24, 33 and 36 of the 2008 Benefit Regulations, as they apply to civil partners (in line with regulation 24A of those regulations, the reference is to include same-sex spouses), only periods of membership after 5 April 1988 are to be taken into account.

Regulation 7(3) of the 2008 Transitional Regulations says that regulation 41 of the 1998 Regulations continues where the civil partnership/same-sex marriage was entered into after leaving. Regulation 41(3A) of the 1998 Regulations says that only post-5 April 1988 membership is used. Regulation 41(3B) says that RAM is also included.

For deaths that occur after 31 March 2015, we must apply the 2014 Transitional Regulations. Under reg.17(4), we must work out the survivor pension under the earlier schemes. However, this is subject to regulations 17(9) to (15).

Regulation 17(10) says that any calculation of the survivor pension payable under the earlier regulations to a person specified in paragraph 11 is only to take account of membership accrued after 5 April 1988. Regulation 17(11)(a) specifies a surviving civil partner, where the civil partnership was entered into after the member's active membership ceased. Regulation 17(11)(b) and (c) cover surviving spouses of same-sex marriages where the marriage took place after the active membership ceased.

Regulation 17(13) only applies where the civil partner/same-sex spouse was in a civil partnership/same-sex marriage with the deceased at any time whilst the deceased was in active membership after 31 March 1972.

Therefore, as regulation 17(10) says that the survivor pension is "only" to take account of membership accrued after 5 April 1988 and regulation 17(13) does not apply, it appears that where the death occurred after 31 March 2015, RAM must not be counted. This represents a worsening position for survivor benefits under the 2009 Scheme payable to civil partners/survivors of same-sex marriages.

We would therefore suggest that the 2014 Transitional Regulations need to be amended putting such survivors back into the position they would have been in had the death occurred before 1 April 2015.

SPPA will also need to review survivor pensions for same-sex spouses/civil partners when implementing the Walker v Innospec judgment. When doing this, SPPA will need to recognise that in some situations placing a survivor of a same-sex marriage/civil partnership in the same position as a widow of an opposite-sex marriage may place them in a worse position – for example, when considering whether RAM is included in post-leaving cases.

The outcome here will also feed into the scenarios where the member left after 31 March 2015.

Status: regulations amended.

146. LGPS (Scotland) Transitional Regulations 2014 – regulation 17(10) – Survivor benefits (non-councillors)

Scenario - 2009 Scheme – pension for survivor of a pre-leaving cohabiting partnership

Regulations 24, 33 and 36 of the 2008 Benefit Regulations set out how to work out a survivor pension. For this purpose, they say to use “the member’s total membership”. Regulation 7(1) of the 2008 Transitional Regulations says that all membership (including membership accrued before 1 April 2009) is included as total membership for this purpose. However, for the purposes of regulations 24, 33 and 36 of the 2008 Benefit Regulations, as they apply to cohabiting partners, under regulation 3(4) of the 2008 Transitional Regulations, only periods of membership after 5 April 1988 are to be taken into account.

Regulation 14A of the 2008 Benefit Regulations allowed an active member to pay additional survivor benefit contributions (ASBCs) so that all or some of their pre-6 April 1988 membership is included when working out the survivor pension payable to their cohabiting partner.

For deaths that occur after 31 March 2015, we must apply the 2014 Transitional Regulations. Under reg.17(4), we must work out the survivor pension under the earlier schemes. However, this is subject to regulations 17(9) to (15).

Regulation 17(9)(b) says that you should use the cohabiting partner definition in the 2014 regulations, even where the member left before 1 April 2015.

However, regulation 17(10) and (13) do not apply in this scenario because the cohabiting partnership was entered into after the member's active membership ceased.

This means that the outcome in this scenario is the same, irrespective of whether the death occurred before, on or after 1 April 2015: post 5 April 1988 membership plus any pre-6 April 1988 membership purchased with ASBCs. However, we understand that this was not the intention, which was that in this scenario, the survivor pension would be based on all membership (it is unclear whether the intention only applies where the member left under the 2015 Scheme or also where the member left under the 2009 scheme and died after 31 March 2015).

We understand that this was enacted by regulation 3(1) of the 2014 Transitional Regulations, which does not save regulation 3(4) of the 2008 Transitional Regulations for the purposes of the pre-April 15 membership. However, in our view, the intention has not been realised. This is because under regulation 17(4), the survivor pension under the earlier schemes is calculated under those earlier schemes "notwithstanding the revocations effected by regulation 2". So, in this instance, ignoring that regulation 2 has revoked regulation 3(4) of the 2008 Transitional Regulations.

Therefore, to achieve the intention, SPPA will need to amend the 2014 Transitional Regulations. In doing so in this scenario, they will need to consider how any paid ASBCs should be dealt with, as the pre-6 April 1988 membership is being included in any case.

Lastly, for a post-leaving cohabiting partnership where the couple were cohabiting at any time whilst the deceased was in active membership after 31 March 2009 and the member died after 31 March 2015, in accordance with regulation 17(13)(a)(ii) of the 2014 Transitional Regulations, RAM is included. However, for pre-leaving cohabiting partnerships, RAM is not included. Which seems an odd outcome. If SPPA amend the regulations allowing all membership to count for pre-leaving civil partnerships, this issue would automatically be resolved. However, if SPPA does not do so, they will need to consider their position regarding RAM for pre-leaving cases.

The outcome here will also feed into the scenarios where the member left after 31 March 2015.

Status: No longer needed as result of policy being clarified (ie not to treat pre-leaving cohabiting partners differently).

147. LGPS (Scotland) Transitional Regulations 2014 – regulation 17(4) – Survivor benefits (councillors)

Please see survivor benefits guide for SPPA, which sets out the issues surrounding survivor benefits for councillors.

03/05/2022 Corrected by the Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2022.

Status: regulations amended.

148. LGPS (Scotland) Regulations 2018 – regulation 21(4)(a)(v) and 21(4)(b)(v) – assumed pensionable pay

Regulation 21(4)(a)(v) says:

“if the member received no pensionable pay relating to that employment in the 3 months preceding the commencement of the pay period in which the absence commenced, assumed pensionable pay should be calculated on the pensionable pay the member received relating to that employment in the 3 months preceding the pay period in which they last received pensionable pay in that employment;”

Regulation 21(4)(b)(v) replicates wording, substituting ‘3 months’ with ‘12 weeks’.

This provision aims to address cases where a member is on unpaid leave for the entirety of the relevant three-month or, as the case may be, 12-week period. It should be noted that where the member was treated as receiving APP during the period, the new provision won’t apply, as the APP the member was treated as receiving counts, under regulation 21(1), as pensionable pay.

We have several questions on the new provision?

- We assume that the outcome from the provision replaces the outcome under regulations (4)(a)(i) and (4)(b)(i) in the APP calculation (i.e. you then apply (ii) and (iii) to the outcome). Also, regulation 21(6) would then potentially apply to the pay received in the earlier period. However, it may be helpful that this is made clear.

- It is unclear whether the 12-month period in which we look to see whether there were any “regular lump sums” received also moves back? If so, what date does it end with?
- Regulations 21(4)(a)(i) and 21(4)(b)(i) refer to when “the circumstances specified in paragraph (2) began” and when “the ill-health retirement or death occurred”. The new provision refers to when “the absence commenced”. It is unclear whether the wording is intended for APP calculations to cover leave and to be used in ill-health/death-in-service calculations. Or whether it is only to be used for APP calculations to cover leave. On the one hand, if it is the latter, we would have expected consistent language to be used – for example “the commencement of the pay period in which the circumstances specified in paragraph (2) began...”. As it doesn’t use consistent language, it leads me to suspect that the intention is that the new provision should also cover APP calculations for ill-health/death-in-service cases. However, I am not sure that I would describe a deceased member as being ‘absent’. Please confirm?
- The last part of the new provisions says “in the 3 month/12 weeks preceding the pay period in which they last received pensionable pay in that employment”. We would recommend that “the commencement of” is added immediately after “preceding”.

Status: matters still to be dealt with.

149. 149. LGPS (Scotland) Regulations 2018 – regulation 21(7)(a)(v) and 21(4)(b)(v) – assumed pensionable pay

Regulation 21(7) says –

“Where any pensionable pay that has been received by a member includes fees of the kind listed in regulation 20(2)(o) (returning officer fees), for the purposes of this regulation the annual rate of pensionable pay relating to those fees for the period specified in paragraph (4)(a)(i) or (4)(b)(i) is the annual average of that pay during the 3 years preceding the date the ill-health retirement or death occurred.”

It should be noted, under regulation 99(2), where a person is also employed to carry out one or more additional duties (i.e. returning officer at local government elections, Scottish Parliament elections, or at UK Parliament elections or as an acting returning officer (including as a regional or local

returning officer at a European Parliamentary election), the additional duties are recorded on a separate record as if the duties were a separate employment. Where the returning officer dies in service or takes ill health retirement, regulation 21(9) sets out how you work out the APP.

Regulation 21(7) is attempting to cover members whose pensionable pay includes returning officer fees/acting returning officer fees in respect of local government elections, elections for the Scottish Parliament, Parliamentary elections and European Parliamentary elections who is not, as part of their substantive employment, also required to carry out the duties as a returning officer/acting returning officer. Are likely to be many?

If regulation 21(7) is actually needed, we have three questions:

- Should the three years precede the commencement of the pay period in which the ill health/death occurred, in the same way as the three years do under regulation 21(9)? At the moment, the three-year period ends with the day before the date on which the ill-health/death occurred.
- As is the case under reg.21(9), do we need to cover situations if the member has been a member for less than three years?
- It makes sense that regulation 21(9) only needs to cover ill-health and death, as it is not envisaged that a member on their separate record covering returning officer duties will need to be treated as receiving APP for a period of leave. However, it is less clear why regulation 21(7) would only cover ill-health and death as the fees are not split out from the main employment?
- Should reg.21(7) also be referenced in regulation 38(3), 39(4)(b), 40(4)(b), (5)(b), (9)(b) and (10)(b).

Status: matters still to be dealt with.

150. 150. LGPS (Scotland) Regulations 2018 – regulation 29(14) – retirement benefits

Regulation 2(16) of SSI 2016/161 inserted regulation 29(14) into the 2018 Regulations with effect from 1 June 2018.

“A deferred member who has attained the age of 55 or over may elect to receive immediate payment of a retirement pension, reduced by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers,

irrespective of whether the deferred pension member is also an employee in local government service.”

By virtue of regulation 29(10), regulation 29(6) already covers deferred members, allowing them to elect for payment between 55 and NPA. Therefore, it is unclear to us why regulation 29(14) is needed.

If it is needed, we have the following queries:

- Regulation 29(14) appears to allow a member who has opted out to elect to receive immediate payment of the retirement pension while the member is still in the same employment, which we understand is not the intention.
- Regulation 29(14) confusingly allows a deferred member to elect for reduced benefits, even where this is after normal pension age.
- It refers to “the deferred pension member”, which should refer to “the deferred member”.
- Regulation 29(14) is not listed in regulation 17(6).
- Regulation 29(14) is not covered in regulation 31 (commencement of pensions)
- No reference is made to regulation 29(14) in paragraph 1 of schedule 2 to the 2014 Transitional Regulations (the 85 Year Rule).

Status: matters still to be dealt with.

151. 151. LGPS (Scotland) Regulations 2018 – regulation 40(9)(a)(v) – children of active members

Regulation 40(9)(a)(v) says –

“the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 39/240; and”

It should instead say “49/240”.

Status: regulations amended.

152. 152. LGPS (Scotland) Regulations 2018 – regulation 46(15) – children of pensioner members

Regulation 29 of SSI 2015/87 inserted regulation 46(14) into the 2014 Regulations:

“For the purposes of paragraph 46(4)(a), (5)(a), (9)(a) and (10)(a), earned pension also includes any amount awarded under regulations 37(1)(a) or (2)(a).”

In the 2018 Regulations, in regulations 46(4)(a), (5)(a), (9)(a) and (10)(a), the following wording has been added:

“...(including any amount added under regulations 37(1)(a) or 37(2)(a) (enhancement of member's Tier 1 and Tier 2 benefits))”.

These additions have the same effect as regulation 46(14). However, regulation 46(14) is re-enacted as 46(15) in the 2018 Regulations.

Do we still need regulation 46(15)?

Status: matters still to be dealt with.

153. LGPS (Scotland) Regulations 2018 – regulation 48(2) – limit on total amount of benefits

Regulation 48(2) says –

“In this regulation “lifetime allowance” is to be construed in accordance with section 218 of and schedule 36 of the Finance Act 2004 and Schedule 6 to the Finance Act 2014 and, where applicable, is to include primary protection, enhanced protection, individual protection or fixed protection within the meaning of those provisions.”

Accordingly, regulation 48(2) provides for a person to receive benefits up to the value of their lifetime allowance (section 218 Finance Act 2004) and where appropriate to use Primary Protection (Schedule 36 Finance Act 2004), Enhanced Protection (Schedule 36 Finance Act 2004) and Individual Protection 2014 (Schedule 6 Finance Act 2014).

However, the following protections to a person’s lifetime allowance are not included within regulation 48(2):

- Individual Protection 2016 – Schedule 4 Finance Act 2016
- Fixed Protection 2016 – Schedule 4 Finance Act 2016
- Fixed Protection 2014 – Schedule 22 Finance Act 2013
- Fixed Protection – Schedule 18 Finance Act 2011

Status: matters still to be dealt with.

154. LGPS (Scotland) Regulations 2014 – regulation 64 – Supply of copies of valuation certificates etc

Regulation 64(1) requires the administering authority to publish and send copies of valuation documents to the Scottish Ministers and employers. Regulation 64(2) requires the administering authority to also send to Scottish Ministers a summary of the assets at the valuation date and a copy of the consolidated revenue accounts with which the actuary was provided.

Regulation 64 has not been re-enacted in the 2018 Regulations and we are unsure why.

The consultation response says that “this provision is now within regulation 100 of the 2018 Regulations”, which does not appear to be the case.

Status: matters still to be dealt with.

155. LGPS (Scotland) Regulations 2018 – regulation 64(2)(b) – payment by scheme employers to administering authorities

Regulation 64(2)(b) says –

“paragraph (1)(c) does not apply where the cost of the administration of the fund is paid out of the fund under regulation 4(4) of the Local Government Pensions Scheme (Management and Investment of Funds) (Scotland) Regulations 2010 (management of pension fund).”

The regulation should refer to regulation 4(6) of the Local Government Pension Scheme (Management and Investment of Funds)(Scotland) Regulations 2010, instead of regulation 4(4).

Status: matters still to be dealt with.

156. LGPS (Scotland) Regulations 2018 – regulation 69(9) – applications to resolve disagreements

Regulation 69(9) says –

“Paragraph (7)(b) does not apply where an appeal has been made under regulation 74(1) (appeals by administering authorities) in respect of a matter that is the subject of an application under this regulation.”

The regulation should refer to regulation 74(2), as it is this that the appeal is made under.

Status: matters still to be dealt with.

157. LGPS (Scotland) Regulations 2018 – Regulation 70(2) – Notice of decisions on disagreements

The corresponding provision in the 2014 Regulation said –

“If no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out—

(a) the reasons for the delay; and

(b) an expected date for giving the decision (“the expected decision date”).”

In the 2018 Regulations “the expected decision date” has been deleted.

However, as regulation 71(1)(b) still refers to “the expected decision date”, we would recommend that the wording is added back to regulation 70(2).

Status: matters still to be dealt with.

158. LGPS (Scotland) Regulations 2018 – Regulation 91(1) – rights to payment out of a pension fund

Regulation 91(1) says –

“A member is entitled to request a transfer under Chapter 1 or 2 of Part 4ZA of the Pension Schemes Act 1993 and where the member does so the amount of any transfer payment due in respect of the member under the relevant transfer may only be paid by the administering authority from its pension fund if the transfer payment is a recognised transfer (within the meaning of section 169 of the Finance Act 2004) in accordance with guidance from Scottish Ministers.”

I am unclear what we mean by the condition “if the transfer payment is a recognised transfer...in accordance with guidance from Scottish Ministers.”

Status: matters still to be dealt with.

159. LGPS (Scotland) Regulations 2018 – regulation 93(3) – bulk transfer (transfers of undertakings).

Regulation 93(3) says –

“The appropriate administering authority must calculate the appropriate amount of earned pension in accordance with actuarial guidance issued by the Scottish Ministers.”

Regulations 93 and 94 deal with bulk transfers out of the LGPS to a different pension scheme. Looking at these regulations, there is no reference to “the appropriate amount of earned pension”, leading me to think that regulation 93(3) has been included in error.

Status: matters still to be dealt with.

160. LGPS (Scotland) Regulations 2018 – regulation 95(8) – Inward transfer of pension rights

Regulation 95(8) says:

“The calculation of the appropriate amount of earned pension is to be in accordance with actuarial guidance issued by the Scottish Ministers.”

This appears to be a duplicate of regulation 96(2).

Delete regulation 95(8)?

Status: matters still to be dealt with.

161. LGPS (Scotland) Regulations 2018 – regulation 102(1) – revocations and transitional provisions

Regulation 102(1) revokes the regulations specified in schedule 6. Schedule 6 specifies the following:

- The Local Government Pension Scheme (Scotland) Regulations 2014
- The Local Government Pension Scheme (Scotland) Amendment Regulations 2015 [SSI 2015/87]
- The Local Government Pension Scheme (Scotland) Amendment (No. 2) Regulations 2015 [S.S.I. 2015/448]; and
- The Local Government Pension Scheme (Scotland) Amendment Regulations 2016 [SSI 2016/32]

116 (published on 14 March 2024)

We understand that the intention was to revoke the 2014 Regulations and any regulations that amended those regulations. However, the amendment regulations listed above also amended other regulations.

For example, SSI 2015/87 amended the 2014 Transitional Regulations and SSI 2015/448 amended the 1998 Regulations, 2008 Transitional Regulations, 2008 Regulations and 2014 Transitional Regulations.

What is the legal status of the amendments made by those regulations?

Status: matters still to be dealt with.

162. LGPS (Scotland) Regulations 2018 – schedule 1 – interpretation

The Local Government Pension Scheme (Scotland) Amendment (No 2) Regulations 2015 removed “additional paternity leave” from schedule 1.

However, the wording has been re-enacted in the 2018 Regulations.

Is this correct?

Status: matters still to be dealt with.

163. LGPS (Scotland) Regulations 2018 – schedule 1 – interpretation

Schedule 1 of the 2018 Regulations has not re-enacted the definition of ‘local government service’.

As ‘local government service’ is still referred to in regulations 29 and 49, should the definition be put back into the schedule?

Status: matters still to be dealt with.

164. LGPS (Scotland) Regulations 2018 – paragraph 6 of schedule 5 – councillor members

Paragraph 6 says that regulation 21 (assumed pensionable pay) is omitted except while the councillor is on reserve forces leave.

The assumed pensionable pay provisions are not needed to protect a councillor member’s pension while on sick leave, child-related leave or on reserve forces service leave. This is because it is believed that a councillor member would continue to receive their pay while on such leave.

However, APP does apply while on reserve forces leave. The reason for this is because, in accordance with regulation 20(2)(i), any payment made by the scheme employer to a member on reserve forces leave is not pensionable. So, the continued payments by the Council to the member on reserve forces leave would be non-pensionable.

But this is based on the assumption that regulation 20 applies to councillors in the same way as it applies to non-councillors. This is incorrect. In accordance with paragraph 5 of schedule 5, a different version of regulation 20 applies to councillors. A version which does not prohibit payments made to councillor members on reserve forces leave from being pensionable.

We therefore suggest that there is no need to apply regulation 21 to a councillor on reserve forces leave.

We would also suggest that paragraph 6 should only disapply regulation 21 for the purposes of regulation 21(1) (i.e. for the purposes of treating the member as receiving APP while on certain types of leave). It should not be disapplied for the purposes of working out APP that will be used to determine ill health and death in service benefits.

Status: matters still to be dealt with.

165. LGPS (Transitional Provisions) Regulations 2014 – regulation 1(4) – Interpretation

Regulation 1(4) says –

““the Earlier Schemes” means the 1974, the 1987, the 1998 , the 2009 and the 2015 Schemes collectively;”

This suggests that the current scheme is different to the ‘2015 Scheme’.

The ‘2015 Scheme’ means the occupational pension scheme constituted by these Regulations and the 2014 Regulations. This marries up with regulation 2(1) of the 2014 Regulations, which says that “these regulations established a scheme...”.

It is to be inferred, by including ‘the 2015 Scheme’ as an earlier scheme, that the 2018 Regulations must have established a new scheme (possibly known as the ‘2018 Scheme’). But this hasn’t happened. Regulation 2(1) of the 2018 Regulations says that the “regulations consolidate with certain amendments

the provisions of the Local Government Pension Scheme (Scotland) Regulations 2014, which established a scheme..., and constitute “the Scheme”. So, it would appear that references to ‘the Scheme’ in the 2018 Regulations are to the one established by the 2014 Regulations.

We would therefore suggest that the 2015 Scheme should not be included in the definition of ‘earlier schemes’.

Also see query 117.

Status: matters still to be dealt with.

166. LGPS (Transitional Provisions) Regulations 2014 – regulation 3(13) – membership before 1 April 2015

Regulation 3(13) says –

“A person who is a deferred member of one of the Earlier Schemes whose benefits under those Schemes have not come into payment and the member is not an active member in local government service in employment from which the benefits arise and who has attained the age of 55 or over may elect to receive immediate payment of a retirement pension, reduced by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers, irrespective of whether the deferred pension member is also an employee in local government service.”

We have the following issues with this:

- The clause creates an additional option under which member can elect to receive immediate payment of a retirement pension. The clause does not modify the existing options under the earlier schemes. This causes several uncertainties:
 - It creates problems interpreting the clause in conjunction with the earlier regulations due to inconsistency in language – for example, the 1987 Scheme refers to “deferred members” as being “a person entitled to preserved benefits”.
 - Where the benefit is drawn under the new option, the requisite benefit protection doesn’t appear to apply. For example, regulation E15 of the 1987 Scheme limits reductions that can be made where benefits become payable under regulation E2 of the 1987 Regulations.

- Under what provision can reductions be waived where the member elects under the additional option?
- The clause allows members who opted out of their employment to draw the benefits while still in the same employment, providing the member has not again become an active member in that employment. We understand that this is not the intention. Should it instead say “is not an employee in local government service in employment from which the benefits arise”?
- It says that the member will become entitled to “a retirement pension” – for members in the 1987 and 1998 schemes, what about the retiring allowance/grant?
- It refers to “deferred pension members” and “deferred members”, which we understand are both referring to the same.
- For members drawing benefits under the 1998 and 2009 Schemes between 55 and 60, how does the rule of 85 work?

Secondly, we understand it is the policy intention that ‘deferred member’ should also include ‘pension credit members’ We do not believe that regulation 29(13) does not extend to pension credit members.

This is mainly on two grounds:

- Firstly, regulation 29(13) infers that the benefits have arisen from the member being an active member in an employment (“..the member is not an active member in local government service in employment from which the benefits arise..”)
- Secondly, my reading of section 124(1) is that the definition of ‘deferred member’ should not be taken to include pension credit members.

“deferred member” , in relation to an occupational pension scheme, means a person (other than an active or pensioner member) who has accrued rights under the scheme,”

The question is thus whether the pension credit member “has accrued rights under the scheme”.

Section 124(2) and (2A) then say –

“(2) For the purposes of this Part—

(a) the accrued rights of a member of an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme, and

(b) at any time when the pensionable service of a member of an occupational pension scheme is continuing, his accrued rights are to be determined as if he had opted, immediately before that time, to terminate that service;

and references to accrued pension or accrued benefits are to be interpreted accordingly.

“(2A) In subsection (2)(a), the reference to rights which have accrued to or in respect of the member does not include any rights which are pension credit rights.”

Therefore, as the pension credit member is not said to have “accrued rights”, it is my reading that the person cannot fall within the meaning of ‘deferred member’. This is further supported by there being a separate definition of a ‘pension credit member’ in section 124(1):

““pension credit member” , in relation to an occupational pension scheme, means a person who has rights under the scheme which are attributable (directly or indirectly) to a pension credit,”

Therefore, our view is that regulation 29(13) cannot be said to deliver the policy intent and that we need an amendment to deliver this (and this is possibly something to pick up when revisiting 29(13) in the next round of updates).

Status: regulations amended.

167. LGPS (Scotland) Regulations 2018 – Regulation 16(11)(f) – APCs

The regulation provides that a regular payment APC arrangement must cease upon a member leaving the employment to which the APC is attached.

This means that APC contracts upon TUPE transfers also cease; if the member wants to continue to pay APCs, the member must start a new contract. Is this the policy intention? What happens if the APC contract was a shared-cost APC contract (the member would lose the right to complete this)?

Status: matters still to be dealt with.

168. LGPS (Scotland) Regulations 2018 – Regulation 16(11)(e) – APCs

This says that a regular payment APC arrangement ceases upon flexible retirement.

The GAD guidance on flexible retirement says that the member can draw all or none of the APC benefits (para.2.5).

It then says that if a member draws benefits from the APC arrangement, the existing contract must cease. This implies that if the member does not do so, the existing contract continues. However, regulation 16(11)(e) says that the existing contract ceases irrespective of whether the member chooses to draw the APCs.

Which is correct?

Status: matters still to be dealt with.

169. LGPS (Scotland) Regulations 2018 – regulation 4 – restriction on eligibility for active membership

It is assumed that the member has the option to elect to remain an active member during reserve forces leave. However, there is no provision that provides for making such election, as there is in LGPS (England & Wales):

“Paragraph (1)(a) does not apply to a member on reserve forces service leave who is entitled to be a member of the Armed Forces Pension Scheme if the member makes an election to the Scheme employer to remain a member of the Scheme.”

Status: matters still to be dealt with.

170. LGPS (Scotland) Regulations 2018 – regulation 22(6) and (7) – pension accounts

The provisions deal with concurrent aggregation. However, they only apply if the person ceases employment in one of the concurrent employments. It doesn't cover situations where the person remains in the other employment but ceases to be an active member (for example, opting out).

Status: matters still to be dealt with.

171. LGPS (Scotland) Regulations 2018 – regulation 39(5), regulation 40(11), 42(5), 43(11), 45(5), 46(11) – survivor benefits

Regulation 39(4) says the survivor pension is the pension the member would have been entitled to draw. Regulations 39(4)(a) and (b) amend the notional pension. Regulation 39(4)(a)(iii) says that “the pension excluded any additional pension purchased under regulation 16.” However, regulation 39(5) says that “additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(a)(iii)” where the member took out the APC to buy back lost pension.

What this means is that if the member would have become entitled to £500 of additional pension (APC contract to cover lost pension), the £500 is not excluded from the amount of the survivor pension. But should the amount be multiplied by 49/160?

Secondly, if the lost pension was based on pension while in the 50/50 section, should the additional pension for this purpose be based on the amount that it would have been under the main section (then multiplied by 49/160)?

This issue also applies to regulations 40, 42, 43, 45 and 46.

Lastly, the GAD guidance does not seem to acknowledge the possibility that the additional pension will also purchase survivor benefits (see paragraph 2.6 of the additional pension guidance).

Status: matters still to be dealt with.

172. LGPS (Scotland) Regulations 2018 – regulation 40(10)(a)(vi) – survivor benefits: children of active members

The underpin addition is multiplied by 60/160.

Should it not be multiplied by 60/120?

Status: regulations amended.

173. LGPS (Scotland) Regulations 2018 – Regulation 93(1)(c)(i) – bulk transfers

The regulation still references chapter 4 and 5 of part 4 of the Pension Schemes Act 1993. The reference should be to chapter 1 or 2 of part 4ZA of the Pension Schemes Act 1993.

123 (published on 14 March 2024)

Status: matters still to be dealt with.

174. LGPS (Scotland) Regulations 2018 – Regulation 78 – Payment for persons incapable of managing their affairs

The provision only applies to benefits under the 2015 Scheme. There is no equivalent provision regarding benefits under the earlier schemes.

Status: matters still to be dealt with.

175. LGPS (Scotland) Regulations 2018 – Regulation 37(8) – calculation of ill-health pension amounts

“For the purposes of this regulation, regulations 38, 39 and 40, in calculating assumed pensionable pay in accordance with regulation 21(4) (assumed pensionable pay), no account is to be taken of any reduction in the pensionable pay the member incurred if the member was working reduced contractual hours as a consequence of ill-health or infirmity of mind or body.”

The effect of this clause applies to the calculation of APP that is used to work out the ill-health enhancements under regulation 37(1) or (2), the death-in-service death grant under regulation 38, and the enhancements to death-in-service survivor pensions under regulations 39 and 40. It should be noted that the protection does not apply if the APP is calculated in accordance with reg.21(7) or (9)(APP for returning officer fees), which makes sense as we are dealing with members who reduced their contractual hours due to ill health.

The clause crucially does not result in the reduction in pensionable pay being ignored when working out the CARE pension built up between the reduction in hours and the ill-health retirement / death in service. Also, the clause does not require that the condition that caused the reduction must have contributed / caused the ill health retirement / death-in-service.

However, [the ill-health guidance](#) contradicts this:

“Member reduces their hours because of the ill health condition which subsequently results in ill health retirement

Where a member is awarded ill health retirement benefits but, prior to their leaving employment, they have had to reduce their hours as a result of the condition that lead to the ill health retirement award, no account is taken of this reduction in hours.

The employer must take a view as to whether the reduction in hours is as a result of the condition that causes him/her to be permanently incapable of the relevant local government employment and/or have a reduced likelihood of undertaking gainful employment, in accordance with regulation 35(1)(a)(b).

The member's reduction in earned pension, which is accrued between the date of the reduction in hours and the date they leave employment, is then ignored for the purposes of calculating his ill health benefits.

The employer can make this decision, based on previous OH advice or by seeking new OH advice.

If a member who is employed at the outset on a part time basis because of an ill health condition, further reduces their hours as a result of that condition, on the basis of previous or new OH advice, the employer can decide that no account is to be taken of the further reduction when calculating an ill health retirement award. This also applies to pension enhancement for a Tier Two or Tier One award. The calculation is based on the pre-reduction part time earned pension."

Status: ill health guidance amended on 14 March 2024.

176. LGPS (Scotland) Regulations 2018 – Regulation 9 (9) – contributions

Regulation 9(9) says:

"For the purposes of this regulation any reduction in pensionable pay which arises as a consequence of any of the following circumstances is to be disregarded—"

On a literal reading of this regulation, it means that the reduction is ignored both for the purposes of band-setting and the pensionable pay on which contributions are paid. So, if a member goes on nil-pay sick leave, regulation 9(9) suggests that the member should pay their contributions on the pensionable pay they would have received had they not been on sick leave. This is not the intention.

The equivalent clause in England & Wales says:

"For the purposes of identifying which is the applicable contribution rate under this regulation and regulation 10, any reduction in pensionable pay which

arises as a consequence of any of the following circumstances is to be disregarded—"

Status: matters still to be dealt with.

177. LGPS (Scotland) Regulations 2018 – Schedule 2

The 2014 regulations simply said "A local authority". The 2018 regulations now say "A local authority which is a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994". It is unclear the reason for the change.

Also, the 2018 Regulations remove "a board of management of a self-governing school constituted and incorporated under section 19(2) of the Self-governing schemes etc (Scotland) Act 1989" from the list of participating employers. Is this correct?

Status: matters still to be dealt with.

178. LGPS (Scotland) Regulations 2018 – Part 2 Schedule 4

Rows 24 to 31 of the table in the 2014 Regulations set out who is the appropriate fund for employees of the Scottish Police Authority.

The 2018 regulations now simply set out that any employee entering into employment on or after 1 June 2018 is assigned to the fund located nearest to the employee's main place of employment.

The 2018 Regulations do not appear to set out who is the appropriate fund for employees who entered into employment before 1 June 2018?

Status: matters still to be dealt with.

179. LGPS (Scotland) Regulations 2018 – Regulation 86

The conditions to apply for a forfeiture certificate set out in regulation 86 are different to the conditions that apply under regulation 66 of the 2008 Administration Regulations. In particular, regulation 66 requires a person to have left the employment because of the relevant offence. However, regulation 86 does not require this.

Under regulation 86, the benefits that can be forfeited are those under the 2015 Scheme.

As a consequence, where a member also has rights before April 2015 and did not leave the employment because of the relevant offence, it is unclear whether the employer can direct that the rights before April 15 should be forfeited.

We would recommend that regulation 86(4) is amended so that it also references rights under the earlier regulations.

Status: matters still to be dealt with.