Understanding…

Retirement Benefits

These notes have been prepared based on the LGPC Secretariat's understanding of the information presently available including the relevant Statutory Instruments governing the Local Government Pension Scheme and associated overriding legislation. They represent the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the LGA for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained herein.

Understanding…Retirement Benefits

SECTIONS:

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Foreword

These workshop notes have been prepared on the basis that certain technical amendments are made to the "2013 Regulations" as the LGPC Secretariat believe they will. Consultation on those amendments is expected to commence in the Summer of 2014. Obviously, things may change or be clarified from this point forward and so these notes may become out-of-date or even technically incorrect in some areas.

Also, these notes are constructed to be read on a single training day and yet have to cover many subject areas that are very complicated and detailed. They are, therefore, not written as a technical manual to cover every eventuality but rather as a relatively easy read to aid learning.

More detailed reference material is available on-line in the Administration Guides Section of www.lgpsregs.org under the Guides tab. This material covers far more than just retirement benefits and it is all is kept up to date with developments. It currently consists of 15 "living" documents, of which the following are particularly relevant to retirement benefits:

The 85 Year Rule	v1.6
Discretions Policies	v1.2
Discretions List	v1.2
Practitioners' Guide	v2.2
Revaluation	v1.2
Trivial commutation and small pot payments	v1.1
The Underpin	v1.3

These notes do not apply to Scotland as changes to the LGPS in Scotland have yet to be made and will not apply until April 2015. Neither do they apply to Councillors.

The delegate should also be aware that there are a number of "special cases" which deviate from the norm when it comes to retirement. Rather than constantly have to make reference to these special cases in the text or in footnotes, the author has reproduced as Appendix A, the table of differences from the Discretions policies document referred to above.

I hope you find these notes and the training experience useful.

Tim Hazlewood
Pensions Training & Development Manager

1 CARE vs Final Pay

HOW CARE BENEFITS ACCRUE

The Local Government Pension Scheme (LGPS) in England and Wales has moved to a CARE basis from 1 April 2014. A career average scheme is still a defined benefit scheme, but with an important difference in how the pension is calculated.

In a final salary 60ths scheme each accrued year earns an additional pension equal to the final salary divided by 60. Of course at the point in time membership is accrued, final salary is not yet known and could only be estimated.

In a CARE 60ths scheme, each accrued year would earn an additional pension equal to the salary for that year uprated to retirement using a specified revaluation rate divided by 60. Once again, at the point in time membership accrued, the CARE figure is not yet known and could only be estimated.

In the unlikely event that the person's pay rose **exactly** lock-step with the method of indexation, the outcomes would be exactly the same in a CARE scheme as it would be in a final salary scheme.

Steady Eddie

Eddie was a member for 5 years and his pay increases by 4% per annum.

His pay for those 5 years was as follows:

Year	**Earnings**	**Revalued Earnings**		
1	£20,000	+4%+4%+4%+4%	=	£ 23,397
2	£20,800	+4%+4%+4%	=	£ 23,397
3	£21,632	+4%+4%	=	£ 23,397
4	£22,497	+4%	=	£ 23,397
5	£23,397	+0%	=	£ 23,397
				£116,985

Final Pay = **£23,397**

CARE = £116,985 / 5 = **£23,397**

Of course, Eddie is totally hypothetical and highly improbable. Some people would gain from moving from 60ths final salary to 60ths CARE and some people would lose, depending on how their actual income rose over time. For LGPS2014 it was decided that the accrual rate would be 49ths and the revaluation rate is the consumer prices index (CPI). The Government Actuary's Department (GAD) believe that, broadly speaking, a 60ths final salary scheme is equivalent to a 49ths CARE scheme with CPI indexation.

As it is presently possible to join the LGPS at age 16 and remain a member until the age of 75, there would be a need to keep a record of earnings covering a 60 year period. There is an alternative solution however which is much simpler to administer and understand. That is to operate an account-based system which, thankfully, LGPS2014 is designed around.

Pension accounts – a whole new concept

Rather than record pay over a person's career and then average that out, multiplying the result by the person's membership and then dividing by the accrual rate(s), you simply calculate the pension in respect of each year and then revalue that by the chosen method of pay revaluation.

Eddie's pension from page 4 based on a career average pay of £23,397 would be as follows if the accrual rate was 49ths:

$$\frac{\text{Membership}}{49} \times \text{Career Average Pay}$$

5/49 x £23,397 = £2,387.45

Alternatively, we could calculate his pension each year, adding on the revalued accrued rights to the previous year.

Year 1	£20000/49	=	£ 408.16
Year 2	£20,800/49 = £424.49 + (£408.16 x 1.04)	=	£ 848.98
Year 3	£21,632/49 = £441.47 + (£848.98 x 1.04)	=	£1,324.41
Year 4	£22,497/49 = £459.12 + (£1,324.41 x 1.04)	=	£1,836.51
Year 5	£23,397/49 = £477.49 + (£1,836.51 x 1.04)	=	£2,387.46

The difference of one penny per annum is purely down to roundings.

The known pensionable pay in each year is simply divided by 49 to arrive at the pension earned in each year. Next year that pension is indexed and added to a 49th of his pensionable pay in the next year. And so on. No need to retain decades of salary history.

Also, a lot of the membership recording necessary for a final salary scheme disappears overnight, saving a huge amount of administration. Recording proportions of membership for term-timers, part-timers, part-time-term-timers, variable timers all become unnecessary, as does grossing up pay to a whole-time equivalent. The only real record of service needed is to establish whether someone has the requisite two years' active membership in the Scheme to qualify for benefits in the first instance.

It also benefits the individual as their accrued rights are more transparent which should make financial planning easier. Indeed, it can be argued that CARE scheme administration can be much simpler for all concerned. Of course, in practice there are necessary complications. There will be times when "actual pay" needs to be replaced by a "notional pay" (referred to as assumed pensionable pay or APP), for example on certain child-related leave.

THE BASICS OF FINAL PAY CALCULATIONS FOR PRE-14 MEMBERSHIP

As a result of the final salary link for pre-1 April 2014 membership it will be necessary for the employer to provide a final pay calculation under the 2008 Scheme definition, for any person who has membership prior to 1 April 2014 or who is subject to the "underpin". This will have to be provided at the date of cessation of active membership and, for active members, at every 31 March for Annual Benefit Statement and Annual Allowance calculation purposes and, for members subject to the underpin, at their 2008 Scheme NPA if they remain active members of the Scheme beyond then.

Under the 2008 Scheme, in the majority of cases, final pay is the total pay due, and on which contributions were paid or were deemed to be paid, in the last 365 days of employment. For part-time members, the pay used is the whole-time equivalent pay.

Where either of the immediately preceding two years would yield a higher figure, then that figure is used (hence, the old adage "best of the last three years"). For someone leaving on 13 August 2014 for example, one would be calculating whole-time equivalent pay in the year to 13 August 2014, year to 13 August 2013 and year to 13 August 2012 to see if either of the previous years was higher than the last.

Where there is a gap in membership in the final year (e.g. due to a break in employment, or some unpaid leave for which the member has not paid contributions), then the pay is mathematically grossed up to a full year. Where an absence was due to illness or injury, any reduction or loss of pay is disregarded (i.e. final pay is calculated as if the reduction or loss had not occurred). Where earnings, or a part of earnings, are derived from fees, the basis of calculation is the annual average in the last three years normally but the employer has discretion to use a different three year period ending on a 31 March in the last 10 years.

If a “Certificate of protection of pension benefits” had been issued under the 1997 Regulations, and the certificate has not lapsed, then the calculation of final pay is improved from best of the last three years to the greater of (1) the best of the last five years and (2) the best average of any three consecutive years in the last thirteen years (all years ending on the anniversary of the date of leaving).

From 1 April 2008, any member having a pay cut or restriction in respect of prescribed circumstances has the right for 10 years to choose the best average of any consecutive three years in the last thirteen years of membership. For simplicity, these thirteen years all end on 31 March rather than anniversaries of the date of leaving. This right continues to apply even where the pay cut or restriction occurs after 31 March 2014.

Calculating final pay has always been onerous. Consideration was given to whether the final pay calculation required for members’ pre 2014 benefits (and the underpin) could be simplified. Various options were considered but, as each of these had its own difficulties, unfortunately none were taken forward.

Whole-time members

2007 Benefits Regulation 1 defines a whole-time employee as:

> "an employee whose contract of employment provides-
> (a) that he is such an employee for the Scheme, or
> (b) that his contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis”.

This relatively simple definition causes some disagreement between employers and administrators alike, and this is understandable when you look at term-time employees and other employment capacities that are “full-time” long before they are “whole-time”.

A classic example of the latter is that of a school-crossing patroller who, say, cannot possibly work more than 7.5 hours per week. Although, arguably, they could fall under the definition of “whole-time” this would lead to some absurd and inequitable benefit levels should they change jobs during their membership of the scheme. As they are paid pro-rata to a whole-time employee (working 37 hours per week for example) it is sensible for them to be classed as a part-timer and their membership is scaled down and their final pay scaled up accordingly.

Arguments aside, let us look at a final pay calculation for a whole-time employee, employed 37 hours a week, 365 days a year:

Mrs Easy

Retires at age 60 on 30 September 2014. She is monthly paid and her rates of pensionable pay (**using the 2008 Scheme definition**) over the last three years have been:

1 October 2011	£15,000 p.a.
1 April 2012	£15,600 p.a.
1 April 2013	£16,440 p.a.
1 April 2014	£17,400 p.a.

Final Year:		
1 October 2013 to 31 March 2014	£16,440 x 6/12 =	£ 8220
1 April 2014 to 30 September 2014	£17,400 x 6/12 =	£ 8700
		£16920 p.a.
Year –1		
1 October 2012 to 31 March 2013	£15,600 x 6/12 =	£ 7800
1 April 2013 to 30 September 2013	£16,440 x 6/12 =	£ 8220
		£16020 p.a.
Year –2		
1 October 2011 to 31 March 2012	£15,000 x 6/12 =	£ 7500
1 April 2012 to 30 September 2012	£15,600 x 6/12 =	£ 7800
		£15300 p.a.

The best of her last three years is her final year - her final pay is **£16920**.

For administrative ease, and for simplicity of building spreadsheets, calculations of final pay are often performed using days rather than months. If this was the case with Mrs Easy, the result would be:

Mrs Even-Easier

Retires at age 60 on 30 September 2014.

1 April 2013	£16,440 p.a.
1 April 2014	£17,400 p.a.

Final Year:

1 October 13 to 31 March 14	£16,440 x 182/365 =	£ 8197.48
1 April 14 to 30 September 14	£17,400 x 183/365 =	£ 8723.84
		£16921.32

Only £1.32 different in this case and it could be deemed as splitting hairs but, as the definition of final pay refers to pensionable pay in the final pay period and pensionable pay refers to monies "paid to him", the calculation of final pay should be done strictly in accordance with the way a person is paid and so, in this case, the technically correct answer is £16920.

Part-time members

Under 2007 Benefit Regulation 7(3), part-time members accrued membership as an "appropriate fraction" of the duration of membership they had. Benefit Regulation 7(4) states "The numerator of that fraction is the number of contractual hours during the part-time service and its denominator is the number of contractual hours of that employment if it were on a whole-time basis".

Counting membership pre 1 April 2014 was therefore relatively clear, a person reducing their hours from a whole-time post of 37 hours per week down to a part-time post of 20 hours per week, started to accrue membership at 20/37ths of calendar length.

Benefit Regulation 8(3), in describing final pay for a part-timer, states "In the case of part-time employment, the final pay is the pay which would have been paid for a single comparable whole-time employment". To calculate final pay for our simple example above we could calculate the actual pay received in the final year and then multiply it by 37/20. An alternative calculation would be to use the comparable whole-time salary in the equation rather than the actual part-time salary paid. Either method should end up with the same result.

Great care must be taken when scaling up pay to a whole-time equivalent or in taking the whole-time pay of a comparable employment. Sometimes no whole-time comparator exists and sometimes the hours worked and the pay received are not directly in proportion. The latter tends to occur when there is more than one element to the pay and reward package.

There are a number of ways the whole-time equivalent for a part-timer can be calculated including performing the calculation with whole-time salary rates. Here is an example of final pay for a monthly-paid part-time employee, deriving the answer from grossing up actual part-time pay:

Joan Collins

Retired 31 December 2013
She had worked 20 hours a week out of 37, receiving pay as follows:

1 January 2013 to 31 March 2013 at	£6,000 p.a.
1 April 2013 to 31 December 2013 at	£6,600 p.a.

£6,000	x	3/12	=	£1,500.00				
£6,600	x	9/12	=	£4,950.00				
				£6,450.00	x	37/20	=	**£11,932.50**

Her Sister, Jackie, worked at the same establishment but changed her contractual hours during her final year. Her calculation is as follows:

Jackie Collins

Retired 31 December 2013
She had worked 20 hours a week out of 37 until 1 July 2013 when she reduced to 16 hours per week, and received pay as follows:

1 January 2013 to 31 March 2013 at	£6,000 p.a.
1 April 2013 to 31 June 2013 at	£6,600 p.a.
1 July 2013 to 31 December 2013 at	£5,280 p.a.

£6,000	x	3/12	=	£1,500.00	x	37/20	=	£ 2,775.00
£6,600	x	3/12	=	£1,650.00	x	37/20	=	£ 3,052.50
£5,280	x	6/12	=	£2,640.00	x	37/16	=	£ 6,105.00
				£5,790.00				**£11,932.50**

Term-time members

Administering authorities either pro-rate membership for term-time scheme members to an all-year-round standard or not. There are two ways to calculate pay for a term-timer as a result.

"Equate"

A term-time employee working 37/37 x 44/52[1] would have had membership recorded as 84.6% of whole-time; and a term-time employee working 20/37 x 44/52 would have had membership recorded as 45.7% of whole-time (if recorded to one decimal place).

The final pay of a term-time employee would, correspondingly, be grossed-up for benefit calculation purposes (other than for the death grant on death in service, where actual pay is used). So, if the full-time term-timer in the previous paragraph was earning £20000 per annum, his final pay would be:

£20000 x 52/44 = £23636.36

The part-time term-timer would have earned 20/37ths of that of the full-time term-timer i.e. £10810.81. Final pay would be:

£10810.81 x 37/20 x 52/44 = £23636.36

"Actual"

The alternative method is for an administering authority to perform their calculations using "actual pay" and "actual membership".

The example of a term time employee working 37/37 x 44/52 shown above would therefore alter to:

Membership	=	100% of whole time
Pay	=	£20,000

Similarly, the part-timer would be equated to a full time term timer and no further.

[1] Of those administering authorities in England and Wales that do "equate" only some use the denominator of 52. Others use 52.143 or 52.167 or 52.179 (accounting for the leap year day and/or there not being exactly 52 weeks in any calendar year).

Variable-time members

Where pensionable pay consists of or includes fees, the average of the last 3 years fees are used when calculating final pay or, at the employer's discretion, the average of any 3 consecutive years ending on a 31st March in the last 10 years. An amendment was made by SI2010-2090 to clarify that when a person's total period of membership is less than three years, the average is to be done by that lesser period.

Certificates of protection

If a "Certificate of protection of pension benefits" had been issued under the 1997 Regulations (regulation 23) **and the certificate has not lapsed**, then the calculation of final pay is improved from best of the last 3 years to the greater of

(a) the best of the last 5 years, and

(b) the best average of any 3 consecutive years in the last 13 years,

The regulations actually provide for the member to elect which pay figure is to be used in the calculation of their benefits. In practice it is expected that employers would pick whichever pay figure will produce the highest amount (allowing for the effects of pensions increase).

Performed properly, final pay calculations for members with certificates of protection take a considerable amount of time.

The successor to certificates of protection

Certificates of protection were not carried forward from the 1997 Regulations. The effect of this is that no new certificates of protection could be issued in respect of drops/restrictions in pay occurring after 31 March 2008.

The certificate of protection's counterpart in the 2008 Scheme (Benefits Regulation 10), works in a different fashion. Firstly a person's pensionable pay in a continuous period of employment has to be reduced or restricted for one of the following reasons:

(a) because the member chooses to be employed by the same employer at a lower grade or with less responsibility;

(b) for the purposes of achieving equal pay in relation to other employees of that employer;

(c) as a result of a job evaluation exercise;

(d) because of a change in the member’s contract of employment resulting in the cessation or restriction of, or reduction in, payments or benefits specified in the member’s contract of employment as being pensionable emoluments; or

(e) because the rate at which the member’s rate of pay may be increased is restricted in such a way that it is likely that the rate of the member’s retirement pension will be adversely affected,

If this is the case, and if the reduction or restriction was not a result of a temporary position ceasing or flexible retirement, then the person can choose any three year average of pensionable pay (calculated to 31st March) that fall within the period of thirteen years ending with their last day as an active member.

It is important to understand that, by virtue of the 2014 Transitional Regulations, rights under Benefit Regulation 10 do not stop at 1 April 2014. Anyone who has the final salary link will have Benefit Regulation 10 protection for many years to come.

On the next page is an example calculation based on a person who retires in 2020 having suffered a significant pay drop in 2015 (Pensions Increase factors are hypothetical).

Mrs Claire Vision
Leaver on 30 September 2020

Year to 30/9/20	£17,250
Year to 31/3/20	£16,920
Year to 30/9/19	£16,470
Year to 31/3/19	£16,020
Year to 30/9/18	£15,660
Year to 31/3/18	£15,300
Year to 31/3/17	£14,760
Year to 31/3/16	£14,247
Year to 31/3/15	£17,850
Year to 31/3/14	£16,764
Year to 31/3/13	£15,981
Year to 31/3/12	£15,183
Year to 31/3/11	£14,418
Year to 31/3/10	£13,890
Year to 31/3/09	£13,290
Year to 31/3/08	£12,750

Last 3 years pay

01/10/2019 to 30/09/2020	£17,250.00
01/10/2018 to 30/09/2019	£16,470.00
01/10/2017 to 30/09/2018	£15,660.00

Three year averages

01/04/2017 to 31/03/2020	£16,080		£16,080.00
01/04/2016 to 31/03/2019	£15,360	1.55%	£15,598.08
01/04/2015 to 31/03/2018	£14,769	4.54%	£15,439.51
01/04/2014 to 31/03/2017	£15,619	6.89%	£16,695.15
01/04/2013 to 31/03/2016	£16,287	8.70%	£17,703.97
01/04/2012 to 31/03/2015	**£16,865**	11.43%	**£18,792.67**
01/04/2011 to 31/03/2014	£15,976	13.86%	£18,190.27
01/04/2010 to 31/03/2013	£15,194	16.32%	£17,673.66
01/04/2009 to 31/03/2012	£14,497	20.27%	£17,435.54
01/04/2008 to 31/03/2011	£13,866	23.69%	£17,150.86
01/04/2007 to 31/03/2010	£13,310	27.41%	£16,958.27*

The best final pay figure to be used would therefore be £16,865. Her benefits are calculated on £16,865 and pensions increase is then added to the lump sum and the pension payable.

* During the evolution of Benefit Regulation 10(4), the words “ending with 31st March” have become enclosed in commas, changing the possible interpretation. We believe that, as the whole of the 3 year period here doesn’t fall within the last 13 years, this period cannot be taken into account.

2 Types of Retirement

The importance of Normal Pension Age (NPA)

In the 2014 Scheme the normal pension age (NPA) for each member is equal to their State Pension Age (SPA) subject to a minimum of age 65.

If a member chooses to retire before their NPA, their pension will be reduced for early payment (subject to the 85 year rule protections). If they retire after NPA their pension will be increased for late payment.

NPA will be whatever their SPA is at the time that they draw their benefits. Deferred members who leave post 31 March 2014 might have one NPA at the date of leaving but this could shift before they draw their pension. This means that members of the Scheme will have different NPAs determined by their date of birth and SPA rules at the time they draw their benefits. Administering authorities will therefore no longer be able to quote a specific NPA payable date in deferred benefit notifications for post 31 March 2014 leavers (or on annual benefit statements issued to such leavers). Such notifications / statements will have to state that normal payable age for the post 31 March 2014 benefits will be whatever the member’s SPA is at the time they draw their benefits, that their SPA is currently [ddmmyyyy] but that this may change in the future as and when the Government changes State Pension Ages.

Protections built into LGPS2014 means that members are still be able to take any benefits relating to pre April 2014 service unreduced at their old NPA of 65 (if they have retired at that time). In time, it may prove difficult to explain to a retiree that, because they have retired at a point in time between their “old” and “new” NPAs, that part of their benefits are subject to an increase for late retirement and part subject to a reduction for early retirement!

Normal retirement

Normal retirement occurs at the age the Scheme pays benefits at 2014 Scheme NPA. Where retirement occurs at NPA there is no actuarial reduction to post 31 March 2014 benefits and no actuarial increase either. Of course, where 2008 Scheme NPA was earlier, pre 1 April 2014 benefits will see an actuarial increase!

Let’s look at a few examples of normal retirement:

Prior to 1 April 2008 the accrual rate of the LGPS was 80ths and there was an entitlement to automatic lump sum.

Example A – all pre-08

Confirmed bachelor Mr. Dunroamin retired on 31 March 2008 (his 65th birthday eve) on a final pay of £22,497 and with total membership of 4 years.

Pension: $\frac{4}{80}$ x £22497 = £1124.85

Lump Sum: 3 x $\frac{4}{80}$ x £22497 = £3374.55

The accrual rate in the LGPS altered on 1 April 2008 to 60ths pension and no automatic lump sum.

Example B – all post-08/pre-14

Mr. Dunroamin retired on 31 March 2014 (his 65th birthday eve) on a final pay of £22,497 and with total membership of 4 years.

Pension: $\frac{4}{60}$ x £22497 = £1499.80

And from 1 April 2014 we have a CARE scheme with 49ths accrual (or 98ths for those in the 50/50 section).

Example C – all post-14

Mr. Dunroamin retired on 31 March 2018 (his 65th birthday eve) with total membership of 4 years.

Year 1	£20000/49	=	£ 408.16
Year 2	£20,800/49 = £424.49 + (£408.16 x 1.04)	=	£ 848.98
Year 3	£21,632/49 = £441.47 + (£848.98 x 1.04)	=	£1,324.41
Year 4	£22,497/49 = £459.12 + (£1,324.41 x 1.04)	=	£1,836.51

Practical Exercise 1 – Normal retirement

Mr Dunroamin leaves on 8 March 2015 – his 65th birthday eve.

He had exactly 20 years' membership on that day, having commenced on 9 March 1995 (he was always whole-time and continuous)

His employer supplies the following information:

Cumulative Pensionable Pay (main section)	= £28,145
Final Pay (2008 scheme definition)	= £23,500

Please calculate his pension and lump sum:

LATE RETIREMENT AND ACTUARIAL INCREASES

A person retiring after age 65 can draw their benefits immediately or can defer payment until a date no later than the day before age 75. Pensions are increased:

- In respect of pre-1/4/2014 benefits, if they are taken after age 65.
- In respect of post-31/3/2014 benefits, if they are taken after (new) NPA.

The actuarial increases are applied to all of the member's benefits and not just that portion which was accrued prior to the member's 65th birthday / NPA.

The actuarial increase applied to a member's pension is 0.014% simple per day for the period from the day after the member's 65th birthday / NPA until the day before benefits come into payment. Where there is a retirement grant payable, the actuarial increase is 0.007% simple per day.

The increases for late payment are not insignificant and over a ten year period can amount to 51.1% on the pension and 25.55% on the lump sum.

Note that a late retirement involving different actuarial uplifts in respect of "old" and "new" NPAs cannot occur at the earliest until 2017 because of the pace of change of State Pension Age.

For now, a relatively simple example of a late retirement increase follows:

Mr. D. Lay

Born on 1 April 1943.

He joined the LGPS on 1 April 1993 and ceased active membership on 31 March 2013. His final pay was £24,000.

Pension

15 y 0d * 1/80 * £24,000 =	£ 4,500.00
5 y 0d * 1/60 * £24,000 =	£ 2,000.00
	£ 6,500.00

Lump Sum

15 y 0d * 3/80 * £24,000 =	£13,500.00

Actuarial Increase based on period 2 April 2008 - 1 April 2013 inclusive

Pension:

£ 6,500 * 1826 * 0.00014	£ 1,661.66
Amount payable (before any conversion of pension)	**£ 8,161.66**

Lump Sum:

£13,500 * 1826 * 0.00007	£ 1,725.57
Amount payable (before any conversion of pension)	**£15,225.57**

ILL HEALTH RETIREMENT

In creating a new scheme in England and Wales in 2008, DCLG replaced the old single-tier ill-health provision in the LGPS with a three-tier system. Despite some lobbying, the basic structure of three tier ill-health has been retained in LGPS2014. However, the conditions have been reworded and it is now necessary to have met the two-year vesting period for benefits rather than the 2008 Scheme three-month vesting period.

First, you must be ill!

To qualify for ill-health benefits two conditions must be satisfied as follows:

- The member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and

- The member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment.

Secondly, how ill?

If those conditions are satisfied, which tier of ill-health retirement a person falls into is then decided as follows:

- A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before NPA.

- A member is entitled to Tier 2 benefits if that member (a) is not entitled to Tier 1 benefits; (b) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment; but (c) is likely to be able to undertake gainful employment before reaching normal pension age.

- A member is entitled to Tier 3 benefits if they are likely to be capable of undertaking gainful employment within three years of leaving the employment, or before NPA if earlier.

Tier 1 and Tier 2 ill-health

The enhancement of membership in respect of future membership “lost” to NPA in the 2008 Scheme has been replaced in the 2014 Scheme with pension in respect of “assumed pensionable pay” from ill-health retirement to NPA as follows:

- Tier 1 - adjusting the active member's pension account by adding the equivalent of the amount of earned pension the member would have accrued between the day following the date of termination and the member's NPA under the 2014 Scheme, if that member had been treated as receiving assumed pensionable pay for each year and fraction of a year in that period.

- Tier 2 - adjusting the active member's pension account by adding 25% of the Tier 1 adjustment described above.

  NB: no enhancement can be added if the member has previously received a Tier 1 ill health pension under the 2014 or 2008 Schemes or has received an ill health pension under any earlier Scheme.

  The enhancement for a member entitled to a Tier 1 or Tier 2 pension is adjusted if the member has previously received a Tier 2 ill health pension under the 2014 or 2008 Schemes. The enhancement for both Tier 1 and Tier 2 shall not exceed three quarters of the number of years between the initial ill health retirement and the member's NPA under the 2014 Scheme, less the number of years of active membership since the initial ill health retirement.

  Administering authorities will wish to add a question to the pension application form to be completed by the member asking whether, for member's being retired with a Tier 1 ill health pension, the member is already in receipt of an enhanced ill health pension from the LGPS in England or Wales from another, earlier, employment and for member's being retired with a Tier 2 ill health pension, whether the member is already in receipt of an enhanced Tier 1 or Tier 2 ill health pension from the LGPS in England or Wales from another, earlier, employment.

  Members covered by regulation 20(13) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (minimum ill health enhancement for those who were active members before 1 April 2008, were aged 45 or over at that time, have been in continuous membership since then, and have not already received any benefits in respect of that membership) will continue to apply when working out the amount of enhancement to add under Tier 1 or Tier 2 (see later sub-section entitled "Sliding Scale Enhancements").

In order to calculate the enhancements, assumed pensionable pay (APP) will need to be calculated by the employer when terminating an active member's employment on the grounds of permanent ill-health with a Tier 1 or Tier 2 ill health pension.

> NB: The same applies where an active member dies in service, or where a Tier 3 ill health pension is awarded which is subsequently changed to a Tier 1 or Tier 2 ill health pension.

The APP figure is calculated in the normal way but using the average of the pensionable pay (excluding lump sums) for the 12 (weekly) or 3 (monthly) complete pay periods **prior to the date of leaving** (including any APP credited in and relating to those pay periods), to which any regular lump sums paid in the 12 months prior to the date or retirement / death which the employer determines there is a 'reasonable expectation' would again have been paid to the member are added back into the annual rate of APP.

Where the Independent Registered Medical Practitioner certifies that the member was working reduced **contractual hours** during the relevant 12 (weekly) or 3 (monthly) pay periods as a consequence of ill health, the APP figure is to be calculated on the pay the member would have received during the relevant pay periods if they had not been working reduced contractual hours. *Note that there is no equivalent to the 2008 Scheme provision that provided for membership prior to the date of leaving to be uplifted where the person had been working reduced hours because of the condition that resulted in their ill-health retirement.*

When calculating the enhancements, if the person was in the 50/50 section at the point of retirement, the election for 50/50 is treated as lapsed.

Tier 3 ill-health

No Tier 3 benefits can be awarded if the member has previously been awarded a Tier 3 pension under the 2008 or 2014 Schemes. It should be noted that Tier 3 ill health retirement benefits awarded under the 2008 Scheme continue to be subject to the 2008 Scheme regulations.

Tier one and tier 2 ill-health benefits decisions are made on the balance of probabilities and result in the immediate payment of any lump sum and a pension for life. There is no subsequent review. Tier 3 retirement also triggers payment of the lump sum, if any, but the pension is only paid for a maximum of three years.

An employee who leaves local government employment as a 3rd tier member will be entitled to their annual accrued benefits payable as a pension for such time as the 3rd tier member does not obtain gainful employment, or until the employer stops payments following the “review” or, in any event, at the end of 3 years.

The 3rd tier member is required to notify the previous employer when employment is found providing details, including pay and working hours, and the employer would then stop payments if this was ‘gainful employment’.[2]

[2] If payments had continued after gainful employment had been found, the employer has powers to recover any overpayment from the 3rd tier member.

The regulations provide that a tier 3 person whose pension stops is then classed as a “deferred pensioner member”. This does not mean that they become a deferred member and have all the rights associated with that (e.g. transfer values, amalgamation of membership, etc.), instead they remain a pensioner whose payment of pension is merely deferred and then payable again at normal pension age.

The person does have the opportunity to elect to receive the benefits from the age of 55 and, if so, the rules mirror those discussed later in this section of the workshop notes in sub-sections covering early retirement and switching back on the Rule of 85.

The Third-tier Review

The previous employer will undertake a review after 18 months if payments are still continuing at that point[3]. 2013 Regulation 37(6) requires the employer to seek a further opinion from an IRMP concerning the condition which resulted in the 3rd tier ill-health retirement.

Effectively, the IRMP is asked whether it remained the case that gainful employment could have been undertaken within 3 years of leaving (and, if necessary in practice, the doctor could be asked to state the precise point at which gainful employment could be undertaken were that to be somewhere between the 18 month and 3 year stage) ***or*** if the member is now judged to be incapable of undertaking gainful employment within 3 years of leaving but is likely to be able to undertake gainful employment before their NPA.

If the former situation is the case, then as the IRMP is of the opinion that the member is capable of undertaking gainful employment, the employer has powers to stop payments from the date of the review or a later date specified by the IRMP.

Where the IRMP certifies that the person is now adjudged to be incapable of undertaking gainful employment with the 3 year period following retirement, the employer has the power to determine that a 3rd tier member should become a 2nd tier member and the date of the “review decision” will decide the date from which the uplift to 2nd tier will be put into payment.

Indeed, 2013 Regulation 37 (10) gives the employer the ability to uplift from Tier 3 to Tier 2 within the period of 3 years following the cessation of 3rd Tier benefits.

[3] Unless the person is over NPA at the time.

Certification

The changes in the wording of the regulations governing ill health retirement has necessitated an amendment to the ill health certificates used by the Independent Registered Medical Practitioners for ill-health retirements from April 2014. The new certificates can be found in Circular 277 issued in March 2014 (as amended by Circular 282 of June 2014) at http://www.local.gov.uk/web/workforcelibrary/lgpc-circulars.

"Sliding Scale" Enhancements

Under the 1997 Regulations there was no second "degree of ill-health" test and everyone qualifying for ill-health received an enhancement as follows:

Total Membership	Total Membership after Enhancement
Less than 5 years	Actual total membership only
Between 5 and 10 years	Total membership doubled
Between 10 and 13 1/3 years	Total membership increased to 20 years
Over 13 1/3 years	Total membership increased by 6 2/3 years

NB: The enhancement however must not exceed the total membership the member would have accrued had their membership continued until age 65. Also, for part-timers, the period of extra membership is scaled down in proportion to the whole-time equivalent. Similarly, where an employee's membership consists of a mixture of whole-time and part-time employment, the period of extra membership is adjusted to reflect the employee's historic work pattern (provided the total membership does not include at least 13 and one-third years of whole-time employment).

Members covered by regulation 20(13) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (minimum ill-health enhancement for those who were active members before 1 April 2008, were aged 45 or over at that time, have been in continuous membership since then, and have not already received any benefits in respect of that membership) continue to have a mimimum benefit underpin, calculated in accordance with regulation 12(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

Regulation 20(13) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 only protected the amount of enhancement that would be added upon ill-health retirement. It made no reference to final pay (but did not need to because the '2008 Scheme' was still a final salary scheme) and did not require that the member's post 31 March 2008 membership should be counted as if it had accrued at 1/80th (rather than the 1/60th it actually had accrued at). The protected enhancement generated a 1/60th pension.

Regulation 12(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 carries the protection forward and is similarly meant to only protect the amount of enhancement to be added. Under that regulation administering authorities have to work out and pay the greater of:

a) the Tier 1 or Tier 2 benefit the member would get under the LGPS Regulations 2013 and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 (ignoring the regulation 12(1) ill-health underpin protection), and

b) the Tier 1 or Tier 2 benefit the member would get under the LGPS Regulations 2013 based on the member's pre 1 April 2008 membership counting at 1/80th pension plus 3/80^{ths} lump sum, their 1 April 2008 to 31 March 2014 membership counting at 1/60th pension, their post 31 March 2014 membership counting at 1/49th pension and the amount of enhancement they would have got under the LGPS Regulations 1997 counting at 1/60th pension.

There is nothing that protects the pay upon which the enhancement is worked out. Thus, the calculation is the greater of:

a) pension =
   - pre 1 April 2008 membership x 1/80th x final pay ('2008 Scheme' definition), plus
   - 1 April 2008 to 31 March 2014 membership x 1/60th x final pay ('2008 scheme' definition), plus
   - 1 April 2014 to date of leaving membership x 1/49th x pensionable pay ('2014 Scheme' definition), plus
   - Tier 1 or Tier 2 enhancement of *1/49th* x APP x *period from day after date of leaving to day before Normal Pension Age (or 25% of this enhancement for Tier 2)*

   Plus lump sum of pre 1 April 2008 membership x 3/80th x final pay ('2008 Scheme' definition)

   AND

b) pension =
   - pre 1 April 2008 membership x 1/80th x final pay ('2008 Scheme' definition), plus
   - 1 April 2008 to 31 March 2014 membership x 1/60th* x final pay ('2008 scheme' definition), plus
   - 1 April 2014 to date of leaving membership x 1/49th* x pensionable pay ('2014 Scheme' definition), plus
   - Tier 1 or Tier 2 enhancement of *1/60th* x APP x *period of enhancement the member would have been entitled to under regulation 28 of the LGPS Regulations 1997*

   Plus lump sum of pre 1 April 2008 membership x 3/80th x final pay ('2008 Scheme' definition).

* One could potentially read regulation 12(1) as saying that the accrual rate should be that applying under the '1998 Scheme' (i.e. 1/80th) but that is not, in the view of the LGPC Secretariat, the correct interpretation or intention behind regulation 12(1).

So, as can be seen from the fractions and wording shown in italics in the final bullet point in (a) and (b) above, the only difference between the two calculations is in determining the amount of pension to be added due to ill-health enhancement.

As the ill-health (and hence the amount of enhancement) is occurring post 31 March 2014 the enhancement is based on APP not final pay under the '2008 Scheme' definition.

Statutory guidance

2013 Regulation 36(4) makes it a requirement that both employers and independent registered medical practitioners have regard to statutory guidance when carrying out their functions.

At the time of compiling this version of the workshop notes, new guidance was still awaited. It is understood that the guidance currently being worked on by DCLG is simply an update of guidance under the 2008 Scheme rather that a complete root and branch overhaul. We therefore recommend that the earlier guidance is followed wherever possible.

That statutory guidance was issued in November 2008 and is included on the LGA website at:

http://timeline.lge.gov.uk/Statutory%20Guidance%20and%20circulars/Final_IH_Stat_Guide_081124.doc

It has been necessary to apply some caution when reading the guidance as it reproduces, and cross refers to, the regulations as they stood at that point in time.

In July 2009 there was some supplementary guidance for IRMPs jointly issued by Communities and Local Government and the Faculty of Occupational Medicine. This was later revised in June 2011 and is available on-line at:

http://timeline.lge.gov.uk/Statutory%20Guidance%20and%20circulars/CLG_IRMP_Supp_guide_June2011.pdf

Although aimed at Doctors, the 6-page supplementary guidance gives some useful insight into the medical perspective and employers would be well advised to read it.

Finally, version 3 of DCLG's Frequently Asked Questions on ill-health retirement (issued in June 2011) is available on-line at:

http://timeline.lge.gov.uk/Statutory%20Guidance%20and%20circulars/CLG_IH_FAQv3.pdf

Practical Exercise 2 – Ill-health retirement

Mrs Sciatica, born 5 November 1983, is certified permanently incapable on the grounds of ill-health and is leaving employment on 6 January 2015.

Her employer determines she falls into Tier 2.

A member, whole-time and continuous since 1 April 2012, she had been a member of the 50/50 Section since 1 April 2014.

The employer has notified you of:	CPP	£19,246.22
	APP	£25,800.00
	Final Pay	£24,528.66

Please calculate her ill-health pension:

EARLY RETIREMENT & ACTUARIAL REDUCTIONS

Providing they have more than two year' membership, or have brought a transfer value into the LGPS, members may elect to retire and receive LGPS benefits at any time from age 55 onwards.

If a member retires before Normal Pension Age their pension (and lump sum if any) is reduced on account they will receive their pension for a longer period (and in the case of the lump sum, they are receiving it earlier than expected). Conceptually simple, the situation is complicated by their being a different definition of NPA for pre and post 1 April 2014 membership and more so because of the former yardstick by which the actuarial reduction was measured (the 85-year rule) which, although removed from the scheme rules in October 2006, still lives on through various protections.

Present actuarial reductions to benefits are as follows:

Years Early	**Pension Male**	**Pension Female**	**3/80ths Lump Sum Unisex**
0	0%	0%	0%
1	6%	5%	3%
2	11%	11%	6%
3	16%	15%	8%
4	20%	20%	11%
5	25%	24%	14%
6	29%	27%	16%
7	32%	31%	19%
8	36%	34%	21%
9	39%	37%	23%
10	42%	40%	26%
11	45%	44%	N/A
12	48%	47%	N/A
13	52%	50%	N/A

Note that where the number of years a person is retiring early is not an exact number, the necessary interpolations are made in the preceding table.

In the 2008 Scheme, employer's consent was required if a person was under the age of 60 and wished to voluntarily draw their pension benefits. This is no longer the case but it important to understand that, as retirement at the member's own choice between 55 and 59 inclusive is a new scheme facility, the Rule of 85 protection will not <u>automatically</u> apply in full to such cases.

85 Year Rule

The 85-year rule was a rule under which there would be no early retirement reduction applied to the benefits of a member who chose to draw their benefits on or after 60 and before age 65 (or before age 60 with the employer's consent) **provided** the member's age and length of Scheme membership (both in whole years) added up to 85 years.

For example, there would be no early retirement reduction applied to the benefits of a member retiring at age 60 if the person had 25 years Scheme membership (60 + 25 = 85) and no reduction for a person at age 62 with 23 years (62 + 23 = 85) etc.

If the 85-year rule is not met, both the pension and lump sum are reduced based on the lesser of the number of years and days until (a) age 65, (b) the date when the member would satisfy the 85 year rule, and for pre-I April 1998 members, (c) their former protected Normal Retirement Date of pre-1 April 1998 members[4].

When the 85 Year Rule was removed from the scheme, following a protracted period of negotiation, accrued and future benefits were finally protected as follows:

(i) Those aged 60 by 31 March 2016

If a member elects for payment of benefits before age 65, there will be no reduction applied to the benefits accrued up to 31 March 2016 or the date membership of the Scheme ends, if earlier **provided** the member satisfies "the 85 year rule" when the benefits are brought into payment.

Any benefits accrued after 31 March 2016, will be subject to an actuarial reduction, with the amount of the reduction being based on the period between the date the benefits are brought into payment and age 65.

(ii) Those aged 60 after 31 March 2016

If the member elects for payment of benefits before age 65, there will be no reduction applied to the benefits accrued up to 31 March 2008 **provided** that the member satisfies "the 85 year rule" when the benefits are brought into payment.

[4] NRD for these members was age 60 if they had at least 25 years' service by that age, age 65 if they could not achieve 25 years' service by that age, otherwise the age (in years and days) on which they would achieve 25 years' service.

Any benefits accrued after 31 March 2008 will be subject to an actuarial reduction, with the amount of the reduction being based on the period between the date the benefits are brought into payment and age 65.

Most members who will reach age 60 between 1 April 2016 and 31 March 2020 have a “tapered” actuarial reduction in respect of their post-31 March 2008 and pre-1 April 2020 membership (see (v) below for details). This was introduced to overcome the cliff-edge that was created by the protections (i.e. a one day difference in birth-date of 31 March and 1 April would have equated to a having either no reduction or a full reduction in respect of membership after 31 March 2008).

(iii) Protection where 85-year rule not satisfied

You will note that the protection from reduction in respect of any benefits accrued up to 31 March 2008 (or up to 31 March 2016 where applicable) only applies **IF** the member satisfies “the 85 year rule” when the benefits are brought into payment.

If the member does not satisfy “the 85 year rule” when the benefits are brought into payment the implication is that there will be no protection and **all** the benefits would be subject to an actuarial reduction. However, it is important to recognise that members cannot, in relation to accrued benefits, be placed in a worse position than applied before the change in the Regulations.

The GAD guidance makes it clear that the reduction in respect of any benefits accrued up to 31 March 2008 (or up to 31 March 2016 where applicable) will be based on the period between:

a) the date the benefits come into payment, and

b) the earlier of age 65, or the date “the 85 year rule” would have been met, or the date the former protected Normal Retirement Date of pre-1 April 1998 members would have been met (and GAD refer to this earliest date as Critical Retirement Age or CRA).

As a result of members in future potentially needing split membership calculations because of having a mixture of unprotected, taper protected and fully protected membership, the explanation to scheme members of how benefits are arrived at may be significantly harder than before.

(iv) The 31 March 1956 Dividing Line

A very simple way of looking at the effect of the transitional protections is to say that members born on or before 31 March 1956 have their membership ***fully*** protected up to 31 March 2016 whereas members born on or after 1 April 1956 have their membership ***fully*** protected only up to 31 March 2008.

	Actuarial Reduction "CRA"	**Actuarial Reduction "NPA65"**
Born on or before 31 March 1956	Membership to 31 March 2016	Membership from 1 April 2016
Born on or after 1 April 1956	Membership to 31 March 2008	Membership from 1 April 2008*

**Subject to Tapering for those born 1/4/1956 to 31/3/60 and who would have met the 85 Year Rule by 31 March 2020.*

(v) Tapered Protection

Tapered reduction factors are not a birth-right but are conditional on **both** being born between 1 April 1956 and 31 March 1960 inclusive, **and** achieving Critical Retirement Age by 31 March 2020. For example a person who became a scheme member on 1 May 2004 who was born on 22 July 1956 would have a Critical Retirement Age of 65 (being 22 July 2021). They are therefore a Group 3 member and do not qualify for taper reduction.

Taper reduction is measured by the distance between 31 March 2016 **and** either age 60 **or** 85-year rule date whichever comes last.

That distance is then divided by 4 to become the interpolation factor F_1 in GAD's calculations of tapered actuarial reductions, shown below:

$$P_{Taper} = F_1 \times P_{65} + (1 - F_1) \times P_{CRA}$$

NB: In the latest guidance, P_{65} is now referred to as P_{NRA}.

As the interpolation factor is based on a number of years and/or days out of a four-year period it gently moves actuarial reductions from the **fully** protected P_{CRA} to the **fully** unprotected P_{65} in 1460 equal steps, effectively removing the 31 March / 1 April 1956 date of birth cliff-edge of actuarial reductions for unprotected membership (but only for those who achieve CRA by 31 March 2020).

2008 Scheme 85 Year Rule position

In the guidance for the 2008 Scheme on actuarial reductions, GAD gave the following table:

	Group 1	Group 2	Group 3	Group 4
Part A	CRA	CRA	CRA	65
Part B	CRA	Taper	65	65
Part C	65	Taper	65	65
Part D	65	65	65	65

CRA, Taper or 65 refer to the rule that applies in calculating any actuarial reduction i.e. will it be based on how much earlier the member has retired than their CRA or their 65th birthday or will they receive a partial or tapered reduction, somewhere between the two. Parts, Groups and CRA are further explained below.

Parts

Part A: membership to 31 March 2008
Part B: membership 1 April 2008 to 31 March 2016
Part C: membership 1 April 2016 to 31 March 2020
Part D: membership 1 April 2020 onwards

Groups

Group 1 member: a member who was an active member prior to 1 October 2006 and who was born on 31 March 1956 or earlier

Group 2 member: a member who was an active member prior to 1 October 2006, was born between 1 April 1956 and 31 March 1960 inclusive, and who would reach their CRA by 31 March 2020

Group 3 member: a member who was an active member prior to 1 October 2006 and who is not a Group 1 or Group 2 member

Group 4 member: a member who was not a member prior to 1 October 2006.

CRA

CRA is the earlier of

a) the member's pre 1 October 2006 'protected' Normal Retirement Date which some members who joined the Scheme before 1 April 1998 had under regulation 25(3A) of the LGPS Regulations 1997 before its deletion by SI 2006/966;

b) the earliest date at which the member would have satisfied the 85 year rule had the member remained in service, calculated in accordance with paragraph 3 of Schedule 2 to the LGPS (Transitional Provisions) Regulations 2008, and

c) age 65.

Important Note – retirement under age 60

CRA cannot be earlier than 60 for voluntary early retirements under Regulation 30(5) of the LGPS Regulations 2013 unless the employer has agreed, under paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, that it should be. See "Switching on the 85 Year Rule" section for more information.

2014 Scheme 85 Year Rule position

These protections were difficult enough to explain under the 2008 Scheme but with the advent of the 2014 Scheme it was necessary to expand the table even further in order for the protections to be delivered. This is because the 2014 Scheme links Normal Pension Age (NPA) to State Pension Age (SPA) from 1 April 2014 but Group 1 members have rule of 85 protection until 31 March 2016 and Group 2 members have a tapered protection until 31 March 2020. Those protections are based on age 65 and not NPA.

For example, a member retiring at 66 who would meet the 85 year rule at 65½ will still have a protected CRA of 65. Thus, if that member retires at age 60 they will have an actuarial reduction for retiring 5 years earlier than their CRA and not an actuarial reduction for retiring 5½ years early.

In addition, although Part D membership is described as membership from 1 April 2020, some things already count as Part D (e.g. certain transfers in and augmented membership) and they will have been awarded based on formulae expecting retirement at age 65 and not NPA.
The table and its parts were therefore revised as follows:

Part A:	membership to 31 March 2008
Part B1:	membership 1 April 2008 to 31 March 2014
Part B2:	membership 1 April 2014 to 31 March 2016
Part C:	membership 1 April 2016 to 31 March 2020
Part D1	membership 1 April 2020 onwards (including Part D1 benefits as defined in the notes following the table)
Part D2	membership defined as D2 membership in the notes.

	Group 1	Group 2	Group 3	Group 4
Part A	CRA (can't be later than 65)	CRA (can't be later than 65)	CRA (can't be later than 65)	65
Part B1	CRA (can't be later than 65)	Taper (proportion of normal % reduction to 65)	65	65
Part B2	CRA (can't be later than 65)	Taper (proportion of normal % reduction to 65)	SPA (min 65)	SPA (min 65)
Part C	SPA (min 65)	Taper (proportion of normal % reduction to 65)	SPA (min 65)	SPA (min 65)
Part D1	SPA	SPA	SPA	SPA
Part D2	65	65	65	65

More information on the 85 year rule, including a number of important notes to the above table and details of what membership counts towards CRA, can be found in the 85 Year Rule paper which is available in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org.

Points to Note on reduced benefits

Generally, if a retiree was a member of the Scheme before 6th April 1997 their pension must not be reduced lower than a minimum level. This will equal 1/80th of final pay for each year of total membership in contracted-out employment on and between 6th April 1978 and 30th April 1995 for females, and 17th May 1990 and 30th April 1995 for males.

In addition, once former State retirement age[5] is attained, the LGPS must guarantee to pay pensions at least at the level of the member's Guaranteed Minimum Pension (GMP). A female Scheme member who chooses to receive her benefits before her normal retirement date in circumstances where her pension is reduced to less than the level of her GMP, will have her pension increased immediately to the level of her GMP on attaining age 60. A male Scheme member will receive a reduced pension until age 65 when it will be increased to match his GMP if greater.

[5] Although State retirement age is being equalised across the genders and also increased over a period of time, the age at which GMPs are due remains at old State pension age i.e. age 60 for a woman and age 65 for a man.

Practical Exercise 3 – Early Retirement

Mrs Miffed, a Group 3 member, leaves on her 60th Birthday eve 30/4/2021
She elects to receive her benefits immediately (NPA 1 May 2028)
She has exactly 40 years membership (w/t continuous since 1/5/1981)
Her final pay on leaving is £24,000
Her CARE account shows a balance of £2,725.54 at the date of leaving

Please calculate her standard benefits (before commutation)

"SWITCHING BACK ON" THE 85 YEAR RULE

The 2014 Transitional Regulations provide that whilst the 85 year rule does not automatically apply in full if the employee decides to voluntarily draw benefits on or after age 55 and before age 60, the employer will be able to, in effect, switch the rule back on.

Where the employer does so the position is no different to that which applied under the 2008 Scheme where an employer agreed to payment of benefits on or after 55 and before age 60 i.e.

a) the scheme member would suffer an actuarial reduction on

   - the benefits relating to their fully protected 85 year rule membership calculated by reference to the period (if any) between the date the benefits are drawn and the date the member would meet the 85 year rule, and

   - the benefits related to any 1 April 2008 to 31 March 2020 tapered 85 year rule membership calculated by reference to the period between the date the benefits are drawn and age 65, and

   - the benefits relating to their non-protected membership calculated by reference to the period from the date the benefits are drawn to NPA (2008 Scheme definition) for the pre 1 April 2014 membership and Part D2 membership; and SPA, with a minimum of age 65, for the post 31 March 2014 membership (excluding Part D2 membership)

b) the employer would be responsible for meeting any remaining strain on fund cost relating to the payment of benefits before age 60.

If, however, the employer does **not** switch the 85 year rule on, the scheme member would suffer an actuarial reduction, calculated in accordance with the actuarial guidance issued by the Secretary of State, on:

- the benefits relating to their fully protected 85 year rule membership calculated by reference to the period between the date the benefits are drawn and the earlier of the date the member would have met the 85 year rule or age 65, but with a minimum reduction to age 60 where the 85 year rule is met before then

- the benefits related to any 1 April 2008 to 31 March 2020 tapered 85 year rule membership calculated by reference to the period between the date the benefits are drawn and age 65, and

- the benefits relating to their non-protected membership calculated by reference to the period from the date the benefits are drawn to NPA (2008 Scheme definition) for the pre 1 April 2014 membership and Part D2 membership; and SPA, with a minimum of age 65, for the post 31 March 2014 membership (excluding Part D2 membership).

So, in simple terms, if the employer switches on the 85 year rule they will pick up any strain on Fund cost as they did under the 2008 Scheme and, if they don’t switch it on, the scheme member meets the strain on Fund cost of having their benefits paid early by having an actuarial reduction applied to their benefits. The cost of releasing benefits early is the same - it is merely a question of who pays.

Administering authorities will need to ensure that leaver forms submitted by employers include a question asking the employer to confirm, for retirements on or after 55 and before age 60, whether or not they have switched on the 85 year rule.

Pension Strain

Pension strain is the common term used to describe the “capital cost of early retirement”. To understand what pension strain is you first need to understand how benefits are funded.

Money is invested by the administering authority to provide enough money in the future to pay out benefits when they fall due. The money invested includes existing assets, the income from those assets and ongoing employee and employer contributions. To work out how much is needed in the Fund now, at each triennial valuation, the Fund Actuary makes many assumptions (on future investment return, future salary growth and inflation etc.). Standard actuarial practice is also to assume that contributors to the scheme will retire at the normal retirement age of 65 (or when they qualify for unreduced benefits between age 60 and 65).

If in practice the benefits are paid earlier than this expected retirement date, the investment returns won’t be enough to pay the benefits due. Where retirement is by the employee’s choice, any early reduction applied to the benefits will negate the capital cost of early retirement if they are age 60 or over and also if they are aged under 60 providing the employer does not switch back on the 85 Year Rule.

The calculation of Pension Strain

Calculation of the strain on the Pension Fund is performed using formulae issued by the local government actuaries. A standard set were agreed in 1998 which cross-referenced Government Actuary tables on augmentation of membership in force at that time.

Subsequently a change in GAD guidance on the calculation of augmentation costs, coupled with an increase in longevity, caused local government actuaries to move away from the standard and calculate strain costs in a bespoke manner for their clients.

Although now there is general agreement amongst the local government actuaries on the calculation of capital costs, there is still flexibility built in at Fund level and, indeed, in exceptional circumstances, at employer level within a Fund.

It is therefore not possible to show an example here of exactly how strain is calculated but your tutor, at this point, should be able to give a very simplified illustration of the principle.

The strain on the Fund is then made good by the payment of extra employers' contributions, either over a period of time or immediately according to the employers' funding position and the position taken by the Administering Authority and Fund Actuary.

WAIVING ACTUARIAL REDUCTIONS

An employer has the power to waive actuarial reductions from benefits. This is a discretion and the employers' powers have historically been different according to the type of retirement.

In all cases bar flexible retirement, waiving actuarial reductions has only been permitted on compassionate grounds (e.g. a reduction in hours necessary to care for a sick relative etc.). Where an employer exercises compassion, the whole of the actuarial reduction is waived which, of course, leads to pension strain.

In the case of flexible retirement however, the employer has been permitted to waive part or all of the actuarial reduction and may exercise this discretion on any grounds (i.e. not just compassion).

Position from 1 April 2014

Effectively, the position appears to have been standardised across all retirement types by virtue of Schedule 2 of the 2014 Transitional Regulation and particularly Schedule 2(2)(1) of those regulations.

The employer can exercise its discretion to waive actuarial reductions but the situation differs according to the group of member the person is classified as for 85 Year Rule purposes (see page 18 for definitions) as follows:

a) Group 1 member

- **all** of the actuarial reduction in respect of pre-1 April 2016 benefits (on compassionate grounds only).
- **all or some** of the actuarial reduction in respect of post-31 March 2016 benefits (on any grounds).

b) Group 2 member

- **all** of the actuarial reduction in respect of pre-1 April 2020 benefits (on compassionate grounds only).
- **all or some** of the actuarial reduction in respect of post-31 March 2020 benefits (on any grounds).

c) Group 3 or 4 member

- **all** of the actuarial reduction in respect of pre-1 April 2014 benefits (on compassionate grounds only).

- **all or some** of the actuarial reduction in respect of post-31 March 2014 benefits (on any grounds).

The discretions in (a) to (c) above, apply equally to deferred members and suspended tier 3 ill health pensioners (other than those drawing benefits on ill-health grounds as no actuarial reduction would apply) who are granted early release of their benefits. Cost justifying this discretionary power in these circumstances is nigh-on impossible, and the employer might only seek to exercise its discretion on the grounds of compassion in any event.

Note: Whilst the above reflects the wording of the regulations, the LGPC Secretariat do not believe that (a) to (c) above should apply to flexible retirement cases, rather that the ability to waive all or part of the reduction on any grounds (the situation under the 2008 Scheme) should continue. The Secretariat has asked DCLG to make a regulatory amendment and the Discretions Policies paper which can be found in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org has been written on the assumption that the amendment will be made.

FLEXIBLE RETIREMENT

Projections show that over the next few decades we will become an increasingly ageing society. People born today can look forward to a lifespan of between ten and thirty years longer than the three-score years and ten once allocated to them!

According to the Organisation for Economic Co-operation and Development (OECD) the number of people in Europe age 65 or over will rise from 57 million in 1995 to 81 million in 2025. A "demographic time bomb" as it has sometimes been called.

With increasing life expectancy, a lower birth rate in recent years, and the baby-boomer generation heading for retirement, we face the real prospect of a greatly increased retired population being dependent on a reduced active workforce.

One approach is to raise the retirement age and, for State Pension purposes, this was one of the recommendations of the Turner Commission taken on board by Government. An alternative or complementary solution is to create conditions where gradual or phased retirement is possible and to allow paid work during retirement without financial penalty.

For employers (especially those experiencing recruitment or retention difficulties and skills shortages) the older workforce is a resource just waiting to be tapped into. Key obstacles to this have been the all or nothing mentality of the “cliff edge of retirement” and historical Revenue rules regarding just what constitutes retirement for the purposes of drawing pension scheme benefits.

From 6 April 2006, HMRC changes allowed pension schemes to facilitate flexible retirement. Flexible retirement provisions were subsequently written into the LGPS by modifying the principal regulations in 2006 and when the new look scheme was introduced in 2008, the flexible retirement provisions were modified further. Similarly, the advent of LGPS2014 has seen the provisions modified slightly again.

A scheme member who has attained the age of 55 can draw all or part of their retirement benefits (both pension and lump sum) even though they have not retired providing that:

- the employer consents, and
- there has been a reduction in hours, or
- a reduction in grade.

Actuarial Reductions

The actuarial reduction to be applied would be based on:-

- for non- protected membership, the shortfall to age 65 in respect of membership pre-1 April 2014 and the shortfall to (new) NPA in respect of membership after 31 March 2014, and

- for protected membership, the shortfall to:

    - age 65 where the member cannot meet the 85 Year Rule;

    - the 85 Year Rule date where this falls before age 65; or

    - former 'Protected NRD' (the 1997 Regulation '25 years' service rule) if this pre-dates the 85 Year Rule date.

The actuarial reduction under the 85 Year Rule does not negate pension strain where the member would have satisfied the 85 Year Rule before the age of 60.

If an employer so chooses, all or part of the actuarial reduction can be waived[6]. Where the reduction is waived, the cost of the strain on the Pension Fund will become due immediately.

Partial Drawing of Benefits

A person flexibly retiring does not have to draw on all of the benefits they have built up at the point of flexible retirement. They have to draw:

- all of their pre 1 April 2008 benefits, plus
- all, some or none of their 1 April 2008 to 31 March 2014 benefits, plus
- all, some or none of their post 31 March 2014 benefits, plus
- any "additional benefits" in accordance with actuarial guidance issued by the Secretary of State.

"Additional benefits" are added years being purchased by the member, AVCs, additional pension bought by APCs/SCAPCs, additional pension bought by ARCs and additional pension awarded by the employer. Basically, added years contracts with an election date prior to 1 October 2006 and AVC contracts entered into before 13 November 2001 **must** be taken on flexible retirement, whereas for other contracts the member has a choice whether to take all or none of the additional benefit.

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[6] Although the regulations presently are worded to the effect that actuarial reductions can only be waived on certain membership in whole and on the grounds of compassion, it is understood this is not intentional and that a regulatory amendment will be made (see previous section "Waiving Actuarial Reductions" for more details).

3 Redundancy and Efficiency Retirements

PENSION FUND BENEFITS

Under Regulation 30(7) of the 2013 Regulations, if

(a) a member aged 55 or more leaves a local government employment, and

(b) he/she has 2 or more years' membership in the LGPS or has less than 2 years membership but has had a transfer of pension rights (of any length) into the LGPS from another scheme, and

(c) the reason for leaving was dismissal due to redundancy or business efficiency (including termination by mutual consent in the case of business efficiency)

then that person is entitled to the payment of pension benefits immediately and without actuarial reduction for early retirement (other than additional pension bought by an Additional Pension Contribution contract or a Shared Cost Additional Pension Contribution contract, or a pre-1 April 2014 Additional Regular Contribution contract).

Compromise Agreements

A compromise agreement allows an individual to contract out of certain rights, the most common ones being:

- the right to claim unfair dismissal at an employment tribunal; or
- the right to claim discrimination at an employment tribunal on grounds of gender, race, disability, age, sexual orientation, religion or belief.

A compromise agreement should not be used in an attempt to negate the statutory right to pension fund benefits described above. The employee might later seek to rely on section 91 of the Pensions Act 1995 and claim that it was not permissible for them to surrender that right to receive benefits.

Section 91 of the Act is reproduced, in part, here:

> **“91 Inalienability of occupational pension**
>
> (1) ………… where a person is entitled to a pension under an occupational pension scheme or has a right to a future pension under such a scheme
>
> (a) the entitlement or right cannot be assigned, commuted or surrendered,
>
> (b) the entitlement or right cannot be charged or a lien exercised in respect of it, and
>
> (c) no set-off can be exercised in respect of it, and an agreement to effect any of those things is unenforceable.”

Pension Strain

The early payment of fund benefits under Regulation 30(7) will place a “strain” on the pension fund when termination occurs before Normal Pension Age or Critical Retirement Age as the case may be. This is because the benefits are not subjected to any actuarial reduction for early payment.

ADDITIONAL PENSION

Regulation 31 of the Local Government Pension Scheme Regulations 2013 introduced, from 1 April 2014, the ability for an employer to grant additional pension up to maximum of £6500. The facility was also available in the 2008 Scheme although the maximum was slightly lower at £5000.

Eligibility

A decision to award additional pension **can** be made:

- only in respect of an employee who is an active member (i.e. a current contributor) of the LGPS, or
- within six months of leaving employment if the reason for leaving was redundancy or business efficiency, and
- regardless of the minimum length of an employee's membership i.e. the member does not need 2 years' membership of the LGPS.

Why award additional pension?

There are a number of reasons including recruitment and retention. More often than not though, awarding additional pension occurs around the time of a person's retirement and is used to compensate or reward the retiring employee. In the case of redundancy (and that expression includes business efficiency retirement) it used to be possible to pay Compensatory Added Years (CAY) outside the Pension Scheme but that facility was removed in England and Wales in 2006. Because that facility was removed, many employers who were disposed to award CAY moved to granting augmented membership or additional pension instead. As the ability to augment membership ceased[7] with the introduction of LGPS2014, awarding additional pension becomes the only option within the pension scheme.

It should be noted that a lump sum compensation payment cannot be made under regulation 6 of the 2006 Compensation Regulations if, in respect of the cessation of employment, the employee can count additional pension that the employer has awarded under regulation 31 of the LGPS Regulations 2013. However, a decision to award additional pension would not prevent the employer from making an award under regulation 5 of the 2006 Compensation Regulations i.e. to base a redundancy payment on the employee's actual week's pay where this exceeds the statutory week's pay limit.

[7] Subject to a transitional window of awards still being possible for a period of six months from the date of leaving for those retired on redundancy or business efficiency before 1 April 2014.

EFFECT OF RE-EMPLOYMENT

If a pensioner member returns to Local Government or another organisation that participates in the LGPS, their pension may be reduced or suspended in accordance with the rules determined by the administering authority. This is referred to as abatement and is an administering authority discretion and their policy with regard to it must be included on a policy statement. Basically, Funds who abate are seeking to ensure that pensioners are no financially better off in retirement than they had been in employment.

As a simple example of “pound-for-pound” abatement, suppose a person retired on a final pay of £20,000 and received a pension of £8,000 per annum. They could become re-employed on a salary of up to £12,000 per annum (£20,000 less £8,000) without any effect on their pension.

If they were re-employed on a salary of £12,500 their pension would be reduced by £500 per annum, if the salary in the re-employment was £14,500 the reduction would be £2,500 and so on. If they were re-employed on £20,000 or more then the pension would be suspended. This is a very simplistic explanation for illustrative purposes only and, in practice, allowances are made for inflation which complicates the calculation a little.

Re-employment of a Pensioner granted CAY

The 2006 compensation regulations removed the facility for employers to make an award of Compensatory Added Years (CAY). Even though granting Compensatory Added Years is therefore a thing of the past, the work involved in checking cases of re-employment will remain for some considerable time.

The employer is required to have a written policy regarding reducing or suspending the member's CAY pension during any period of re-employment in local government and also on reducing the member's CAY pension following the cessation the re-employment

The employing authority, in determining its policy in respect of the reduction or suspension of annual compensation **during** any period of re-employment in local government (including employment with an admitted body if the person is, in that employment, a member of the LGPS) must at least ensure that the aggregate of

- the annual compensation, and
- the annual pension from the LGPS, and
- the annual rate of pay from the new employment,

does not exceed the annual rate of pay from the employment in respect of which the added years were granted, as increased by the Retail Prices Index.

If that position cannot be achieved by a reduction in the annual compensation, then the annual compensation must be suspended.

An authority could have a policy which is more penal than the minimum set out above. For example, in the most penal form, the policy could state that annual compensation will be suspended during any period of re-employment in local government (including employment with an admitted body if the person is, in that employment, a member of the LGPS) regardless of the level of earnings received during that period of re-employment.

The employing authority, in determining its policy in respect of the reduction of annual compensation (derived from the award of added years) **following** the cessation of a period of re-employment in local government (including employment with an admitted body if the person is, in that employment, a member of the LGPS), must at least seek to secure that if:

the period of added years granted in respect of the former employment

plus

the period of membership the person has accrued in the LGPS (or would have accrued had he / she joined the scheme when first eligible to do so) during the period of re-employment in local government (counted at its part-time length, if the person was part-time)

exceeds

the period of membership the person would have accrued during the period from the cessation of the former employment until age 65 on the assumption that he / she had continued in that former employment to age 65 (again counted at its part-time length if the person was part-time at the date of cessation of the former employment)

then

the annual pension and lump sum from the first job combined with the annual pension and lump sum from the second job (based on the assumption that the employee joined the LGPS when first eligible to do so), plus the annual and lump sum compensation, should not in aggregate exceed the pension and lump sum the person would have achieved if he / she had remained in the first job through to age 65.

Where there is an excess, the annual compensation **must** be reduced by the excess pension, and the resulting reduced basic annual compensation **must** then be suspended until the excess lump sum is recovered.

4 Early Leavers

DEFERRED (PRESERVED) BENEFITS

Prior to 1 April 2004, early leavers did not become entitled to deferred benefits unless they had 2 years' membership of the scheme or had less than 2 years but had transferred-in previous pension rights from another pension scheme.

Amendment regulations effective from 1 April 2004 introduced "immediate vesting" into the Local Government Pension Scheme which meant that an active member who opted out of the scheme or ceased to be employed and who had at least 3 months' membership (or has less than 3 months' membership but a transfer value has been received) became entitled to deferred benefits.

Now, with the advent of LGPS2014, from 1 April 2014 we have moved back to a two year vesting period but an active member who moved into the 2014 scheme on 1 April 2014 can, if they subsequently leave with between 3 months and 2 years' membership in total, choose between:

- A refund of contributions
- A deferred pension
- An immediate pension provided they had reached their normal pension age (as defined in the 2008 scheme)

The "choice" obviously depends upon their entitlement to a refund of contributions (they may, for example, have not had a break of at least one month and one day and therefore not be entitled to a refund).

A pre 1 April 2014 frozen refund or deferred member who rejoins the scheme on or after 1 April 2014 and aggregates (or, in the case of a frozen refund member, has compulsory aggregation of) their benefits can, if they subsequently leave with between 3 months and 2 years' membership in total, choose between:

- A refund of contributions
- A deferred pension

Once again, the "choice" obviously depends upon their entitlement to a refund of contributions.

Elections must be made to the administering authority within six months of ceasing active membership and, in the absence of an election, the default is the award of a deferred or immediate pension as appropriate.

Time Limits

The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 give the scheme manager just two months from the date he has been notified that scheme membership has ceased, to notify the early leaver of his rights and options, if any, under the rules of the scheme.

This does not entail the actual amount of the deferred benefits being disclosed but, just to be complaint with this legislation, the administering authority must notify the deferred member of his/her entitlement to deferred benefits and of the available alternatives and options.

The deferred member is entitled to request the amount of his/her deferred benefits no more frequently than annually. Indeed, amending LGPS regulations in 2004 introduced a requirement for annual statements of benefits for both active and deferred members (including “pension credit members” – a category of member created under pension sharing on divorce rules).

Date of Payment

Deferred benefits awarded under the “Earlier schemes” continue to be subject to regulations governing those Earlier Schemes i.e. the 1995, 1997 or 2007 Regulations.

Deferred benefits awarded under the 2014 Scheme are payable when the member attains Normal Pension Age under the 2014 Scheme, unless the member makes an election to defer payment (to age 75 at the latest) or to draw benefits on or after age 55 and before NPA. Benefits drawn after NPA will be subject to an actuarial increase and benefits drawn before NPA will be subject to an actuarial reduction (in accordance with actuarial guidance issued by the Secretary of State).

Between 1 October 2006 and 31 March 2014, deferred benefits awarded were payable from NPA (or Normal Retirement Date (NRD) as it was then referred to. Prior to 1 October 2006, deferred benefits were also payable from NRD but pre-1 April 1998 members retained the right to a Normal Retirement Date of age 65 or, if earlier, the date between 60 and 65 when 25 years’ membership would be attained. For a deferred benefit case, this included notional membership from the date of leaving, i.e. it is the date they would have attained 25 years’ membership had they continued in membership of the scheme.

Employers will therefore have a variety of deferred beneficiaries with payable dates ranging from age 60 up to age 68 presently.

TAKING BENEFITS EARLY

There are a number of instances where preserved benefits may be payable earlier and these are as follows:

(i) Ill health – pre-1/4/2008 leaver

Deferred benefits can be released at any age where the former employee becomes incapable of carrying out the duties of their former post by reason of permanent ill-health. An application for early payment on ill-health grounds is made to the former employer.

An employer would need to refer the case to an Independent Registered Medical Practitioner, just as for an ill-health retirement from employment. However, the question being asked of the doctor about permanent incapacity differs because the comparable employment clause does not apply i.e. the doctor is being asked whether the person is incapable of carrying out the duties he last held rather than those he currently holds along with any comparable employment offered.

In addition, if the applicant is under the age of 55 it is necessary to establish whether the person is incapable of performing **any** employment whatsoever. This is because only those deferred beneficiaries who are incapable of any work when their benefits are released on ill-health grounds under the age of 55 are entitled to the payment of subsequent pension increases.

(ii) Ill health – post-31/3/2008 / pre-1/4/2014 leaver

Deferred benefits can be released at any age where the former employee becomes incapable of carrying out the duties of their former post by reason of permanent ill-health and who, at the date of application, would have met the provisions of Benefits Regulations 20(2) or (3) if they had still been employed by the former employer (i.e. would have fallen into the 1st or 2nd tier). Although silent, it is understood that the application for early payment on ill-health grounds is made to the former employer. As with (i) above, certification is required by an IRMP.

(iii) Ill health – post-31/3/2014 leaver

Deferred benefits can be released at any age where the former employee becomes incapable of carrying out the duties of their former post by reason of permanent ill-health and who is unlikely to be capable of undertaking gainful employment for at least 3 years (or by NPA if earlier) if they had still been employed by the former employer.

The application for early payment on ill-health grounds is made to the former employer but if that employer is no longer a Scheme Employer then it is made to the Administering Authority. As with (i) and (ii) above, certification is required by an IRMP.

(iv) At age 60

A person who has an NRD/NPA later than age 60 can elect for the early payment of their preserved benefits at age 60.

It is worth noting that men who claim reduced benefits that reduce the level of their pension below their Guaranteed Minimum Pension (GMP) have their pension increased to the level of their GMP from age 65. A woman claiming reduced benefits at age 60 could not have her pension reduced to below the level of her GMP and a woman not claiming reduced benefits may still be entitled to the payment of GMP immediately[8].

(v) Under age 60 – leavers from 1/4/2014

The LGPS (Transitional Provisions and Savings) Regulations 2014 (the Transitional Regulations") provide that whilst the 85 Year Rule does not automatically apply in full if the ex-employee decides to voluntarily draw benefits on or after age 55 and before age 60, the ex-employer will be able to, in effect, switch the rule back on.

The considerations are exactly the same as those detailed earlier in these notes in the context of early retirement of an active member. Additionally, the employer has the power to waive actuarial reductions when releasing deferred benefits early and, again, the rules are exactly the same as for a retiree.

(vi) Under age 60 – leavers from 1/4/2008 to 31/3/2014

At or after age 55 a deferred beneficiary can request the early release of their deferred benefits but only with the consent of their former employer. It is possible for the former employer to waive, on compassionate grounds, any actuarial reduction that would otherwise apply for early payment.

[8] Complex rules surround this issue but there is a handy "GMP Payable Table" available on our website at http://www.local.gov.uk/web/workforcelibrary/technical-guides#GMP

(vii) Under age 60 – leavers from 1/4/1998 to 31/3/2008

At or after **age 50** a deferred beneficiary can request the early release of their preserved benefits but only with the consent of their former employer. It is possible for the former employer to waive, on compassionate grounds, any actuarial reduction that would otherwise apply for early payment.

(viii) Under age 60 – Pre-1/4/1998 leavers

Before the 1997 regulations came into effect, the only way an employer could release preserved benefits before the age of 60 (other than on the grounds of permanent ill-health) was to consent to their release on compassionate grounds.

At any time from **age 50** onwards, a deferred beneficiary could write to their former employer asking for the release their preserved benefits, setting out the reason why the employer should agree to this. If the employer consented, the benefits would be released without actuarial reduction.

Deferred beneficiaries whose benefits arose under the 1995 regulations still have the possibility of early release on compassionate grounds and employers may find they are asked to consider cases from time-to-time.

Important NB: There are potentially significant tax implications in releasing deferred benefits before **age 55** and employers should be advised to consult their administering authority before entertaining any request for early release.

5 MISCELLANY

NOTIFYING THE LEAVER OF THEIR BENEFIT OPTIONS

Three sub-paragraphs of Regulation 72 (First instance decisions) are reproduced here:

(3) The appropriate administering authority must decide any question concerning—

(a) a person's previous service or employment;

(b) the crediting of additional pension under regulation 16 (additional pension); and

(c) the amount of any benefit, or return of contributions, a person is or may become entitled to out of a pension fund.

(4) A person's Scheme employer must decide any question concerning any other matter relating to the person's rights or liabilities under the Scheme.

(5) A decision under this regulation must be made as soon as is reasonably practicable.

It is for the administering authority to decide the amount of the benefit (sub-paragraph 3(c)) but it is the role of the employer to decide whether a person is entitled to any benefit, and if so which benefit they are entitled to, when they leave or opt out of membership (sub-paragraph 4). Each party must arrive at a decision as soon as is reasonably practicable (sub-paragraph 5).

Regulation 73 (Notification of first instance decisions) is reproduced here in its entirety:

(1) Every person whose rights or liabilities are affected by a decision under regulation 72 (first instance decisions) must be notified of it in writing by the body which made it as soon as is reasonably practicable after the decision is made.

(2) A notification of a decision that the person is not entitled to a benefit must contain the grounds for the decision.

(3) A notification of a decision about the amount of a benefit must contain a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

(a) specify the rights available under regulations 74 (applications for adjudication of disagreements) and 76 (references of adjudications to administering authority);

(b) specify the time limits within which the rights under those regulations may be exercised; and

(c) specify the job title and the address of the person appointed under regulation 74(1) to whom an application may be made.

This regulation prescribes that whichever body made the decision is responsible for notifying the person concerned of that decision, giving them an address from which further info can be obtained and telling them of their right of appeal, and to who and in what timescale, any appeal can be made. Once again, the words “as soon as is reasonably practicable” are used.

The constant usage of the words “as soon as is reasonably practicable” might to some imply that there is significant leeway available in notifying any leaver of their right to a benefit or the amount of those benefits. However, there are a number of pieces of overriding legislation that contain explicit time limits and there are fines that may be levied for non-compliance with those limits.

The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 [SI 1991/167] contain provisions to the effect that early leavers' rights and options must be notified to them automatically within two 2 months of member or employer notifying the scheme administrator of the termination of active member status. Failure to do so can result in a fine of up to £1,000 against an individual, or up to £10,000 otherwise.

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 [SI 2013/2734] stipulate that on a benefit becoming payable, the member/beneficiary must be provided with details of:-

- the amount of the benefit(s) payable,
- the conditions on which periodic payments will continue,
- the provisions under which periodic payments may be altered, and
- the rights and options available on the death of a member/beneficiary and the procedures for exercising them.

The required information is to be given automatically within one month following the date the benefit becomes payable, extended to two months where retirement occurs prior to Normal Pension Age. Again, failure to do so can result in a fine of up to £1,000 against an individual, or up to £10,000 otherwise.

Employers and administrators need to ensure, therefore, that timely procedures and information flows are in place not only to facilitate a first-class service to members but also to avoid any potential fines for non-compliance.

THE UNDERPIN

The LGPC Secretariat's understanding of the process representing the policy intention behind the underpin set out in regulation 4 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, is detailed in our paper entitled "The Underpin" which can be found in the Administration Guides section of www.lgpsregs.org. It is a three step process which then leads to one of another 7 steps. In brief:

Step 1

Determine whether the member will meet the criteria when their benefits are paid i.e. the member:

(a) was an active member of the 2008 Scheme on 31 March 2012 and was, on 1 April 2012, 10 years or less from their normal retirement age under the 2008 Scheme;

(b) was an active member immediately before the underpin date and receives payment of benefits under the 2014 Scheme on or after the underpin date;

(c) does not have a disqualifying break in service; and

(d) has not, prior to the underpin date, drawn benefits under the 2013 Regulations in relation to an employment

The underpin date is the earlier of:

(i) the date the member attained their normal retirement age under the 2008 Scheme, or

(ii) the date the member ceased to be an active member of the 2014 Scheme with an immediate entitlement to a pension

A disqualifying break in service is a continuous break after 31 March 2012 of more than 5 years in active membership of a public service pension scheme

Step 2

Determine whether the member is an active member immediately before the date the member attained their normal retirement age under the 2008 Scheme or, for a member ceasing to be an active member before their normal retirement age under the 2008 Scheme, whether the member ceased to be "an active member of the 2014 Scheme with an immediate entitlement to a pension" and "would have had an immediate entitlement to payment under the 2008 Scheme".

Nearly all members who were active members on 31 March 2012 and who were, on 1 April 2012, 10 years or less from their normal retirement age under the 2008 Scheme will be 55 or over on 1 April 2014 and so have an immediate entitlement to a pension under the 2014 Scheme (as a member can elect under regulation 30(5) of the LGPS Regulations 2013 for payment from that age). However, some members with a protected normal retirement age of 60 under the 2008 Scheme might not.

It should be noted that a member who opts out of membership prior to attaining their normal retirement age under the 2008 Scheme will not have an immediate entitlement to a pension (because they are still employed in the employment in respect of which they had been a member). They will, therefore, not meet the requirements of step 2 and so not be subject to the underpin calculation.

If the member meets the Step 2 criterion, move to Step 3.

Step 3

At the earlier of the date the member ceases to be an active member or the member's normal retirement age under the 2008 Scheme, calculate the underpin amount in accordance with regulations 4(4) to (6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

The first stage is to calculate what pension would have built up in the member's pension account at the underpin date on the following assumptions:

- the member had been in the **main** section of the 2014 Scheme between 1 April 2014 and the underpin date (excluding any breaks and any absences/strike periods not paid for but including any Tier 1 or Tier 2 ill health enhancement under the LGPS Regulations 2013)

- any additional pension bought via APCs/SCAPCs (other than to cover pension 'lost' due to absence or strike) is ignored

- any AVC payments are ignored

- any pension purchased by a transfer in is ignored

- any adjustment due to a pension debit or annual allowance scheme pays election is made to the account

- the balance in the account includes revaluation up to the beginning of the Scheme year in which the underpin date falls

The second stage is to calculate the final salary pension the member would have accrued and had an immediate entitlement to under the 2008 Scheme if the member had stayed in the 2008 Scheme between 1 April 2014 and the underpin date, based on the following assumptions:

- the membership to be used in the calculation is the period between 1 April 2014 and the underpin date (excluding any breaks and any absences/strike periods not paid for but including any Tier 1 or Tier 2 ill health enhancement under regulation 20 of the LGPS (Benefits, Membership and Contributions) Regulations 2007)

- any adjustment due to a pension debit or annual allowance scheme pays election is made to the pension

If the amount calculated at the second stage is higher than the amount calculated at the first stage the difference is the underpin amount. This should be held as a separate “guarantee amount”.

Note that in performing these calculations it is important to include, where relevant, pensions increase on the final salary benefits. Although PI is technically not a “benefit the member would have been entitled to under the 2008 Scheme”, because it is payable under the Pensions (Increase) Act 1971, it would be illogical not to include it in the calculation - it is important that the calculation compares apples with apples and not apples with pears.

If there is an underpin “guarantee amount” calculated at Step 3, move to the appropriate step out of steps 4 to 10.

Steps 4 to 10

These seven steps cover all the possibilities of eventual retirement and whether the underpin is paid without actuarial adjustment or not or, in the single case of retirement where employer consent would have been necessary under the 2008 Scheme (Step 5), not paid at all. In addition to the underpin amount itself, there are other elements of the pension that will have to be treated differently to normal, otherwise the desired effect would not be achieved.

The seven steps are not detailed here but are covered in great detail, as the opening paragraph of this sub-section stated, in a document entitled “The Underpin” available on www.lgpsregs.org in the Administration Guides section.

To all intents and purposes where an underpin “guarantee amount” is paid, both

a) the underpin “guarantee amount”, and

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

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

Furthermore –

c) any amount of pension in the member’s post-14 pension account accrued after the member’s 2008 NPA, and

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

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

The rationale for (c) is that the underpin guarantee only applies for benefits accrued up to the member’s NPA under the 2008 Scheme. The rationale for (d) is twofold. Firstly, regulations 4(5)(b)(i), 4(5)(c) and 4(5)(d) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 exclude the elements in (d) from the underpin calculation (and so they must, therefore, be paid in addition). Secondly, the amount of pension credited to the member’s account from a transfer in and the amount of the additional pension purchased via the APC / SCAPC were based on the member’s NPA under the 2014 Scheme.

Paragraph 2.18 of the actuarial guidance issued by the Secretary of State on “Early Payment of Pension” (dated 28 March 2014) will need to be updated to reflect the above.

General

Any underpin "guarantee amount" which is calculated will need to be apportioned to Part B2, Part C and Part D2 as appropriate in order that the correct actuarial reduction can be applied (if drawn before the member's NPA under the 2008 Scheme).

For example, if the member has membership from 1 April 2014 to 31 March 2021 (7 years), has final pay (2008 Scheme definition) of £40,000 and has an underpin "guarantee amount" of £91.67, the underpin amount would be allocated as follows:

	B2		C				D2
	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
CARE accrued	£850.00	£650.00	£600.00	£650.00	£625.00	£650.00	£550.00
Total CARE	£1,500.00		£2,525.00				£550.00
2008 Scheme comparison	2/60 x £40,000 = £1,333.33		4/60 x £40,000 = £2,666.67				1/60 x £40,000 = £666.67
Difference	-£166.67		+£141.67				+£116.67
Total	£1,333.33		£2,666.67				£666.67

This method of allocation ensures that where a member is subject to the 85 year rule the actuarial reduction applicable to Part B2, Part C and Part D2 membership is applied to the amount of pension the member would actually have earned as Part B2, Part C or Part D2 membership had they remained in the 2008 Scheme.

STANDARD BENEFITS?

Timing of Elections

The 2013 Regulations provide that members must elect to convert pension into lump sum "by written notice given to the appropriate administering authority before any benefits in relation to the benefit crystallisation event become payable".

Section 216 of the Finance Act talks of BCEs occurring when a person becomes entitled to benefits i.e. a pension and/or a lump sum. In HMRC's Registered Pension Schemes Manual (RPSM)[9] the question "What is meant by "becoming entitled" to various kinds of pension?" is answered and supported by a number of example cases. It is evident from these examples that an "actual" entitlement doesn't arise until the administrators are in a position to make payment, irrespective of whether the award is to be backdated to an earlier payable date.

It can be reasonably argued, therefore, that the administering authority could not be in a position to process the payment of benefits until all the necessary paperwork had been received. The necessary paperwork would include any Lifetime Allowance document (this has been confirmed by HMRC) and could also include the election to commute itself.

Maximum Tax-free Cash

The HMRC rules on maximum tax-free cash are extensive and complex to say the least. A good starting point is to visit the section of RPSM entitled "RPSM09104210 - Technical Pages: Member benefits: Lump sums: Pension commencement lump sum: Maximum amount: General: Contents" at: http://www.hmrc.gov.uk/manuals/rpsmmanual/rpsm09104210.htm

Under 2013 Regulation 33(3), maximum tax-free cash is calculated under actuarial guidance from the Secretary of State. This guidance was issued on 31 March 2014. In simple terms, a member is allowed to take up to 25% of the value of benefits "crystallising" when they draw them.

You could be forgiven for thinking that the assessment of maximum tax-free cash would be a simple operation but, in assessing the capital value of accrued rights, one must take the post-commutation benefits into account, not the pre-commutation benefits.

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[9] See page RPSM11102055
http://www.hmrc.gov.uk/manuals/rpsmmanual/rpsm11102055.htm

The problem is that the factor used in assessing the value of benefits is 20 times pension plus lump sum whereas the factor used to convert pension into lump sum in the LGPS is 12 for 1. As the capital value of accrued rights and pension to lump sum conversion are interdependent, a reiterative calculation follows. The best way of understanding this issue is to look at an example:

Joe Public is entitled to standard benefits of:

£10,000 p.a. pension and £30,000 lump sum

The maximum tax-free cash is calculated using the formula:

((20 x pension) + lump sum) x 25%

Maximum tax-free cash is therefore:

((£10,000 x 20) + £30,000) x 25%
= (£200,000 + £30,000) x 25%
= £230,000 x 25%
= £57,500

In order to increase the lump sum from £30,000 to £57,500 (an increase of £27,500), the pension must be reduced on a 12 for 1 basis like this:

Extra lump sum £27,500 / 12 = £2,292
Revised Pension therefore £10,000 - £2,292 = £7,708 p.a.

As the input values in the maximum tax-free cash formula are post-commutation benefits, it is now necessary to reassess maximum tax-free cash as follows:

((£7,708 x 20) + £57,500) x 25%
= (£154,160 + £57,500) x 25%
= £211,660 x 25%
= £52,915

In order to increase the lump sum from £30,000 to £52,915 (an increase of £22,915), the pension must be reduced on a 12 for 1 basis like this:

Extra lump sum £22,915 / 12 = £1,910
Revised Pension therefore £10,000 - £1,910 = £8,090 p.a.

As the input values in the maximum tax-free cash formula are post-commutation benefits, it is now necessary to reassess maximum tax-free cash as follows:

((£8,090 x 20) + £52,915) x 25%
= (£161,800 + £52,915) x 25%
= £214,715 x 25%
= £53,679

In order to increase the lump sum from £30,000 to £53,679 (an increase of £23,679), the pension must be reduced on a 12 for 1 basis like this:

Extra lump sum £23,679 / 12 = £1,973
Revised Pension therefore £10,000 - £1,973 = £8,027 p.a.

As the input values in the………. Etc, etc, etc

So, are we to spend the rest of our working days doing reiterative calculations? Fortunately not, thanks to algebra! Two relatively simple examples of commutation follow:

Member 1 – Pension of £7000, lump sum of £9000

The maximum the member can commute is C where

C = 1/56*[(20 * Pension) – (3 * Lump Sum)]

C = 1/56 (£140,000 - £27,000)
C = 1/56 * £113,000
C = £2,017.85 (rounded down to the nearest penny)

Post commutation pension = £7,000 - £2,017.85 = **£4,982.15**

Post Commutation lump sum = £9,000 + (2,017.85 * 12) = **£33,214.20**

Cross check the answers.

20 * £4,982.15 = £99,643 / 3 = £33,214.33

(The post commutation lump sum is just less than ¼ of the total value of crystallised benefits. If the member commuted 1 penny more, the lump sum would be in excess of ¼ of the total value of crystallised benefits.)

Member 2 – Pension of £8000 only

The maximum the member can commute is C where

C = 1/56*[(20 * Pension) – (3 * Lump Sum)]

C = 1/56 * £160,000
C = £2,857.14 (rounded down to the nearest penny)

Post commutation pension = £8,000 - £8,857.14 = **£5,142.86**

Post Commutation lump sum = 2,857.14* 12 = **£34,285.68**

Cross check the answers.

20 * £5,142.86 = £102,857.20 / 3 = £34,285.73

(This proves that the above formula also works when the member's scheme benefits are a pension with no lump sum.)

In-house AVCs

The 2013 Regulations are worded in such a fashion that it is permissible for a person to take 25% of the value of their main scheme benefits as tax-free cash **and** 100% of their AVC pot. If a person did both these things they would, of course, exceed the maximum tax-free cash allowed under HMRC rules, causing an unauthorised payment. It is expected, therefore, that the 2013 Regulations will be amended to prevent this.

The 2014 Transitional Regulations effectively remove the 25% limit on main scheme benefits, leaving the Finance Act limitations to apply on all the benefits being crystallised, in respect of an "AVC arrangement entered into by a member before 1st April 2014". This means that an AVC arrangement in existence at 31 March 2014 will be dealt with thereafter in the same manner it previously was i.e. providing the AVC pot is crystallised at the same time as the main scheme benefits the person can take 100% of the AVC pot as tax-free cash subject to limitations (HMRC permit the maximum 'pension commencement lump sum' to be calculated on a scheme-wide basis).

This leaves us with the thorny question of what constitutes an AVC arrangement entered into by a member before 1st April 2014? Although the 2014 Transitional Regulations define this as "the earlier of the date the AVC election form was received" (by either the administering or employing authority) there are a number of potential scenarios that could subsequently occur (change of employer, change of Fund to name but two) that require clarification.

In the Administration Guides section of www.lgpsregs.org there is a document entitled "Additional Voluntary Contributions Scenarios" which sets out various scenarios which may occur in respect of AVC contracts and provides the LGPC's understanding of the approach to take in each case.

Pre-1/4/2014 Arrangements

A scheme member may choose to take:

- all of their maximum lump sum from their AVC pot, except the basic 3/80ths retirement grant that accrues under (and must be taken from) the main scheme, or

- all of their maximum lump sum from their main scheme benefits (and pension only from AVCs), or

- any combination in between these two extremes.

If the scheme member does not take their benefits from AVCs at the same time as their main scheme benefits, the 25% permitted maximum will need to be considered individually in relation to their AVCs and their main scheme benefits. This is because the later payment of their AVCs will constitute a separate benefit crystallisation event (BCE) to the earlier payment of their main scheme benefits.

Where individuals wish to transfer some AVCs into the main scheme to provide a scheme top-up pension or membership, but also to use some of the AVC fund for providing tax-free lump sum, the transfer of the AVC fund will need to take place prior to the main scheme BCE (i.e. the date of retirement or receipt of paperwork from the employer or scheme member, if later). If it is not, it would result in a separate BCE for the AVCs, which would mean that the 25% permitted maximum lump sum would need to be considered separately in relation to their AVCs and their main scheme benefits.

This problem need not occur where the complete AVC fund is being taken as a lump sum as the administering authority should not have to wait for any additional information in relation to the AVCs (and hence there is no delay in the BCE). However, administering authorities must remember that the member will need to elect for this "before any benefits become payable" otherwise the member will be restricted to a maximum of 25% of the AVC fund as a lump sum.

For the purposes of calculating the maximum lump sum in the cases where aggregation of main scheme benefits and AVCs is permitted, the value of the AVCs should be taken as the fund value. However, if the AVCs have been transferred into main scheme LGPS benefits to purchase additional scheme pension or additional membership, the resulting benefits are valued as part of the main scheme benefits (i.e. using the factor of 20 for the pension) – this is because the AVCs have been merged into the main scheme, converting them from money purchase benefits to defined benefits.

There are some circumstances where individuals may have an in-house AVC arrangement with an alternative administering authority (for example, where an inter-fund adjustment was paid in respect of main scheme benefits but AVCs were not transferred to the new administering authority's AVC provider). In this situation the two administering authorities will need to liaise closely to ensure the AVCs are treated correctly and that the individual is not paid more tax-free cash than he or she is entitled to receive. However, if one administering authority is in Scotland and the other is in England or Wales, the benefits cannot be considered together (even if they will have the same BCEs) as the schemes are considered to be separate registered pension schemes.

Finally, even though the Finance Act may permit it, LGPS members may not take payment of their AVCs prior to their main scheme benefits.

UNAUTHORISED PAYMENTS, ANNUAL AND LIFETIME ALLOWANCES

These tax matters are very complicated indeed and are included in this part of the workbook in general terms only. For detailed information you should turn to HMRC's Registered Pension Scheme Manual online at: http://www.hmrc.gov.uk/MANUALS/RPSMMANUAL/Index.htm

Back in 2006, we commissioned a Guide to Tax Simplification. This guide was last updated in 2008 (version 11) but, regrettably, became so out-of-date that it was taken offline. Following significant changes through the Finance Act 2011, we prepared a draft guide to the new annual allowance regime (in excess of 200 pages) and issued it to Pension Managers although several points of clarification with HMRC were still outstanding.

That guide is currently available online at http://www.local.gov.uk/web/workforcelibrary/technical-guides#annual but should be read with some caution as it was last updated in 2012 and is therefore a little out-of-date.

Unauthorised payments

The Technical pages at HMRC's website define an unauthorised payment as "a payment that is neither an authorised member payment, nor an authorised employer payment."

Payment in this context has a very broad meaning. Unauthorised payments fall into two categories, unauthorised member payments and unauthorised employer payments. HMRC technical pages RPSM04104040 and RPSM04104050 give more information on what are unauthorised member payments and unauthorised employer payments respectively.

Situations which would trigger an unauthorised payment in the LGPS include (this is by no means an exhaustive list):

- the remote possibility of receipt of employee contributions beyond age 75 which neither HMRC nor LGPS will permit;
- the payment of retirement or death related lump sums beyond age 75;
- the payment of a pension commencement lump sum more than three months after the entitlement to benefit arises;
- releasing benefits earlier than age 55 on other than ill-health grounds.

Unauthorised payments trigger up to three tax charges:

- The **unauthorised payments charge** – a tax of 40% of the value of the unauthorised payment, payable by the member or beneficiary.

- The **unauthorised payments surcharge –** where unauthorised payments go above a set amount in a set period an additional tax charge of 15% will be due, and payable by the member or beneficiary.

- The **scheme sanction charge –** a charge paid by the sub-scheme administrator on certain unauthorised payments in addition to the other two tax charges. The sanction charge due is 40% of the value of the payment, but may be reduced to as low as 15% where the unauthorised payments charge has been paid by the member or beneficiary.

The administering authority is required to notify HMRC of all unauthorised payments (along with other reportable events) on an annual event report and to pay across any charges and surcharges that arise on a quarterly basis.

Lifetime allowance

From 2006, pension benefits were no longer directly limited by membership, accrual rates or by salary. Instead the value of pension benefits is tested against the 'lifetime allowance'. The lifetime allowance is the total amount of pension saving that can be provided to an individual without incurring an extra tax charge. Benefits in excess of the lifetime allowance will become subject to a tax charge. This assessment covers pension benefits accrued in all tax-'registered' pension schemes – not just the LGPS.

The standard lifetime allowance is the threshold set by the Government. Since its introduction, the standard lifetime allowance has been as follows (the figures in bold show where the allowance was reduced):

Tax year	Lifetime Allowance
2006/07	£1.50 m
2007/08	£1.60 m
2008/09	£1.65 m
2009/10	£1.75 m
2010/11	£1.80 m
2011/12	£1.80 m
2012/13	**£1.50 m**
2013/14	£1.50 m
2014/15	**£1.25 m**

Benefits must be checked against the lifetime allowance whenever a benefit crystallisation event (BCE) occurs. Though some benefits may come into payment at the same time (for example, a pension and lump sum), they are classed as being separate benefit crystallisation events. In this circumstance, entitlement to the retirement grant is deemed to have arisen first (immediately before the pension).

Benefits must be compared with the lifetime allowance at each date on which a benefit crystallisation event takes place (i.e. where a scheme member has two sets of benefits that come into payment at different times, then two separate checks against the lifetime allowance must take place).

In simple terms, you could consider the lifetime allowance as a one-off total value of pension benefits that can be paid, without incurring tax charges. Each time a benefit is paid as part of a BCE, a check against the lifetime allowance (or balance of lifetime allowance) is necessary.

So as to ensure that any benefits that are already in payment are taken into consideration during the calculation, the administering authority has to ask the scheme member to confirm whether or not they have any other pension arrangements and, if so, the value of those other pension arrangements.

The method of calculating the value of benefits depends on the type of benefit. Pensions are multiplied by a valuation factor so as to provide a capital value. Here is an example covering a very simple case to give you a flavour of the calculation:

Mr. Smith had exactly 36 years' total membership at 31 March 2014 and had no other pension savings elsewhere.

Final pay of £100,000 on 31 March 2014

Retirement pension	30/80 x £100,000	=	£ 37,500
	6/60 x £100,000	=	£ 10,000
			£ 47,500
Lump sum retirement grant	3 x 30/80 x £100,000	=	£112,500

In this example, the total value of the benefits for comparison with the lifetime allowance is:

(£47,500 x 20) + £112,500 = £1,062,500

As £1,062,500 was below the lifetime allowance threshold at the date of retirement (£1,500,000), there was no tax charge.

If an individual's pension benefits exceed the lifetime allowance a 'lifetime allowance charge' will apply to such benefits as exceed the lifetime allowance. The charge on benefits paid as a pension will be 25% (with income tax deducted thereafter at the member's marginal rate). Benefits taken as lump sums will be taxed (once only) at 55%.

Under the Finance Act, the individual and the scheme administrator (i.e. the administering authority in LGPS) are jointly and severally liable for the lifetime allowance charge. Within the LGPS, the administering authority will pay the lifetime allowance charge, and this will then be deducted from the amount of the scheme members' benefits.

Lifetime Allowance Protections in a nutshell

When the lifetime allowance (LTA) was first introduced in 2006, there were two types of protection available, primary protection and enhanced protection. Primary protection was available if a person had pension savings in excess of the standard LTA of £1.5 million on 5 April 2006. Enhanced protection was available to anyone regardless of the value of their accrued benefits at 5 April 2006.

Primary Protection

Primary protection granted a person a personal LTA in excess of the standard LTA which reflected how much their capital value at 6 April 2006 exceeded £1.5 million. Personal LTA is expressed as a factor calculated as follows:

Value of pension savings at 5 April 2006	£1.6 million
Value of LTA at 5 April 2006	£1.5 million

£1.6m - £1.5 = £100,000 / £1.5m = 0.066

Primary protection factor (Lifetime Allowance Enhancement Factor or LAEF) is 0.07 (rounded to two decimal places)

The factor reflects the percentage by which benefits at 6 April 2006 exceeded the standard LTA then. In our example above, the individual concerned has a personal lifetime allowance of 7% above the standard going forward from 2006. Following the reduction in the standard LTA on 6 April 2012 and 6 April 2014, individuals with primary protection continue to measure their personal LTA with reference to the previous standard LTA of £1.8 million.

Enhanced protection

Enhanced Protection allows for all of a person's pension benefits to be protected from the LTA charge irrespective of the size of the pension saving at retirement providing the benefits have not increased by more than a set rate between 6 April 2006 and retirement.

The rate of growth of benefits is subject to a test known as the relevant benefit accrual (RBA) test. RBA occurs not just when benefits grow by more than a certain amount but also if, for example, a person takes out a new AVC arrangement.

Where the RBA test is passed, the person retains enhanced protection and receives benefits without the application of a LTA charge. Where the RBA test is failed then they lose enhanced protection and their benefits will be tested against the standard LTA[10] unless they have "dormant" primary protection (they can apply to HMRC for enhanced protection to be disregarded and activate their primary protection) or individual protection.

Fixed Protection

When the LTA was reduced in April 2012 and April 2014, further protections were made available. These were all subject to strict application deadlines, Fixed Protection 2012 (FP12) before the deadline of 5 April 2012, Fixed Protection 2014 (FP14) before the deadline of 5 April 2014, and Individual Protection (IP) by 5 April 2017.

Fixed Protection recognised that a person may expect to have pension savings of more than the standard LTA of £1.5m after 5 April 2012 or £1.25m after 5 April 2014. FP12 gives a personal LTA of £1.8m and FP14 gives a personal LTA of £1.5m.

Anyone who was contributing to a registered pension scheme, who did not already hold a certificate of primary or enhanced protection, could apply for FP12. Anyone who was contributing to a registered pension scheme, who did not already hold a certificate of primary or enhanced protection or FP12, could apply for FP14.

If a person had enhanced protection then they could give this up to take up fixed protection instead. If they held primary protection, they could not give this up, and were unable to apply for fixed protection.

[10] Note, however, according to the GAD guidance note on lifetime allowances (dated 31 March 2014), DCLG policy provides for "split crystallisation" in cases like this. Effectively, benefits up to the limit are crystallised and keep enhanced protection (so have no tax charge) and benefits over the limit are crystallised separately without the benefit of enhanced protection (with an appropriate tax charge).

A person cannot give up fixed protection but from 5 April 2012 (FP12) or 5 April 2014 (FP14), they could lose it. Similar to, but not the same as, the conditions for retaining enhanced protection, fixed protection is lost if a person starts a new pension arrangement (other than to accept a transfer of existing pension rights) or if they have benefit accrual (BA), or if they pay contributions into a money purchase pension arrangement other than to a life assurance policy providing death benefits that started before 6 April 2006. They are also subject to restrictions on where and how they can transfer benefits.

Unlike enhanced protection's RBA test which is performed by scheme administrators on retirement, fixed protection's BA test is an ongoing test that is the responsibility of the individual. Benefit accrual occurs if the capital value of benefits increases by more than the 'relevant percentage' at any time during the tax year.

The 'relevant percentage' is linked to the increases applied to benefits under the scheme rules, which are calculated under the Pensions (Increase) Act 1971, and are currently linked to the Consumer Prices Index. If benefit accrual takes place, the person has to notify HMRC within 90 days – failure to do so could result in a penalty of up to £300.

Where a person loses their fixed protection they revert to the standard LTA. If they lost FP12 they could have applied for FP14 up to 5 April 2014, or can still apply for IP up to 5 April 2017.

Individual Protection

Individual protection is a facility for people to retain a personal LTA of between £1.25 million and £1.5 million after 5 April 2014. People can only apply for individual protection if the capital value of their benefits on 5 April 2014 is more than £1.25 million.

They can apply for individual protection if they currently hold enhanced protection, fixed protection 2012 or fixed protection 2014, but these take precedent. If these are lost, then the person can revert to individual protection.

If the capital value of benefits is £1.25 million or more on 5 April 2014 then with IP the person retains a personal LTA equal to this amount, up to a maximum of £1.5 million. <u>There are no restrictions on the growth of benefits and a person cannot lose individual protection</u>.

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Annual allowance

Introduced in 2006, the annual allowance limits the total amount of 'savings growth' relating to an individual's pension benefits in each year. Benefits in excess of the annual allowance will become subject to a tax charge. This assessment covers pension benefits accrued in all tax-registered pension arrangements—not just the LGPS.

Since its introduction, the Government have set the annual allowance at the following levels:

Tax year	Annual Allowance
2006/07	£215,000
2007/08	£225,000
2008/09	£235,000
2009/10	£245,000
2010/11	£255,000
2011/12	**£ 50,000**
2012/13	£ 50,000
2013/14	£ 50,000
2014/15	**£ 40,000**

For tax years 2011/12 onwards, the annual allowance was reduced to just £50,000. Couple this with a change in the formula used to calculate the "pensions input amount" (the term for savings growth in a pension scheme), and it becomes evident that many more people are likely to exceed the annual allowance, and not necessarily just those on high earnings as before. For 2014/15 the allowance was reduced even further to just £40,000.

The savings growth for an individual is the sum total of all their pension input amounts (PIA). A PIA is ascertained in relation to each individual set of benefits (and then the onus is on the individual to aggregate the amounts so as to determine the 'total pension input amount' for comparison with the annual allowance).

The pensions input amount for a tax year is the amount of the increase in the value of the member's benefits during the pensions input period (PIP) ending in that tax year.

In defined contribution schemes (like an Additional Voluntary Contribution scheme) the pensions input amount is equal to the contributions paid in the pensions input period. Nice and simple.

In defined benefits schemes (like the LGPS) the pensions input amount has to be assessed a little more scientifically. The pension input amount is determined in the LGPS by working out the value of accrued benefits at the beginning and end of the pension input period, applying a formula and then working out the difference between the two.

Here is a very simple example:

Mr Jones

Joined the LGPS on 1 April 2011

Active member throughout the PIP

Pay for the year to 31 March 2013 is £72,000

Pay for the year to 31 March 2014 is £75,600, a rise of 5%

The Consumer Prices Index (CPI) for September 2012 is 2.2%

Working out the opening value for 2013/14 PIP

Amount of annual pension	2 / 60 * £72,000.00	=	£ 2,400.00
Apply flat factor of 16	£2,400.00 * 16	=	£38,400.00
There is no automatic lump sum to add in			
Increase by CPI	£38,400.00 * 1.022	=	£39,244.80

Working out the closing value for 2013/14 PIP

Amount of annual pension	3 / 60 * £75,600.00	=	£ 3,780.00
Apply flat factor of 16	£3,780.00 * 16	=	£60,480.00
There is no automatic lump sum to add in			

Working out the pension input amount for the 2013/14 PIP

The increase in the member's benefits over the PIP is the closing value less the opening value, so:

£60,480.00 - £39,244.80 = **£21,235.20**

If a person has not used all of their allowance in one or more of the last three tax years, the unused amount is added to the annual allowance available for the current tax year. This enables them to make pension savings above the normal annual allowance in one year and not suffer a tax charge. This facility could be particularly helpful if a person had a significant promotion or was made redundant for example.

The old annual allowance tax charge was a flat rate 40%. With effect from the 6 April 2011, the tax charge on savings above the available annual allowance changed from the flat rate of 40% to the individual's marginal rate of income tax (i.e. any excess amount will be treated as income for tax purposes).

In certain circumstances, the annual allowance charge can be met from the pension scheme - effectively the individual's benefits are reduced by the annual allowance charge and the "scheme pays" over the tax to HMRC. Except in the case of "scheme pays", liability for the annual allowance charge rests with the member, not the scheme administrator.

Before the changes, HMRC would in most cases identify persons liable to the charge from their Self Assessment tax returns. In fact, there was no requirement on schemes to automatically notify individuals of the PIA. In the new regime however, from 2011 we are in a whole new ball game.

To enable administering authorities to provide members with details of their PIA, **employers must** provide relevant information (e.g. pensionable pay, changes in contractual hours, etc) to the administering authority by 6 July following the end of the tax year.

Employers must also provide the administering authority with such information as they require to calculate the Pension Input Amount for the previous three tax years if the administering authority request it.

Where the aggregate of an individual's PIA in respect of all their arrangements in the scheme exceeds the annual allowance, **the administering authority must** automatically provide the member, within six months of the end of the tax year (i.e. by 6 October) with a pension savings statement showing the member's PIA for the relevant PIP and for the previous three PIPs.

Where the aggregate of an individual's Pension Input Amount in respect of all their arrangements in the scheme do not exceed the annual allowance they do not have to be given a pension savings statement automatically but they can nevertheless make a written request for one to be issued. If requested, the administering authority must then provide the pension savings statement by the later of three months from the request and six months from the end of the tax year i.e. 6 October.

To avoid the possibility of a flood of individual requests, some administering authorities issue a pension savings statement to all scheme members, not just those who have benefits that exceed the annual allowance.

In practice, there are many deviations to the simplicity we saw in the simple example on page 75. For example, as we are potentially just one small part of a member's pension savings jigsaw, what is the effect to the PIA if a person:

- transfers in from another pension scheme
- transfers out to another pension scheme
- aggregates membership from another LGPS deferred benefit
- gets an award of augmented membership
- has a Pension Sharing Order on divorce
- leaves part way through a PIP
- retires part-way through a PIP
- ceases a concurrent employment

The list could go on and on. The Finance Act 2004 as amended by the Finance Act 2011 dictates what happens to the calculation in any given circumstance. As stated in the opening paragraphs to this sub-section, there is further information available on the HMRC website and in our guide to the annual allowance and the URLs to both are given there.

TRIVIAL COMMUTATION

This sub-section briefly sets out the provisions governing trivial commutation and small pot payments to members of the LGPS in England and Wales i.e. where the value of a member's pension benefits fall below prescribed values and can be commuted into a one-off payment at the discretion of the administering authority. For more detailed information (including the position in Scotland and commuting Pension Credit pensions, Councillor pensions and survivor pensions) please refer to the "Trivial commutation and small pot payments" paper in the Administration Guides section of www.lgpsregs.org.

In the 2014 Budget statement it was announced that the limits for trivial commutation lump sums and small pot payments would be increased from £18,000 to £30,000 and from £2,000 to £10,000 respectively for payments made on or after 27th March 2014. The current position is as follows:

Pre-1 April 2008 leaver (other than councillors)

Administering authorities may:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004, and

b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004

An administering authority however **cannot** pay (to a member or survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 as the relevant amendments to the LGPS Regulations 1997 have not been made.

Post-1 April 2008 leaver (other than councillors)

Administering authorities may:

a) pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004, and

b) pay (to a survivor) a lump sum which is a trivial commutation lump sum death benefit within the meaning of section 168 of the Finance Act 2004

c) pay (to a member or survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009.

Providing the conditions for payment under the relevant legislation have been met, commutation is possible in the LGPS in most cases, summed up as follows:

	Summary table - is commutation possible?			
Date Left	FA04 s166	FA04 s168	AP09 reg6	AP09 reg11/12
Pre 1/4/08	Yes	Yes	No	No
1/4/08 to 31/3/14	Yes	Yes	Yes	Yes
Post 31/3/14	Yes	Yes	Yes	Yes

Trivial commutation lump sums payable under s.166 of FA04

The member must:

- be aged 60 or over (or, in the case of a man who has a GMP, aged 65 or over)
- have all or part of their lifetime allowance available
- take a lump sum in respect of **all** their benefits within the LGPS in England and Wales (for a member of the LGPS in England or Wales who wishes to commute)
- not previously have been paid a trivial commutation lump sum from any registered pension scheme or, if such a lump sum has previously been paid, the trivial commutation lump sum from the LGPS must be paid within 12 months of the day on which a trivial commutation lump sum was first paid to the member (from any registered pension scheme),
- have their pension savings in all their pension schemes (LGPS and non-LGPS) valued on the same date (the nominated date) which must be no more than three months before they take their first trivial commutation lump sum. The nominated date can be a date specified

by the member within that three month period or, if no date is chosen, it will be the date that a trivial lump sum commutation payment is first paid to the member, and

- on the nominated date, have a total value of **all** pension pots (LGPS and non-LGPS) of less than £30,000.

If the member is taking a trivial lump sum commutation payment from more than one pension scheme they must take all the trivial lump sums within 12 months of the first trivial lump sum payment.

As the right to nominate a date is in the Finance Act (and therefore overriding), it is important for administering authorities to ask a scheme member who approaches them with an interest in commuting benefits if there is a nominated date. If there is not, or if the administering authority is instigating the trivial commutation, they will need to tell the scheme member what date is being treated as the nominated date.

To determine whether a member's benefits **CAN** be commuted on the grounds of triviality, administering authorities need to determine whether or not the value of the member's benefits, as determined in accordance with Schedule 29 of FA04, fall below the £30,000 limit set by that Schedule (or the £18,000 limit if the first trivial commutation lump sum payment from any pension scheme was made before 27th March 2014).

Under FA04 the value of a member's rights (excluding any survivor's pension or State Pension to which the member is entitled in their own right) are to be calculated as:

(a) the value of the member's relevant crystallised pension rights on the nominated date, plus

(b) the value of the member's uncrystallised rights on the nominated date.

Where a pension is about to become payable it will be necessary to consider the options available i.e.

(1) commute the uncrystallised benefits (before the BCE date)

(2) commute the crystallised benefits – with no 12:1 commutation

(3) commute the crystallised benefits – with maximum 12:1 commutation

(4) commute the crystallised benefits – with some 12:1 commutation

This is necessary because the calculation of the value of the member's pension benefits differs depending on whether the benefits are commuted on the grounds of triviality before or after they have crystallised.

Under option (1) the amount of the trivial commutation payment and any standard 3/80ths lump sum are added together. 25% of this total sum is paid as tax free cash. The remaining 75% of the total is subject to tax.

Under option (2) any standard 3/80ths lump sum retirement grant is paid tax free but the amount of the trivial commutation payment is taxable.

Under options (3) or (4) the lump sum retirement grant (i.e. after the 12:1 conversion and including any standard 3/80ths lump sum) is paid tax free and the amount of the trivial commutation payment is taxable.

The difference between option (2) and options (3) and (4) is that the lump sum retirement grant is determined using the 12:1 conversion factor. However the actuarial factors for commuting trivial pension to lump sum are often higher than 12:1. Therefore, not taking the maximum tax free lump sum via the 12:1 option may give a higher lump sum value to the trivial pension – but subject to tax. Thus, the person's tax liability may be an important issue in determining which option they choose.

De minimis payments under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009

This allows de minimis 'small pot' payments to be paid without:

- the need to comply with either the 12 month commutation period and nominated date requirements for payments under section 166 of the Finance Act 2004, nor

- the necessity to determine the total value of the member's benefits under all registered pension schemes (for payments under section 166 of the Finance Act 2004).

From 27th March 2014 the de minimis 'small pot' payment limit increased from £2,000 to £10,000 for all payments made under those regulations on or after 27th March 2014. Where an administering authority wishes to utilise the de minimis lump sum payment option:

- the member must be aged 60 or over (or, in the case of a man who has a GMP, aged 65 or over)

- the commutation value of **all** the person's benefits in the LGPS in England and Wales must be less than £10,000

- the commutation payment must not exceed £10,000

- the member must take **all** their benefits in the LGPS in England and Wales as a lump sum i.e. the payment must extinguish all their pension rights in the Scheme including any other active, deferred, pension or pension credit entitlement, whether or not in the same LGPS pension fund, as well as the contingent benefits that would be paid to dependants on the death of the member,

- the member must not have transferred any funds out of the LGPS in England or Wales to another recognised pension scheme in the last three years (i.e. to a registered pension scheme or to a qualifying recognised overseas pension scheme), and

- the member must not be a 'controlling director' - or someone connected with a controlling director - of an employer that participates in the LGPS in England or Wales.

Subject to meeting the de minimis rules, a de minimis lump sum payment can be made in respect of pensions in payment.

Commutation payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009

This regulation caters for “accretion” which, for example, is where a payment in is received for someone who has already taken a transfer out.

In practice it is highly unlikely that administering authorities will ever encounter a situation where a payment under regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] would be paid. It is therefore not discussed further here.

Tax

By virtue of section 636B of the Income Tax (Earnings and Pensions) Act 2003, where a member is paid a trivial commutation lump sum under section 166 of the Finance Act 2004, the member is treated as having taxable pension income for the tax year in which the payment is made equal to the amount of the lump sum. However, if immediately before the trivial lump sum is paid the member has uncrystallised rights (within the meaning of section 212 of the Finance Act 2004) under one or more arrangements under the Scheme, the amount of the taxable pension income –

(a) if all of the member’s rights under the Scheme are uncrystallised, is 75% of the lump sum, and

(b) otherwise is reduced by 25% of the value of the uncrystallised rights calculated in accordance with section 212 of the Finance Act 2004.

Full guidance on taxation of trivial lump sum payments can be found at http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM09105080.htm.

PENSIONS INCREASE

Local government pensions are classed as “official” pensions for the purposes of the Pensions (Increase) Act 1971. They are therefore increased in line with review orders passed by Parliament provided they satisfy one of the following qualifying conditions:

- A pension of a former employee who has attained age 55
- An ill-health or injury pension
- A pension awarded on grounds other than ill-health to an employee under age 55 who subsequently becomes permanently incapacitated from engaging in any regular full-time employment
- A widow/widower’s pension
- A child’s pension

Pensions increase accrues from “the beginning date”. For LGPS2014 CARE pension, this is the date following the member’s last day of active membership of the scheme. For final salary linked rights, normally this would be the same day. However, if the pension was based on final pay from a year other than the final year however, then the pension is deemed to have begun on the day following the last day used in the calculation of final pay.

Preserved benefits are also “official pensions” and also attract pensions increase. This includes both the preserved pension and preserved lump sum.

Guaranteed Minimum Pensions and their effect on P.I.

The Social Security Act 1975 brought in the State Earnings Related Pension Scheme or SERPS from 1978. The Child Support, Pensions and Social Security Act 2000 brought in the successor to SERPS, the State Second Pension or S2P in 2002.

Under SERPS the LGPS guaranteed it would pay at least a minimum level of benefits in respect of contracted-out service. This is called the Guaranteed Minimum Pension or GMP. The GMP is equivalent to the Additional Pension or AP element of SERPS but the two are calculated slightly differently which can lead to a difference in value.

GMPs accrued between 6 April 1978 and 5 April 1997 and are a component part of a member’s pension. However, pensions increase liability is met, either whole or in part, by the State. Pensions Increases in respect of GMPs that accrued up to 5 April 1988 are paid by the State along with the State pension. The State, however, is only responsible for increases in excess of 3% in respect of GMPs that accrued post 5 April 1988.

There are circumstances where the State will not pay pensions increases in respect of the GMP and where this is the case the State notifies the scheme of this. This happens when the AP becomes less than the GMP or when the State is not paying the AP. If and when the State resume responsibility for pensions increases, the scheme is similarly notified and responsibility for pensions increases passes back to the State. However, sometimes this is done retrospectively and sometimes for future increases only. The rules surrounding GMPs are complex and onerous and are outside the remit of this training event.

It is important to understand, however, that the State's responsibility for inflation-proofing elements of the GMP commences at State Pension Age (SPA). As SPA has recently altered it means that the LGPS will have to pay pensions increase after old SPA, when previously it normally would not have.

Effectively, there are additional requirements for public sector schemes relating to inflation proofing, whereby the scheme is required to inflation proof the whole of the pension, if there is no inflation proofing being provided by the State. For women whose SPA falls after age 60, it will not be possible for the State to apply any increases until the individual reaches her new SPA. It therefore follows that the scheme must inflation proof the whole of the pension until the individuals new SPA.

Practical Exercise 4 – Pensions Increase

Mr Confused retired one year ago, aged 65.

He has been in receipt of a pension of £7200 p.a.

His Guaranteed Minimum Pension is in total £2080 p.a.
(This is split £780 pre-88 and £1300 post-88)

The pensions increase review order is made at 2.7%

Please calculate his revised LGPS pension payment

THE INTERNAL DISPUTE RESOLUTION PROCEDURE (IDRP)

Every time an employer or administering authority makes a decision about a member under the scheme rules they must notify that member in writing. Decisions cover a wide variety of issues from joining the scheme and contribution rates right through to leaving the scheme and resulting benefits. If the decision is that a person is not entitled to a benefit that person must be told why that decision has been reached. If the decision is about the amount of benefit, the person must be told how the benefits were worked out. In the case of a deceased member, similar details have to be given to any dependants about their benefits.

If the person is not happy with the decision then they have a right to complain. By law, an occupational pension scheme must have a procedure to deal with member's concerns or complaints and this is called an Internal Dispute Resolution Procedure (IDRP). Ultimately, if a member is not happy with what happens through this system, they can take their case to the Pensions Ombudsman.

Individuals also have the right to use the dispute rules if a decision should have been made by the employer or the administering authority and given to them, but hasn't been. Individuals can also complain about maladministration. The following are examples of maladministration:

- Unreasonable delays in letting the member know about or paying their pension benefits.
- Failure to let members know about changes in their pension entitlement or changes in the scheme rules that may affect them.
- Failure to give adequate or timely information that members need to enable them to make informed decisions about their rights and benefits in the scheme.

Of course, before going to the trouble of making a formal complaint, the employer or Pensions Section may welcome the opportunity to try to resolve the matter in an informal way. This avenue is worth promoting as misunderstandings and errors can sometimes be amicably resolved without recourse to formal complaint.

The Procedure

The formal complaint procedure has two stages. Any complaint made should be treated seriously, and considered thoroughly and fairly. An individual can ask someone to take their complaint forward on their behalf. This could be, for instance, a trade union official, welfare officer, husband, wife or partner, or a friend.

At any stage during the formal complaint procedure the Pensions Advisory Service (tPAS) can be contacted for information and advice.

First stage

If a person needs to make a formal complaint, they should make it in writing and normally within 6 months of the day when they were told of the decision they want to complain about. If the complaint is about a lack of a decision then it should normally be made within 6 months of the date the decision should have been made.

The complaint will be considered carefully by a person nominated by the body that took the decision against which the person is complaining. This person is referred to as the “adjudicator”.

If the adjudicator's decision is contrary to the original decision complained about, the employer or administering authority who made that original decision will then have to deal with the case in accordance with the adjudicator's decision.

If the decision complained about concerned the exercise of a discretion by the employing or administering authority, and the adjudicator decides that the employing or administering authority should reconsider how they exercised their discretion, they will be required to reconsider their original decision.

Second Stage

The complainant can ask the pension scheme administering authority to take a fresh look at the complaint in any of the following circumstances:

- they are not satisfied with the adjudicator's first-stage decision,
- they have not received a decision or an interim letter from the adjudicator, and it is 3 months since they lodged their complaint,
- it is one month after the date by which the adjudicator told them (in an interim letter) that they would give a decision, but they have still not received that decision.

<u>This review would be undertaken by a person not involved in the first stage decision</u>. Again, the complaint must be made in writing and the administering authority will consider the complaint and give their decision in writing.

If the complainant is still unhappy following the administering authority's second stage decision, they can take their case to the Pensions Ombudsman provided they do so within 3 years from the date of the original decision (or lack of a decision) about which they are complaining.

The Pensions Advisory Service (tPAS)

tPAS offer a free service to all members of pension schemes who have problems with their pensions. They have local advisors who can help to explain and obtain more information about scheme member's pensions for them. Individuals can normally contact a tPAS advisor through their local Citizen's Advice Bureau or by contacting them directly at 11 Belgrave Road, London SW1V 1RB, telephone 020 7630 2250. tPAS can be contacted for help at any time if a person is having difficulties in sorting out their complaint under the dispute rules.

The Pensions Ombudsman

The Pensions Ombudsman can investigate complaints of maladministration or disputes of fact or law about decisions that have been made about pensions but the procedures laid down in the disputes rules must have been gone through first. This means that a person must first take their complaint through Stage 1 and Stage 2 of IDRP before the Pensions Ombudsman will investigate it.

The Pensions Ombudsman can also investigate complaints or disputes about the handling of a case at either stage of the IDRP process. The Pensions Ombudsman's address is: 11 Belgrave Road, London SW1V 1RB, telephone 020 7630 2200.

SPECIAL CASES – leavers before 1/4/14	**Early voluntary payment of deferred benefit (or of a suspended Tier 3 ill health pension under the 2008 Scheme)**			**85 year rule**	**Normal Pension Age**	**Late retirement**
	Earliest retirement age	**Employer consent necessary for voluntary retirement before 60**	**Actuarial reduction applied to [age below]**	**Does 85 year rule apply?**	**Pre 1/4/14 membership**	**Actuarial increase for deferment of benefits after [age below]**
Former NHS scheme members (see 9)	50 pre 1/4/08 leavers 55 leavers 1/4/08 to 31/3/14	No	60	Yes	65	65
Former Metropolitan Civil Staffs Superannuation Scheme members (see 10)	50 pre 1/4/08 leavers 55 leavers 1/4/08 to 31/3/14	No	60 (or to date 25 years membership achieved if before age 60)	No - but see 25 year rule	65	65
Meat Hygiene Service members (see 11)	50 pre 1/4/08 leavers 55 leavers 1/4/08 to 31/3/14	Yes	60	No	60	65
Civil Servants transferred to the Environment Agency (see 12)	50	Yes	60	No	65	65
Former learning and Skills Council for England members (see 13)	50 (but 55 for voluntary payment of suspended Tier 3 pension and for redundancy / business efficiency retirement)	No	60	No	60	65

SPECIAL CASES – leavers and flexible retirements after 31/3/14	Early voluntary retirement / early voluntary payment of deferred benefit or suspended Tier 3 ill health pension			Flexible retirement			85 year rule	Normal Pension Age		Late retirement
	Earliest retirement age	**Employer consent necessary for voluntary retirement / early voluntary payment before 60**	**Actuarial reduction applied to [age below]**	**Earliest flexible retirement age**	**Employer consent to draw benefits required if employer has agreed to reduction in hours or grade**	**Actuarial reduction applied to [age below]**	**Does 85 year rule apply?**	**Pre 1/4/14 member-ship**	**Post 31/3/14 member-ship**	**Actuarial increase for deferment of benefits after [age below]**
Former NHS scheme members	55 (see 4, 6, 9)	No (see 1, 4, 6, 9)	60 for pre 1/4/14 membership (see 1, 4, 9) SPA (min 65) for post 31/3/14 membership (see 2, 8)	55 (see 4, 7, 9)	Yes (see 4, 7, 9)	65 for pre 1/4/14 membership (see 4, 7, 9) SPA (min 65) for post 31/3/14 membership (see 2, 7, 8)	Yes (as the NHS transfer occurred on or after 1/8/91 but before 1/10/06)	65 (see 2, 4, 9)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 4, 9) SPA (min 65) for post 31/3/14 membership (see 2, 4, 5, 8)
Former Metropolitan Civil Staffs Superannuation Scheme members	55 (see 6, 10)	No (see 1, 6, 10)	60 (or to date 25 years membership achieved if before age	55 (see 7, 10)	Yes (see 7, 10)	65 for pre 1/4/14 membership (see 7, 9) SPA (min 65) for post	No - but see 25 year rule for pre 1/4/14 membership (see 1, 10)	65 (see 2, 10)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 4, 9) SPA (min 65) for post

			60) for pre 1/4/14 membership (see 1, 10) SPA (min 65) for post 31/3/14 membership (see 2, 8)			31/3/14 membership (see 2, 7, 8)				31/3/14 membership (see 2, 5, 8)
Meat Hygiene Service members	55 (see 6, 11)	No* (see 6) * was Yes prior to 1/4/14 but became No on 1/4/14 due to reg 30(5) of the LGPS Regulations 2013	60 for pre 1/4/14 membership (see 1, 11) SPA (min 65) for post 31/3/14 membership (see 2, 8)	55 (see 7, 11)	Yes (see 7, 11)	65 for pre 1/4/14 membership (see 7, 11) SPA (min 65) for post 31/3/14 membership (see 2, 7, 8)	No (see 1, 11)	60 (see 1, 2, 11)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 11) SPA (min 65) for post 31/3/14 membership (see 2, 5, 8)
Civil Servants transferred to the Environment Agency	50 (see 1, 12)	Yes, prior to age 55 (see 1, 6, 12) No, from age 55 (see 6)	60 for pre 1/4/14 membership (see 1, 12) SPA (min 65) for post 31/3/14 membership (see 2, 8)	55 (see 7, 12)	Yes (see 7, 12)	60 for pre 1/4/14 membership (see 7, 12) SPA (min 65) for post 31/3/14 membership (see 2, 7, 8)	No (see 1, 3, 12)	65 (see 2, 12)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 12) SPA (min 65) for post 31/3/14 membership (see 2, 5, 8)

Former learning and Skills Council for England members	50 (but 55 for voluntary payment of suspended Tier 3 pension and for redundancy / business efficiency retirement) (see 1, 13)	No (see 1, 13 – and 6 for early payment of suspended Tier 3 ill health pension from 55 or over)	60 for pre 1/4/14 membership (see 1, 13) SPA (min 65) for post 31/3/14 membership (see 2, 8)	50 (see 1, 13)	No (see 1, 14)	60 for pre 1/4/14 membership (see 1, 13) SPA (min 65) for post 31/3/14 membership (see 2, 7, 8)	Usually No (as the LSC transfer was not until 1/4/10) but can be Yes for members who had earlier LGPS deferred benefits, including pre 1/10/06 membership, which they aggregated upon rejoining the LGPS.	60 (see 1, 2, 13)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 13) SPA (min 65) for post 31/3/14 membership (see 2, 5, 8)

Key:

1. **Regulation 24(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014**
2. **Regulation 24(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014**
3. **Regulation 24(4) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014**
4. **Regulation 24(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014**
5. **Regulation 30(4) of the LGPS Regulations 2013**
6. **Regulation 30(5) of the LGPS Regulations 2013**
7. **Regulation 30(6) of the LGPS Regulations 2013**
8. **Definition of normal pension age in Schedule 1 of the LGPS Regulations 2013**
9. **Regulation 23 of the LGPS (Transitional Provisions) Regulations 1997**
10. **Regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997**
11. **Regulation 144B of the LGPS Regulations 1997**
12. **Regulation 15 of the LGPS (Transitional Provisions) Regulations 2008**
13. **Regulation 18 of the LGPS (Benefits, Membership and Contributions) Regulations 2007**
14. **Regulation 18A of the LGPS (Benefits, Membership and Contributions) Regulations 2007**