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20th February 2009

Dear Philip,

**The Draft Local Government Pension Scheme (Miscellaneous) Regulations 2009**

I am responding to the Department's letter of 28th November 2008 seeking comments on the above draft Miscellaneous Regulations.

Draft regulation 1

Given that draft regulation 2 amends the LGPS Regulations 1997, which were revoked from 1st April 2008 by the LGPS (Transitional Provisions) Regulations 2008, I assume that regulation 1(3) should be amended to provide that regulation 2 should have an effective date prior to 1st April 2008 and, consequently, regulation 19(a) should have an effective date of 1st April 2008.

So as to ensure that members are not adversely affected by the removal of the facility to issue a "Certificate of Protection" for pay reductions or restrictions occurring on or after 1st April 2008, regulation 11 should have an effective date of 1st April 2008.

To ensure continuity of the GMP provisions, regulation 26 should have an effective date of 1st April 2008.

It would also seem sensible for the clarifying amendment at regulation 16 to have an effective date of 1st April 2008.

The overall effect of the above would be that regulation 1(3) would read "These Regulations shall come into force on 1st April 2009 but regulations 2 to 11, and regulations 14, 16, 18, 19(a), 21, 23 and 26 shall have effect from 1st April 2008."

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Managing Director Jan Parkinson

Draft regulation 2

Regulation 12 of the LGPS (Administration) Regulations 2008 , as amended by regulation 19 of the draft Miscellaneous Regulations, contains the words "Subject to ..... regulation 130C of the 1997 Regulations". Thus, the words "and regulation 12(1) of the Local Government Pension Scheme (Administration) Regulations shall not apply" should be deleted from regulation 130C(3). Otherwise, the cross-reference in regulation 12(1) of the Local Government Pension Scheme (Administration) Regulations to regulation 130C would itself be disapplied.

As currently drafted, regulation 130C covers those staff detailed in regulation 130C(1). Such staff who were in membership of the LGPS on 31st March 2008 would have been transferred to the new look LGPS on 1st April 2008 by virtue of regulation 2(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007. What is not clear is:

a) whether those staff detailed in regulation 130C(1) who retained eligibility for membership of the LGPS but who, as at 31st March 2008, had not joined the LGPS, should retain the right to join the LGPS post 31st March 2008. They are not covered by regulation 2(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007or regulation 10 of the LGPS (Administration) Regulations 2008 and regulation 130C of the LGPS Regulations 1997 has not been carried forward as a saved provision by regulation 2 of, and Schedule 1 to, the LGPS (Transitional Provisions) Regulations 2008; and
b) whether those staff detailed in regulation 130C(1) who were members of the LGPS on 31st March 2008 and who were transferred to the new look LGPS on 1st April 2008 should retain the right to join the LGPS if they subsequently have a break in service but later return to employment in the service of the Secretary of State's function of providing rent officers with clerical and other assistance.

Perhaps the regulations could be amended to clearly set out the policy intention.

Draft regulation 3

No comment

Draft regulation 4

The amendment to regulation 2(1)(a) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 should commence "(a) a body listed in **Part 1 of** Schedule 2" i.e. the words highlighted in bold need to be added.

Although not in the draft Miscellaneous Regulations, consideration should be given to deleting regulation 6(4)(a) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 given that a calculation performed under that sub-paragraph would probably not fall within the exemption contained in regulation 33 of the Employment Equality (Age) Regulations 2006. An employer who makes a payment under the 104 weeks provision can rely on the exemption in the Age Regulations as long as the payment is a multiplier of the statutory redundancy payment. The statutory redundancy payment is calculated on the weeks pay in force at the date specified in the Employment Rights Act whereas the Compensation Regulations say that the payment under the 104 weeks provision should be calculated based on pay at the date of leaving. As the pay at those two points in time could be different I am suggesting the deletion of regulation 6(4)(a) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

Given that Schedule 2 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 saves, for certain purposes, the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 and given the wording of Part VI of the latter Regulations, the definition of "the Pension Regulations" in regulation 2 of the 2000 Regulations needs to be updated to also refer to the Benefits Regulations (and possibly to the Administration Regulations and the Transitional Regulations). Consideration also needs to be given as to how regulations 17 and 19 of the 2000 Regulations should apply, and whether amendments to those regulations are required, in the case of a member who has attained further employment and takes flexible retirement during that further employment.

Draft regulations 5 to 9

No comments.

Draft regulation 10

It would be helpful if a further exclusion could be added to regulation 4(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 i.e.

(g) a lump sum payment to buy-out a pensionable payment or benefit.

The LGPC is aware of cases where, for example, following a service being in-sourced, the local authority has, as part of an exercise to rationalise terms and conditions and achieve equal pay, wished to buy-out a pensionable payment or benefit by making a lump sum buy-out payment . It has never been entirely clear whether such a lump sum payment to buy-out future payments is pensionable or not. On balance it would seem preferable that such a payment should be non-pensionable given that it is a lump sum compensation payment to buy-out a future expectation of pay, rather than a payment for actual services rendered. Nevertheless, it would be helpful if regulation 4 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 was amended to clarify whether or not such payments are pensionable.

Draft regulation 11

This substitutes a new version of regulation 10 into the LGPS (Benefits, Membership and Contributions) Regulations 2007.

In sub-paragraphs (1) and (2), please amend "reduced " to "reduced or restricted".

Sub-paragraph (1) says that the member may choose to have their final pay calculated as mentioned in paragraph (3). However, the regulation does not specify how, to whom, or by when the choice has to be made. It is suggested that the regulation should be amended to make the position clear by saying "the member may choose, by making a written election to their employing authority prior to ceasing active membership, or such longer period as the employing authority may allow, to have their final pay calculated as mentioned in paragraph (3). Where a member has died in service without having made an election under this regulation, the appropriate administering authority may make an election on his behalf[1]."

[1] This is similar to the position that applied under regulations 22(7) and 23(9) of the LGPS Regulations 1997.

At the Technical Group meeting on 6th January 2009, members discussed whether sub-paragraphs (a), (b) and (c) of draft regulation 10(1) should be deleted or whether a further sub-paragraph should be added. Deleting the sub-paragraphs would mean that a member could make use of regulation 10 if pay was reduced or restricted for any reason whatsoever, even due to the personal choice of a scheme member to, for example, exchange some pay for a different benefit from the employer (such as a car). This would, it was felt, be too all encompassing and so sub-paragraphs (a), (b) and (c) should not be deleted. Nevertheless, draft regulation 10(1) as presently worded does not appear to capture all cases where it would seem reasonable to offer the member the protection of regulation 10. For example, where an employer buys out or removes a contractual pensionable payment or benefit for a reason other than achieving equal pay, or a reason not flowing from a job evaluation exercise, and where the member does not at the same time move to a lower grade. It is therefore suggested that a catch-all sub-paragraph (d) should be added to draft regulation 10(1) e.g.

"(d) as a result of the reduction, restriction or removal, instigated by the member's employer, of a permanent contractual payment or benefit."

The difficult question is whether or not a member whose pay reduces due to a drop in bonus payments or performance related pay should be able to utilise regulation 10. There are two trains of thought on this:

a) why should the Scheme protect a member in this way (as the employer would pick up two costs; the cost of the employee's reducing performance during work, and the pension cost of allowing benefits to be based on earlier years' pay figures which would include the higher bonus / performance pay); and
b) why shouldn't the Scheme protect members whose performance trails off in older age, particularly as we are seeking to encourage employees to remain in employment for longer.

A policy decision needs to be taken on this point and the wording of regulation 10 updated accordingly.

Sub-paragraph (3) should commence with the words "Subject to regulations 8(3) and 8(4),". Also, sub-paragraph (3) needs to make clear whether the 31st March for all of the 3 years used have to fall within the last 10 years prior to leaving, or whether only the last 31st March of the 3 years used has to fall within the last 10 years prior to leaving.

Following the Technical Group meeting on 3rd December 2008 the draft Final Pay paper was updated. The draft paper (which was sent to CLG for consideration and is available at http://www.lge.gov.uk/lge/aio/888080) set out the method of calculation of final pay under regulations 8 to 11 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007. The matters where the Regulations appear to produce odd results or where CLG need to clarify the meaning / intention of the Regulations were highlighted in red in the example scenarios outlined in the paper. The major issue that paper highlighted was the discrepancy that appears to exist between regulations 8 and 10 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 i.e.

- under regulation 8, final pay for a member can only include pay with the final employer in respect of membership that will count in the calculation of that benefit i.e. final pay cannot include:
  a) pay from a previous employer (apart from, possibly, some cases where there has been a TUPE transfer – see scenario 7 in the Final Pay paper)
  b) pay from the current employer prior to a break in employment (see scenarios 8 and 9 in the Final Pay paper)
  c) pay from the current employer in respect of a period for which the member already has a deferred benefit or is in receipt of a pension (apart from, possibly, where the member is in receipt of partial flexible retirement benefits – see scenario 14 in the Final Pay paper)

- subject to the observations made in the example scenarios in the Final Pay paper, under regulation 10, a member appears to be able to include in the final pay calculation
  - i) pay in respect of membership with a previous employer, even if the member is already in receipt of benefits or holds a deferred benefit in respect of that membership
  - ii) pay prior to a break in employment (where the break occurred prior to the pay drop)
  - iii) pay in respect of membership with the current employer, even if the member is already in receipt of benefits* or holds a deferred benefit in respect of part of that membership (*although there is an argument that it is reasonable for pay in respect of which the member is drawing full or partial flexible retirement benefits from the current employer to be able to count towards final pay when the member fully retires from the current employer)

Item (i) above appears to be at odds with CLG's comments on regulation 10 at page 33 of the Commentary Guidance. The guidance considers the benefits and drawbacks of restricting the rolling 3 year average to only pay with the most recent employer, before concluding *"On balance it has been decided the principle should only apply to changes with same employer."* The argument put forward in item (iii) above in relation to flexible retirement appears to be consistent with CLG's comments on page 34 of the Commentary Guidance.

Given that the draft Miscellaneous Regulations propose to amend regulation 10 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, the opportunity should be taken to amend that regulation and regulation 8, as necessary, to deal with the apparent discrepancies highlighted in the Final Pay paper.

Draft regulation 12

In new regulation 12A(1) please insert ", in accordance with guidance issued by the Government Actuary," after "reduction in membershp".

Also, as enhanced protection can be "lost" for a number of reasons, including upon an interfund or intrafund transfer, or can be given up by the member, the words "is not taken into account in the calculation of their benefits under regulation 22, the employing authority shall" should be replaced with the words " is lost in accordance paragraph 12(1) of Schedule 36 to that Act or given up in accordance with regulation 4(8)(c) of The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006[2], the employing authority or in the case of an interfund transfer under regulations 86 or 87 of the Administration Regulations or an intrafund transfer, the ceding employing authority, shall".

In new regulation 12B(1) and regulation 12B(1)(b) after the words "("the 2000 Regulations")" insert "or earlier regulations". It will then be necessary to define "earlier regulations" e.g. as those revoked by regulation 35 of The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 and by regulation 49 of the Local Government (Discretionary Payments) Regulations 1996.

If an employer were to convert Compensatory Added Years to a period of membership by utilising regulation 12B, this would have a number of potential implications e.g. the increase in scheme pension derived from that membership could lead to a further Lifetime Allowance test (see section 216(1) and paragraphs 6 and 10 to 12 of Schedule 32 to the Finance Act 2004) and, also, the benefits derived from that membership would be subject to any subsequent Pension Sharing Order.

[2] S.I. 2006/131

Draft regulation 13

In new regulation 14A(1), the reference to "before 4th April 1988" should, I believe, be amended to "before 6th April 1988".

It would seem sensible to add a further sub-paragraph to regulation 14A(1) i.e.:

"(c) spouse"

This would mean that married scheme members who wish to provide extra pension for their spouse (but not for themselves) could do so. To only provide such an option to members with a co-habiting partner or civil partner does not seem equitable.

The facility provided by regulation 14A means that a member can purchase up to £5,000 of additional survivor pension regardless of whether they have 1 day of membership pre 6th April 1988 or 20 years membership pre 6th April 1988. Are there any equality issues here, given that, in the past, female scheme members could only uprate their *actual* pre 6th April 1988 membership for widower's pension purposes.

In regulation 14A(2) amend "guidance issued by the Secretary of State" to "actuarial guidance obtained and issued by the Secretary of State". This would tie in with the wording in draft regulations 24A(6) and 24B(3) of the Administration Regulations.

Whilst regulation 14A permits a member to purchase aditional survivor pension for a nominated co-habiting partner or a civil partner, as currently drafted there appears to be no requirement for the Fund to actually pay the benefit to the designated beneficiary. Perhaps regulations 24(2), 33(2) and 36(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 should therefore be amended to specify that additional survivor benefit purchased under regulations 14, 14A or 15, and under regulations 23 to 26 of the Administration Regulations, is also payable.

A member can choose to pay ARCs under regulation 14 in respect of himself (only) or in respect of himself and any survivor. The member could, if he so wished, pay for a survivor benefit even if he was not married at the time he took out the ARC contract. However, a member wishing to utilise regulation 14A can only do so if he actually has a nomintaed co-habiting partner or civil partner. This could be seen as being discriminatory and the LGPC understands that one Fund has been approached by a member asking whether he could make payments under regulation 14A even though he has not yet nominated a co-habiting partner or entered into a civil partnership (but may do so in the future).

Should regulation 74(3) of the Administration Regulations be amended by adding regulation 14A of the Benefits Regulations (and also ARCs under regulation 14 of the Benefits Regulations) to the list of exclusions?

Draft regulation 14

No comment

Draft regulation 15

The amended regulation 38 proposes that the Environment Agency may discharge all future Pensions Increase liabilities incurred under regulation 38(2) by the payment of a lump sum and that the lump sum shall be calculated by an actuary appointed by the Environment Agency. This appears to provide carte blanche to the Environment Agency. Surely the regulation should provide a right for the receiving Fund to challenge the amount to be paid.

Draft regulations 16 to 18

No comments.

Draft regulation 19

Given the introduction of regulation 16(7) into the Administration Regulations by SI 2008/3245, is regulation 12(6)(d) required? If it is, should regulation 12(6)(d) not be restricted to just transfers between CSCI and CQC, but extended to cover all transfers of staff covered by regulations 12(6)(a) to (c)?

Draft regulations 20 to 21

No comments.

Draft regulation 22

Draft regulations 24A(9) and 24B(3) say that the member must be credited with the additional pension. Given that the additional benefit is not for the member but is for the nominated co-habiting partner or civil partner, shouldn't those regulations say, as does draft regulation 14A, that the member must "be credited with additional pension in respect of

a) a nominated co-habiting partner within the meaning of regulation 25, or
b) a civil partner" [or
c) a spouse][3]

What happens to the additional benefit if the member ceases to co-habit or the civil partnership is ended? Is the additional benefit paid for simply "lost"?

Draft regulation 23

The change proposed in this regulation runs counter to the earlier decision to only allow LGPS AVCs to be transferred into the LGPS AVC arrangement and instead would allow all types of money purchase pension scheme benefits to be transferred into the LGPS AVC arrangement (including transfers from money purchase schemes, FSAVC's, money purchase Pension Credits, AVCs from other schemes, and money purchase overseas schemes).

Prior to making a decision on whether to proceed with this regulation, the Government Actuary should be asked to give a view on whether it is in the Scheme's financial interests to:

[3] See my comment on Draft regulation 13

a) permit all types of money purchase pension scheme benefits to be transferred into the LGPS AVC arrangement, or
b) only permit LGPS AVCs in England and Wales to be transferred into the LGPS AVC arrangement, with other permissible transfers only being able to be used to purchase membership under regulation 83 of the Administration Regulations.

If the former approach is adopted this might lead members to not commute as much of their LGPS pension for a lump sum, with the result that the commutation take-up rates assumed by GAD when costing the new-look LGPS would not be met, leading to additional costs to the Scheme. Furthermore, if transfers of FSAVCs and money purchase benefits into the LGPS AVC arrangement were allowed, there is a concern that HMRC might say that we are facilitating a 100% cash benefit when the person could only have got 25% cash from the FSAVC or money purchase arrangement. The danger in this would be that HMRC would want us to close off the 100% cash route for all in house AVC members (not just for those who'd had a money purchase transfer in).

Conversely, if the latter approach is adopted and members do not commute to the expected level (albeit that is unlikely), what would be the impact on the Scheme given the assumptions behind the GAD non-Club transfer in and AMC factors?

Draft regulation 24

No comment.

Draft regulation 25

Should regulation 40A(3) specify to whom the lump sum payment is to be made?

Draft regulation 26

I would suggest that a further paragraph is added as follows:

(6) This regulation overrides any provision in these Regulations, the Benefits Regulations and the Transitional Provisions Regulations to the extent to which they conflict with it, except -
(a) regulation 39 of the Benefits Regulations (commutation);
(b) regulation 71 (application of abatement policy to individual cases);
(c) regulation 72 (forfeiture);
(d) regulation 73 (interim payments directions); and
(e) regulations 20(4)(a) and 20A of the 1997 Regulations (as saved by regulation 2 of, and Schedule 1 to, the Transitional Provisions Regulations).

It should be noted, however, that neither draft regulation 50A, regulation 36 of the 1997 Regulations (for leavers between 1st April 1998 and 31st March 2008), nor regulation D17 of the LGPS Regulations 1995 (for pre 1 April 1998 leavers) now properly conform to section 13 of the Pension Schemes Act 1993 which says:

13 Minimum pensions for earners
(1) Subject to the provisions of this Part, the scheme must -
(a) provide for the earner to be entitled to a pension under the scheme if he attains pensionable age; and
(b) contain a rule to the effect that the weekly rate of the pension will be not less than his guaranteed minimum

(if any) under sections 14 to 16.

(2) In the case of an earner who is a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of section 19(4) of the Social Security Contributions and Benefits Act 1992, subject to the provisions of this Part, the scheme must -
(a) provide for her to be entitled to a pension under the scheme if she attains pensionable age
(b) satisfy such other conditions as may be prescribed.

(3) Subject to subsection (4), the scheme must provide for the pension to commence on the date on which the earner attains pensionable age and to continue for his life.

(4) Subject to subsection (5), the scheme may provide for the commencement of the earner's guaranteed minimum pension to be postponed for any period for which he continues in employment after attaining pensionable age.

(5) The scheme must provide for the earner's consent to be required -
(a) for any such postponement by virtue of employment to which the scheme does not relate; and
(b) for any such postponement after the expiration of five years from the date on which he attains pensionable age.

Section 181 of the Pension Schemes Act 1993 defines "pensionable age" as:

"(a) so far as any provisions (other than sections 46 to 48) relate to guaranteed minimum pensions, means the age of 65 in the case of a man and the age of 60 in the case of a woman."

So, under section 13 of the 1993 Act, schemes must provide for the GMP to be paid from age 60 (woman) or 65 (man), and not from state pension age (which is increasing from 60 to 65 between 2010 and 2020 for a woman and to 68 for men and women by 2046), unless the scheme rules provide for the commencement of the earner's guaranteed minimum pension to be postponed for any period for which he continues in employment after attaining pensionable age. However, the member's consent must be obtained for postponement beyond 5 years after age 60 (women) / age 65 (men) - not 5 years after state pension age.

Thus, draft regulation 50A, regulation 36 of the LGPS Regulations 1997 and regulation D13 of the LGPS Regulations 1995 will need to be amended to reflect this i.e. that the GMP date is 60 for women / 65 for men, and is not state pension age. Furthermore, given the problems we have regarding potential unauthorised payments (where a bare GMP is paid and the lump sum that is subsequently paid exceeds 25% of the value of the remaining pension benefits) it would be helpful if draft regulation 50A, regulation 36 of the LGPS Regulations 1997 and regulation D13 of the LGPS Regulations 1995 were amended to reflect sections 13(4) and (5) of the 1993 Act. This would enable female members to defer drawing their GMP at age 60 if they were in any employment (not just if they were in local government employment).

Upon introducing regulation 50A the equivalent of regulations 37, 43 and 114 of the 1997 Regulations also need to be added into the Administration Regulations.

Covering letter

Paragraph 6 of the letter accompanying the draft regulations asks for views on aggregation of deferred benefits. In the short term, to avoid differential treatment, the Transitional Provisions Regulations should provide that the rules set out in regulation 16[4] of the Administration Regulations should equally apply to those who left with deferred benefits under the 1997 or earlier Regulations and who rejoin the LGPS on or after 1st April 2008. Amendments also need to be made to ensure the rules on aggregation should equally apply to aggregation of a frozen refund.

However, as discussed at the Technical Group on 6th January 2009, a far wider debate on the whole area of transfers needs to be undertaken i.e.

- should members be permitted to transfer other pension rights into the LGPS;
- if members aggregate earlier LGPS membership, what membership credit should it purchase;
- should all transfers in post a given date purchase Part D membership only and not affect any existing CRA;
- is the need for the Club now defunct and, if the Club persists, what membership credit should a Club transfer in purchase?
- if transfers in are permitted, should they purchase membership or an amount of annual pension?

Other comments

Given that several months have now elapsed since the introduction of the new-look LGPS, I thought it would be helpful, as promised:

a) to list those areas of the regulations where amendments are required (due to a cross referencing error) or a clarifying amendment would be very helpful;
b) to detail those areas of existing GAD guidance where further clarification is required; and
c) to detail those areas where GAD guidance is still outstanding.

Those areas of the regulations where amendments are required (due to a cross referencing error) or a clarifying amendment would be very helpful

***Section A of the Table in Part III of Schedule 5 to the LGPS Regulations 1997****:* Delete the reference to Luton Borough Council. This is because, if the reference is not deleted, Luton Borough Council will inadvertently be covered by paragraph 7(b) of the Table in Part 1 of Schedule 4 to the Administration Regulations and by paragraph 7(c) of that Table. It should only be covered by paragraph 7(c).

***Paragraph 11 of Schedule 8 to the LGPS Regulations 1997****:* Delete this paragraph as the "new" regulation 29(1)(a) (as inserted by SI 2004/573) does apply to councillor members.

***Administration Regulation 2(1):*** An old chestnut – it would be helpful to practitioners if regulation 2(1) could be amended to read "References to members or membership refer to active members or active membership respectively unless otherwise stated" and, consequently, all references to member within the regulations which

[4] Please note that the reference in regulation 16(3) to "paragraph 4(b)" needs to be amended to read "paragraph 4(b)(i)"

relate to members other than active members (e.g. to deferred members, pensioner members, or pension credit members) should specifically state this to be the case.

***Administration Regulation 6(2):*** The wording in regulation 6(2) defines a transferee admission body as a body "other than a community admission body". This would appear to mean that if a service is to be outsourced to a body to which a local authority makes a grant (e.g. a voluntary sector body), and would therefore fall within the definition of a "community body", it would not be possible to use the contractor route to achieve admission. It is appreciated that the body could still be admitted under regulation 5 but that would mean that the decision to admit would rest with the administering authority. Additionally, it is understood that some authorities have difficulties providing guarantees unless they have a specific power to do so, and this may not be the case unless regulation 5(4) applies. Regulation 5(4) could also be problematic in itself in that if the body receives funding from two authorities (county and district) but only one authority is involved in the transfer, both authorities would have to stand as guarantors. Unless there is a specific reason for its retention, it might be simpler if the words "other than a community admission body" were deleted from regulation 6(2).

***Administration Regulation 6(11):*** The reference to "paragraph (11)" should be amended to "paragraph (10)"

***Administration Regulation 7:*** It would be helpful if regulation 7 could include a further paragraph as follows:

"An admission agreement may provide that a period of employment by the admission body before the date of the agreement counts as membership of the Scheme."

***Administration Regulation 8(1):*** Given that, as I understand it, CLG and DCSF are of the view that a foundation school or a foundation special school should not be in a position to deny their staff access to the LGPS, the words "and the local education authority has, with the consent of his employer," ought to be amended to "and the local education authority has with, in the case of (a) and (c), the consent of his employer,".

***Administration Regulation 12(4):*** Amend "may not become" to "may not be or become".

***Administration Regulation 12(5):*** This can be deleted as, I believe, retained or voluntary membership firemen can now join the new Firemens' Pension Scheme.

***Administration Regulation 12:*** It might also be helpful if regulation 12 contained a further provision along the lines of "A person may not be a member if he does not satisfy the requirements of section 8(1) of the Asylum and Immigration Act 1996".

***Administration Regulation 13(5):*** This regulation does not specify to whom, or by when, an application to backdate membership has to be made. The option to do so should not be open-ended, otherwise a member could decide, just before retirement, to opt to backdate membership for a period that occurred, say, 20 years previously. The words "if he applies to be so" should therefore be amended to "if he applies to that body to be so" and, at the end of paragraph (5) the following words should be added "The application must be made within 3 months of becoming eligible to join the Scheme, or such longer period as the employer may allow."

***Administration Regulation 16(3):*** The reference to "paragraph 4(b)" should be amended to "paragraph 4(b)(i)"

***Administration Regulation 17(1)(a):*** This regulation is meant to cover those not covered by regulation 46. Regulations 46 covers members "with less than three months' membership" and those who cease "to be an active member without becoming entitled to a retirement pension". Regulation 17(1)(a) as presently drafted only covers members with "at least three months' total membership" and does not also cover those who cease to be an active member having become entitled to a deferred benefit but who do not have three months membership. Regulation 17(1)(a) should, therefore, be amended to read "ceases to be an active member in one employment ("the first employment") in respect of which he has an entitlement to benefits by virtue of regulation 5 of the Benefits Regulations."

Also, there are cases where a member with 2 concurrent employments ceases those employments on the same day. They subsequently rejoin the Scheme in a different employment, employment 3, and opt to aggregate their membership. As regulation 17 is presently drafted the pro-ration referred to in regulation 17(3) cannot be applied to employments 1 and 2 as the member did not cease one of them before they ceased the other (i.e. they ceased both concurrent employments on the same day). In such a situation, the membership from 1 and 2 counts as day for day in job 3 whereas if they had ceased 1 prior to 2 and then taken up job 3, the service from 1 and 2 would have been pro-rated before being aggregated with 3. This seems inconsistent. The same problem arises under regulation 46.

***Administration Regulation 18(1):*** Amend "must make contributions" to "must make contributions under regulation 3 of the Benefits Regulations" in order to mirror regulation 19(2).

***Administration Regulation 18(8):*** Amend "the member must continue" to "the member must, subject to regulation 24, continue".

***Administration Regulation 19(2):*** Amend "and any payments" to "and, subject to regulation 24, any payments".

***Administration Regulation 20(5)(b):*** Amend "must continue" to "must, subject to regulation 24, continue".

***Administration Regulations 21(1) and (4):*** Amend "must make the payments" to "must, subject to regulation 24, make the payments".

***Administration Regulations 24:*** What happens if a person with an ARC contract has a permanent reduction in pay that reduces their pay to below the monthly ARC amount? Is the contract terminated? If the person wants to carry on paying ARCs, would the member have to take out a new contract based on their current age or could the original contract be scaled down, with the person paying a lower monthly amount to purchase a lower amount of additional pension but based on the factors relevant to their age when they took out the original contract? Or can the member elect to pay ARCs that exceed normal net pay, and pay the excess by way of (for example) a Standing Order? Note that contributions in excess of 100% of gross taxable pay would not be tax relievable.

If, at the date of flexible retirement, the ARC contract has not been completed and the member has drawn some or all of their accrued additional pension, can the member carry on paying ARCs under the original terms (as he has not ceased to be an active member) and, if so, should (as seems logical) the same initial PI date which is being used to increase the value of the ARCs being drawn on flexible retirement also be used when the benefits from the remainder of the ARC contract are drawn?.

If a member with an ARC contract ceases employment with an employer and rejoins another employer in the same or a different Fund, can the member continue paying the ARCs under the original contract terms? On the basis that there are a number of variables which could make the possibility of continuing with the contract very difficult (e.g. the member may have a break between the employments; the member may not decide to aggregate their LGPS membership; the original administering authority may not have required a medical but the new administering authority's policy might be to require a medical) it is to be assumed, given these issues, the ambiguity of the wording of regulation 24 of the Administration Regulations, and in the absence of any advice in the GAD guidance, that the contract comes to an end and the member is credited with that part of the additional pension purchased up to the date of leaving. The member could then take out a new ARC contract in the new employment if he / she so wished. However, it would be helpful if the regulation could clarify this point, particularly in cases where a member moves from one employer to another employer without a break in service (i.e. it can be argued that, under the current wording of the regulation, such a member has not ceased to be an active member)..

***Administration Regulations 25(1):*** Could the phrasing of paragraph (1) result in HMRC viewing the AVC provision as a separate Scheme, thus jeopardising the 100% AVC cash option (i.e. restricting the cash from the AVC pot to 25% of the value of the pot)?

***Administration Regulation 26:***
In paragraph (1)(a)(ii) insert "29," between "19," and "30"

In paragraph (2) insert "or (b)" after "(1)(a)(i)"; delete paragraph (7); and in paragraph (8) delete "or with paragraph (7)(b)"

In paragraphs (2) and (4) amend "employing authority" to "administering authority" and delete paragraph (6)

Amend paragraph (3) to read: "The permissible ways are –
a) to subscribe to a registered pension scheme (other than the Scheme), but only if making a transfer under Part 9 [of his other LGPS rights]
b) to subscribe to the AVC [or SCAVC] scheme operated by his new administering authority where regulation 86(1) and (2) apply
c) to purchase an appropriate policy from one or more insurance companies (within the meaning of section 275 of the finance Act 2004) [BUT I'm still not certain this is what really happens in practice]

The above are comments on the regulation as currently drafted. However, I think the regulation needs to be rethought as it does not seem to work correctly. For example,

- The option to take some or all of the accumulated AVCs as a cash lump sum, as suggested in Benefits Regulation 15(2) (subject to the overall 25% limit), does not appear in the list of permissible ways specified in Administration Regulation 26. Does the phrasing of Administration Regulation 26 now mean that members cannot draw some or all of their accumulated AVCs in the form of a cash lump sum? Contrast this with Administration Regulation 23(6) in Scotland which specifically provides for the lump sum AVC option.

- Benefits Regulation 15(1) says that a member who has paid AVCs can use the AVC pot in accordance with one of the methods permissible under the Finance Act 2004. The Act would permit the purchase of an annuity and I assume, therefore, that those to whom Administration Regulations 26(1)(a)(ii) and 26(1)(c) apply can purchase an annuity if they so wish. Although the option for these members to

purchase an annuity is not contained in regulation 26, I assume that administering authorities can simply rely on Benefits Regulation 15(1) and the fact that Administration Regulation 26(4) is providing an additional option rather than the only option.

- What happens if a person does not make a notification under 26(4) to draw their AVC funds in one of the permissible ways (i.e. what is the fallback / default position)? Regulation 64 of the 1997 Regulations used to provide a default.

- There seems to be no provision to refund AVCs in less than 3 month cases i.e. there is no equivalent of regulation 66(7) of the 1997 Regulations. Administration Regulation 46 does not seem to be entirely appropriate as it talks about a refund from the Fund as opposed to a refund from the AVC provider.

- Should there not be an explicit provision requiring payments to be made before the age of 75? There is no specific provision in Administration Regulation 26 or 50 and the phrasing of benefits Regulation 17 doesn't really seem to cover these cases either.

- Where is the provision to make payment to the legal personal representatives if a member paying AVCs dies before effect is given to his/her wishes (i.e. the equivalent of regulation 64(3) of the 1997 Regulations)?

- Where are the provisions governing AVC death benefits (i.e. the equivalent of regulations 60(3) and 63 of the 1997 Regulations)?

- Where a member chooses to draw some, and not all, of their benefits on flexible retirement how will this work in relation to the amount of their accrued AVC pot i.e. will they have to take all of their AVC pot or can they just draw some of it?

- Can a deferred beneficiary purchase a scheme annuity when the deferred pension comes into payment? Such a member does not currently seem to be allowed to do so as they are not covered by regulation 26(4).

- What about members who leave with a tier 3 ill health pension? Can they purchase an annuity / scheme pension and, if so, does it stop when the tier 3 ill health pension stops?

- What happens if the main scheme benefits are commuted on grounds of triviality under Benefits Regulation 39?

***Administration Regulation 27(1):*** If a member who has paid AVCs leaves with less than 3 months membership, there appears to be no provision allowing for the repayment of those AVCs.

***Administration Regulation 33(2):*** Paragraph (2) does not sit comfortably within regulation 33 and should perhaps be moved to a new, separate, regulation dealing with Finance Act 2004 matters.

***Administration Regulation 38(2):*** It is not clear what, in regulation 38(2), the words "ceases to have effect" mean. I think it would be very helpful if this be clarified i.e. does an admission agreement cease to have effect:

a) when there are no more active members, or
b) when the last benefit to or in respect of any member (active, deferred, pensioner or pension credit member) and to or in respect of the spouse, civil partner, co-habiting partner or dependant has finally been paid?

***Administration Regulation 41:*** Regulation 41 does not also make mention of regulation 30 of the Benefits Regulations. There are two "strain on fund" costs that can occur under regulation 30 of the Benefits Regulations.

Firstly, where an employer agrees to the release of benefits before age 60 and the member already meets the 85 year rule, or would meet it before age 60, there is a "strain on fund" cost. Regulation 80(5) of the 1997 Regulations permitted the administering authority to make a charge for this to the employing authority. This facility should be added back into regulation 41(2) of the Administration Regulations or Schedule 2 of the Transitional Provisions Regulations should have a further paragraph added to permit the administering authority to charge any "strain on fund" cost to the employing authority where, in respect of a member covered by Schedule 2 to the Transitional Provisions Regulations, the employing authority has agreed to early release of benefits under regulation 30 of the Benefits Regulations. If the latter approach were to be taken, regulation 44 of the Administration Regulations would also need an appropriate amendment.

Secondly, there is a "strain on fund" cost if the employing authority agrees, under regulation 30(5) of the Benefits Regulations to waive any actuarial reduction on compassionate grounds. If it is intended that the administering authority should be permitted to make a charge for this to the employing authority then regulation 41 of the Administration Regulations would need to be amended accordingly. However, it may be that regulation 41 of the Administration Regulations has deliberately made no reference to regulation 30(5) of the Benefits Regulations on the grounds that cost should not be a determining factor in deciding whether or not to waive an actuarial reduction on compassionate grounds.

***Administration Regulation 45(5) and (6):*** Under regulation 14(6) an optant out with less than 3 months membership is treated as not being in the Scheme. HMRC accept that such a person could be treated as being in the Scheme in error i.e. contributions were deducted in error. Can the Scheme rules thus contain a regulation awarding interest when the person is not part of the Scheme? Will this cause problems with HMRC? It might be safest to disapply regulations 45(5) and (6) to optants out with less than 3 months membership.

***Administration Regulation 46:*** Section 205(1) of the Finance Act 2004 states that a charge to income tax arises where a short service refund is paid by a registered pension scheme and under 205(2) the person liable to the short service refund lump sum charge is the scheme administrator. Sub-clause 205(6) states that "Tax under this section is to be charged on the amount of the lump sum paid or, if the rules of the pension scheme permit the scheme administrator to deduct the tax before payment, on the lump sum before deduction of tax." Regulation 46 of the Administration Regulations does not contain a provision permitting the administering authority to deduct any tax due under section 205 of the Finance Act 2004. It would seem that such a provision needs to be inserted in order to provide the vires for an administering authority to deduct tax from a refund of contributions. It could be argued that regulation 22(4) of the Benefits Regulations provides the vires, but that would seem odd given the heading to that regulation.

***Administration Regulation 51:*** This appears to be deficient in that it does not provide for interest to be payable on the late payment of any accrued Pensions Increase due on a lump sum payment e.g. on a lump sum death grant, on a deferred beneficiary's lump sum commutation payment, or on the supplemental PI payable on both of the aforementioned under the following Pensions Increase (Review) Order.

***Administration Regulation 51(3)(b):*** In order to be consistent with regulation 51(1) the words "the Transitional Regulations or" should be amended to "the Transitional Regulations, the Earlier Regulations or"

***Administration Regulation 52:*** It would be helpful if a Bona Vacantia provision could be introduced into regulation 52.

***Administration Regulation 53:*** Regulations 53(2) and (3) need to be rewritten to reflect current law (see, for example, sections 91 and 94 of the Pensions Act 1995 and Part II of the Welfare Reform and Pensions Act 1999).

***Administration Regulation 55:*** Where a Scheme employer has ceased to exist and there is no financially liable successor body, regulation 55 should be amended to empower the administering authority to exercise functions on behalf of that former Scheme employer but, where this entails the exercise of a discretion, only if the exercise of that discretion results in no additional cost to the Fund.

***Administration Regulation 55(7)(b):*** At the end of paragraph (7)(b) add "or regulation 14(5)"

***Administration Regulation 56:*** Where a Scheme employer has ceased to exist and there is no financially liable successor body, regulation 56 should be amended to empower the administering authority in cases where regulation 31 of the Benefits Regulations applies to obtain a certificate of permanent ill health so as to enable, where appropriate, deferred benefits to be put into payment in accordance with the ill health certificate.

***Administration Regulation 58:*** Does regulation 58 need to be updated to reflect the provisions of regulation 2 of The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 [SI 2008/649] and The Pensions Act 2004 (Commencement No.11) Order 2008 [SI 2008/627], which sets the effective date for the change as 6 April 2008?

***Administration Regulation 58(9):*** Amend "63(1)" to "63(2)"

***Administration Regulation 70(1):*** Amend "where the member has entered" to "where the member, since ceasing the employment that gave rise to the pension, has entered". This is to ensure that those who return to local government employment before 60, keep separate benefits, and draw the deferred benefits at, say, 60 before retiring from the re-employment are subject to abatement. This seems fair as:
a) a person who aggregated could not have received the pension until retirement
b) a person who retires and returns to local government post 60 would be subject to abatement

Delete "a teachers' scheme" and replace with "another public service pension scheme (as defined in regulation 12(2)) unless the other scheme was made under section 7 of the Superannuation Act 1972". This would introduce consistency with regulation 12.

***Administration Regulation 70(2):*** Amend "authorities" to "Scheme employers"

***Administration Regulation 71:*** In consequence of the change suggested to regulation 70(1) above:
- delete "the payment of" in paragraph (1)
- in paragraph (2) amend "has become" to "has or will become"
- in paragraph (4)(c) amend "may reduce" to "may, as appropriate, reduce".

In paragraph (3) delete "a teachers' scheme" and replace with "another public service pension scheme (as defined in regulation 12(2)) unless the other scheme was made under section 7 of the Superannuation Act 1972". This would introduce consistency with regulation 12.

***Administration Regulation 74(3):*** Shouldn't ARCs under regulation 14 of the Benefits Regulations also be excluded as they are personal payments made by the scheme member (plus payments made under proposed regulation 14A of the Benefits Regulations)? Also, what is the rationale for excluding the employer element of payments into a SCAVC as they did not constitute a personal payment made by the scheme member?

***Administration Regulation 78:*** A further paragraph should be added to extend the period in which a member has a right to a cash equivalent transfer value. This should read:

"(9) For the purposes of Chapter IV of Part IV of the Pension Schemes Act 1993, normal pension age shall be taken to be the normal retirement age as defined in regulation 16(2) of the Benefits Regulations."

This definition is necessary because, although the "normal retirement age" in the LGPS is age 65, the definition of "normal pension age" in section 180 of the Pension Schemes Act 1993 is as follows:

"180.-(1) In this Act "normal pension age", in relation to a scheme and a member's pensionable service under it, means-
(a) in a case where the scheme provides for the member only a guaranteed minimum pension, the earliest age at which the member is entitled to receive the guaranteed minimum pension on retirement from any employment to which the scheme applies; and
(b) in any other case, the earliest age at which the member is entitled to receive benefits (other than a guaranteed minimum pension) on his retirement from such employment."

The earliest date that any LGPS member is entitled to receive benefits on retirement (ignoring cases of ill-health, redundancy or employer discretion) is age 60. Thus, for the purposes of the Act, the "normal pension age" of the LGPS remains 60 even though the LGPS's "normal retirement age" is now 65. This means that, unless the suggested amendment to regulation 78 is made, the statutory right to a CETV lapses at age 59 or six months after leaving (where the date of leaving occurs after 59 ½ and before age 60) and, arguably, post 1st December 2006 that could be deemed to be ageist and need objective justification.

***Administration Regulation 81(7)(d):*** Why does this not read the same as regulation 79(3)(d)?

***Administration Regulation 83:*** Is the wording of regulation 83 broad enough to cater for bulk TVs in?

***Administration Regulation 84:*** Is the wording of regulation 84(3) broad enough to cater for agreed service credits from bulk TVs in?

***Administration Regulation 86:*** At the end of paragraph (8) add "but does not apply upon the cessation of one of the concurrent employments."

Regulation 86 should not permit an Inter Fund Adjustment to be paid where a bare GMP is in payment under the proposed regulation 50A.

***Administration Regulation 87:*** This regulation only covers the position where a variable-time member transfers to another variable-time employment. An additional regulation is needed to cover the position where a variable-time member transfers to a full or part-time employment. Regulation 82(2) of the LGPS (Administration) (Scotland) Regulations 2008 has catered for this and, using that as a template, regulation 87 should have an additional paragraph added as follows:

"(2) An inter-fund transfer under regulation 86(2) in respect of a member who is a variable-time employee prior to the transfer and who becomes a whole-time or part-time employee after the transfer shall be on the basis that his period of membership transfers on a pro-rata basis using the formula-

period of membership x <u>annual rate of pay in the variable-time employment</u>
annual rate of pay in the employment post transfer
= period of membership credited in the post transfer employment."

***Administration Regulations, Schedule 4:*** In paragraph 2, please amend "paragraph 3 of Part 2 of the Table in Schedule 5" to "paragraph 3 of the Table in part 2 of Schedule 5". This mirrors the method of referencing used within paragraph 7 of the Table in Part 1 of Schedule 4.

Also, delete the word "active" in notes (1), (2) and (3) at the bottom of the Table in Part 1 of Schedule 4 as those who are active at 1st April 2008 will eventually become deferred or pensioner members, but those members will still be part of the relevant Funds.

***Transitional Provisions Regulation 3:*** In paragraph (2)(b) amend "16, 17 19 and 20" to "16, 17, 19, 20, or 31".
Would it be prudent to add a further paragraph to regulation 3 that quite specifically states, for the avoidance of any possible doubt by HMRC, that the benefits payable under regulation 3 in respect of the pre and post April 2008 membership constitute a single Benefit Crystallisation Event?

One assumes that there should be a provision under regulation 3 specifying that a member who went on child related leave, reserve forces service leave, trade dispute absence or absence with permission before 1st April 2008 but who either resigns or returns to work post 31st March 2008 should be able to opt to pay contributions under regulation 18, 19, 20 or 21 (as appropriate) of the Administration Regulations. In other words, a provision needs to be added to cater for those whose leave of absence straddled 1st April 2008.

***Transitional Provisions Regulation 6(1):*** The reference to "before or after 1st April 2008" should be amended to "before, on or after 1st April 2008"

***Transitional Provisions Regulation 6(3):*** What are the implications if the member marries after flexible retirement and before full retirement?

Regulation 42(1) of the 1997 Regulations, which continues in effect by virtue of regulation 2, regulation 6(3) and Schedule 1 to the Transitional Provisions Regulations, provides that where a male "pensioner member" marries (after becoming a pensioner member) the widow's short and long-term pension is to be based only on so much of the pensioner's pension as is attributable to the period of membership in contracted-out employment after 5th April 1978. A pensioner in receipt of benefits following flexible retirement is a "pensioner member" and so regulation 42(1) of the 1997 Regulations would apply. Thus, if the member were to subsequently marry after flexible retirement but before full retirement the widow's pension payable in respect of the flexible retirement pension would be based only on the post 5th April 1978 contracted-out membership[5]. This contrasts with the

[5] The widow's pension payable in respect of the membership accrued after flexible retirement and before full retirement would be based on all the member's pension accrued for that period.

position if the member had not flexibly retired but had married before full retirement. In that case the widow's pension would have been based on all membership (including any pre 6th April 1978 membership).

Similarly, regulation 42(2) of the 1997 Regulations, which continues in effect by virtue of regulation 2, regulation 6(3) and Schedule 1 of the Transitional Provisions Regulations, provides that where a female "pensioner member" marries (after becoming a pensioner member) the widower's short and long-term pension is to be based only on so much of the pensioner's pension as is attributable to the period of membership after 5th April 1988. A pensioner in receipt of benefits following flexible retirement is a "pensioner member" and so regulation 42(2) of the 1997 Regulations would apply. Thus, if the member were to subsequently marry after flexible retirement but before full retirement the widower's pension payable in respect of the flexible retirement pension would be based only on the post 5th April 1988 membership[6]. This contrasts with the position if the member had not flexibly retired but had married before full retirement. In that case the widower's pension would have been based on all membership (including any pre 6th April 1988 membership).

In the above two scenarios, is the policy intention to exclude, respectively, the pre 6th April 1978 and pre 6th April 1988 membership?

***Transitional Provisions Regulation 9(1):*** How is regulation 12(3) of the 1997 Regulations continued in effect by regulation 3(2)? Regulation 3(2) only says that the regulations listed in the Schedule continue in effect for the specific purposes listed in regulation 3(2), which do not include the calculation of a member's contribution rate.

***Transitional Provisions Regulation 10(1)(b):*** This currently says –
"(b) in respect of whom the appropriate administering authority has consented to pay retirement benefits following a request made by him under regulation 30 of the Benefits Regulations".

However, no administering authority consent is required for release of benefits under Benefits regulation 30. Only the employing authority has to give consent, and only if the member is under age 60. Additionally, the 85 year rule is also applicable to retirements under Benefits regulation 18. Regulation 10(1)(b) should therefore be amended to read –
"(b) in respect of whom, if he is under age 60, the appropriate employing authority, or former employing authority, has consented to pay retirement benefits following a request made by him under regulation 30 of the Benefits Regulations, or
(c) in respect of whom the appropriate employing authority has consented to pay retirement benefits following a request made by him under regulation 18 of the Benefits Regulations".

***Transitional Provisions Regulation 14(1):*** The words "as continued in effect by regulation 3" should be replaced with the words "as continued in effect by regulation 2". Regulation 3 is not the correct cross-reference as it refers to active members of the 1997 Scheme. A Pension Credit member was never an active member of the 1997 Scheme. A cross reference to regulation 2 seems more logical. However, I'm not certain that regulation 14(1) needs to be retained at all given that a Pension Credit member's benefits are all calculated under the provisions of regulations 144 to 161 of the 1997 Regulations (as saved by Schedule 1) and there are no benefits accruing to a Pension Credit member under the 2008 Scheme. It seems to me, therefore, that regulation 14(1) could / should be deleted.

[6] The widower's pension payable in respect of the membership accrued after flexible retirement and before full retirement would be based on all the member's pension accrued for that period.

***Transitional Provisions Regulation 14(2):*** The cross-reference to "regulation 156" appears to be incorrect and, I believe, the cross-reference should be to "regulation 157". The regulation also seems to be at odds with Schedule 1 which says that regulations 144 to 161 of the 1997 Regulations are not revoked (or should the words "do not continue to apply" be amended in regulation 14(2) to "do not continue to **so** apply"? However, if regulation 14(1) is deleted, as suggested above, then it seems to me that regulation 14(2) should then also be deleted.

***Transitional Provisions Regulation 14(3):*** This regulation does not specifically state that it only covers Pension Credit members. Commutation of small pensions due to other types of member under the 1997 Regulations are covered by regulation 49 of the 1997 Regulations. Perhaps, therefore, it should begin with the words "In relation to any entitlement to or in respect of a Pension Credit member, ".

***Transitional Provisions, Schedule 1:*** The reference to "Regulation 108(A)" should be amended to "Regulation 108A".

Also, does regulation 73A of the 1997 Regulations need to be added to the list as it is referred to in regulations 31(1), 31(1A) and 35(1) of the Administration Regulations?

And does regulation 106B of the 1997 Regulations need to be added to the list as it is referred to in regulation 67 of the Administration Regulations?

Paragraph 3 of the Table in Part 2 of Schedule 5 to the 1997 Regulations and the Table in Part 3 of Schedule 5 to the 1997 Regulations need to be added to the list as they are referred to in Schedule 4 of the Administration Regulations.

Given that regulations 144 to 161 of the 1997 Regulations have not been revoked, but the definition of "member" in Schedule 1 of the Administration Regulations excludes a Pension Credit member (apart from for the purposes of regulation 68 of the Administration Regulations), it would appear that the following regulations under the 1997 Regulations which also deal with Pension Credit members need to be added to the list of non-revoked regulations: 94(1A)(b), 94(5), 94(6), 95, 97 (see 97(2)(a), 97(8A) and 97(13A) in particular), 100 (see 100(2)(ba), 100(2)(bb), 100(4A)(a) in particular), 101, and 104.

***Transitional Provisions, paragraph 1 of Schedule 2:*** The reference to "under regulation 18(1)" should be amended to "under regulation 18(1) or 30(1)" and the reference to "regulation 18(2)" should be amended to "regulation 18(2) or 30(4)".

***Transitional Provisions, paragraph 4(2) of Schedule 2:*** There is nothing in this regulation equating to regulation 29(2) of the 1997 Regulations which debarred membership taken into account upon flexible retirement from counting towards the 85 year rule in the ongoing employment. Can paragraph 3 of Schedule 3 to the 1997 Regulations (as saved by regulation 2 and Schedule 1 to the Transitional Provisions Regulations) be relied upon? One assumes not, otherwise there would have been no need for regulation 29(2) to have been inserted into the 1997 Regulations.

***Transitional Provisions, paragraph 6(1) of Schedule 2:*** The words "Paragraphs 1 to 5 apply" should be amended to "Paragraphs 1 to 3 and 5". Paragraph 4 needs to be excluded as paragraph 6(2) makes it clear that

paragraph 6 only applies where members aggregate their membership. Paragraph 4 covers people who do not aggregate their membership.

***Transitional Provisions, paragraph 6(1)(a) of Schedule 2:*** The words "whether before or after that date" should be amended to "whether before, on or after that date"

***Transitional Provisions, paragraph 6(1)(b) of Schedule 2:*** The position on the 85 year rule protections as set out in LGPC Circular 193 was the line being taken by CLG at that time i.e. that the member must have been an **active member** immediately before 1st October 2006 in order for the protection to apply. However, during the discussions on the 2008 Scheme, this line was changed and regulation 6 of the Transitional Provisions Regulations now says that the person only had to have been a **member** before 1st October 2006 i.e. the person could have been an active member at 30th September 2006 or a deferred member at that date. It says that the 85 year rule protection applies where a member:
- was a member before 1st October 2006, and
- left / leaves the LGPS before, on or after 1st October 2006 (i.e. so the person did not have to be an **active** member on 30th September 2006); and
- rejoins the scheme before the "relevant date" which paragraph 2 of the Schedule defines as:

(a) in the case of a member who will be aged 60 or more on 31st March 2016, the earlier of—
(i) 1st April 2016, and
(ii) the date on the day after the day on which the member leaves local government employment; or
(b) in any other case, 1st April 2008.

Paragraph 6(1)(b) of Schedule 2 should, of course, be amended to specify that the "relevant date" is that referred to in (a)(i) and (b) above only and not to (a)(ii) above (as the inclusion of (a)(ii) produces a nonsensical result).

Assuming that amendment will be made, the above would produce the following results:

1. A member (active or deferred) at 30th September 2006 who rejoins the scheme before 1st April 2008, or before 1st April 2016 if he/she would be 60 or more by 31st March 2016, and who aggregates membership will have a protected CRA (although if there was a break in employment the CRA will shift backwards upon aggregation).
2. A member (active or deferred) at 30th September 2006 who rejoins the scheme before 1st April 2008, or before 1st April 2016 if he/she would be 60 or more by 31st March 2016, and who does not aggregate membership will have the original protected CRA on the unaggregated membership but an age 65 NRD (i.e. no earlier CRA) on the new membership.
3. A member (active or deferred) at 30th September 2006 who rejoins the scheme after 31st March 2008, or after 31st March 2016 if he/she would be 60 or more by 31st March 2016, and who aggregates membership will lose their right to a protected CRA and all membership will have an NRD of 65. This seems rather harsh but it is what the regulation appears to say, although whether this is the policy intention is not clear.
4. A member (active or deferred) at 30th September 2006 who rejoins the scheme after 31st March 2008, or after 31st March 2016 if he/she would be 60 or more by 31st March 2016, and who does not aggregate membership will have the original protected CRA on the unaggregated membership but an age 65 NRD (i.e. no earlier CRA) on the new membership.
5. A member who was not active or deferred at 30th September 2006 does not have any entitlement to a CRA. All benefits have an NRD of 65.

Scenario 3 appears to be at odds with the relevant GAD guidance and does not feel entirely correct. Take, for example, a person who leaves employer 1 and moves to employer 2 with no break in service but, because they have technically left and rejoined post 31st March 2008 (or post 31st March 2016 if they would be 60 or more by 31st March 2016) and have to make a positive decision to opt to aggregate, they would lose their protection if they aggregate, even though there has been no break in service. Also, those who:
a) would not be 60 or more by 31st March 2016, and
b) who were TUPE transferred to another LGPS employer on or after 1st April 2008 and before 28th June 2008 (the date from which the amendment to regulation 16 of the Administration Regulations took effect by virtue of SI 2008/3245), and
c) who opted to aggregate
would lose their protection.

Having said all of that, whilst I have sympathy for those who would lose protection even though they had not had a break, how long should the Scheme continue to protect people for? For example, is it right that a person who left in, say, 2005 and rejoins in 2015 should retain their 85 year rule protection, even though they have been out of local government for 10 years?

I think paragraph 6 needs to be amended to meet whatever the policy intent may be.

Furthermore, those who fall into scenario 3 but are aggregating a deferred benefit awarded following an option out to join a personal pension and who are being reinstated under regulation 122A of the 1997 Regulations (as saved by regulation 2 of, and Schedule 1 to, the Transitional Provisions Regulations) should not lose their right to a CRA. Regulation 122A(1) of the 1997 Regulations says that regulation 122(6D) shall not apply and so the transfer in will purchase pre 1st April 2008 membership. Regulation 122A(3) then goes on to say that the period of membership should be the same as the person could have counted if they had been an active member throughout the personal pension period. If they are not given the 85 year rule protection the transfer will purchase more membership than day for day and will thus defeat the objective of regulation 122A. Given that, and the fact that I'm not certain whether the outcome from scenario 3 as outlined above is intended, it would be helpful if the regulations could make it explicit that the 85 year rule protections are retained in these cases. Looking forward, however, and given that we are now 20 years beyond the date when opting out to join a personal pension scheme was first permitted, consideration should be given to closing off the reinstatement option from some date in the future e.g. 1 April 2011. This would provide enough time for any remaining cases to be given warning that the option is to be withdrawn and enough time for administering authorities to finalise any ongoing cases.

Lastly, a minor point is that sub-paragraph (2) should form part of sub-paragraph (1) – i.e. delete the word "(2)" - and sub-paragraph (3) should be re-numbered as sub-paragraph (2).

***Transitional Provisions, paragraph 7(1) of Schedule 2:*** The words "who retires" should be amended to "who leaves". This is because some members who leave at or after age 60 will choose not to draw immediate pension benefits and will be deferred members of the Scheme, not retirees.

***Benefits Regulation 1(4):*** To be consistent with the definition of "the Scheme" in Transitional Provisions Regulations and the Administration Regulations, the definition of "the Scheme" in the Benefits Regulations should be amended to "means the occupational pension scheme constituted by these Regulations, the Administration Regulations and the Transitional Regulations".

***Benefits Regulation 2(2):*** The wording of this regulation says that an active member of the Scheme on 31st March 2008 must remain a member for so long as he remains eligible to be a member. An employee who opts out of membership of the Scheme under regulation 14 of the Administration Regulations is, technically, still "in employment which makes him eligible to be" an active member of the Scheme. The act of opting out does not stop the person from being eligible for membership. Thus, regulation 2(2) would apparently suggest that an active member of the 1997 Scheme has to remain an active member until such time as he / she ceases employment or attains age 75 i.e. the person cannot opt out of membership. This, of course, contradicts regulation 14 of the Administration Regulations. To overcome this anomaly, regulation 2(2) ought to start with the words "Subject to regulation 14 of the Administration Regulations".

Also, despite what regulation 2(2) says, a Councillor member who is an active member of the Scheme on 31st March 2008 is not to be an active member of the 2008 Scheme – see regulation 13 of the Transitional Provisions Regulations. Thus, in regulation 2(2) the words "An active member of the 1997 Scheme is an active member of the Scheme" should be amended to "An active member of the 1997 Scheme, other than a Councillor member, is an active member of the Scheme".

***Benefits Regulation 3(3):*** Although the figures in the table are to be increased on 1st April 2009 and each 1st April thereafter, the first weekly, fortnightly or 4 weekly payroll in the year might have a start date before 1st April. It would be better, therefore, if the regulation was amended to say "On the first day of the pay period in which 1st April 2009 falls, and on the first day of the pay period in which each subsequent 1st April falls,".

Also, the regulation requires that after applying Pensions Increase to the figures in the Table each April, the resulting answers are rounded down to the nearest £100. If the Pensions Increase (Review) Order 2009 says that a pension attracting a full year's increase should go up by 5%, then the figures in the Table should be increased by 5% and the resulting figures rounded down to the nearest £100. This would produce the following result:

| Old Range | | New Range | New Range (having rounded down answers to nearest £100) |
|---|---|---|---|
| 1. £0 to £12,000 | + 5% | £0 to £12,600.00 | £0 to £12,600 |
| 2. £12,001 to £14,000 | + 5% | £12,601.05 to £14,700.00 | £12,600 to £14,700 |
| 3. £14,001 to £18,000 | + 5% | £14,701.05 to £18,900.00 | £14,700 to £18,900 |
| 4. £18,001 to £30,000 | + 5% | £18,901.05 to £31,500.00 | £18,900 to £31,500 |
| 5. £30,001 to £40,000 | + 5% | £31,501.05 to £42,000.00 | £31,500 to £42,000 |
| 6. £40,001 to £75,000 | + 5% | £42,001.05 to £78,750.00 | £42,000 to £78,700 |
| 7. More than £75,000 | + 5% | More than £78,750.00 | More than £78,700 |

If, from 1st April 2009, a person earns, say, £14,700 would they fall into band 2 or band 3? This problem would have been resolved if the bands had referred to "More than £x and up to £y" e.g. more than £14,700 and up to £18,900.

***Benefits Regulation 3(3):*** This regulation does not seem to deliver the policy intention for two reasons.

Firstly, unlike the equivalent regulation in Scotland, it does not specify what Pensions Increase date is to be used. It would be helpful, therefore, if the words "if they were pensions" were amended to read "if they were pensions beginning on 1st April 2008".

Secondly, the regulation says the pay ranges should be increased by "the amount by which the figures would be increased with effect from 6th April of the relevant year if they were pensions to which the Pensions (Increase) Act 1971 applied." Unfortunately, Pensions Increases rarely take effect exactly on a 6th April. It would be helpful if the regulation could be amended to read "with effect from the first Monday falling on or after 6th April of the relevant year …..").

***Benefits Regulation 3(4):*** Regulation 3(4)(a) says that where there has been a permanent material change to the terms and conditions of a member's employment which affect his pensionable pay the employer may determine that his contribution rate is **not** to be calculated in accordance with paragraph (2). As the actual rates are contained in the table in paragraph (2), paragraph (4)(a) could be read to mean that the employer can determine not to apply a rate from the table, but can make up their own rate. This is clearly not intended and so, in paragraph (4)(b), the words "the contribution rate applicable to him" ought to be clarified by amending them to "the contribution rate applicable to him from the table in paragraph (2)"

***Benefits Regulation 3(5):*** It is not clear why this regulation twice refers to "full-time employee" when, throughout the rest of the Benefits Regulations the words "whole-time employee" are used.

***Benefits Regulation 3(9):*** This suggests that contributions can be paid on the day before 75. However, regulation 17(4) of the Benefits Regulations says that benefits must begin to be paid no later than the day before 75 and regulations 50(2) and 50(6) of the Administration Regulations say that payment of benefits can be deferred until no later than the day before 75 i.e. benefits cannot be deferred until 75 which means they must be brought into payment on the day before 75. Given that benefits must be paid, at the latest, on the day before age 75, it appears that regulation 3(9) is incorrect and should be amended to say "In any event, an active member does not make any contributions on or after the day before his 75th birthday".

***Benefits Regulation 3(10):*** I could be reading this wrongly, but this regulation appears to say that if a member has two employments, one with a whole-time equivalent pay of £14,500 and one with a whole-time equivalent pay of £15,000, the member must make contributions for each of those employments based on the sum of his / her pensionable pay i.e. £29,500 which would generate a 6.5% contribution rate, rather than each separate job attracting a rate (as at April 2008) of 5.9%. I believe the intention is that the member should pay 5.9% and not 6.5% but am not certain the regulation as currently worded achieves this.

***Benefits Regulation 3(11):*** I would suggest that this regulation should either:

a) be deleted, as I can see no reason for specifying that it should be for the administering authority decide the intervals at which employee contributions are made, or
b) be amended to refer to the "employing authority" rather than to the "administering authority".

***Benefits Regulation 3(12):*** In assessing the band that a member falls into this regulation says that "any reduction … by reason of … any statutory entitlement … shall be disregarded". However, it does not tell us to disregard any reduction in pay for any other reason (for example, where a member has been on half or nil pay due to sickness, or has been on maternity leave, etc). Surely, the regulation should specify that we should also disregard these types of reductions when assessing the contribution band a member falls in.

***Benefits Regulation 4(3):*** This appears to mean that an employee who is based outside the UK and who is not assessable to income tax can join the LGPS if employed by a Scheme employer but, if they do so, they will not have any pensionable pay. As benefits would be accruing at the rate of 1/60th x £nil = £nil there would be no

point in them joining the LGPS (unless they subsequently return to the UK and have taxable pensionable pay). If my interpretation is correct it would appear that an appropriate amendment would be required.

***Benefits Regulation 5(1):*** Membership is defined by regulation 6 but regulation 6 does not include pre 1st April 2008 membership. So, based purely on regulation 5, if a member leaves with less than 3 months post 31st March 2008 membership they would not be entitled to benefits under the 2008 Scheme even though they may have many years of pre 1st April 2008 membership. Whilst the Transitional Provisions Regulations provide that the benefits in respect of the pre 1st April 2008 would be payable, regulation 5 does not provide for payment of post 31st March 2008 membership which itself lasts for less than 3 months. This clearly cannot be correct as a person moving over from the old to the new scheme who left in, say, May 2008 would get no benefits in respect of the membership for April and May 2008. Regulation 5(1)(a) should therefore be amended to read "(a) his total membership, including membership prior to 1st April 2008 in respect of a member to whom regulations 3 or 4 of the Transitional Regulations apply, is at least three months; or".

***Benefits Regulation 5(3):*** It is my understanding that, in order for a refund to be an authorised payment under the Finance Act 2004, the member must not already be entitled to an earlier pension or deferred pension under the Scheme. However, the only people regulation 5(3) catches are those who have previously satisfied the conditions in regulation 5(1) and who rejoin the Scheme before drawing the earlier benefits under regulations 16, 17, 19, 20 30 or 31. It does not catch cases where:
a) a member does not have 3 months post 31st March 2008 membership and has not had a transfer in post that date and so does not meet the condition in regulation 5(1) but who does have far more than 3 months membership in total when their pre 1st April 2008 membership is included (although these cases would be caught if the amendment to regulation 5(1) as suggested above was implemented), or
b) a member who does not have 3 months post 31st March 2008 membership and has not had a transfer in post that date and so does not meet the condition in regulation 5(1) but who already has a LGPS pension or deferred pension in respect of membership that ceased prior to 1st April 2008 (although these cases might be covered by paragraph 3 of, and notes 1 and 2 to, Schedule 3 of the 1997 Regulations which have been retained by Schedule 1 of the Transitional Provisions Regulations), or
c) a member who has satisfied one of the conditions in regulation 5(1) and who subsequently becomes a member again but who only become such a member again **after** drawing the earlier benefits under regulations 16, 17, 19, 20 30 or 31, or
d) a member who has satisfied one of the conditions in regulation 5(1) and who subsequently becomes a member again but who only becomes such a member again after drawing the earlier benefits under regulation 18.

Although I appreciate that CLG do not agree with the HMRC position on this, administering authorities nevertheless have to report any refunds they make which HMRC would view as being unauthorised refunds.

***Benefits Regulation 5(4):*** The wording of this regulation is not quite correct. Paragraph (3) should apply to a member who has transferred out benefits from the LGPS to a Qualifying Recognised Overseas Pension Scheme (as such a member should not be entitled to a refund if they subsequently rejoin the LGPS and leave within 3 months).

***Benefits Regulation 6:*** At the beginning, amend "6" to "6(1)" as this is referred to in regulation 15(5) of the Administration Regulations. Also, although regulation 6(1)(a) contains the words "(or is treated as having paid)" I can find nothing in the regulations that says that a person away from work because of illness or injury is treated as having paid contributions (i.e. there is no equivalent of regulation 9(1)(b) of the 1997 Regulations).

***Benefits Regulation 7(3):*** This should commence with the words "Other than for the purposes of regulation 5(1)(a)" as it is necessary to use the calendar length of membership, not the pro-rated part-time period, to determine whether or not a member has total membership of at least three months in order to be entitled to a benefit.

***Benefits Regulation 7(4):*** Despite the CLG Commentary, this regulation does not permit the pro-ration of term-time membership.

***Benefits Regulation 7(5):*** This should commence with the words "Subject to regulations 20(4)(a) and 20A of the 1997 Regulations (as saved by Schedule 1 to the Transitional Regulations)". Also, It may be necessary, depending on how flexible retirement works when the member draws only part of the pension, to qualify the method of calculation under regulation 7(5).

***Benefits Regulation 8(3):*** This should commence with the words "Subject to regulation 23(4)," as part-time pay is not to be grossed up to its whole-time equivalent when calculating the death grant for a member who dies in service. Also, the words "the pay" should be amended to "the pensionable pay" for consistency with regulations 4, 8(1) and 8(4).

***Benefits Regulation 11(1)(a):*** If the membership period is less than 3 years then the fees received should be divided, not by 3, but by the number of years and days constituting the membership period. It might be helpful if this was made clear in the regulation by adding after "the three consecutive years" the words "(or his total membership period if less)".

***Benefits Regulation 11(2):*** This should commence with the words "But, for the purposes of paragraph (1)(a),". This is to ensure that where paragraph (2) applies, the member's final pay is calculated as the sum of paragraphs (1)(a) and (1)(b).

***Benefits Regulation 12(2):*** At the end of this regulation add "less any membership augmented under regulation 52 of the 1997 Regulations".

***Benefits Regulation 12(6):*** Delete the words "or because the member held a joint appointment which has been terminated because the other holder has left it" as these words are no longer used in regulation 19.

***Benefits Regulation 13(1):*** This regulation just refers to "a member". Regulation 12, however, specifically refers to an **active** member and so does regulation 40(1)(a) of the Administration Regulations which says that regulation 12 of the Benefits Regulations "confers power to increase the membership of an **active** member by an additional period." Is regulation 13 also only meant to apply to active members only? If so, and given that regulation 12 and other regulations in the Benefits Regulations (e.g. regulations 2 and 3) specifically say they only apply to active members, then it would be helpful if regulation 13(1) and regulation 40(1)(b) of the Administration Regulations could be amended to also specifically refer to active members.

If a member is granted £5,000 of additional pension by his employer and then moves to a new employing authority, the wording of regulation 13(1) does not prevent the new employing authority from also awarding up to £5,000 of additional pension. Is this intended? If not, a limitation will need to be inserted into regulation 13.

Unlike regulation 14 of the Benefits Regulations, regulation 13 does not contain any reference to an actuarial reduction being applied to additional pension granted by the employer if the pension is paid before age 65.

However, paragraphs 2.5.3, 4.4 and 4.5 of the GAD guidance state that there would be an actuarial reduction applied to the additional pension if paid before age 65. A regulatory amendment to regulation 13 to back up the GAD guidance would be helpful.

***Benefits Regulation 14(1):*** Given that other regulations which only apply to active members specifically say so – see regulations 2, 3 and 12 - it would be helpful if regulation 14(1) was amended to also refer to "active member".

***Benefits Regulation 15(1):*** This should commence with the words "Subject to regulation 26 of the Administration Regulations,". This is because regulation 26 of the Administration Regulations appears to be more limiting than the Finance Act 2004.

***Benefits Regulation 16(1):*** The term "local government pension scheme employment" is not defined anywhere and so should be replaced with the term "local government employment" which is defined in Schedule 1 of the Administration Regulations.

Members who remain in employment after age 65 are entitled to an actuarial increase under regulation 17(2). Members who leave before age 65 with a deferred pension and who, by virtue of regulation 50(2) of the Administration Regulations, defer payment of their benefits beyond age 65, are entitled to an actuarial increase to recompense them for the delayed payment of their benefits by virtue of regulation 29(5) of the Benefits Regulations. However, members who leave at 65 and choose to defer payment of their benefits beyond age 65 in accordance with regulation 50(6) of the Administration Regulations are not entitled to an actuarial increase to recompense them for the delayed payment of their benefits. This cannot be intended but, unfortunately, neither regulation 17(2) nor regulation 29(5) covers them and there is no provision in regulation 16 to provide for an actuarial increase. Nonetheless, paragraph 1.3 of the GAD late retirement guidance says "For the avoidance of doubt, Communities and Local Government's (CLG's) policy intention is that similar increases should also be applied in respect of members who leave service with immediate entitlement to benefits under regulation 16 but who choose not to receive payment immediately." It would be helpful if this could be replicated within the regulations.

***Benefits Regulation 17(1):*** I believe that regulation 17(1) should be amended to read:

"(1) A member **who first joins the Scheme on or after age 65 or** who remains in employment after his 65th birthday is entitled to a pension when he retires from service"

This is because, otherwise, a strict reading of the regulation would mean that a person who first joins after age 65 would have to pay contributions but would not be entitled to draw a pension in respect of them as regulation 17(1) only covers those who **remain** in employment beyond 65 (which implies they must have been in employment before age 65 in order to be covered by the regulation).

***Benefits Regulation 17(3):*** This should commence with the words "Subject to regulation 50(6) of the Administration Regulations"

***Benefits Regulation 18(1):*** Although it is clearly intended that flexible retirement benefits should be payable from the date of the reduction in hours or grade, it would be helpful if this could be made explicit by including after the words "be paid to him" in regulation 18(1), the words "from the date of the reduction in hours or grade".

***Benefits Regulation 18(3):*** I believe that a further sub-paragraph should be added after regulation 18(3) along the lines of "If the payment of benefits referred to in paragraph (1) takes effect after the member's 65th birthday, the benefits shall be increased in accordance with guidance issued by the Government Actuary" This would ensure that the benefits of those who take flexible retirement post age 65 are actuarially increased, thus treating them equitably with those who fully retire post age 65. Regulation 17(2) does not already cover these cases as that regulation only provides for increases between 65 and the date of retirement but, by virtue of regulation 18(1), a member drawing benefits under regulation 18 "has not retired from that employment" (regulation 18(1) merely permits payment of benefits even though the member has not retired).

***Benefits Regulation 18(4):*** By virtue of regulation 18(1), a member can only make a request once they have reduced their hours or grade. Thus, for a request to be made before 31st March 2010, the latest a reduction, and hence a request, can be made is 30th March 2010. This seems illogical. Paragraph (4) should say "makes a request before 1st April 2010". This would tie in with regulation 30(6). Furthermore, what if a person reduces their hours or grade on or before 30th March 2010 but does not make a request until on or after 31st March 2010 i.e. they delay sending in their request for a day or two. On the face of it they would lose the protection. This cannot have been intended.

Also, why does paragraph (4) cover "a person who is a member on 31st March 2008" whereas regulation 30(6) covers "a person who is an **active** member on 31st March 2008"? The absence of the word "active" from paragraph (4) could be interpreted to mean that paragraph (4) covers any person who was a member – active, deferred or pensioner member – at 31st March 2008 and who has been in continuous employment (but not necessarily in continued active membership e.g. an optant out) with the same employer since that date (see regulation 18(4A)).

To overcome the above issues, paragraph (4) ought to be amended to read:
"(4) Subject to paragraph (4A), in the case of a person who is an active member on 31st March 2008, and to whom paragraph (1) applies before 1st April 2010, paragraph (1) applies as if "the age of 50" were substituted for "the age of 55"."

And paragraph (4A) ought to be amended to read:
"(4A) Paragraph (4) only applies to a member whose active membership has been continuous with that same employer throughout that period."

And paragraph (4B) ought to be amended to read:
"(4B) For the purposes of paragraph (4A), the active membership of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply shall be treated as being continuous with the transferee employer."

***Benefits Regulation 18(5):*** As a member can take flexible retirement more than once, regulation 18 should not have been omitted from the list in regulation 18(5).

***Benefits Regulation 19(2):*** In regulation 19(2) the words "to whom paragraph (1) applies" need to be amended to "to whom paragraphs 1(a) or (b) apply", as the inclusion of (c) defeats the objective of regulation 19(2) i.e. as currently written, the protection granted by regulation 19(2) only applies if 19(1)(a), (b) **and** (c) apply and so only covers those made redundant / retired on business efficiency grounds when already aged 55 or over (by which time an age 50 protection would be entirely irrelevant).

A member can only have the protection given by regulation 19(2) if they are dismissed before 31st March 2010. This seems illogical. In order to tie in with regulation 30(6), paragraph (2) should have referred to "1st April 2010" and not to "31st March 2010".

Also, why does paragraph (2) cover "a person who is a member on 31st March 2008" whereas regulation 30(6) covers "a person who is an **active** member on 31st March 2008"? The absence of the word "active" from paragraph (2) could be interpreted to mean that paragraph (2) covers any person who was a member – active, deferred or pensioner member – at 31st March 2008. and who has been in continuous employment (but not necessarily in continued active membership e.g. an optant out) with the same employer since that date (see regulation 18(4A)).

To overcome the above issue, paragraph (2) ought to be amended to read:
"(2) Subject to paragraph (3), in the case of a person who is an active member on 31st March 2008, and to whom paragraph (1) applies before 1st April 2010, paragraph (1) applies as if "the age of 50" were substituted for "the age of 55"."

Also, to be consistent with regulations 18(4A) and 18(4B), two more paragraphs should be added to regulation 19 as follows:
"(3) Paragraph (2) only applies to a member whose active membership has been continuous with that same employer throughout that period.

(4) For the purposes of paragraph (3), the active membership of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply shall be treated as being continuous with the transferee employer."

The above would reflect the statement in the CLG commentary which says "Breaks in employment will break this protection."

***Benefits Regulation 20 and related provisions in Benefits Regulations 29, 30, and 31 and Administration Regulations 50, 55 and 56 :*** Various technical amendments are being considered by the Ill Health Monitoring Group. The latest list is attached at Annex 3.

***Benefits Regulation 21(1):*** I believe that, in order to ensure that a member who has had a previous Benefit Crystallisation Event (BCE) can still elect to commute part of the pension from the current BCE, and to ensure that the date benefits become payable is linked to the BCE date, the words "any benefits become payable" in regulation 21(1) should be replaced with the words "any benefits become payable in respect of that Benefit Crystallisation Event".

***Benefits Regulation 21(5):*** The reference to "regulation 18" should be amended to "regulation 18(2)".

***Benefits Regulation 22(1):*** The words from "value of which" to "enhanced protection" should be deleted and replaced with the following "value of which exceeds his enhanced protection, or which exceeds his lifetime allowance increased, where applicable, by his primary protection,". This is to reflect the fact that enhanced protection is not a multiple of the lifetime allowance.

***Benefits Regulation 22(4):*** If an administering authority is required to pay a scheme sanction charge under section 239 of the Finance Act 2004, regulation 22(4) would apparently permit the administering authority to recover the charge from the member's benefits. Is this intended? Presumably not, in which case a relevant amendment to regulation 22(4) is required.

***Benefits Regulation 23(4):*** Amend "calculating death grant" to "calculating the death grant".

***Benefits Regulation 24(2):*** Regulations 24(2), 33(2) and 36(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 need to be amended to commence with the words "Subject to regulations 20(4)(a) and 20A of the 1997 Regulations, as saved by regulation 2 of and schedule 1 to, the Transitional regulations and regulations 14, 14A or 15, and regulations 23 to 26 of the Administration Regulations,". This is to ensure that the benefits under regulations 24(2), 33(2) and 36(2) take into account any Pension Debit suffered by the member and any increase in survivor benefits purchased by the member.

***Benefits Regulation 25(4):*** I cannot see the benefit of retaining paragraph (4) as it means that, technically, for a co-habiting partner's pension to be paid, the conditions in paragraphs (3), (4) and (6) have to be met. Thus, an administering authority would need to check the conditions in paragraphs (3) and (4) are met at the point the declaration is signed, and also check that the conditions in paragraphs (3) and (6) are satisfied at the member's date of death. This appears to be unnecessarily complicated. All an administering authority really ought to need to concern itself with is whether the conditions in paragraphs (3) and (6) are satisfied. I am aware that, in practice, many administering authorities are taking this practical approach. To remove an unnecessary administrative burden and ensure that some administering authorities are not acting outside the requirements of the Regulations I think it would be helpful if regulation 25(4) was deleted.

***Benefits Regulation 26:*** As you will be aware, there is a considerable amount of concern amongst pensions practitioners, as discussed at several meetings of the Technical Group, that the wording of the relevant regulations in the Benefits Regulations, the 1997 Regulations and 1995 Regulations do not accurately reflect the requirements of the Finance Act 2004 and that, in order to avoid the possibility of HMRC determining that Funds are making unauthorised payments, the Regulations need to be amended. A copy of the extant provisions covering children's pensions is attached at Annex 1.

Let's look, first, at regulation 26 of the Benefits Regulations.

<u>26 Meaning of "eligible child"</u>

(1) Subject to paragraph (3), the child of a deceased member is an eligible child if he is wholly or mainly dependent on the member, and is less than 18 years of age, at the date of the member's death.

[Comment: This paragraph only covers a child **of** the deceased member if the child is under 18 **and** is wholly or mainly dependent on the member at the date of death. So, if a child of the deceased member is under 18 but is not wholly or mainly dependent on the member at the date of death (e.g. the child of the deceased member is living with the other, separated, parent), that child is not an "eligible child" and no child's pension will be payable. It is important to note, too, that to be an "eligible child" the child has to be a child **of** the deceased member. The advice the Secretariat has received from HMRC is that "Child is not defined for the purposes of paragraph 15 of Schedule 28 to Finance Act 2004. So we have to look to the legal definition of a child – which is the natural (whether born legitimate or illegitimate and includes a child "en ventre sa mere" i.e. "an unborn child inside the mother's womb") or legally adopted child of a person". Thus, a child accepted as part of the family (e.g. the child

of a cohabiting partner or spouse from a previous relationship) who is not the natural child (legitimate, illegitimate or "en ventre sa mere") or legally adopted child of the deceased member would not be entitled to a child's pension under regulation 26(1). In a nutshell, the regulation says a child has to be a child **of** the member **and** dependent whereas the Finance Act 2004 says a child has to be a child **of** the member **or** dependent.]

(2) But a child who is born on or after the first anniversary of the date of the member's death is not an eligible child.

(3) A dependent child who has reached the age of 18 but has not reached the age of 23 and is in full time education or undertaking vocational training at the date of the member's death is an eligible child.

[Comment: this uses the word "dependent" without defining it in terms of the Finance Act 2004. Also, under this paragraph as presently drafted, the vocational training does not have to be full time. Is this intended?]

(4) An appropriate administering authority may treat a dependent child who commences full time education or vocational training after the date of the member's death as an eligible child after he reaches the age of 18 and until he reaches the age of 23.

[Comment: By referring back to paragraph (3) it would appear that the vocational training does not have to be full time. Is this intended?]

(5) In the case of a dependent child falling within paragraph (4), an appropriate administering authority may-
(a) treat education or training as continuous despite a break; and
(b) suspend payment of any entitlement to benefits under regulation 28, 34 or 37 during such a break.

[Comment: why does this not also cross refer to paragraph (3)?]

(6) An appropriate administering authority may treat a dependent child who is disabled within the meaning of the Disability Discrimination Act 1995 as an eligible child.

[Comment: this does not appear to restrict payment to cases covered by the Finance Act 2004. Paragraph 15(2) of Part 2 of Schedule 28 to the Finance Act 2004 says that the payment will only be an authorised payment if a child of the member -
(a) has not reached the age of 23, or
(b) has reached that age and, in the opinion of the scheme administrator, was at the date of the member's death dependant on the member because of physical or mental impairment.]

To overcome the above issues and conform to the Finance Act 2004 I would suggest regulation 26 is redrafted as follows:

"(1) Subject to paragraphs (2) and (3), a child is an eligible child if, at the member's death:

a) he is a child of the member and is less than 18, or
b) he was, though not a child of the member, wholly or mainly financially dependent on the deceased member and is less than 18,
c) he is a child of the member, is aged 18 or over but has not reached the age of 23, and is in full time education or undertaking [?full time?] vocational training,

d) he was, though not a child of the member, wholly or mainly financially dependent on the deceased member, is aged 18 or over but has not reached the age of 23, and is in full time education or undertaking [?full time?] vocational training
e) he is a child of the member and was dependant on the deceased because of physical or mental impairment within the meaning of the Disability Discrimination Act 1995
f) he was, though not a child of the member, wholly or mainly financially dependent on the deceased member because of physical or mental impairment within the meaning of the Disability Discrimination Act 1995

(2) Paragraphs (1)(b), (d) and (f) shall not include a child overseas supported by the member by charitable donation.[7]

(3) An appropriate administering authority may treat as an eligible child:
a) a child of the member, or
b) a child who at the member's death was wholly or mainly financially dependent on the member

who commences full time education or [?full time?] vocational training after the member's death and after he reaches the age of 18, until he reaches the age of 23 or ceases the full time education or [?full time?] vocational training, whichever is the sooner.

(4) In the case of an eligible child falling within paragraphs (1)(c), 1(d) or (3), an appropriate administering authority may –
a) treat education or training as continuous despite a break; and
b) suspend payment of any entitlement to benefits under regulation 28, 34 or 37 during such a break.

(5) A child's pension only remains payable for so long as he remains an eligible child.

Similar changes would be need to the 1997 Regulations and the 1995 Regulations[8] taking account, of course, of the transitional protections afforded by The Taxation of Pension Schemes (Transitional Provisions) Order 2006 [SI 2006/572].

If the above is not taken forward then, with regard to the amendment made to regulation 44 of the 1997 Regulations by the Local Government Pension Scheme (Miscellaneous) Regulations 2008 [SI 2008/2425], the words "of the 1997 Regulations" in regulation 44(5)(b) should be deleted.

***Benefits Regulation 27(2):*** Given that regulations 24, 33 and 36 do not specify that the sutrvivor pension is payable from the day following the date of death, either
a) regulation 27(2) should be deleted, or
b) regulation 27(2) should be amended to read "The pension is payable from the day following the date of death" and regulations 24, 33 and 36 should have the equivalent wording inserted.

[7] This is to ensure that where a member pays, say, £100 a month via a charity to support a named child overseas, a child's pension would, in those circumstances, not be payable.
[8] The 1995 Regulations need amending as children's pensions will be / are payable under those Regulations to the children of deceased pensioners and, more likely, deceased deferred pensioners who left prior to 1 April 1998.

***Benefits Regulation 29(2):*** As regulation 29(1) says that the regulation only applies to a member who leaves his employment and regulation 29(2) says that the deferred benefit can only be calculated at the date of leaving the employment, it appears that technically benefits for an optant out cannot be calculated and awarded until such time as the member ceases employment. However, this seems to be at odds with regulation 55(7)(b) of the Administration Regulations. In order to ensure that the Scheme is easily able to comply with:

a) the provisions of regulation 27A of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (SI 1991/167) which requires that members be informed of their leaver rights and options within 2 months of making a request or within 2 months of the employer or the member notifying the administering authority that pensionable service has terminated, and
b) Parts and of the Pension Schemes Act 1993 (right to a Cash Equivalent Transfer Value), and
c) regulation 3 of the Occupational Pension Schemes (Transfer Value) Regulations 1996 (SI 1996/1847) which provides for the right to a CETV of post 5th April 1988 benefits upon opting out,

regulations 29(1) and (2) ought to be amended to permit the benefits to be calculated and awarded upon opting out. However, the regulations should not permit payment until such time as the person ceases local government employment (as defined in Schedule 1 of the Administration Regulations).

***Benefits Regulation 29(3):*** This regulation ought to commence "Subject to regulations 30 and 31 and to regulation 50(2) of the Administration Regulations" in order to recognise that the member can defer payment beyond age 65.

***Benefits Regulation 29(5):*** The words "or any part of it" should be deleted as, as far as I am aware, there is no provision for an early leaver to choose to take only part of their deferred benefits at age 65.

***Benefits Regulation 30(1):*** Regulation 30(1) needs to be amended to specify to whom the member has to make an election for early payment.

***Benefits Regulation 30(6):*** To be consistent with regulations 18(4A) and 18(4B), two more paragraphs should be added to regulation 30 as follows:

(7) Paragraph (6) only applies to a member whose active membership has been continuous with that same employer throughout that period.

(8) For the purposes of paragraph (7), the active membership of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply shall be treated as being continuous with the transferee employer.

Consideration needs to be given to the need to build in the age 55 increase into regulation 31 of the 1997 Regulations and regulation D11 of the 1995 Regulations? As I understand the provisions of Section 165 of the Finance Act 2004 and the protections in paragraph 22 of Part 3 of Schedule 36 to the Finance Act 2004 (see Annex 2):

1. Members who left with a deferred benefit prior to 6th April 2006 can retain age 50 ERD (forever) - which both the 1995 Regulations and the 1997 Regulations provide for.

2. Members who left with a deferred benefit on or after 6th April 2006 and before 31st March 2008 and who were [active?] members of the scheme on 5th April 2006 can retain age 50 ERD (forever) - so these cases are OK under the wording of the 1997 Regulations.

3. Members who left with a deferred benefit on or after 6th April 2006 and before 31st March 2008 and who were not [active?] members of the scheme on 5th April 2006 can retain age 50 ERD until, at the latest, 5th April 2010, whereupon the age for ERD rises to 55 - which the 1997 Regulations do not currently provide for.

It seems, therefore, that only the 1997 Regulations require amendment, and then only in cases covered by item 3 above. If the 1995 or 1997 Regulations were amended to increase the ERD to 55 for any other cases, those deferred members who would be affected would surely opt out of the change (as provided for in section 12(4) of the Superannuation Act 1972) in order to protect the age 50 payable date. Thus, there seems no point in amending the 1997 and 1995 Regulations in cases other than 3 above (although, even in those cases, would the requirements of section 12(4) of the Superannuation Act 1972 take precedence over the Finance Act 2004?).

***Benefits Regulation 31(1):*** Regulation 31(1) does not specify to whom the member has to make an election for early payment. Given the requirements of regulation 31(2) the regulation should be amended to specify that the election has to be made to the former employing authority.

***Benefits Regulation 31(2):*** Regulation 31 is not clear. Paragraph (1) simply says that a person who is permanently incapable of his former job by reason of ill health or infirmity of mind or body can ask for payment of his benefits. Paragraph (1) is, therefore, essentially the criteria under which a member can apply for payment of the benefit and makes no mention of him / her being unable to obtain gainful employment before normal retirement age or for at least three years. Therefore, if the medical practitioner agrees that the deferred member satisfies the criteria of paragraph (1), i.e. permanently unable to do the former job, then there would be no grounds for the employer refusing to put benefits into payment. If the intention is that benefits can only be paid if the criteria in paragraph (1) are met AND the person is unlikely to be able to obtain gainful employment before NRD or for at least three years, regulation 31 needs to say so. It doesn't do so at present as there is nothing in regulation 30(1) which says the requirements of regulations 30(1) AND 30(2) both have to be met (although I assume that is what is intended).

***Benefits Regulation 33(2):*** Regulations 24(2), 33(2) and 36(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 need to be amended to commence with the words "Subject to regulations 20(4)(a) and 20A of the 1997 Regulations, as saved by regulation 2 of and schedule 1 to, the Transitional regulations and regulations 14, 14A or 15, and regulations 23 to 26 of the Administration Regulations,". This is to ensure that the benefits under regulations 24(2), 33(2) and 36(2) take into account any Pension Debit suffered by the member and any increase in survivor benefits purchased by the member.

***Benefits Regulation 35(3):*** This regulation needs to be amended to provide that any abatement reduction at the date of death due to re-employment should be ignored when calculating 10 times the pension in payment. Also, the regulation needs to be amended so that the 10 year calculation is reduced not just be the amount of any retirement pension paid to the deceased member but also by the amount that would have been paid to him / her if abatement had not applied. For example, take a case where a pensioner dies after 6 years on pension but for 5 of those years the pensioner had been re-employed and the pension had been abated to £nil. The death grant should be 10 x pension less 1 year of pension paid less 5 years of notional pension paid leaving a death grant of 4 years pension (not 10 years pension less 1 year of pension paid leaving a death grant of 9 years pension). These two points can be overcome by amending regulation 35(3) to read "The death grant is his pension in payment

multiplied by 10, ignoring any reduction due to abatement under regulation 71 of the Administration Regulations, but the amount so calculated is reduced by the amounts of any retirement pension paid to him or that would have been paid to him had his pension not at any time been subject to abatement under regulation 71 of the Administration Regulations."

An additional regulation (i.e. 35(4)) needs to be added to accord with regulations 23(5) and 32(4).

***Benefits Regulation 36(2):*** Regulations 24(2), 33(2) and 36(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 need to be amended to commence with the words "Subject to regulations 20(4)(a) and 20A of the 1997 Regulations, as saved by regulation 2 of and schedule 1 to, the Transitional regulations and regulations 14, 14A or 15, and regulations 23 to 26 of the Administration Regulations,". This is to ensure that the benefits under regulations 24(2), 33(2) and 36(2) take into account any Pension Debit suffered by the member and any increase in survivor benefits purchased by the member.

***Benefits Regulations 36(2), 37(2) and 37(3):*** It appears that a survivor benefit calculated using the formula contained in regulation 36(2) could, in a very limited number of cases, result in an unauthorised payment where the member dies after attaining age 75. Paragraphs 16 to 16C of Part 2 of Schedule 28 to the Finance Act 2004 appear to restrict the dependants' pensions to no more than the pensioner was in receipt of in the previous 12 months plus 5% of any tax free lump sum that had been paid to the member. This could cause difficulties in cases where the member had taken maximum commutation and/or the member's pension had been paid at an actuarially reduced rate, or where the member had commuted his pension on the grounds of serious ill health (and possibly where the member's pension had been subject to abatement during the previous 12 months). If, in the case of a death after age 75, the survivor's pension exceeds that in payment to the deceased at the date of death, the excess would represent an unauthorised payment, reportable to HMRC.

**Other**

Shouldn't the provisions of regulations 13, 17, 18, 23, 24 and 25 of the LGPS (Transitional Provisions) Regulations 1997 be replicated or saved (with appropriate amendments)?

The old K1 provisions need to be reinserted into the 1997 Regulations (from which they had been inadvertently omitted) and then they need to be added to the "Do not revoke" list in Schedule 1 of the Transitional Provisions Regulations. I can supply the necessary background details if required.

A provision needs to be introduced into the Benefits Regulations to provide that where a member dies before a refund of contributions has been repaid such contributions shall be treated as a lump sum death benefit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004. This provision also needs to be built into the 1997 and 1995 Regulations.

I think that each separate employment and each AVC "pot" should be regarded as separate arrangements for the purposes of the Finance Act 2004. I can supply extra information on this if required.

The extant provisions of the Local Government (Discretionary Payments) Regulations 1996 need updating (and, in fact, are in need of a general overhaul).

The Local Government Pension Scheme (Miscellaneous) Regulations 2008 [SI 2008/2425] made various amendments to the 1997 Regulations. However, I believe the amendments made to regulation 38 (death grants),

44 (meaning of eligible child), 49 (commutation: small pensions), and definition of "Occupational pension scheme" in Schedule 1 need to be made to the equivalent regulations / schedule in the Local Government Pension Scheme Regulations 1995. With regard to the amendment made to regulation 44 of the 1997 Regulations the words "of the 1997 Regulations" in regulation 44(5)(b) should be deleted.

**GAD Guidance – clarification required**

GAD guidance on ARCs (Admin Regs 23(6), 24(3), 40(3) and Benefits Regs 13 and 14(3))

- See the final paragraph under the comments above on Benefits Regulation 13(1).

- If, at the date of flexible retirement, the ARC contract has not been completed and the member has drawn some or all of their accrued additional pension, can the member carry on paying ARCs under the original terms (as he has not ceased to be an active member) and, if so, should (as seems logical) the same initial PI date which is being used to increase the value of the ARCs being drawn on flexible retirement also be used when the benefits from the remainder of the ARC contract are drawn? (This mirrors the comment above on Administration Regulation 24).

- Where a member chooses to draw some, but not all, of their benefits on flexible retirement how will the amount of additional pension purchased by ARCs (or granted by the employer) be treated (i.e. will they only be able to draw some of it in the same proportion as that part of their post 31st March 2008 benefits drawn)?

- In paragraphs 2.5.2 and 2.14 delete the second "had" in the final sentence and in 2.5.8 delete the first "equal".

- Paragraph 3.1 says that contributions may be paid over a number of years not exceeding the period to 65. However, the combination of age and contract length in the tables only ever add up to a maximum of 64. Does paragraph 3.1 therefore need amending or do the tables need amending?

- In paragraph 3.7, after "who leaves service" please add "or who opts out of active membership"

- If a member dies in service and is buying additional pension for just himself / herself then there is no benefit payable from the fund. However, there are a number of inconsistencies in the GAD guidance which need to be corrected; for example.

  paragraph 2.2 says:

  *A member may purchase additional pension for the member only or for the member and his or her dependants. When an employer purchases additional pension, it will be additional pension for the member only.*

  and paragraph 2.5.9 says:

  *No additional pension benefit is payable if the member dies in service.*

  This all seems clear and straight forward BUT paragraph 4.3 says:

*..... If a member is awarded an ill health pension or dies early in an additional pension contract then this is likely to cause a strain on the fund. There may also be a strain following payment of a lump sum contribution if a member is awarded an ill health pension from an early age or dies leaving a young spouse, civil partner or nominated cohabiting partner.*

With regard to the first sentence of paragraph 4.3 above, if the member is paying ARCs to provide a pension for themselves only, how (given what paragraph 2.5.9 says) can there be a strain on Fund cost upon death in service. Perhaps the first sentence in 4.3 above should be amended to read "If a member is awarded an ill health pension or, having paid ARCs to also purchase dependants' benefits, dies early in an additional pension contract then this is likely to cause a strain on the fund." Additionally, given that only an employer can pay a lump sum contribution (which does not purchase any spouse's, civil partner's, co-habiting partners or children's pensions), the words "or dies leaving a young spouse, civil partner or nominated cohabiting partner" ought to be deleted from paragraph 4.3

- An additional pension granted by the employer will be indexed from the date the lump sum payment is made by the employer and any additional pension purchased by the member via ARCs will be indexed from the moment the contract commenced. When the additional pension is brought into payment, how is the PI to be calculated?

  Paragraph 2.5.10 of the GAD guidance says:

  *The rate of additional pension is increased with reference to the RPI from the date of the first contribution/ lump sum payment to the date of award of benefits. Once in payment, the additional pension is increased with reference to the RPI.*

  Thus, to fully comply with the GAD guidance, one would have to know what the accrued PI is up to the date the pension commences. The RPI table will not be published until at least a month after leaving so there will be a problem in that, at the point benefits come into payment, administrators will not know exactly how much to pay. If this interpretation is correct then the PI date for the additional pension after it has been brought into payment ought to be the date the pension commences (because the member will already have been paid full PI up to that date). However, it would have been simpler if the guidance had said that when the additional pension comes into payment it should include PI up to the last annual PI Order and then a full years PI would be applied at the following PI Order to the additional pension in payment. If there was no PI at the last PI Order (because the employer made their lump sum payment or person started paying the ARCs after about mid March preceding the Order) then the PI at the following PI Order would be based on a PI date equal to the date the employer made the lump sum payment or the date the person started paying the ARCs. Also, I assume that the reference in 2.5.10 to "from the date of the first contribution" means "from the first day of the pay period in which the first contribution is paid" as opposed to "from the pay day in which the first contribution is paid". Is my assumption correct?

  One further point to cover concerning PI is that some members who were active members at 31st March 2008 will retain the right to receive benefits on or after age 50 and before age 55 if, before 1st April 2010, they are retired on the grounds of redundancy or business efficiency or the employer agrees to early payment of benefits. It is assumed that in such cases, and regardless of the wording of paragraph 2.5.10 of the GAD guidance, PI would not be added to the additional pension until age 55 (as is the case for all other official pensions). Perhaps this needs to be made clear in the GAD guidance.

GAD transfer guidance dated 28th April 2008 (Admin Regs 78, 79, 84 and 85(1))

- The guidance should clarify that married factors are to be used in the calculation of non Club transfers in and for all transfers out where the administering authority hold a verified nominated cohabiting partner election form which was signed on or before the Relevant Date.

- Similarly, for Club transfers in, the guidance needs to clarify that the married factor should be used where there is verified nominated cohabiting partner election form at the date the transfer is received (regardless of the marital status used by the sending scheme).

- The guidance needs to clarify whether a transfer out can be made in respect of a female with a GMP who has attained SPA (I don't think such a transfer is permitted except for an optant out).

- There appears to be a problem in respect of members who joined the LGPS after 30th September 2006 with no previous LGPS membership (and who therefore have an NRD of age 65 and no 85 year rule protection) in respect of whom a transfer is received from a Club scheme that also has an NRD of 65. As the sending scheme will use standard age 65 club factors (issued by the Cabinet Office on 2 February 2006) to calculate the transfer value and administrators of LGPS funds will use adjusted age 60 factors to calculate the service credit, the service credit awarded in the LGPS will be less than the total service in the sending scheme, even though both schemes have an NRD of age 65.

- A consolidation of all GAD guidance with respect to the calculation of individual incoming and outgoing transfers would be welcome.

- Paragraph 1.7 – I do not understand why the guidance states that Funds should contact the LGE for advice on Community Scheme transfers when regulation 85(1) of the LGPS (Administration) Regulations 2008 clearly states that such transfers should be dealt with in accordance with guidance issued by GAD. I believe that paragraph 1.7 should be amended to say something like "Community Scheme transfers into the LGPS are not covered by this guidance. Funds should contact GAD on an individual basis when dealing with a potential transfer in under regulation 85 of the Administration Regulations".

- Paragraph 2.1 says:

  *2.1 Cash equivalents for members with no service after 31 March 2008 can be calculated using the guidance in force at that date. Members with some or all of their service after 31 March 2008 will require different treatment as described below.*

  Presumably, given paragraph 1 of the GAD transfer guidance note dated 18 November 2008, this paragraph should be deleted.

- Paragraph 2.2 – This needs to specify that added years purchased under regulation 55 of the LGPS Regulations 1997 should, where they are purchasing a 1/80th pension and 3/80ths lump sum, have the pension and lump sum factors applied.

- Paragraph 2.8 – Part D membership is shown as "membership from 1st March 2020". Of course, it should be shown as "membership from 1st April 2020".

- Paragraph 2.10 – this says that the taper period is "the number of years between 31st March 2016 and the date on which the member would first satisfy the rule of 85 and would be aged 60 or over". I believe the word "between" should be "after" and that when determining the date on which the member would first satisfy the rule of 85 and would be aged 60 or over, practitioners should use the day before a birthday if the member meets the 85 year rule on a birthday, or use the day the 85 year rule is met if this falls on the

completion of a whole year of membership rather than on a birthday. If my view is correct, then the taper period in example 2 in section 4 of the guidance should be based on 2 years 91 days and not 2 years 93 days.

- Paragraph 2.10 – in the last sentence, the words "and no lump sums are accrued subject to tapered protection" should read "and no accrued lump sums are subject to tapered protection" (because all accrued lump sums relate to membership that is treated as pre 1st April 2008 membership and so is fully protected).

- Paragraph 2.12 says:

  *2.12 If the fund has previously received a non-club transfer in respect of the member, then an underpin applies in the case of a non-club transfer value calculation. The underpin is equal to the amount of the transfer received plus member contributions paid to the LGPS.*

  If paragraph 2.1 is not deleted (see comment above) it would appear that the minimum transfer out underpin mentioned in paragraph 2.12 will only apply to members where some or all of their LGPS membership falls after 31 March 2008 as, according to the extant paragraph 2.1, transfers for a member with no service after 31 March 2008 should continue to be calculated in accordance with the guidance in force at that date. The guidance in force at 31 March 2008 did not include any provision for an underpin. Is this intended?

  Also, what about interfund adjustments? These are now calculated using non-Club factors. Is it intended that there should be a minimum transfer underpin when calculating an interfund adjustment CETV?

  See also the comment later regarding whether or not there should be an underpin in the case of Pension Sharing CETVs and CEVs.

- There is a conflict between paragraph 2.16 of the GAD guidance, which says a member can make a request for a transfer out up until age 64, and the provisions of the Pension Schemes Act 1993. Although, because of the way the Act defines "normal pension age", there would only be an overriding statutory right to a CETV after age 59 or six months after leaving (where the date of leaving occurs after 58 ½ and before age 59), the LGPS – via the GAD guidance (plus see my comment under regulation 78 of the Administration Regulations) – goes beyond this. However, because the LGPS normal retirement age is age 65, the GAD guidance should permit a CETV up to age 64 or six months after leaving (where the date of leaving occurs after 63 ½ and before age 64).

- Paragraph 3.1 of the guidance should be amended to state that, due to the provisions of regulation 84(4) of the Administration Regulations, transfers in are not permitted if the member has attained the age of 65 at the Relevant Date (and not age 64 ½ as currently stated in the guidance).

- Paragraph 3.4 of the guidance states that for a member who joins the LGPS after 31st March 2008 but has protection under the 85 year rule (due to previous membership before 1st October 2006), the service credit will be based on a Normal Retirement Age of 65 and an accrual rate of 1/60th thereby generating an inflated service credit. However, that inflated service credit would also drag forward the CRA under the 85 year rule (as all membership counts towards the 85 year rule) as per paragraph 3.9 of the guidance. It does not seem correct therefore to say that the service credit for such a person should be based on 60ths and an NRD of 65.

- Paragraph 3.4 – the reference to "not a member on 31st March 2008" should, more correctly, say "not an active member on 31st March 2008"

- Paragraph 3.8 – this requires that the service credit from a Capped Club transfer should be multiplied by the ratio of the Club earnings cap to the member's pay in the LGPS. Does this means the pay used by the sending scheme in the calculation of the transfer value (which could include part of one financial year's cap and part

of the previous financial year's cap), rather than the earnings cap at the point of leaving the former scheme or at the point of joining the LGPS, and does the "member's pay in the LGPS" mean the pensionable pay on joining the LGPS, rather than the pensionable pay in the LGPS at the "relevant date" used in the sending scheme's calculation?

- Paragraph 3.9 - the reference to "before or after 1st April 2008" should, more correctly, say "before, on or after 1st April 2008"

GAD interfund transfer guidance dated 2nd May 2008 (Admin Regs 86(2), 86(7) and 44(5))

- Paragraph 1.1 – the statement that regulation 86 of the LGPS (Administration) Regulations 2008 applies where a member ceases active membership of one fund and immediately commences active membership of another fund is not strictly correct. It applies even if there is a gap in employment between leaving one fund and joining another.

- Paragraphs 1.1.1 to 1.1.3 – there is a further category in respect of whom an Interfund transfer can be paid. That is where a member has a frozen refund (by virtue of either regulation 46(3) or regulation 47(4) of the LGPS (Administration) Regulations 2008, or the equivalent regulations under the LGPS Regulations 1997)

- Paragraph 2.4 says "The effective date of the calculation should be the date of the election that triggers the transfer" without clarifying what is meant by an "election". Regulation 16 of the LGPS (Administration) Regulations 2008 and regulation 4 of the LGPS (Transitional Provisions) Regulations 2008 do not use the word "election" but merely state that the member may "choose", by giving notice in writing, to aggregate membership. Regulation 86 of the LGPS (Administration) Regulations 2008 similarly refers to making a "choice" (apart from when talking about aggregation of concurrent membership where the Regulations do use the word "election"). Although the Regulations do not refer to an "election" but refer instead to a choice by giving notice in writing, I am of the view that the act of giving notice in writing must itself represent an election. Thus, the effective date for the IFA calculation will be the date the member first chooses in writing to aggregate the membership (which could, for example, precede the date the member fills in a transfer declaration form). Interest would be payable in accordance with paragraph 2.6 of the GAD guidance if the IFA is not paid within 3 months of the date the member first chooses in writing to aggregate the membership (i.e. within 3 months of the "election" date). In frozen refund cases I am aware that there has been some debate as to whether or not the member has to elect to aggregate the membership or whether, as seems to be required by Regulations 86(1)(a) and (b) and 86(2) of the LGPS (Administration) Regulations, an IFA is automatically payable without the need for an election to aggregate benefits. For Funds who take the latter view, the effective date to be used in the calculation of the IFA would be the date the person becomes a member in the new fund. If a Fund takes the former view, the effective date to be used in the calculation should be the date of the member's election in writing to aggregate. However, it would be helpful if all of this could be clarified in the GAD guidance.

- See the comment above (under GAD transfer guidance dated 28th April 2008) regarding an underpin in the case of interfund CETVs.

- The GAD guidance also needs to specify how NI Modification should be dealt with when calculating an interfund CETV. Funds have, of course, not had to bother with NI Modification for transfers in since 1980 (because transfers in since then have bought unmodified service). And for old style IFAs administering authorities didn't have to worry because they were dealt with on a simple pay x service x factor calculation (where NI Mod was an irrelevance). However, now that IFAs are to be calculated using non-club transfer in

factors, there is a problem (as there are no NI Modification factors in the non-club transfer in tables). There are four possible solutions:
a) all Funds are told to ignore the NI Mod (i.e. apply the pension factor to the full, unmodified pension)
b) all Funds are told to apply the pension factor to the modified pension
c) all Funds are told to use the NI Mod factors in the Club tables
d) GAD issue specific NI Mod factors for IFAs

My personal preference, for simplicity, would be to run with (a) on a knock for knock basis. It means that the sending Fund would pay out a bit more than the value of the benefits in their Fund (but this will go some way towards compensating the receiving Fund for the increase in liability due to the likely higher pay the member will be in receipt of from their new employer).

GAD late retirement guidance dated 28th April 2008 (Benefits Regs 17(2) and 29(5) and para 5(5) of Schedule 8 to the 1997 Regs by virtue of Schedule 1 to the Transitional Provisions Regs)

- The GAD guidance is headed "Retirements on or after 1st April 2008" and refers to benefits payable under the LGPS (Benefits, Membership and Contributions) Regulations 2007. It would appear, therefore, that the former GAD guidance on Late Retirements is still to be applied in cases where the member ceased prior to 1st April 2008 and to councillor members. Could this be clarified?

- Paragraph 1.3 – The statement made here needs to be backed up by an amendment to regulation 16 of the benefits Regulations.

- Paragraph 2.3 - should the percentage uplift be applied to all of the pension and lump sum? Take, for example, a member with a pre 13th November 2001 AVC contract who, at age 68, decides to convert the AVC pot into membership under protected regulation 66(8) of the LGPS Regulations 1997 and retires at age 69. If the age 68 factors for use in the service credit calculation make allowance for the benefit not being paid any earlier than age 68 (as suggested in paragraph 2.8 of the GAD guidance on actuarial reductions applied on early and flexible retirement), would it be appropriate to also provide an uplift on the purchased membership under the GAD late retirement guidance from age 65 or should the uplift on this membership only be from age 68?

- Paragraphs 2.4 and 2.7 – paragraph 2.4 states "The increase under this guidance should be based on the pension after PI has been included if there was a period of deferment" and paragraph 2.7 says "Once in payment, pensions should be increased in accordance with the Pensions (Increase) Acts, and based on the day of actual retirement, not the member's 65th birthday." However, this appears to conflict with section 8(2)(a) of the Pensions Increase Act 1971 which says "A pension . . . shall be deemed for the purposes of this Act to begin on the day following the last day of service in respect of which the pension is payable, except that-

  (a) an earnings-related pension based, directly or indirectly, on emoluments received for a period not ending with the last day of that service …… is to be deemed to begin on the day following the last day of that period"

  Thus, section 8(2)(a) of the Pensions Increase Act 1971 requires that Pensions Increase is applied from the day following the end date of the years pay used in the calculation of benefits. This would cover, for example, cases where a deferred member chooses to defer payment beyond age 65 or cases where payment is deferred beyond age 65 and an earlier years pay (i.e. earlier than the final years pay) is used in the calculation

of the benefits. The GAD guidance, in the second example calculation, says that the PI date should be taken as 1st October 2008 whereas the PI Act 1971 indicates that the PI date should be 30th May 2008. Based on the GAD guidance, the member in the example would appear to be losing out on the effect of PI in respect of the period from 30th May 2008 to 30th September 2008.

- Is the actuarial increase to be applied for the period from, and including, the 65th birthday, or for the period from the day following the 65th birthday? Paragraph 2.3 says it is the period "after the birthday" but "before retirement". However, does this mirror the wording of regulation 17 of the Benefits Regulations?

- If a member joins the scheme at age 67 and retires at age 70, is the actuarial increase to be calculated based on a period of 5 years beyond age 65 or, as the member did not join until age 67, is the actuarial increase only to be calculated based on a period of 3 years? I presume that it should be based on 5 years and not 3 years, as I assume the factors are based on life expectancy beyond age 65 (not on whether the member joined pre or post age 65). Is my assumption correct?

- The guidance does not specify how the increase should be calculated in the case of a member drawing benefits post age 65 against whom there is a Pension Sharing Order. Should the increase be applied to the member's pension and lump sum (if any) pre or post the application of the Pension Debit?

- As far as any GMP is concerned, where a person carries on in employment beyond age 60 (woman or age 65 (man) the GMP is not payable until the person leaves that employment. However, if the member carries on in the same employment for 5 years after 60 (woman) or 65(man) and doesn't then leave she / he is entitled to payment of the GMP 5 years after age 60 (woman)/65(man) unless she / he consents to a postponement, until age 75 at the latest. Thus, unless the member consents to a postponement, the GMP would be payable, at the latest, at age 65 for a woman and age 70 for a man. The guidance does not specify how, in these cases, the increase should be calculated (given that the GMP part of the pension will have been brought into payment prior to the rest of the pension benefits).

<u>GAD guidance on choice of early pension and flexible retirement dated 11 April 2008 (Benefits Regs 18(2) and 30(4) and Transitional Reg 3(2) and para 7(2) of Schedule 2 to the Transitional Regs)</u>

- The guidance makes no mention of the reduction factors to be applied in the case of members who were covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 [transferred nurse training staff]. Although those regulations were repealed by the LGPS (Transitional Provisions) Regulations 2008 I am of the view that regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 should continue to be honoured on the grounds that to do otherwise would break the legislative commitment made to those staff upon transfer to the LGPS. Hence, such staff ought to continue to have the NHS actuarial reduction factors applied to them rather than the LGPS actuarial reduction factors. This should be mentioned in the GAD guidance.

- Does the old actuarial reduction guidance still apply to pre 1st April 2008 leavers and to councillor members?

- Paragraph 2.6 – this implies that membership could have been credited under regulation 40 of the LGPS (Administration) Regulations 2008 prior to 1st April 2008 and so count as Part A membership. Clearly this cannot be true, as a payment under regulation 40 of the Administration Regulations can only relate to augmented membership granted by the employer under regulation 12 of the LGPS (Benefits, Membership and Contributions) Regulations 2007. That membership can only count as Part D membership. Augmented

membership granted by the employer following a resolution passed by the employer under regulation 52 of the LGPS Regulations 1997 should, in my view and perhaps contrary to what could be read into the wording of paragraph 2.6, always count as Part A membership as the resolution was passed prior to 1st April 2008 (even if payment for it is not made, or the agreement to make extra contributions for it is not reached, until on or after 1st April 2008). This view is based on my interpretation that the augmented membership was awarded under regulation 52 of the LGPS Regulations 1997 (thereby counting as pre 1st April 2008 membership) and not under regulation 12 of the Benefits Regulations. The GAD guidance needs to be updated accordingly.

- Paragraph 3.1 – although at the end of the first sentence the guidance only refers to "redundancy" this should say "redundancy or business efficiency".

- Paragraph 4.1 – although this paragraph only refers to an "election under Regulation 30(1)" it should also refer to an election under Regulation 18(1) of the Benefits Regulations.

- Paragraph 4.2 - there appears to be a possible inequity in the calculation of the taper in cases where a member has a NRD under the first bullet point of paragraph 2.2 of the guidance which falls before the date the member meets 85 year rule (e.g. where, for example, a pre 1st October 2006 member has some Qualifying Service from, say, a pre 1975 or pre 1978 split refund or from non-pensionable part-time employment that counted as Qualifying Service but which the member did not buy back under the part-time buy-back provisions). Paragraph 4.2 describes the taper as:

  "*The tapered reduction factors for Part B and C membership of Group 2 members are calculated according to the taper period which is the number of years between 31st March 2016 and the date on which the member would first satisfy the rule of 85 and would also be aged 60 or over. Part-years should be taken into account in this calculation the result of which should be between 0 and 4 years. The interpolation factor (FI) is then equal to the taper period divided by 4 years. Then the tapered reduction factors are interpolated from the CRA and age 65 factors as follows:*

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

  $$RG_{Taper} = F_1 \times LS_{65} + (1 - F_1) \times RG_{CRA"}$$

  So, although PTaper and RGTaper are a percentage reduction somewhere between the period to age 65 and the period to CRA, which paragraph 2.2 defines as follows:

  *CRA is "The age of the member at the earliest of:*

  - *the member's pre 1st October 2006 Normal Retirement Date (under Regulation 25 of the 1997 Regulations, prior to being amended by SI 2006/966);*
  - *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 the Transitional Schedule) and*
  - *age 65"*

  the taper period (F1) is only measured to age 60 or the 85 year rule date, whichever is the later, (i.e. it is not measured to the former NRD if this is before the date the 85 year rule is met but after age 60).

Thus, one part of the formula (PCRA or RGCRA") is measured to CRA (which is assessed by reference to 3 dates) and another part (F1) measured by reference to only 2 dates. It seems to me that, to overcome this anomaly, paragraph 4.2 should be amended to measure the taper period (F1) to the date on which the member would satisfy **the earlier of the rule of 85 date and former protected NRD and would also be age 60 or over.**

There also appears to be a further tweak necessary to paragraph 4.2. It says that the taper period is "the number of years **between** 31st March 2016 and the date on which the member would first satisfy the rule of 85 and would be aged 60 or over". I believe the word "**between**" should be "**after**" and that when determining the date on which the member would first satisfy the rule of 85 and would be aged 60 or over, practitioners should use the day before a birthday if the member meets the 85 year rule on a birthday, or use the day the 85 year rule is met if this falls on the completion of a whole year of membership rather than on a birthday.

Although paragraph 4.2 includes a formula for RGTaper, I believe that no such formula is required. RGTaper is the percentage reduction to be applied to Part B and Part C membership for a Group 2 Member for Retirement Grant purposes. Part B and C membership collectively is from 1st April 2008 to 31st March 2020. That's all new-look 1/60th pension only so there is no automatic lump sum to which RGTaper could be applied. If the actuarial reduction was applied POST commutation, then there would be a need for RGTaper. But the GAD guidance on commutation makes it clear that the actuarial reduction is applied to benefits first, and then the member can commute some of the reduced pension. So, any actuarial reduction would be applied to the pre 1st April 2008 pension and lump sum, and to the post 31st March 2008 pension (there is no post 2008 lump sum) and then the member can commute some of the reduced pension. As there is no initial post 31st March 2008 lump sum to which an actuarial reduction is to be applied, there can be no RGTaper. Examples 4A and 4B on, respectively, pages 18 and 20 of the GAD guidance confirms this as does paragraph 2.10 of the GAD guidance on Individual Incoming and Outgoing Transfers.

- Paragraph 6.6 – in the definition of "P" what is the "pensions increase multiplier"? Is it the notional multiplier at the last PI Order based on the member's PI date (i.e. the day following the last day of the period used in the final pay calculation)? Of course, this would not take account of any notional PI between the date of the last PI Order and the date of election for early payment of benefits.

- Paragraph 11.2 – the last sentence, which refers to "Part B Membership", should refer to "Part B, C and D Membership".

- The guidance does not seem to cater for group 2 members who could attain their CRA before the start of the taper period. None of the examples actually give an example of a Group 2 member who ceases active employment before the start of the taper period but to whom a tapered actuarial reduction is to apply. I can supply a worked example if required.

<u>GAD guidance on trivial commutation dated 21st February 2008 (Benefits Reg 39(2) and reg 156(3) of the 1997 Regs by virtue of Schedule 1 of the Transitional regs)</u>

- The above guidance is headed "Lumps sums paid on or after 1st April 2008". However, the guidance only refers to trivial commutation payments made under regulation 39 of the LGPS (Benefits, Membership and Contributions) Regulations 2007. It does not mention payments made under regulation 49 of the LGPS Regulations 1997 (i.e. payments made on or after 1st April 2008 to members who left prior to that date) or

under regulation 156(3) of those regulations and does not state that the trivial commutation guidance for regulation 49 dated 21st January 1998 and 18th May 2000 has been replaced. I assume, therefore, that the regulation 49 guidance (taking account of HMRC requirements) still applies to pre 1st April 2008 leavers, councillor members and Pension Credit members (although, in essence, it is hardly any different from the new guidance). Is my understanding correct?

GAD guidance on lifetime allowance and additional cash commutation (Benefits Reg 21(4) and para 5(2D) of Schedule 8 to the 1997 Regs by virtue of Schedule 1 to the Transitional Regs)

- On page 4 of the guidance, there is a section entitled, "Important notes" which give rise to a number of observations and considerations.

  The 3rd important note specifically states that where benefits are actuarially reduced, then it is benefits, after the actuarial reduction, that are to be used in determining the member's maximum PCLS. There is not an equivalent statement where the member's benefits are actuarially increased under regulation 17 of the Benefit Regulations. It is reasonable to assume that it is the post actuarially increased benefits which are used to determine the member's maximum PCLS where the member does not crystallise benefits until after his or her 65th birthday but it would be helpful if the GAD guidance confirmed this.

  There is no explicit mention of Pensions Increase (including PI on GMP increments) and / or the application of the formulae where the member is crystallising deferred benefits into payment. It appears reasonable to assume that the calculation of the maximum PCLS includes PI accrued between the cessation of active employment and the date the member brings the deferred benefits into payment, rather than calculating maximum PCLS and then applying PI to the resultant figure. I attach at Annex 4 a copy of worked examples. We believe that examples 1 and 3 are the correct approach but it would be helpful if this could be confirmed in the GAD guidance.

  There is no mention of requisite benefits. As membership for requisite benefits ceased accruing on 30th April 1995, the relevancy of the requisite benefits test has diminished over time for active members, and so the test appears to have been removed for post 31st March 2008 leavers. Is that correct?

  I believe the previous GAD guidance issued in respect of regulation 20 of the LGPS Regulations 1997 still applies to pre 1st April 2008 leavers and to councillor members. Is my understanding correct?

**GAD guidance – outstanding**

Guidance on flexible retirement (Benefits Reg 18(5)

Regulation 18 of the Benefits Regulations says:

*(1) A member who has attained the age of 55 and who, with his employer's consent, reduces the hours he works, or the grade in which he is employed, may make a request in writing to the appropriate administering authority to receive all or part of his benefits under these Regulations, and such benefits may, with his employer's consent, be paid to him notwithstanding that he has not retired from that employment.*

*(2) If the payment of benefits referred to in paragraph (1) takes effect before the member's 65th birthday, the benefits payable are reduced in accordance with guidance issued by the Government Actuary.*

*(3) But the employer may agree to waive, in whole or in part, any such reduction as is referred to in paragraph (2).*

*(4) Subject to paragraph (4A), in the case of a person who is a member on 31st March 2008, and who makes a request before 31st March 2010, paragraph (1) applies as if "the age of 50" were substituted for "the age of 55".*

*(4A) Paragraph (4) only applies to a member whose employment has been continuous with that same employer throughout that period.*

*(4B) For the purposes of paragraph (4A), the employment of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply shall be treated as being continuous employment with the transferee employer.*

*(5) The value of any benefits paid to a member under paragraph (1) shall be taken into account in any subsequent calculation of his benefits under regulation 16, 17, 19, 20, 30 or 31 in accordance with guidance issued by the Government Actuary.*

And regulation 3 of the Transitional Provisions Regulations says:

*(1) This regulation applies to a person who was an active member of the 1997 Scheme and becomes a member of the Scheme by virtue of regulation 2 of the Benefits Regulations.*

*(2) Notwithstanding the revocations effected by regulation 2, the regulations listed in the Schedule continue to have effect, subject to regulation 4, so far as is necessary so that-*
*(a) The person's total membership accrued in the 1997 Scheme in respect of, or calculated by reference to, his service before 1st April 2008, and the pension rights accrued at that date, are preserved; and*
*(b) his benefits under the 1997 Scheme are payable immediately where benefits become payable without reduction under regulations 16, 17, 19 and 20 of the Benefits Regulations, or with the appropriate actuarial reduction in line with guidance produced by the Government Actuary where benefits become payable under regulations 18 or 30 of the Benefits Regulations.*

*(3) But his pay, for the purposes of any calculation of benefits under paragraph (2), is calculated in accordance with regulations 8 to 11 of the Benefits Regulations.*

So, where an employer agrees to a reduction in hours or grade they can also agree to let the member take all or part of his accrued post 31st March 2008 benefits on flexible retirement (Benefits Regulation 18(1)). Where they do so, and regardless of whether the member draws all or just part of the post 31st March 2008 benefits, all of the pre 1st April 2008 benefits must be paid (Transitional Provisions Regulation 3(2)(b)).

The GAD guidance therefore needs to cover, amongst other matters:

- How to calculate the post 31st March 2008 benefits where the employer agrees to the member taking only part of their post 31st March 2008 benefits (plus all of their pre 1st April 2008 benefits). Where a member is granted flexible retirement at, say, 30th September 2009, can the member say:
    a) "I want to draw 50% of the value of the benefits accrued post 31st March 2008", or
    b) "I want to draw benefits built up between 1st April 2008 and 30th June 2009.", or

c) "Although the pension built up post 31st March 2008 is £500 p.a. I only want to draw £320 p.a."?

- How, too, will any actuarial reduction be calculated if (b) above applies, given that the date of flexible retirement is 30th September 2009? And what final pay should be used? Is it the year to 30 September, which seems reasonable, or the year to 30 June? This in turn will drive the PI date.

- If partial flexible retirement is taken, what is the effect on the 85 year rule for the remaining service going forward and on the amount of service/pension not drawn at the point of partial flexible retirement? Is this different compared to if the member takes full flexible retirement?

- Where a member chooses to draw some, but not all, of their benefits on flexible retirement how will the amount of additional pension purchased by ARCs (or granted by the employer) be treated (i.e. will the member only be able to draw some of it in the same proportion as that part of their post 31st March 2008 benefits drawn) and will the member be able to continue paying ARCs under the original contract (as he has not ceased to be an active member). If so, should (as seems logical) the same initial PI date which is being used to increase the value of the ARCs being drawn on flexible retirement also be used when the benefits from the remainder of the ARC contract are drawn?

- Where a member chooses to draw some, and not all, of their benefits on flexible retirement how will this work in relation to the amount of their accrued AVC pot i.e. will they have to take all of their AVC pot or can they just draw some of it?

- Where a member chooses to draw some, or all, of their benefits on flexible retirement how / when is any abatement and any clawback of Compensatory Added Years awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, and earlier equivalent regulations, to be calculated?

- How / when is a Pension Debit to be applied where a member draws some or all of their benefits on flexible retirement?

- How is a GMP included in a transfer in which purchases post 31st March 2008 membership to be dealt with if a member wishes to take partial flexible retirement?

<u>Protected rights factors</u>

- Updated protected rights factors[9] have not yet been received from GAD (to enable administering authorities to quote the split of the CETV between protected and non-protected rights).

<u>Treatment of ARCs included in a transfer from a Club scheme (or a cross border interfund adjustment)</u>

- It is not yet known how any ARCs included in a transfer from another Club scheme (or a cross border IFA) should be dealt with i.e. should the amount included in the transfer value purchase membership or a fixed amount of pension? If the former, the service credit would, according to the Club's 'Guide for members of club schemes' (see:

[9] See regulation 80 of the Local Government Pension Scheme (Administration) Regulations 2008.

http://www.civilservice-pensions.gov.uk/scheme_information/Public_Sector_Transfer_Club.html), have to be calculated as a non-Club transfer in. If the latter, how is the fixed amount of pension to be calculated? Early indications are that it should purchase a fixed amount of pension but when a decision has been taken this will need to be reflected in the GAD guidance.

Use of "new" Non-Club transfer in factor tables where the service credit would purchase Part A membership (i.e. a pension of 1/80th and a lump sum of 3/80ths or, in the case of conversion of a LGPS AVC pot to scheme membership, a pension of 1/80th)

- The GAD guidance for Non-Club transfers in stipulates that the tables in the guidance are for the sole purpose of calculating service credits for Non-Club incoming transfers in relation to members with an NPA of 65 buying 60ths benefits with a commutation option. The guidance does not specify how transfers that purchase Part A membership should be dealt with. A solution has been proposed i.e. to use the non-Club transfer in factors issued for Scotland (which are still based on a 1/80th and 3/80th accrual) but GAD need to clarify this within their guidance.

Conversion of LGPS AVC pot to scheme membership (Transitional Reg 2 and Schedule 1)

- The existing GAD guidance includes factors for protected cases under regulation 66(8) of the 1997 Regulations to adjust the service credits on account of the fact that such service credits produce no lump sum. However, given the fact that the normal Non-Club CETV factors have been updated (although we await guidance on how to calculate transfers that purchase Part A membership), I assume that GAD will issue new protected regulation 66(8) factors (including factors for those aged 65 and over). This guidance will need to refer to the current regulations and clarify, given that the service credit will count as type A membership, whether the service credit will now generate a 1/80th pension and 3/80ths lump sum (as there is no longer any overriding requirement for there to be no lump sum derived from the AVC conversion into membership). It will also need to clarify whether it, or the old guidance, applies to pre 1st April 2008 leavers.

Conversion of LGPS AVC pot to a "top up" pension i.e. a scheme annuity under regulation 26(5) of the LGPS (Administration) Regulations 2008 (Admin Reg 26(5))

- In these cases, given the change to the Non-Club transfer in factors (reflecting increased life expectancy), I assume that GAD will issue updated factor tables. The new guidance will need to refer to the current regulations and will need to clarify whether it, or the old guidance, applies to pre 1st April 2008 leavers. Until such time as new factors are issued, administering authorities will have no option but to continue to use the current scheme annuity factor tables. However, this only holds factors for married or single members. What factor should Funds use for a member who is not married but who has a nominated co-habiting partner?

- What is the rationale for not permitting councillor members to use their AVC pot to purchase a "top up" pension i.e. a scheme annuity?

Updated factors for Adjustment A in the GAD guidance on Pensioner Cash Equivalent on Divorce

- The GAD Guidance (entitled "Pensioner Cash Equivalent Factors on Divorce" which is dated 24th November 2008) contained the relevant Adjustment B factors in Tables 1.1 and 1.2 but we are awaiting updated Adjustment A factors.

Minimum transfer value underpin

- Does the minimum transfer value underpin for normal CETVs apply to Pension Sharing on Divorce CETVs (for active and deferred members) and CEVs (for pensioner members)?

Guidance on the application of Pension Debits and Credits (Benefits Reg 41 and regs 20A, 147(4)(b) and 149(2) of the 1997 Regulations by virtue of Schedule 1 to the Transitional Regs)

- Guidance on the above is required, given that the Pension Credit still currently generates a 1/80th pension plus, in some cases, a 3/80ths lump sum, whereas the Pension Debit member is currently accruing a 1/60th pension (with the option to commute). Also, the need for guidance is becoming urgent given that administering authorities only have 4 months to implement a Pension Sharing Order. PSOs issued in early October 2008 need to be implemented but we do not have updated Pension Credit factors.

- The Pension Credit factors have not been updated whereas factors for calculating CETVs and CEVs have been. This means that the Pension Debit and the Pension Credit are not being calculated on an equivalent basis.

- Furthermore, as there was a change in the percentage reduction factors in September 2006, and hence the conversion factors applying to CETVs, this has impacted on the pension credit factors. Take, for example, a male Pension Credit member aged 57 where the Pension Credit factor is 7.26. However, the factor applying in assessing any service credit for the Pension Credit member should be 12.23 i.e. 16.09 [the new CETV out factor] x 0.76 [the new actuarial reduction factor] and not 7.26. i.e. 10.84 [the old CETV out factor] x 0.67 [the old actuarial reduction factor].

- How / when is a Pension Debit to be applied where a member draws some or all of their benefits on flexible retirement?

Guidance on augmentation (Admin Reg 40(3) and Benefits Reg 12)

- The current GAD guidance on augmentation does not refer to the current regulations and does not, in any case, adequately cover the real cost of augmentation as it assumes that benefits will not be payable until, at the earliest, age 60 and does not reflect the move to a 1/60th accrual rate or longer life expectancy. Whilst the current guidance might be reasonably OK in the limited number of cases where an employer grants augmented membership to an active scheme member as, for example, a bonus or inducement to join / remain with the employer, the vast majority of cases are where augmentation is granted immediately prior to early retirement on redundancy or efficiency grounds. In the latter cases, the methodology used in the GAD guidance materially underestimates the true cost of augmentation. New guidance is needed to cover this. Also, the existing GAD guidance draws a distinction between cases where the augmentation affects a member's CRA and cases where it does not. However, any augmentation granted under the new scheme (regulation 12 of the Benefits Regulations) does not affect a member's CRA - see paragraph 3(2) of Schedule 2 to the LGPS (Transitional Provisions) Regulations 2008. Paragraphs 1.5.3 to 1.5.5 and Example 2 in the current GAD guidance should, therefore, now be ignored in England and Wales and the new GAD guidance (when issued) should take this into account.

Guidance on the limit on total benefits (Benefits Reg 22(1))

- We are awaiting formal guidance on the above calculation for:
    a) members without Primary or Enhanced Protection
    b) members with Primary Protection
    c) members with Enhanced protection (including the reduction for excess pre 6th April 2006 benefits)

Guidance on calculating the capital value of pension rights (Benefits Reg 22(3))

- We are awaiting formal guidance on the above calculation.

Guidance on mis-selling reinstatement costs (Reg 122A(4)(c) of the 1997 Regs by virtue of Schedule 1 to the Transitional Regs)

- Presumably there ought to be an instruction for Funds to use the current non-Club transfer in factors to work out the reinstatement cost.

Guidance on deduction for teachers' pension payments (Reg 142(4) and (5) of the 1997 Regs by virtue of Schedule 1 to the Transitional Regs)

- Presumably there ought to be an instruction for Funds to refer individual cases to CLG/GAD.

Guidance on tier 3 ill health pensions

- A policy decision needs to be taken to clarify when a suspended 3rd tier pension is again payable i.e. should such a suspended pension be payable:

  a) from age 65, unless the member chooses to defer drawing it at that time until no later than age 75, or
  b) **at any time from age 60 and before age 65 if the member chooses, or
  c) **on application from the member, at any time from age 50/55 and before age 60 if the former employer agrees (and the former employer can also agree to waive any reduction on compassionate grounds)
  d) from any age, if the member would satisfy the tier 1 or tier 2 ill health criteria

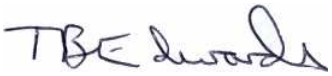
  ** in normal deferred benefit cases where a member asks for payment of benefits before 65, any actuarial reduction is applied to the pension before commutation. However, in a suspended 3rd tier ill health case, the member will already have received up to 3 years worth of unreduced pension and at the time of the original ill health termination may well have commuted part of that unreduced pension into a lump sum. How is this to be taken into account if the suspended pension is to be brought back into payment at an actuarially reduced rate prior to age 65? There is no GAD guidance dealing with this situation.

- Clarification is also needed on how tier 3 members are to be treated for Pension Sharing on Divorce purposes i.e. how do we work out a CETV value on their benefits during the initial payment period, or after the pension has been suspended, given that the member has already received some pension and all of their lump sum? Are their benefits to be valued using the transfer factors for a deferred member or the factors for a pensioner member? Will this differ depending on whether the pension is currently in payment or suspended?

Guidance on proposed new Benefits Regulation 14A and Administration Regulations 24A and 24B

If this regulation is introduced, the relevant GAD guidance will need to be issued.

Yours sincerely



Terry Edwards
Head of Pensions

**Annex 1**

**The Local Government Pension Scheme Regulations 1995**

**G1 Meaning of "child"**
For the purposes of these regulations "child" means a person who-
(a) has not attained the age of 17 years,

(b) has attained that age and has since been-
(i) receiving full-time education, or
(ii) undergoing a full-time course of training of not less than 2 years' duration for a trade, profession or vocation, either continuously or continuously with the exception of a period which the appropriate administering authority have in their discretion decided to disregard (on being satisfied that his education or training ought not to be regarded as completed), or

(c) has attained that age and is incapacitated by reason of ill-health or infirmity of mind or body which arose either-
(i) before he attained that age, or
(ii) while receiving such full-time education or training, or
(iii) during a period which the authority have decided to disregard under paragraph (b).

**G2 Meaning of "eligible child"**
(1) For the purposes of these regulations a child is an eligible child of a deceased person who was in a local government employment when he died and was then a member or a former member, if he is-
(a) the deceased's legitimate or adopted child,
(b)the deceased's step-child or illegitimate child,
(c) an adopted child of a person who has been married to the deceased, or
(d) a child accepted by the deceased as a member of the family,
and, in the case of a child within paragraph (b), (c) or (d), is wholly or mainly dependent on the deceased at the time of his death.

(2) For the purposes of these regulations a child is an eligible child of a person who has died after becoming entitled to a retirement pension if-
(a) he is a legitimate child of a marriage of the deceased which took place before the date on which he became entitled to the pension, and was born before the first anniversary of that date, or
(b) he is a child adopted by the deceased before he became entitled to the pension, or
(c) he is a child who was wholly or mainly dependent on the deceased both before he became entitled to the retirement pension and at the time of his death and is-
(i) the deceased's step-child or illegitimate child,
(ii) an adopted child of a person who married the deceased before he became entitled to the pension, or
(iii) a child accepted by the deceased as a member of the family.

**G10 Children over 17 in paid training**
(1) If a child in respect of whom a children's long-term pension is payable has attained the age of 17 years and is receiving remuneration in respect of full-time training for a trade, profession or vocation at an annual rate in excess of the indexed training rate, then-
(a) the annual rate of the pension is to be reduced by the amount of the excess, or

(b) if it results in a smaller reduction, the child is to be disregarded for the purpose of calculating the pension.

(2) In paragraph (1) "the indexed training rate" means the annual rate at which an official pension (within the meaning of the Pensions (Increase) Act 1971) would for the time being be payable if it had begun on 1st April 1994 and had then been payable at an annual rate of £1,450.

**The Local Government Pension Scheme Regulations 1997**

**44 Meaning of "eligible child"**
(1) Subject to paragraph (3), the child of a deceased member is an eligible child if he is wholly or mainly dependent on the member, and is less than 18 years of age, at the date of the member's death.

(2) But a child who is born on or after the first anniversary of the date of the member's death is not an eligible child.

(3) A dependent child who has reached the age of 18 but has not reached the age of 23 and is in full-time education or undertaking vocational training at the date of the member's death is an eligible child.

(4) An appropriate administering authority may treat a dependent child as an eligible child after he reaches the age of 18 and until he reaches the age of 23 if he commences full time education or vocational training after the date of the member's death.

(5) In the case of a dependent child falling within paragraph (4), an appropriate administering authority may -
(a) treat education or training as continuous despite a break; and
(b) suspend payment of any entitlement to benefits under regulation 45, 46 and 47 of the 1997 Regulations[10] during a break in education or training.

(6) An appropriate administering authority may treat a dependent child who is disabled within the meaning of the Disability Discrimination Act 1995 as an eligible child.

**46 Children's long-term pensions**
(10) If a child in full-time training for a trade, profession or vocation is receiving pay at an annual rate exceeding the training rate-
(a) the pension is reduced by the excess, but
(b) if the pension would be greater without the child, he need not be counted.

(11) In paragraph (10) "the training rate" means the current annual rate of an official pension which began to be paid on 1st April 1994 at an annual rate of £1,450.

**The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007**

**26 Children's long-term pensions**
(1) Subject to paragraph (3), the child of a deceased member is an eligible child if he is wholly or mainly dependent on the member, and is less than 18 years of age, at the date of the member's death.

[10] The words "of the 1997 Regulations" ought to be deleted.

(2) But a child who is born on or after the first anniversary of the date of the member's death is not an eligible child.

(3) A dependent child who has reached the age of 18 but has not reached the age of 23 and is in full time education or undertaking vocational training at the date of the member's death is an eligible child.

(4) An appropriate administering authority may treat a dependent child who commences full time education or vocational training after the date of the member's death as an eligible child after he reaches the age of 18 and until he reaches the age of 23.

(5) In the case of a dependent child falling within paragraph (4), an appropriate administering authority may-
(a) treat education or training as continuous despite a break; and
(b) suspend payment of any entitlement to benefits under regulation 28, 34 or 37 during such a break.

(6) An appropriate administering authority may treat a dependent child who is disabled within the meaning of the Disability Discrimination Act 1995 as an eligible child.

**The Local Government Pension Scheme (Miscellaneous) Regulations 2008 [SI 2008/2425]**

**21 Amendment of the Local Government Pension Scheme (Transitional Provisions) Regulations 2008**
The Local Government Pension Scheme (Transitional Provisions) Regulations 2008 are amended, in Schedule 1, by the insertion at the appropriate place in the list of provisions of the Local Government Pension Scheme Regulations 1997 which are saved from revocation, of-
Regulation 44 for the purpose of enabling an administering authority to make after 31st March 2008 a determination whether a child of a deceased member is an "eligible child" within the meaning of regulation 44;

**Finance Act 2004**

**Schedule 28 : Registered Pension Schemes: Authorised Pensions – Supplementary**

**Part 2 : Pension Death Benefit Rules**

**Meaning of "dependant"**
15
(1) A person who was married to, or a civil partner of, the member at the date of the member's death is a dependant of the member.

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

(2) A **child of** the member is a dependant of the member if the child-
(a) has not reached the age of 23, or
(b) has reached that age and, in the opinion of the scheme administrator, was at the date of the member's death dependant on the member because of physical or mental impairment.

(3) A person who was not married to, or a civil partner of, the member at the date of the member's death and is **not a child of** the member **is a dependant of** the member if, in the opinion of the scheme administrator, at the date of the member's death-
(a) the person was financially dependant on the member,
(b) the person's financial relationship with the member was one of mutual dependence, or
(c) the person was dependant on the member because of physical or mental impairment.

**The Taxation of Pension Schemes (Transitional Provisions) Order 2006 [SI 2006/572]**

**34 Payments to dependants over the age of 23**
(1) Paragraph (2) applies in the case of a payment of a pension death benefit by a registered pension scheme which-
(a) meets the conditions set out in paragraph (4), (5) or (6) below, and
(b) falls within paragraph 1(1) of Schedule 36.

(2) Paragraph 15(2) of Schedule 28 shall be modified, in a case to which this paragraph applies, as follows.
(3) At the end of paragraph (a) omit the word "or" and after paragraph (b) insert-
(c) "has reached that age and is in full time education or undertaking vocational training, or
(d) on reaching that age or, if later, on ceasing full time education or vocational training is, in the opinion of the scheme administrator, suffering from physical or mental deterioration which is sufficiently serious to prevent the individual from following a normal employment or which would seriously impair his earning capacity.".

(4) The conditions are as follows.
CONDITION A
The pension was in payment to a child of the member ("the child") on 5th April 2006 or the member had died on or before that date and a pension was due to come into payment to the child.
CONDITION B
The rules of the pension scheme allowed a pension to be paid to a child of the member following the death of that member until the child ceased full-time education or vocational training or reached a specified age before completing full-time education or vocational training.

(5) The conditions are as follows.
CONDITION A
The pension was in payment to a member on 5th April 2006.
CONDITION B
The rules of the pension scheme allowed a pension to be paid to a child of the member following the death of that member until the child ceased full-time education or vocational training or reached a specified age before completing full-time education or vocational training.
CONDITION C
The child was born on or before 5th April 2007.

(6) The conditions are as follows.
CONDITION A
The rules of the pension scheme on 10 December 2003, allowed an irrevocable election to be made designating part of the sums or assets representing the member's rights as available for the payment of a pension to a child of the member following the death of that member until the child ceased full-time education or vocational training.
CONDITION B

Such an election had been made by the member and accepted by the scheme administrator on or before 5th April 2006.

(7) In this Article "pension" has the meaning given in section 165(2).

**Advice from HMRC**

"Child is not defined for the purposes of paragraph 15 of Schedule 28 to Finance Act 2004. So we have to look to the legal definition of a child – which is the natural (whether born legitimate or illegitimate and includes a child "en ventre sa mere" i.e. "an unborn child inside the mother's womb") or legally adopted child of a person".

Annex 2

Section 165 of the Finance Act 2004 says that members cannot draw benefits (other than on health grounds) prior to normal minimum pension age which section 279(1) defines as follows:

"normal minimum pension age" means-
(a) before 6th April 2010, 50, and
(b) on and after that date, 55

This is, however, subject to the protections in paragraph 22 of Part 3 of Schedule 36 to the Finance Act 2004 which says:

**Extract from paragraph 22 of Part 3 of Schedule 36 to the Finance Act 2004**
22
(1) This paragraph applies in relation to a registered pension scheme and a member of the pension scheme if-
(a) the pension scheme is a protected pension scheme, and
(b) the retirement condition is met in relation to the member and the pension scheme.

(2) A pension scheme is a protected pension scheme if condition A or condition B is met.
(3) Condition A is met if-
(a) the pension scheme was within any of paragraphs (a) to (e) of paragraph 1(1), and
(b) the entitlement condition is met in relation to the member and the pension scheme.

(4) The entitlement condition is met in relation to the member and the pension scheme if-
(a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 55,
(b) the rules of the pension scheme on 10th December 2003 included provision conferring such a right on some or all of the persons who were then members of the pension scheme, and
(c) such a right either was then conferred on the member or would have been had the member been a member of the scheme on that date.

(5) Condition B is met if the member is a member of the pension scheme ("a transferee pension scheme") as a result of-
(a) a block transfer from the pension scheme ("the original pension scheme") in relation to which condition A is met to the transferee pension scheme, or
(b) a block transfer to the transferee pension scheme from a pension scheme that was a transferee pension scheme in relation to the original pension scheme by virtue of the previous application of paragraph (a) or the previous application (on one or more occasions) of this paragraph.

(6) A transfer is a block transfer if-
(a) it involves the transfer in a single transaction of all the sums and assets held for the purposes of, or representing accrued rights under, the arrangements under the pension scheme from which the transfer is made which relate to the member and at least one other member of that pension scheme, and
(b) either the member was not a member of the pension scheme to which the transfer is made before the transfer or he has been a member of that pension scheme for no longer than such period as is prescribed by regulations made by the Board of Inland Revenue.

(7) The retirement condition is met in relation to the member and the pension scheme if-
(a) the member becomes entitled to all the benefits payable to the member under arrangements under the pension scheme (to which the member did not have an actual entitlement on or before 5th

April 2006) on the same date, and
(b) in a case where on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 50, Condition 1 is met or, in any other case, Condition 2 or 3 is met.

(7A) Condition 1 is met if-
(a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected, and
(b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

(7B) Condition 2 is met if-
(a) the member is not, after becoming entitled to the benefits mentioned in sub-paragraph (7)(a), employed by a person specified in sub-paragraph (7C), and
(b) the member's becoming entitled to those benefits is not part of an arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

(7C) The persons referred to in sub-paragraph (7B)(a) are-
(a) any person who was a sponsoring employer in relation to the pension scheme at any time during the period of six months ending with the day on which the member became entitled to the benefits mentioned in sub-paragraph (7)(a) and by whom the member was employed at any time during that period,
(b) any person who is connected with any such person, or
(c) any person who is a sponsoring employer in relation to the pension scheme and with whom the member is connected.

(7D) If the member has become entitled to the benefits payable under arrangements under the pension scheme by reason of service in the armed forces of the Crown, any employment on compulsory recall is to be disregarded for the purposes of sub-paragraph (7B)(a).
(7E) Condition 3 is met if-
(a) paragraph (a) of sub-paragraph (7B) is not satisfied but one of the re-employment conditions is met, and
(b) paragraph (b) of that sub-paragraph is satisfied.

(7F) The re-employment conditions are-
(a) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of six months beginning with the day on which the member becomes entitled to the benefits mentioned in sub-paragraph (7)(a), and
(b) that the member is not employed as mentioned in sub-paragraph (7B)(a) during the period of one month beginning with that day, but is so employed during the period of five months beginning at the end of that period, and either the pension abatement condition or the materially different employment condition is met.

(7G) The pension abatement condition is met if-
(a) the pension scheme is a public service pension scheme, and
(b) the member's benefits under the scheme consist of or include a scheme pension which is liable to reduction by abatement while the member is employed as mentioned in sub-paragraph (7B)(a) and is under the age of 55.

(7H) The materially different employment condition is met-
(a) in a case where the member is employed as mentioned in sub-paragraph (7B)(a) in more than one

employment during the period of five months mentioned in sub-paragraph (7F)(b), if each of those employments, and
(b) otherwise, if the employment in which the member is so employed during that period, is materially different in nature from the employment in which the member was employed immediately before becoming entitled to the benefits mentioned in sub-paragraph (7)(a).

(7I) For the purposes of sub-paragraph (7D) "employment on compulsory recall" means permanent service-
(a) under Part 4 of the Reserve Forces Act 1996,
(b) under Part 5 of that Act,
(c) under a call-out or recall order made under that Act,
(d) having been called out or recalled under the Reserve Forces Act 1980, or
(e) because of any other call-out or recall obligation of an officer.

(7J) Section 839 of ICTA (connected persons) applies for the purposes of this paragraph.
(8) The member's protected pension age is the age from which the member had an actual or prospective right to any benefit under the protected pension scheme on 5th April 2006 (or, where condition B is met, under the original pension scheme on that date).

(9) But this paragraph does not have effect so as to give the member a protected pension age of more than 50 at any time before 6th April 2010.

So, the protection applies where:

a) the pension scheme is a "protected pension scheme" - which the LGPS is - and
b)
(i) on 5th April 2006 the member had an actual or prospective right under the LGPS to any benefit from an age of less than 55,
(ii) the rules of the LGPS on 10th December 2003 included - which they did - provision conferring such a right on some or all of the persons who were then members of the pension scheme, and
(iii) such a right either was then conferred on the member or would have been had the member been a member of the scheme on that date.
and
c) the member becomes entitled to all the benefits payable to the member under arrangements under the LGPS (to which the member did not have an actual entitlement on or before 5th April 2006) on the same date

So, this leaves us with the following:

1. Members who left with a deferred benefit prior to 6th April 2006 can retain age 50 ERD (forever) - which both the 1995 Regulations and the 1997 Regulations provide for

2. Members who left with a deferred benefit on or after 6th April 2006 and before 31st March 2008 and who were [active?] members of the scheme on 5th April 2006 can retain age 50 ERD (forever) - so these cases are OK under the wording of the 1997 Regulations

3. Members who left with a deferred benefit on or after 6th April 2006 and before 31st March 2008 and who were **not** [active?] members of the scheme on 5th April 2006 can retain age 50 ERD until, at the latest, 5th April 2010, whereupon the age for ERD rises to 55 - which the 1997 Regulations **do not** currently provide for

4. The LGPS can provide that members who left with a deferred benefit on or after 1st April 2008 and who were [active?] members of the scheme on 5th April 2006 can retain an age 50 ERD (forever). However, it can be argued that the unions, in agreeing to the terms of the new LGPS, agreed to a rise in the ERD to age 55. Thus, the protections in the Benefits Regulations at regulation 30(6) are actually far more restrictive than required under the Finance Act 2004 in that the protection only lasts to 31st March 2010 (rather than forever) for those who elect to draw their deferred benefits by then

5. The LGPS can provide that members who left with a deferred benefit on or after 1st April 2008 and who were **not** [active?] members of the scheme on 5th April 2006 can retain an age 50 ERD until, at the latest, 5th April 2010, whereupon the age for ERD rises to 55. The protections in the Benefits Regulations at regulation 30(6) are actually slightly more restrictive than required under the Finance Act 2004 in that the protection only lasts to 31st March 2010 (rather than to 5th April 2010) and only covers those who were active members of the Scheme on 31st March 2008 (rather than both pre and **post** April 2008 joiners).

6. Anyone who was retired on redundancy / efficiency grounds aged 50+ prior to 1st April 2008 is OK (as the general Finance Act age 50 protection covers those who leave before 6th April 2010)

7. Under the Finance Act 2004, anyone who retires on redundancy / efficiency grounds aged 50+ on or after 1st April 2008 and before 6th April 2010 is OK (as the general Finance Act age 50 protection covers those who leave before 6th April 2010). Benefits Regulation 19 is actually more restrictive than this in that is only covers those who were [active?] members of the Scheme on 31st March 2008 and who leave on redundancy / efficiency grounds before 31st March 2010

8. Under the Finance Act 2004, anyone who retires on redundancy / efficiency grounds aged 50+ on or after 6th April 2010 and who was an [active?] member on 5th April 2006 could be provided, by the LGPS, with a protected age 50 ERD (forever). However, it can be argued that the unions, in agreeing to the terms of the new LGPS, agreed to a rise in the ERD to age 55. Thus, the protections in the Benefits Regulations at regulation 19(2) are actually far more restrictive than required under the Finance Act 2004 in that the protection only last to 30th March 2010 (rather than forever) and only cover those who were [active?] members of the Scheme on 31st March 2008 and who leave on redundancy / efficiency grounds before 31st March 2010

9. Anyone who was retired on flexible retirement aged 50+ prior to 1st April 2008 is OK (as the general Finance Act age 50 protection covers those who leave before 6th April 2010)

10. Under the Finance Act 2004, anyone who takes flexible retirement aged 50+ on or after 1st April 2008 and before 6th April 2010 is OK (as the general Finance Act age 50 protection covers those who leave before 6th April 2010). Benefits Regulation 18 is actually more restrictive than this in that is only covers those who were [active?] members of the Scheme on 31st March 2008 and who take flexible retirement before 31st March 2010

11. Under the Finance Act 2004, anyone who takes flexible retirement aged 50+ on or after 6th April 2010 and who was an [active?] member on 5th April 2006 could be provided, by the LGPS, with a protected age 50 ERD (forever). However, it can be argued that the unions, in agreeing to the terms of the new LGPS, agreed to a rise in the ERD to age 55. Thus, the protections in the Benefits Regulations at regulation 18(4) are actually far more restrictive than required under the Finance Act 2004 in that the protection only last to 30th March 2010 (rather than forever) and only cover those who were [active?] members of the Scheme on 31st March 2008 and who take flexible retirement before 31st March 2010

## Annex 3

**Ill Health Monitoring Group**
**Recommendations received for possible regulatory changes to the ill health regime**

| Topic for clarification | Regulation to be changed |
|---|---|
| Make it clear that a member whose 3rd tier pension has stopped can apply for their "deferred" retirement benefits despite having received 3rd tier benefits | Reg 31 |
| What we need to do in the regulations is have a separate regulation saying that the suspended 3rd tier pension is again payable:<br><br>a) from age 65, unless the member chooses to defer drawing it at that time until no later than age 75, or<br><br>b) **at any time from age 60 and before age 65 if the member chooses, or<br><br>c) **on application from the member, at any time from age 50/55 and before age 60 if the former employer agrees, and the former employer can also agree to waive any reduction on compassionate grounds<br><br>d) from any age, if the member would satisfy the tier 1 or tier 2 ill health criteria<br><br>** in normal deferred benefit cases where a member asks for payment of benefits before 65, any actuarial reduction is applied to the pension before commutation. However, in a suspended 3rd tier ill health case, the member will already have received up to 3 years worth of unreduced pension and at the time of the original ill health termination will have commuted part of that unreduced pension into a lump sum. How is this to be taken into account if the suspended pension is to be brought back into payment at an actuarially reduced rate prior to age 65? There is no GAD guidance dealing with this situation. | Regs 29, 30 and 31 |
| We also need clarification as to how tier 3 members are to be treated for Pension Sharing on Divorce purposes i.e. how do we work out a CETV value on their benefits during the initial payment period, or after the pension has been suspended, given that they have already received some pension and all of their ump sum? Are they to be valued using the transfer factors for a deferred member or the factors for a pensioner member? Will this differ depending on whether the pension is currently in payment or suspended? | Regs 144 to 161 of 1997 Regs |

| | |
|---|---|
| Regulation 31 - doctors are recommending that the regulation reads the same as the terms of regulation 20 (5) | Reg 31 |
| Make it clear that a review only applies to the 3rd tier and make it clear that a review is not required if the member attains age 65 within that 18 months and that the benefit does not stop under regulation 20(8)(b) if the member attains age 65 within the 3 year period i.e. in regulation 20(7)(a) amend the words "Once benefits have been in payment to a person for 18 months" to "Once benefits under paragraph (4) have been have been in payment for 18 months, and provided the member has not attained normal retirement age,". | Reg 20 (7)<br>Reg 20(8)(b) |
| Make it clear that 20 (7) relates to 3rd tier benefits only | Reg 20 (7) |
| What can a third tier member do with an AVC pot and, amongst many other questions, does a scheme annuity or an open market annuity stop when the third tier pension is stopped? | Admin reg 26 |
| Put it beyond doubt that, at the review, the same IRMP may reassess the member who has a 3rd tier benefit | Admin reg 56(1) |
| Commencement of pensions under Reg 50 (2) of the administration regulations seems to preclude those members who received a 3rd tier benefit even if that benefit had been stopped | Admin reg 50 (2) |
| Admin reg 50(4) is inconsistent with Benefits reg 31 i.e. benefits under reg 31 are payable from the date of application or the date of permanent ill health, if later, whereas reg 50(4) incorrectly says the benefits are payable from the date the member became permanently ill | Admin reg 50(4) |
| Should 20 (4) say within 3 years or before normal retirement age if this is earlier? i.e. in regulation 20(4) amend the words "within three years of leaving his employment" to "within three years of leaving his employment or before normal retirement age, whichever is the earlier,". | Reg 20(4) |
| Should it be made clear that a member has the right of appeal against a termination of employment where no ill health retirement has been awarded following an assessment by an IRMP and the member considers that such an award should be made? | Reg 20 and/or 55 |
| Need to clarify who makes decision under reg 20(1) for staff in voluntary aided, foundation and foundation special schools | 20(1), Admin regs 8(2) and Sch 1 |
| Can a 3rd tier pensioner commute their pension on triviality grounds? | Reg 39 |
| Is reduction in hours to be ignored when calculating survivor benefits | Regs 20(12), 23, 24 and |

| | |
|---|---|
| and death grant following death in service? | 28 |
| Do protections under 20(13) and 20(15) apply to survivor benefits following death in service? | Regs 20(13), 20(15), 24 and 28 |
| Is it permissible under the Finance Act 2004 to increase a benefit from tier 3 to tier 2 (or even tier 1) given the likely "unauthorised payment implications? | |
| What is the position if hours are reduced more than once, or if hours are reduced and then increased (and what if they are increased to full-time)? | Reg 20(12) |
| Shouldn't 20(12)(b) refer to "membership" rather than "service"? | Reg 20(12)(b) |
| Shouldn't 20(13) refer to "an active member immediately before 1st April 2008" rather than "a member before 1st April 2008"? | Reg 20(13) |
| Regulation 20(13) refers to the period that would have been added under regulation 28 of the 1997 Regulations. However, regulation 28 did not "add" membership – it simply referred to an enhanced (total) membership period. | Reg 20(13) |
| Revise Reg 56 (1) to change the reference from 20 (6) to 20 (5) | Admin reg 56 (1) |
| Include a determination under 20 (4) at Reg 24 (2) (a) relating to ARCs | Reg 24 (2) (a) (see draft LGPS (Misc) Regs 2009 |

## Annex 4

### Calculation of Maximum PCLS

[Throughout this paper, the calculation of the maximum PCLS and the associated commuted pension are rounded down to the nearest whole penny in all cases. This is to prevent rounding up leading to an authorised payment of between 1 and 12 pence.]

### Example 1

A member has elected to bring deferred benefits into payment.

The value of the deferred pension is £5,500 (including PI of £500)
The value of the deferred lump sum is £16,500 (including PI of £1,500)
For the moment, let us ignore the GMP.

#### Applying GAD's formula to calculate maximum PCLS

¼ *[((120 * £5,500) + (10 * £16,500)) / 7]
= 1/28 * (£660,000 + £165,000)
= 1/28 * £825,000
= £29,464.28

#### Pension commuted

£29,464.28 - £16,500 = £12,964.28 / 12 = £1,080.35

#### Pension after commutation

£5,500 - £1,080.35 = £4,419.65

#### Check maximum PCLS has been calculated

(£4,419.65 * 20) + £29,464.28 = £117,857.28 / 4 = £29,464.32 (✓)

## Example 2

The same details as example 1 but calculate maximum PCLS before the application of PI.

### Applying GAD's formula to calculate maximum PCLS

¼ *[((120 * £5,000) + (10 * £15,000)) / 7]
= 1/28 * (£600,000 + £150,000)
= 1/28 * £750,000
= £26,785.71

### Pension commuted

£26,785.71 - £15,000 = £11,785.71 / 12 = £982.14

### Pension after commutation

£5,000 - £982.14 = £4,017.86

### Apply PI multiplier to post commutation benefits

Pension: £4,017.86 * 1.1 = £4,419.65
Lump Sum: £26,785.71 * 1.1 = £29,464.28

Example 1 proves that these post-commutation pension and lump amounts generate the maximum PCLS the member can receive without incurring a tax charge.

### Notes

(1) Examples 1 and 2 generate the same result because the PI multiplier is uniformly applied to all components of the member's benefits.
(2) Examples 1 and 2 will still generate the same results even if the member was active after 31 March 2008.
(3) In mathematical terms, this is an application of the arithmetic law of distribution: i.e. a * (b + c) = ab + ac.

## Example 3

At the date the member retired (age 61), her pension was £5,000, the lump sum £15,000 and the GMP at age 60 (all post '88) was £1,040.

The member attained SPA before the first PI review date which, in turn, occurred before the benefits were paid (i.e. the woman retired at age 61 and an earlier year's pay has been used as 'final pay' to calculate her benefits). The PI applied to scheme benefits is 5% and the PI on the post 88 GMP is 3%.

After the PI review the member's benefits are:

GMP = (£1,040 / 52) * 1.03 = £20.60 * 52 = £1,071.20
(including PI on post 88 GMP = £31.20)
GMP increments for 52 weeks of deferral beyond SPA = £20.60 * 52/700 = £1.53 * 52 = £79.56

PI on Pension = (£5,000 - £1,040) * 0.05 = £198.00
[or PI on Pension = (£5,031.20 - £1,071.20) * 0.05 = £198.00]
PI on post 88 GMP = £31.20
GMP increments = £79.56
Total = £198.00 + £31.20 + £79.56 = £308.76

Total Pension after PI review and increments = £5,308.76

Lump Sum = £15,000 * 1.05 = £15,750

### Applying GAD's formula to calculate maximum PCLS

¼ *[((120 * £5,308.76) + (10 * £15,750)) / 7]
= 1/28 * (£637,051.20 + £157,500)
= 1/28 * £794,551.20
= £28,376.82

### Pension commuted

£28,376.82 - £15,750 = £12,626.82 / 12 = £1,052.23

### Pension after commutation

£5,308.76 - £1,052.23 = £4,256.53

### Check maximum PCLS has been calculated

(£4,256.53 * 20) + £28,376.82 = £113,507.42 / 4 = £28,376.86 (✓)

## Example 4

Member details are as per example 3. Calculate maximum PCLS as per example 2.

### Applying GAD's formula to calculate maximum PCLS

¼ *[((120 * £5,079.56 incl GMP increments) + (10 * £15,000)) / 7]
= 1/28 * (£609,547.20 + £150,000)
= 1/28 * £759,547.20
= £27,126.68

### Pension commuted

£27,126.68 - £15,000 = £12,126.68 / 12 = £1,010.55

### Pension after commutation

£5,079.56 - £1,010.55 = £4,069.01

### Add back PI to post commutation benefits

### Option 1

Pension: £4,069.01 + £198.00 + £31.20 = £4,298.21
Lump Sum: £27,126.68 * 1.05 = £28,483.01

This cannot be correct because the total PI figure of £229.20 is based on the pre-commutation pension of £5,000. A single PI multiplier cannot be applied to the pension because the GMP attracts a different PI multiplier from the scheme pension. See the calculation below which demonstrates that the calculated PCLS exceeds a quarter of the value of crystallised benefits.

### Check maximum PCLS has been calculated

(£4,298.21 * 20) + £28,483.01 = £114,447.21 / 4 = £28,611.80

### Option 2

Re-calculate PI based on the post-commutation pension
£4,069.00 - £1,040.00 = £3,029.00 * 0.05 = £151.45

Pension = £4,069.01 + £151.45 + £31.20 = £4,251.66

### Check maximum PCLS has been calculated

(£4,251.66 * 20) + £28,483.01 = £113,516.21 / 4 = £28,379.05

NB: the above answer is close to the answer in example 3 but not exact. I suspect it has something to do with the fact that the GMP increments included a 3% increase but the recalculation of PI on the post commutation

pension (which included the GMP increments) is calculated at 5% - but I could well be wrong. I'm struggling to determine what the right answer is. At least if we follow example 3 the final check in the calculation works out OK.

Comment – ADF 03/02/2009

Before the application of PI, PI on the post 88 GMP and GMP increments the member's total pension consisted of two components: £3,960 is the initial pension in excess of the GMP and the GMP itself which is £1,040.

After the application of PI on the post 88 GMP and GMP increment calculation the total GMP is £110.76. This gives an overall "notional" multiplier of

(£1,040.00 + £110.76) / £1,040.00) = 1.1065

The multiplier applied in both options 1 and 2 of example 4 is only 1.05 which cannot be correct for that part of the member's initial pension which is in respect of the GMP. (Contrast with example 2, where there are no GMP complications so the PI multiplier can be applied uniformly and correctly to all components of the initial pension.)

Where there are elements of a member's pension (before commutation) which attract different "notional" multipliers, example 3 is the method that works.