



The Local Government Pension Scheme

Commentary Guidance



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Foreword

This note sets out and summarises the intention of the separate sets of Regulations which constitute the Local Government Pension Scheme (LGPS) from 1 April 2008. Because of their profile the note also covers admitted body status, the Policy Review Group and Sustainability within the LGPS. Although this is a public document, it is intended to be of interest to mainly Pension Managers, Scheme Administrators, Scheme Members and other key stakeholders alike.

It is a 'living' document and will be updated regularly. For this to happen, local authorities and their pensions staff are invited to take an active interest in this Guide. Therefore, Communities and Local Government would like to receive feedback on it in terms of its usefulness. So please send your comments to Nicola Rochester (email: Nicola.rochester@communities.gsi.gov.uk).

Please also note that this Guide should be read in conjunction with other sources of information – namely the Workforce Pay and Pensions website: www.xoq83.dial.pipex.com – Communities and Local Government's website: www.communities.gov.uk – Wandsworth Borough Council's Timeline Regulations at: <http://timeline.lge.gov.uk/> and the Pensions Page on the LGE website at: www.lge.gov.uk.

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¹ Benefits Regulations also

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Administration Regulations

These deal with the day to day administration processes of the scheme. They complement the Benefit, Membership and Contribution Regulations (the Benefits Regulations), and take account of the Transitional Regulations.

In a good many ways, they simply replicate the procedural/administrative provisions interwoven with details on benefits under the 1997 regulations which established the current scheme. However, they also reflect certain new aspect in the benefits package of the 2008 scheme. The opportunity has been taken to update/clarify some provisions, including references to other legislation.

Specific Provisions

It may be useful to be aware of the following which describe provisions finalised after the consultation, with regulation numbers as in the final version of the Administration Regulations.

Refund of contributions, abatement and forfeiture

Included as follows:

Return of contributions – Regulations 46 & 47

Abatement – Regulations 70 & 71

Forfeiture – Regulations 72 to 76.

Nominated co-habiting partners

These are now dealt with in:

- a. Regulation 47(2) on exclusion of rights to a return of contributions,
- b. Regulations 58(2)(a) and 60(9)(b) on the internal dispute resolution procedure,
- c. Regulation 76(4)(b) on the transfer of sums from the pension fund to compensate for a former member's misconduct,
- d. Regulation 80 on transfers out, and
- e. Regulation 85 on Community scheme transferees.

Special Cases of Eligibility – Part 5 Chapter 1 of the LGPS Regulations 1997 – old Regulations 127 to 131

Only provisions relevant to those who could become members on/after 1 April 2008 are included in the Administration Regulations.

Pension credit members

Only Regulation 68 and Regulation 82(2) of the final Administration Regulations make reference to pension credit members.

Regulation 68 (annual benefit statements) requires administering authorities to send pension credit members an annual benefit statement.

Regulation 83(2) (inward transfer of pension rights) provides that “relevant pension rights” – those accrued rights that a person can transfer into the Scheme – do not include rights to benefits which are attributable, directly or indirectly, to a pension credit. This simply replicates Regulation 121(2) of the LGPS Regulations 1997.

Most provisions in the 1997 Regulations about pension credit members have been saved in the Transitional Regulations. Pension credit members are not mentioned in Regulation 55 (first instance decisions) and Regulation 58 (applications to resolve disagreements) of the Administration Regulations.

Miscellaneous

The Transitional Regulations has provisions on:

- The Transitional Regulations (Regulation 2(1) and Schedule 1) save Regulations 108A and 122A of the 1997 Regulations on mis-selling.

IDRP

There are **no changes made by these regulations** to the current IDRP provisions. Any proposals for changes to reflect the Pensions Act 2007 would be consulted on/after April 2008.

Part 1: Citation, Commencement and Application

These regulations may be cited as the Local Government Pension Scheme (Administration) Regulations 2008 and shall come into force on 1 April 2008 and will apply in relation to England and Wales.

Part 2: Membership of the Scheme

Regulation 5 of the LGPS Regulations 1997

Some of this is replicated as described below.

Regulation 8 – Eligibility for membership of employees of other bodies not listed in Schedule 2 – *old 127(1), 128(1) & 128(7)*

This regulation applies to individuals who are, or become, an employee of one of the specified kinds of educational body on/after 1 April 2008.

Regulation 10(1) – Supplementary provisions for certain members – *old Regulation 131*

This replicates the still relevant parts of old Regulation 131(9A), (9B) and (9D) concerning rent officers, and which authority is to be treated as their employer for Scheme purposes. It applies to officers who are members when the 2008 Scheme commences.

Regulation 13 – Joining the scheme – *old Regulation 7*

This regulation is arranged differently. The opening subparagraphs reflect the common use of joining procedures where a person is **deemed** to have applied to be a member (so-called “automatic enrolment”).

A person is only allowed to join the Scheme if he is employed under a contract of employment lasting at least 3 months as provided in **Regulation 2 of the Benefits Regulations**. Regulation 13(5) is relevant where a contract of employment that was expected to last less than 3 months is extended, so that an otherwise ineligible employee of a Schedule 2 Part 1 Scheme Employer becomes eligible for membership after all. Subject to the conditions set out in Regulation 13(5), the start of his membership can then be backdated to when the employment started.

Regulation 13(6) deals with joining by eligible admission body employees. (Regulations 5, 6 & 7 deal with admission body employees’ eligibility for membership. Note Regulation 7(1) and, for transferee admission bodies, Regulation 6(10).)

The omission of an equivalent for old Regulation 7(9) is deliberate. In **Regulation 13(7)**, a person who previously left the Scheme or opted out of membership (a “former active member”) no longer has to meet extra conditions in order to be able to apply to rejoin. This change does remove an employer’s discretion on rejoining by a person who has previously given more than one notification to leave. But it fits with

the general policy objective of maximising take-up of the opportunity to join the Scheme, and recognises the much changed nature of the LGPS workforce with much higher turnover and shorter average periods of membership.

Regulation 14

For the most part this Regulation brings forward the same principles as applied under the 1997 Regulations, but now also recognises the facility to end membership in respect of one, some or all employments.

Aggregation of membership – Regulation 16(1) and Regulation 6(2) of the Benefits Regulations

Regulation 6(2) of the Benefit Regulations will be aligned with Regulation 16(1) of the Administration Regulations. Aggregation will not be automatic. The re-employed and rejoining deferred member will have to choose to aggregate membership in a former employment. Pensioner members who become re-employed and re-join the scheme cannot choose to aggregate.

Regulation 17 – Concurrent employments – old Regulation 32A

This provision, regarding the aggregation of membership in relation to concurrent employments, was added after the statutory consultation. Note also **Regulation 5 of the Transitional Regulations** (membership accrued before 1 April 2008: concurrent employments).

Part 3: Contributions

Regulation 19 – Contributions during reserve forces leave – old Regulation 17(4) to 17(8)

The position is as explained in paragraph 13 of the July 2007 consultation letter:

Communities and Local Government is not un-sympathetic to the response from earlier consultations suggesting that scheme members who belong to the reserve forces should not be required to pay contributions, in order for any lost membership resulting from reserve forces leave to count towards their pension. However, this issue will also be of interest to those with responsibility for other public sector pension schemes, and it would not be appropriate for the LGPS to adopt a new approach without adequate prior consultation and consideration.

Communities and Local Government will inform Scheme interests later of its decision on this issue.

Regulation 23

This is the replacement in the new Scheme of the old facility to purchase added years. This should be read in conjunction with **Regulation 14** of the Benefit Regulations, and it sets out processes for members, employing and administering authorities to start the payments and how the cost of providing extra pension is determined.

Regulations 24

This Regulation advises what happens where ARC payments cease. Other than on death or ill health retirement where the contract will be considered as completed in full, the regulation sets out that a member will receive at normal retirement age a pro rata amount of pension relative to contributions paid to the date of cessation.

Regulation 24(2) – Discontinuance of additional regular contributions (ARCs) for additional pension – old Regulation 83

Regulation 24(2) provides that a member who stops paying his ARCs before the end of the ARC payment period is nonetheless to be treated as having paid his ARCs up to the end of that period, if he dies or if he leaves his employment because of ill health and is awarded ill health retirement benefits under [Regulation 20\(2\) or 20\(3\) of the Benefits Regulations](#).

In such cases, the difference in the level of increased benefits awarded under [Regulation 20\(2\) or 20\(3\) of the Benefits Regulations](#) makes no difference to the treatment of the member under Regulation 24(2) of the Administration Regulations. He is treated as having paid all of his ARCs up to the end of the ARC payment period, whichever level of ill health benefits has been awarded.

Additional pension from Additional Regular Contributions (ARCs) and Additional Voluntary Contributions (AVCs)

A member may choose to pay ARCs for additional pension from the Scheme, in units of £250 up to the permitted £5,000 maximum, to be paid with his normal benefits when he retires. This pension is indexed both pre- and post-retirement.

A member may also choose to pay AVCs. The accumulated value of a member's AVCs may be used for additional pension in accordance with the Regulations when he retires, or if he is awarded ill health retirement benefits [under Regulation 20 of the Benefits Regulations](#). A member also has the choice of open market purchase of an annuity, draw down or taking AVC at same time as the benefit crystallisation event (see [Regulations 15 and 21 of the Benefits Regulations](#)).

It is therefore possible for a member to accrue additional pension via both of these routes – ARCs and AVCs.

Electing to pay Shared Cost Additional Voluntary Contributions (SCAVCs) – Regulation 25

Consideration was given to whether there was a need for a separate provision about a member electing to pay this particular type of additional voluntary contribution in conjunction with arrangements with his employer. However, it was concluded that Regulation 25 as drafted covers this situation too.

Regulation 26(5) – AVCs & SCAVCs – use of accumulated value – old Regulations 66 & 70

The final regulation differs from the statutory consultation version. It does not provide that, where a person who is entitled to do so notifies his employing authority that he wants the accumulated value of his AVCs/SCAVCs to be used for additional pension, the relevant GAD guidance has to show the amounts of the additional pension in multiples of £250. Nor will the total value of the additional pension be limited to £5,000. The value of the AVCs would not be predictable enough to allow such restrictions on the GAD guidance.

Part 4: Pension Funds and Employers' Payments

Regulation 40

This Regulation brings forward the 1997 provision for employers to meet the cost of augmenting membership (see [Regulation 12](#) of the Benefit Regulations), but covers also cost relating to the employer awarding an amount of additional pension (see [Regulation 13](#) of the Benefit Regulations).

Regulation 42

This brings forward the provision which requires employing authorities to make payments and pass money to the relevant employing authority but also now includes a requirement that employing authorities provide details of pay band to which the member has been attributed and costs relating to levels of performance as under Regulation 43. This in turn is linked to Regulation 65 – (the preparation of a pension administration strategy).

Regulation 44

This Regulation brings forward the common provisions for charging interest on late payments under the Scheme.

Regulations 46 & 47 – Rights to return of contributions, and exclusions to that right – old Regulations 87 & 88

The differences between Regulation 87(1) of the LGPS Regulations 1997 and Regulation 46(1) of the Administration Regulations, and between Regulation 88(1) of the 1997 Regulations and Regulation 47(1), reflect the need to avoid unintended liability to tax. They aim to make it clearer that no refund of contributions is possible once an underlying entitlement to benefits is established by virtue of [Regulation 5\(1\) of the Benefits Regulations](#) in respect of any one period of membership². And that the only times when a refund can be given after that are if the membership is subject to a Benefit Crystallisation Event, or if under Regulation 79 a person's accrued rights are transferred out.

²BR 5(1) says "Membership of the Scheme only entitles the member to benefits under these Regulations if – (a) his total membership is at least three months; or (b) a transfer value is credited to him."

Part 5: Payment of Benefits etc

Regulation 48

This replicates Regulation 38 of the Benefit Regulations and links payments under these provisions to the Pensions Increase Act.

Regulation 53 – Non-assignability of pensions – *old Regulation 96*

This reflects recent changes to the law on insolvency.

Regulation 55(9) – Attributing members to pay bands for contribution purposes

This provides that a member's employer must decide any question about what contribution rate he is liable to pay. [Regulation 3\(2\) of the Benefits Regulations](#) sets out the various pay bands and corresponding contribution rates.

([Regulation 8 of the Transitional Regulations](#) deals with the attribution to contribution rates, before 1 April 2008, of active members of the 1997 Scheme who go on to be members of the 2008 Scheme.)

The rest of Regulation 55 replicates *old Regulation 97(1) to (8A)*, albeit with some rearrangement and consequential changes.

Part 6: Determination of Questions and Disputes

Regulation 56 – First instance determinations: ill health – *old Regulations 97(9A) & (10)*

Regulation 56(3) provides that, should the Secretary of State have issued related statutory guidance, the employer and independent doctor must have regard to it. Regulation 56(2) mentions the choice of independent medical practitioner for the purposes of [Regulations 20 and 31 of the Benefits Regulations](#).

Part 7: Policy Statements and Information

Regulation 68 – Annual benefit statements – *old Regulation 106A*

The date by which the first benefit statements under the new Scheme must be sent out is **on or before 1 April 2010**. These will be the statements relating to members' rights accrued in 2008-09. (An earlier date was proposed in the July consultation.) As now, an authority may use a date other than 31 March as "the relevant date" – see Regulation 68(3) to (5).

Statements relating to members' rights accrued up to 31 March 2008 are subject to the requirements of the LGPS Regulations 1997. A technical easement is being considered in relation to statements for the year 2007-08.

Part 8: Special Adjustments

Regulation 70 – Statements of policy concerning abatement of retirement pension in new employment – old Regulation 109 & Regulation 71 – Application of abatement policy to individual cases – old Regulation 110

The statutory consultation version of the Regulations did not include any provisions on abatement. The relevant provisions from the 1997 Regulations are, however, replicated in the actual Administration Regulations.

While some consultees did not support the continuation of the facility to abate, others felt that administering authorities definitely should have this option, where a person, particularly where aged under 65 draws an LGPS pension while simultaneously earning so much from new employment that his post-retirement income exceeds his pre-retirement local government salary.

Regulation 70 copies Regulation 109 of the 1997 Regulations in not requiring an administering authority to have a policy that it **will** abate pensions. Regulation 70 only requires an authority to have and publish a policy, having regard to the points set out in subparagraph (5) of the regulation. It sets out how a policy must be consulted on, published and reviewed. Regulation 71 deals with the application of the policy in individual cases.

Note that Regulation 70(3) does **not** require an administering authority which has a published policy on abatement that does not need reviewing at that time, to develop and publish a new policy statement within the specified period of 1 April 2008.

Regulation 12 of the Transitional Regulations preserves, for those who were members of the LGPS before 1 April 1998, the protection provided by Regulation 110(5) of the LGPS Regulations 1997. Under Regulation 110(5) no abatement of the pension of those who were Scheme members immediately before the commencement date of the 1997 Regulations, could exceed what would have applied under the 1995 Regulations.

Regulations 70(1) & 71(3) make special provision in respect of the new employment by a Scheme employer of a person who is eligible to belong to a teachers' scheme. Abatement will not apply to his LGPS pension. This exception provides for a situation where an individual is a teacher and a member of the teachers' pension scheme, but also entitled to belong to the LGPS because he is separately employed by a Scheme employer to carry out non-teaching functions (such as administration) for which the LGPS is the appropriate scheme. If he draws his LGPS pension from that non-teaching employment, but also continues to work as a teacher, his total income could exceed that from his previous local government employment. But his LGPS pension could not be abated.

Abatement is also relevant for other public sector pension schemes. It may be that a wider policy review at some future date could lead to changes. However, for now, the current approach continues.

Part 9: Transfers in and out

Regulation 78(2) – Transfers – Application of Chapter 4 etc old 116

Regulation 78 concerns the application of Chapter 4 etc of the Pension Schemes Act 1993. Regulation 78(2) is a new provision, and deals with the right to a cash transfer sum of a member with under three months membership.

Regulation 80 – Contracting-out requirements affecting transfers out – old 118

This is restructured in part. Regulation 80(3) substitutes for paragraphs (3) and (4) of old Regulation 118, and the content of old Regulation 118(3) is not included. Regulation 80(4) replaces old Regulation 118(2).

Inward transfers of pension rights – Regulation 83 – old Regulation 121

CLG confirm that it is not our policy intention to allow transfers in or out of the LGPS by those aged over 64 and a half years, ie who are within 6 months of the normal pension age for the Scheme. However, the Pension Schemes Act 1993, and regulations under it, make clear provision on the issue. Consequently there is no need for detailed provision about this in the LGPS Administration Regulations.

Changes of fund – Regulations 86 and 87 – old Regulation 125

Regulation 86 now covers the situation where a member leaves a concurrent employment – while another employment in which he is a member continues – and aggregates his membership, ending up with one appropriate fund. Regulation 87 is new. It concerns changes of fund and variable time employees.

Schedules

Schedule 2 Scheme Employers, Part 1 – Probation Trusts

Paragraph 8 now includes a reference to probation trusts which are being established as a result of reorganisation within the probation service. They will be functioning in some areas by 1 April 2008.

Schedule 3 of the LGPS Regulations 1997 – Excluded membership

It has not been necessary to replicate most of this, but this does not alter pre April 2008 qualifying conditions. However, note:

paragraph 6 (forfeiture) is replicated in **Regulation 15(3)** of the Administration Regulations

paragraph 3 (no double counting) is replicated in **Regulation 42 of the Benefits Regulations**

paragraph 8 relates to councillors, albeit to their non-councillor membership.

Admitted Body Status

Local authority outsourcing and the protection of staff pensions

Background

For many people, the services provided by their local authority have a very significant impact on their quality of life and provide their main experience of public services. It is vital that these services are delivered to a high standard, and in ways that are responsive to the needs of their users.

Best value arrangements were introduced in April 2000 and place a duty on local government to deliver services to clear standards, covering both cost and quality, by the most effective, economic and efficient means available. This involves best value authorities³ reviewing all their services over five years; setting tough targets for improving them; and publishing a best value performance plan every year to show how they're doing. Detailed guidance on best value and performance improvement is available [here](#).

Types of Local Authority Services Outsourced

As a result of a best value review some services or functions are being provided by, or in partnership with, the private or voluntary sector, or restructured and organised in a new way within the public sector.

The types of services that may be outsourced by authorities as part of achieving Best Value include the essential services that we all rely on – from street cleaning to school cleaning and catering, from parking to parks and from housing to home helps and the provision of services that support vulnerable families, children and young people and the elderly.

Implications for Staff

Partnership with the private and third sectors to modernise and reform the delivery of public services often involves the transfer of public sector employees to these sectors.

When an authority is considering outsourcing its functions the Government has introduced legislation ensuring that there must be a clear and consistent policy for the treatment of staff and that the success of such projects will depend critically on the treatment of the transferring staff who need reassurance that their rights will be respected and that they will be treated fairly.

³Best Value authorities are described in Part 1 of the Local Government Act 1999. In broad terms, a best value authority is: a local authority, a National Park authority; the Broads Authority; a police authority; a fire authority constituted by a combination scheme and a metropolitan county fire and civil defence authority; the London Fire and Emergency Planning Authority; a waste disposal authority; a metropolitan county passenger transport authority; Transport for London; the London Development Agency.

Protecting the rights of employees

Under provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) [SI 2006/246] the pay, terms and conditions of transferred employees are protected, preventing these entitlements being changed without agreement.

In broad terms, TUPE protects employees' terms and conditions (except occupational pension arrangements that relate to old age, ill health or survivor benefits) when the business in which they work is transferred from one employer to another. Employment with the new employer is treated as continuous from the date of the employee's start with the first employer. Terms and conditions cannot be changed where the operative reason for the change is the transfer although changes for other reasons may be negotiated.

The Regulations also **protect their accrued pension rights** and where transferred employees were entitled to participate in an occupational pension scheme prior to the transfer, the new employer must establish a minimum level of pension provision for transferred employees. TUPE regulations provide some protection against unfair dismissal and state that trade union recognition and collective agreements in force at the time of the transfer are to be maintained.

Protection of pension rights

In June 1999 the Government published guidance entitled 'Fair Deal for Staff Pensions' which set out the standards for protecting the occupational pensions of staff who are compulsorily transferred⁴ to private sector employers as part of public sector restructuring and outsourcing. The Fair Deal for Staff Pensions is contained at Annex A of the Cabinet Office's Statement of Practice (**COSOP**) for staff transfers. Additional guidance is also available on [HM Treasury's website](#).

The guidance reinforces previous and existing guidance on treatment of pension issues in compulsory transfers of public sector staff to private sector partners delivering public services. It should be recognised that although the previous guidance was not directly applicable to local government, it was supported by the Local Government Association and authorities were expected by Government to follow it as best practice.

From October 2007, best value contracting authorities in England and police authorities in Wales have had to comply with the requirements of Directions made under s 101 of the Local Government Act 2003 as regards the pension provision for their transferring staff, which require pension rights to be the same as, broadly comparable to, or better than, the rights that employees had or had the right to acquire as an employee of the authority

⁴The Fair Deal relates to staff transferred to the private sector where TUPE (the Transfer of Undertakings (Protection of Employment) Regulations) apply. The Cabinet Office Statement of Practice (COSOP) advises that in transfers of public sector staff the norm should be for TUPE to engage, and where as a matter of law it does not, protection should be given to staff equivalent to that which would apply if it did.

Admitted Body Status provisions in the LGPS

Admitted Body Status (ABS) provisions were amended in 1999 so that contractors who take on local authority services or functions can allow specific groups of transferring employees covered by TUPE to have continued access to the LGPS. ABS provisions enable members of the LGPS to remain in that arrangement and continue to accumulate benefits under the one pension scheme whilst their employment is transferred between different contractors. There is no **statutory requirement** to adopt ABS.

Informal Consultation on Admitted Body Status Provisions in the LGPS

On 18 January 2008 the Department for Communities and Local Government commenced a twelve weeks informal consultation exercise on Admitted Body Status (ABS) provisions in the Local Government Pension Scheme (LGPS).

ABS is an attractive and useful mechanism for dealing with pensions in the contracting out process and that there is nothing in the fundamental concept which needs to be changed. However, concerns have been expressed by some stakeholders that the detailed arrangements are not always being implemented in the way intended.

The consultation document published on 18 January 2008 examines specific concerns raised about the implementation of ABS provisions and sets out three possible broad approaches which might be developed to address those concerns:

Approach 1 considers whether **providing reviewed guidance** would address concerns raised about the implementation of ABS provisions

Approach 2 considers whether making **minor regulation modifications** would address concerns raised about the implementation of ABS provisions and sets out ideas about what those modifications could be including providing specific provision to refund any pensions surplus at the end of a contract to remove asymmetric risk and so enabling contractors to benefit from fund performance and actuarial assumptions; requiring annual actuarial monitoring of contracts to check for employee related or other changes that could have an impact on the pensions position; requiring an annual review of the indemnity cover and; requiring the prepared risk assessment to be published locally.

Approach 3 considers whether **introducing broader regulatory changes** would address concerns raised about the implementation of ABS provisions. Ideas presented for consideration by stakeholders include allowing for pass-through of pension costs whereby the intention would continue to be that contractors would contribute only for membership accrued during the contract and would have no past service liabilities (other than to the extent that some factors, such as higher than expected pay rises, impact on the cost of past service) nor ongoing liability at the end of the contract.

In addition, stakeholders are encouraged to provide views about whether contractors should be required to sign up to open admission agreements when delivering services or functions outsourced by local authorities when ABS is the contractor's preferred route for providing pension rights for transferring local authority employees. This means that all new employees on a relevant contract can also become members of the LGPS, in contrast to closed agreements where only members of staff who originally transferred with the contract can be members of the LGPS

A copy of the consultation document and accompanying questionnaire is available on Communities and Local Government's website at www.communities.gov.uk/localgovernment/personnelandworkforce/localgovernmentpensions/abs/reviewabs/.

We welcome your views on the approaches set out in the consultation document and encourage you to provide additional ideas on potential ways forward to help ensure the provisions meet the needs and support the interests of local authorities, contractors, employees and taxpayers. Responses should be provided to Darren Kristiansen at Darren.kristiansen@communities.gsi.gov.uk by **Thursday 10 April 2008**.

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Benefit, Membership and Contribution (*the Benefits Regulations*)

These regulations set out in sequence how someone joins the scheme; how it is decided what contributions they pay in order to accrue benefit rights under the scheme; how their membership is counted; how the benefits are calculated in the instances of active members moving from active to pensioner membership either at normal retirement age or on grounds of ill health, redundancy or efficiency departures; what benefits are payable if an active member dies in terms of death benefits and survivor pensions. These core benefits can be improved by an individual contributing more or employer granting more pension and pensionable membership. Provisions covering death and survivor benefits are then in effect replicated with relevant variations where the relevant event – death of a member – occurs in respect of a deferred and a pensioner member.

The sequence of the regulations is intended to avoid any confusion as to whether one is dealing with an active, deferred or pensioner member. Within the regulations everything up to Regulation 28 primarily deals with active members, 29 to 34 with deferred members, and 35 to 37 with pensioner members. Some of the definitions – eg a child – clearly cross refer to all instances where a survivor benefit for a child is being put into payment. Regulations 38 to 40 are common provisions.

The following sections deal with the regulations in sequential order, and draw out as appropriate relevant linkages and inter connections between the regulations.

Becoming a member

Regulations 2

Continuous Members

All existing employees who are active members as at 31 March 2008 and who continue in the employment of a LGPS employer on 1 April 2008 will automatically join the new scheme on 1 April 2008, by virtue of Regulation 2 of the *Benefits Regulations*. Any member can subsequently choose to opt out at any time.

Those employees who have opted out can elect to rejoin the LGPS at any time. Previous restrictions on the number of times a person could opt out and back in again no longer apply ([Admin reg 13\(7\)](#)).

New Joiners

Current members as at 31 March 2008 become auto-enrolled in the Scheme as from 1 April 2008. New joiners are auto enrolled unless it is made clear on starting that employment is for less than three months ([see also Admin Regs. reg 13\(1\) and 13\(3\)](#)).

Anyone who has more than one job with a LGPS employer, or with different employers, can choose not to be a member of the Scheme for one or more of their jobs whilst retaining membership in respect of one or more jobs. [See admin Reg 14\(3\)](#).

A lot of discussion has taken place on the issue of when is a casual not a casual, and trying to determine whether there is any mutuality of obligation. This is no longer relevant. Has any contractual relationship been created simply by adding someone's name to a list of reserves to be called upon on an as and when required basis?

The LGPS Regulations [both Administration and Benefits] no longer use the term casual. What has now been (re)introduced into the Scheme is the concept of short fixed term contracts of less than three months. If someone is employed under such a contract they cannot access the LGPS. However, if, during the short limited period, the contract is extended so that in total the contract lasts for more than three months the individual can join the Scheme and the earlier period will count if the person concerned pays the relevant contributions (see [Regulation 13\(5\) of the Administration Regulations](#)). This is necessary to avoid paying contributions for only two months, for example, and the pension fund then having to consider a refund. This also has a read across to Regulations 5-7 on page 31.

If a person is employed on back to back contracts the three months will be treated as completed. Similarly once a person has satisfied the qualifying condition in any employment, on rejoining the Scheme on a contract of three months or more the qualifying conditions are satisfied from day one of their new period of membership.

Example

Mrs A first started work on a full time basis in local government on 1 September 2004 and in July 2007 she leaves, but does not ask for a transfer. She returns to local government pension scheme employment in January 2008 on a lower salary with no restriction on period of employment, and decides not to aggregate her periods of membership. She leaves however, for her second time, on 28 February. She is not entitled to a refund, but rather now has two separate pension rights established, both of which can come into payment or be transferred out as and when she satisfies conditions within the benefit or administration regulations.

Contributions

Regulations 3 and 4

The purpose of introducing variable contribution bands is to deliver on the policy decision, supported both by trades unions and employers, to resolve, within the limits available to a pension scheme, issues relating to equity and reduction of potential cross subsidisation. It is also intended, as part of the decision to re-address the balance between employer and employee contributions so as to return to the more historic relationship between these rates, that overall contributions from employees should yield 6.3% of pensionable payroll. It needs to be recognised that some employers where the average pay is below that applying across the whole of the LGPS (eg classroom assistants or certain other non-teaching staff) will not produce such a yield, but this is offset by other employers which bring average pay up.

Discussions have taken place with a number of payroll software providers and local authorities on the impact of the approach set out in the letter the department issued on 22 June 2007, advising that employers in the new scheme arrangements will be required to attribute members to particular paybands. The responses have been very encouraging with an emphasis on how the arrangements can be made to work from April 2008.

This will allow all those involved with the pension administration processes to re-examine and fine tune where appropriate the kinds of records which are maintained to allow for correct assessment of liabilities and accurate calculation of member's pension entitlement.

The Benefit Regulations have been designed to apply for members joining and events occurring on and after 1 April 2008. Regulation 3 sets out that on becoming a member under Regulation 2 they will be allocated to a specific band for that employment. Any material change in contractual terms subsequent to first joining will mean the employer can re-attribute the specific payband (upwards or downwards). The regulation should be seen as facilitating employers' capacity to re-attribute, with material changes year on year rather than simply inter year as some have asked.

The attribution process must also take account of Regulation 4 of the *Benefits Regulations*, which carries forward in the main the same definitions of pensionable pay as applied under the 1997 Regulations. Where certain elements of pay as defined under the 1997 Regulations can only be treated as pensionable for "continuous members", rather than being repeated in the definition for the period from 1 April 2008 they have been saved by virtue of Schedule 1 of the Transitional Provisions. The reference to taxable pay has been retained in order to deal with issues such as salary sacrifice where revenue have decided that part of someone's pay is subject to a zero rate of tax.

The transitional provisions **Regulation 8** provides that all current active members will be attributed to a payband by their employer by 31 March 2008, treating them in like manner to the purposes of Regulation 2 as new joiners. In essence the deadline is the day before the first pay-day after 1/4/2008.

The initial attribution has to be carried out on a reasonable basis, and the same principle must also be applied to any subsequent re-attribution. If not then the employer's first instance decision may be challenged under the IDR process. It is also possible that if the employer fails to attribute members to their correct payband then the intended yield may not be realised. Where reasonable employers can take into account known changes in the pipeline (eg incremental progression or pay awards), but this does need to be balanced against the administrative costs of achieving assumed yield.

For re-attribution to occur the change has to be material, and can occur between as well as within financial years.

For fee earners deduction should be the band relative to the actual fee. Thus if the fee is £8,000 the contribution rate is 5.5%. If the fee is £24,000 the relevant contribution rate is 6.5%. Employers will need to seek advice on an individual basis if a fee has been subsumed into an overall contractual payment. For members being paid by virtue of specific session – eg carrying out non teaching coaching sessions – the contribution band should be linked to the annual equivalent of the hourly rate paid for such sessions.

Working Examples of Payband Attribution

Authority A has a senior director on a salary of **£72,000** where historically good performance has meant a **further three incremental point performance bonus**. The employer therefore reasonably attributes the member to the **7.5%** payband.

Employing authority B employs Miss F on a part time contract for 20 hours a week. The whole time equivalent is **£17,000** and historically effective performers in this grade receive a **10% performance payment**. The employer reasonably attributes this person to the **6.5%** payband.

Employing authority C has been employing Mr J on a **basic salary of £15,000, but contractual additions take their pensionable salary to £28,000**. The authority decides to reasonably attribute this person to the **6.5%** payband.

Authority D attributes Mrs C, who starts on 3 April, earning **£16,500 to the 5.9% payband**. In October the post is re-graded to **£19,000** per year, but the employer's payroll system is unable to handle a mid-year review. So the **employer decides to delay the new attribution to the next financial year** and advise Mrs C accordingly.

Employing authority E employs Mrs S on a part time basis for 20 hours a week. The whole time equivalent is **£17,000 and historically no bonus payments or additions** are paid. The employer reasonably attributes this person to the **5.9%** payband.

Authority F has gone through an internal restructuring by January 2009 and the pay of Mr J has been frozen at **£30,400** where he pays **6.8%**. But the inflator to be used for the purposes of Regulation 3 is already known for the following year and the payband for **6.5%** rate of contributions will now cover members earning between **£18,500 and £30,900**. So from the following April the employer re-attributes Mr J to the **6.5%** contribution band.

Authority G is employing Mr N on a salary of £17,800 for the year ending 31 March 2008. A 1% incremental addition for 2008/09 is guaranteed and the pay award is likely to be a further 2%. They reasonably attribute Mr N to the 6.5% payband for the 08/09 financial year.

In the case of authority C not making this decision will cause the following.
If pensionable/final pay is £28,000 accruing cost using benchmark basis is £5,432.
If lower band attribution was applied only £1,652 would be recovered from Mr J; whereas the higher band would result in £1,820 being recovered. This in turn would result in authority C not generating an average yield of 6.3% from members.

For authority D taking this decision is justified because total pay in the year would leave member in 5.9% payband. Actual pay for 12 months is £17,750 which would be in the 5.9% payband. But from the following April it is clear Mrs C will have earning in the 6.5% payband.

For authority F this notification should form part of the advice on the effect of the change of the contractual terms and conditions, since it is a material change.

Although term time whole timers have been defined quite separately from other whole timers for the purposes of Regulation 3 this is in effect no different from the practice already followed by a number of authorities in designating full time status. This approach merely confirms the need for consistency sought during the consultation on the new Benefit Regulations that the nature of employment for staff in the school's sector – principally classroom assistants – was sufficiently different to justify determining their contribution rate status on the nature of this employment.
NB This has an obvious cross reference and leads one directly to the next sections which deals with Regulations 6 and 8.

Where authorities are calculating pensions as follows;-

Works 37 hours per week for 44 weeks per year

Earns £12,692 p.a. (£15,000 x 44/52)

Contributions based on pay of £12,692

Membership counts at full length

Final pay for benefits calculation purposes £12,962 (actual earnings);

they should continue to do so. Where the calculation is

Currently

Works 37 hours per week for 44 weeks per year

Earns £12,692 p.a. ($£15,000 \times 44/52$)

Contributions based on pay of £12,692

Membership reduced by 44/52 (84.62%)

Final pay for benefits calculation purposes £15,000

Under 2008 LGPS

Pension contributions will be based on the band applicable to £12,692

(as now)

Membership and final pay will be the same

NO CHANGE

The opportunity could be taken, if employing authorities and/or administering authorities wish, to split the calculation in terms of pre and post 2008 to avoid any windfalls, and ensure consistency of approach from 1 April 2008, but this is not obligatory. It would however mean that a common approach to dealing with the issue of whole timers working less than the normal 36/37 hour week would be adopted across all funds.

It should also be noted that someone working in an employment environment where the standard employment payment is 52 weeks per year, who chooses, perhaps because of family commitments, to only work during term times is a part time employee. This is in line with the Government's approach to encouraging flexible working patterns which meet individual needs and requirements. It is important that their contract of employment should spell this change or variation in working pattern out along with their whole time pay equivalent, which is needed for both payband attribution and benefit calculation.

Counting Membership

Regulation 5, 6 and 7

In terms of establishing entitlement to benefit Regulation 5 makes clear that transferred in membership counts for “qualifying” purposes. The new administration Regulations will also be dealing with transfers in, and for the avoidance of doubt transferred in service will be shown to count as part of membership for the purposes of Regulation 6. It will also be made clear that once the qualifying condition is satisfied for the first time it applies in all subsequent (or concurrent) periods where a person becomes a member by virtue of a contract which is for three months or more, provided pension has not come into payment.

The **Administration Regulations (Regulation 16)** will continue with the current process whereby a member wishing to aggregate their deferred benefit rights from post 2008 periods of membership to their LGPS membership in a new job will have to make a positive decision to do so. This approach will be replicated in the Benefits Regulations. The question as to whether or not automatic aggregation should be the default option will be kept under review.

A degree of discussion has taken place as to whether the administration or benefits regulations should be the home for avoiding double counting of membership. Although it is very much a process it has been decided that the kind of provision covered by Regulation 34 of the 1997 Regulations should be included within the Benefits Regulations, and is now Regulation 42.

For issues concerning pre-2008 membership, please see the section on Transitional Provisions.

No definition of the current concept of total membership is carried forward. It is considered that in these regulations, which only deal with a post 2008 regime, a plain English reading of the regulations suffices. But the condition applying to the former conditions of qualifying and reckonable periods do still apply as they did under the 1997 and earlier provisions in respect of membership up to and including 31 March 2008.

Pay for Benefit Calculation Purposes

Regulation 8 and 9

It was set out in the Regulatory Impact Assessment that it is best actual pay figure in last 3 years which will be used, or the averaging process can apply, in cases, for example, where there has been a reduction of pay, a pay freeze and as with certificates of protection making clear this does not come into play when the higher salary was temporary. This also should be used in cases of stepping down and potential flexible retirements (but see comment on reg 10(3)). Regulation 9 carries forward the position as under the 1997 Regulations for use of alternative pay in the case of maternity leave and reserve forces duty. There is, however, a need to examine in the future whether the Scheme provisions require Regulation 9(1) which deals with armed forces. This is to be followed up with other public service providers. (See comments on Admin Reg 19).

Regulation 10

Although the use of certificates in cases of imposed stepping down or mark time have not been carried forward for events occurring after 1 April 2008 in terms of consistency with the 1997 Regulations (and the application of Regulation 23 of those Regulations), Regulation 10 does protect the use of earlier pay periods, before April 2008, in cases of stepping down after April 2008 where this occurs within the last ten years of a person's period of membership, and also covers those scenarios where a member's pay is frozen on a mark time basis.

Detailed discussions also considered the option of whether this principle should apply only in respect of changes with same employer. There is clearly a need to avoid the potential risk of the last employer being responsible for pension increases where a pension has been calculated against an earlier salary with a different employer when an individual chooses to step down by changing jobs and employers. However, it is also recognised that by excluding the use of salary with a different employer when an individual moves for higher pay (as is more usually the case) the last employer automatically takes on the responsibility for pension increases. This is being ameliorated by a movement away from Inter Fund Adjustments.

On balance it has been decided the principle should only apply to changes with same employer. This principle will, however, apply where a person has changed employers in the last ten years in circumstances where TUPE (Transfer of Undertaking) or the move is treated as a TUPE move applies, for example in a machinery of government change or contracting out exercise.

Trying to have consistency in a pension scheme is like a holy grail, and there are always issues to consider of whether there might be certain winners and losers when trying to deliver a degree of consistency. Should one allow this same principle to apply in the case of a person where the same employer has agreed that pension (all or part) can come into payment where the member continues under new contractual terms? In the case of a change of hours the same WTE salary is being used, albeit with a reduction in accruing membership. So, in order to retain the skills of the member in question, is

it wrong to use the salary from the earlier period – in particular as this would be the case in a straight stepping down where no pension was drawn? It would seem to be the case that the Scheme should aim for some form of consistency across the piece than have multiple options for each case. The necessary amendments to the Benefits Regulations have therefore been completed. Regulation 10(3) was not originally drafted on the understanding that only stepping down with the same employer principle would apply. Discussion at the technical group supported the concept of allowing earlier period in flex retirement where employment continues with same employer.

NB See also section on flexible retirement [Regulation 18] where this principle is also covered.

If benefits are calculated on a pay figure other than the final years pay, the benefits will be subject to Pensions Increase in accordance with the Pensions Increase Act 1971 when they are brought into payment.

Regulation 11 – Fees

No change in effect from the approach taken under the 1997 Regulations, and the point which was raised during our earlier consultations that at some point the idea of applying a simpler career average calculation to fees has not been taken up. See also the comment on relevant contribution band on page 18. For the most part fee earners, in what has historically been termed variable time employment, are paid for a whole year and receiving a fee does not denote that the post represents a period of part-time employment. For others, in particular where a member may provide a particular service by means of session, a correct distinction between fee and annualised salary must be established.

Non Core Benefits

Regulation 12 – Augmentation of period of Membership

There is no change here from the facility available under the 1997 Regulations to award during a member's period of employment an additional period of membership of up to ten years. But, look as well at [admin Regulations 40, 42\(1\)\(c\) and 44](#). [Reg 40 (employer's payment following resolution to increase membership); reg 42 (payment by employing authorities to appropriate administering authorities); and 44 (interest – on late payments).] See also comments on Regulation 13 about how employers could use this as part of a retention policy. It is important to recognise the inter connection between pension costs and business efficiency in the round.

Regulation 13

New provision available to employer to award an actual amount of pension for the benefit of the member, perhaps clearer to member as it is an actual amount rather than being dependant on salary figure used as part of the calculation under Regulation 8. As with 12, look also at reg 40 etc of admin regs (as above) and give consideration to relevant GAD guidance when seeking cost from fund's actuary – which could be relative to individual employer within an individual fund.

Whilst employers will have to give due consideration of their policy on this facility, it should be noted that rather than giving a blanket arrangement to augment for members over age 60 as a way of encouraging someone to stay on – which might have raised issues covered by age discrimination legislation – employers could consider this route as one means of offering “a carrot” that is available within the pension scheme on a case by case objective justification basis.

Employers will pay by a one-off lump sum or by a number of instalments as agreed with the **administering authority**.

Regulation 14 Buying Additional Pension – Additional Regular Contributions [see also comments on Administration Regulations, reg 24]

This is a new feature of the scheme, which allows a member to purchase additional, known, amounts of pension in current day value tranches of £250 annual pension per year up to a maximum of £5,000 per year payable from scheme NRD. This does not mean a member can purchase £5,000 more than once. See also GAD guidance note. If a person chose to buy £500 at age 60 and inflation was 2.5% per year between date entering into contract and date of draw down at 65, the actual amount becoming payable would be some £638.14 per annum, and as it is an official pension it will continue to be indexed linked post retirement. It also has to be taken into account for the purposes of **Regulations 21 and 22**.

Due to the method of calculating a survivor pension any extra pension granted by the employer (up to a maximum of £5,000) or purchased by the member (in multiples of £250 up to a maximum of £5,000) will not automatically generate extra survivor benefits. However, a member electing to purchase extra pension will be able to add within that election extra survivor benefit (payable in addition to the standard survivor benefits). This will be at member's choice and will be reflected in the guidance produced by GAD, which will also cover the effect of additional pension being taken early. It is not possible to purchase an additional pension only for a partner.

APBs will be paid in full for those members who cease active employment due to ill-health. This is based on current legislation and does not therefore differentiate between ill-health from all employments as opposed to current employment only. Although this arrangement follows the lead already taken within the TPS the one set of factors for LGPS will permit members to pay over a longer period than is possible for a teacher.

One should also look to the administrative processes as set out in the [Admin Regs provisions about paying ARCs \(additional regular contributions\), regs 23 and 24](#).

Additional Voluntary Contributions

Regulation 15

This simply provides the enabling capacity for a member to make contributions to an AVC provider, chosen by the relevant administering authority. It should be read in conjunction with [Regulations 25 and 26 of the Admin Regulations](#), and any guidance material produced by the provider which has to be prepared in line with approved means under the relevant Finance Act provisions. Pension deriving from an AVC fund forms part of a benefit crystallisation event [see Regulations 21-22] as a result of early flexible or full retirement, which does provide capacity for monies from an AVC fund to be included as part of the overall capital value from which 25% can be taken as tax free lump sum. The limit of only paying 50% of pay on a regular basis, ie no lump sums but rather ongoing deductions from pay, continues to apply.

Retirement: Normal Retirement

Regulation 16

This is the normal retirement age of a scheme member, and is the age at which if a member chooses to retire benefits will be paid in full with no actuarial reduction coming into play.

Retirement: Late Retirement

Regulation 17

For a variety of reasons more members of the workforce are choosing to continue in employment beyond the earliest age at which they could seek release of pension rights. Indeed it is now government policy to provide some form of encouragement in terms of pension for those who choose not to retire at state retirement age. From April 2008 members who choose not to take a pension at the Scheme's normal retirement age of 65 will:-

- continue to accrue membership of the scheme up to the day before 75th birthday if they are active contributing members
- earn enhancement on those rights accrued up to age 65; and
- earn enhancement as well on that membership accruing beyond their 65th birthday.

While there is no limit on accrual or enhancement in some instances higher earners might find themselves in certain circumstances generating a tax liability if the total value of their accrued rights at a benefit crystallisation is in excess of HMRC lifetime allowance limits. The enhancement of rights accrued up to the Scheme's normal retirement age will also apply where a deferred member chooses not to draw down pension at 65. See also Regulation 29(5).

See the relevant GAD guidance note which provides detail of the relevant actuarial uplift to accrued rights.

Retirement: Flexible Retirement and Final Pay

Regulation 18

The new tax regime introduced from 2006 permits for the first time the concept of members of occupational pensions schemes drawing all or part of their accrued rights whilst continuing in employment with the same employer. Individual pension schemes can devise their own rules as to how such flexible retirements will operate. Within the LGPS as a means of stabilising and controlling costs the policy decision has been made that release of accrued rights at the point in time of flexible retirement can only occur where there has been an actual reduction in hours or grade. Without doing so the savings used to pay for the new benefit package following the removal of the rule of 85 just would not be available. This regulation also requires the amount of any pension taken as part of a flexible retirement is taken into account, in line with GAD guidance, when a final pension is taken under other provisions.

Flexible retirement

Just what is the cost of agreeing flex retirement and what are the business case implications? One important issue to recognise is that this is not simply a pension question as it ultimately has to involve employment oriented questions relating to business efficiency and retention of skills.

One of the major issues of cost demonstrated by steps taken to remove the rule of 85 is that actuaries factored in the risk of benefits being taken at the earliest possible date. Therefore ALL LIABILITIES for pre-October 2006 joiners are costed on rule of 85 at 60 basis for those who started before age 35 (or later if TV-in applied).

The pension funds within the Scheme have an opportunity saving (which still exists) where the member chooses not to go at age 60 or request, in the case of a deferred member, to draw down accrued rights. It costs the Scheme NOTHING if a member stays on to 65. Indeed some actuaries have suggested offering the carrot of awarding half the rate of enhancement applicable from age 65, as it is easily paid for by the substantial reduction in liability brought about by reduction in number of years pension is in payment. I am not sure this can be done across the piece because of age discrimination considerations, but on a case by case basis an employer could decide to augment to achieve the same effect if both business case and objective justification hurdles are overcome.

There will be a cost to the fund if an individual member receives higher than actuarially assumed pay awards or promotions in last few years, since the pension liability for rule of 85 protected members is met at age 60. There would seem to be no justification for netting off the cost of any so called larger pension as the liability is met, and it is only opportunity savings which are foregone. But even these potential lost savings have to be seen in a broader context.

The following needs to be recognised

- Flexible retirement was introduced into the LGPS as part of wider government policy to ease the transition from full time employment to full retirement and at the same time increase the number of workers over 55 who are economically active. It should overall be cost neutral, although in some circumstances cases could be made for either the employer or employee gaining. Essentially it is meant to be win/win.
- Any suggestion that the cost of flexible retirement cases should come from a budget for ill-health and early retirements seems odd, unless the assumption is made that such cases score against the assumption the actuary has made about levels of early release. But see above; in many instances there will not be an early release cost, and where there is, then it is more of a pension cash flow issue which needs to be considered in the round of the employment business case.
- The flexible retirements do not necessarily generate a cost when taken in the round, but they can mean that the potential saving has been foregone. Looking at the pension cost alone is like looking through the wrong end of the telescope. The important first step is to establish how employers manage their resources.
- Employers might not get as large an experience saving in respect of pension contributions, but win on the employment front. It is also an argument for permitting a member to take part, rather than all, of their accrued rights.

And whilst it is true that pay goes up quicker than inflation – normally that is in terms of long term trends– it is also true that contribution yields increase more quickly and this runs parallel with above inflation returns on investment which goes towards meeting the rights accrued up to age 60.

It will be necessary to consider capital cost. Actuaries have assumed benefits will be taken at Earliest Retirement Date, and for post April 2008 membership there will in due course be application of an actuarial reduction if pension is released early. This cost will not automatically be 70% of pension foregone, which has been suggested. Such a figure would be at the top end of reduction in opportunity saving AND has to be seen in the round. A higher pension might ultimately come into payment, but for a shorter period and the fund has received further and higher contributions and investment income AND employer makes saving by not having to recruit/train but use available skills base and save on salary and NI overheads.

What also needs to be spelled out is the possible business case justification to allow release of accrued rights unless change is meaningful (unless employer is happy with the cost implication!). Dropping from five days a week to four or less, or by one or two grades if the work can accommodate it, appears to be a more reasonable and workable approach, so that it is the employment agenda and not the pension fund/scheme which is the driver. Allowing flexible retirement where any reduction is minimal (eg less than 10-20%) may be difficult to objectively justify.

It is clear that a much clearer understanding of what needs to go in such business cases and just how value of retaining members can be costed is possible where funds have approached their actuaries for input. At least one of the main actuarial providers has already made significant progress in making this calculation more sophisticated than simply netting off pay and pension. Such actuarial approaches to wider employment issues could be perhaps encouraged, or at least considered, with Scheme employers.

Perhaps one would expect the pay for the calculation of benefits for the second retirement to be based on the pay that has been earned in the second employment (ie only on pay earned **after** the first retirement). It would seem to be a windfall if the second job was much lower paid but they were able to retire – after (say) a couple of years – and use the pay that was used to calculate the benefits in the first employment (i.e. the best of the last three years, even though they have only worked two years in the job from which they are retiring). However see above regarding reduction in hours.

But if this is being done as part of a properly costed exercise to retain certain skills and experience then the so called windfall should be taken into account in the business case modelling to agree the early release in the first instance. It is in *such* circumstances that allowing a person to use an earlier year (either highest actual under Regulation 8 or average of three years by virtue of Regulation 10) becomes relevant and is permissible.

This is one of the areas within the regulations which are dependant on employer practices. Its usage will need to be further monitored by the Policy Review Group over time. Within the LGPS it is intended that flexible retirement be used as a means of easing the transition from full time work to full retirement which is reflected in the concept of some form of stepping down, and as a means of employers retaining essential skills and experience.

There are two parts to the decision process from an employer's perspective. First of all they need to agree with the employee the change in contractual terms. Subsequent to that there is a further employer decision to agree to release of benefits on flexible retirement. This will be set out in Regulation 18(1). It is not envisaged that this is a means for employers to refuse to release pension in cases of flexible retirement where they could have been taken in full without employer consent on or after a member's 60th birthday.

It is envisaged that in the short to medium term most early and flexible retirements will have to give consideration to rule of 85 protections, which are covered by the amendments made to the 1997 Regulations. Guidance will be produced to enable scheme guides to cover how flexible retirement benefits are to be calculated and how this will impact on membership and benefits, particularly where the member takes only part of their benefits upon flexible retirement. It is intended that partial draw down will only apply to those rights accruing from 1 April 2008. This is to avoid problems relating to protected rights, eg pre 1997 GMP or the manner in which rule of 85 is calculated. Some of the mechanics may prove to be not dissimilar to approaches taken to pension debits applied following the application of a Pension Sharing Order. Members will be able to accrue more membership after taking flexible retirement.

The principle of which pay figure can be used is set out above, and also on page 33. It is essential that the same approach is followed by all fund authorities and their contributing members. But, of course, irrespective of how pay is calculated, the NRD for the post flex retirement period of membership will be different (65 in the new job but almost certainly under 65 in any flexible retirement case). Thus if someone flex retires at age 60, then leaves completely at 62 the two years would be subject to the three year early reduction factor – although employer could waive the reduction on compassionate grounds, or in the context of the overall business efficiency on which the flex retirement was first approved simply treat the departure as on grounds of efficiency.

The scheme has a retirement age of 65 and with or without flexible retirement early release could be subject to actuarial reduction. And if a person took some/all pension at 60 then retired completely at 63 an actuarial reduction has to be considered at both points in time – it's just that one is smaller than the other the second period of membership of three years would be subject to an actuarial reduction as it is being taken two years before the retirement age of the Scheme – unless employer decides to waive actuarial reduction. Certainly this will be the case once the rule of 85 has finally rolled out of the system.

Here are two examples

A local authority has been considering two different cases with a view to agreeing two flexible retirements where the member met the 85 year rule so had no reduction on their benefits.

One person was 60 with 40 years (so a decision was made to agree in order to persuade the member to stay), the other was under 60 but flexible retirement was agreed to avoid making the member redundant (since the duties of their post had diminished as a result of outsourcing).

If they left and then returned to employment their previous service (on which their benefits as used in the retirement calculations are based) counts as “unaggregated” service (as opposed to “qualifying” service), and their NRD for their new (PT) job is age 65. This removes the possibility that membership could be counted twice, and it is clear it cannot be aggregated. Under the new scheme a pensioner member cannot in fact aggregate.

Both members, however, continued paying into the scheme (as part time, continuously employed pensioner members). In subsequently retiring either at or before the NRD of 65, the calculation of benefit at final retirement will take account of that part of pension already drawn, in line with GAD guidance.

An example has been given of a scheme member earning 40k who wishes to flexibly retire, reduces his earnings to 20k, and retires completely five years later. He may choose to use a final pay period where his pay was at the 40k level. The concern here is that the fund will suffer a loss if the pay figure of £40,000 is used, and as a result might only agree to allow flexible retirement in cases where there is little difference to the overall Final Pay before and after flexible retirement (for example, a member earning 20k and drops to 18k).

But in such an example the reason for reduction from £40k to £20k is crucial. If it is a grade change then employer needs to recognise cost and build it into the saving from the reduction in overheads etc. But if change is in hours (as above) use of £40k is offset by the lower membership accrual. Should the Scheme differentiate or recognise the broader issues in deciding on such cases as set out above?

Following on from the earlier scenarios one arrives at the fundamental question. Are these members who have flexibly retired exactly the same as members who have retired completely from their employment. If they are pensionable members – in which case they cannot aggregate and should not be using earlier periods. Or can they be considered to still be a form of continuous active member? They are in fact given the best of both worlds.

From a government perspective of finding ways to keep people in work longer, and from an employer organisational perspective of retaining skills this might be the price that has to be paid – as long as the business case can be justified, not simply the pension cost case.

Retirement: Early Retirement

Regulation 19 – Redundancy

The earliest age at which pension can be released for new members is age 55, and for all members it will be 55 from April 2010. The regulation also makes clear that such payments are connected to business efficiency but this is no change from the current policy intention. Breaks in employment will break this protection.

Regulation 20 – Ill-health

Two new tiered ill health retirement provisions are contained in the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (*the benefit regulations*). They provide a 100% enhancement to accrued retirement benefits for those employees who leave because an Independent Occupational Health Professional (IOHP) has judged that they are permanently incapable of their local authority employment and are not likely to work in any other employment before normal retirement age of 65 (NRA), (first tier); and a 25% enhancement for those permanently incapable of their current employment but who are likely to become capable of gainful employment at some stage before NRA (second tier).

Following an undertaking given by Ministers, a consultation letter was issued on 21 November concerning proposals for a final, third tier of ill health benefit to be included in the benefit regulations. Consultation responses have been considered and assessed. Ministers have now agreed the terms of the third tier benefit including the review mechanism, and that the Statutory Instrument, setting out the third tier provision and other technical measures, can be finalised.

The provisions are to commence, in line with other benefit regulations provisions, on 1 April 2008 and will include transitional arrangements where individual ill health retirement considerations are currently being considered.

Regulation 31 is to be revised to make it clear that retirement benefits will be those accrued by the Scheme member, and that a certificate from an IOHP will be required before early release of pension can be made.

Permissible Revenue Amounts

Regulations 21 and 22

Together with relevant guidance from GAD these place the Scheme within the Revenue tax regime. This allows for 25% of the capital value of scheme benefits taken as part of a single Benefit Crystallisation to be taken as tax free lump sum. Three separate GAD guidance notes follow from these regulations setting out the approach to be taken for those High Earners within the Scheme who may be subject to a tax charge where the capital value of their accrued rights exceeds the Revenue lifetime allowance limit.

These two regulations also apply when benefits come into payment under Regulations 30 and 31.

Core Benefits: Death Benefits (Actives)

Regulation 23

This regulation now sets out that the death benefit payable to an active member is three times actual salary. This benefit is to be paid at the absolute discretion of the relevant administering authority, and in exercising their discretion the authority can give regard to any indication from a member as to whom the benefit should be paid. This procedure avoids the possibility of the money being seen as part of the member's property.

Use of a simple nomination form and/or strict adherence to such a form could result in the payment being treated for Revenue purposes as part of the member's estate and a tax charge might follow. The member is not nominating a beneficiary, but giving some indication as to whom a member would like the benefit paid.

Core Benefits: Survivor Benefits (Actives)

Regulation 24

This regulation sets out the survivor benefit calculation, based on an accrual of 1/160. For active members the period of membership is based on the maximum enhanced period of membership as used in calculating a top tier ill-health retirement pension under Regulation 20.

Regulation 25

As well as making clear that notifications of details of a nominated partner should be provided to the relevant administering authority, we also allow such nominations to be made by deferred and pensioner members as well as active members, as long as they have been members under the *Benefits Regulations*.

Core Benefits: Survivor Benefits Children

Regulation 26, 27, 28

The regulation as originally drafted allowed for the waiving of the suspension of a pension during short breaks. It therefore followed that if full time education does not continue the pension can be suspended. In the light of comments made so far on intention and construction, the regulation has been recast and the definition of eligible child will be as follows for dependant children:-

“The dependent child of a deceased member is an eligible child if

- the child is 17 or under or born within 12 months of the date of the death
- any dependant child still in education or training between the ages of 17 and 23 at the time of the death.

Any dependant child who is physically or mentally disabled can continue to be treated as a child after age 17 where the condition exists before death of the member any child who continues subsequent to the member’s death in education or training after age 17 and up to age 23, but for this group such benefit payable under 28, 34 or 37 may be suspended during any break.”

Deferred Members: Calculation, Early Release and Early Release Ill Health

Regulations 29, 30 & 31

Regulation 29 requires a calculation of accrued rights for members who leave without immediate entitlement to payment of a pension, and who become a deferred member. It is this level of benefit – with pensions increase uplift where appropriate – to be used where it is agreed to early release of pension between date of leaving and the scheme's normal retirement age. Under Regulation 30 this is where a deferred member asks the authority to release accrued pension rights before the Scheme's normal retirement age and an actuarial reduction may be applicable. Under Regulation 31 a deferred member has to demonstrate that were they still an active member of the LGPS then they would need to have satisfied the conditions in Regulation 20.

Death Benefits

Regulation 32

This now provides a five year guarantee for deferred members and **Regulation 7** of the Transitional Provisions sets out the maximum of five times pension which can be paid for those whose period of membership straddles the period March-April 2008, or by election is treated as straddling. In the current scheme a deferred member receives an automatic lump sum, and this replacement reflects the improvement in death in service benefits which have been introduced as part of the new benefit package from April 2008. This provision only applies to a deferred member who has a period of active membership in the Scheme on or after 1 April 2008.

Survivor Benefits

Regulation 33 and 34

These now provide for survivor benefits to come into payment following the death of a deferred member.

Pensioner Members: Ten Year Guarantee, Survivor Benefits

Regulation 35

This now introduces a ten year guarantee for pensioner members, to replace the current provision whereby survivors of a pensioner member receive an initial short term pension. This, as with deferred member increases, is a reflection of the improvement to death benefits within the overall benefit package. This provision only applies to a pensioner member who has a period of active membership in the Scheme on or after 1 April 2008.

Regulation 36 and 37

These now provide for survivor benefits to come into payment following the death of a pensioner member. The benefit payable is based on a different accrual than the member's own benefit calculation and ignores any commutation that the member may have made under Regulation 21 of the benefits regulations.

Common Provisions

Regulations 38-42

These are the common provisions for the Scheme:

Regulation 38 sets out the requirement (see also **Regulation 48 of the admin regs**) for benefits under these regulations to be indexed by virtue of Pensions Increase legislation on an annual basis each April;

Regulation 39 provides the facility to commute trivial pensions (in line with the relevant GAD guidance note) and the checks which authorities are obliged to undertake under Revenue provisions⁵;

Regulation 40 sets out the statutory obligation to have cost sharing principles in place by April 2008 (see also *page 56*);

Regulation 41 puts in place the need to take account of any pension sharing on divorce debit which has been applied in calculating and paying benefit under these regulations;

Regulation 42 brings forward the provision (as under the 1997 and earlier Regulations) to avoid double counting of periods of membership.

⁵A combination of growing reluctance to certify life expectancy of less than one year, together with the facility to take more tax free lump sum at point of departure and the increase in post retirement death benefit guarantee has meant that members can now be offered better provision via other means in terms of total payments available for member at the point of retirement rather than use the trivial commutation type route.

Other Issues: Pension Sharing

What will happen about Pension Sharing on Divorce or Dissolution, and how will the scheme treat pension credit and debit members?

Subject to some minor amendments it has been decided not to revoke the relevant provisions within the 1997 Regulations dealing with Pension Credit or Debit members at this time, so that they also apply to events taking place on and after 1 April 2008. The basic principles remain the same. These provisions will still impact on members who have pension rights debited from the Scheme membership.

Other Issues: Elected Members

Elected member provisions?

We are currently considering the best approach to manage the pension arrangements for elected members, especially in light of the Report of the Councillors Commission, published in December 2007, which contained recommendations relating to allowances and pension provision for Councillors. The Government will publish its response early in 2008. A consultation with stakeholders will be undertaken shortly after the Government's response, taking into account accepted recommendations from the Report and inviting comment on how pension provision should be shaped in the context of changes to the LGPS beyond April 2008. As an interim step, however, we intend to retain the current arrangements under the 1997 Regulations.

Policy Review Group

The Policy Review Group (PRG) was established in April this year, with the agreement of Ministers. The purpose of the Group is to be a “broad based forum” designed to concentrate on big issues – such as reviewing the Scheme’s future and seeks common ground on areas such as cost-sharing rather than discussing regulatory type issues which are being dealt with separately through various Communities and Local Government-led Working Groups. The Terms of Reference for the Group (along with the minutes of the meetings) can be viewed on our website at www.xoq83.dial.pipex.com on the Policy Review Group or What’s New Page.

It is worth noting that the Group has no decision making or negotiating powers. Communities and Local Government advises Ministers of the Group’s findings as appropriate. So far, the Policy Review Group has met four times this year and is the natural successor to the former Tri-Partite Committee (TPC) and the Policy Development Group (PDG). The next meeting is due to take place in April 2008.

Scheme Sustainability

The LGPS has (as set out in the LGPS (Membership, Contributions and Benefits) regulations 2007) a statutory requirement to have a cost-sharing arrangement in place no later than 31 March 2009. Put simply, cost sharing means sharing cost risks between employers and scheme members – thereby promoting a partnership of joint action to control those risks. It will also raise awareness of the value of pension benefits across the membership.

Much of the work for this is being taken forward at the Policy Review Group, where GAD have provided a helpful, initial steer to Group members in setting out what is involved – including having a “notional fund” as well as offering guidance on an implementation timetable. Inevitably, there is still a lot of work to do – but it is hoped that an informal consultation on how cost-sharing can be achieved within the LGPS, will start this month, coupled with a formal consultation going ahead next year. The LGPS is not alone in having to set up a cost-sharing mechanism. All the other public service pension schemes are also required to implement such a policy.

Transitional Regulations

The consultation on the draft Statutory Instrument took the approach of a balance between specific items and the need to identify those areas which would be best served by saving or preserving rights and arrangements already entered into. As the covering letter of 4 April with the Benefits Regulations set out, nothing is being done to alter any of the provisions and protections in the 1997 Regulations.

The LGPS (Transitional) Regulations 2008 [Statutory Instrument 2008/238] provides for the following:-

- **Regulation 1** the standard preambles and effective date for the SI along with common definitions;
- **Regulation 2** revokes the 1997 Regulations other than where specified in the regulations or in the saved provisions of Schedule 1;
- **Regulation 3** sets out how benefits are to be calculated for those continuous members of the Scheme who joined before 31 March and who will retire on or after 1 April 2008 having accrued membership under both arrangements;
- **Regulation 4** sets out similar arrangements for how current deferred members can be treated in like manner as continuous members if they rejoin the LGPS on or after 1 April 2008;
 - By default these two provisions mean that if someone is not a continuous member or treated as a continuous member by virtue of their decision to aggregate on rejoining, then their rights at point of earlier departure from the Scheme will continue to apply.
- **Regulation 5** deals with the calculation of membership for concurrent members as under current Regulation 32A and **Regulation 17 of the Administration Regulations** where the periods straddle 31 March and 1 April 2008;
- **Regulation 6** sets out how survivor benefits are to be dealt with for members covered by Regulations 3 and 4 who die leaving dependants;
- **Regulation 7** sets the maximum amount of death grant payable to a continuous member who becomes a deferred member after 1 April and whose death occurs before receiving pension at or after normal retirement age or receiving early release of pension. The total death benefit payable in such cases must not exceed five times pension as calculated under Regulation 23 of the Benefit Regulations taking account of Regulation 3 of the Transitional Provisions (eg £3,000 iro pre 2008 membership and £200 iro post 2008 results in a death benefit of £16,000, as opposed to the £9,000 lump sum payable under the 1997 Regulations;

- **Regulation 8** requires employers to attribute current members to a contribution payband effective from 1 April 2008;
- **Regulation 9** deals with the rates to be paid by protected ex-manual workers as their contributions come into line with other members over the period April 2008 to March 2011;
- **Regulation 10**, together with Schedule 2, sets out how the transitional protection for those who would have been covered by the rule of 85 if they chose to retire early by 31 March 2020 will continue to operate;
- **Regulation 11** is a saving provision making clear that appropriate pension funds as set out under the 1997 Regulations still apply;
- **Regulation 12** continues to apply abatement provisions applicable under the 1997 Regulations for those who first took pension under the earlier provisions;
- **Regulation 13** saves on an interim basis the 1997 Regulations as they apply to councillor members;
- **Regulation 14** deals with a limited number of issues relating to pension sharing on divorce not covered by a simple saving provision;
- **Schedule 1** sets out provisions saved under the 1997 Regulations and the provisions now revoked; and
- **Schedule 2** brings forward the rule of 85 protections for those members born on or after 1 April 1950.

In earlier correspondence it was also set out that the TP Regulations would also cover:-

- how pensionable pay before 1 April 2008 can be used for the purposes of Regulations 8-11 of the Benefit Regulations, it is now our view that this is not needed. A plain English reading of Regulation 8-11 of the Benefits Regulations could only mean that periods before the coming into force can be used; and
- how added years contracts entered into before 31 March would be dealt with and this is now achieved by a limited saving provision in Schedule 1.

Any further queries or questions on these particular provisions should be sent in the first instance to Brian Town (email – Brian.town@communities.gsi.gov.uk).