
CIRCULAR

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No. 156 - MAY 2004

CHANGES TO THE LGPS IN ENGLAND AND WALES

Purpose of this Circular

1. This Circular provides details of the changes made to the Local Government Pension Scheme Regulations 1997 by the Local Government Pension Scheme (Amendment) Regulations 2004 [SI 2004/573]. The changes are effective in England and Wales from 1 April 2004, other than the changes to the Internal Dispute Resolution Procedure which are effective from 1 June 2004.
2. The Circular also alerts authorities in England and Wales to the draft Local Government Pension Scheme (Amendment) (No. 2) Regulations 2004. The draft regulations propose that, other than in the case of Scheme members who are aged 50 or over at 31 March 2005, the earliest age at which pension benefits can be paid, other than on the grounds of permanent ill health, will be increased from 50 to 55 as from 1 April 2005. Furthermore, the draft regulations propose that the 85 year rule will be removed in respect of benefits accruing after 31 March 2005 (although it is proposed that there will be transitional protection for Scheme members who will both attain age 60 and meet the 85 year rule before 1 April 2013). The draft regulations and a covering letter were sent to Chief Executives by the Office of the Deputy Prime Minister on 31 March 2004.

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The Local Government Pension Scheme (Amendment) Regulations 2004 – a summary

3. The Local Government Pension Scheme (Amendment) Regulations 2004 [SI 2004/573], hereinafter referred to as the Amendment Regulations, make a number of amendments to the Local Government Pension Scheme Regulations 1997 in England and Wales.
4. The changes are effective from 1 April 2004 apart from the changes to the Internal Dispute Resolution Procedure which are effective from 1 June 2004.
5. The main changes that have been made to the LGPS Regulations 1997 are summarised below:
 - an NHS employer can enter into an admission agreement so that LGPS members who are transferred to them by virtue of a Partnership established under Section 31 of the Health Act 1999 can remain in membership of the LGPS¹
 - the facility that permitted employers to agree with employee representatives how the whole, or a part of, an employee's pensionable pay should be calculated (i.e. the pay upon which pension contributions were to be paid) has been removed. However, agreements that were in force on 31 March 2004 remain in force
 - the period of membership required in order to qualify for benefits under the LGPS is reduced from 2 years to 3 months. Apart from those members covered by transitional protections, refunds of contributions will only be available to those who leave within 3 months and have not had a transfer of pension rights into the LGPS. The transitional protections cover those members who were contributing to the LGPS on 1 April 2004, who subsequently leave with less than 2 years membership and who had not transferred pension rights into the LGPS from another scheme. Such members will still be able to opt to take a refund (rather than have a deferred benefit)
 - the definition of "permanently incapable" for entitlement to ill health benefits has been amended to clarify that it means "the member will, more likely than not, be incapable until, at the earliest, age 65²."
 - no ill health enhancement will be awarded where a member ceases membership of the LGPS on the grounds of permanent ill health for a second or further time
 - re-employed pensioners will not be able to combine their benefits upon cessation of the period of re-employment (but re-employed LGPS pensioners who are active members of the LGPS on 1 April 2004 can elect, by 30 September 2004, to opt out of the effect of this change)
 - deferred pensioners who rejoined the LGPS before 1 April 2004 and did not aggregate their membership must decide by 31 March 2005 whether

¹ See LGPC Circular 157 regarding the reciprocal arrangement whereby staff transferred from the NHS to a local authority led section 31 partnership can stay in the NHS Pension Scheme under a Directions Order.

² Age 70 in the case of coroners, Justices' Clerks and Councillor members.

or not to do so (or decide within such longer period as their employer may allow). Deferred pensioners who rejoin the LGPS on or after 1 April 2004 must decide whether or not to aggregate their membership within 12 months of rejoining (or such longer period as their employer allows)

- the augmentation provisions under the Scheme have been replaced with a single augmentation provision that allows employers to award a member an additional period of membership at any time during active membership of the Scheme. Employers will need to amend their discretionary policy on augmentation to reflect this change
- each administering authority must prepare, maintain and publish a funding strategy statement having consulted with such persons as they consider appropriate
- the Internal Dispute Resolution Procedure is amended from 1 June 2004. At stage 1 of the procedure, appeals are to be heard by a person specified by the body that took the initial pension decision. Responsibility for stage 2 of the procedure will rest with the administering authority.

The Local Government Pension Scheme (Amendment) Regulations 2004 in detail

Membership of the LGPS – partnership arrangements established under section 31 of the Health Act 1999 – regulation 6(11) of the LGPS Regulations 1997

6. Prior to the change being made by the Amendment Regulations, local government employees who were transferred to a NHS Care Trust could remain members of the LGPS provided
 - they were active members of the LGPS immediately before the transfer to the Care Trust,
 - the Care Trust had entered into an admission agreement with the LGPS Fund administering authority, and
 - the employees were specified in, or were within a class of employees specified in, the admission agreement.
7. The Amendment Regulations extend this facility to cover local government employees who are transferred to a NHS Scheme employing authority by virtue of a Partnership established under section 31 of the Health Act 1999. Such employees can remain members of the LGPS provided
 - they were active members of the LGPS immediately before the transfer to the NHS Scheme employing authority,
 - the NHS Scheme employing authority enters into an admission agreement with the LGPS Fund administering authority, and
 - the employees are specified in, or are within a class of employees specified in, the admission agreement.
8. It should be noted that the amendment to regulation 6(11) of the LGPS Regulations 1997 appears to permit the admission agreement to cover any staff working for a Care Trust or NHS Scheme employing authority who,

immediately before becoming employed by that body, were active members of the LGPS. Thus, provided the admission agreement specifies an individual or the class of employees to which the individual belongs as being eligible for membership of the LGPS, that individual will be eligible for membership of the LGPS even if he / she was not part of a compulsory transfer of staff to the Care Trust or NHS Scheme employing authority but voluntarily moves (without a break in service) to that body at any time from a job in which he / she was already an active member of the LGPS. It is important, therefore, that if an admission agreement is entered into, the wording of the agreement specifies:

- a) whether the agreement only covers those staff who are initially transferred from local government employment to the Care Trust or to the NHS Scheme employing authority and who wish to remain in the LGPS, or
- b) whether it will also cover LGPS members who subsequently voluntarily transfer, without a break in service, from local government employment to the Care Trust or to the NHS Scheme employer.

It is also important that the admission agreement adequately deals with the matter of scheme eligibility for those persons initially covered by the agreement who, at some later date, voluntarily change jobs within the Care Trust or NHS Scheme employer i.e. the admission agreement may require that entitlement to remain in the LGPS should cease if the transferee voluntarily changes job.

Pensionable pay

9. The facility that permitted employers to agree with employee representatives how the whole, or a part of, an employee's pensionable pay should be calculated (i.e. the pay upon which pension contributions were to be paid) has been removed. Employers are not now able to negotiate a reduction in the pay upon which employees (and hence employers) pay pension contributions and upon which pension benefits are calculated. However, any agreement that was in force prior to 1 April 2004 will remain in effect for the duration of the period during which the agreement applies.

Qualification for benefits under the LGPS

10. The period of membership required in order to qualify for benefits under the LGPS is reduced from 2 years to 3 months³.
11. Thus, an employee who has 3 or more months membership in the LGPS or who has had a transfer of pension rights (of any length) into the LGPS will be entitled to either deferred or retirement benefits under the Scheme,

³ Although, even if a member has less than 3 months membership and has not transferred pension rights (of any length) into the LGPS, a death grant, a surviving spouse's short-term pension and eligible children's short-term and long-term pensions will be payable if the member dies in service.

depending on their age and reason for leaving. Those retiring at age 65 with less than 3 months membership will also be entitled to retirement benefits under the Scheme.

12. The main implications of this Scheme amendment are covered below.
13. The reduction in the qualifying period will mean that a scheme member with 3 or more months membership in the LGPS, or who has had a transfer of pension rights (of any length) into the LGPS, will be entitled to immediate ill health benefits (provided the member is certified as being permanently incapable of discharging efficiently the duties of his / her employment or any other available comparable employment with the employer because of ill health or infirmity of mind or body). A member will, however, still need 5 years membership to be entitled to an enhanced ill health pension. As all scheme members who have 3 or more months membership in the LGPS or who have had a transfer of pension rights (of any length) into the LGPS will, if retired on the grounds of permanent ill health, now be entitled to an immediate ill health pension and lump sum, the Scheme provisions that provided for the payment of an ill health grant (i.e. a one off lump sum payment to members leaving on health grounds with 1 or more but less than 2 years membership) are no longer needed. They have, therefore, been deleted.
14. A scheme member aged 50⁴ or over, and who has 3 or more months membership in the LGPS or who has had a transfer of pension rights (of any length) into the LGPS, will be entitled to immediate benefits if the employer certifies that the reason for retirement was redundancy or was in the interests of efficiency. Employers need to be aware of the potential implications of this in relation to short service employees, including casual employees and fixed (short-term) contract employees. Short service employees may not be entitled to a redundancy payment but the LGPS Regulations do not require that a redundancy payment must have been made in order for pension benefits to be paid. Therefore, as long as
 - a) a scheme member aged 50 or over is redundant (e.g. the establishment where the employee works closes down, or the need for workers carrying out a certain type of work has ceased or reduced, or there is a change in the place of work of the employee), and
 - b) the scheme member has 3 or more months membership of the LGPS or has transferred pension rights into the LGPS, and
 - c) the employer certifies that the reason for retirement is redundancy

immediate unreduced benefits would be payable under regulation 26 of the LGPS Regulations 1997. The pension benefits, and the strain on Fund costs will, of course, be relatively small for short service members, unless the person has brought a transfer of pension rights into the LGPS. Regulation

⁴ It is proposed that this will rise to age 55 from 1 April 2005 (except for those members who are contributing to the LGPS on 31 March 2005 and who are aged 50 or over on that date for whom the minimum payable age will remain age 50).

121(9) of the LGPS Regulations 1997 does, however, provide discretion for administering authorities not to accept a transfer in of pension rights⁵.

15. Other early leavers (i.e. other than ill health, redundancy or efficiency) who have 3 or more months membership in the LGPS or who have had a transfer of pension rights (of any length) into the LGPS will be entitled to deferred benefits.
16. Apart from those members covered by transitional protections (see the paragraph below), members who cease employment with less than 3 months membership, who have not had a transfer of pension rights (of any length) into the LGPS, and who are leaving before the beginning of the tax year in which they attain State Pension Age⁶, are entitled to a refund of contributions from the Fund, less the relevant deductions (20% tax and the Certified Amount to buy the person back into the State Second Pension). Interest will no longer be payable on refunds unless the refund is paid one year or more after the date of leaving the Scheme. As an alternative to a refund, the member could, in the view of the LGPC and the Technical Group, elect for a Cash Equivalent Transfer Value to be paid to another Scheme or arrangement. The reasoning behind this view is explained at Annex 1.

Transitional protections apply to members who:

- a) were contributing to the LGPS on 1 April 2004,
- b) leave or opt out of the scheme with 3 months or more but less than 2 years membership,
- c) have not had a transfer of pension rights (of any length) into the LGPS, and
- d) are leaving before the beginning of the tax year in which they attain State Pension Age.

Such members will still be able to opt for a refund of contributions from the Fund under the former provisions rather than have a deferred benefit. It should be noted that even if a deferred benefit award is made there is nothing within the Regulations that would prevent the member, some years later, from subsequently requesting a refund of contributions plus interest (where the refund is paid more than 12 months after leaving). If a refund is subsequently claimed, a Contributions Equivalent Premium (CEP) would be payable to the Contracted-out Employments Group (COEG) of the Inland Revenue. Whether COEG would accept a CEP in these cases is not known as, normally, a notice of termination of contracted-out employment should be sent to COEG within 6 months of leaving and the CEP should be paid by

⁵ If an administering authority contemplates not accepting a transfer of pension rights for short term employees, consideration will need to be given to any potential implications under the proposed age discrimination legislation (operative from 1 October 2006) or under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 [SI 2002/2034]

⁶ The Technical Group decided at its meeting on 14 September 2000 that, due to the wording of the Pension Schemes Act 1993, a refund of contributions could not be paid in respect of a person who leaves in or after the tax year of attaining State Pension Age.

the later of 6 months after leaving or one month after COEG notify the amount due. If COEG will not accept a CEP, administering authorities would have to pay a benefit from the LGPS to the member. It is difficult, therefore, to see how administering authorities could pay a refund in these circumstances and so the original award of the deferred benefit would have to stand.

17. A member who opts out of the scheme with less than 3 months membership and who has not had a transfer of pension rights (of any length) into the LGPS is to be paid a refund of the contributions⁷ through payroll by the employer, who should also adjust the tax and national insurance contributions as appropriate. The refund is not, in the view of the LGPC Secretariat, to be paid through the Fund by the administering authority. This is because regulation 87, which deals with refunds via the Fund, only applies to "members" of the Scheme. By virtue of regulation 8(5) of the LGPS Regulations 1997, such optants-out are to be treated as never having been members of the Scheme and, hence, regulation 87 does not apply.

The fact that regulation 87(1)(b) still contains a reference to refunds being paid from the Fund in respect of employees who opt out of the scheme under regulation 8(2) is, in the view of the LGPC Secretariat, nothing more than a hangover to the former provisions. It is a redundant regulation for new Scheme members but will still be appropriate in the case of those members who opt out with 3 months or more but less than 2 years membership (and who had not had a transfer of pension rights into the LGPS) and who were contributing to the LGPS on 1 April 2004 (i.e. those optants-out covered by the transitional protections mentioned in paragraph 16 above and who request a refund).

The LGPC recognises that there would, potentially, be a number of advantages if refund of contributions to those who opt out during the first 3 months of membership could be made via the Fund, rather than via the payroll e.g.:

- there would be a record of membership (and of opting out) held by the administering authority,
- there would be no need to delete the computerised pension record,
- new joiners would have to be notified to administering authorities in a timely manner,
- it would overcome the problem employers face when adjusting NI contributions that span a tax year end, and
- the "Apparent Un-notified Termination" queries received by administering authorities from the DWP relating to optants-out where an employing authority has refunded contributions through the payroll but failed to properly adjust the NI contributions would no longer occur.

⁷ Optants out with less than 3 months membership who have not had a transfer of pension rights (of any length) into the LGPS are NOT entitled to a Cash Equivalent Transfer Value as an alternative to a refund of contributions through the payroll.

Conversely, there would be one very significant drawback of paying refunds of contributions to optants-out with less than 3 months membership via the Fund rather than through the payroll. This is that a large proportion of such optants-out are low paid and do not pay tax. To refund contributions through the Fund would impose a 20% tax charge on the refund which would not, in the eyes of the optant-out, restore the status quo and would inevitably lead to a number of complaints.

So, whilst the LGPC Secretariat accepts that the co-existence of regulations 87(1)(b) and 8(5) have created a dichotomy that could potentially justify employers and administering authorities in whichever repayment route they chose to take for optants-out with less than 3 months membership i.e. repayment via the payroll or via the Fund, the Secretariat believes that, on balance, and for the reasons expounded above, repayment via the payroll is the correct approach. This is akin to a person who makes payment to a personal pension scheme and opts out within the cooling off period. Paragraph 5.17 of IR12 deals with cases where contributions "were made in error because a direct debit mandate, or the like, was not altered or cancelled immediately the obligation to make the premiums or contribution ceased". In other words, although the member did not fill out the opting-out form until after they had made a contribution to the Scheme, the obligation to make payments ceased from day one of employment because regulation 8(5) says the person is to be treated as never having been a member of the Scheme. In this case, paragraph 5.17 of IR12 allows the contributions simply to be returned and for any tax relief given at source to be adjusted through the payroll.

18. A point of detail that needs to be considered is "When does a member attain 3 months membership of the scheme?" This is obviously straight forward in the case of a member without a break in service e.g. a member joining the scheme on 5 May would attain 3 months membership on 4 August. However, if an employee joins the scheme on 5 May and leaves on 2 June with a frozen refund, then rejoins on 21 August, when is 3 months membership completed? One could say that 3 months from 5 May would have ended on 4 August and this is 92 days. So the person's 3 months membership would now be achieved on 22 October (i.e. 5 May to 2 June = 29 days + 21 August to 22 October = 63 days which equals 92 days in total). However, if the member had first joined on 3 February the 3 months would have ended on 2 May which is only 89 days. So, does 3 months equate to 92 days or 89 days? It could be simpler to say that 3 months in all cases where there is a break in service equates to a total of 91 days (i.e. $365 / 4 = 91$ days to the nearest day). The Technical Group debated this question at its meeting on 12 May 2004 and decided, by a majority vote, that administering authorities should adopt 91 days when determining, in split service cases, when 3 months has been completed.
19. Lastly, it should be noted that the qualification period for entitlement to discretionary compensation under regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England

and Wales) Regulations 2000 remains unaltered i.e. the qualification period for the "66 weeks" compensation provision for employees whose employment is terminated by reason of redundancy or in the interests of efficiency when under the age of 50 remains at 2 years and has not been reduced to 3 months.

Changes to ill health retirement provisions

20. Apart from the reduction in the qualifying period to become entitled to an ill health pension (see paragraph 13 above) there are two other significant changes to the regulations governing ill health retirements.
21. Firstly, the definition of "permanently incapable", which is used to determine whether a member is entitled to an ill health pension or to the early payment of a deferred benefit on the grounds of permanent ill health, has been amended. The LGPS Regulations 1997 now specify that permanently incapable means "that the member will, more likely than not, be incapable until, at the earliest, age 65⁸." This is consistent with both the advice issued by the Employers' Organisation for local government in the 'Management of Ill Health Handbook' and with the "balance of probability" approach already taken by the Secretary of State in appeal determinations.
22. Secondly, where a member has previously ceased membership of the LGPS with payment of an ill health pension, even if that pension was not based on an enhanced membership period, no ill health enhancement will be granted upon ceasing membership of the Scheme on health grounds for a second or further time. Instead, only the membership in that second or further employment will be used when calculating the ill health pension benefits in respect of that employment⁹. However, where a member becomes entitled to multiple ill health retirement benefits in respect of concurrent employments which cease simultaneously, the benefits in each employment will be calculated by reference to an enhanced membership period provided, of course, that the member has at least 5 years membership.
23. The proposal in the earlier draft regulations that ill health retirement benefits awarded after 31 March 2004 should be subject to a 5 yearly review has not been carried forward into the actual Amendment Regulations. Following representations, Ministers have opted to delay the introduction of a review process pending comprehensive proposals which will be circulated later this year concerning the longer-term future of the Scheme.

⁸ Age 70 in the case of coroners, Justices' Clerks and councillor members.

⁹ It should be noted that the wording of regulation 28(4) would have been better phrased as "the multiplier for the further ill-health pension and grant will be **by reference to** the total membership without enhancement."

Re-employed pensioners - combining pension benefits following cessation of a period of re-employment

24. Prior to the Amendment Regulations, a re-employed pensioner could elect, following retirement from a period of re-employment in which he / she had again contributed to the Scheme, to combine the two periods of scheme membership, provided that the benefits from the first retirement were not being paid at an actuarially reduced rate and were not being paid in respect of a bare Equivalent pension benefit (EPB). Following the making of such an election, the person's retirement benefits under the Scheme would be calculated based on the combined period of membership and on the person's final pay in the post in which he / she had been re-employed. This provision was clearly advantageous to a pensioner where the final pay in relation to the period of re-employment was greater, in real terms, than the final pay in respect of the first retirement.
25. Subject to the protections covered in paragraph 26 below, the Amendment Regulations remove this option. In future, re-employed pensioners will not be able to combine their periods of scheme membership and so will receive separate pension benefits (see the table at Annex 2). Whilst the earlier membership will not count in working out the amount of benefits from the period of re-employment, it will count¹⁰ in determining, in relation to that period of re-employment, whether the person has enough membership to:
- a) qualify for a benefit (i.e. 3 months membership), and
 - b) qualify for an enhanced ill health pension (i.e. 5 years membership) although, as mentioned in paragraph 22 above, no enhancement can be awarded if the pensioner is already in receipt of an LGPS ill health pension.

It will also count in determining:

- a) the maximum period of augmented membership that the employer may grant to the member in the new employment under regulation 52 of the LGPS Regulations 1997; and
- b) the maximum membership¹¹ that can be taken into account in calculating benefits under the LGPS i.e. a maximum of 40 years or, for a member who joined before 1 June 1989¹², a maximum of 40 years at age 60 and 45 years at age 65.

¹⁰ It should be noted that the changes made to regulation 29 has resulted in a cross-referencing error in the LGPS Regulations 1997. The words in the second column of the Table in Schedule 3 to the LGPS Regulations 1997 should, against paragraph 3, read "All regulations but see regulations 29 and 32(5)(aa)"

¹¹ see paragraphs 4 and 5 of the Table in Schedule 3 to the LGPS Regulations 1997 and note (5)(a) to that Table.

¹² i.e. members who joined pre 1 June 1989 and who have since

- remained in continuous membership of the LGPS or have satisfied one of the continuity conditions, as defined in paragraph 1(1) of Schedule 4 to the LGPS Regulations 1997, and
- have not had a continuity break, as defined in paragraph 1(1) of Schedule 4 to the LGPS Regulations 1997.

26. The Amendment Regulations contain protections for existing re-employed pensioners i.e. those who were re-employed and again participating in active membership of the LGPS as at 1 April 2004 and whose pension in payment is neither being paid at an actuarially reduced rate nor is a bare Equivalent Pension Benefit (an EPB). Such re-employed pensioners may elect to retain their right to combine their membership at retirement (see the table at Annex 2). The election must be made by 30 September 2004 by writing to the administering authority in whose Fund the person is currently an active scheme member¹³. The election will include the right for their membership to be combined for the benefit of their dependants should they die in service. However, the protection offered by the election only remains in force provided the re-employed pensioner remains in the same employment from 1 April 2004 until the date of retirement or death in service (unless subject to a transfer). The Amendment Regulations do not, unfortunately, define "same employment" or "subject to a transfer". For example, does the word "transfer" mean that the member has been subject to a statutory transfer, a transfer to which TUPE applies, both of these, or does some other definition apply? The covering letter from the Office of the Deputy Prime Minister that accompanied the Amendment Regulations says it means "a change of employment that is beyond their control".

It should be noted that existing pensioners at 1 April 2004 who, on that date, are **not** participating in the LGPS as a re-employed pensioner are not able to elect to opt out of the changes made by the Amendment Regulations. Such pensioners, if they subsequently become re-employed and rejoin the LGPS will not be able to combine benefits upon cessation of the period of re-employment (see the table at Annex 2).

27. Administering authorities will need to write to their active members who were both an active member and a pensioner member (i.e. in receipt of an LGPS pension) as at 1 April 2004, where the pension in payment is neither being paid at an actuarially reduced rate nor is a bare Equivalent Pension Benefit (an EPB), in order to afford them the opportunity of making an election, by 30 September 2004, for the protections to apply to them.

28. There is one remaining matter that needs to be considered. Paragraph 4 of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 stipulates that a person who was a LGPS pensioner at 31 March 1998 and who either:

- a) was re-employed and had rejoined the LGPS before 1 April 1998, or
- b) became re-employed and rejoined the LGPS post 31 March 1998

¹³ The Amendment Regulations specify that the election must be made to the "appropriate administering authority". The definition of "appropriate administering authority" contained in Schedule 1 to the LGPS Regulations 1997 does not help clarify whether this means the administering authority paying the pension or the administering authority in whose Fund the pensioner is again an active member. It is assumed that the latter is the correct interpretation as the protected regulation 30 requires a member who wishes to aggregate benefits to make that election to the new Fund authority.

can elect to combine the periods of membership by making an election under regulation 29(1) of the LGPS Regulations 1997. Apart from those re-employed pensioners who are subject to the transitional protections outlined in paragraph 26 above and who make an election before 30 September 2004 to retain the right to aggregate under regulation 29, it is to be assumed that the rights granted by paragraph 4 of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 have become ineffectual (as the regulation to which that paragraph refers no longer provides the right to combine the periods of membership).

Re-employed deferred pensioners – option to aggregate membership

29. Prior to the Amendment Regulations the following rules applied:

- a) a deferred pensioner who rejoined the LGPS in a new employment prior to 1 January 1998 would, upon rejoining the Scheme, automatically have the two periods of membership aggregated unless the member elected to keep the two periods of membership separate. A member who elected to retain separate benefits could, upon ceasing the new employment (provided this was after 31 March 1989¹⁴), review their decision and, if appropriate, opt within 3 months of leaving to aggregate the two periods of membership;
- b) a deferred pensioner who rejoined the LGPS in a new employment on or after 1 January 1998 and before 1 April 1998¹⁵ could, upon rejoining the Scheme, elect to keep the two periods of membership separate. If the member:
 - i) made such an election the member could, upon ceasing the new employment, review the decision and, if appropriate, opt within 3 months of leaving to aggregate the two periods of membership;
 - ii) did not make such an election, the member was treated as if they had made such an election. However, from 1 April 1998 the member could opt at any time during the period of new employment to aggregate the membership;
- c) a deferred pensioner who rejoined the LGPS in a new employment on or after 1 April 1998 and before 1 April 2004 would not, upon rejoining the Scheme, automatically have the two periods of membership aggregated. However, the member could opt at any time during the period of new employment, or within 3 months of becoming entitled to the benefits, to aggregate the membership.

30. The Amendment Regulations stipulate that a deferred pensioner who rejoins the LGPS in a new employment on or after 1 April 2004 must, if he / she

¹⁴ The election to aggregate could only be made if the new employment ceased after 31 March 1989 – see regulation 7 of the Local Government Superannuation (Amendment) Regulations 1989 [SI 1989/371] and paragraph 13 of Annex A to the Department of the Environment Circular 9/89 which accompanied SI 1989/371

¹⁵ See paragraph 7 of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions) Regulations 1997

wishes to aggregate the two periods of membership, make an election under regulation 32 of the LGPS Regulations 1997 to aggregate within 12 months of re-joining the Scheme, or within such longer period as the new employer may allow¹⁶ (see the table at Annex 2). The notice of election can only be made whilst the person is an active member of the LGPS in the new employment and must be made to the administering authority of the current Fund and also to the administering authority of the former Fund (if this is different to the current Fund). Administering authorities will wish to amend the information provided to new members to draw to their attention the new timescales within which an election to aggregate has to be made. It should be noted that no provision has been made for a beneficiary to make the election on behalf of a member who dies within the 12 month period and who had not before the date of death made an election to aggregate.

31. Those deferred pensioners in categories (b)(ii) and (c) in paragraph 29 above who are active members on 1 April 2004 and who have not already opted to aggregate membership will have until 31 March 2005 to make an election to aggregate, or such longer period as the employer may allow.
32. The position of those deferred pensioners in categories (a) and (b)(i) in paragraph 29 above who opted to retain separate benefits and who are active members on 1 April is less clear. This is because by virtue of paragraphs 4 and 6 of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 such members could opt, within 3 months of becoming entitled to benefits from the further employment, to aggregate benefits under regulation 29 of the LGPS Regulations 1997. However, that regulation has been replaced with a provision that no longer permits aggregation. Furthermore, the 12 month time limit being introduced by the Amendment Regulations only relates to elections under regulation 32 of the LGPS Regulations 1997 (and not to elections under the former regulation 29). It would appear that this is a drafting oversight and that the intention is that deferred pensioners in categories (a) and (b)(i) in paragraph 29 above who are active members on 1 April 2004 and who had opted to retain separate benefits should, if they wish to aggregate the membership, have to elect to do so:
 - i) by 31 March 2005 (or such later date as the employer may allow), or
 - ii) within 3 months of the date of becoming entitled to benefits from the further employment where the date falls between 1 April 2004 and 31 December 2004

whichever occurs first.

¹⁶ For example, an employer might wish to consider extending the normal 12 month time limit in cases where the employee commences work with them on a lower whole time equivalent salary, in real terms, than the deferred benefits have been calculated on. However, the employer would then need to consider whether this should be an open ended extension which endures for so long as the person remains an active member in their employment or whether the person should have to make a decision on whether or not to aggregate within 12 months of the date their full time equivalent salary, in real terms, reaches that upon which the deferred benefits were calculated. The latter option could be very difficult to implement / monitor.

33. Administering authorities should, therefore, write to all active members in their Fund who hold, or may hold, a separate deferred LGPS pension and inform them of the change in legislation and of the new deadlines imposed for making a decision to aggregate membership. Whilst there is an opt out clause in regulation 43 of the Amendment Regulations under which deferred pensioners could opt out of the changes introduced by the Amendment Regulations, the opt out clause is ineffectual. This is because the deferred pensioner can only opt out of the changes in relation to the deferred benefit whereas the option to aggregate is made under the current job (from which there is no opt out clause). Thus, a person who is an active member on 1 April 2004 and who currently holds a separate deferred benefit from an earlier period of LGPS membership cannot opt out of the requirement to make a decision by 31 March 2005 (or such longer period as the new employer may permit) as to whether or not to aggregate the periods of membership. It should be noted, however, that a person who was not an active member on 1 April 2004 but who holds separate benefits, the latest of which is a deferred benefit that arose from employment that ceased on or after 1 April 1998 and before 1 April 2004 can, by virtue of regulation 43 of the Amendment Regulations, elect by 30 September 2004 to retain the right to aggregate those benefits under regulation 30 of the LGPS Regulations 1997 (see the table at Annex 2). Such deferred members will need to be given the opportunity, by 30 September 2004, to retain the right to aggregate their benefits.
34. An active member who is offered the opportunity of aggregating an earlier period of membership (in respect of which they hold an LGPS deferred pension) with a current period of membership but who does not do so will not be able to make a subsequent election to aggregate that earlier period during a further period of LGPS membership. For example, a man leaves job 1 with a deferred benefit and subsequently commences job 2. He decides not to aggregate the two periods of membership. He subsequently leaves job 2 with a deferred pension in respect of that job. Later, he commences job 3. He will be able to aggregate the membership from job 2 with that in job 3 but not the membership from job 1 with that of job 3.
35. Any unaggregated period of membership will not count in working out the amount of benefits from the new employment. However, the unaggregated membership will count in determining whether the person has enough membership in the new employment to:
- qualify for a benefit (i.e. 3 months membership), and
 - qualify for an enhanced ill health pension (i.e. 5 years membership).

It will also count in determining:

- the maximum period of augmented membership that the employer may grant to the member in the new employment under regulation 52 of the LGPS Regulations 1997; and

- b) the maximum membership¹⁷ that can be taken into account in calculating benefits under the LGPS i.e. a maximum of 40 years or, for a member who joined before 1 June 1989¹⁸, a maximum of 40 years at age 60 and 45 years at age 65.

Aggregating concurrent employments

36. Regulation 32A of the LGPS Regulations 1997 provides that where a person ceases to be an active member in one employment in respect of which he / she has at least 3 months membership¹⁹ and continues as an active member in another employment he / she held concurrently with the first employment, the member may elect to aggregate the membership in the job that has ceased with that in the job that is continuing. Regulation 32A does not directly specify a time period within which an election to aggregate membership must be made. However, where a member elects to aggregate, the provisions of regulation 32 apply and sub-paragraph (8A) of that regulation states that the election has to be made within 12 months of "the date [the member] became an active member again". Unfortunately this wording is not really relevant to a person who ceases a concurrent employment (as the member has not "become an active member again"). Nevertheless, it would seem logical that, by drawing an analogy with a normal re-employed deferred pensioner, the election to aggregate membership should be made within 12 months of ceasing active membership in the concurrent employment that has terminated (or within such longer period as the employer may allow). An amendment to regulation 32A clearly specifying a 12 month time limit would be helpful.
37. The 12 month time limit does not apply to members ceasing a concurrent employment with less than 3 months membership and who have not transferred pension rights into the LGPS. This is because the election to aggregate the membership in the job that has ceased with that in the job that is continuing is made under regulation 87 of the LGPS Regulations 1997 which does not contain a time limit. Again, it would be helpful if the ODPM could make an amendment was made to regulation 87 to impose a 12 month time limit.

Power of employing authorities to increase total membership

38. Prior to the Amendment Regulations an employer could, subject to specified time limits, resolve to increase (i.e. augment) the membership of:

¹⁷ see paragraphs 4 and 5 of the Table in Schedule 3 to the LGPS Regulations 1997 and note (5)(a) to that Table.

¹⁸ i.e. members who joined pre 1 June 1989 and who have since

- remained in continuous membership of the LGPS or have satisfied one of the continuity conditions, as defined in paragraph 1(1) of Schedule 4 to the LGPS Regulations 1997, and
- have not had a continuity break, as defined in paragraph 1(1) of Schedule 4 to the LGPS Regulations 1997.

¹⁹ Regulation 32A is deficient as it should refer to those members who have membership of 3 months or more or who have transferred pension rights into the LGPS

- a) a new employee under the age of 59, or
- b) a member who left employment on or after age 50

up to the maximum permitted by, respectively, regulations 53 and 52 of the LGPS Regulations 1997.

39. The Amendment Regulations have replaced the current augmentation provisions with a single provision. This allows employers to award a member an additional period of membership at any time during that member's active²⁰ membership of the Scheme with the employer. The additional membership granted cannot exceed²¹ the shorter of:

- a) 6 years 243 days, or
- b) the period by which the member's total membership falls short of 40 years, or
- c) the period by which the member's total membership falls short of the total membership the member will have if he / she continues as an active member until he / she is 65.

It should be noted that, technically, an employer can only assess (b) and (c) above when the employer knows the exact date an employee's contract will be terminated (either by the employer or by the employee). However, the limits in (b) and (c) above are likely to be removed from the LGPS when the new Inland Revenue tax regime governing pension schemes is introduced from April 2006. In the meantime, employers will need to exercise caution when considering awarding augmented membership to active members who will attain age 65 or have 40 years membership before the new Inland Revenue rules are introduced into the LGPS.

40. Where an employer resolves to augment membership, the employer and the administering authority must agree within one month of the date of the resolution whether the cost of the augmented membership will be paid to the Fund as a lump sum payment within that month or whether the cost will be met by an increase in the employer's pension contributions.
41. The change in the augmentation provisions is a significant one. It means that all employers' policies relating to augmentation under the former regulations 52 and 53 will need to be amended. This is because:
- a) regulation 53 has been deleted by the Amendment Regulations and so no longer exists, and
 - b) more importantly, a resolution to augment membership under regulation 52 can now only be made whilst the employee is an active member of the Scheme. Many employers currently use the augmentation provisions

²⁰ Note that as membership can only be awarded during active membership of the LGPS, regulation 52(10) of the LGPS Regulations 1997 is defunct as it refers to circumstances that can only occur after leaving employment.

²¹ The additional membership must, also, not increase the member's benefits to greater than those permitted under Schedule 4 of the LGPS Regulations 1997.

under the pre-amended regulation 52 to augment membership for leavers aged 50 or over, typically where the reason for leaving is redundancy or efficiency. The decision to augment is currently made after the date of leaving, and may take into account factors ascertained after leaving e.g. job prospects, new employment income, etc. However, as the new regulation 52 requires the resolution to be made before the person leaves active membership of the scheme, employers' augmentation policies will need to be amended to reflect this. It may be that to reflect the spirit of the legislation, if not the letter of the law, employer's who wish to augment membership in the case of redundancy or efficiency retirements will need to say that their policy will apply once notice of termination has been given, even if the amount of augmentation, if any, is not finally determined until after cessation of employment when all relevant factors have been ascertained.

42. It should be noted that where augmented membership is granted under regulation 52 of the LGPS Regulations 1997, neither a lump sum severance payment (the '66 weeks' provision) nor Compensatory Added Years can be awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000²².

Funding Strategy Statement

43. The Amendment Regulations require each administering authority, having consulted with such persons as they consider appropriate, to prepare, maintain and publish a written statement setting out their funding strategy. The administering authority must have regard to their statement of investment principles and to the "CIPFA Pensions Panel Guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No.6)".
44. The first statement must be issued by 31 March 2005 and must be revised and re-published following any material change in the authority's statement of investment principles or in the authority's policy on the matters contained in their Funding Strategy Statement.
45. When performing the triennial valuation of the Fund, the Fund actuary must take account of the administering authority's Funding Strategy Statement.
46. The Funding Strategy Statement allows each administering authority, having consulted such persons as they consider appropriate, to take a prudent long-

²² Regulations 6(1)(b)(ii) and 7(2)(b) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 do not permit compensation to be awarded where a person can count an additional period of membership under regulation 52 of the LGPS Regulations 1997. However, both of the aforementioned regulations 6(1)(b)(ii) and 7(2)(b) are in need of a minor consequential amendment as they both refer to regulation 52 as the "power of employing authority to increase total membership of members leaving employment at or after age 50" whereas the amended regulation 52 is simply the "power of employing authority to increase total membership" of an active member.

term view of funding liabilities whilst recognising the potential actuarial consequences of extending the liability recovery periods.

Notification of decisions made by the employer or by the administering authority

47. When an employer or an administering authority make a decision under the LGPS Regulations 1997 relating to the rights or liabilities of a person under the Scheme they must notify that person of the decision as soon as is reasonably practicable.
48. The Amendment Regulations require that the notification sent to that person should contain the job title and the address of the person to whom they may make an appeal against the decision under stage 1 of the Internal Dispute Resolution Procedure.

The Internal Dispute Resolution Procedure (IDRP)

49. From 1 June 2004 an amended IDRP will apply to prospective and active members of the LGPS in England and Wales and to others, such as deferred members, pensioner members and pension credit members, whose position may be affected by decisions taken by their employing body or by the administering authority. The main features of the new arrangement are:
 - a) responsibility for determinations under stage 1 of the appeal procedure will rest with a person to be specified by the body that took the decision which is being appealed;
 - b) where the appellant is dissatisfied with the decision under stage 1, he / she will be able to refer the matter to stage 2. Responsibility for determinations under stage 2 of the appeal procedure will rest with the administering authority; and
 - c) the Secretary of State has been removed from the Internal Dispute Resolution Procedure (but see paragraph 51 below).
50. The Local Government Pensions Division of the Office of the Deputy Prime Minister has issued detailed guidance on the new procedures. The guidance was sent at the beginning of April to the Pension Managers of all administering authorities in England and Wales. They should be in contact with all employers participating in their Fund regarding the new procedures and, in particular, the responsibilities of the employer at stage 1 of the appeal procedure.
51. Although the Secretary of State has been removed from the main Internal Dispute Resolution Procedure, appeals to the Secretary of State can still be made by an administering authority where the administering authority disagrees with a decision taken by a Scheme employer or where a Scheme employer has failed to make a decision. The details of the procedure to be followed in such cases is detailed in regulation 105 of the LGPS Regulations 1997.

Annual Benefit Statements (ABS)

52. The Amendment Regulations introduce a requirement for administering authorities to issue annual benefit statements to all active, deferred and pension credit members in their Fund. The first statements must be issued on or before 1 April 2005 and subsequent statements must be issued on or before each 1 April thereafter. The statement must include the amount of benefit accrued up to the 31 March prior to the date the statement was issued (or the benefits accrued up to such later date as the administering authority may choose) and, in the case of active members, an indication of the benefits they could accrue if they continue to be an active member of the Scheme until their normal retirement date.
53. This will be a substantial undertaking for those administering authorities who have not, to date, issued annual benefit statements or who have issued them only to active members. Administering authorities, bearing in mind the likely changes to the Scheme from April 2005, will need to consider both the information provided on, and any information accompanying, annual benefit statements issued to active members in 2004/2005. For example, if a projection of benefits to a date prior to age 65 is provided, it might be appropriate if this were to be accompanied by a "health warning" i.e. that the benefits shown as at that date may be overstated compared to the statement to be issued in subsequent years should the proposed changes to the Scheme's "85 year rule" come about.
54. The Amendment Regulations do not specify that annual benefit statements issued to deferred and pension credit members should include Pensions Increase. However, the merit in issuing a statement that does not show Pensions Increase is questionable. If Pensions Increase is shown, the statement should be accompanied by a clear warning that the "accrued" Pensions Increase is only payable once the benefits are in payment and a qualifying condition has been met. For example, if a deferred benefit is brought into payment:
- a) on compassionate grounds on or after age 50 but before age 55 (in respect of a pre 1 April 1998 leaver), or
 - b) on or after age 50 and before age 55 with the employer's consent under regulation 31 of the LGPS Regulations 1997 (in respect of a post 31 March 1998 leaver)²³, or
 - c) on the grounds of permanent ill health prior to age 55 where the person is not certified as being permanently incapacitated from engaging in any regular full-time employment

a qualifying condition will not have been met and so the Pensions Increase would not, normally, come into payment until age 55.²⁴

²³ This category will only apply to those aged 50 or over at 31 March 2005 if the draft Local Government Pension Scheme (Amendment) (No. 2) Regulations 2004 are enacted

55. There are no exemptions from the requirement to issue an annual benefit statement. Thus, the regulations require that a statement must be issued even in the case of active casual and variable time members and active councillor members.
56. The regulations, as presently worded, require that the statements for councillor members should be based on the member's pay (in the case of an active councillor member) or on the member's final pay (in the case of a deferred councillor member). This appears to be an oversight in the regulations as it would mean that:
- a) in the case of an active councillor member the statement would be based on the pay received by the councillor member in the 12 months up to the 31 March prior to the date the statement was issued (or such later date as the administering authority may choose). The accrued benefits shown on the statement, if based on that pay figure, would be incorrect because a councillor member's accrued benefits are based on career average pay. Similarly, the projected benefits to normal retirement date could be seriously overestimated if not based on career average pay; and
 - b) in the case of deferred councillor members the regulation requires that the statement is based on "final pay". This is not appropriate to councillor members as their deferred benefits are based on career average pay.

An appropriate amendment is, therefore, required either via a direct amendment to regulation 106A of the LGPS Regulations 1997 or indirectly via Schedule 8 of those Regulations. In practice, the LGPC Secretariat believes that administering authorities will have to base statements for councillors on career average pay.

Removal of right to convert Compensatory Added Years to a period of membership in the LGPS

57. The Amendment Regulations have removed the regulation (regulation 143 of the LGPS Regulations 1997) that permitted an employer to convert Compensatory Added Years which they had awarded into a period of Scheme membership (provided they paid an appropriate sum of money into the Pension Fund to compensate the Fund for the liability it was taking over from the employer). Much of regulation 143 was, in any case, time-limited and so it makes sense for the time-limited part of the regulation to be deleted. However, there was one element of regulation 143, namely sub-paragraph (10) of regulation 143, that was not time limited but which,

²⁴ In some special circumstances (i.e. where there is a dependant who is wholly or mainly supported by you and who is either under 17 or is in full time education or training) a pension can be increased before age 55. However, in the case of a woman, only the fraction of her pension earned in respect of service before 1 January 1993 will be increased and in the case of a man only that fraction of his pension earned in respect of service between 17 May 1990 and 31 December 1992 will be increased.

nevertheless, has not been saved. This said that employers who award Compensatory Added Years on or after 1 April 1998 and who believe they will cease to exist, or who cease to exist, as a result of a provision made by or under an Act, could convert the Compensatory Added Years into a period of Scheme membership. It may have been helpful to retain this particular provision in order to safeguard the income of certain pensioners but, as stated, the provision has been deleted in its entirety.

Urban Development Corporations

58. A new generation of Urban Development Corporations (UDCs) are being set up under sections 134 to 197 of Part 16 of the Local Government, Planning and Land Act 1980. Thurrock, the first UDC in the Thames Gateway, was officially established on 29 October 2003. A further London UDC is due to be established in May 2004 and further UDCs are likely to be in operation sometime during 2005. The lifespan of the UDCs is expected to be somewhere between 7 to 10 years. In order to make the LGPS available to employees of the new Corporations, UDCs have been added to the list of employers that may pass a statutory resolution specifying their employees, or a class of their employees, as members of the LGPS. The Local Government Pensions Committee (LGPC) had no objection in principle to Urban Development Corporations being added to the list of resolution bodies as it was felt this would be a simpler process than each UDC having to individually seek admitted body status. However, the LGPC acceptance of the resolution body route was subject to the proviso that, upon the demise of each UDC, there will be a named successor body (or guarantor) to meet any unfunded liabilities. The successor body would also take on the role for ongoing "employer" functions e.g. in relation to the exercise of discretions and the referral of deferred members to an independent medical practitioner in ill health cases. This would be akin to the role that the Commission for New Towns exercised in relation to the former Development Corporations.

The draft Local Government Pension Scheme (Amendment) (No. 2) Regulations 2004

59. The above named draft regulations and a covering letter were sent to local authority Chief Executives by the Office of the Deputy Prime Minister on 31 March 2004.
60. The draft regulations propose that, other than in the case of Scheme members who are aged 50 or over at 31 March 2005, the earliest age at which pension benefits can be paid, other than on the grounds of permanent ill health, will be increased from 50 to 55 as from 1 April 2005.
61. Furthermore, the draft regulations propose that the 85 year rule²⁵ will be removed in respect of benefits accruing after 31 March 2005 (although it is

²⁵ Under the current Scheme, retirement benefits voluntarily drawn before age 65 are not subject to an actuarial reduction if the member's combined age and Scheme membership in whole years equals or exceeds 85 years.

proposed that there will be transitional protection for Scheme members who will both attain age 60 and meet the 85 year rule before 1 April 2013).

62. The Office of the Deputy Prime Minister has prepared a factsheet on how the proposed changes to the 85 year rule may affect Scheme members. The factsheet can be viewed at www.xoq83.dial.pipex.com/afaqx.htm
63. The changes proposed in the draft regulations are significant changes. The letter from the Office of the Deputy Prime Minister that accompanied the draft regulations states "The consultation period now beginning provides an extensive opportunity for all interested parties to discuss with the Office the details of the proposals and to ensure that sufficient levels of protection are built into the scope of the changes under consideration." The consultation period ends on **30 June 2004**. Responses to the draft regulations, and any requests for discussion on them, should be directed to Paul Kirk, Local Government Pensions Division, ODPM, Zone 2/E8, Ashdown House, 123 Victoria Street, London, SW1E 6DE (tel 020 7944 6017) or e-mail paul.kirk@odpm.gov.uk

Actions for administering authorities in England and Wales

64. Administering authorities in England and Wales should copy this Circular to employers in their Fund (other than to Local Authorities to whom this Circular has been sent direct) or bring the Circular to the attention of employers by directing them to the Circular on the LGPC website at www.lg-employers.gov.uk/pensions/circulars.html
65. Administering authorities in England and Wales will need to liaise with employers in their Fund regarding the changes to the Internal Dispute Resolution Procedures and update all guides, booklets, forms and letters (as appropriate) to reflect the various changes made to the LGPS Regulations 1997 by the Amendment Regulations. The standard guides on the LGPC website have been updated. The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 [SI 1996/1655] require that material changes to a member's rights or prospective rights under the Scheme should be notified to the member (except to deferred pensioners and pension credit members for whom no current address is known) either before the date the change takes effect or within 3 months of that date i.e. within 3 months of 1 April 2004 (or 3 months of 1 June 2004 regarding to the changes to the Internal Dispute Resolution Procedure). Administering authorities will also need to take the appropriate action detailed in paragraphs 27, 30 and 33 of this Circular in respect of deferred and pensioner members.
66. Due to their significance, it is also highly important that the proposed changes to the Scheme, operative from 1 April 2005, are brought to the attention of employers participating in the Fund and to the attention of active Scheme members.

Terry Edwards, Assistant Director (Pensions), May 2004

Entitlement to a Cash Equivalent Transfer Value (CETV) for those members who cease employment with less than 3 months membership and who have not had a transfer of pension rights (of any length) into the LGPS.

In the view of the LGPS Secretariat, those members who cease employment with less than 3 months membership and who have not had a transfer of pension rights (of any length) into the LGPS are entitled to a Cash Equivalent Transfer Value as an alternative to a refund of contributions from the Fund. This is because regulations 116 and 117 of the LGPS Regulations specify that transfers out of the LGPS are to be in accordance with Chapter IV of Part IV of the Pension Schemes Act 1993. Sections 93, 93A and 94 of that Act state:

93. Scope of Chapter IV.

(1) This Chapter applies -

(a) to any member of an occupational pension scheme -

(i) whose pensionable service has terminated at least one year before normal pension age, and

(ii) who on the date on which his pensionable service terminated had accrued rights to **benefit under the scheme**.

93A. Salary related schemes: right to statement of entitlement.

(1) The trustees or managers of a salary related occupational pension scheme must, on the application of any member, provide the member with a written statement (in this Chapter referred to as a "statement of entitlement") of the amount of the cash equivalent at the guarantee date of any **benefits** which have accrued to or in respect of him **under the applicable rules**.

(2) In this section -

"the applicable rules" has the same meaning as in section 94;

94. Right to cash equivalent.

(2) In this section -

"the applicable rules" means -

(a) any provision which the rules of the scheme do not contain but which a scheme must contain if it is to conform with the requirements of Chapter I [which requires schemes to provide a deferred benefit to any member whose pensionable service is terminated before normal pension age and who has at least 2 years' qualifying service, or who has had a transfer payment into the scheme from a personal pension scheme]; and

(b) **the rules of the scheme**, except so far as Chapter II or III overrides them; and

(c) any provision of Chapter II or III which overrides any of the rules of the scheme.

So, whilst all occupational pension schemes must offer a transfer value to members whose pensionable service is terminated before normal pension

age and who have at least 2 years' qualifying service, or who have had a transfer payment into the scheme from a personal pension scheme, they must also offer a transfer value to members who have accrued rights to benefit under the scheme rules.

Regulation 97(2) of the LGPS Regulations states that "any question whether a person is entitled to a benefit under the Scheme must be decided by the Scheme employer who last employed him" and regulation 97(4) states "where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount." Crucially, regulation 97(11) states "in paragraphs (2) and (4) "benefit" includes a return of contributions. Thus, even those scheme members not entitled to a deferred benefit under the rules of the LGPS are, nevertheless, entitled to a Cash Equivalent Transfer Value as an alternative to a refund of pension contributions because they are entitled to a "benefit" under the rules of the scheme.

Annex 2

Combining Benefits from 1.4.04 - the effect of the LGPS (Amendment) Regs 2004 [SI 2004 No 573]

Status of 1 st benefit on 1.4.04	Status of 2 nd employment on 1.4.04	Date left 2 nd employment	Benefit entitlement iro 2 nd employment	Combined benefits possible?	Explanation
Deferred	Active (which commenced pre 1.4.04.)	Post 1.4.04	Deferred benefits	No, unless member opts to combine within 12 months of 1.4.04. whilst an active member (or such longer period as the employer allows)	See reg 42(8). Reg 42 (5) provides no further protection for this category as it only applies to re-employed pensioners. Reg 43 protection would also not apply as entitlement to the second benefit had not arisen prior to 1.4.04
Deferred	Deferred	1.4.98 – 31.3.04	Deferred benefits	Yes, provided member opts by 30.9.04. to retain right to combine	Reg 43 protection <u>does</u> apply as both the benefit entitlements arose prior to 1.4.04
Deferred	Deferred	Pre 1.4.98 ('95 regs apply – no change)	Deferred benefits	Only if elected for combined benefits within 3 months of becoming entitled to 2 nd deferred benefits	Both benefit entitlements arose under the 1995 regulations. The provisions in those regulations about combining benefits are not affected by the SI 2004 No 573 amendments
In payment	Active	Post 1.4.04	Deferred benefits	No	Reg 42 (5) provides no protection in this case as it only applies where a person remains in the same employment until death or retirement (i.e. cannot apply where deferred benefits arise)

Status of 1 st benefit on 1.4.04	Status of 2 nd employment on 1.4.04	Date left 2 nd employment	Benefit entitlement iro 2 nd employment	Combined benefits possible?	Explanation
In payment	Active	Post 1.4.04	Immediate benefits (same employment or compulsory transfer	Yes, provided member opts by 30.9.04. to retain right to combine	Regulation 42 (5) protection <u>does</u> apply here as the person is a re-employed pensioner at 1.4.04 and retires from the active employment
In payment	Active	Post 1.4.04	Death in service benefits	Yes, provided member opts by 30.9.04. to retain right to combine	Regulation 42 (5) protection <u>does</u> apply here as the person is a re-employed pensioner at 1.4.04 and dies in the active employment
In payment	Deferred	1.4.98 – 31.3.04	Deferred benefits	Yes, provided member opts by 30.9.04. to retain right to combine	Reg 43 protection <u>does</u> apply as both the benefit entitlements arose prior to 1.4.04
In payment	Deferred	Pre 1.4.98 ('95 regs apply – no change)	Deferred benefits	Only if elected for combined benefits within 3 months of becoming entitled to 2 nd deferred benefits	Both benefit entitlements arose under the 1995 regulations. The provisions in those regulations about combining benefits are not affected by the SI 2004 No 573 amendments

Status of 1st benefit on 1.4.04	2nd employment commenced on or after 1.4.04	Combined membership / benefits possible?	Explanation
Deferred	Active membership commenced on or after 1.4.04.	Yes, but only if member opts to aggregate membership whilst an active member and within 12 months of re-joining the LGPS (or such longer period as the employer allows)	Reg 43 protection would not apply as entitlement to a second benefit had not arisen prior to 1.4.04
In payment	Active membership commenced on or after 1.4.04.	No	Reg 43 protection would not apply as entitlement to a second benefit had not arisen prior to 1.4.04

Notes

- i). Combined benefits are not possible if the first set of benefits were reduced for early payment or were a "bare" EPB pension.
- ii). As the phrase 're-employed pensioner member', as used in regulation 42(5) of SI 2004 / 573, is not defined (similar but not identical phrases are defined in the Transitional Provisions Regulations 1997 e.g. 'active pensioner'), I have assumed it means a member who was both a pensioner member and an active member on 1.4.04 regardless of when the pension became payable.
- iii). My thanks to the Tameside Pension Fund who undertook the vast majority of the work in producing the above table.

Terry Edwards

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