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pay, pensions and  
employment solutions

The Local Government Pensions Committee  
Secretary: Terry Edwards

## **CIRCULAR**

Please pass on sufficient copies of this Circular to your Treasurer/Director of Finance and to your Personnel and Pensions Officer(s) as quickly as possible

**No. 198 – MAY 2007**

# **THE NEW-LOOK LOCAL GOVERNMENT PENSION SCHEME IN ENGLAND AND WALES**

### **Purpose of this Circular**

1. This Circular has been issued:
  - to provide authorities with an outline of the advice and information the Local Government Pensions Committee proposes to provide over the coming months leading up to the introduction of the new-look LGPS in England and Wales from April 2008;
  - to provide a commentary on the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 [SI 2007/1166] as amended by regulation 16 of the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2007 [SI 2007/1488]; and
  - to provide authorities with an update on further regulations that are currently expected

### **Background**

2. As authorities will be aware, the review of the LGPS in England and Wales commenced in August 2001 and culminated in a decision to introduce a new-look Scheme from 1<sup>st</sup> April 2008.

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Managing Director Jan Parkinson

3. The first piece of legislation for the new Scheme has now been issued. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 [SI 2007/1166] were issued under cover of a letter from Communities and Local Government (CLG) dated 4<sup>th</sup> April 2007 and set out the benefits package for the new-look LGPS in England and Wales. Those Regulations have since been amended by the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2007 [SI 2007/1488] which were issued by under cover of a CLG letter dated 25<sup>th</sup> May 2007.
4. Draft Administration Regulations were issued on 14<sup>th</sup> February 2007 and we are expecting the actual Administration Regulations to be made by the end of May 2007.
5. Another piece of the jigsaw, the Transitional Regulations, which will detail how the pre and post April 2008 benefit structures will interact, have yet to be issued. We are expecting a draft of these to be issued shortly.
6. The regulatory provisions dealing with the treatment of pension rights following pension sharing on divorce and with pensions for councillors have yet to be finalised.

### **Advice and information from the LGPC**

7. In the months leading up to the introduction of a new Scheme from April 2008, administering authorities, employers and employees will clearly need as much advice and information as possible.
8. To assist in this process, the LGPC plans, by the end of December 2007<sup>1</sup>, to
  - update, revamp and rationalise all of the standard employee guides and leaflets it produces for use by authorities (see <http://www.lge.gov.uk/lge/core/page.do?pagelid=58020> )
  - update the employees' LGPS website (see [www.lgps.org.uk](http://www.lgps.org.uk))
  - produce the text for a Newsletter to employees explaining the new Scheme and comparing it with the current Scheme
  - produce tools to help to explain the new Scheme, for example a DVD and / or CD ROM. Representatives from a number of administering authorities are working with the LGPC to determine the format and type of materials to be produced. The LGPC will then produce a tender specification and the successful bidder will be appointed to produce the required communication materials. The LGPC does not intend to produce an on line comparative benefits calculator showing the amounts Scheme members will get from the new Scheme, compared to the old Scheme. This is because such calculators rely heavily on the accuracy of input from the individual Scheme member (in terms of

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<sup>1</sup> This timescale is dependant upon timely promulgation of the Regulations and production of the necessary Government Actuary guidance.

accrued membership, existing added years contracts, whole-time equivalent pensionable pay, etc) and there is clearly a significant danger that incorrect, and thus misleading, results could be generated.

9. The LGPC plans to run a series of seminars and training events on the new look LGPS, both at a detailed level during the Autumn of 2007 for administering authorities and again, at a more over-arching level for employers, during January / February 2008. By early 2008 we should have all the relevant regulations and Government Actuary's Department guidance in place thereby ensuring that full and authoritative information can be imparted in the immediate lead up to April 2008. We recognise, of course, that authorities will need relevant advice and guidance well before then and so we will be issuing guidance and technical briefing notes via the normal LGPC Circulars. This Circular is the first of a number that will be issued over the coming months.
10. Given the significant change in the ill health arrangements under the new Scheme, we are considering the possibility of arranging training events on the new ill health procedures later in 2007<sup>2</sup>. Further information will be issued once a final decision has been taken.

**Commentary on the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 [SI 2007/1166] as amended by regulation 16 of the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2007 [SI 2007/1488]**

11. The above regulations were issued under cover of letters from Communities and Local Government dated 4<sup>th</sup> April 2007 and 25<sup>th</sup> May 2007. They set out the benefits package for the new-look LGPS in England and Wales which is to be operative from 1<sup>st</sup> April 2008.
12. In a nutshell, the main provisions of the new-look LGPS, as set out in the regulations, are as follows:
  - new employees must have a contract of employment of more than 3 months duration in order to be entitled to join the Scheme
  - all existing members move to the new Scheme from 1<sup>st</sup> April 2008
  - the new Scheme provides a pension of 1/60<sup>th</sup> of final pay for each year of membership in the Scheme after 31<sup>st</sup> March 2008. There will be no automatic lump sum in respect of post 31<sup>st</sup> March 2008 membership (but see next bullet point regarding commutation). Membership to 31<sup>st</sup> March 2008 will still be calculated as 1/80<sup>th</sup> pension plus 3/80ths lump sum

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<sup>2</sup> Subject to the relevant legislation and guidance having been produced by CLG by then.

- up to 25% of the capital value of benefits can be taken as a lump sum by commutation using the 12:1 commutation rate i.e. for every pound of pension given up the member gets £12 lump sum
- contributions will be payable on the same definition of pay as now (but no contributions can be collected from pay after age 75)
- employees are to pay contributions according to the following table based on their whole-time equivalent pensionable pay:

Band	Range	Contribution rate
1	£0 - £12,000	5.5%
2	£12,001 - £14,000	5.8%
3	£14,001 - £18,000	5.9%
4	£18,001 - £30,000	6.5%
5	£30,001 - £40,000	6.8%
6	£40,001 - £75,000	7.2%
7	More than £75,000	7.5%

Note: Given the completion of many equal pay claims, the need to move away from a two tier workforce and the need to equality proof the Scheme, the Government is proposing to increase the contribution rate, on a phased basis, for those existing manual workers who pay contributions at the protected 5% contribution rate, bringing their contribution rate into line with all other Scheme members from 1<sup>st</sup> April 2011. To achieve this it is proposed that the contribution bands should be merged over the three years between 2008/09 and 2010/2011 so that by 2011/12 everyone will fall within the standard bands shown above. This will be covered by the Transitional Regulations.

- apart from benefits payable on death in service, members must have a minimum of 3 months membership or have had a transfer of pension rights from another scheme into the LGPS in order to be entitled to benefits
- benefits are to be calculated on final pay being the best one of the last 3 years pensionable pay plus the average of any fees received in the last three years, but members whose post is downgraded or who voluntarily downgrade (other than as a result of flexible retirement) can, if they wish, choose to have benefits based on the average of any 3 consecutive years in the last 10 (ending on a 31<sup>st</sup> March). Where final pay from a year earlier than the final year is used, pensions increase will be added to compensate for the intervening inflation
- normal retirement age will be age 65, but with the right to take pension from age 60 or, with employer consent, from age 55 (or from age 50 for existing members opting to draw benefits with employer consent before 31<sup>st</sup> March 2010). Benefits voluntarily drawn before age 65 will

be subject to an actuarial reduction for early payment<sup>3</sup> (unless the employer waives the reduction on compassionate grounds)

- employees can stay in the Scheme beyond age 65 but benefits must be drawn before age 75. Benefits drawn after age 65 will be actuarially increased
- flexible retirement with employer consent<sup>4</sup> will be permitted from age 55, with member's being able to draw all or part of their benefits (or from age 50 for existing members opting to draw all or part of their benefits with employer consent before 31<sup>st</sup> March 2010). Benefits drawn on flexible retirement before age 65 will be subject to an actuarial reduction for early payment<sup>5</sup> (but the employer can waive any reduction in whole or in part)
- immediate payment of pension benefits following redundancy / efficiency retirement on or after age 55 (or from age 50 for existing members leaving before 31<sup>st</sup> March 2010)
- a two tier ill health benefits system. If the member's employment is terminated because of permanent ill health the pension payable is based on accrued membership<sup>6</sup> plus, if the person has 2 years membership:
  - 25% of prospective membership between leaving and age 65 where the member is unlikely to obtain gainful employment within a reasonable period of time but is likely to be able to obtain gainful employment before age 65, or
  - 100% of prospective membership between leaving and age 65 where the member has no reasonable prospect of obtaining gainful employment before age 65

Gainful employment is defined as "paid employment for not less than 30 hours per week for a period of not less than 12 months".

There is to be an underpin for certain existing older members (aged 45 or over on 31<sup>st</sup> March 2008) so that they receive no less than they would have done under the current Scheme.

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<sup>3</sup> Existing Scheme members may not suffer an actuarial reduction if they meet the 85 year rule and are covered by the transitional protections for existing members.

<sup>4</sup> Although the regulations do not provide that benefits can only be released if the employer gives consent this is a drafting error which is to be corrected.

<sup>5</sup> Existing Scheme members may not suffer an actuarial reduction if they meet the 85 year rule and are covered by the transitional protections for existing members.

<sup>6</sup> Provided the member has at least 3 months membership or has had a transfer of pension rights into the Scheme.

Note that for members whose employment is terminated on the grounds of permanent ill health but who are likely to be able to obtain gainful employment within a reasonable period of time it is proposed that employers will be provided with powers to pay a reviewable benefit from their revenue account (not from the Pension Fund) which could not continue if alternative employment is gained.

- a death grant of 3 times pay for death in service; a death grant of 5 times pension if a deferred beneficiary dies; and a death grant of 10 times pension less the amount of pension already paid if a pensioner dies before age 75
  - spouses pensions are to be based on a 1/160<sup>th</sup> accrual rate; civil partners and nominated co-habiting partners pensions are to be based on a 1/160<sup>th</sup> accrual rate (but we expect this is to be based on post 5<sup>th</sup> April 1988 membership only); children’s pensions are to be paid to eligible children, the amount depending on the number of eligible children and whether or not a spouse’s, civil partner’s or nominated co-habiting partner’s pension is payable
  - members will be able to buy extra scheme pension in multiples of £250 up to a maximum of £5,000 (to provide a pension for themselves only or to provide a pension for themselves and any survivor on their death) and / or they can pay Additional Voluntary Contributions (AVCs)
  - employers will be able to augment membership by up to 10 years; and / or grant extra pension of up to £5,000; and / or contribute, with the Scheme member, to a Shared Cost AVC
  - trivial pensions may be commuted into a single lump sum payment in accordance with HMRC rules
  - a cost sharing mechanism is to be established by 31<sup>st</sup> March 2009. Employing authorities and Scheme administering authorities will be required to have regard to guidance which is to be issued by the Secretary of State before 31<sup>st</sup> March 2009 detailing the manner in which the costs of the Scheme will be met after 31<sup>st</sup> March 2010.
13. The costs of future service under the new look Scheme, as set out in the Regulatory Impact Assessment accompanying the Regulations, are:

	<b>Existing Members</b>	<b>New Entrants</b>
Total cost	20.6%	18.2%
Less average employee rate	6.3%	6.3%
Employer rate	<b>14.3%</b>	<b>11.9%</b>

14. Overall, some of the key objectives have been met e.g. an increase in the average employee contribution rate and, according to the Regulatory

Impact Assessment, the benefit package equates to an employer contribution rate for future service of 14.3% for existing members and 11.9% for new members. We welcome the formation of, and participation in, the Policy Review Group which will focus on strategic issues, establish common ground between stakeholders and monitor closely longevity trends, ill-health and flexible retirement trends and other demographic experiences in the Scheme as well as such matters as the rate of commutation take-up. This will provide the basis for decisions on Scheme developments, for considering proposed regulatory changes to the Scheme's legal framework and for developing the essential cost-sharing mechanism.

15. A detailed commentary on the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, as amended by the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2007, is contained in Appendix 1 to this Circular.

### **Actions for administering authorities**

16. In consequence of the items in this Circular, administering authorities may wish copy this Circular to employers in their Fund (other than to Local Authorities to whom this Circular has already been sent direct) or bring the Circular to the attention of employers by directing them to the Circular on the LGE website at:

<http://www.lge.gov.uk/lge/core/page.do?pagelid=71952>

Terry Edwards  
Head of Pensions  
May 2007

## Appendix 1

### **Detailed comments on the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 [SI 2007/1166], as amended by regulation 16 of the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2007 [SI 2007/1488]**

In this Appendix each regulation is reproduced in *italics* and comments are provided beneath each regulation.

#### **Regulation 1 – Citation, commencement, interpretation and application**

*(1) These Regulations may be cited as the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.*

*(2) These Regulations apply in relation to England and Wales.*

*(3) These Regulations shall come into force on 1st April 2008.*

*(4) In these Regulations-*

*"the 1997 Regulations" means the Local Government Pension Scheme Regulations 1997;*

*"the 1997 Scheme" means the occupational pension scheme constituted by the 1997 Regulations;*

*"appropriate administering authority" means the body maintaining the appropriate fund;*

*"appropriate fund", in relation to a member, means the fund into which he pays contributions and from which he receives benefits;*

*"eligible child" has the meaning given by regulation 26;*

*"employing authority" means a body employing an employee who is eligible to be a member;*

*"financial year" means the year ending 31st March;*

*"nominated cohabiting partner" has the meaning given by regulation 25;*

*"part-time employee" means an employee whose contract of employment provides-*

*(a) that he is such an employee for the Scheme, or*

*(b) who is neither a whole-time employee nor a variable-time employee;*

*"the Scheme" means the Local Government Pension Scheme 2008 constituted by these Regulations;*

*"variable-time employee" means an employee whose contract of employment provides that he is such an employee for the Scheme and-*

*(a) whose pay is calculated by reference to his duties (rather than necessarily by reference to the number of hours he has worked), or*

*(b) whose duties only have to be performed on an occasional basis; and*

*"whole-time employee" means an employee whose contract of employment provides-*

*(a) that he is such an employee for the Scheme, or*

*(b) that his contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis.*

Comments:

This regulation defines various terms including the definition of “part-time employee”, “variable-time employee” and “whole-time employee”.

It should be noted that the policy intention is that a term-time employee should, other than for the purposes of determining an employee’s contribution rate (see regulation 3(6) below), be treated as a part-time employee. Thus, a term-time employee working 37 / 37 x 44 / 52 would have membership recorded as 84.6% of whole-time; and a term-time employee working 20 / 37 x 44 / 52 would have membership recorded as 45.7% of whole-time. The final pay of a term-time employee would, correspondingly, be grossed-up for benefit calculation purposes (other than for the death grant on death in service, where actual pay is used). It is difficult to see, however, how the definition of a whole-time employee, as currently worded, will deliver the policy intent described above.

The Secretariat has suggested that, in order to better reflect the meaning of full-time, part-time and variable-time employment, and to clearly deal with term-time employees, the definitions of “part-time employee”, “whole-time employee” and “variable-time employee” should be replaced with wording along the lines of the following which, in part, would reflect definitions already contained in regulation 2 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 [SI 2000/1551]:

“full-time employee” means an employee who, under their contract of employment, is paid by reference to the time he works and, having regard to the custom and practice of the employer in relation to employees employed by the employer, is identifiable as a full-time worker for each week in the calendar year”.

“part-time employee” means an employee who, under their contract of employment, is paid by reference to the time he works and, having regard to the custom and practice of the employer in relation to employees employed by the employer, is not identifiable as a full-time employee nor a variable-time employee.

“variable-time employee” means an employee who, under their contract of employment, is paid by reference to his duties (rather than by reference to the number of hours he has worked) or whose duties only have to be performed on an occasional basis.

CLG will be reconsidering the current definitions to ensure that the policy intention is delivered.

## **Regulation 2 – Active members**

*(1) An employee of a body listed in-*

*(a) Chapter 1 of Part 2 of;*

*(b) Chapter 1 of Part 5 of; or*

*(c) Schedule 2 to*

*the 1997 Regulations is an active member of the Scheme.*

*(2) But a person is not an active member unless he is employed under a contract of employment of more than three months' duration.*

*(3) An active member of the 1997 Scheme is an active member of the Scheme for as long as he continues in Local Government Pension Scheme employment.*

Comments:

This regulation says that a person who has a contract of employment of more than 3 months' duration and who is employed by one of the following is an active member of the Scheme:

- a) a Scheduled Body,
- b) a Resolution Body,
- c) an Admitted Body, or
- d) various other employers mentioned in Part 5 of Chapter 1 of the LGPS Regulations 1997

However, this regulation will have to be read in conjunction with the LGPS (Administration) Regulations as those Regulations, when promulgated, will qualify who may be an active member e.g. amongst other matters the LGPS (Administration) Regulations are likely to provide that:

- i) employees will not be able to be an active member on or after the day before their 75<sup>th</sup> birthday. This is to ensure that they will be a pensioner, not an active member, on the day before their birthday thereby ensuring that pension benefits can be paid on the day before their 75<sup>th</sup> birthday – see regulation 17(4) – and that the payments are thus authorised benefit payments under the terms of the Finance Act 2004
- ii) employees of a Resolution Body will only be members if the Body nominates them or the class of employees to which they belong as being eligible for membership of the Scheme
- iii) employees of an Admitted Body will only be members if they are covered by the Admission Agreement. The Admission Agreement can specify that all, or any specified class, of the body's employees may be members

The wording of regulation 2(1) seems to suggest that existing employees who, at 31<sup>st</sup> March 2008, have opted out of membership of the Scheme will automatically be enrolled into membership of the Scheme from 1<sup>st</sup> April 2008. However, CLG have confirmed that this is not the intention and that only those existing employees who are active members as at 31<sup>st</sup> March 2008 and who continue in the employment of an LGPS employer on 1<sup>st</sup> April 2008 will automatically join the new Scheme on 1<sup>st</sup> April 2008 (plus, of course, any new starters on 1<sup>st</sup> April 2008).

Regulation 2(2) makes it clear that an **employee** must have a contract of employment of more than 3 months' duration in order to be able to join the

Scheme. This will impact on the pensionable status of casual employees, of which there are two types<sup>7</sup>:

- a) those where there is no mutuality of obligation. In these cases the employer is under no obligation to offer employment and the worker is under no obligation to accept any work offered. A contract of employment only exists on the days when work is both offered and accepted; and
- b) those where there is a fixed-term or open-ended contract with mutuality of obligation. In these cases the employer has issued a contract of employment (although there are no contractual hours) and the employee is under an obligation to accept work under that contract as and when it is offered.

Those in category (a) are unlikely to ever meet the 3 month requirement and would thus be excluded from the Scheme. Those in category (b) are eligible for membership if the contract is open-ended or the fixed-term is for more than 3 months' duration.

It should be noted that casual employees in category (b) who have already opted into the Scheme and are active members on 31<sup>st</sup> March 2008 will, like all other active members of the Scheme on that date, remain members of the Scheme by virtue of regulation 2(3). Equally, casual employees in category (a) who have elected to be a member and are active members on 31<sup>st</sup> March 2008 (by virtue of working on that day) will remain an active member on 1<sup>st</sup> April 2008 (if they work on that day), but subsequent upon any day on which the category (a) casuals do not work on or after 1<sup>st</sup> April 2008 they would need to meet the minimum 3 month contract requirement to again be eligible for membership of the Scheme (which is unlikely). Regulation 2(3) says that "an active member of the 1997 Scheme is an active member of the [new] Scheme for so long as he continues in Local Government Pension Scheme employment". It would have been helpful if the phrase "Local Government Pension Scheme employment" had been defined for the purposes of both this regulation and regulation 16 (where the phrase is also used) but, in the absence of a definition, it should be construed as meaning "for so long as he remains in an employment in which he is eligible for membership of the LGPS".

The LGPC Secretariat is of the view that regulation 2(3) should have commenced with the words "Subject to regulation 10 of the (draft) Administration Regulations" so as to enable those who are active members of the Scheme on both 31<sup>st</sup> March 2008 and 1<sup>st</sup> April 2008 the ability to subsequently opt out of membership of the Scheme. CLG has confirmed that this is the intention.

CLG has also confirmed that an employee with multiple jobs will be able to choose not to be a member of the Scheme for one or more of their jobs whilst retaining membership in respect of their other job(s).

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<sup>7</sup> See the decision of the House of Lords in the case of Carmichael and Others v National Power Plc (explained in LGPC Circular 87 <http://www.lge.gov.uk/lge/aio/56226> )

The cross-references in regulation 2(1) to the 1997 Regulations will be amended to the appropriate regulation numbers in the Administration Regulations once the latter Regulations have been promulgated.

### **Regulation 3 - Contributions payable by active members**

*(1) Subject to paragraph (9), each active member shall make contributions to the Scheme at the contribution rate from his pensionable pay in each employment in which he is an active member.*

*(2) Subject to paragraph (4), the contribution rate to be applied to his pensionable pay in any financial year is calculated on the basis of his pensionable pay in the previous financial year in accordance with the following table.*

Band	Range	Contribution rate
1	£0 - £12,000	5.5%
2	£12,001 - £14,000	5.8%
3	£14,001 - £18,000	5.9%
4	£18,001 - £30,000	6.5%
5	£30,001 - £40,000	6.8%
6	£40,001 - £75,000	7.2%
7	More than £75,000	7.5%

*(3) On 1st April 2009, and each subsequent anniversary thereof, the figures in the second column of the table in paragraph (2) ("Range") are increased as if they were pensions to which the Pensions (Increase) Act 1971 applied.*

*(4) Where a member is employed in any employment for part only of any financial year, the range (and the contribution rate) applicable to him are those that would have applied had he been so employed for the whole of that financial year.*

*(5) Where a member is a part-time employee, his contributions shall be calculated by multiplying the contributions he would have paid had he been a full-time employee (calculated in accordance with paragraph (2)) by the proportion that the number of his weekly hours bears to the number of weekly hours that he would have worked had he been a full-time employee.*

*(6) But a term-time worker is not a part-time employee for the purposes of this regulation.*

*(7) In this regulation, "term-time worker" means a person whose contract of employment provides for a regular pattern of periods of work and periods of no work so as to result in a recognisable cycle of work consisting of one year (but is not limited to persons working in educational establishments).*

*(8) The amount of an employee's pensionable pay for the purposes of this regulation is calculated in accordance with regulation 4.*

*(9) In any event, an active member does not make any contributions after the day before his 75th birthday.*

*(10) A person who is an active member in more than one employment must make contributions for each of those employments.*

*(11) His appropriate administering authority may decide the intervals at which the contributions are made.*

*(12) For this regulation any reduction in pensionable pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work shall be disregarded.*

Comments:

Regulation 3 sets out the rules governing how the contributions payable by an active Scheme member are to be calculated.

The combination of regulations 3(2) and 3(5) require that the contribution rate to be applied to an employee's pensionable pay during a financial year should be the relevant rate from the table. The relevant band would be determined by reference to the pensionable pay the employee had received in the previous financial year or, in the case of a part-time employee, what the whole-time equivalent pensionable pay would have been.

However, in practical terms, it would be very difficult for payroll, between year end and the new year's first payroll, to accurately assess last year's pensionable pay figure and set the contribution rate for the coming year, particularly where the employee

- a) was part-time and had received variable payments e.g. for unsocial hours, sleeping in allowances, bonus payments, honoraria, etc., or had changed grade part way through the year, and / or
- b) received fees (e.g. as a returning officer) or had been paid on a sessional basis, and / or
- c) held multiple jobs (which should be treated separately for pension purposes), and / or
- d) had been on reduced or no pay at some point in the previous year as a result of sickness, maternity leave, paternity leave, adoption leave, strike, jury service, garden leave, career break, strike, salary sacrifice, etc.

The above are major issues, given that a significant proportion of LGPS members are part-time, many employees hold multiple jobs, and a proportion of the Scheme membership will have been on reduced or no pay or will have changed grades during the previous year. To be able to perform accurate calculations payrolls would need to hold details of each separate job, including contractual hours changes, pay earned before the change, pay earned after the change, periods on reduced or no pay<sup>8</sup> and any amount of pay received whilst on

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<sup>8</sup> Regulation 3(12) says that when determining the band that a member falls into (by reference to his previous year's pay) "any reduction ... by reason of ... any statutory entitlement ... shall be

reduced pay, the amount of weekend/evening enhancements and the periods they related to, what the whole time equivalent hours are for pension purposes, etc. etc. Few payrolls will hold this level of detail. Even if all payrolls were reprogrammed during 2007/08 to hold all required data, this could not be achieved until shortly before April 2008 which would mean that the historical data needed to work out the whole-time equivalent pay for 2007/08 would not be available.

As a result of these concerns, CLG wrote to all authorities and other interested parties on 3<sup>rd</sup> May 2007 to acknowledge the problems that the approach taken in regulation 3 would cause. In consequence, CLG is proposing<sup>9</sup> to amend regulation 3 to provide that, rather than relying on pay received during the previous financial year, the employee contribution rate will be set by reference to the employee's whole-time annual rate of pensionable pay or an equivalent hourly rate as at the beginning of the financial year or on the commencement of employment (if later). Thus, when preparing payroll for the beginning of the new financial year (i.e. when uploading increments, new tax codes, etc) the payroll will also need to access a table to assess and set the employee's contribution rate for the coming year. This would be by reference to the following table (but see the note further below regarding those existing members currently paying 5%):

Band	Range	Contribution rate
1	£0 - £12,000	5.5%
2	More than £12,000 up to £14,000	5.8%
3	More than £14,000 up to £18,000	5.9%
4	More than £18,000 up to £30,000	6.5%
5	More than £30,000 up to £40,000	6.8%
6	More than £40,000 up to £75,000	7.2%
7	More than £75,000	7.5%

It will be noted the ranges in the new table are expressed slightly differently as, under the old table, a person earning for example £12,000.50 would not have fallen into a band.

The band for full-time term-time employees<sup>10</sup> will be that appropriate to their annual pensionable pay or an equivalent hourly rate; the band for part-time term-time employees will be that appropriate to what their pay would have been had they been a full-time term-time employee.

Where an employee holds more than one employment, each is to be treated separately. For example, an employee with two part-time jobs, one with a whole-time equivalent salary of £13,000 and one with a whole-time equivalent

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disregarded". However, it does not say that any reduction in pay for any other reason should be disregarded (for example, where a member has been on half or nil pay due to sickness, or has been on maternity leave, etc). This is clearly wrong.

<sup>9</sup> This is a proposal. Final details will be consulted on by CLG in due course.

<sup>10</sup> The current definition of a term-time worker in regulation 3(7) would mean that a full-time employee working condensed hours over 4 days instead of 5 would also fall within the definition of a term-time worker (even though they don't work term-time)

salary of £15,000 will pay 5.8% on the pay from the first job and 5.9% on the pay from the second job.

CLG have confirmed that an individual will only change bands during a year if he / she changes employer. The new starting pay will determine the band for that job for the rest of the year with that employer.

Given the completion of many equal pay claims, the need to move away from a two tier workforce and the need to equality proof the Scheme, the Government is proposing to increase, on a phased basis, the contribution rate for those existing manual workers who pay contributions at the protected 5% contribution rate, bringing their contribution rate into line with all other Scheme members from 1<sup>st</sup> April 2011. To achieve this it is proposed that the contribution bands should be merged over the three years between 2008/09 and 2010/2011 so that by 2011/12 everyone will fall within the standard bands shown above. This will be covered by the Transitional Regulations.

Thus, payrolls will have to cope with a different table for the protected 5% contributors over a transitional period.

Regulation 3(3) currently provides that the figures in the second column in the table are to be increased on "1<sup>st</sup> April 2009, and each subsequent anniversary thereof ..... as if they were pensions to which the Pensions (Increase) Act 1971 applied". As worded, regulation 3(3) would cause difficulties i.e.

- a) the figures in the table would not be increased at all in April 2009 because the 2009 Pensions Increase (Review) Order will not have taken effect by then. This is because the Orders only apply from the first Monday on or after 6<sup>th</sup> April. The same problem would arise on every 1<sup>st</sup> April in the future and therefore the table would always be running one year behind inflation
- b) the Regulation does not specify what the PI date to be used is

Additionally, there is no rounding provision, which would mean the figure in, for example, the second band would increase to £12,252.00 - £14,294.00 if PI was 2.1%.

CLG intends to introduce amendments to clarify the method of indexation and to introduce a rounding provision.

The LGPC Secretariat understands the genuine concerns of many payroll and pension practitioners as to the practicality of administering a tiered contribution rate. This will necessitate significant payroll reprogramming and interface testing (with associated costs). We appreciate that time is of the essence and we intend to issue further advice and guidance on how payrolls systems should interpret and apply the contribution table as soon as we are in a position to be certain exactly what the amended regulation 3 will say. The guidance will, amongst other matters, need to consider how the rate should be determined for people who are paid at a sessional rate, or who are paid fees.

Finally, the Secretariat believes that the regulations ought to be amended to provide that contributions to the LGPS in relation to a pensionable employment should be limited to 100%<sup>11</sup> of taxable earnings received in **that** employment in the tax year, except in the case of unpaid leave of absence. This is to ensure that, for example, a person with 2 jobs cannot pay 6% in respect of one job and 120% in respect of the second job.

#### **Regulation 4 – Meaning of pensionable pay**

- (1) *An employee's pensionable pay is the total of –*
  - (a) *all the salary, wages, fees and other payments paid to him for his own use in respect of his employment; and*
  - (b) *any other payment or benefit specified in his contract of employment as being a pensionable emolument.*
  
- (2) *But an employee's pensionable pay does not include –*
  - (a) *payments for non-contractual overtime;*
  - (b) *any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;*
  - (c) *any payment in consideration of loss of holidays;*
  - (d) *any payment in lieu of notice to terminate his contract of employment; or*
  - (e) *any payment as an inducement not to terminate his employment before the payment is made.*
  
- (3) *No sum may be taken into account in calculating pensionable pay unless income tax liability has been determined on it.*

Comments:

This regulation defines pensionable pay in much the same way as under the current Scheme.

However, whilst the historical position regarding leased cars is to be dealt with by the Transitional Regulations, the Secretariat believes regulation 4(2) ought to also exclude leased cars (or the money value of a leased car) in order to ensure that no new cases can be pensionable; otherwise they could be made pensionable via the contract of employment if the employer specified them as being such in accordance with regulation 4(1)(b).

School Achievement Awards have been removed from the exclusions list in regulation 4(2) as it is understood they are no longer payable.

It should be noted that an equivalent of regulation 13(3) of the 1997 Regulations has not been included in regulation 4. Regulation 13(3) of the 1997 Regulations said "the pay of a part-time employee for any period is the pay he would have received if during that period he had worked the contractual hours." The absence of such an equivalent provision in regulation 4 will mean that employers will now only be able to rely on regulation 4(2)(a) to exclude

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<sup>11</sup> Or 50% in the case of AVCs to mirror regulation 60(2B) of the LGPS Regulations 1997.

“excess hours” above an employee’s contractual hours from being pensionable (i.e. by treating them as non-pensionable “non-contractual overtime”).

### **Regulation 5 - Benefits**

*(1) 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.*

*(2) But paragraph (1) does not apply to benefits in respect of a member under regulation 23 (death grants: active members), regulation 24 (survivor benefits: active members), or regulation 28 (children's pensions: active members).*

Comments:

This regulation provides that a member of the Scheme is only entitled to benefits under the Scheme if –

- a) his total membership is at least three months, or
- b) he has transferred pension rights into the LGPS from another (non LGPS) scheme.

However, the above requirements do not apply in the case of benefits payable under regulation 23 (death grant: active members), regulation 24 (survivor benefits: active members), or regulation 28 (children’s pensions: active members).

CLG have stated that a plain English reading of the phrase “total membership” in regulation 5(1)(a) suffices as the regulation only deals with the post 2008 regime and a definition is not, therefore, required.

It is not clear from the combination of regulations 5 and 6 whether a period of unaggregated deferred membership or a period of membership in respect of which a member is already in receipt of a pension will count towards the minimum 3 month period required for entitlement to a benefit in a new local government employment.

Clearly, the Transitional Regulations will need to provide that pre 1<sup>st</sup> April 2008 membership will count towards total membership for the purposes of regulation 5.

### **Regulation 6 – Periods of membership**

*(1) These are the periods which count as periods of membership-*

- (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 3; and*
- (b) any period added under regulations 12 or 20.*

*(2) Where a member who has left local government employment rejoins such employment before his normal retirement age, the periods mentioned in paragraph (1) are (unless he chooses otherwise) aggregated with any such subsequent periods.*

Comments:

Under this regulation, only:

- membership for which contributions have been paid (or are treated as having been paid) under regulation 3,
- 'augmented membership' granted by the employer under regulation 12, and
- ill-health enhancement under regulation 20

can be taken into account when calculating a member's benefits under regulation 7(5).

The counting of pre 1<sup>st</sup> April 2008 membership (including various types of service such as purchased added years) are to be covered by the Transitional Regulations, but the intention is that rights existing under the 1997 Regulations are not to be altered in respect of membership accrued up to 31<sup>st</sup> March 2008.

Regulation 6 does not currently provide that service transferred into the Scheme post 2008 can count as membership. This implies that Funds can accept a transfer value but not include the membership resulting from the transfer when calculating retirement benefits. CLG have, however, confirmed that the regulations will make clear, in connection with the Administration Regulations, that transferred in membership will count. Similarly, CLG will also need to make sure that membership derived by the conversion of AVCs into membership post 31<sup>st</sup> March 2008 (i.e. by those who commenced AVCs prior to 13<sup>th</sup> November 2001) will be counted under regulation 6(1).

Regulation 6 does not detail how membership will count for various purposes e.g.

- for what purposes membership will count where a member, post 31<sup>st</sup> March 2008, aggregates / does not aggregate separate periods of membership. Will the membership, for instance, count towards the 2016 and 2020 "85 year rule" protections;
- whether, where a member aggregates membership post 31<sup>st</sup> March 2008, that part of the aggregated membership which falls before 6.4.78. or 6.4.88. will count for, respectively, post retirement widow's and widower's/civil partner's pensions;
- whether any part of benefits not drawn on flexible retirement will retain any 2016 and 2020 "85 year rule" protection;
- whether overlapping membership counts twice;
- how a deferred benefit for a pre 6<sup>th</sup> April 2006 leaver who was subject to the Earnings Cap and is aggregated with post 1<sup>st</sup> April 2008 membership should be adjusted consequent upon the removal of the Cap;
- etc.

CLG has confirmed that steps are to be taken to ensure there is no double counting of periods of membership where service overlaps and that the current provisions which allow for the aggregation of concurrent membership are to be replicated in the Administration Regulations. As practitioners will know, in reality there are two types of overlapping service. The first type is the genuine concurrent employment which will go through the apportionment routine based on the relativities of pay in the terminated job to pay in the continuing employment, thereby producing a fair service credit upon aggregation. The second type is overlapping service where a person leaves one employer and takes leave during the last week or so of that employment, and then starts with the new employer during the period he is on paid leave from the old employer. It seems to the LGPC Secretariat that a specific provision should also be provided in the Regulations to deal with this latter type of case. It should be made clear that such cases are not to be dealt with under the concurrent employment apportionment routine and that either:

- a) the overlapping service does not double count, or
- b) the overlapping service can double count (on the basis that the member and the employers have paid into the Funds for that period)

The current wording of regulation 6(2) means that membership from a pension already in payment, other than following flexible retirement (see regulation 18(5)), will count again upon re-employment (thereby generating a double benefit). This is clearly incorrect.

Regulation 6(2) provides that where a member ceases active membership and subsequently rejoins the Scheme, the previous membership will automatically be aggregated with the current period of membership, unless the member chooses otherwise. This would represent a significant change and would mean that we would have moved back to automatic aggregation of benefits when a deferred beneficiary rejoins the Scheme (unless he opts to retain separate benefits). CLG have, however, confirmed that this is not intended and that the Administration Regulations will continue with the current process whereby a member wishing to aggregate their deferred benefit with current membership will have to make a positive decision to do so. This will, of course, necessitate a change to regulation 6(2) i.e. the words "are (unless he chooses otherwise) aggregated" will need to be amended to "are (unless he chooses otherwise) **not** aggregated"

### **Regulation 7 – Calculation of length of periods of membership**

*(1) In calculating the length of a period of membership, fractions of years of membership count.*

*(2) The numerator of such fractions is the number of complete days of membership and the denominator is 365.*

*(3) Membership in part-time service is counted as the appropriate fraction of the duration of membership.*

*(4) The numerator of that fraction is the number of contractual hours during the part-time service and its denominator is the number of contractual hours of that employment if it were on a whole-time basis.*

*(5) The amount of any benefit payable to a member as a result of his membership is his total period of membership multiplied by his final pay and divided by 60.*

Comments:

This regulation spells out how benefits are to be calculated under the new Scheme i.e. members are entitled to a pension of 1/60<sup>th</sup> of final pay for each year (and part year) of membership. For part-time employees, the membership is pro-rated and the final pay is grossed up to the whole-time equivalent rate.

It may be necessary to qualify the method of calculation under regulation 7(5) in cases where only part of the pension is drawn on flexible retirement, depending on how the calculation for such cases is to work in practice.

Regulation 7 does not specify how benefits are to be calculated for a Pension Debit member and we are awaiting clarification on this point.

It is interesting to note that regulation 7(5) says that "the amount of **any benefit** payable to a member as a result of his membership is his total period of membership multiplied by his final pay and divided by 60". It seems to the Secretariat that it would have been more appropriate if the words "any benefit" had been replaced with the words "any pension".

### **Regulation 8 – Final pay: general**

*(1) Subject to regulations 9 to 11, a member's final pay for an employment is his pay for as much of the final pay period as he is entitled to count as active membership in local government employment.*

*(2) A member's final pay period is the year ending with the day on which he stops being an active member.*

*(2A) But a member may choose instead to treat as his final pay period either of the two preceding years ending with a day that is the anniversary of the last day he was an active member. [Inserted by SI 2007/1488]*

*(3) In the case of part-time employment, the final pay is the pay that would have been paid for a single comparable whole-time employment.*

*(4) Any reduction or suspension of a member's pensionable pay during the final pay period because of his absence from work owing to illness or injury is disregarded.*

Comments:

The Secretariat believes that regulation 8(1) should be amended to read “*Subject to regulations 9 to 11 **and 23(4)**, a member’s final pay for an employment is his **pensionable** pay for as much of the final pay period as he is entitled to count as active membership (in **relation to that**) local government employment **with that employer**”.*

The reasons for wishing the highlighted words to be added are as follows:

- a) a cross-reference to regulation 23(4) is necessary because that regulation restricts final pay to the actual pay of a part-time member who dies in service;
- b) adding the words “in relation to that” would clarify that where a member holds more than one concurrent employment, it is only the pay in relation to active membership in the employment that is ending that counts towards the benefit calculation for that employment;
- c) adding the words “with that employer” would mean that only pay from the current employer could count in the final pay calculation. This would also need to be reflected in regulation 8(2A) and would mean that pay from a previous employer (or employers) could not be counted where an employee had aggregated membership e.g. where the member had moved employer within the final year; or had moved employer within the last 3 years where the member’s pay with the former employer was higher than with the current employer; or had moved employer in the last 10 years and had downgraded to a lower paid post in the last 10 years either whilst with the previous employer or on transferring to the current employer. Ensuring pay from a previous employer is not included in the final pay calculation not only makes the calculation of final pay easier to administer, but would also mean that the last employer would not pick up the pension strain in cases where pay with a previous employer was higher than with the last employer. Even if the Intra / Inter-Fund Adjustment system was amended to provide a fair transfer sum in respect of the past service, the new employer would still be faced with the strain cost relating to the benefits accrued in respect of service with them as the benefits would be based on the higher pay figure the employee had earned with the previous employer;
- d) amending the word “pay” to “pensionable pay” is necessary in order to be consistent with regulation 4.

Regulation 8(2A) permits a member to choose to have benefits calculated on any one of the last three years pay. The equivalent in the 1997 Regulations provided that either of the two years prior to the last year could be used but only if the pay was actually higher than the final years pay. Take the following example of a member leaving on 30 June 2009:

1 July 2006 to 30 June 2007: £20,000 + PI 5.1% = £21,020  
1 July 2007 to 30 June 2008: £20,200 + PI 2.5% = £20,705  
1 July 2008 to 30 June 2009: £20,400 = £20,400

Under the 1997 Regulations the person could not choose either of the previous two years pay as neither was actually greater than £20,400. Regulation 8(2A), however, would appear to allow the member to choose to have benefits

calculated on the figure of £20,000 which, when PI is added, would generate a higher benefit. This, in effect, would provide a hedge against inflation where pay rises in the last 3 years were less than inflation. The Secretariat does not know whether this is a deliberate policy change.

Regulation 8(3) should have referred to "pensionable pay" and not to "pay" in order to be consistent with regulation 4.

### **Regulation 9 – Final pay: reserve forces, maternity leave etc.**

*(1) If a member's final pay period includes reserve forces service leave, his final pay is-*

*(a) in a case where he has continued to pay contributions in respect of it, the amount it would have been if his reserve forces pay were pay received in his former local government employment, or*

*(b) otherwise, the amount it would have been if he had continued to be employed in his former employment during the period of that leave.*

*(2) For the purposes of these regulations, a member's final pay for any period of maternity, paternity or adoption absence during the final pay period in respect of which he pays or is treated as paying contributions is the pay he would have received had he not been absent.*

*(3) If a member is absent from work for any other reason during his final pay period, he is only to be treated for these regulations as having received the pensionable pay he would otherwise have received if he has continued to pay contributions in respect of it for the period he is absent.*

*(4) If a member is only entitled to count part of the year specified in regulation 8(2) as a period of active membership in relation to the employment which he ceases to hold, his final pay is his pensionable pay during that part multiplied by 365 and divided by the number of days in that part.*

*(5) Final pay does not include any pension in payment.*

Comments:

This regulation sets out how final pay is to be calculated if, during the final pay period, the member was on reserve forces service leave, maternity, paternity or adoption leave, was absent for any other reason (other than sick leave), or if the member is only entitled to count part of the final year as active membership.

Regulation 9(1) may yet need to be amended depending on the eventual decision as to how those on reserve forces leave should be treated for pension purposes in the future.

Regulation 9(5) could be deleted if reg 8(1) is re-worded as suggested above.

## **Regulation 10 – Final pay: reductions**

*(1) A member whose pensionable pay has been reduced [1] because he has chosen to continue [2] in local government employment at a lower grade or with less responsibility [3] than his previous post may, subject to paragraph (3), choose [4] to have his final pay calculated as the average of his annual pensionable pay [5] in any three consecutive years ending 31<sup>st</sup> March [6] within the period of 10 years ending with the last day he was an active member. [As amended by SI 2007/1488]*

*(2) And the average referred to in paragraph (1) is increased as if it were a pension to which the Pensions (Increase) Act 1971 applies.*

*(3) A member who has had a request under regulation 18 granted may not choose under paragraph (1) in respect of the same event.*

Comments:

[1] This should say “reduced within the period of 10 years prior to his last day of active membership” otherwise employees who had a downgrading in, say, their 40’s could choose the average of the best 3 consecutive years in the last 10 when retiring 20 years later (which would be advantageous to the Scheme member where inflation over the last few years had outstripped pay rises).

[2] This appears to cover voluntary reduction cases (excluding flexible retirement cases - see regulation 8(3)) which means that the employer will pick up the cost where the Scheme member chooses to have benefits based on the average of the best 3 consecutive years pay in the last 10 (ending on a 31<sup>st</sup> March). This is true even where the reduction in grade occurred upon voluntary transfer of employment from a previous employer in which case (subject to the comments on regulation 8(1) above which could prevent this) at, say, age 55 an employee could decide to move from Senior Officer with one authority to office assistant with another employer and get benefits at 60 based on the average of 3 years of Senior Officer’s pay.

The regulation, as worded, does seem to also cover compulsory downgrading (e.g. as the result of single status). The regulation does not require the member to have chosen to downgrade, merely that following a downgrading, be that voluntary or enforced, the person had “chosen to continue in local government employment”.

This regulation appears not to be restricted to just those cases where the downgrading occurs after 31<sup>st</sup> March 2008. Thus, a member leaving on, say, 31<sup>st</sup> August 2009 who had a downgrading in 2006 could ask for benefits to be based on the average of the best 3 consecutive years pay in the last 10 years (ending on a 31<sup>st</sup> March), regardless of whether or not a Certificate of Protection of Pension Benefits had been issued under the 1997 Regulations.

Equally, if a downgraded member leaves in, say, 2012, the 10 year window includes pay prior to 1<sup>st</sup> April 2008 and so, in effect, includes a retrospective

element (i.e. covers a period prior to when the 2008 Scheme came into operation).

[3] Regulation 23 of the 1997 Regulations (Certificate of Protection of Pension Benefits) not only covered downgrading but also:

- a) any other type of reduction in pay (e.g. the removal of a pensionable emolument), and
- b) frozen / restricted pay.

In many cases, frozen / restricted pay results from a downgrading and regulation 10 would cover such cases. However, it appears that regulation 10 does not cover cases of frozen or restricted pay which results from something other than a downgrading or move to a job with less responsibility. Equally, regulation 10 does not cover cases where a member's pay is reduced otherwise than by reason of moving to a post on a lower grade or with less responsibility.

[4] This does not specify to whom or by when an election has to be made nor what happens if a member dies before being able to make an election. The Secretariat therefore believes that the provisions of regulations 22(6) and (7) of the 1997 Regulations should be replicated i.e.

*22(6) An election under this regulation by a member must be made by notice in writing given to the appropriate administering authority before the expiry of the period of one month beginning with the day he is notified of his entitlement to a benefit.*

*22(7) Where a member has died without having made an election under this regulation, the appropriate administering authority may make an election on his behalf (whether or not the period within which he could have elected has expired).*

It may be that the above will be included in the Administration Regulations.

[5] This does not appear to require a grossing up of final pay under regulations 8(3) and (4) and does not cross-refer to the provisions of regulations 9 and 11. Subject to the comments above on regulation 8(1) which could prevent this, it could be argued that, as presently worded, regulation 10(1) would permit a member to elect to have benefits calculated on the average of any 3 consecutive years pay in the last 10 years (ending on a 31<sup>st</sup> March), even if these covered a period in respect of which the member holds an (unaggregated) deferred benefit or is already drawing a pension (other than a pension resulting from flexible retirement). This is clearly not intended.

[6] It is appreciated that the reference to 31<sup>st</sup> March is meant as a simplification. However, apart from monthly paid employees, year ends tend not to end on a 31<sup>st</sup> March (e.g. a weekly payroll, which could include a week 53, and the 13<sup>th</sup> payroll of a 4 weekly payroll could end on a date other than 31<sup>st</sup> March). The Secretariat believes it would have been better to simply refer to the employer's payroll/financial year end although it is understood that CLG specified 31<sup>st</sup> March

in the regulation as it links with the period specified by CLG as an input period for HMRC purposes.

Regulation 10(2) increases the average pay by pensions increases. However, as the date that the average period ends is a previous year, the Pension Increase Act itself will then increase the benefits by PI as well thereby doubling the increase. This is again clearly not intended.

Regulation 10(3) specifically excludes those who have taken flexible retirement from being able to use pay from the period prior to flexible retirement in the calculation of the best 3 years pay in the last 10 when they subsequently retire.

### **Regulation 11 – Final pay: fees**

*(1) Subject to paragraph (2), where a variable-time employee's pensionable pay for the purposes of regulation 8(1) consists of or includes fees, his final pay is calculated as the sum of -*

- (a) the average of all such fees for the three consecutive years ending with the final pay period; and*
- (b) any sums falling within regulation 4(1), other than fees, for the final pay period.*

*(2) But a member's employer may consent to him having his final pay calculated as the average of all such fees for any three consecutive years ending 31st March within the period of ten years ending with the last day he was an active member.*

Comments:

This regulation specifies how final pay should be calculated where a variable-time employee's pay consists of, or includes, fees.

To be consistent with regulation 11(1), regulation 11(2) should have added at the end "plus any sums falling within regulation 4(1), other than fees, for the final pay period".

The equivalent of regulation 10(2) should have been added to reg 11 (subject to being updated to take on board the comments on regulation 10(2) above).

### **Regulation 12 - Power of employing authority to increase total membership of active members**

*(1) An employing authority may resolve to increase the total membership of an active member.*

*(2) A member's total additional membership under this regulation (including additional membership in respect of different employments) must not exceed 10 years.*

Comments:

This regulation provides the power for employers to grant extra membership to active scheme members. The maximum award is a period of 10 years and, unlike the corresponding regulation in the 1997 Regulations (i.e. regulation 52) there is no additional restriction based on age 65 (i.e. under the 1997 Regulations a member aged 64 could only have been granted 1 year of augmented membership but under regulation 12 the employer could give an member aged 64 up to 10 years of augmented membership).

If, following current deliberations, CLG decide to permit augmentation at the point of leaving, and up to 6 months after leaving, regulation 12(1) will need to be amended accordingly (as will the 1997 Regulations).

### **Regulation 13 - Power of employing authority to award additional pension**

*(1) An employing authority may resolve to award a member additional pension of not more than £5000 a year payable from the same date as his pension payable under any other provisions of these Regulations.*

*(2) Additional pension may be paid in addition to any increase of total membership resolved to be made under regulation 12.*

Comments:

CLG have stated that the reference to "member" in regulation 13(1) refers to an "active member" and thus employers may only grant an active member an additional pension under this regulation.

It is understood that a member may elect under regulation 21 to commute part of the extra pension payable under regulation 13.

It should be noted that due to the method of calculating a survivor pension under regulations 24, 28, 33, 36 or 37 any extra pension granted by the employer under regulation 13 will not generate extra survivor benefits under regulations 24, 28, 33, 36 or 37.

It should also be noted that the additional pension could have a different PI date to the basic pension (if an earlier years' pay is used for the basic pension). This will have implications for the pension payroll PI routines.

### **Regulation 14 - Election in respect of additional pension**

*(1) A member may choose to pay additional contributions in order to be credited with additional pension, in respect of him alone or in respect of him and any survivor, of £250 a year or multiples thereof to a maximum of £5000.*

*(2) If he chooses to take the additional pension referred to in paragraph (1) earlier or later than his normal retirement age, it is reduced or, as the case may be, increased.*

*(3) The amount of the additional contributions to be paid under paragraph (1), and the reduction or increase referred to in paragraph (2), is calculated in accordance with guidance issued by the Government Actuary.*

Comments:

CLG have stated that the reference to "member" in regulation 14(1) refers to an "active member" and thus only active members can purchase additional pension.

It is intended that a member may elect under regulation 21 to commute part of the extra pension payable under regulation 14.

Due to the method of calculating a survivor pension under regulations 24, 28, 33, 36 or 37 any extra pension purchased by the member under regulation 14 will not automatically generate extra survivor benefits under regulations 24, 28, 33, 36 or 37. However, a member electing to purchase extra pension under regulation 14 will be able to include within that election extra survivor benefit (payable in addition to the standard survivor benefits under regulations 24, 28, 33, 36 or 37). This will be at member's choice and will be reflected in the guidance produced by GAD

It should also be noted that the additional pension could have a different PI date to the basic pension (if an earlier years' pay is used for the basic pension). This will have implications for the pension payroll PI routines.

### **Regulation 15 – Elections to pay AVCs**

*(1) A member who has entered into an arrangement to pay additional voluntary contributions ("AVCs") or to contribute to a shared cost AVC in addition to any other contributions he may pay under these Regulations is entitled to additional benefits in accordance with one of the methods permissible under the Finance Act 2004.*

*(2) Where a member chooses to take some or all of the benefits referred to in paragraph (1) in the form of a lump sum, that sum forms part of the total amount referred to in regulation 21(2).*

*(3) In this regulation, "a shared cost AVC" means an arrangement established and maintained by an employing authority for the purpose of enabling contributions to be paid by and for active members.*

Comments:

Greater detail on the AVC provisions will be included in the Administration Regulations.

## **Regulation 16 – Retirement benefits**

*(1) A member who has attained the Scheme's normal retirement age and ceases to be employed in local government pension scheme employment is entitled to immediate payment of retirement pension without reduction.*

*(2) The normal retirement age of the Scheme is 65.*

Comments:

The Scheme's normal retirement age for all members will be age 65.

## **Regulation 17 - Retirement after the normal retirement date**

*(1) A member who remains in employment after his 65th birthday is entitled to a pension when he retires from service.*

*(2) His pension rights accrued at that date, and any rights accruing between that date and the date of his retirement or the day before his 75th birthday, whichever is earlier, shall be enhanced in accordance with guidance issued by the Government Actuary.*

*(3) The pension is payable immediately on retirement.*

*(4) But it must begin to be paid not later than the day before the member's 75th birthday even if he has not retired.*

Comments:

This regulation provides that the benefits payable to employees who remain in the Scheme beyond age 65 are to be paid immediately upon their retirement or, if earlier, from the day before their 75<sup>th</sup> birthday, and are to be actuarially increased to compensate for the period of deferment of retirement beyond age 65.

The Secretariat believes that regulation 17(1) should be amended to read:

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

This is because, otherwise, a strict reading of the regulation would mean that a person who first joins after age 65 would have to pay contributions but would not be entitled to draw a pension in respect of them.

## **Regulation 18 – Flexible retirement**

*(1) A member who has attained the age of 55 and who, with his employer's consent, reduces the hours he works, or the grade in which he is employed, may make a request in writing to the appropriate administering authority to receive all or part of his benefits under these Regulations, and the authority may pay*

*those benefits to him notwithstanding that he has not retired from that employment.*

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

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

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

*(5) Where a member is receiving benefits under this regulation, the period of membership used to calculate those benefits is not taken into account in any subsequent calculation of such benefits to which he is entitled under these Regulations.*

Comments:

The corresponding flexible retirement regulation in the 1997 Regulations (regulation 35(1A)) contains a double consent mechanism for benefits to be paid on flexible retirement i.e. the employer must have agreed to the reduction in hours or grade **and** agreed to the early release of benefits. Regulation 18(1) only contains the first of these two requirements. The Secretariat believes this is an oversight and that in regulation 18(1) the words "and the authority may" should be amended to "and the authority may, with his employer's consent," thereby reflecting the provisions of regulation 35(1A) of the 1997 Regulations (as amended by SI 2006/966).

Although it is clearly intended that "flexible retirement" benefits should be payable from the date of the reduction in hours or grade, it would have been helpful if this had been made explicit by including after the words "to receive" in regulation 18(1), the words "from the date of the reduction in hours or grade".

Regulation 18(1) permits a member to elect to receive part of his benefits on flexible retirement. However, the regulation provides no detail of how this will work and does not specify

- how (perhaps in accordance with Government Actuary guidance) the benefits to be drawn are to be calculated (including the pre 1<sup>st</sup> April 2008 benefits) e.g. can the member choose to take, say, 20% of all their accrued pension, or can they choose take only the benefits accrued up to, say, 31<sup>st</sup> March 2008
- what will be the effect on accrued membership,
- what death in service benefit is payable (i.e. 3 times pay PLUS a 10 year guarantee on the pension already in payment)
- whether that part of benefits not drawn will subsequently increase in line with RPI (i.e. be treated as if it were a deferred benefit) or whether it should

continue to increase in line with the rise in the member's earnings. The latter would seem to be the most appropriate.

CLG have confirmed that guidance will be produced and that some of the mechanics may not be dissimilar to the approach to be taken in relation to a Pension Debit applied following receipt of a Pension Sharing Order.

With regard to regulation 18(2) the Secretariat and the PPMA believe that the actuarial reduction should be calculated based on the shortfall to the earlier of

- a) age 60, where flexible retirement occurs before age 60 and the member has met or would meet the protected 85 year rule before age 60, or
- b) the date the protected 85 year rule is met, where this falls after age 60 and before age 65 and, in any other case
- a) age 65

Under the current GAD guidance, where a protected employee is under age 60 and has either attained the 85 year rule or would have attained the 85 year rule before age 60, there is always a cost to the employer which potentially impacts on the employer's decision to allow flexible retirement in these cases. Clearly, for flexible retirement to be a useful facility for employers in managing their workforce, it needs to be a relatively "cost neutral" option. If the reductions were calculated as set out above the employer would, of course, still have the ability to waive the reduction in whole or in part (as provided for in regulation 18(3)) which they might wish to do when considering the overall business case in agreeing to the flexible retirement.

The Secretariat believes that a further sub-paragraph should be added after regulation 18(2) along the lines of "If the payment of benefits referred to in paragraph (1) takes effect after the member's 65<sup>th</sup> birthday, the benefits shall be increased in accordance with regulation 17." This would ensure that the benefits of those who take flexible retirement post age 65 are actuarially increased thereby treating them equitably with those who fully retire post age 65.

Where under regulation 18(3) an employer agrees to waive an actuarial reduction, in whole or in part, the Administration Regulations will need to specify how the cost should be calculated, and how or when the cost should be paid e.g. whether it is payable by a lump sum or via the employer's contribution rate, or whether both options are available.

It is understood that the reference in regulation 18(4) to "member" refers to an "active member". However, it would have been helpful if the regulation had made it explicit that a member had to be an active member on 31<sup>st</sup> March 2008 for the protection provided by regulation 18(4) to apply. It will also be necessary for CLG to clarify whether the protection continues to apply to such members if they have a break post 31<sup>st</sup> March 2008, rejoin before April 2010 and

- a) aggregate deferred benefits, or
- b) don't aggregate deferred benefits, or
- c) are a rejoining pensioner member

It is not the date of election for flexible retirement benefits that is important for the purposes of regulation 18(4), but rather the date that the flexible benefits are payable from. Hence, subject to the preceding paragraph, regulation 18(4) might more accurately reflect the situation if it were amended to “(4) In the case of a person who is an active member on 31<sup>st</sup> March 2008, and whose benefits following an election under paragraph (1) are payable before 31<sup>st</sup> March 2010, paragraph (1) applies as if “aged 50” were substituted for “aged 55”.”

Although regulation 18(5) says that the membership used to calculate flexible retirement benefits cannot count in any subsequent calculation it is not clear whether this also means that it does not count as “qualifying service” in the continuing employment towards the 3 months needed under regulation 5 to qualify for a benefit or the 2 years needed under regulation 20 to qualify for an enhanced ill health pension. It does count for the equivalent purposes under the 1997 Regulations. The Secretariat believes that the membership used to calculate flexible retirement benefits will not count towards any protected 85 year rule in the continuing employment (as per the equivalent provision in the 1997 Regulations) but it is not clear whether that part of any benefits **not** drawn on flexible retirement will retain any 2016 and 2020 “85 year rule” protection.

Regulation 18 does not detail how existing added years contracts and the benefits deriving from them should be treated upon flexible retirement where all or part of the main benefits are drawn (i.e. whether the benefits from that proportion of the added years purchased can be paid and, if so, whether the existing contract remains in force for the remainder of the initial contract period or whether the contract ends). The regulations also need to specify whether benefits derived from accrued AVC rights will be payable.

If it is decided to retain re-employment abatement rules (as seems likely<sup>12</sup>) it will be necessary to disapply these in the case of flexible retirements by amending regulation 18 e.g. by adding a paragraph such as “Any pension paid following an election under paragraph (1) is not subject to abatement under regulation XX of the Administration Regulations in respect of any subsequent employment with the body who is the employer that agreed to the election under paragraph (1)”.

Lastly, the Transitional Regulations will need to clarify how the widow’s / widower’s pension should be calculated where a member marries after taking flexible retirement but before full retirement.<sup>13</sup>

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<sup>12</sup> See paragraph 5 of the CLG letter of 11<sup>th</sup> April 2007 covering the draft Local Government Pension Scheme (Administration) Regulations 2007 and the draft Local Government Pension Scheme (Amendment) (No. 2) Regulations 1997

<sup>13</sup> LGPC Circular 193 provides more information in relation to this matter (see <http://www.lge.gov.uk/lge/core/page.do?pageld=71952>).

## **Regulation 19 – Early leavers: inefficiency and redundancy**

(1) Where-

(a) a member is dismissed by reason of redundancy; or  
(b) his employing authority has decided that, on the grounds of business efficiency, it is in their interest that he should leave their employment; and  
(c) in either case, the member has attained the age of 55,  
he is entitled to immediate payment of retirement pension without reduction.

(2) In the case of a person who is a member on 31st March 2008, and to whom paragraph (1) applies before 31st March 2010, that paragraph applies as if "the age of 50" were substituted for "the age of 55".

Comments:

For the sake of consistency it would have been helpful if the word "inefficiency" in the heading had been amended to "business efficiency".

It is understood that the reference in regulation 19(2) to "member" refers to an "active member". However, it would have been helpful if the regulation had made it explicit that a member had to be an active member on 31<sup>st</sup> March 2008 for the protection provided by regulation 19(2) to apply. It will also be necessary for CLG to clarify whether the protection continues to apply to such members if they have a break post 31<sup>st</sup> March 2008, rejoin before April 2010 and

- a) aggregate deferred benefits, or
- b) don't aggregate deferred benefits, or
- c) are a rejoining pensioner member

In regulation 19(2) the words "to whom paragraph (1) applies" need to be amended to "to whom paragraphs 1(a) or (b) apply", as the inclusion of (c) completely defeats the objective of regulation 19(2).

The Secretariat suggested when responding to the consultation on the draft Benefits Regulations that regulation 19 should include an extra paragraph along the lines of "paragraph (1) does not apply where a member who is dismissed by reason of redundancy is offered, by the employing authority, suitable alternative employment (within the meaning of section 141 of the Employment Rights Act 1996) which they unreasonably refuse." This was to cover cases where a member is offered suitable alternative employment by the employing authority which the member unreasonably refuses. The LGE's view in such cases is that the employee is still dismissed by reason of redundancy but is not entitled to a redundancy payment under the Employment Rights Act 1996. The Secretariat has been made aware of some cases in recent years where employers, although not having to pay a redundancy payment, have nevertheless had to meet the strain on Fund cost because the pension has been payable immediately even though the employer had offered the member suitable alternative employment (which the member refused). The wording suggested above would have overcome this by removing the right to an immediate unreduced pension award in such cases, but this suggestion has not been taken forward by CLG because it would have had to have been subject to separate consultation.

## **Regulation 20 – Early leavers: ill health**

*(1) If an employing authority determines, in the case of a member who has at least two year's total membership-*

*(a) to terminate his local government employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and*

*(b) that he has a reduced likelihood of obtaining gainful employment (whether in local government or otherwise) before his normal retirement age, they shall pay him benefits under this regulation.*

*(2) If the authority determine that there is no reasonable prospect of his obtaining gainful employment before his normal retirement age, his benefits are increased-*

*(a) as if the date on which he left local government employment were his normal retirement age; and*

*(b) by adding to his total membership at that date the whole of the period between that date and his actual normal retirement age.*

*(3) If the authority determine that, although he cannot obtain gainful employment within a reasonable period of leaving local government employment, it is likely that he will be able to obtain gainful employment before his normal retirement age, his benefits are increased-*

*(a) as if the date on which he left local government employment were his normal retirement age; and*

*(b) by adding to his total membership at that date 25% of the period between that date and his actual normal retirement age.*

*(4) In the case of a member in part-time service, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is calculated in accordance with regulation 7(3) as if he had remained in such part-time service until his actual normal retirement age.*

*(5) But if, in the case of a person who is a member before 1st April 2008, and-*

*(a) has attained the age of 50 before that date, or*

*(b) became a member of the 1997 Scheme having-*

*(i) attained the age of 45 before that date; and*

*(ii) not received a transfer for any other scheme,*

*the period to be added under paragraph (3)(b) is less than the period that would have been added had regulation 28 of the 1997 Regulations applied, then his benefits are increased by adding the latter period.*

*(6) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body and,*

*if so, as to the likelihood of the member being able to obtain other gainful employment within a reasonable time of leaving local government employment or, as the case may be, before reaching his normal retirement age.*

*(7) In this regulation, "qualified in occupational health medicine" means-*  
*(a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, "competent authority" has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003; or*  
*(b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.*

*(8) In this regulation, "gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months.*

Comments:

Employers will be faced with, in essence, a 3 tier ill health system (albeit that one of these sits outside of the Pension Scheme). This system is likely to be more complex to administer than the current arrangements and could give rise to more appeals (although this has not been the experience in the Firefighters' Pension Scheme). Only time will tell whether the new arrangements will be more or less costly than those under the current Scheme.

The period to be entitled to an enhanced pension has been reduced from 5 years (in the 1997 Regulations) to 2 years.

There is no provision corresponding to that in the 1997 Regulations which prevents a member who is already in receipt of an enhanced ill health pension from again receiving an enhanced pension should they subsequently be retired on ill health grounds for a second (or further) time.

The permanency test only appears to relate to the employee's job and not, unlike in the 1997 Regulations, to the employee's job and to any (available) comparable job with the employer.

Any member satisfying the provisions of regulation 20(1) is to be "paid benefits under this regulation". This apparently suggests that those who satisfy regulation 20(1) but do not meet the requirements of regulations 20(2) or (3) are to be paid benefits under this regulation. This is nonsensical as cases meeting the requirements of regulation 20(1) but not 20(2) or (3) are those in respect of whom the employer is to be given powers to make a payment out of their revenue account, not from the Fund.

At the end of regulation 20(1) it would have been helpful if the words "in relation to that employment" were added (to cater for multiple employment scenarios).

Regulation 20(1)(b) says the person has a “reduced likelihood of obtaining gainful employment” but regulation 20(3) applies to a person who “is likely ... to obtain gainful employment”. It is difficult to see how the wording in each regulation can rationally and comfortably sit together.

Regulation 20 throughout talks about “obtaining gainful employment”. The Secretariat had asked that the regulation should refer to “being able to undertake gainful employment because of his ill health” in order to relate the prospects of gaining other work to the person’s state of health rather than to the state of the local job market. Using the word “obtaining” means that as the possibility of “obtaining” gainful employment is less in a high unemployment area than it is in a low unemployment area, more of those in a high unemployment area are likely to fall within the scope of regulations 20(2) and 20(3) rather than into the lower level which is to sit outside the LGPS Regulations.

The Secretariat believes that regulation 20(5) would be better placed in the Transitional Regulations and should refer to an “active member”.

The word “for” in regulation 20(5)(b)(ii) should be amended to “from”.

The Secretariat is not clear as to the intentions behind the wording of regulations 20(5)(a) and (b). Those active members aged 45 or more but under 50 at 31<sup>st</sup> March 2008 who have not had a transfer in from a non LGPS Scheme get protection under the regulation but if they had transferred as little as 1 day into the LGPS they would not get the protection. Also, regulation 20(5) refers to the period that would have been added under regulation 28 of the 1997 Regulations. However, regulation 28 did not “add” membership – it simply referred to an enhanced (total) membership period.

Regulation 20 uses the words “permanently incapable”, “reasonable prospect”, “reasonable period” and “within a reasonable time of leaving” without defining these terms. Unless these are defined or some form of, possibly statutory, guidance is given there is the potential for a consequential rise in appeals.

Regulation 20, as presently drafted, only covers those who have at least 2 years total membership. It does not cover those who have under 2 years but more than 3 months membership (or under 3 months but have had a transfer in) and who are certified as suffering from permanent ill health.

Due to the significant number of issues surrounding regulation 20 CLG intend to consult on an amended version of regulation 20 (and also on an amended version of regulation 31).

It should be noted that to get enhancement under regulation 20 the member has to have 2 years total membership but if a member dies in service with less than 2 years membership the benefit payable to the spouse, children, etc is, apparently, based on enhanced membership. Thus, where a member leaves with, say, 1 year of membership and dies one month later, a spouse’s pension would be based on an unenhanced pension; but if the member had been kept in

service for that final month and died in service, a spouse's pension would apparently be based on an enhanced pension. This is a matter that employers will need to consider when deciding when to terminate employment in such cases.

### **Regulation 21 – Election for lump sum in lieu of pension**

*(1) A member in respect of whom a benefit crystallisation event within the meaning of the Finance Act 2004 occurs on or after 1st April 2008 may choose in writing to the appropriate administering authority before any benefits become payable to commute his pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered .*

*(2) But the total amount of the member's commuted sum, including any sum received as benefits provided in the form of a lump sum in accordance with regulation 15 shall not exceed 25% of the capital value of his accrued rights.*

*(3) For the purposes of this regulation, a member's accrued rights include rights accrued in respect of any payments made by or for him in accordance with the 1997 Regulations.*

*(4) The capital value of a member's accrued rights shall be calculated in accordance with guidance issued by the Government Actuary.*

*(5) And for the purposes of paragraph (1), a member's pension is his pension after any reduction pursuant to regulation 18 or 30.*

Comments:

The Secretariat believes that, in order to ensure that a member who has had a previous Benefit Crystallisation Event (BCE) can still elect to commute part of the pension from the current BCE the words "any benefits become payable" in regulation 21(1) should be replaced with the words "that Benefit Crystallisation Event".

The amendment made to regulation 20(3A) of the 1997 Regulations by regulation 5 of the Local Government Pension Scheme (Amendment) (No. 2) regulations 2007 [SI2007/1488] needs to be carried forward into regulation 21(1) above.

Regulation 21(1) says the member can "commute his pension". The Secretariat believes this also includes any pension payable to the member which is derived from regulations 13 and 14.

Regulation 21(3) might have been better placed in the Transitional Regulations.

The current GAD commutation guidance makes it clear that a member cannot commute their pension to below the level of their Guaranteed Minimum Pension (GMP), if any, and that the requisite benefit test is performed before commutation.

## **Regulation 22 – Limit on total amount of benefits**

*(1) A member and any dependent of his shall not be entitled, under any provision of these Regulations, to receive benefits the capital value of which exceeds his lifetime allowance increased, where applicable, by his primary protection or his enhanced protection except in accordance with guidance issued by the Government Actuary.*

*(2) In this regulation, "lifetime allowance", "primary protection" and "enhanced protection" are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004.*

*(3) Any calculation of the capital value of a member's benefits for the purposes of this or any other of these Regulations is to be carried out in accordance with guidance issued by the Government Actuary.*

*(4) The appropriate administering authority is responsible for deducting from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.*

### Comments:

The Secretariat believes that the words from "value of which" to "enhanced protection" in regulation 22(1) should be replaced with "value of which exceeds his enhanced protection, or which exceeds his lifetime allowance increased, where applicable, by his primary protection,". This is to reflect the fact that enhanced protection is not a multiple of the lifetime allowance.

Scheme members electing for Enhanced Protection are required to surrender any benefits as at 5<sup>th</sup> April 2006 that exceed the former HMRC limits. As this is a requirement of the Finance Act 2004 it will be necessary for CLG to consider whether the Regulations need to be amended to incorporate this. GAD guidance is currently awaited on how to calculate maximum benefits for members with Enhanced Protection and how any surrendered amount is to be calculated.

## **Regulation 23 – Death grants: active members**

*(1) If an active member dies, a death grant is payable.*

*(2) The appropriate administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.*

*(3) The death grant is his final pay multiplied by 3.*

*(4) But in calculating death grant in respect of a part-time employee, actual pensionable pay in part-time employment is to be used.*

*(5) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with his death, they must pay an amount equal to the shortfall to the member's personal representatives.*

Comments:

The death in service grant has been increased from 2 to 3 times pay.

For deaths occurring before 6<sup>th</sup> April 2006, HMRC have introduced transitional arrangements which allow a death grant to be paid within two years of the date the Scheme could reasonably have become aware of the member's death. This allows more flexibility in scenarios where notification of death is delayed.

Representations have been made to HMRC for a similar provision to be introduced for post 5<sup>th</sup> April 2006 deaths. If HMRC do so, the provision will need to be replicated in the Benefits Regulations i.e. at regulations 23, 32 and 35.

### **Regulation 24 – Survivor benefits: active members**

*(1) If a member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.*

*(2) The pension is calculated by multiplying his total membership, augmented as if Regulation 20(2) applied, by his final pay and divided by 160.*

*(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).*

Comments:

From 1<sup>st</sup> April 2008 the Scheme will provide a pension to not only a spouse or civil partner, but also to a nominated cohabiting partner (see regulation 25 below). The Secretariat believes that nominated cohabiting partner's pensions will be based on post 5<sup>th</sup> April 1988 membership.

Survivor benefits under regulation 24 are at the rate of 160<sup>th</sup> (i.e. half an 80<sup>th</sup>) not at the rate of 120<sup>th</sup> (half a 60<sup>th</sup>). How pre 1<sup>st</sup> April 2008 membership will count is to be covered in the Transitional Regulations.

It should be noted that the wording of regulation 24(2) provides that if a member dies in service the survivor pension payable under regulation 24 will be based on the 100% rate of enhanced membership detailed in regulation 20(2) even, apparently, if the member had less than 2 years membership.

There will no longer be a short-term survivor pension payable at a higher rate, only a long-term pension.

### **Regulation 25 – Meaning of "nominated cohabiting partner"**

*(1) "Nominated cohabiting partner" means a person nominated by a member in accordance with the terms of this regulation.*

*(2) A member (A) may nominate another person (B) to receive benefits under the Scheme by giving to his administering authority a declaration signed by both A and B that the condition in paragraph (3) has been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.*

*(3) The condition is that-*

*(a) A is able to marry, or form a civil partnership with, B,*

*(b) A and B are living together as if they were husband and wife or as if they were civil partners,*

*(c) neither A nor B is living with a third person as if they were husband and wife or as if they were civil partners, and*

*(d) either B is financially dependent on A or A and B are financially interdependent.*

*(4) But a nomination has no effect if the condition in paragraph (3) has not been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.*

*(5) A nomination ceases to have effect if-*

*(a) either A or B gives written notice of revocation to the Secretary of State,*

*(b) A makes a subsequent nomination under this regulation,*

*(c) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or as if they were civil partners, or*

*(d) B dies.*

*(6) B is A's surviving nominated partner if-*

*(a) the nomination has effect at the date of A's death, and*

*(b) B satisfies the Secretary of State that the condition in paragraph (2) was satisfied for a continuous period of at least 2 years immediately prior to A's death.*

*(7) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.*

Comments:

The references to "the Secretary of State" in regulations 25(5)(a) and (6)(b) are incorrect and are to be amended to "the administering authority".

The cross reference in regulation 25(6)(b) to "paragraph (2)" should actually be a cross-reference to "paragraph (3)".

The LGPC Secretariat will produce a nomination form for co-habiting partners and will issue this in due course to administering authorities.

## **Regulation 26 – Meaning of “eligible child”**

*(1) The child of a deceased member is an eligible child if he falls within the meaning of "dependant" for the purposes of Part 2 of Schedule 28 to the Finance Act 2004 as modified by regulation 34 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006*

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

*(3) If an appropriate administering authority wish-*

*(a) they may treat education or training as continuous despite a break.; and*

*(b) they may suspend payment of any entitlement to benefits under regulations 28, 34 or 37 during such a break.*

Comments:

The definition of a dependant in paragraphs 15(2) and (3) of Part 2 to Schedule 28 of the Finance Act 2004 is:

(2) A child of the member is a dependant of the member if the child-

(a) has not reached the age of 23, or

(b) has reached that age and, in the opinion of the scheme administrator, was at the date of the member's death dependant on the member because of physical or mental impairment.

(3) A person who was not married to, or a civil partner of, the member at the date of the member's death and is not a child<sup>14</sup> of the member is a dependant of the member if, in the opinion of the scheme administrator, at the date of the member's death -

(a) the person was financially dependant on the member,

(b) the person's financial relationship with the member was one of mutual dependence, or

(c) the person was dependant on the member because of physical or mental impairment.

The transitional arrangements in the Taxation of Pension Schemes (Transitional Provisions) Order 2006 [SI 2006/572] extend the definition of a child to:

A child of the member is a dependant of the member if the child:

(a) has not reached the age of 23;

(b) has reached that age and, in the opinion of the scheme administrator, was at the date of the member's death dependant on the member because of physical or mental impairment.

(c) has reached that age and is in full time education or undertaking vocational training, or

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<sup>14</sup> This is relevant as a child's pension can be paid under the LGPS Regulations to a child who is not a child of the member and thus there would need to be financial dependency or dependency because of physical or mental impairment.

- (d) on reaching on reaching that age or, if later, on ceasing full time education or vocational training is, in the opinion of the scheme administrator, suffering from physical or mental deterioration which is sufficiently serious to prevent the individual from following a normal employment or which would seriously impair his earning capacity.

The transitional provisions apply (if scheme rules wish to adopt them) where:

- (a) a child was already in receipt of a pension on 5 April 2006 (or the member had died before then and the child's pension was due to come into payment); or
- (b) a member was in receipt of a pension on 5 April 2006 and his or her child is born on or before 5 April 2007

It appears that regulation 26 has, therefore, considerably extended the scope as to whom a child's pension may be paid (compared to the scope within the 1997 Regulations). The Secretariat is awaiting clarification of whether this was intended but it would seem that it was not intended as, if it were, there would have been no need for regulation 26(3).

Regulation 26(3) clarifies that an administering authority may treat education or training as continuous despite a break and may suspend payment of any entitlement to benefits under regulations 28, 34 or 37 during such a break. This acknowledges current practice.

There is a superfluous full stop in regulation 26(3)(a).

### **Regulation 27 – Children's pensions**

*(1) If a member dies leaving one or more eligible children, they are entitled to a children's pension.*

*(2) The pension is payable from the death.*

*(3) An eligible child ceases to be entitled to a pension when he ceases to be a child within regulation 26.*

*(4) The amount of that pension is calculated in accordance with regulation 28, 34 or 37, as the case may be.*

Comments:

The payment of children's pensions under regulations 28, 34 or 37 have been considerably simplified. There will no longer be any short-term children's pensions payable at a higher rate (only long-term pensions will be payable) and the rate of pension will no longer depend on whose care the child is in, only on whether or not a survivor benefit is payable to the widow, widower, civil partner or nominated cohabiting partner and on the number of eligible children there are. Where there is more than one eligible child, the amount of child's pension is to be shared equally amongst the eligible children.

There will no longer be a minimum underpin for children's pensions equivalent to that in regulation 46(8) of the 1997 Regulations (which provided for children's pensions to be based on a minimum of 10 years membership or, if shorter, on total notional membership to age 65).

### **Regulation 28 – Children's pensions: active members**

*(1) The amount of the pension of an eligible child of a deceased active member is calculated as follows.*

*(2) If a survivor benefit is payable under regulation 24-*

*(a) where there is only one such child, the pension is calculated by multiplying the member's total membership, augmented as if Regulation 20(2) applied, by his final pay, and dividing by 320; and*

*(b) where there is more than one such child-*

*(i) the pension is calculated by multiplying the member's total membership, augmented as if Regulation 20(2) applied, by his final pay, and dividing by 160; and*

*(ii) those children are jointly entitled in equal shares.*

*(3) If no survivor benefit is payable under regulation 24-*

*(a) where there is only one such child, the pension is calculated by multiplying the member's total membership, augmented as if Regulation 20(2) applied, by his final pay, and dividing by 240; and*

*(b) where there is more than one such child-*

*(i) the pension is calculated by multiplying the member's total membership, augmented as if Regulation 20(2) applied, by his final pay, and dividing by 120; and*

*(ii) those children are jointly entitled in equal shares.*

Comments:

See comments under regulation 27.

It should be noted that the wording of regulation 28 provides that if a member dies in service the children's pensions payable under regulation 28 will be based on the 100% rate of enhanced membership detailed in regulation 20(2) even, apparently, if the member had less than 2 years membership.

### **Regulation 29 – Calculation on leaving early**

*(1) This regulation applies in the case of a member who leaves local government employment and is not entitled to immediate payment of retirement pension under any of regulations 16 to 20.*

*(2) His entitlement to benefits that would, apart from any other provision of these Regulations, become payable on his attaining normal retirement age, is calculated in accordance with regulation 7 as at the date of his leaving such employment.*

*(3) But that entitlement is extinguished if an aggregation takes place under regulation 6(2) or if a transfer out takes place under regulations 116 to 118 of the 1997 Regulations.*

Comments:

The cross-reference in regulation 29(3) to regulations 116 to 118 of the 1997 Regulations will be amended to the appropriate regulation number in the Administration Regulations once the latter have been promulgated.

### **Regulation 30 – Choice of early payment of pension**

*(1) If a member leaves a local government employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he has attained the age of 55 he may choose to receive payment of them immediately.*

*(2) A choice made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6)).*

*(3) If the member so chooses, he is entitled to a pension payable immediately.*

*(4) His pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary.*

*(5) A member's employing authority may determine on compassionate grounds that his retirement pension and grant should not be reduced under paragraph (4).*

*(6) In the case of a person who is a member on 31st March 2008, and who makes an election before 31st March 2010, paragraph (1) applies as if "the age of 50" were substituted for "the age of 55".*

Comments:

There has been some debate in the past as to the meaning of the word "immediately". For example, in regulation 30(1) it could be construed to mean "immediately from age 55" or "immediately from the date of election" although the latter is understood to be the true meaning.

Regulation 30(1) does not specify to whom the member has to make an election for early payment. It is to be assumed that this will be clarified in the Administration Regulations.

In regulation 30(2) the reference to "(but see paragraph (6))" needs to be deleted as, in the draft Benefit Regulations, this referred to a paragraph (6) that has not been carried forward into the actual regulations.

In regulation 30(5) the words "and grant" need to be deleted as they are inconsistent with regulation 21(5).

It is understood that the reference in regulation 30(6) to “member” refers to an “active member”. However, it would have been helpful if the regulation had made it explicit that a member had to be an active member on 31<sup>st</sup> March 2008 for the protection provided by regulation 30(6) to apply. It will also be necessary for CLG to clarify whether the protection continues to apply to such members if they have a break post 31<sup>st</sup> March 2008, rejoin before April 2010 and

- a) aggregate deferred benefits, or
- b) don't aggregate deferred benefits, or
- c) are a rejoining pensioner member

The equivalent of regulation 31(2) needs to be transposed into regulation 30 as a new sub-paragraph (7).

Note: The Secretariat assumes that regulation 31 of the 1997 Regulations and regulation D11 of the 1995 Regulations will be amended to increase the minimum payable age from 50 to 55 as from 31<sup>st</sup> March 2010.

### **Regulation 31 – Early payment of pension: ill health**

*(1) Subject to paragraph (2), if a member who has left a local government employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body-*

- (a) he may request to receive payment of the retirement benefits immediately, whatever his age, and*
- (b) paragraphs (2) and (4) of regulation 20 apply.*

*(2) If a member does not request immediate payment under this regulation, he is entitled to receive a pension without reduction, payable from his normal retirement age.*

Comments:

There has been some debate in the past as to the meaning of the word “immediately”. For example, in regulation 31(1)(a) it could be construed to mean “immediately from the date the person became permanently incapable” or “immediately from the date of election” although the latter is understood to be the true meaning.

Regulation 31(1)(a) does not specify to whom the member has to make an election for early payment. It is to be assumed that this will be clarified in the Administration Regulations.

Regulation 31(1)(b) appears to award ill health enhancement (equal to the period from cessation of employment to age 65) to a member who successfully applies for his deferred benefits to be released early on grounds of permanent ill-health. This is clearly incorrect. It is understood the intention is that only deferred pensioners who, at the date of application, would have met the provisions of

regulations 20(2) or (3) if they had still been employed by the former employer, would be able to have their deferred pension brought into payment and then only at an **unenhanced** rate. CLG is to consult shortly on an appropriate amendment to regulation 31.

### **Regulation 32 – Death grants: deferred members**

*(1) If a deferred member dies, a death grant is payable.*

*(2) The administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.*

*(3) The death grant is his retirement pension multiplied by 5.*

*(4) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with his death, they must pay an amount equal to the shortfall to the member's personal representatives.*

Comments:

The death grant for a deferred member has been increased from an equivalent of 3 years pension to 5 years pension.

The Secretariat expects that the calculation of the death grant for a deferred member with pre and post 31<sup>st</sup> March 2008 membership will be clarified in the Transitional Regulations.

### **Regulation 33 – Survivor benefits: deferred members**

*(1) If a deferred member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.*

*(2) The pension is calculated by multiplying his total membership by his final salary and divided by 160.*

*(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).*

Comments:

From 1<sup>st</sup> April 2008 the Scheme will provide a pension to not only a spouse or civil partner, but also to a nominated cohabiting partner (see regulation 25 above). The Secretariat believes that nominated cohabiting partner's pensions will be based on post 5<sup>th</sup> April 1988 membership only.

Survivor benefits under regulation 33 are at the rate of 160<sup>th</sup> (i.e. half an 80<sup>th</sup>) not at the rate of 120<sup>th</sup> (half a 60<sup>th</sup>). How pre 1<sup>st</sup> April 2008 membership will count is to be covered in the Transitional Regulations.

In regulation 33(2) the reference to “final salary” needs to be amended to “final pay”.

### **Regulation 34 – Children’s pensions: deferred members**

*(1) The amount of the pension of an eligible child of a deceased deferred member is calculated as follows.*

*(2) If a survivor benefit is payable under regulation 33-*

*(a) where there is only one such child, the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 320; and*

*(b) where there is more than one such child-*

*(i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 160; and*

*(ii) those children are jointly entitled in equal shares.*

*(3) If no survivor benefit is payable under regulation 33-*

*(a) where there is only one such child, the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 240; and*

*(b) where there is more than one such child-*

*(i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 120; and*

*(ii) those children are jointly entitled in equal shares.*

Comments:

See the comments under regulation 27.

### **Regulation 35 – Death grants: pensioner members**

*(1) If a pensioner member dies before his 75th birthday, a death grant is payable.*

*(2) The administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.*

*(3) The death grant is his pension multiplied by 10, but the amount so calculated is reduced by the amounts of any retirement pension paid to him.*

Comments:

The Regulations need to clarify that the guarantee in regulation 35(3) is a multiplier of 10 times the pension in payment (i.e. post commutation and post actuarial reduction), including any pension resulting from regulations 13 or 14 but ignoring any abatement reduction due to re-employment. The Regulations

also need to clarify whether any 1/240<sup>th</sup> increase in the pension as the result of regulations 54 or 57 of the 1997 Regulations should be excluded from the guarantee.

In order to mirror regulations 23(5) and 32(4) a new sub-paragraph needs to be added to regulation 35 i.e. "(4) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with his death, they must pay an amount equal to the shortfall to the member's personal representatives."

The Secretariat is not certain of the logic behind a 10 year guarantee for a pensioner compared to a 5 year guarantee for a deferred pensioner, although we recognise of course that under the 1997 Regulations there is already a difference of approach i.e. under the 1997 Regulations there is a 5 year guarantee for a pensioner plus a short-term and long-term survivor pension whereas for a deferred pensioner there is the equivalent of a 3 year guarantee and only a long-term survivor pension.

### **Regulation 36 – Survivor benefits: pensioners**

*(1) If a pensioner member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.*

*(2) The pension is calculated by multiplying his total membership by his final salary and divided by 160.*

*(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).*

Comments:

From 1<sup>st</sup> April 2008 the Scheme will provide a pension to not only a spouse or civil partner, but also to a nominated cohabiting partner (see regulation 25 above). The Secretariat believes that nominated cohabiting partner's pensions will be based on post 5<sup>th</sup> April 1988 membership only.

Survivor benefits under regulation 36 are at the rate of 160<sup>th</sup> (i.e. half an 80<sup>th</sup>) not at the rate of 120<sup>th</sup> (half a 60<sup>th</sup>). How pre 1<sup>st</sup> April 2008 membership will count is to be covered in the Transitional Regulations.

In regulation 36(2) the reference to "final salary" needs to be amended to "final pay".

It should be noted that if the member's pension has been increased under regulation 17(2), the survivor's pension under regulation 36(2) is not similarly increased. If this is not intended CLG will need to amend the formula in regulation 36(2) to include the same level of percentage increase as had been applied to the member's pension under regulation 17(2).

At a more fundamental level, however, it is not clear that HMRC rules will permit an authorised survivor benefit to be calculated using the formula contained in

regulation 36(2) where the member dies after attaining age 75. Paragraphs 16 to 16C of Part 2 of Schedule 28 to the Finance Act 2004 appear to restrict the dependants' pensions to no more than the pensioner was in receipt of in the previous 12 months plus 5% of any tax free lump sum that had been paid to the member. This could cause difficulties in cases where the member had taken maximum commutation and / or the member's pension had been paid at an actuarially reduced rate (and possibly where the member's pension had been subject to abatement during the previous 12 months). If the survivor's pension exceeds that in payment to the deceased at the date of death this would represent an unauthorised payment, reportable to HMRC.

### **Regulation 37 – Children's pensions: pensioner members**

*(1) The amount of the pension of an eligible child of a deceased pensioner member is calculated as follows.*

*(2) If a survivor benefit is payable under regulation 36-*

*(a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating his benefits under these Regulations by his final pay, and dividing by 320; and*

*(b) where there is more than one such child-*

*(i) the pension is calculated by multiplying the member's total membership used in calculating his benefits under these Regulations by his final pay, and dividing by 160; and*

*(ii) those children are jointly entitled in equal shares.*

*(3) If no survivor benefit is payable under regulation 36-*

*(a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating his benefits under these Regulations by his final pay, and dividing by 240; and*

*(b) where there is more than one such child-*

*(i) the pension is calculated by multiplying the member's total membership used in calculating his benefits under these Regulations by his final pay, and dividing by 120; and*

*(ii) those children are jointly entitled in equal shares.*

Comments:

See the comments under regulation 27.

It should be noted that if the member's pension has been increased under regulation 17(2), the child's pension under regulation 37 is not similarly increased. If this is not intended CLG will need to amend the formulae in regulation 37 to include the same level of percentage increase as had been applied to the member's pension under regulation 17(2).

At a more fundamental level, however, it is not clear that HMRC rules will permit an authorised dependant's benefit to be calculated using the formula contained in regulation 37 where the member dies after attaining age 75. Paragraphs 16 to 16C of Part 2 of Schedule 28 to the Finance Act 2004 appear to restrict the

dependants' pensions to no more than the pensioner was in receipt of in the previous 12 months plus 5% of any tax free lump sum that had been paid to the member. This could cause difficulties in cases where the member had taken maximum commutation and / or the member's pension had been paid at an actuarially reduced rate (and possibly where the member's pension had been subject to abatement during the previous 12 months). If the dependant's pension exceeds that in payment to the deceased at the date of death this would represent an unauthorised payment, reportable to HMRC.

### **Regulation 38 – Pensions increases under the Pensions (Increase) Acts**

*Where a pension to which the Pensions (Increase) Act 1971 applies is payable out of an appropriate fund, any increase under that Act or the Pensions Increase Act 1974 must be paid from that fund.*

### **Regulation 39 – Commutation: small pensions**

*A lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act may be paid in accordance with the rules relating to the payment of such benefits under the Finance Act 2004.*

Comments:

The Secretariat believes that the words "and the amount shall be calculated in accordance with guidance issued by the Government Actuary" should be added to the end of regulation 39. This is necessary because the Finance Act 2004 does not specify how much the commutation payment should be. Alternatively, this could be covered in the Administration Regulations.

To avoid implications under the Finance Act 2004, regulation 39 should, like regulation 49 of the 1997 Regulations, also state that the commutation extinguishes all benefits and prospective benefits under the Scheme (and under the 1997 Regulations).

In relation to small pensions generally it would be helpful if there were a provision, presumably in the Administration Regulations, permitting small ongoing pension payments in different Funds to be aggregated and paid from one Fund (with the paying Fund receiving a capital payment from the other Fund). This would reduce pension payroll costs.

### **Regulation 40 – Guidance on future costs**

*Administering and employing authorities shall have regard to guidance to be issued by the Secretary of State, before 31st March 2009, as to the manner in which the costs of the Scheme will be met after 31st March 2010.*

## **Other matters**

### 1. Optants out

The Secretariat believes there needs to be a regulation specifying that an optant out (who meets the requirements of regulation 5) is to be awarded a deferred benefit under regulation 29 and that deferred benefit cannot come into payment under the provisions of regulation 30 or, potentially, 31 until the member has ceased the employment from which they opted out of the LGPS.

### 2. Pension Credit / Debit Members

The regulations need to cover the benefit provisions for Pension Credit / Debit Members following the issue of a Pension Sharing Order on Divorce or Dissolution. CLG has stated that, subject to some minor amendments, it might prove possible not to revoke the relevant provisions within the 1997 Regulations dealing with Pension Credit or Debit members, so that the 1997 provisions would continue to apply to events taking place on or after 1<sup>st</sup> April 2008. Whilst this might be possible in the case of the Pension Credit, albeit a somewhat clumsy solution in respect of the ex-spouse or civil partner of a member who had never been subject to the 1997 Regulations, the Secretariat believes that the Pension Debit mechanism will need to be included, or made reference to, in the Benefit Regulations.

### 3. Councillor Members

The regulations to cover the benefit provisions for Councillor Members have yet to be issued.

### 4. Refunds

The regulations are currently silent on what happens to a member's contributions if they leave or opt out of the Scheme with less than three months membership and have not had a transfer in of pension rights from another scheme. In their letter of 11<sup>th</sup> April 2007, CLG said "Based on the comments received to date, it is likely that the amending regulations will reflect the support of respondents for retaining the right to a return of contributions, as opposed to the proposed refund of salary resulting from an incorrect deduction".

### 5. Death of a member with a frozen refund

To fit in with HMRC rules the Regulations need to provide that in the case of the death of a member with a frozen refund, the refund is payable to the member's personal representatives as a lump sum death benefit and that a Certified Amount may be deducted from the payment. There would normally be no tax deduction.

## 6. Bona Vacantia

Where a death grant is payable, but there are no known beneficiaries, payment is currently made to the Treasury Solicitor. A number of pension schemes contain a Bona Vacantia rule which permits the sum to revert to the Fund rather than paying it to the Treasury Solicitor. The Secretariat has requested that such a provision be included in the regulations for the new LGPS.

## 7. Interest

The Benefit Regulations contain no interest provisions. These are to be included in the Administration Regulations.

## 8. Civil partners and cohabiting partners

The Secretariat understands that it is intended that only post 5<sup>th</sup> April 1988 membership will be used in the calculation of survivor pensions for civil partners and cohabiting partners and that consideration will be given to allowing members who wish their pre 6<sup>th</sup> April 1988 membership to count towards a civil partner's or cohabiting partner's pension to be able to do so and to meet the cost via either

- a) the payment of additional contributions, or
- b) having a reduction applied to their pre 6<sup>th</sup> April 1988 membership.

## 9. Pre and post April 2008 membership

The interaction between membership and benefits accrued up to 31<sup>st</sup> March 2008 with membership and benefits accruing post 31<sup>st</sup> March 2008 will be contained in Transitional Provisions. In general, a member who was an active member on 31<sup>st</sup> March 2008 and who continues to be a member on 1<sup>st</sup> April 2008 will have his benefits calculated on a 1/80<sup>th</sup> pension plus 3/80<sup>ths</sup> lump sum basis in respect of all membership accrued up to 31<sup>st</sup> March 2008 and on a 1/60<sup>th</sup> pension basis for all membership after that date. The benefits will be based on the final pay (as defined in regulation 7) and it will be made clear that, although a split calculation, the pension payable will constitute a single Benefit Crystallisation Event for the purposes of the Finance Act 2004.

## 10. Guaranteed Minimum Pensions (GMPs) and Requisite Benefits

Although GMPs and Requisite Benefits relate to periods of membership prior to the introduction of the new Scheme on 1<sup>st</sup> April 2008 they nevertheless may affect the benefits of members retiring on or after that date. Hence, GMP and Requisite Benefit provisions ought to be included in the Transitional Regulations.

## **And finally – a quick summary of:**

### **What's gone down or disappeared**

1. Commutation for exceptional ill health cases - gone
2. Short term survivor pensions – gone
3. Requirement to have a minimum of 3 months membership or to have had a transfer in for there to be entitlement to a long-term spouse's or civil partner's pension upon death in service - gone
4. Guarantee that long-term children's pensions following death of an active, deferred or pensioner member would be based on a minimum of 10 years membership or, if shorter, total notional membership to age 65 – gone (but see 16 below)
5. No new certificates of protection of pension benefits (but see 10 below)
6. Membership required for ill health enhancement - reduced from 5 to 2 years
7. No lump sum death grant for pensioners who die aged 75+

### **What's gone up or come in**

8. Need to have a contract of at least 3 months duration in order to join the Scheme
9. Benefit accrual rate increased from 1/80<sup>th</sup> pension plus 3/80<sup>th</sup> lump sum to 1/60<sup>th</sup> pension (with lump sum by commutation)
10. Any member whose pay goes down as a result of downgrading or less responsibility (other than as a result of flexible retirement) can choose to have benefits based on best consecutive 3 years pay in the last 10 ending on a 31<sup>st</sup> March
11. Minimum retirement age (other than for ill health retirements) increased to 55 except for existing Scheme members for whom the minimum age remains age 50 for retirements up to 30<sup>th</sup> March 2010
12. Death in service lump sum – increased from 2 to 3 years pay
13. Death on pension guarantee increased from 5 to 10 years pension (but see 7 above)
14. Death grant in respect of a deferred pensioner increased from the equivalent of 3 years pension to 5 years pension
15. Introduction of nominated cohabiting partner's pensions
16. Survivor pensions following death in service now based in all cases on notional membership to age 65
17. Active scheme members will be able to buy extra Scheme pension in multiples of £250 up to a maximum of £5,000 (to provide a pension for themselves only or to provide a pension for themselves and any survivor on their death)
18. Employers will be able to augment membership by up to 10 years - even for those over 55 which represents an increase from the current limit of the lesser of 10 years or the shortfall to age 65.
19. Employers will be able to grant extra pension of up to £5,000 to an active scheme member
20. A cost sharing mechanism is to be established by 31<sup>st</sup> March 2009. Employing authorities and the Scheme administering authorities will be required to have

regard to guidance to be issued by the Secretary of State before 31<sup>st</sup> March 2009 as to the manner in which the costs of the Scheme will be met after 31<sup>st</sup> March 2010.

### **What's altered**

21. No automatic lump sum on retirement in respect of post 31<sup>st</sup> March 2008 membership (but can commute some pension to get a lump sum at the rate of £12 lump sum for every £1 of annual pension given up)
22. Employee contribution rate – now a banded rate rather than a flat rate
23. Ill health retirement provisions – now 3 tiers, one of which sits outside the Pension Scheme. Some members will get a better benefit under the new provisions (compared to what the 1997 Regulations provided) but some will get a lesser benefit
24. Children's pension provisions – have been simplified<sup>15</sup>

### **Comparison table**

GAD has produced a table comparing the existing and new-look LGPS. It can be viewed at :

<http://www.gad.gov.uk/Publications/docs/LGPS%20key%20features%20pre%200%2B%20post%201%204%2008.pdf>

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<sup>15</sup> This could move up into the benefit improvement column depending on whether or not the payment of a child's pensions to age 23 was an intended improvement by CLG rather than an error that is to be corrected – see comments on regulation 26.

## **Distribution sheet**

Chief executives of local authorities  
Pension managers (internal) of administering authorities  
Pension managers (outsourced) and administering authority client managers  
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Local Government Pensions Committee  
Trade unions  
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