ASSOCIATION OF LOCAL AUTHORITY CHIEF EXECUTIVES AND SENIOR MANAGERS

PENSIONS — FREQUENTLY ASKED QUESTIONS

Tenth Edition – January 2017

HOW TO USE THIS PENSIONS INFORMATION

Although the frequently asked questions (*FAQs*) sought to be answered here are primarily about the workings of the Local Government Pension Scheme (LGPS), the taxation implications of almost all pensions considerations are so significant – especially for higher earners – that it is necessary to provide additional detailed guidance about them in the **two Annexes also dated January 2016** which accompany these *FAQs* on the *lifetime allowance* and the *annual allowance* rules.

No part of these pages is to be read as offering financial, taxation or legal advice. They are to be understood as merely providing information and a starting point from which to obtain the detailed personal advice that you need about your own circumstances **before you take any irrevocable step – or miss any irrecoverable opportunity – that may seriously jeopardise your financial and taxation position.** Since questions may be asked in different ways or contexts depending on personal circumstances, some material is included in more than one answer.

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Introduction

This document seeks to provide ready answers to twenty frequently asked questions (*FAQs*) about the Local Government Pension Scheme (LGPS) as it applies to ALACE members. (It entirely supersedes previous editions.) The LGPS is necessarily complex, and interwoven with provisions about compensation for premature loss of office, so the responses set out below are general and relate primarily to the LGPS in England and Wales.

Principal differences between the provisions of the LGPS in Northern Ireland and in Scotland are, however, indicated. 2015 was a transitional year, since the major structural changes introduced in England and Wales in April 2014 were matched by similar (but not always identical) changes in Northern Ireland and Scotland in April 2015. Consideration is being given – depending on member demand – to dividing the three jurisdictions in future into separate sets of *FAQs*. Meanwhile material describing the relationship between the pre-and post-2008 Schemes (2009 in Northern Ireland and Scotland) has been removed from this edition, though it can be made available for any longer-serving ALACE members who may still require it.

More information is available from the ALACE Consultants, and – relating more generally to members' employment contracts – in the ALACE *Employment Guidance Notes* confidentially available to members on the ALACE website www.alace.org.uk. **Neither source is a substitute for the detailed professional legal, financial and taxation advice required in an individual case, and which everyone should obtain before taking any decisions that may affect their future status, benefits or tax position.**

Most pension fund authorities are helpful in this respect; ALACE also now provides, for a fee to the provider, access both to a service giving expert pensions calculations information (currently provided by Hymans Robertson) and another giving individual financial planning and investment advice (currently provided by Close Brothers). These can offer help on many issues including the pension lifetime allowance ("LTA"); the annual allowance; and the need for – and potential loss of – pension tax protections. For access to either of these services please either contact the ALACE Consultants Cheryl Miller or Pete Morris (whose details are shown on the ALACE website in the Members' Area), or Ian Miller, the Honorary Secretary. They can often suggest information and calculations that individual members can request from their pension funds, and which will normally be provided at no cost to the individual. This then avoids the individual having to use and pay for the Pensions Calculation Service provided by Hymans Robertson. The services of the ALACE Consultants are provided free to the individual member as part of their annual subscription benefits.

The responses set out below are given as at 1 January 2017. Since 1 April 2014 the principal Regulations in ***England and Wales*** have been the Local Government Pension Scheme Regulations 2013, SI No 2356 (as amended, and referred to below as "the 2013 Regulations"), with the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 SI No 525. Subsequent amendments principally relevant for these *FAQs* are contained in SIs 2014 Nos 44 and 525; SI 2015 Nos 57 and 755; and 2016 No 946. (Unless the contrary appears below, references are to the position and legislation in England and Wales.)

In both Northern Ireland and Scotland sets of similar LGPS Regulations were made, operative from 1 April 2015. In ***Northern Ireland*** these are SRs 2014 Nos 188 and 189. Subsequent amendments are contained in SRs 2015 Nos 77 and 162; and 2016 No 128.

In ***Scotland*** the principal relevant provisions operative also from 1 April 2015 are SSIs 2014 Nos 164 and 233, together with the Local Government (Discretionary Payments and Injury Benefits)

(Scotland) Regulations 1998, SI No 192, as most recently amended by SSSI 2009 No 187. Subsequent LGPS amendments to 2014 are contained in SSIs 2015 No 87; and 2016 Nos 32 and 74.

The various statutes and statutory instruments themselves can be found online, as detailed in section 10 of the current 2016 edition of the ALACE *Employment Guidance Notes*. The principal relevant website of the National Archives is now www.legislation.gov.uk and this is in the process of replacing earlier provision. New Acts and Orders for each jurisdiction are added daily, and can be accessed there also. For the texts and tabled amendments to public Bills currently before Parliament, go to www.publications.parliament.uk/pa/pabills.htm.

Much more information on the LGPS can be found at www.lgpsregs.org where there is a 123-page *Guide to the Local Government Pension Scheme for Employees in England and Wales*, now in version V2.0 dated July 2016 under the tab *Guides*.

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The following simplified explanation of the LGPS is based, as stated above, on the Schemes now in operation in England and Wales since 1 April 2014, and effective in Northern Ireland and Scotland respectively from 1 April 2015.

1. *How does the LGPS work?*

Overall management: There are currently 80 separately managed local government pension funds in England, 1 in Northern Ireland (where the "administering authority" is the Northern Ireland Local Government Officers' Superannuation Committee or NILGOSC), 11 in Scotland (each under an "administering authority"), and 8 in Wales. The Government is introducing 'asset pooling,' whereby eight self-organised groupings of pension funds of the funds in England and Wales will oversee their organisation and general operation of implementing individual funds' investment strategy decisions from April 2018. A criterion for each 'pool' is management of £25bn. or more of assets. A Local Government Pension Scheme Advisory Board ('S.A.B.') has been set up under the Public Services Pensions Act 2013 (see www.lgpsboard.org). The traditional term "superannuation" means the same as "pension" and has now largely fallen into disuse.

Individual membership: Although the accrual basis of previous service is protected, the LGPS is no longer a contributory, final salary scheme. It is now a 'career average revalued earnings' or 'CARE' Scheme whereby the applicable reckonable pay for a pension year is re-calculated every year. Under regulation 9 of the 2013 Regulations, "active members" (i.e. employees who currently contribute to the LGPS) pay between 5.5% and 12.5% (varying according to pay level) of their gross pay into the pension fund, and employers pay contributions at varying rates set by the actuary for the fund of which they are part.

Two elements are used in calculating LGPS benefits:

- The first is membership – the length in years and days that you have been a member of the LGPS, plus any membership you have purchased by a transfer into the LGPS, any additional years you have bought by paying additional contributions, or additional years granted by your employer when that was still allowed.
- The second element, from 1 April 2014, is 'career average' pay, with a pension earned each year based on 1/49th of your pensionable pay (as defined in regulations 20 and 21). Your benefits prior to April 2014 are calculated differently, as indicated in the next paragraph. Each employee's records must be kept in an individual 'pension account' – see regulations 22-29.

Prior to the changes introduced into the LGPS in April 2014 (April 2015 in Northern Ireland and Scotland), how benefits were previously worked out changed from 1 April 2008 in England and

Wales and from 1 April 2009 in Northern Ireland and Scotland. For each year of membership in England and Wales up to 31 March 2008 (31 March 2009 in Northern Ireland and Scotland) you receive a retirement pension based on 1/80th of your final pay *at the time you actually retire*, i.e. not your pay on 31 March 2008 (or 31 March 2009 in Northern Ireland or Scotland). (For part-time employees, the same calculation is used, but membership is scaled down to the whole-time equivalent length based on the contractual hours worked, and the final pay is scaled up to the whole-time equivalent rate.) You also qualified to receive a (normally tax-free) single lump sum, or "retirement grant," of 3/80ths of your final pay for each year of membership, equivalent to three times your annual pension. So a Scheme member retiring on 31 March 2008 (31 March 2009 in Northern Ireland and Scotland) with 30 years of membership and a final salary of £100,000 would have received a taxable pension of £37,500 pa. and a tax-free lump sum of £112,500.

For membership from 1 April 2008 until 31 March 2014 (1 April 2009 until 31 March 2015 in Northern Ireland and Scotland) the approach was the same, but instead of a 1/80th pension and a 3/80ths lump sum, your pension was at the increased rate of 1/60th of your final pay. There is no automatic lump sum for membership built up after 31 March 2008 (31 March 2009 in Northern Ireland and Scotland), but you do have the option to exchange some of your pension for a lump sum (on which see below: question 13). The total standard benefit package up to 31 March 2014 (31 March 2015 in Northern Ireland and Scotland) was therefore the sum of so many 80ths prior to 1 April 2008 (1 April 2009 in Northern Ireland and Scotland) and so many 60ths thereafter, plus an automatic lump sum in respect of membership built up to 31 March 2008 (31 March 2009 in Northern Ireland and Scotland).

Thus the calculation of pension payable for LGPS members who joined prior to 31 March 2008 will comprise:

- (i) an element based on service to 31 March 2008 and final pay;
- (ii) an element based on service between 1 April 2008 and 31 March 2014; and
- (iii) the CARE pension built up from 1 April 2014.

(All these dates of course will be one year later in Northern Ireland and Scotland.)

Lifetime allowance and annual allowance: see Annexes 1 and 2 respectively. This is a summary: under Revenue and Customs (HMRC) rules, if the LGPS makes an unauthorised payment or your total pension benefits exceed the **lifetime allowance** (£1 million in 2016-17), or if you recycle your lump sum back into a pension arrangement, there will be a tax charge. The additional tax charged on the amount by which your total pension benefits (excluding the state old age pension) exceeds the lifetime allowance is 55% if taken as a lump sum, and 25% if taken as annual pension. (Your annual pension will of course also be subject to income tax. That is, if you are liable to an overall top tax rate of 40%, the charge on excess over the lifetime allowance will be 65%.)

There have been past opportunities for individuals to apply for protections (primary protection, enhanced protection and two versions of fixed protection in 2012 and 2014) to give a higher personal lifetime allowance than the then applicable standard maximum, although the application deadlines for all of these have now passed. Individuals can currently apply for three kinds of lifetime allowance protections. The first is *Individual Protection 2014*. Anyone whose capital value of their total pension benefits from all sources exceeded £1.25 million on 5 April 2014 has until 5 April 2017 to apply to HMRC for *Individual Protection 2014*: this will give them a personal protected lifetime allowance equivalent to the value of their pension benefits at that date up to a maximum of £1.5 million. In 2016 the Government introduced a new form of individual protection – *Individual Protection 2016*. Anyone whose capital value of their total pension benefits from all sources exceeded £1 million on 5 April 2016 can apply to HMRC for *Individual Protection 2016*: this will give them a personal protected lifetime allowance equivalent to the value of their pension

benefits at that date up to a maximum of £1.25 million.

There is currently no deadline for applications for Fixed Protection 2016, but it is only of use to anyone who did not remain in the LGPS, and did not accrue any other form of pension benefits, after 5 April 2016. The accrual of any further pension benefits in excess of inflation from 6 April 2016 would lead to the automatic loss of Fixed Protection 2016, so it is unlikely to be of interest to active LGPS members. A person cannot hold both Individual Protection 2014 and Individual Protection 2016 at the same time. (See Annex 1 for more information.)

There will also be a significant tax charge if the value of your pension rights, calculated under section 234 of the Finance Act 2004, increases by more than the **annual allowance** in any tax year. The annual allowance is £40,000 for 2016-17 (but can reduce to £10,000 for high earners – a process known as 'tapering'). See also question 3 below.

The LGPS is a national scheme, so that although it is locally administered in county-wide or similar funds you can freely transfer service accumulated with one local authority to another authority which is part of a different fund, and carry on adding to it as if all your service had been with one authority. These arrangements apply within England and Wales, and within Scotland. Transfers between the LGPS in England and Wales, the LGPS in Scotland and the LGPS in Northern Ireland are on a different basis, and may not buy day-for-day membership. Such transfers may also be regarded as joining a new pension arrangement, which could have implications for whether or not your pre-6 April 2008 (pre-April 2009 in Northern Ireland and Scotland) benefits will still be calculated in relation to your final salary when you retire; whether any 'rule of 85' protections that you hold (see question 9) still apply; and may lead to the loss of any personal lifetime allowance protections you may hold – so **the full implications of transferring your benefits need to be checked with your Fund administering authority before you do so**. Except within Scotland, however, all members have only twelve months from joining the LGPS with an employer to opt to transfer previous LGPS pension rights, unless the employer (or in Northern Ireland the NILGOS Committee) allows a longer period. (In Scotland, a member can normally give notice to transfer as long as they are an active member in their new employment, even after twelve months.) You cannot, however, transfer rights that you have previously opted to keep separate. ***Aggregation is very important, as it means that all your pensionable service will be reckoned for benefits on the basis of your final pensionable pay up to 31 March 2014 (31 March 2015 in Northern Ireland and Scotland), and not the pensionable pay level applicable to the earlier period. This will also ensure that all your post-career-average calculations – and hence your individual pension account – will be maintained on the most inclusive and advantageous basis.***

If you have two (or more) concurrent pensionable local government employments you will pay two lots of contributions and accrue entitlement to two separate pensions. For ALACE members the most likely circumstances for this are election appointments as a returning officer, and distinct clerkship appointments to joint committees or similar. To be LGPS pensionable, however, the employment must come under an "administering authority" as set out in regulation 53 and Part I of schedule 3 (either via direct employment or through employment with an 'admitted body'). Appointments in England and Wales as a returning officer at local government elections or at elections for the National Assembly for Wales, or as an acting returning officer (including as a regional or local returning officer at a European Parliamentary election) are classed as pensionable; a deputy returning officer appointment is not pensionable, however, as the employing returning officer is not himself or herself a "Scheme employer" as defined in schedule 2 to the 2013 Regulations. Despite representations from ALACE and elsewhere, however, employment as a counting officer at the May 2011 AV Referendum was, contrary to past practice, not made pensionable; nor was running the Police and Crime Commissioner elections in November 2012 or

May 2016; and nor was running the EU referendum on 23 June 2016. (The Cabinet Office published a paper *Pensions Guidance Notes for Returning Officers* in June 2016.)

The total amount of benefits receivable under the LGPS Regulations is capped under regulation 50(1); their capital value cannot exceed "that person's lifetime allowance, except in accordance with actuarial guidance issued by the Secretary of State." That rather coded provision is explained by regulation 50(2), that "lifetime allowance" here "is to be construed in accordance with section 218 of and Schedule 36 to the Finance Act 2004 and, where applicable, to include primary protection, enhanced protection or fixed protection within the meaning of those provisions."

Appointments in Scotland as a returning officer at local government elections; or as a returning officer (including employment in the duties of a regional or local returning officer at a European Parliamentary election); or as a returning officer at elections to the Scottish Parliament, are classed as pensionable. In Northern Ireland a clerk of a district council who performs functions under article 9(2) (conduct of elections) of the Electoral Law (Northern Ireland) Order 1972 shall, in relation to those functions, be treated as if employed by that district council, and any fees paid in connection with those functions shall be treated as remuneration paid to the clerk by that district council. The fees are treated as fluctuating emoluments under article 23 (1) for pensionable pay calculations.

Paying In and Accruing Entitlements

2. *How much do I have to pay?*

LGPS contributions attract tax relief at the time they are deducted from your pay. (Members were contracted out of the State Second Pension scheme ('S2P') that was introduced in 2002, and this meant that they paid a lower rate of National Insurance.) Under the new state pension rules that were introduced in 2016, and the abolition of contracting out, members are now paying a higher rate of National Insurance that will impact on their state pension. If you are over 50 you can request an estimate of the state pension you will receive under the new system at www.gov.uk/state-pension-statement. From April 2014 the contribution rates in England and Wales vary from 5.5% up to 12.5% in nine pay range bands set out in regulation 9 of the 2013 Regulations. Some people are separately paying additional contributions to buy additional benefits: see question 3.

In Northern Ireland from 1 April 2015 there are six pay bands from £0 to £85,000 and above, paying pension contributions from 5.5% to 10.5%: see regulation 11 of 2014 SR No 188. The rate at which you contribute depends on which pay band applies to you. For example, if your current pay rate is in the £43,001 to £78,700 range you contribute 8.5%, and if your pay rate is more than £85,000 you contribute 10.5%.

In Scotland from April 2015, under regulation 9 of SSI 2014 No 184 there are five bands, from £0 to £45,300 and above, paying pension contributions from 5.5% to 12%.

Note that the contribution rate depends on the salary for the post, and therefore the contribution rate for returning officer pension may well be different from (and lower than) the contribution rate for your principal employment.

3. *Can I pay more? Are there any contribution limits?*

You can increase your retirement benefits by making additional voluntary contributions (AVCs) under regulation 17. All LGPS funds must have an AVC arrangement (in-house AVCs) in which you can invest through an "AVC provider" (often an insurance company or building society). Care

does, however, need to be taken, especially if either of two conditions applies. The first condition of which to beware is where you have a protected lifetime allowance – see question 1 above – as the purchasing of AVCs after such protection has been acquired is considered by HMRC to constitute accruing benefits in another scheme (in this latter case, a money purchase scheme) and, as such, cancels the protection (see Annex 1).

The second condition of which to beware concerns the tax regime, i.e. the Annual Allowance and the Lifetime Allowance for tax-free pensions savings. If you are approaching retirement and are making AVCs, the added growth they generate in your pension benefits in any one year may take the total growth in your benefits in that year above the annual allowance, which could lead to additional tax charges. Pension or lump sum benefits accrued as a result of AVCs have to be taken into account as part of your total pension benefits when you retire, and therefore need to be managed carefully – even if neither of the above two conditions applies in your case – to ensure that they do not result in your exceeding your lifetime allowance, thereby attracting the additional tax charges on the excess over the lifetime allowance – see question 1. It is important to discuss these considerations with your AVC provider. In some cases SCAVCs, shared cost AVCs, may be available, where the employer also contributes to the cost. Similar provisions apply in Northern Ireland and in Scotland. See also question 14.

Regulation 16 also allows active members to pay additional pension contributions (APCs) which are different from AVCs. APCs may be made either by regular contributions or a lump sum. The amount of additional pension that may be credited to a pension account must not exceed the *additional pension limit*, which was set from 1 April 2014 as £6,500 (regulation 16(6)), and is being increased annually from 1 April 2015 as though it were an index-linked pension. (The APC situations for Northern Ireland and Scotland are modified by their LGPS reforms commencing a year later.) The limit as at 1 April 2016 is £6,755. Regular contributions must be made for at least a year, with the number of whole years specified at the outset. The same considerations relating to losing personal lifetime allowance protections or exceeding the annual allowance apply to APCs as they do to AVCs (see the preceding paragraph).

Under regulation 16(10) your administering authority may if they wish ask you to have a medical examination at your expense to show that you are in what is called "reasonably good health"; if you refuse or fail the examination, it may decline to allow APCs to be made.

AVCs and APCs both offer a tax efficient means of saving if limits on tax-free savings are not breached. The benefits of AVCs and APCs are different. AVCs offer more flexibility in how the sum saved can be invested and used at retirement, but the investment risk is borne by the member. It is also possible to buy life cover through AVCs (see regulation 17(4).

On 27 March 2014, the Government Actuary published *Purchase of additional pension - Elections on or after 1 April 2014: Factors and guidance*. This may be helpful to anyone considering them. ("Elections" of course refers here to making choices, and not to polling!)

4. *Can I pay less? What are the consequences of doing so? What is the 50-50 option?*

The 2013 Regulations contain the so-called "50-50 option" whereby under regulation 10 an LGPS member can give notice of intention to pay reduced contributions. The employee contribution rate is then reduced to 50% of what normally applies, and rights to pension benefits accordingly accrue similarly at 50% of what they would otherwise have been while the temporary reduction applies. There is no reduction in the employer contribution when a member chooses the 50-50 option. Should you be retired compulsorily by your employer, say on business efficiency or redundancy grounds (see question 8 below) your non-actuarially reduced pension will still be based on your full

salary. If you were to die in service while on the 50-50 option, the death grant (three times your salary) paid to your dependants would also still be based on your full salary. You can re-elect later to go back to paying full contributions (and thereby accruing rights to full benefits). No other percentage splits are possible. Pension funds usually need at least a month's notice of your intention either to move onto the 50-50 option or to return to paying the full employee contributions. You should also be aware of the risk of returning to the standard LGPS standard scheme package through auto-enrolment, which is a responsibility of employers.

5. *When are pension contributions and/or pension pots taxable?*

You will usually pay tax if you exceed the **lifetime allowance** or the **annual allowance**, but these are very complex areas, on which see the Annexes 1 and 2 to these *FAQs*.

6. *In what circumstances can the employer award extra membership of the LGPS?*

Under regulation 31 a Scheme employer can award additional pension up to the "additional pension limit" to an active member, or to a former active member who has been dismissed for reasons of redundancy, business efficiency, "or whose employment was terminated by mutual consent on grounds of business efficiency." The "additional pension limit" has been annually increased from the original £6,500 on 1 April 2014 as though it were an index-linked pension, and is £6,755 from 1 April 2016.

Regulation 60 requires policy statements to be published about the basis on which this discretion will be exercised, and its exercise will not be legally valid if it does not conform to this statement. Each case must be considered against the published criteria, with the possibility of a differentiated outcome where appropriate.

Retirement

7. *What will my normal retirement/pension age be? What about retiring after my normal pension age?*

Under the new LGPS arrangements introduced from April 2014 your normal pension age under the LGPS is the same as your state pension age. If this is age 65, you can retire and receive your LGPS benefits in full from age 65. For many, however, the state pension age is increasing to 66 or 67. If your normal pension age is increasing, you will normally not be able to retire and receive your LGPS benefits in full until you reach that age. You can check what your state pension age is by using the state pension calculator on the www.gov.uk website. Reaching state pension age avoids deductions!

As for retirement after your 65th birthday (or after your normal pension age), it used to be that working after the former normal pension age of 65 was a matter for your employers to agree, though this has now changed following the Equality Act 2010. Once past your normal pension age, you will subsequently be able to retire at any time, without of course any actuarial reduction of your pension benefits.

If you carry on working after age 65 (or after your normal pension age) without leaving the Scheme, you will continue to pay into it at the same applicable contribution rate, accruing further benefits. If you delay drawing your pension till after age 65 (or after your normal pension age), your pension will be increased to reflect the fact that it will be paid for a shorter time. In all the Schemes your benefits have to start being paid before your 75th birthday.

When you finally retire completely, or if you change your flexible retirement arrangements and draw more pension benefits while still working, your pension position in relation to the Lifetime Allowance will be reassessed, and you may find yourself having to pay some additional tax charges.

8. *Can I retire early? In what circumstances can I retire and draw my pension after age 55?*

Prior to 1 April 2014, if you had reached age 55 you needed your employer's consent to retire before age 60. That consent is no longer required, but **if you retire before your normal pensionable age (see question 7 above) – other than on ill-health grounds, or due to redundancy or business efficiency – your benefits will normally be reduced** to take account of early payment and the fact that your pension will be payable for longer. Your employer may determine on compassionate grounds not to apply any reduction. This is a formal employer discretion in respect of which a policy statement must be published under regulation 60.

The current Government Actuary's guidance on early retirement is dated 31 March 2014 and is confusingly entitled *Flexible Retirement* – even though the latter is a separate topic (see question 10). The position has become very complicated because of the different accrual rates for pensionable service under the pre-2008, 2008 and now 2014 Schemes. The point bears repeating that **authoritative figures and advice are essential before you take any step that may lead to an actuarial reduction in your benefits**. The earlier you retire, the more significant the reduction: for example, someone retiring ten years early at age 55 (if their state/normal pensionable age is 65) whose pension benefits have to be abated may have some or all of their benefits reduced by well over 40%.

You can now voluntarily retire as of right from age 55. If you retire before your "normal pension age" (usually 65, 66 or 67) **your benefits will usually be reduced**, by an amount depending on when you joined the LGPS, your Scheme membership, the reason for your retirement (see the next paragraph), and your age; the earlier you retire the greater any reduction will be. See the reference to the Government Actuary's guidance on *Flexible Retirement* in this question above. Reaching age 60 no longer has the same significance that it had under the pre-2014 Scheme, when early retirement at ages 55-60 required employer consent.

If you are aged 55 or over and are made redundant, or you are retired in the interests of business efficiency (both come under regulation 30(7)(b) of the 2013 Regulations – or in Northern Ireland and in Scotland, the respective regulations 31(7) and 29(7) of the 2014 Regulations), you are entitled to the immediate payment of your accrued retirement benefits without reduction. The former minimum age of 50 ceased to apply after 31st March 2010 other than in Scotland where, if you were a member of the LGPS on 5 April 2006, and you are retired on redundancy or business efficiency grounds, the earliest age at which immediate benefits are paid currently remains 50.

Retirement on ill-health grounds is a special case. See question 11 below.

9. *Does the "rule of 85" still apply?*

The *rule of 85* determined whether or not your benefits should be actuarially reduced if you chose to retire early, i.e. before your normal pensionable age – in the past usually age 65. It now applies only to a diminishing group of remaining protected cases, and even then to a reduced extent from its original scope. Previously, if you satisfied the rule of 85, your benefits would not be reduced if voluntarily drawn before your normal pensionable age/65. The rule was satisfied if your age plus LGPS membership (each in whole years) totalled at least 85 when you started drawing your

pension. You required your employer's consent, however, to retire before age 60. Although protections were provided, the original rule of 85 was removed in England and Wales and Northern Ireland from 1 October 2006, and from 1 December 2006 in Scotland.

Those members with the benefit of rule of 85 protections may suffer lower or no early payment reductions. Working out how you are affected, however, can be complex. For a detailed understanding of your position, you should contact your Fund administering authority directly.

In England and Wales, the applicable regulations prior to 1 April 2014 (SI 2008 No 238) have been modified by the complex detail in regulation 18 of, and schedule 2 to, SI 2014 No 525. For those who were members of the Scheme at 30 September 2006 in England and Wales and Northern Ireland, some information is provided below –

- **If you were aged 60 or over by 31 March 2016** and you choose to retire between age 60 and your normal retirement age, provided you satisfy the rule of 85 (or meet an earlier normal retirement date (NRD) which some members who joined the Scheme before 1 April 1998 have under previous Regulations (though this does not apply in Northern Ireland)) when you start to draw your pension, the benefits you built up to 31 March 2016 will not be reduced.

- **If you were under age 60 by 31 March 2016** and choose to retire before age 65 then, provided you satisfy the rule of 85 (or the pre-1998 exception mentioned above, which again does not apply in Northern Ireland) when you start to draw your pension, the benefits you built up to 31 March 2008 may not be reduced. Also, if you will be aged 60 between 1 April 2016 and 31 March 2020 and meet the rule of 85 (or again the pre-1998 exception) by 31 March 2020, some or all of the benefits you build up between 1 April 2008 and 31 March 2020 may not be subject to a full reduction. (This is the case provided you retire between the ages of 60 and your normal pensionable age. If, however, you choose to retire between the ages of 55 to 59 without your employer's consent, whether the rule of 85 protections apply will depend on your employer's early retirement policy, and whether they have chosen to exercise their discretion to apply the rule of 85 protections to those who retire before age 60. You need consent to claim the full rule of 85 protections.)

For employees in Scotland (where similar pre-1998 exceptions apply as in England and Wales above) who were members of the Scheme at 30 November 2006 –

- **If you will be aged 60 or over by 31 March 2020** and choose to retire before age 65 then, provided you satisfy the rule of 85 when you start to draw your pension, the benefits you build up to 31 March 2020 will not be reduced.

- **If you will be under age 60 by 31 March 2020** and choose to retire before age 65, then, provided you satisfy the rule of 85 when you start to draw your pension, the benefits you built up to 31 March 2008 will not be reduced.

As stated above, if you joined the LGPS in England, Northern Ireland or Wales on or after 1 October 2006 (1 December 2006 in Scotland) and voluntarily choose to draw your benefits before age 65, **all your benefits will normally be reduced**.

If you are entitled to the above protections and you retire (or more correctly, voluntarily draw your pension early) from your principal employment under the rule of 85 and at the same time give up an additional pensionable employment, such as being the returning officer, for which you do not qualify under a rule of 85 protection, the retirement benefits from your additional employment will be actuarially reduced unless your employer agrees to bear that cost. If applicable to you, however,

no actuarial reduction will be required for benefits from membership before your relevant date set out in paragraph 2 of schedule 2 to the 2008 Transitional Provisions Regulations, SI No 238 and referred to in relation to 2016. (The alternative is not to start to receive that pension before your normal retirement age, usually 65.)

10. *Will my pension be reduced if I retire before my normal pension age? Would it matter if I hadn't asked to retire? Can I reduce my hours? What about flexible retirement? What about retiring after my normal pension age?*

The answers to questions 7 and 8 make it clear that the general rule now is anyone retiring before age 65 (or their normal pension age) – other than on grounds of ill-health – will suffer a reduction in the value of their benefits, both lump sum grant and annual pension. Those retired on redundancy or business efficiency grounds will not have actuarial adjustments made for early payment, though regulation 30(7)(a) of the 2013 Regulations does provide for Government Actuary guidance to be followed, and any additional pension benefits based on AVCs will be actuarially reduced to offset their early payment. The only exceptions to the requirement for actuarial reduction are where LGPS members are entitled to the protections explained in answer to question 8, or where that reduction may be waived on compassionate grounds. The waiving of actuarial reductions is an employer discretion in respect of which a policy statement must be published.

If you want to reduce the scale of actuarial reductions, it is possible to take deferred benefits which over time will reduce the scale of reductions, but this of course would mean that you would not be in receipt of a pension. The scope to take such a decision and the financial pros and cons of such an approach will need individual evaluation.

For redundancy and business efficiency retirements, it is stipulated that "that member is entitled, and must take, immediate payment…" Whether you have sought to retire, or your employer wishes you to do so, is immaterial in this context (except that, of course, an employer cannot force you to retire other than on the grounds of ill-health, redundancy or business efficiency).

If you draw your benefits on flexible retirement and you are under age 65 (or your normal pensionable age), they will be reduced as explained in the answer to question 8.

Rather than continuing to age 65 or your "normal pension age", you can from age 55 and with your employer's consent reduce your hours or move to a position on a lower grade and elect to draw all or part of the pension benefits you have already built up, while still being paid in the normal way in relation to the reduced hours or grade. This is called **flexible retirement**, and is governed by regulation 30(6). It is also provided by regulations 31(6) and 29(6) respectively of the Northern Ireland and Scottish Regulations, SR 2014 No 188 and SSI 2014 No 164 respectively.

You can continue paying into the LGPS to build up further benefits in the Scheme.

You must have your employer's consent to draw your pension benefits under the flexible retirement rules. This is an employer discretion, and under the LGPS in England and Wales, and also in Northern Ireland and Scotland, your employer's policy with regard to this must be included in the required statutory policy statement.

Your pension and lump sum may be reduced if you take flexible retirement in the same way as early retirement – see question 8. If you receive payment of your benefits under flexible retirement, then your benefits will not be subject to reduction or suspension for re-employment whilst you continue

in your employment, or any subsequent employment with the employer that allowed you to take flexible retirement.

As for retirement after your 65th birthday (or after your normal pensionable age), it used to be that working after the former normal pensionable age of 65 was a matter for your employers to agree, though this has now changed following the Equality Act 2010. Once past your normal pension age, you will subsequently be able to retire at any time, without of course any actuarial reduction of your pension benefits.

If you carry on working after age 65 (or after your normal pensionable age) without leaving the Scheme, you will continue to pay into it at the same applicable contribution rate, accruing further benefits. If you delay drawing your pension till after age 65 (or after your normal pensionable age), your pension will be increased to reflect the fact that it will be paid for a shorter time. In all the Schemes your benefits have to start being paid before your 75th birthday.

When you finally retire completely, or if you change your flexible retirement arrangements and draw more pension benefits while still working, your pension position in relation to the Lifetime Allowance will be reassessed, and if the total value of your pension benefits exceeds your Lifetime Allowance you will have to pay some additional tax charges.

11. *When can someone retire because of ill-health?*

The rules on ill-health retirements have been repeatedly amended in recent years, and there are now three tiers of ill health provision in England and Wales, though only two tiers in Northern Ireland and Scotland. There is no lower age limit, but to qualify for ill health benefits you must have at least two years' membership (a year in Northern Ireland and two years in Scotland) and your Scheme employer (or, in Northern Ireland, the NILGOS Committee) must be satisfied that ill-health retirement is necessary, and will take account of an examination by an independent registered medical practitioner (IRMP) appointed by them (or by the NILGOS Committee in Northern Ireland). Note that the administering or pension authority is not necessarily also your actual employer, but where they are different the employer must first obtain the approval by the administering authority of its choice of IRMP.

In England and Wales, under regulation 35 two conditions must be met to qualify for retirement –

"(3) The first condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.
(4) The second condition is that the member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment."

There are similar but not identical regulations 36 in Northern Ireland and also 34 in Scotland that the person's employment should be terminated 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 (except in Scotland) that he has a reduced likelihood of obtaining any gainful employment before his normal retirement age.

The current regulations provide graded levels of ill-health retirement benefits (tiers) based on how likely you are to be capable of undertaking gainful employment after you leave, but all require the 'permanently incapable' test to be met. That permanent incapability refers to the duties of the post in which you have been employed, and not to the prospects of other different employment in the

future. Someone who is either a deferred member or a deferred pensioner member may also ask to receive ill-health benefits under regulation 38.

Regulation 35 sets out the three tiers of ill-health retirement in these terms –

> "(5) A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before normal pension age.
>
> (6) A member is entitled to Tier 2 benefits if that member –
> (a) is not entitled to Tier 1 benefits; and
> (b) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment; but
> (c) is likely to be able to undertake gainful employment before reaching normal pension age."
>
> (7) Subject to regulation 37 (special provision in respect of members receiving Tier 3 benefits), if the member is likely to be capable of undertaking gainful employment within three years of leaving the employment, or before normal pension age if earlier, that member is entitled to Tier 3 benefits for so long as the member is not in gainful employment, up to a maximum of three years from the date the member left the employment."

Ill-health pension benefits are calculated under regulation 39. For **Tier 1**, to the member's pension account is added an amount equivalent to what would have accrued from the actual retirement date until what would have been normal pension age, with the member "treated as receiving assumed pensionable pay" calculated under regulation 21(5). A retirement pension is then paid based on that augmented pension account "as if the member had reached normal pension age on the date the member's employment was terminated."

For **Tier 2**, to the pension account for the year in which the member's employment ends, one quarter of the sum obtained from the same Tier 1 augmentation calculation is added, and then "retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated."

Tier 3 benefits are simply "the retirement pension that would be payable to the member if that member had reached normal pension age on the date the active member's employment was terminated." Tier 3 benefits are no longer payable once someone reaches normal retirement age, and normal pension payments then become due: regulation 37(1). The rest of regulation 37 imposes duties of disclosure and review on both sides while the maximum allowable three years are running.

There are also Tiers 1 and 2 protection provisions in regulation 12 of SI 2014 No 525 relating to people aged 45 before 1 April 2008, and a provision about the position of ill-health retired members who are paying APCs (see question 3) in regulation 16(14).

In Northern Ireland and Scotland, if you have no reasonable prospect of being capable of undertaking gainful employment before age 65 (the first tier), ill-health benefits are based on the membership you would otherwise have built up to state pension age. If, however, you have a reasonable prospect of undertaking gainful employment before state pension age (the second tier), then ill-health benefits are based on membership built up to leaving plus 25% of prospective membership from leaving till state pension age. As stated above, there is no third tier provision in either Northern Ireland or Scotland in their respective Benefits Regulations. An additional provision is available in Scotland under regulation 40 of the Discretionary Compensation Regulations (SI 2008 No 192, which is not a Scottish statutory instrument).

Benefits

12. *What are the limits on benefits that can be paid on retirement?*

Capping – the word used in regulation 50, to be distinguished from capping in other contexts – based on the level of applicable lifetime allowance, applies relating to the maximum pension benefits payable. (See also question 1 above.) For the taxation rules relating to the *lifetime allowance*, including those for people with protected personal lifetime allowances, see Annex 1.

13. *When are pension lump sums or annual benefits subject to reduction or abatement?*

There are several kinds of cases. When you start to receive pension benefits before your normal retirement age, as set out under question 8, the requirement for actuarial reduction is governed by the Government Actuary (GAD) Guidance document *Flexible Retirement* referred to under question 8 above. Regulation 17(7) governs the situation where someone who has been paying AVCs (see question 3) seeks to draw down their realisable value before normal retirement age.

If you receive a third-tier ill-health benefit in England and Wales, then payment of these benefits will be stopped after three years, or sooner if you are in gainful employment or become capable of undertaking such employment.

Another and different kind of abatement applies if, after having started to receive pension benefits, you subsequently return to pensionable local government employment and your combined pension and new pay is greater than your former pay as increased by inflation. In such a circumstance, your pension may be reduced in accordance with the abatement policy of the administering authority paying your pension.

If you receive payment of your benefits under flexible retirement (see question 10), then your benefits will not be subject to reduction or suspension for re-employment whilst you continue in your employment or any subsequent employment with the employer that allowed you to take flexible retirement.

If you opt to pay a tax charge in respect of either the lifetime allowance and/or annual allowance via the "scheme pays" route (see questions 9 and 10 of Annex 1 and question 10 of Annex 2), this will reduce the pension that you receive.

While this edition of the *FAQs* deals only with the law and rules as they stand at January 2017, the Government has legislated to introduce a cap of £95k on public sector exit payments which – depending on secondary legislation which has yet to be published or brought into force – could also result in reductions in the pension paid in cases of redundancy or business efficiency. The *FAQs* will be updated once the contents of legislation and their operative date have been confirmed.

14. *How much of my pension entitlements can I take as a tax-free lump sum?*

You can take a bigger lump sum on retirement by giving up some of your annual pension benefits. In England and Wales this is provided by regulation 33. You can take up to a maximum of 25% of the capital value of your LGPS pension benefits as a lump sum tax free, provided the lump sum does not exceed 25% of the current standard lifetime allowance, that is £250,000 in 2016-17. You may be able to take a larger sum than £250,000, but not all of it may be tax-free. The rules are, however, very complex and it will be prudent to seek confirmation from your pension fund as to what is the maximum *tax-free* lump sum that you can take before you decide what to do. When asking this, you must make them aware if you hold a protected personal lifetime allowance, and the

value of that protection. For every £1 of annual pension you give up you receive £12 lump sum. You will also therefore wish to confirm with your pension fund what effect taking a larger lump sum will have on the value of your pension.

It is also possible to take some or all of your AVC savings as a tax-free lump sum, subject to the 25% limit for a tax free lump sum not being breached.

In Northern Ireland the equivalent provision is regulation 34 of the 2014 Regulations, SR No 188, and in Scotland it is regulation 32 of the 2014 Regulations, SSI No 164.

The formula for the calculation of your total pension benefits for the purpose of the lifetime allowance involves multiplying your annual pension by 20 and adding on your lump sum. If you commute some of your pension into lump sum this may mean that you can reduce your total benefits figure to nearer to, or even below, the lifetime allowance – thereby reducing, or in some cases eliminating, the additional tax charges mentioned in the answer to question 1. (See also Annex 1.) You should obtain independent or other trustworthy financial advice on whether this is beneficial for you. (You can find an independent financial adviser at http://www.unbiased.co.uk – ALACE has also established pensions information arrangements for members with Hymans Robertson and can put you in touch with independent financial and investment advisers at Close Brothers; you should apply through the Hon. Secretary, Ian Miller, or through ALACE Consultants Cheryl Miller or Pete Morris – whose contact details are on the ALACE website in the Members' Area – *and not directly to the companies concerned* if you wish to use them.) As to *annual allowances* see Annex 2.

Electing to exchange any proportion of your pension into lump sum will not affect the level of survivors' pensions should you die, i.e. their pensions will relate to what your pension would have been had you not transferred some of your pension into tax-free lump sum. See also question 16 below.

15. *If I have a right to a pension when I am made redundant or dismissed on efficiency grounds, do I have to take that pension straight away?*

Yes. If you are aged 55 or more (aged 50 or more in Scotland if you were a member of the LGPS on 5 April 2006) and made redundant or dismissed in the interests of business efficiency, your LGPS benefits are payable immediately and are unreduced. You do not have the right to delay payment of the benefits, but must take them immediately: regulation 30(7).

16. *Suppose I took a reduced early pension on voluntary retirement: would it be increased to the full amount when I reach my normal retirement/pension age?*

No. The early retirement reduction to your pension is actuarially calculated with reference to how early you draw your pension and to life expectancy. The reduction is permanent and applies for as long as you receive your pension. The lifetime allowance limit is applied after any actuarial reduction has been made: any such reduction may mean that tax charges will be reduced or even eliminated.

17. *Death in service – what are the survivor benefits?*

The LGPS provides death grants and pensions for surviving spouses, civil partners, co-habiting partners, and dependent children. The rules are necessarily different for former active LGPS members, deferred members and pensioner members, i.e. those working in local government and still in LGPS membership at death, those who have left the service or the LGPS, and those who

have retired and are already receiving LGPS benefits themselves. These are set out in regulations 40-48 (and regulation 17 of SI 2014 No 525), with the provisions about children also based on the interpretation provision defining "eligible child" in schedule 1 –

- If an active LGPS member dies before reaching the age of 75, a lump sum death grant of three times "assumed pensionable pay" is paid under regulation 40(3). The member's widow, widower, civil partner or nominated co-habiting partner (as applicable) will receive a survivor's pension. The widow, widower, civil partner or nominated co-habiting partner will receive a pension of 1/160th of the deceased member's "annual assumed pensionable pay" for each year of the deceased's pensionable service plus however many years remain until they would have reached age 65. Pensions based usually on 1/320ths are also paid to eligible children (though 1/320th will become 1/240ths if there is no surviving adult partner and only one eligible child, increasing to 1/120ths shared equally if more than one). Children are only eligible if they are under 18 (under 17 in Scotland) and wholly or mainly dependent on you, or if they are 18 or over (17 or over in Scotland) and under 23, dependent on you and in full-time education or training. In some cases, a dependent child of any age who is disabled may be classed as an eligible child. If there is more than one eligible child, the entitlement will be split between them.

- If a deferred member dies, a lump sum death grant is payable under regulation 43, amounting to five times the amount of annual pension that the deceased would have been able to draw on the date of death had there been no age or other restrictions. A widow's, widower's, civil partner's or nominated co-habiting partner's pension is equal to 1/160th of the deceased member's pensionable pay multiplied by the membership years on which the deceased's pension is based. The fractional entitlements of children under regulation 45 are similar to those in the preceding paragraph.

- Where a pensioner member dies before age 75, a death grant is payable (at the administering authority's "absolute discretion" under regulation 46(2) and (3)) to a nominee, personal representatives, or someone who is a relative or dependant of the deceased. It is ten times the annual pension entitlement as at the date of death taking into account any commutation for a lump sum, less the pension paid and adjusted for any commutation. Surviving partners and children are entitled with reference to 1/160ths, 1/320ths and 1/240ths similarly as in the first of these three paragraphs above.

For a "co-habiting partner" to be eligible, the administering authority must be satisfied that the conditions in schedule 1 are met, including at least two years of qualifying at the date of the deceased's death, and genuine co-habiting.

An allowance may also be payable where an active member dies as a result of an injury incurred or disease contracted at work: see regulation 7 of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011, SI No. 2954 and section 7 of the ALACE *Employment Guidance Notes*.

An LGPS member who retires unmarried, or without a civil partner or nominated co-habiting partner or eligible children, does not receive greater personal benefits. If a member marries, contracts a civil partnership, or eligibly co-habits after leaving employment, the widow or widower's pension may be less than that paid if the marriage had occurred prior to leaving.

An eleven-page summary of the current rules on survivor benefits, which have become extremely complex depending since April 2014 on the date of death, qualifying service and the nature of the

relevant relationship, can be found at the LGPC Secretariat's website at http://lgpsregs.org/images/AdministrationGuides/SurvivorBenefitsv1.3clean

Portability

18. ***Portability — can I transfer previous public or private pension rights into the LGPS? And can I similarly transfer LGPS service into another public sector or private sector scheme?***

Generally — yes in both cases.

An option to transfer into the LGPS must be made within 12 months of joining the LGPS or such longer period as your employer (or the NILGOS Committee in Northern Ireland) allows: regulation 100(6). A transfer out of the LGPS can be made to a new pension provider provided they are willing and able to accept it.

It is important to obtain proper financial advice before taking any step that would involve transfer.

19. ***If I left local government after (say) 25 years' pensionable service and worked elsewhere till my normal retirement age, would my LGPS lump sum and pension be index-linked for inflation when it started to be paid?***

Yes. Your total pension benefits would be deferred in the LGPS until retirement age and attract annual cost of living increases. You would have become a deferred member, and each year your deferred member's pension account would be adjusted in accordance with regulation 24(8). Index-linking is on the CPI (consumer price index) basis, and not the former RPI (retail price index) basis. Decreases as well as increases are possible.

The current Pensions Increase (Review) Order is SI 2015 No 671, applicable in England, Scotland and Wales. The equivalent Statutory Rule in Northern Ireland, applicable similarly, is SR 2015 No 180.

20. ***I expect to exceed the lifetime allowance and/or pay annual allowance charges most years until I retire – should I leave the Scheme and defer my benefits?***

This is not a question to be answered solely in terms of your income tax position, important though that clearly is – and the subject of detailed information in Annexes 1 and 2. It may well be worthwhile, if you are unsure of your exact position, first to seek the additional help on the tax calculation and financial planning issues via the services that ALACE has negotiated to be provided respectively by Hymans Robertson and Close Brothers (see question 14).

While the tax rate on the excess by which the lifetime allowance is exceeded (without protection) is 55% if taken as a lump sum and an additional 25% if taken as a pension, and then subject to your marginal rate of tax. It should not be overlooked that LGPS annual benefits are substantial, and probably exceptionally difficult for you to replicate in a pensions context outside the public sector. The level of annual benefit will continue to be adjusted for CPI for inflation, and of course length of pensionable service continues to accrue while you remain an active LGPS member.

The new annual allowance rules from April 2016, especially the new tapering arrangements for very high earners, may mean that those members may have to pay additional tax charges in respect of the annual allowance in most years up to retirement. If, however, they pay these charges through

the "Scheme Pays" option then this will reduce the value of their pension at the time they retire which will, in turn, probably save additional tax charges in respect of the lifetime allowance when they retire.

Certainly, given the unlikelihood of being able to find better, safer investments than an LGPS pension in the open market, it would be worth considering getting forward estimates made of the net financial position at retirement taking account of any possible tax liabilities before then and at retirement, before deciding whether or not to leave the Scheme.

Moreover, if you give up that active membership while remaining in employment, you will or may also lose rights or discretions that depend on the status of active membership – for example payment of unabated pensions benefits on early retirement, immediate payment of unabated payments on redundancy or, should it arise, some ill-health retirement or the full death-in-service provisions. Re-joining the Scheme at a later date may also not help in relation to some of these considerations. For example, if you re-joined the Scheme so that you could be retired early compulsorily by your employer on redundancy or efficiency grounds only those benefits earned since re-joining the Scheme would be protected from actuarial reduction – not the greater bulk of your benefits earned prior to your leaving the Scheme.

There may be other alternatives such as the 50-50 option (see question 4) which may be more beneficial, especially since under this option you would retain the ability to be retired early by your employer with no actuarial reduction in your pension, and your dependants would still receive the full death grant based on your full salary should you die.

You should explore the scope of all the relevant issues so as to make a balanced decision, rather than one based solely on your potential tax position.

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Edition 10
Version 1