

ASSOCIATION OF LOCAL AUTHORITY CHIEF EXECUTIVES

PENSIONS – FREQUENTLY ASKED QUESTIONS

Eighth Edition – December 2014

HOW TO USE THIS PENSIONS INFORMATION

Although the twenty 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 that is too long to include. Accordingly two Annexes 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. This is a transitional year, since the major structural changes introduced in England and Wales in April 2014 will be matched by similar (but not always identical) changes in Northern Ireland and Scotland in April 2015. Consideration will then be given – depending on member demand – to dividing the three jurisdictions 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 in the ALACE *Guidance Notes* confidentially available to members on the ALACE website www.alace.org.uk (particularly sections 5, 7 and 8). **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 (L.T.A.); the annual allowance; and the need for – and potential loss of – pension tax protections. For access to either of these services please contact the Honorary Secretary.

The responses set out below are given as at 1 November 2014. 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.

In both Northern Ireland and Scotland sets of three similarly titled LGPS Regulations were made, operative from 1 April 2009. In Northern Ireland these are SRs 2009 Nos 32, 33 and 34 respectively. The subsequent Northern Ireland amendments are contained in SRs 2010 No 164, 2012 No 183, and 2013 No 71. They will be replaced from April 2015 by SRs 2014 Nos 188 and 189.

In Scotland the relevant provisions are still currently set out in the already amended respective LGPS Regulations 2008, SSIs Nos 228, 229 and 230. The subsequent Scottish amendments are contained in SSI 2009s No 93, 2010 No 234, and 2012 Nos 236 and 347, and also in the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009, SI No 187. They will similarly be replaced from April 2015 by SSIs 2014 Nos 164 and 233.

The various statutes and statutory instruments themselves can be found, as detailed in section 10 of the current edition of the ALACE *Guidance Notes*, at the Office of Public Sector Information website www.opsi.gov.uk with a click on “legislation.” New Acts and Orders for each jurisdiction are added daily, and can be accessed at www.opsi.gov.uk/legislation/whatsnew.htm. The site www.statutelaw.gov.uk launched in December 2006 usefully provides the texts as currently amended rather than as originally enacted. Alternatively, timeline versions and copies of relevant legislation can be found on the Local Government Employers’ website at <http://timeline.lge.gov.uk/> and more information on the LGPS can be found at www.lgps.org.uk.

The following 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 2009.

1. How does the LGPS work?

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’ 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.

In Scotland since 1 April 2009 members pay tiered contributions of between 5.5% and 12% (the top rate of a sliding scale based on how much of your pay falls into each tier). In Northern Ireland the contribution rates (applicable from 1 April 2011) increase from 6.8% to 7.2% and at the highest 7.5%.

The traditional term “superannuation” means the same as “pension” and has now largely fallen into disuse. 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.

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 – calculated each year 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 $1/80^{\text{th}}$ of your final pay. (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 receive a (normally tax-free) single lump sum, or “retirement grant,” of $3/80^{\text{ths}}$ of your final pay for each year of membership. 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 $1/80^{\text{th}}$ pension and a $3/80^{\text{ths}}$ lump sum, your pension was at the increased rate of $1/60^{\text{th}}$ of your final pay. There was 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 80^{ths} prior to 1 April 2008 (1 April 2009 in Northern Ireland and Scotland) and so many 60^{ths} thereafter, plus an automatic lump sum in respect of membership built up to 31 March 2008 (31 March 2009 in Northern Ireland and Scotland).

Lifetime allowances and annual allowances: 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** (£1.25 million in 2014-15), 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% (on top of your normal marginal rate of tax) if taken as a pension. (That is, if you are liable to a top rate of 40% tax on your pension, the charge on all 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 current standard £1.25 million, although the application deadlines for all of these have now passed. (Applications for transitional ‘fixed protection 2014’ (FP14) which, subject to certain conditions, permits individuals to retain a personal lifetime allowance of up to £1.5 million, had to be made to HMRC no later than 5 April 2014.) Until 5 April 2017, however, it is possible for anyone whose capital value of their total pension benefits from all sources exceeded £1.25 million on 5 April 2014 to apply to HMRC for *individual protection*: this will give them a personal protected lifetime allowance equivalent to the value of their pension at that date up to a maximum of £1.5 million. (See Annex 1 for more information.)

There will also be a 55% 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 2014-15. See also question 3 below, and section 5 of the ALACE *Guidance Notes*.

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 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. 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 salary up to 31 March 2014 (31 March 2015 in Northern Ireland and Scotland), and not the salary 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 on 15 November 2012.

The total amount of benefits receivable under the LGPS Regulations is capped under regulation 50; their capital value cannot exceed “that person’s lifetime allowance, except in accordance with guidance issued by the Secretary of State.”

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.

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.) 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.

The seven former England and Wales pay bands used to determine your employee's pension contribution rates also currently still apply in Northern Ireland under regulation 3(2) of the Benefits Regulations 2009, SR No 32, but from 1 April 2015 there will be just six pay bands there from £0 to £85,000 and above, paying from 5.5% to 10.5%: see regulation 11 of 2014 SR No 188. The rate you pay depends on which pay band applies to you. For example, if your current pay rate is in the £42,001 to £78,700 range you currently pay 7.2%, and if your pay rate is more than £78,700 you pay 7.5%. From 1 April 2015 you will pay 8.5% from £43,001 to £85,000 and 10.5% above that.

In Scotland there is currently a five-tier contribution system from 1 April 2009, with contributions based on how much of your pay falls into each tier. Above £40,000 the rate is 12%, although members only pay 5.5% on the first £19,970 and so on according to the sliding scale. For example, this means that someone earning £150,000 during 2014-15 pays a contribution rate of 10.6%. From April 2015, under regulation 9 of SSI 2014 No 184 there will still be just five bands, from £0 to £45,300 and above, paying from 5.5% to 12%.

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 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 annual allowance. 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 13.

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 will be increased annually from 1 April 2015 as though it were an index-linked pension. 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 refuse to allow APCs to be made.

The benefits of AVCs and APCs may be different: some AVC providers, for instance, may offer life assurance as part of the arrangement (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.

4. *What will my normal retirement/pensionable age be?*

Under the new LGPS arrangements introduced from April 2014 your normal pensionable age under the LGPS is the same as your statutory pensionable age. If this is age 65, you can retire and receive your LGPS benefits in full from age 65. For many, however, the statutory pensionable age is increasing to 66 or 67. If your normal pensionable age is increasing, you will normally not be able to retire and receive your LGPS benefits in full until you reach that age.

5. *Can I retire early? Does the “rule of 85” still apply?*

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 4 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 15). 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 whose pension benefits have to be abated will have their benefits reduced by well over 40%.

The *rule of 85* determined whether or not your benefits should be actuarially reduced if you chose to retire early, i.e. before age 65. Previously, if you satisfied the rule of 85, your benefits would not be reduced if voluntarily drawn before 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. 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.

What follows is still applicable in Northern Ireland (SR 2009 No 34) and Scotland (SSI 2008 No 229), but 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 –

- **If you will be aged 60 or over by 31 March 2016** and choose to retire before age 65 then, 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 build up to 31 March 2016 will not be reduced.

- **If you will be 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 will 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 will be reduced by a lesser-tapered amount. (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.)

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.)

6. *In what circumstances can I retire and draw my pension (i) after age 55; and (ii) above the age of 65 or my normal pensionable age?*

The answer to (i) is partly contained in the answer to question 5. You can now voluntarily retire as of right from age 55. If you retire before your "normal pension age" (usually 65) **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 question 5 above. Reaching age 60 no longer has the significance 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 19 of the 2009 and 2008 Benefits 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 8 below.

As for part (ii), 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.

7. Will my pension be reduced if I retire before my normal pensionable age? Would it matter if I hadn't asked to retire? What about flexible retirement?

The answers to questions 4, 5 and 6 make it clear that the general rule now is anyone retiring before age 65 (or their normal pensionable age) – other than on grounds of ill-health, redundancy or business efficiency – will suffer a reduction in the value of their benefits, both lump sum grant and annual pension. The only exceptions are where LGPS members are entitled to the protections explained in answer to question 5, or where actuarial 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.

You cannot simply reduce or avoid the reductions by not taking immediate payment of your benefits: for instance in the cases of regulation 30(7) 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 – none of which would in any event result in an actuarial reduction being applied to your benefits).

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 5. See question 15 for further information on flexible retirement.

8. 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, based on an examination by an independent registered medical practitioner (IRMP) appointed by them (or by the NILGOS Committee in Northern Ireland). Note that the Scheme employer (i.e. the administering or pension authority) is not necessarily also your actual employer, but where they are different the former must first obtain the approval by the latter 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 20 in Northern Ireland and also 20 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 age 65. If, however, you have a reasonable prospect of undertaking gainful employment before age 65 (the second tier), then ill-health benefits are based on membership built up to leaving plus 25% of prospective membership from leaving till age 65. As stated above, there is no third tier provision in either Northern Ireland or Scotland in their respective Benefits Regulations. A different third tier is available in Scotland under Discretionary Compensation Regulations, however, to cover those dismissed because of ill-health but who are not certified as permanently incapable.

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

Capping (based on the level of applicable lifetime allowance) applies relating to the maximum benefits payable. For the taxation rules relating to *lifetime allowances*, including those for people with protected personal lifetime allowances, see Annex 1.

10. *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" is £6,500 from 1 April 2014, with the limit annually increased from 1 April 2015 as though it were an index-linked pension.

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.

11. *When can compensation for loss of office be awarded?*

This is not strictly a pensions issue, and is to be distinguished from the award of additional pension in question 10. Compensation for loss of office can be paid under the Local Government (Early Termination of Employment)(Discretionary Compensation) (England and Wales) Regulations 2006, SI No 2914; the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007 SR No 93; and the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998, SI No 192).

Compensation of up to 104 weeks' pay inclusive of any statutory and discretionary redundancy payment made can in principle be paid, but employees have no entitlement as of right to anything beyond their employment contract entitlements. In calculating a redundancy payment the employee's actual weekly pay may be (but does not have to be) used. The maximum weekly pay that may be used in such a calculation is currently £464 in England, Scotland and Wales under SI 2014 No 382 (and £470 in Northern Ireland under 2014 SR No 39).

Authorities must also publish a policy statement governing the exercise of discretions for this purpose as described in question 10.

12. *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 questions 5, 6 and 7, the requirement for actuarial reduction is governed by the Government Actuary (GAD) Guidance document *Flexible Retirement* referred to under question 5 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 15), 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.

13. *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 lifetime allowance, that is £312,500 in 2014-15 (but this may be

higher if you have a protected personal lifetime allowance, for example £450,000 if you have fixed protection from 2012 or £375,000 if you have fixed protection from 2014), *less* the value of any other pension rights you have in payment. For every £1 of annual pension you give up you receive £12 lump sum.

In Northern Ireland the equivalent provision is currently regulation 21 of the 2009 Benefits Regulations, SR No 32, and in Scotland it is also regulation 21 of the 2008 Benefits Regulations, SSSI No 230.

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, for those who only exceed their lifetime allowance by a relatively small amount, that they can reduce their total benefits figure to below the lifetime allowance – and thereby not be subject to the additional tax charges mentioned in the answer to question 1. You should obtain independent 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 investment advice arrangements with Close Brothers; you should apply through the Hon. Secretary *and not directly* if you wish to use them.) As to *annual allowances* see Annex 2.

Electing to exchange any proportion of your lump sum will not affect the level of survivors' pensions should you die.

See also question 19 below.

14. *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).

15. *Can I reduce my hours? What is flexible retirement?*

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 regulation 18 in each case of the Northern Ireland and Scottish Benefits Regulations, SR 2009 No 32 and SSI 2008 No 230 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 flexible retirement (employer consent is only required in Scotland if you are under age 60). 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 questions 5 & 6. 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.

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/pensionable 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.

17. *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 now on the CPI (consumer price index) basis, and not the former RPI (retail price index) basis.

The current Pensions Increase (Review) Order is SI 2014 No 668, applicable in England, Scotland and Wales. The equivalent Statutory Rule in Northern Ireland, applicable similarly, is SR 2014 No 99.

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. *I expect to exceed the lifetime allowance – 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 Annex 1. 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 13).

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% on your marginal rate of tax if taken as a pension, it should not be overlooked that LGPS annual benefits are substantial and probably now impossible for you to replicate in a pensions context elsewhere. 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.

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 death-in-service provisions. 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.

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

The LGPS provides death grants and pensions for surviving spouses, civil partners, nominated 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 $1/160^{\text{th}}$ of the deceased member’s “annual assumed pensionable pay” for each year of the deceased’s pensionable service plus however many remain until they would have reached age 65. Pensions based usually on $1/320^{\text{th}}$ s are also paid to eligible children (though $1/320^{\text{th}}$ will become $1/240^{\text{th}}$ s if there is no surviving adult partner and only one eligible child, increasing to $1/120^{\text{th}}$ s 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 $1/160^{\text{th}}$ 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. 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 *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>

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