



**THE LOCAL  
GOVERNMENT PENSION  
SCHEME**

# PensionChanges

**LGPS Issues – No.4**

**March 2008**

## **INTRODUCTION**

This is the fourth issue of the CLG Newsletter which brings you up to date with the latest information regarding the new-look LGPS. CLG is expecting some media interest around 1 April (an unavoidable date!) and will be briefing our Press Staff about the new Scheme and our proposed commentary. No other CLG-inspired events are planned. As before, if anyone has any comments on these newsletters or would like clarification of any points, then do get in touch with one of the following, either Brian Town at: [brian.town@communities.gsi.gov.uk](mailto:brian.town@communities.gsi.gov.uk) or Nicola Rochester at: [Nicola.rochester@communities.gsi.gov.uk](mailto:Nicola.rochester@communities.gsi.gov.uk).

**Further, as we are drawing ever closer to the launch date – it would be very much appreciated if you would please draw this newsletter and our earlier editions to the attention of all your employers. It has become apparent to us recently that not everyone is quite up to speed with the relevant changes as they should be! This is worrying! So please don't leave folk out – get the message out!!**

## **REGULAR UPDATES**

This issue provides administrators with updates on ill health retirement – 3<sup>rd</sup> tier; Benefit Regulations; Administration and Transitional Provisions; Commentary Guide; Admitted Body Status Review, the Sustaining Mechanism and the Policy Review Group.

## **ILL HEALTH RETIREMENT – 3<sup>RD</sup> TIER**

Set out below are the intended terms of the 3<sup>rd</sup> tier that will be contained in Regulation 20 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2000 (the benefits regulations). Ministers have agreed that the necessary Statutory Instrument (SI) can be finalised and it should be published shortly when made and laid in Parliament. Stakeholders may find these informal comments helpful as they await the final provisions.

The proposals for a 3<sup>rd</sup> tier of ill health benefit were set out in a consultation letter issued on 21 November 2007 which invited comments by 12 January 2008. Communities and Local Government is grateful for the responses received which have been evaluated and assessed.

### **The 3<sup>rd</sup> tier of ill health provision**

The measure which comes into force on 1 April 2008, provide local authority employers with powers to award benefits for those scheme members who are permanently incapable of their local authority employment but are judged by an Independent Occupational Health Practitioner (IOHP) to be capable of gainful employment within a reasonable period after leaving that employment.

When establishing the framework for the 3<sup>rd</sup> tier, account has been taken of all the representations made including those from employer organisations and trades unions. The final terms of the regulations have been prepared on the basis that the provisions must remain within the agreed cost envelope and cost no more than 0.1% of payroll.

### **The framework**

There will be a qualifying period of 3 months of continuous contributory membership.

An employee who leaves local government employment as a 3<sup>rd</sup> tier member will be entitled to their annual accrued benefits payable as a pension for such time as the 3<sup>rd</sup> tier member does not obtain gainful employment, or until the employer stops payments following the review\*.

The 3<sup>rd</sup> tier member will be required to notify the previous employer when employment is found providing details, including pay, working hours and length of contract of that employment, and the employer would then stop payments if this was 'gainful employment.'

If payments have continued when gainful employment has been found, the employer will have powers to recover any overpayment from the 3<sup>rd</sup> tier member.

If 3<sup>rd</sup> tier payments cease, there should be no reinstatement.

The definition of the status of a 3<sup>rd</sup> tier member whose benefits are stopped is ‘a pensioner member with deferred benefits’.

There will be protection for those members who have a reduction in hours which directly relate to the ill health condition resulting in termination of employment.

When benefits are stopped and the then 3<sup>rd</sup> tier member subsequently becomes an active member of the LGPS, the earlier period of membership which resulted in ill health benefits should not be aggregated with the later active membership.

### **Definitions**

‘reasonable period’ means a period of 3 years.

‘gainful employment’ means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

### **The Review mechanism**

The previous employer will be required to undertake a review when payments have been made for 18 months if payments are still continuing at that point.

At the review, the previous employer will ask the 3<sup>rd</sup> tier member if their circumstances had changed seeking details of working hours, pay and length of contract. If the employer decides, from the information provided that gainful employment had been obtained, the 3<sup>rd</sup> tier payments will be stopped.

The employing authority will be required to notify the appropriate administering authority without delay when payments should be stopped.

### **Seeking a further opinion from an Independent Occupational Health Practitioner (IOHP)**

If, as a result of the employer’s enquiry, it was found that a 3<sup>rd</sup> tier member had not found gainful employment, the employer will be able to seek a further opinion from an IOHP concerning the condition which resulted in the 3<sup>rd</sup> tier membership.

*Statutory Guidance* will set out that the IOHP should be asked whether it remained the case that gainful employment could have been obtained within a reasonable period of leaving the former local authority employment (and the doctor should be asked to state the precise point at which gainful employment could be obtained) *or* if the member is judged to be incapable of undertaking gainful employment within a reasonable period but is likely to be able to obtain gainful employment before his retirement age.

*Statutory Guidance* will set out that a 3<sup>rd</sup> tier member’s employer would not be precluded, for the review, from selecting the same IOHP who made the judgement for the 3<sup>rd</sup> tier decision.

\*If the IOHP is of the opinion that the member remains capable of gainful employment within the reasonable period, the employer will have powers to stop payments at the date specified by the IOHP.

The employer will have powers to determine that a 3<sup>rd</sup> tier member should become a 2<sup>nd</sup> tier member and the date of further determination will decide the date from which the uplift to 2<sup>nd</sup> tier will be put into payment.

### **Regulation 31**

The intention of Reg 31 will be redrafted to make clear that unenhanced retirement benefits are payable, and that the member requesting early release of the retirement benefits should be judged by an IOHP as permanently incapable of the previous local authority employment until normal retirement age.

The consultation letter highlighted the proposal for an Ill Health Monitoring Group and membership of the group will be announced shortly.

## **UPDATE ON GAD GUIDANCE**

You should now be in receipt of the first two GAD guidance notes that were sent out earlier this month. Please email Andy Lankester if you have not received yours: [andy.lankester@communities.gsi.gov.uk](mailto:andy.lankester@communities.gsi.gov.uk) .

Look out for the one we are hoping to issue on transfers in the next few days!

## **AMENDMENTS TO THE BENEFITS REGULATIONS – TECHNICAL CHANGES & CLARIFICATIONS**

A number of technical changes are to be made to the *Benefit Regulations* which have been usefully identified by practitioners and administrators since they were made in April 2007. These are as follows:-

After the standard preamble in regulation 1 and stating that the Benefits Regulations are amended as follows in regulation 2, this SI does the following to the LGPS (Benefits, Membership and Contributions) Regulations 2007:-

- the necessary cross reference to the LGPS (Administration) Regulations 2008 is inserted into the Benefits Regulation citation, regulation 1;
- regulation 2 now has a cross reference to the Admin Regulations rather than the 1997 Regulations in terms of defining Scheme employers, and makes clear that continuous members join the new arrangement;

- regulation 3 has been amended to show how new joiners should be allocated to one of the contribution pay bands on starting; how the bands will be updated each year to the nearest £100, how a material change in a member's pay may require a re-attribution of contribution band, clarifies whole time term timers (in line with approach already in place with many employers and funds) and that band applies to all pay in EACH individual job;
- regulation 5 is amended to make clear that once the initial three month qualifying condition is satisfied it applies in respect of all later periods, other than where a pension has come into payment;
- regulation 6 now makes the appropriate cross reference to the Admin Regulations;
- regulation 8 is amended to meet the intention set out in the RIA which accompanied the Benefits Regulations;
- regulation 9(5) is now deleted as not being needed;
- regulation 10 has been amended to deliver a consistent approach to retirement and flexible retirement with ongoing membership, and see also changes made to regulation 16 and 18;
- in regulation 16 a new sub-paragraph (3) has been inserted to deal with the consistency of approach
- and this same point is repeated in regulation 17;
- regulation 18 as amended now sets out that stepping down, which can only be with same employer, permits flexible retirement in a consistent manner with amendments to regulations 10, 16 and 17;
- the cross referencing in regulation 25(6)(b) is now corrected;
- amends regulation 26 to set out definition of eligible child rather than rely on cross references to other legislation;
- a new provision is inserted into regulation 29 which removes need for point to be repeated in subsequent regulations and allows for enhancement where deferred member chooses not to take pension at age 65;
- regulation 30 has had otiose provisions deleted;
- in regulation 33 the word "salary" has been replaced by "pay";
- regulation 35 is amended to make clear that in paying guaranteed amount of death benefit regard is given to post commutation pension;
- regulation 36 is amended in same way as regulation 33;
- regulation 39 now includes specific reference to GAD guidance in dealing with trivial commutation;
- a new regulation 41 is inserted bringing forward pension debit provision into Benefits Regulations rather than in Administration Regulations; and
- a new regulation 42 is inserted to ensure no double counting of periods of membership which was being considered for inclusion in the Administration Regulations.

The opportunity has also been taken to amend a saving provision in the Transitional Provisions to ensure consistency of approach between a member switching funds where they had already entered into an added years contract and a member with preserved rights linked to AVC contract or rule of 85 protection up to 2016.

## **ADMINISTRATION AND TRANSITIONAL REGULATIONS**

These Regulations have now been made and laid and will come into force on 1 April. You should already be in receipt of an electronic copy. If not, you can download a set from our website ([www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)) and go to the What's New Page and look under 14 February (SI 2008 Nos. 238 & 239).

## **COMMENTARY GUIDANCE**

The long-awaited Commentary Guidance will be published on 1 April when the new-look LGPS goes 'live'. As you know, it will accompany the Benefit, Transitional and Administration regulations. It will also be posted onto both the Departmental website ([www.communities.gov.uk](http://www.communities.gov.uk)) and our website ([www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)) so there will always be a copy to refer to. As this will need to be a living document, we would welcome your comments and observations on it so that we can keep it up to date and relevant at all times. Once published – please email any comments you might have to Nicola Rochester ([Nicola.rochester@communities.gsi.gov.uk](mailto:Nicola.rochester@communities.gsi.gov.uk)).

## **ADMITTED BODY STATUS REVIEW**

January's edition of this newsletter informed that the informal consultation exercise on Admitted Body Status provisions was underway. An informal consultation document on 18 January that examines specific concerns raised about the implementation of ABS provisions and sets out three possible broad approaches which might be developed to address those concerns.

A wide range of stakeholders including councils, unions and employers are invited to submit their views on the approaches set out in the consultation document and provide additional ideas on potential ways forward to help ensure the provisions meet the needs and support the interests of local authorities, contractors, employees and taxpayers.

The consultation document and accompanying questionnaire are available at [www.communities.gov.uk/publications/localgovernment/admittedbodystatus](http://www.communities.gov.uk/publications/localgovernment/admittedbodystatus). Alternatively, you can request your copy of the consultation document by emailing Darren Kristiansen at [Darren.Kristiansen@communities.gsi.gov.uk](mailto:Darren.Kristiansen@communities.gsi.gov.uk) or telephone Darren on tel: 020 7944 8173.

This informal consultation exercise closes on **Thursday, 10 April 2008**.

If you are organising an event before 10 April and would welcome further information about the consultation exercise, please contact Darren Kristiansen on the details provided above. Subject to availability Darren would be pleased to attend any events taking place and provide advice, guidance or presentation on the consultation exercise.

## SUSTAINING THE LGPS IN ENGLAND & WALES

Our informal consultation document on “Sustaining the LGPS in England and Wales” was published last month. You should all be in receipt of a copy along with a separate document which refers to the proposed timetable. Both documents are available on our website ([www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)) on the What’s New Page under 4 March. **You will need to forward copies of both the consultation and timetable to your Finance Director.** The closing date for responses is **30 May 2008**. The consultation will also be discussed at next month’s Policy Review Group meeting.

## POLICY REVIEW GROUP

The next meeting of the Policy Review Group will take place on 9 April in which the Group hopes to examine the initial results of GAD’s re-assessment of Ro85 costs exercise. Administering authorities should already have given their permission to the release of essential data via their actuaries.

Please note that all meeting papers discussed at the Policy Review Group have now been posted onto our website ([www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)) under the Policy Review Group Page.

Finally, on a separate note, if there are any other pension items which you feel should be covered in a future issue of Pensions Changes – then please email Nicola Rochester – [Nicola.rochester@communities.gsi.gov.uk](mailto:Nicola.rochester@communities.gsi.gov.uk) .

See you next month!

**Workforce Pay and Pensions – Branch 2**  
**March 2008**