

Local Government Pensions Committee  
Secretary, Lorraine Bennett

## LGPC Bulletin 180 – February 2019

### Foreword

This bulletin provides a commentary for LGPS administering authorities in England and Wales on the changes to the LGPS made by the Local Government Pension Scheme (Miscellaneous Amendment) Regulations 2018 [SI2018/1366].

On 4 October 2018, the Ministry of Housing, Communities and Local Government (MHCLG) opened a consultation on proposed amendments to the LGPS. The consultation closed on 29 November 2018. A copy of all the consultation papers (including the Government response published in December 2018) can be found under the [scheme consultations page](#) of [www.lgpsregs.org](http://www.lgpsregs.org). On 18 December 2018, the LGPS (Miscellaneous Amendment) 2018 Regulations were laid before parliament.

The regulations come into force on 10 January 2019 but the provisions listed in regulation 1(2)(a), 1(2)(b)(i) and 1(2)(b)(ii) have effect from 17 April 2018, 5 December 2005 and 13 March 2014 respectively. The regulations amend the LGPS 2013 Regulations<sup>1</sup> and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014<sup>2</sup>, by:

- introducing a general power for the Secretary of State to issue statutory guidance
- making a technical amendment to allow early access to benefits between the age of 55 and NRD (as defined by the LGPS Regulations 1995<sup>3</sup>), for deferred members who left before 1 April 1998
- addressing the [Walker v Innospec judgment](#) by providing that survivors of registered civil partners or same sex marriages are provided with benefits that replicate those provided to widows.

### Actions for administering authorities

There are actions that LGPS administering authorities *must* take as a result of these changes. A summary of the required actions is provided below; more detail is provided in the appropriate sections of this bulletin:

- note and make any necessary changes to procedures / documentation to reflect that from 17 April 2018 deferred members who left the Scheme before 1 April 1998:
  - must now make a written election for early payment to the administering authority, instead of their former employer.

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<sup>1</sup> SI 2013/2356

<sup>2</sup> SI 2014/525

<sup>3</sup> SI 1995/1019

- no longer have to have left all local government employment in order to receive early payment of their benefits under regulation D11(2)(d) of the LGPS Regulations 1995<sup>3</sup> i.e. election for early payment
- revisit calculations of pensions paid to surviving civil partners and same sex spouses and pay any additional amounts due. Await statutory guidance with regard to any further adjustments that may be due e.g. to CETVs, trivial commutations paid to surviving civil partners and same sex spouses and trivial commutations paid to members where the member was in a civil partnership or married to a same sex spouse at the date of payment. MHCLG have confirmed they will issue statutory guidance to assist administering authorities in this exercise.
- make adjustments to the calculation of some widows' and widowers' pensions where the member dies after 9 January 2019.

### Disclosure Requirements

LGPS administering authorities will need to communicate the changes to scheme members, as required under regulation 8 and Part 1 of Schedule 2 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013<sup>4</sup>. Communication of the changes should take place as soon as possible, and in any event, within three months of the date of change (i.e. by 10 April 2019). The national Communications Working Group met on 15 January 2019 and have agreed to provide template wording to be used to communicate the changes. This will be issued by the end of February.

### Updates to online resources

We will update the technical guides, member communications and the national LGPS member website in due course.

### The changes

- [General power for the Secretary of State to issue statutory guidance](#)
- [Payment of deferred benefits from age 55 for leavers before 1 April 1998](#)
- [Surviving partners' pensions - overview](#)
- [Surviving partners' benefits payable under the 1995 Scheme and earlier schemes](#)
- [Surviving partners' benefits payable under the 1998 Scheme](#)
- [Surviving partners' benefits payable under the 2008 Scheme](#)
- [Surviving partners' benefits payable under the 2014 Scheme](#)

### Queries raised with MHCLG

### Definition of terms

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<sup>4</sup> SI 2013/2734

## General power for the Secretary of State to issue statutory guidance

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
Regulations 1(2) and 2	LGPS Regulations 2013: <ul style="list-style-type: none"> <li>• New reg 2(3A),</li> <li>• New reg 2(3B)</li> </ul>	10 January 2019	<p>MHCLG may issue guidance to administering authorities on the administration and management of the Scheme.</p> <p>Before preparing new guidance or revising existing guidance, MHCLG must consult with persons they consider to be appropriate.</p>	<p>Enables MHCLG to provide statutory guidance in areas other than where the regulations specifically provide for it.</p> <p>In their response to the consultation MHCLG state that nothing in the statutory guidance should change or conflict with the meaning of the regulations, unless the court require a new interpretation to ensure consistency with the Human Rights Act 1998. The purpose of the guidance is to clarify the content of the regulations and maintain an appropriate level of consistency in interpretations of its rules between administering authorities.</p>

## Payment of deferred benefits from age 55 for leavers before 1 April 1998

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
Regulations 1(2)(a), 3 and 4	Transitional Provisions 2014 <sup>5</sup> : <ul style="list-style-type: none"> <li>Amends reg 3 by substituting new para (5A)(a)</li> </ul>	17 April 2018	<p>The LGPS (Amendment) Regulations 2018<sup>6</sup> introduced the early payment of deferred benefits <i>at</i> age 55 (or the date the member left all local government employment, if later), for members who left active membership of the Scheme before 1 April 1998. The policy intention of those amendments was to provide for payment <i>from</i> age 55 (this is explained further in <a href="#">bulletin 171</a>). The LGPS (Miscellaneous Amendment) Regulations 2018 legislate for the policy intent.</p> <p>In addition, they make a further change by removing the requirement</p>	<p>The <a href="#">deferred benefit payable table</a> sets out when deferred benefits are payable both before and after these changes.</p> <p>The changes are effective from 17 April 2018, earlier than the effective date of the LGPS (Amendment) Regulations 2018<sup>6</sup> (14 May 2018). MHCLG confirmed that whilst they appreciate it would have been more appropriate for regulation 4 to take effect from 14 May 2018 they are of the opinion that the alternative date will not cause any significant issues.</p> <p><b>Backdating applications</b>            In the consultation, MHCLG stated that members who were prevented from gaining access to their deferred benefit because of the oversight in the LGPS (Amendment) Regulations 2018<sup>6</sup> should be able to backdate their application and that the facility to backdate would be available for 6 months from the coming into force of this latest amendment to the 1995 scheme rules. However, the LGPS</p>

<sup>5</sup> SI 2014/525

<sup>6</sup> Regulation 24(a) of LGPS (Amendment) Regulations 2018 [SI 2018/493]

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
			<p>for a member to have left all local government employment in order to receive payment of their benefits under regulation D11(2)(d) of the LGPS Regulations 1995<sup>3</sup> i.e. election for early payment.</p>	<p>(Miscellaneous Amendment) Regulations 2018 do not deliver this.</p> <p>By removing the wording “<i>given within the period of three months beginning with the relevant date</i>” they have in effect provided a facility to backdate payment to 17 April 2018; however, there is not a prescribed time limited facility to backdate, as was suggested in the consultation.</p> <p>It is our understanding that the changes made allow those members who were previously prevented from accessing their benefit from age 55, due to the technical error in the LGPS (Amendment) Regulations 2018), to be able to backdate their election to 17 April 2018, by choosing a relevant date earlier than the date the election was received by the administering authority. Though, in normal circumstances the relevant date would either be the date the election is received by the administering authority or a later date, if specified.</p>

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
				<p><b>Leaving all local government employment</b></p> <p>In their response to the consultation MHCLG confirm that “<i>the Government agrees that removing the requirement for a member to have left all local government employment would be consistent with the proposed policy and the Government’s wider policy on pension freedoms</i>”. They go on to state they intend to fully equalise the rights of deferred members of the 1995 scheme by removing the need for them to have left all local government employment.</p> <p>However, by simply removing paragraph 4(b) of regulation D11 of the LGPS Regulations 1995, they have also inadvertently removed the requirement for a member to have left the employment to which the deferred benefit relates. This is because regulation D4 states that reference to a member ceasing to hold a local government employment includes a member who has opted out. Given that we are talking about a member who would have opted out before 1 April 1998 and still be in the same employment, the impact of this is</p>

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
				<p>likely to be minimal. <b>We will raise the issue with MHCLG</b></p> <p><b>Actions for administering authorities</b></p> <p>Administering authorities will need to ensure that their:</p> <ul style="list-style-type: none"> <li>• scheme communications reflect that a member can elect for early payment prior to their NRD of the 1995 scheme <u>from</u> age 55 and confirm that the member no longer has to have left all local government employment.</li> <li>• where a member makes an election, the election is made to the administering authority.</li> <li>• Where the former employer is no longer a scheme employer, the discretion to allow payment on compassionate grounds now lies with the administering authority.</li> </ul> <p>Administering authorities will need to update their discretionary policies.</p>

Deferred Benefit Payment Table – leavers before 1 April 1998<sup>7</sup>

Payable Date	Payment before 17 April 2018	Payment after 16 April 2018
Latest payable date (even if in the same or another local government employment.)	Normal Retirement Date ( <a href="#">NRD</a> ) of the 1995 Scheme i.e. there is no option to defer beyond NRD	Normal Retirement Date ( <a href="#">NRD</a> ) of the 1995 Scheme i.e. there is no option to defer beyond NRD
Or the earlier of:		
Permanent ill health	Any age before <a href="#">NRD</a>	Any age before <a href="#">NRD</a>
On compassionate grounds	On or after age 50 <sup>8</sup> but before NRD if the employing authority determines they are payable.	On or after age 50 <sup>6</sup> but before NRD if the scheme employer determines they are payable, or where a member's employer has ceased to be a scheme employer, the appropriate administering authority.
Early payment – member's request	At age 60 (providing the member is not in local government employment) NB: this option only applied where the member's NRD is after age 60, otherwise benefits were paid at NRD as shown earlier within this table.  Election was made to the employing authority.	On or after age 55 but before NRD (even if the member has not ceased all government employment <sup>9</sup> ).  Election is made to the administering authority.

<sup>7</sup> D11 of the 1995 Regulations

<sup>8</sup> Note: benefits paid before age 55 would be unauthorised under the Finance Act 2004

<sup>9</sup> See [page 6](#) for details of the issue regarding the deletion of D11(4)(b)

## Surviving partners' pensions - overview

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
Reg 1(2)(b)(i) and (ii) and reg 5	Transitional Provisions 2014 <sup>5</sup> : <ul style="list-style-type: none"> <li>• New reg 17(9)(c),</li> <li>• New reg 17(9)(d),</li> <li>• New reg 17(9)(e),</li> <li>• Deletes regs 17(11)(a) and (c),</li> <li>• Amends reg 17(11)(b),</li> <li>• Substitutes new reg 17(12),</li> <li>• Substitutes new reg 17(13),</li> <li>• New reg 17(17)</li> </ul>	10 January 2019 in respect of any amendments that do not relate to surviving civil partners or same sex spouses.  5 December 2005 in relation to changes for surviving civil partners.  13 March 2014 in relation to changes for surviving spouse of a same sex marriage.	The changes intend to: <ul style="list-style-type: none"> <li>• align the payment of pensions payable to surviving civil partners and same sex spouses, with those paid to widows.</li> <li>• Correct earlier discrepancies in regulation 17.</li> </ul>	The tables on the following pages set out the changes to survivor benefits that are affected by the LGPS (Miscellaneous Amendment) Regulations 2018, and the date each change is effective from.  The tables detail the membership that should be used in the calculation of short term (where applicable) and long term survivor pensions, both before and after the changes.  The information is set out according to when the member left active membership of the Scheme, as below. <ul style="list-style-type: none"> <li>• <a href="#">Leavers before 1 April 1998</a> (1995 Scheme and earlier schemes)</li> <li>• <a href="#">Leavers after 31 March 1998 and before 1 April 2008</a> (1997 Scheme)</li> </ul>

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
				<ul style="list-style-type: none"> <li>• <a href="#">Leavers after 31 March 2008 and before 1 April 2014</a> (2008 Scheme)</li> <li>• <a href="#">Leavers after 31 March 2014</a> (2014 Scheme)</li> </ul> <p>The tables only include survivor benefits where we think the calculation has changed. We plan to issue a revised survivor benefit guide confirming the provisions for all survivor benefits in the next few weeks.</p> <p>Administering authorities should note that there has been a change to widow and widower calculations under the 1995 regulations, in relation to post leaving marriages where the widow/widower was also married to the member at some point after 31/3/1972 whilst the member was active member. The change is introduced by new paragraphs (a) and (c) of regulation 17(13) of the Transitional 2014 Regulations and broadly puts such survivors back in the position they would were</p>

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
				<p>before the changes to survivor benefits that took effect from 1 April 2014 were made. This change is effect from 10 January 2019 – it is not backdated.</p> <p><b>Conversion of a civil partnership into a same sex marriage</b></p> <p>In our response to the consultation we pointed out that Section 9 of the Marriage (Same Sex Couples) Act 2013 provides that the parties to a civil partnership are able to convert their civil partnership into a marriage. Once converted, the date from which the marriage is to be treated as having subsisted is the date the civil partnership was formed, in accordance with section 9(6) of the 2013 Act. We queried whether the draft regulations needed to be amended to provide that the pension paid to a surviving same sex spouse, when recalculated under these provisions, would be backdated to the date the marriage is treated as having subsisted, i.e. potentially</p>

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
				<p>back to 5 December 2005, rather than just to 13 March 2014.</p> <p>Despite assurances at the time that the draft regulations were sufficient in this regard, MHCLG have since acknowledged that this is not the case. Regulation 1(2)(b)(ii) only provides that the changes be backdated to 13 March 2014 in respect of a surviving same sex spouse – they do not provide that the changes can be backdated to 5 December 2005 where a member has converted a civil partnership into a marriage.</p> <p>MHCLG have informed us that the statutory guidance will confirm that the benefits of a surviving same sex spouse, derived from the conversion of a civil partnership, will be fully covered, to reflect the policy intent (i.e. back dating to 5 December 2005 if appropriate).</p>

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
				<p><b>Actions for administering authorities</b></p> <p>Where indicated in the tables, it will necessary for administering authorities to recalculate:</p> <ul style="list-style-type: none"> <li>• the payment of pensions being paid to surviving civil partners and same sex spouses and pay any additional amounts due.</li> <li>• pay interest on any payments in accordance with the relevant LGPS regulations.</li> <li>• adjust the calculation of widows' and widowers' pensions where the member died after 9 January 2019, where appropriate.</li> </ul> <p>We understand that MHCLG will shortly be consulting on statutory guidance that will direct administering authorities to also revisit:</p> <ul style="list-style-type: none"> <li>• trivial commutation payments made to surviving civil partners and same sex spouses</li> </ul>

SI 2018/1366	Regulations amended/inserted or deleted	Effective date of amendment	Description of change	Impact of change
				<ul style="list-style-type: none"> <li>• trivial commutations paid to the member where the member was in a civil partnership or same sex marriage at the point of payment</li> <li>• CETVs where the member was in a civil partnership or same sex marriage at the point of transfer</li> <li>• Potentially some interfund adjustments</li> </ul>

## Survivor benefits payable under the 1995 Scheme and earlier schemes

Relationship	Member died before 1 April 2014	Member died after 31 March 2014 and before 10 January 2019	Member died after 9 January 2019
<b>Widow</b> – post leaving marriage to a male member, where the widow was also married to the member at some point after 31/3/1972 whilst the member was active.	All membership <sup>10</sup>  <b>NO ACTION NEEDED</b>	Membership <sup>10</sup> after 5 April 1978 <u>plus</u> relevant additional membership ( <a href="#">RAM</a> ) <sup>10</sup>  <b>NO ACTION NEEDED</b>	All membership <sup>10</sup>  <b>ACTION: ensure procedures are updated to reflect that the calculation has changed.</b>
<b>Widower-</b> post leaving marriage to deceased female member, where the widower was also married to the member at some point after 31/3/1972 whilst the member was active.	Membership <sup>10</sup> after 5 April 1988, plus 1 April 1972 to 5 April 1988 or any pre 1 April 1972 membership, where the member paid contributions for that period to count towards a widower's <u>long term</u> pension, plus the membership defined in <a href="#">F8(3)</a>  <b>NO ACTION NEEDED</b>	Membership <sup>10</sup> after 5 April 1988 plus <a href="#">RAM</a> <sup>11</sup>  <b>NO ACTION NEEDED</b>	Membership <sup>10</sup> after 5 April 1988 plus the membership defined in <a href="#">F8(3)</a> of the 1995 Regulations.  <b>ACTION: ensure procedures are updated to reflect that the calculation has changed.</b>

<sup>10</sup> The calculation of the long term pension ignores any 1/240<sup>th</sup> increase (by virtue of D2(2)(i) of the 1995 Regulation) to certain additional service awarded or purchased by the member.

<sup>11</sup> Regulation 17(13) of the TP Regs only provides that relevant additional membership that could have counted under regulations 42 and 42A of the 1997 regs can count. A member who ceased active membership prior to 1<sup>st</sup> April 1998 was not subject to the 1997 Regulations and so could not count relevant additional membership under regulation 42 or, as appropriate, regulation 42A of the 1997 Regs. It is believed that this was not intended and that the intention of regulation 17(13) of the TP Regs was that a member who left prior to 1 April 1998 and died after 31 March 2014 should be treated **as if** regulation 42 or, as appropriate, regulation 42A (modified, where relevant, by reg 42B) of the 1997 Regulations applied to him / her.

## Survivor benefits payable under the 1995 Scheme and earlier schemes

Relationship	Member died before 1 April 2014	Member died after 31 March 2014
<b>Surviving civil partner - post leaving civil partnership</b>		
Surviving civil partner's pension payable <b>before</b> the Walker v Innospec judgment	Membership <sup>10</sup> after 5 April 1988 plus the membership defined in <a href="#">F8(3)</a>	Membership <sup>10</sup> after 5 April 1988 plus <a href="#">RAM</a>
Surviving civil partner's pension payable <b>after</b> the Walker v Innospec judgment	<p>Membership<sup>10</sup> after 5 April <b>1978</b> plus the membership defined in <a href="#">F8(3)</a></p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to civil partners from 5 December 2005 and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>	<p>Membership<sup>10</sup> after 5 April <b>1978</b> plus the membership defined in <a href="#">F8(3)</a></p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to civil partners from 5 December 2005 and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>

## Survivor benefits payable under the 1995 Scheme and earlier schemes

Relationship	Member died before 1 April 2014	Member died after 31 March 2014
Surviving same sex-spouse - post leaving marriage		
Surviving same sex spouse's pension payable <b>before</b> the Walker v Innospec judgment	Membership <sup>10</sup> after 5 April 1988 plus the membership defined in <a href="#">F8(3)</a>	Membership <sup>10</sup> after 5 April 1988 plus <a href="#">RAM</a>
Surviving same sex spouse's pension payable <b>after</b> the Walker v Innospec judgment	<p>Membership<sup>10</sup> after 5 April <b>1978</b> plus the membership defined in <a href="#">F8(3)</a></p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to same sex spouse's from 13 March 2014 (or as far back as 5 December 2005 if the member has converted their civil partnership into a same sex marriage) and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>	<p>Membership<sup>10</sup> after 5 April <b>1978</b> plus the membership defined in <a href="#">F8(3)</a></p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to same sex spouse's from 13 March 2014 (or as far back as 5 December 2005 if the member has converted their civil partnership into a same sex marriage) and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>

## Survivor benefits payable under the 1998 Scheme

Relationship	Member died before 1 April 2014	Member died after 1 April 2014
<b>Surviving civil partner</b> – in civil partnership at date of leaving.		
Surviving civil partner's pension payable <b>before</b> the Walker v Innospec judgment	Membership after 5 April 1988 plus <a href="#">RAM</a>	Membership after 5 April 1988 plus <a href="#">RAM</a>
Surviving civil partner's pension payable <b>after</b> the Walker v Innospec judgment	<p>All membership</p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to civil partners from 5 December 2005 and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>	<p>All membership</p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to civil partners from 5 December 2005 and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>

## Survivor benefits payable under the 1998 Scheme

Relationship	Member died before 1 April 2014	Member died after 1 April 2014
<b>Surviving civil partner- post leaving civil partnership</b>		
Surviving civil partner's pension payable <b>before</b> the Walker v Innospec judgment	Membership after 5 April 1988 plus <a href="#">RAM</a>	Membership after 5 April 1988 plus <a href="#">RAM</a>
Surviving same civil partner's pension payable <b>after</b> the Walker v Innospec judgment	<p>Membership after 5 April <b>1978</b> plus RAM</p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to civil partners from 5 December 2005 and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>	<p>Membership after 5 April <b>1978</b> plus RAM</p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to civil partners from 5 December 2005 and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>

## Survivor benefits payable under the 1998 Scheme

Relationship	Member died before 1 April 2014	Member died after 1 April 2014
<b>Surviving civil partner</b> - post leaving civil partnership, but also in a partnership with the member at some point after 31/3/1972 whilst the member was active		
Surviving civil partner's pension payable <b>before</b> the Walker v Innospec judgment	Membership after 5 April 1988 plus <a href="#">RAM</a>	Membership after 5 April plus <a href="#">RAM</a>
Surviving civil partner's pension payable <b>after</b> the Walker v Innospec judgment	Membership after 5 April <b>1978</b> plus RAM <b>Action: as above</b>	Membership after 5 April <b>1978</b> plus RAM <b>Action: as above</b>
<b>Surviving same sex spouse partner</b> - married at date of leaving		
Surviving same sex spouse's pension payable <b>before</b> the Walker v Innospec judgment	Membership after 5 April 1988 plus RAM	Membership after 5 April 1988 plus RAM
Surviving same sex spouse's pension payable <b>after</b> the Walker v Innospec judgment	All membership <b>Action: administering authorities are required to:</b> <ul style="list-style-type: none"> <li>Recalculate survivor pensions paid to same sex spouse's from 13 March 2014 (or as far back as 5 December 2005 if the member has converted their civil partnership into a same sex marriage) and pay any arrears of pension due, including interest for late payment</li> </ul>	All membership <b>Action: administering authorities are required to:</b> <ul style="list-style-type: none"> <li>Recalculate survivor pensions paid to same sex spouse's from 13 March 2014 (or as far back as 5 December 2005 if the member has converted their civil partnership into a same sex marriage) and pay any arrears of pension due, including interest for late payment</li> </ul>

## Survivor benefits payable under the 1998 Scheme

Relationship	Member died before 1 April 2014	Member died after 1 April 2014
	<ul style="list-style-type: none"> <li>Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members.</li> </ul>	<ul style="list-style-type: none"> <li>Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members.</li> </ul>
<b>Surviving same sex spouse – post leaving marriage</b>		
Surviving same sex spouse's pension payable <b>before</b> the Walker v Innospec judgment	Membership after 5 April 1988 plus <a href="#">RAM</a>	Membership after 5 April 1988 plus <a href="#">RAM</a>
Surviving same sex spouse's pension payable <b>after</b> the Walker v Innospec judgment	Membership after 5 April <b>1978</b> plus RAM <b>Action:</b> <a href="#">as above</a>	Membership after 5 April <b>1978</b> plus RAM <b>Action:</b> <a href="#">as above</a>
<b>Surviving same sex spouse - post leaving marriage, but also married to the member at some point after 31/3/1972 whilst the member was active</b>		
Surviving same sex spouse's pension payable <b>before</b> the Walker v Innospec judgment	Membership after 5 April 1988 plus <a href="#">RAM</a>	Membership after 5 April 1988 plus <a href="#">RAM</a>
Surviving same sex spouse's pension payable <b>after</b> the Walker v Innospec judgment	Membership after 5 April <b>1978</b> plus RAM <b>Action:</b> <a href="#">as above</a>	Membership after 5 April <b>1978</b> plus RAM <b>Action:</b> <a href="#">as above</a>

## Survivor benefits payable under the 2008 Scheme

Relationship	Member died before 1 April 2014	Member died after 31 March 2014
<b>Surviving civil partner-</b> post leaving civil partnership		
Surviving civil partner's pension payable <b>before</b> the Walker v Innospec judgment	All membership	Membership after 5 April 1988 plus <a href="#">RAM</a> <sup>12</sup>
Surviving same civil partner's pension payable <b>after</b> the Walker v Innospec judgment	All membership  <b>NO ACTION NEEDED</b>	Membership after 5 April <b>1978</b> plus RAM <sup>12</sup>  <b>Action:</b> administering authorities are required to: <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to civil partners from 5 December 2005 and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>

<sup>12</sup> There was an option for pre 1 April 2014 leavers or their civil partner to elect before 1 April 2015 for the survivor pension to continue to be based on all membership for leavers between 1 April 2008 and 31 March 2014 – where an election was made this remains in place after these changes.

## Survivor benefits payable under the 2008 Scheme

Relationship	Member died before 1 April 2014	Member died after 31 March 2014
<b>Surviving civil partner</b> - post leaving civil partnership, but also in a partnership with the member at some point after 31/3/1972 whilst the member was active		
Surviving civil partner's pension payable <b>before</b> the Walker v Innospec judgment	All membership	Membership after 5 April 1988 plus <a href="#">RAM</a> <sup>13</sup>
Surviving same civil partner's pension payable <b>after</b> the Walker v Innospec judgment	All membership <b>NO ACTION NEEDED</b>	Membership after 5 April <b>1978</b> plus RAM <sup>13</sup> <b>Action:</b> <a href="#">as above</a>
<b>Surviving same sex spouse</b> – post leaving marriage		
Surviving same sex spouse's pension payable <b>before</b> the Walker v Innospec judgment	All membership	Membership after 5 April 1988 plus <a href="#">RAM</a>
Surviving same sex spouse's pension payable <b>after</b> the Walker v Innospec judgment	All membership <b>NO ACTION NEEDED</b>	Membership after 5 April <b>1978</b> plus RAM <b>Action:</b> administering authorities are required to: <ul style="list-style-type: none"> <li>Recalculate survivor pensions paid to same sex spouse's from 13 March 2014 (or as far back as 5 December 2005 if the member has converted their civil partnership into a same sex marriage) and pay any arrears of pension due, including interest for late payment</li> </ul>

<sup>13</sup> There was an option for pre 1 April 2014 leavers or their civil partner to elect before 1 April 2015 for the survivor pension to continue to be based on all membership for leavers between 1 April 2008 and 31 March 2014 – where an election was made this remains in place after these changes

## Survivor benefits payable under the 2008 Scheme

Relationship	Member died before 1 April 2014	Member died after 31 March 2014
		<ul style="list-style-type: none"> <li>Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members.</li> </ul>
<b>Surviving same sex spouse</b> - post leaving civil marriage, but also married to the member at some point after 31/3/1972 whilst the member was active		
Surviving same sex spouse's pension payable <b>before</b> the Walker v Innospec judgment	All membership	Membership after 5 April 1988 plus <a href="#">RAM</a>
Surviving same sex spouse's pension payable <b>after</b> the Walker v Innospec judgment	All membership <b>NO ACTION NEEDED</b>	Membership after 5 April <b>1978</b> plus RAM <b>Action:</b> <a href="#">as above</a>

## Survivor benefits payable under the 2014 Scheme

Member has pre and post 2014 aggregated membership (where the pre 1 April has a final salary link)

Relationship	Member died before 1 April 2014	Member died after 31 March 2014
<b>Surviving civil partner- post leaving civil partnership</b>		
Surviving civil partner's pension payable <u>before</u> the Walker v Innospec judgment	N/A	Membership from 6 April 1988 to 31 March 2014, plus <a href="#">RAM</a> , plus the survivor benefit calculated under regs 41, 44 or 47 of the LGPS 2013 Regulations
Surviving same civil partner's pension payable <u>after</u> the Walker v Innospec judgment	N/A	<p>Membership from 6 April <b>1978</b> to 31 March 2014, plus <a href="#">RAM</a>, plus the survivor benefit calculated under regs 41, 44 or 47 of the LGPS 2013 Regulations</p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to civil partners from 5 December 2005 and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members etc.</li> </ul>

## Survivor benefits payable under the 2014 Scheme

Member has pre and post 2014 aggregated membership (where the pre 1 April has a final salary link)

Relationship	Member died before 1 April 2014	Member died after 31 March 2014
<b>Surviving civil partner</b> - post leaving civil partnership, but also in a partnership with the member at some point after 31/3/1972 whilst the member was active		
Surviving civil partner's pension payable <b>before</b> the Walker v Innospec judgment	N/A	Membership from 6 April 1988 to 31 March 2014, plus <b>RAM</b> , plus the survivor benefit calculated under regs 41, 44 or 47 of the LGPS 2013 Regulations
Surviving same civil partner's pension payable <b>after</b> the Walker v Innospec Judgment	N/A	<p>Membership from 6 April <b>1978</b> to 31 March 2014, plus <b>RAM</b>, plus the survivor benefit calculated under regs 41, 44 or 47 of the LGPS 2013 Regulations</p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to civil partners from 5 December 2005 and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members.</li> </ul>

## Survivor benefits payable under the 2014 Scheme

Member has pre and post 2014 aggregated membership (where the pre 1 April has a final salary link)

Relationship	Member died before 1 April 2014	Member died after 31 March 2014
<b>Surviving same sex spouse – post leaving marriage</b>		
Surviving same sex spouse's pension payable <b>before</b> the Walker v Innospec judgment	N/A	Membership from 6 April 1988 to 31 March 2014, plus <b>RAM</b> , plus the survivor benefit calculated under regs 41, 44 or 47 of the LGPS 2013 Regulations
Surviving same sex spouse's pension payable <b>after</b> the Walker v Innospec judgment	N/A	<p>Membership from 6 April <b>1978</b> to 31 March 2014, plus <b>RAM</b>, plus the survivor benefit calculated under regs 41, 44 or 47 of the LGPS 2013 Regulations</p> <p><b>Action:</b> administering authorities are required to:</p> <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to same sex spouse's from 13 March 2014 (or as far back as 5 December 2005 if the member has converted their civil partnership into a same sex marriage) and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members.</li> </ul>

## Survivor benefits payable under the 2014 Scheme

Member has pre and post 2014 aggregated membership (where the pre 1 April has a final salary link)

Relationship	Member died before 1 April 2014	Member died after 31 March 2014
<b>Surviving same sex spouse</b> - post leaving civil marriage, but also married to the member at some point after 31/3/1972 whilst the member was active		
Surviving same sex spouse's pension payable <b>before</b> the Walker v Innospec judgment	N/A	Membership from 6 April 1988 to 31 March 2014, plus <b>RAM</b> , plus the survivor benefit calculated under regs 41, 44 or 47 of the LGPS 2013 Regulations
Surviving same sex spouse's pension payable <b>after</b> the Walker v Innospec judgment	N/A	Membership from 6 April <b>1978</b> to 31 March 2014, plus <b>RAM</b> , plus the survivor benefit calculated under regs 41, 44 or 47 of the LGPS 2013 Regulations  <b>Action:</b> administering authorities are required to: <ul style="list-style-type: none"> <li>• Recalculate survivor pensions paid to same sex spouse's from 13 March 2014 (or as far back as 5 December 2005 if the member has converted their civil partnership into a same sex marriage) and pay any arrears of pension due, including interest for late payment</li> <li>• Await statutory guidance with regard to any further adjustments that may be due e.g. CETVs, trivial commutations paid to survivors or members.</li> </ul>

## Queries raised with MHCLG

We have highlighted throughout the bulletin where, in our view, there are issues with the LGPS (Miscellaneous Amendment) Regulations 2018. A consolidated list of these issues (which have all been raised with MHCLG), including some not already mentioned, is set out below:

1. The deletion of D11(4)(b) – before the changes introduced by this statutory instrument, a member had to leave all local government employment in order to access their deferred benefit before NRD under regulation D11(2)(d). The deletion of D11(4)(b) means that from 17 April 2018 this requirement no longer applies, but additionally it removes the requirement for a member to have left the employment to which the deferred benefit relates. This is because regulation D4 states that a reference to a member ceasing to hold a local government employment includes a member who has opted out. We do not believe that this is the intention of the change as it is inconsistent with successor regulations. Whilst any impact of this is likely to be minimal, we have asked MHCLG to consider amending the regulations to prevent a member who has opted out of an employment from electing for early payment of their benefits in respect of that employment (or confirm the intention of the regulation in statutory guidance).
2. Regulation 4(a)(iv) and (v) of the LGPS (Miscellaneous Amendment) Regulations 2018 amends D11(4)(a) and deletes D11(4)(b); however, there remains a superfluous ‘or’ at the end of regulation D11(4)(a).
3. Regulation 4(a)(iv) of the LGPS (Miscellaneous Amendment) Regulations 2018 amends regulation D11(4)(a) to read “*the date on ~~or after~~ which he attains the age of ~~60~~55*”. In our view, this still seems read that the only date a member may elect for early payment of benefits before NRD is ‘the’ date the member reaches age 55. We believe that D11(4)(a) should read “*a date on or after which he attains the age of 55*”. Whilst MHCLG have made the policy intent clear in this respect (i.e. that benefits can be paid from age 55), we have asked them to consider amending the regulations to reflect that intent, or make it clear in statutory guidance.
4. Regulation 5(d) of the Local Government Pension Scheme (Miscellaneous Amendment) Regulations 2018 amends regulation 17(13) of the Transitional Provisions Regulations 2014; however, in the amendment to regulation 17(13)(d) there is a superfluous “59” after the reference to regulation 14A of the Benefits regulations.
5. Regulation 5(b) of the Local Government Pension Scheme (Miscellaneous Amendment) Regulations 2018 deletes regulation 17(11)(a) of the Transitional Provisions Regulations 2014. As a consequence the reference to regulation 17(11)(a) in regulation 17(15) needs to be amended to reference regulation 17(12)(a), though only in respect of civil partnerships.
6. Regulation 1(2)(b)(i) and (ii) of the Local Government Pension Scheme (Miscellaneous Amendment) Regulations 2018 make the changes for surviving civil partners and same sex spouses effective from 5 December 2005 and 13

March 2014, respectively. Section 9 of the Marriage (Same Sex Couples) Act 2013 provides that the parties to a civil partnership are able to convert their civil partnership into a marriage. Once converted, the date from which the marriage is to be treated as having subsisted is the date the civil partnership was formed, in accordance with section 9(6) of the 2013 Act. In our response to the consultation, we queried whether the draft regulations needed to be amended to provide that the pension paid to a surviving same sex spouse, when recalculated under these provisions, would be backdated to the date the marriage is treated as having subsisted, i.e. potentially back to 5 December 2005, rather than just to 13 March 2014. Despite assurances at the time that the draft regulations were sufficient in this regard, MHCLG have since acknowledged that this is not the case. Regulation 1(2)(b)(ii) only provides that the changes be backdated to 13 March 2014 in respect of a surviving same sex spouse – they do not provide that the changes can be backdated to 5 December 2005 where a member has converted a civil partnership into a marriage. However, MHCLG have confirmed that statutory guidance will confirm that the benefits paid to a surviving same sex spouse, where the date of marriage is before 13 March 2014 (due to the conversion of a civil partnership) will be fully covered and reflect the policy intent (i.e. that benefits will be recalculated in accordance with the LGPS (Miscellaneous Amendment) Regulations 2018 and any additional amounts due backdated to the date the marriage is treated as having subsisted (i.e. potentially back to 5 December 2005).

## Definition of terms

### **F8(3) of the LGPS Regulations 1995**

The membership set out in regulation F8(3) of the LGPS Regulations 1995 is to be included in the calculation of survivor benefits where indicated in the tables above. It includes:

- Ill health enhancement paid under either the 1986 or 1995 Schemes
- Added years purchased by the member under the 1995 Scheme
- Added years purchased by the member under the 1986 Scheme either by a lump sum payment or by regular contributions, but only where the lump sum payment was made or contributions commenced after 5 April 1988
- Membership purchased by certain members under regulation D9 of the 1986 Scheme (e.g. manual workers who had a 12 month waiting period) in respect of periods where there were in employment but not eligible to be a pensionable employee, but only where payment commenced after 5 April 1988
- Membership awarded by an employing authority under regulation B16, B17 (special powers) or B18 (redundancy/efficiency) under the 1995 Scheme
- Membership where the an employing authority passed a resolution under regulation B19 to convert added years awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (and predecessor regulations) into membership under the 1995 Scheme
- Additional years of reckonable service granted at the discretion of the employing authority under regulation D7 of the 1986 Regulations, but only where the resolution to make the award was after 5 April 1988

- Membership that, on 1 May 1995, would have counted as post 5 April 1988 reckonable membership under earlier regulations
- Any increase of reckonable service under D13 of the 1986 Scheme (part-time buy back) where the person already had membership after 5 April 1988 which counted as reckonable membership
- any period of service in respect of a transfer in which counted as reckonable service, where the transfer value:
  - was accepted after 5 April 1988
  - was not a transfer value to which, by virtue of regulation 25(1)(b) of the Local Government Superannuation (Interchange) Regulations 1991, regulations 10 to 15 and 19 and 20 of those Regulations applied

### **Relevant Additional Membership (RAM) – regulation 42(4) of the LGPS Regulations 1997**

- Ill health enhancement paid under the 1997 or 2008<sup>14</sup> Schemes
- Membership awarded by an employing authority under regulation 52 (Power of an employing authority to increase total membership) of the 1997 Scheme
- Membership awarded by an employing authority under regulation 13 (Duty of employing authority to increase total membership of members with membership before the commencement date) of the LGPS (Transitional Provisions) Regulations 1997
- Membership where the an employing authority passed a resolution under regulation 143 to convert added years awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (and predecessor regulations) into membership under the 1997 Scheme
- Added years purchased by the member under regulation 55 of the 1997 Scheme (or earlier Schemes), but only where the lump sum payment was made (if under the earlier Scheme) or contributions commenced, after 5 April 1988
- Any period of membership in respect of a transfer in which counts as reckonable membership, but only where the transfer value was accepted after 5 April 1988
- Membership treated as post 5 April 1988 membership by virtue of the Transitional 1997 Regulations, including (but not limited to):
  - membership from 1 April 1972 to 5 April 1988 where a female member paid contributions (or contributions were deemed to be paid where the member was active on 31 March 1998) for that period to count towards a widower's long term pension
  - Membership before 1 April 1972 membership, where a female member paid contributions for that period to count towards a widower's long term pension
- Any membership purchased by the member by way of a lump sum permitted by the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990 - i.e. if additional payments made by a Class B or C member under an agreement started before 1 April 1998 (other than AVCs), when added to the member's basic pension contributions, obligatory and optional contributions during an absence and contributions to a FSAVC scheme,

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<sup>14</sup> Included by virtue of the Interpretation Act 1978 [SI 1978/30]

exceeded 15 percent of remuneration, the member was allowed to pay a lump sum representing the excess to the Scheme.

**Normal retirement date (NRD) of the 1995 Scheme** – is the earlier of:

- age 60 if, by that age, the member would have had 25 or more years membership of the scheme if they had remained in the Scheme until then, or
- the date the member would have achieved 25 years membership, if the date would fall after 60 and before age 65, or
- age 65, if by that age, the member would not have had 25 years membership of the scheme if they had remained in the scheme until then.

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