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pay, pensions and
employment solutions

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 56 – March 2009

Please contact Dave Friend with any comments you might have on the contents of this Bulletin or to suggest other items that you would wish to see included in future Bulletins.

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LGPS (Administration) (Amendment) Regulations 2009 (SI 2009/447)

[SI 2009/447](#) was laid before Parliament on 9th March 2009 and comes into force on 1st April 2009. It makes a couple of minor amendments to the LGPS (Administration) Regulations 2008. It inserts new regulation 8A into the Administration Regulations to enable clerical staff in the Rent Service to whom the provisions of regulation 130C of the 1997 Regulations applied and who are active members of the LGPS immediately before 1 April 2009 to remain members of the Scheme on transfer to the Commissioners for Her Majesty's Revenue and Customs. The SI also replaces the original version of sub-paragraph (6) of regulation 12 (Further Restrictions on Eligibility) of the Administration Regulations. Sub-paragraph (6) permits employees to join the LGPS even though they are entitled to be members of the NHS scheme in England and Wales and has been amended to insert a reference to section 77 of the NHS Act 2006 and to enable former staff of the Commission for Social Care Inspection to remain in membership of the LGPS on transfer to the Care Quality Commission.

The [Timeline Regulations](#) have been updated to reflect the above changes.

LGPS Amendment (Scotland) Regulations 2009 (SSI 2009/93)

[SSI 2009/93](#) was laid before the Scottish Parliament on 9 March and comes into force on 1st April 2009. It corrects a number of drafting errors in the set of the regulations which comprise the LGPS (Scotland) 2009.

The [Timeline Regulations](#) have been updated to reflect the changes.

LGPS – GMP into Payment at State Pension Age

The Secretariat has received a number of queries on whether the Scheme has to pay a member's GMP on reaching State Pension Age. Although there are no GMP provisions currently in the regulations governing the new-look LGPS in England and Wales nor the new-look LGPS in Scotland, CLG have recently consulted on inserting regulation 50A into the Administration Regulations. This basically replicates the wording of regulation 36 of the LGPS Regulations 1997. Regulation 36¹ of the LGPS Regulations 1997 says:

“Guaranteed minimum pensions etc.

36 (1) *Where a member's local government employment is contracted-out employment and he has a guaranteed minimum in relation to service before 6th April 1997, from the date he attains state pensionable age **he is entitled** to a pension at a weekly rate equal to not less than that guaranteed minimum.*

(2) *But if the member attains state pensionable age while in local government employment, he is not so entitled until he leaves that employment, unless paragraph (3) applies.*

(3) *If the member-*

(a) continues in the same employment for a further period of five years after attaining state pensionable age; and

(b) does not then leave it,

¹ Regulation 35 of the LGPS (Scotland) Regulations 1998 uses the same wording except that in sub-paragraph (2) the word “But” has been replaced with the word “However”

he is entitled from the end of that period to so much of his retirement pension as equals that guaranteed minimum (unless he consents to a postponement of the entitlement).

(4) For paragraph (1), a person has a guaranteed minimum if he has such a minimum under section 14 of the Pension Schemes Act 1993 in relation to benefits under these Regulations."

The above seeks to reflect the provisions of section 13 of the Pension Schemes Act 1993 which says:

"13 Minimum pensions for earners

(1) Subject to the provisions of this Part, the scheme **must** -

(a) provide for the earner to be entitled to a pension under the scheme if he attains pensionable age; and

(b) contain a rule to the effect that the weekly rate of the pension will be not less than his guaranteed minimum (if any) under sections 14 to 16.

(2) In the case of an earner who is a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of section 19(4) of the Social Security Contributions and Benefits Act 1992, subject to the provisions of this Part, the scheme must -

- (a) provide for her to be entitled to a pension under the scheme if she attains pensionable age
- (b) satisfy such other conditions as may be prescribed.

(3) Subject to subsection (4), the scheme must provide for the pension to commence on the date on which the earner attains pensionable age and to continue for his life.

(4) Subject to subsection (5), the scheme may provide for the commencement of the earner's guaranteed minimum pension to be postponed for any period for which he continues in employment after attaining pensionable age.

(5) The scheme must provide for the earner's consent to be required -

- (a) for any such postponement by virtue of employment to which the scheme does not relate; and
- (b) for any such postponement after the expiration of five years from the date on which he attains pensionable age."

Section 181 of the Pension Schemes Act 1993 defines "pensionable age" as:

"(a) so far as any provisions (other than sections 46 to 48) relate to guaranteed minimum pensions, means the age of 65 in the case of a man and the age of 60 in the case of a woman."

So, under section 13 of the Pension Schemes Act 1993, schemes must provide for the GMP to be paid from age 60 (woman) or 65 (man), and not from state pension age (which is increasing from 60 to 65 between 2010 and 2020 for a woman and to 68 for men and women by 2046), unless the scheme rules provide for the commencement of the earner's guaranteed minimum pension to be postponed for any period for which he continues in employment after attaining pensionable age. However, the member's consent must be obtained for postponement beyond 5 years after age 60 for women, or age 65 for men. Thus, it is clear that in order to comply with the contracting-out provisions of the Pension Schemes Act 1993, the GMP must be paid at age 60 (women) / 65 (men) unless the person is in

employment at that age - but consent has to be obtained from the member to defer payment of the GMP beyond age 65 (women) / age 70(men); or beyond age 60 (women) / age 65 (men) if the employment is with an employer that does not participate in the LGPS).

In the response to the draft LGPS (Miscellaneous) Regulations 2009, the Secretariat commented that draft regulation 50A of the Administration Regulations, regulation 36 of the LGPS Regulations 1997 and regulation D13 of the LGPS Regulations 1995 need to be amended to reflect the fact that the GMP date is 60 for women and 65 for men. The GMP date is not state pension age and, given the problems the LGPS is experiencing with potential unauthorised payments (where a bare GMP is paid and the lump sum that is subsequently paid exceeds 25% of the value of the remaining pension benefits²), it would be helpful if draft regulation 50A of the Administration Regulations, regulation 36 of the LGPS Regulations 1997 and regulation D13 of the LGPS Regulations 1995 were amended to reflect sections 13(4) and (5) of the Pension Schemes Act 1993. This would enable female members to defer drawing their GMP at age 60 - but only if they were in employment (not just if they were in local government employment).

The Secretariat also commented that upon introducing regulation 50A into the Administration Regulations, the equivalent of regulations 37, 43 and 114 of the LGPS Regulations 1997 also need to be added into the Administration Regulations.

The Secretariat would presume that equivalent changes would then be made to the corresponding provisions of the regulations in Scotland.

² It should be noted that there is no problem for those who took a bare GMP pre 6th April 2006 and who are due the balance of their pensions plus lump sums on or after then as paragraph 31 of schedule 36 to the Finance Act 2004 gives them transitional protection (i.e. the 3/80ths lump sum can be taken even if this exceeds 25% of the capital value of their benefits, in excess of the GMP, when those remaining benefits are brought into payment. See paragraphs 267 to 272 of the Tax Guide).

LGPS 2008 and LGPS(Scotland) – GAD Guidance on Individual Transfers Market Yields

The new actuarial factors issued by GAD in respect of individual Club transfers and cash equivalents for the LGPS in England and Wales and the LGPS in Scotland removed the 2% underpin for the market yield. The market adjustment is based on the indexed-linked government bonds with duration of 15 years or more averaged between the 0% and 5% inflation assumptions.

The table below gives the values for the first working day in each month from April 2008 to March 2009.

First Working Day	0% Inflation	5% Inflation	Average (rounded up)
Tuesday, 1 st April 2008	0.92	0.83	0.88
Thursday, 1 st May 2008	0.87	0.77	0.82
Monday, 2 nd June 2008	0.94	0.85	0.90
Tuesday, 1 st July 2008	0.81	0.72	0.77
Friday, 1 st August 2008	0.85	0.77	0.81
Monday, 1 st September 2008	0.57	0.48	0.53
Wednesday, 1 st October 2008	0.87	0.79	0.83
Monday, 3 rd November 2008	1.35	1.26	1.31
Monday, 1 st December 2008	1.35	1.26	1.31
Friday, 2 nd January 2009	0.88	0.80	0.84
[Scotland - Monday, 5 th January 2009	0.97	0.89	0.93]
Monday, 2 nd February 2009	0.97	0.89	0.93
Monday, 2 nd March 2009	1.24	1.16	1.20

The data was sourced from [the Financial Times website's page for Bonds and Rates \(FTSE UK Gilts Indices\)](#). A screen dump of the appropriate page on the Financial Times website is reproduced on the next page.

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FTSE UK Gilts Indices

January 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

To obtain the values in the future users should:

- complete the Choose a Category and Choose a Report fields as per the screen dump;
- enter the appropriate month and year; and then
- click on the date that represents the first working day of the month.

After the desired date is selected, the FT website will open a new browser window which will display a small pdf file with the FTSE UK gilts for the selected date.

The GMP Increase Order 2009 (SI 2009/477)

[SI 2009/477](#) was made on 4 March 2009 and comes into force on 6th April 2009. The GMP increase for this year is 3%. The necessary update of the [Timeline Regulations](#) has been made.

The Social Security Revaluation of Earnings Factors Order 2009 (SI 2009/608)

[This SI](#), which revalues the earnings factors used to calculate a scheme member's GMP, comes into force on 6th April 2009. The necessary update of the [Timeline Regulations](#) has been made.

The Social Security (Contributions) (Amendment) Regulations 2009 (SI 2009/111)

[This SI](#), together with [the Social Security \(Contributions\) \(Amendment No. 2\) Regulations 2009](#), have an effective date of 6th April 2009. They reflect the changes made by the Pensions Acts 2007 and 2008 and the National Insurance Act 2008. The changes include the replacement of the upper earnings limit (UEL) with the upper accrual point (UAP) with effect from April 2009; the introduction of new administrative procedures (see [the latest edition of HMRC's Employer Bulletin](#) for details); and setting

the earnings threshold and the lower and upper earnings limits. Further details are contained in [Circular 227](#).

The Heyday Case – Compulsory Retirement Age

The European Court of Justice (ECJ) has given its judgment in the Heyday case. Heyday (which evolved from Age Concern) brought a claim against the UK government for the introduction of a national retirement age of 65. The UK's age discrimination legislation resulted from an EU directive so the UK courts sent the challenge back to the ECJ.

Last September, the Advocate General gave his opinion – [see page 25 of Bulletin 53 for details](#). The ECJ's judgment, which on the whole follows the majority of the opinion given by the Advocate General, is welcome news for employers as it has held that the compulsory retirement exception in the Age Regulations is capable of being lawful, provided that it is objectively justifiable within national law. The ECJ did add a proviso that any aims, which can be considered as legitimate with respect to age discrimination, must be "legitimate social policy aims".

Heyday has vowed to continue the action. In an article published on 5th March Heyday claimed, "European judges confirmed this morning that the UK government has to overcome a high hurdle to justify forced retirement and so will struggle to show that its national default retirement age of 65 satisfies European Union age discrimination rules when the case returns to the British courts". The article went on to highlight there was a difference between the Advocate General's opinion and the ECJ's judgment, "The European Court of Justice in effect rejected the Advocate General's suggestion that ageism was less significant than other forms of discrimination and sends a message that ageism has no place in a fair society."

It is reasonable to assume that the Heyday case is not near a resolution any time soon. An interesting footnote is that Heyday as a separate organisation will cease to exist as at 31st March 2009 and it is assumed that Age Concern will continue to the challenge to the UK government's policy.

Pre Budget Report 2008 – Personal Tax Allowance and Pension Contributions Tax Relief

A change to personal income tax allowance was announced in the pre-budget report 2008. From April 2010, an individual's personal tax allowance will be reduced by £1 for every £2 earned in excess of £100,000 until half of the personal allowance is withdrawn. If a person earns over £140,000 the remaining half of the personal allowance is withdrawn. The pre-budget report also stated that the new higher tax rate of 45 pence in the pound will be introduced from April 2011 for taxable non-savings and savings income above £150,000.

HMRC have confirmed in an email that, "A contribution to a registered pension scheme that operates the net pay arrangement has the effect of reducing the member's employment income that is chargeable to tax. This has the effect of giving relief at the member's marginal rate of tax. There is nothing on the legislation at it currently stands that would mean that relief could not be given at the proposed new 45% tax rate".

From HMRC's response, it would appear that HMRC do not accept that there is a "marginal" tax rate of 60% from April 2010 – i.e. if a person earns £100,002 then he or she will pay 80p on the £2 plus a further 40p from the loss of the £1 of tax allowance. The member will effectively pay £1.20 on the extra £2 over £100,000 which equates to a marginal rate of 60%. HMRC's view appears to be that loss of the personal tax allowance is simply that; it is not a 60% tax rate. Thus, tax relief on pension contributions can only be at the standard marginal tax rates.

Reducing Pensions Under Deflation

This topic was first covered in Bulletin 54. Reinforcing the view given in that Bulletin, HMRC have indicated, in a response to a query from the Occupational Pension Schemes Joint Working Party Technical Liaison Committee, that a reduction in pension would incur unauthorised payment charges in most cases. A reduction can only be applied if it is applied to all members equally. If a scheme, such as the LGPS, has members with a GMP then it will not be able to apply a blanket reduction because the members' GMPs cannot be reduced.

HMRC – Change of Circumstances

HMRC have added [a new secure page](#) which will permit individual scheme members to inform HMRC by email that there has been a change in their circumstances.

HMRC – Employer Bulletin

HMRC have published the [February 2009 edition of its Employer Bulletin](#). The bulletin includes articles on the recording of National Insurance contributions from 6th April 2009 and the use of substitute forms by administrators of contracted-out schemes. HMRC are currently reviewing the forms and need to be aware of any forms where administrators use their own versions.

HMRC – Draft Inheritance Tax Guide

HMRC have published proposed amendments to the [chapter on pensions of the Inheritance Tax guide](#). The same page also has draft guidance on the new [Unauthorised Payment Calculator](#). Any responses to the draft guidance should be submitted to HMRC before the end of April.

Statutory Money Purchase Illustrations

The Board for Actuarial Standards has issued version 1.3, dated January 2009, of [Technical Memorandum 1: Statutory Money Purchase Illustrations](#). Section 1.4 of the Memorandum says that version 1.3 comes into effect on 6 April 2009 for all illustrations issued on or after 1st September 2009. It reflects changes to legislation affecting contracted-out money purchase schemes including the proposed abolition of defined contribution contracting out from 2012. The reason the Memorandum will be of interest to administering authorities is that it applies to the annual benefit statement illustrations that have to be produced in relation to all money-purchase benefits, including AVCs.

Bits and Pieces

Circular 227

The Secretariat has issued [Circular 227](#) which is the Annual Update for 2009. It contains details of the annual increase to qualifying pensions from 6th April 2009, the increase to GMPs in payment, the National Insurance contribution rates to apply from 6th April 2009, the maximum "weeks pay" for statutory redundancy payments, the standard Lifetime Allowance, the Annual Allowance and the notional earnings cap for the tax 2009/10.

Timeline Regulations

In addition to the statutory instruments previously mentioned, the March 2009 update of the [Timeline Regulations](#) website includes the upload of:

- CLG correspondence with respect to non-Club transfers which award the member 1/80 pension and the 3/80 lump sum service credit;
- CLG update on the calculation of divorce cash equivalents;
- an update of GAD guidance issued in respect of the LGPS (Scotland) current and new schemes;
- version 2 of the Statutory Guidance on Tiered Contribution Rates for the LGPS (Scotland) 2009; and
- the latest version of the Public Sector Transfer Club memorandum.

Deadline Reminder

The deadline of 5th April 2009 for individuals to register for primary or enhanced protection with HMRC is almost upon us.

Legislation

United Kingdom

SI Reference Title

2009/111	The Social Security (Contributions) (Amendment) Regulations 2009
2009/200	The Occupational Pension Schemes (Levy Ceiling – Earnings Percentage Increase) Order 2009
2009/325	The Pensions Act 2004 (Commencement No.12) Order 2009
2009/406	The Pensions Act 2007 (Commencement No.3) Order 2009
2009/447	The Local Government Pension Scheme (Administration) (Amendment) Regulations 2009
2009/477	The Guaranteed Minimum Pensions Increase Order 2009
2009/486	The Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009
2009/499	The Social Security Benefits Up-rating Order 2009
2009/591	The Social Security (Contributions) (Amendment No. 2) Regulations 2009
2009/608	The Social Security Revaluation of Earnings Factors Order 2009
2009/692	The Pensions Increase (Review) Order 2009

Scotland

SSI Reference Title

2009/93	The Local Government Pension Scheme Amendment (Scotland) Regulations 2009
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Northern Ireland

SR Reference Title

2009/22	The Pensions (2008 No.2 Act) (Commencement No.1) Order (Northern Ireland) 2009
2009/62	The Pensions (2005 Order) (Commencement No.12) Order (Northern Ireland) 2009
2009/95	The Pensions (Act 2008) (Commencement No.2) Order (Northern Ireland) 2009
2009/78	The Pension Protection Fund (Miscellaneous Amendments) Regulations (Northern Ireland) 2009
2009/80	The Guaranteed Minimum Pensions Increase Order (Northern Ireland) 2009

Useful Links

[The LGE Pensions page](#)

[The LGPS members' website](#)

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in England and Wales, and Scotland.

[Qualifying Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

[Tax Guide \(Version 11\)](#)

[The Timeline Regulations](#)

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