

Local Government Pensions Committee  
Secretary, Terry Edwards

## **LGPC Bulletin 61 – August 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.

### **Contents**

[Divorce](#)  
[LGPS 2008 – National Model Fund](#)  
[CLG Consultations](#)  
[Flexible Retirement](#)  
[Salary Sacrifice](#)  
[Immediate vesting period of 2 years](#)  
[Refund of contributions and concurrent employment](#)  
[Correction to Bulletin 59](#)  
[Finance Act 2009 – Anti-forestalling measures](#)

This month [Bits and Pieces](#) includes items on [the Timeline Regulations](#), and [the annual report from the Pensions Ombudsman](#).

## Divorce

In preparing for and delivering the present round of "Understanding Pensions on Divorce" courses a couple of issues have come to light. These are currently under investigation and our conclusions will be incorporated in the LGPC Divorce Guide which is currently being updated. The issues are:

- there is a conflict between the LGPC's Divorce guide and the original 2000 GAD guidance on Pension Sharing as to what constitutes the "relevant date" for the purpose of calculating the first valuation CETV. The guide refers to the relevant date as being the date on which the application for the divorce CETV quote is received, whereas the GAD note says it is what would be the guarantee date if it were a "real" CETV offer. It appears that the truth may be a combination of the two. As this conflict has existed for over 9 years without comment so far, authorities are asked to note the issue but await clarification from the LGPC when the updated Divorce Guide is made available.
- there is a GAD guidance note dated 5 September 2007 which changed the calculation date for actual pension debits and pension credits, synchronising them at the "transfer day". As actual sharing order numbers are reported as relatively low, it is feared that the changes to the original 2000 guidance by the 2007 note might have been overlooked by some authorities. A copy of the guidance note can be found in both the English/Welsh and Scottish sections of the [Timeline Regulations](#) under GAD Guidance. It appears that the note does apply to the whole of the UK and not just England and Wales and we will investigate the ramifications for Scottish divorces (bearing in mind the differences in Scottish Law) and make changes as necessary to the Divorce Guide.

## LGPS 2008 - National Model Fund

The LGPC/LGE has written to CLG with its observations on the methodology and assumptions being proposed for the National Model Fund (the notional Fund which is to be created for the purposes of the costs sharing exercise). The key points of the letter are:

- transparency is required, with a need for GAD to fully explain the methodology and assumptions being proposed so that members of the Policy Review Group can assess their reasonableness;
- without transparency it is difficult to endorse, in any way, the proposed assumptions;
- a suggested discount rate of 3.5% appears to be too high; and
- there is a lack of consistency in the mechanism used to calculate the cost envelope for the LGPS 2008 scheme and the proposed mechanism for the Dummy Model Fund and the National Model Fund.

## CLG Consultations

### LGPS 2008– Delivering affordability, viability and Fairness

On 25 June 2009, CLG issued an informal consultation letter providing suggestions for:

- a new approach to solvency at and from the 2010 valuation in order to mitigate the potentially short term, adverse impacts of the current economic recession, and
- a change to the employee contribution rates and bandings from April 2010, with a new higher rate of 8.5% being introduced for those earning £75,001+ and 10% for those earning

£100,001+<sup>1</sup>. Conversely, many members earning less than £22,001 p.a. would benefit from a lower rate. Those earning £30,001 or more but less than £75,001 per year would also have to contribute more: +0.2% or +0.3%, to avoid “cliff edge” increases in contributions within the bandings.

The informal consultation letter also foreshadows a parallel, separate consultation exercise on the broader debate, announced when John Healey spoke at the NAPF Local Authority Conference on 19 May 2009, about the longer term future of the Scheme, and how it might best respond to changes in the workplace, workforce and economy.

The LGPC considered the consultation paper at its meeting on 22 July 2009, following which the Secretariat prepared a draft response. The draft will be considered by the Local Government Association’s HR Panel when it meets on 22 September 2009 and a formal response will be sent to CLG before the consultation deadline of 30 September. The formal response will be available on the LGE Pension website following the meeting of the LGA HR Panel.

### LGPS 2008 - Governance

[Statutory guidance](#) on Scheme Governance was issued by CLG on 3 December 2008 and contained nine best practice principles against which administering authorities have to measure their compliance.

In a letter dated 13 May 2009, CLG say that since the publication of the statutory guidance there has been “a clear indication of substantive progress and LGPS administering authorities can be congratulated on the steps taken”. However, there are some areas where CLG believe further progress can be made, particularly in the areas of training, facility time and expenses (paragraphs 14 and 15 of the CLG letter) and the quality of engagement with scheme member representatives and other lay members (paragraphs 16 to 22 of the CLG letter). CLG are seeking views, by 30 September 2009, on how best to extend the already high levels of member and other non-elected stakeholders’ participation and active involvement in governance of the scheme.

The LGPC considered the consultation paper at its meeting on 22 July 2009 and a draft response has been prepared. The Secretariat intends to await the publication<sup>2</sup> by CLG of the full results of their assessment of governance compliance statements before finalising the response. The draft response currently makes the following points:

- there is no “one size fits all” solution to governance and each administering authority must be free to decide upon how good practice is best achieved for their Fund
- the lack of consistency across Funds to match the standards set out in the statutory guidance is noted
- the LGPC would endorse best practice in areas such as training, facility time and expenses
- the LGPC is highly supportive of the training needs of councillors and other members sitting on pension or investment committees / panels. Indeed, the importance they place on this is signified by the fact that each year the Secretariat organises and provides such training at a number of different venues nationwide.

A copy of the LGPC/LGE’s response will be available on the LGE Pensions website in due course.

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<sup>1</sup> Although the consultation paper refers in paragraphs 41 and the table in paragraph 42 to £110, 001+, a corrective e-mail was issued by CLG stating that the figure should be £100,001+

<sup>2</sup> Subject to this being published before the end of September 2009.

## **Flexible Retirement**

The Secretariat understands that, even though the costs / savings from the whole business case should be taken into account when considering flexible retirement (not just the pension cost, if any), many employers are reluctant to offer flexible retirement where there is a pension cost.

As a result of discussions on this matter at recent meetings of the Office Advisory Group and the LGPC, the Secretariat is drafting a letter seeking a change in the regulations such that any actuarial reductions applied to benefits paid on flexible retirement before age 65 should reflect the full pension cost of paying the benefits early. It is considered that such a change would be likely to encourage employers to more widely consider the benefits to them (and to their employees) of flexible. Employers would, of course, still be able to agree to waive, in whole or in part, any actuarial reduction if they so wished.

A copy of the letter will be made available on the LGE Pensions website shortly after it is sent to CLG.

## **Salary Sacrifice**

At the last meeting of the Technical Group on 8 July 2009, Pricewaterhouse Cooper (PWC) gave a presentation on a number of potential salary sacrifice arrangements. Some of these, due to the present wording of the LGPS Regulations, would (if taken up by an employee) appear to have the effect of reducing an employee's pensionable pay and hence pension benefits. After due consideration, the Technical Group, Officer Advisory Group and Local Government Pensions Committee concluded that there was merit in asking CLG to consider making an amendment to the LGPS Regulations in England and Wales to ensure that employers who wish to offer various forms of salary sacrifice arrangement should not be constrained in doing so by the definition of pensionable pay contained in regulation 4 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 or the saved provisions of regulation 13 of the LGPS Regulations 1997. This, it is argued, would allow employers participating in the LGPS to operate on a level playing field with the private sector and certain other parts of the public sector as far as the ability to offer flexible benefit arrangements are concerned. However, there was no support for permitting the salary sacrifice of pension contributions (i.e. where the employee sacrifices pay equivalent to what their normal pension contributions would have been, and the employer pays that amount into the pension scheme in addition to the normal employer contributions).

There are many factors that would need to be considered by CLG when deciding whether or not to agree to an amendment to the LGPS Regulations and these are set out in the letter which is shortly to be sent to CLG. A copy of the letter will be placed on the LGE Pensions website.

## **Immediate vesting period of two years**

As announced in last month's Bulletin, the LGPC/LGE has written to CLG requesting that the period for immediate vesting in England and Wales increases from 3 months to 2 years (which is the vesting period that still applies to the LGPS in Scotland). A [copy of the letter](#) is available from the LGE Pensions website.

## **Refund of contributions and concurrent employment**

The LGPC/LGE have also written to CLG and SPPA to request that amendments are made to the LGPS (Administration) Regulations 2008 and the LGPS (Administration) (Scotland) Regulations 2008 which will prevent a refund of contributions where the member continues in a concurrent employment. This is

to ensure that problems that might otherwise arise under the Finance Act 2004 are avoided. [Copies of the letters](#) are available on the LGE Pensions website.

## Correction to Bulletin 59

On page 2 of [Bulletin 59](#), in the section on Inter Fund Adjustments under the heading “LGPS (England & Wales, Scotland) – Outgoing Transfers and Application of Interest” we did not correctly cover the position of interest on IFAs in Scotland. The section should have read:

**For IFAs within England and Wales (and within Scotland)** – for IFAs within England and Wales, funds have to pay interest in accordance with Administration Regulations 44(4) and (5) if payment is made more than 3 months after the effective date i.e. 1 per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests. No interest is payable if the IFA is paid within 3 months of the effective date. In [Bulletin 54](#), the Secretariat provided a view on what is meant by the “effective date”. For IFAs within Scotland, funds have to pay interest in accordance with Administration Regulations 39(4) and (5). The extant guidance in Scotland still requires Funds to calculate interest, where the period between the date of leaving and the date payment is made to the new Fund exceeds 6 months, at the rate of 6% with yearly rests for each complete period of a year ending before 1 April 1977 and at the rate of 2.25% with 3 monthly rests for each complete period of 3 months beginning after 31 March 1977.

## The Finance Act 2009 – Anti-forestalling measures

The Finance Act gained Royal Assent on 21 July. It included, in clause 72 and Schedule 35, the anti-forestalling measures for the Special Annual Allowance (as covered in [Bulletin 57](#)). These measures form the first part of the restrictions on tax relief for higher earners which were set out in this year’s budget statement. HMRC have produced [a document](#) which provides answers to the most frequently asked questions and contains some worked examples.

The Government intends to introduce further legislation to reflect some minor concessions on the effect of the anti-stalling measures.

## Bits and Pieces

### Timeline Regulations

This month’s update of the [Timeline Regulations](#) website included:

### For England and Wales

- the Supplementary Guidance for Independent Registered Medical Practitioners qualified in occupational health medicine (IRMPs) together with the covering letter from CLG and the Faculty of Occupational Medicine. These have been added to the Statutory Guidance and Circulars page; and

### For Scotland

- version 1.2 of the Actuarial Factors for Individual Cash Equivalent and Club transfers for members of the LGPS (Scotland) which has been added to the post March 2009 GAD guidance page; and

- the joint Police, Fire and Local Government Circular (2009/No.1), which has been added to the Statutory Guidance and Circulars page.

## The Pensions Ombudsman

The latest [Annual Report from the Pensions Ombudsman](#) has been published. It cites transfers and ill-health as the most common causes for cases to be sent to the Pensions Ombudsman.

## Legislation

SI Reference	Title
2009/1888	The Pensions Regulator (Deregulation of Powers) Regulations 2009
2009/1906	The Occupational Pension Scheme (Scottish Parliamentary Pensions Act 2009) Regulations 2009
2009/1907	The Occupational Pension Scheme (Public Service Pension Schemes) Regulations 2009
2009/1920	The Parliamentary Pensions (Amendment) Regulations 2009
2009/2031	The Special Allowance (Application to Members of Currently-Relieved Non-UK Pension Schemes) Order 2009
2009/2047	The Pension Scheme (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2009
2009/2010	The Police Pensions (Amendment) Regulations 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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**Distribution sheet**

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