

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 63 – October 2009

This month's Bulletin contains a number of general items of information.

In the previous Bulletin we indicated that we intended to include in this month's Bulletin a consolidation of all the GAD guidance and CLG letters issued with respect to transfers. While compiling the consolidated information, the Secretariat decided for a number of reasons that it should publish all the transfer guidance as a separate guide rather than as part of a Bulletin. This is currently being worked on and will be issued as soon as possible.

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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This month [Bits and Pieces](#) includes one item on [the Timeline Regulations](#).

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LGPS - Age 50 protection for members not active at 5 April 2006

At its meeting on 6 October, the Technical Group discussed if there was age 50 protection for those employees who:

- were not active members of the LGPS or LGPS (Scotland) on 5 April 2006;
- will be under age 55 at 5 April 2010; and
- whose BCE date occurs on or after 6 April 2010.

Such members do not have age 50 protection under Schedule 36 to the Finance Act 2006 so their normal minimum pension age rises to age 55 with effect from 6 April 2010. If the employee retires on a date before 6 April 2010, on 31 March 2010 for example, but the BCE date does not occur until on or after 6 April 2010, will the payment of benefits be regarded as unauthorised payments?

The Secretariat contacted HMRC after the Technical Group meeting. HMRC has confirmed in an e-mail that an unauthorised payment will occur for employees falling into this category of members where the BCE is on or after 6 April 2010.

Example 1 from [RPSM 11102050](#) of HMRC's Technical Manual confirms that the payment of benefits is an authorised payment for these employees provided the BCE date is before 6 April 2010; i.e. the employee obtains an 'actual right' to receive benefits. As long as the employer and the member have, prior to 6 April 2010, provided all the information necessary to calculate benefits (such as the employer providing leaving details and final pay, and the member confirming his/her commutation option, bank details etc.), then the payment of benefits will be authorised even if the first payment of pension is on or after 6 April 2010.

So, to ensure that employees who were not active members of the LGPS or LGPS (Scotland) on 5 April 2006 and who are at least age 50 and less than age 55 at 5 April 2010 can receive payment of benefits without incurring an unauthorised payment tax charge, employers and administering authorities must ensure the member must have an 'actual right' to payment of benefits before 6 April 2010.

Employers and administering authorities in England and Wales will need to identify as soon as possible:

- a) those members who are taking flexible retirement before 31 March 2010 where the member:
- was a member of the LGPS on 31 March 2008; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of flexible retirement; and
 - has remained with the same employer since 31 March 2008

b) those members who are to be made redundant prior to 31 March 2010¹ where the member:

- was a member of the LGPS on 31 March 2008; but
- was not a member of the LGPS on 5 April 2006; and
- will be at least age 50 but younger than age 55 at the date of redundancy

¹ But see the next item in this Bulletin concerning the letter from CLG dated 7 October 2009.

- c) those members where the employer agrees to an election made by the member before 1 April 2010 for early release of benefits (prior to age 60) and the member:
- was a member of the LGPS prior to 1 April 2008; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of election

Employers and administering authorities in Scotland will need to identify as soon as possible

- a) those members who are taking flexible retirement before 31 March 2010 where the member:
- was a member of the LGPS on 31 March 2009; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of flexible retirement; and
 - has remained with the same employer since 31 March 2009

- b) those members who are to be made redundant prior to 31 March 2010 where the member:
- was a member of the LGPS on 31 March 2009; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of redundancy

- c) those members where the employer agrees to an election made by the member before 1 April 2010 for early release of benefits (prior to age 60) and the member:
- was a member of the LGPS prior to 1 April 2009; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of election

It is imperative that the employer is aware, and it is also made clear to the employee, that in order to avoid paying a tax charge all the necessary forms, paperwork, and elections must have been completed and provided to the administering authority before 6 April 2010.

LGPS 2008 – CLG letter issued 7 October 2009

CLG issued a letter on 7 October 2009 addressing the question of whether an employee, who is aged between 50 and 55 and who is made redundant on 31 March 2010, will be entitled to receive benefits under regulation 19 of the Benefits Regulations. The letter confirmed that the policy intention is that such employees should be able to receive their benefits and that, if required, an appropriate amendment would be made to regulation 19 of the Benefit Regulations.

The letter further indicated that it is planned to amend the LGPS Regulations to permit Pension Credit members to receive their benefits before age 65. The standard actuarial reduction factors (i.e. those applying to a member with no 85 year rule protection) would be applied to the early release of the Pension Credit member's benefits, with the earliest payable age being age 60. The necessary changes will be included in the next set of consultation regulations with the effective date of the changes in the LGPS regulations backdated to 1 April 2009 as per the changes introduced by the DWP earlier year.

We are, of course, still awaiting the GAD guidance promised in 2000 on how to apply a Pension Debit to a debited member's benefits.

Pensions Increase April 2010

The RPI figure for September 2009 was 215.3 and this meant that the index had dropped by 1.4% from the previous September's figure of 218.4. In the 2009 budget announcement the government promised to increase the basic state pension by 2.5%. At the Technical Group meeting of 6 October, CLG indicated that there were ongoing discussions with HM Treasury as to what impact any of this might have on next April's Pensions Increase award. It is expected that an announcement will be made in the next few weeks. At this point in time, however, all we are able to confirm is that local government pensions will not be reduced next April.

LGPS - Calculation of Maximum PCLS for a member with a Pension Debit

The Secretariat received a query regarding the calculation of the maximum PCLS where the member's benefits are subject to a Pension Debit. Should the calculation of the maximum PCLS be processed before or after the deduction of the Pension Debit amounts? The answer is the maximum PCLS should be calculated after the deduction of the Pension Debit amounts – i.e. the pension (and lump sum) the member would receive if he or she did not commute part of the pension. The example below illustrates the point.

A member's pre-commutation benefit is an annual pension of £11,200 but the member has a Pension Debit of £5,600 made against his benefits as a result of a Court Order. The member's pension after the application of the pension debit is £5,600 per annum. The member does not have any lump sum prior to commutation.

Maximum commutation using the post debit pension

$$\begin{aligned}C &= 1/56[(20 * £5,600) - 3 * £0] \\C &= 1/56 * £112,000 \\C &= £2,000\end{aligned}$$

The post commutation pension is £3,600 and the maximum post commutation lump sum (PCLS) is £24,000.

Check calculation

Value of Crystallised benefits: $(20 * £3,600) + £24,000 = £96,000$

$\frac{1}{4}$ of £96,000 = £24,000 = the PCLS.

Calculation using the pre-debit pension

$$\begin{aligned}C &= 1/56[(20 * £11,200) - 3 * £0] \\C &= 1/56 * £224,000 \\C &= £4,000\end{aligned}$$

The post commutation pension = $£11,200 - £5,600 - £4,000 = £1,600$; and the post commutation lump sum (PCLS) is £48,000.

Check calculation

Value of Crystallised benefits: $(20 * £1,600) + £48,000 = £80,000$

$\frac{1}{4}$ of £80,000 = £20,000 which is less than the PCLS. A PCLS paid to the member of £48,000 would be an unauthorised member payment.

The second calculation goes awry because it includes the £5,600 Pension Debit, which is an amount the member will never receive, in determining the maximum the member can commute.

LGPS – Impact of accepting inward transfers (Technical Group meeting 6 October 2009)

At the Technical Group meeting of 6 October there was a discussion as to whether LGPS funds should accept inward non-Club transfers in view of the risk that a member might receive a high increase in pay, be promoted after the transfer, be made redundant or be retired on ill health grounds. It was agreed that whilst LGPS funds cannot refuse to accept an interfund adjustment or a Club transfer, they can refuse to accept non-Club transfers.

The inherent risk in accepting inward transfers will remain as long as the LGPS remains a final salary scheme. The concern expressed by some members of the Technical Group was that the scheme as a whole should either be accepting or not accepting non-Club transfers in, and should not be adopting a fragmented approach, with most Funds accepting such transfers but some deciding not to. However, the Technical Group felt that, until the matter was resolved as part of the wider review of the LGPS, each Fund would, for the present, need to continue to make its own decision on whether or not to accept non-Club transfers in.

LGPS – Commutation of pension by a Pension Credit member (Technical Group meeting 6 October 2009)

The Technical Group debated at the meeting of 6 October whether Pension Credit members can commute part of their pension under the LGPS in England and Wales to increase the lump sum received.

It was agreed that if the Debit Member ceased membership before 1 April 2008, the Credit Member is awarded a benefit under the LGPS Regulations 1997 and so cannot commute. It was also agreed that where the Debit Member has active membership in the 2008 Scheme but the transfer date following a divorce was prior to 1 April 2008 the Credit Member is awarded a benefit under the LGPS Regulations 1997 and so cannot commute.

However, where the Debit Member has active membership in the 2008 Scheme and the transfer date following a divorce is on or after 1 April 2008, the Credit Member is awarded a benefit under the LGPS Regulations 1997 but the commutation provisions are those contained in the Benefits Regulations, not those under the LGPS Regulations 1997. Whether or not the Credit Member can commute hinges on the definition of "member", but the Benefits Regulations (which contain the commutation provisions) do not contain a definition of "member". If one takes the view that, in the absence of a definition for "member" in the Benefits Regulations, one must use the definition in the Pensions Act 1995, then a Credit Member would be allowed to commute. If, however, one takes the view that there is a definition for "member" in Schedule 1 of the Administration Regulations which says "'Member' has the same meaning as in section 124(1) of the Pensions Act 1995 but, except in regulation 68 [Annual Benefit Statements], does not include a pension credit member", then a Credit Member would not be allowed to commute. This would tie in with the GAD guidance on the LTA and Additional Cash Commutation.

The Technical Group decided that, for consistency, administering authorities should continue with the current practice: i.e. not to permit Pension Credit members to commute part of their pension to increase the lump sum.

CLG indicated at the meeting that they are going to liaise with GAD and change the regulations to permit Pension Credit members to commute part of their pension for a lump sum.

In Scotland, Pension Credit members are already permitted to commute part of their pension for a lump sum.

LGPS – Vocational training rate for children’s pensions (Technical Group meeting 6 October 2009)

Unlike the former regulations, the Benefit Regulations do not contain a provision requiring a child’s pension to be reduced if the child is in full-time training for a trade, profession or vocation and is receiving pay that exceeds the indexed training rate. This leads to different treatment depending on whether the child’s pension is payable under the former regulations or the current Benefits Regulations. The Technical Group concluded that the omission of the vocational training rate from the Benefits Regulations appeared to be intentional and that a child’s pension payable to an eligible child under the Benefits Regulations should be paid / continue in payment irrespective of the amount of vocational pay the child receives.

LGPS 2008 – Third tier ill-health benefits (Technical Group meeting 6 October 2009)

At the Technical meeting of 6 October, the question of what age a suspended third tier ill health benefit becomes payable again was discussed. CLG confirmed that a suspended third tier ill-health does not come back into payment until the member attains the age of 65. The Technical Group backed the view of the Ill Health monitoring Group that suspended third tier ill-health pensioners should have the option to have the pension brought back into payment from age 60 onwards with, where appropriate, an actuarial reduction.

LGPS 2008 – Pensions for councillors (Technical Group meeting 6 October 2009)

Currently, pensions for councillors in England and Wales are still covered by the LGPS Regulations 1997. CLG confirmed at the Technical Group that they intended to issue a consultation paper on councillors pensions before the end of the year (although it was not clear whether this meant before the end of the calendar year or the end of the financial year).

Bits and Pieces

Timeline Regulations

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

For England and Wales

- the addition of the two issues letter (with respect to employees made redundant on 31 March 2010 and the early payment of benefits for a Pension Credit member); and
- consequential amendments to the timeline regulations due to the publication of the correction slip for the Local Government Pension Scheme (Amendment) Regulations 2008 [SI 2008/1083]

The update also included the correction of a number of minor typographical and layout errors.

Legislation

United Kingdom

SI Reference Title

2009/2393 The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009
2009/2655 The Social Security (Miscellaneous Amendments) (No.4) Regulations 2009
2009/2715 The Pensions Act 2007 (Supplementary Provision) Order 2009

Northern Ireland

SR Reference Title

2009/318 The Social Security (Miscellaneous Amendments) (No.3) Regulations (Northern Ireland) 2009
2009/338 The Social Security (Miscellaneous Amendments) (No.4) Regulations (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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