

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 64 – November 2009

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

The consolidated LGPC guidance on transfers is still 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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PI and new State Pension Age

The State Pension Age (SPA) for females starts to rise next year and will have implications for Pensions Increase, given that the age from which a GMP is payable will remain 60 for women (and 65 for men).

Where the LGPS is paying a GMP but the member has not yet attained the new SPA, the LGPS will have to treat the case as an AP<GMP case and, therefore, fully inflation proof the GMP until SPA (and even beyond if the AP is still less than the GMP at the new SPA).

However, as the first increase in SPA does not occur until 6 May 2010 (for women born between 6 April 1950 and 5 May 1950), by which time the April 2010 Pensions Increase award will have been applied, the first annual Pensions Increase award to be affected by the change will be April 2011.

Nonetheless, administering authorities will need to take account of this in the information they supply to the pensioner member when the pensioner member reaches 60 (i.e. who will be responsible for paying PI on the GMP until SPA) and it will also impact on the information to be held on the payroll (i.e. a flag to show that the AP is less than the GMP and so PI should be applied to the GMP).

LGPS - Age 50 protection and employer's consent

Further to [the article in last month's bulletin on age 50 protection](#) (for members not active at 5 April 2006) another category of member has been identified where a protected earliest retirement age of 50 does not apply. This category is where the member :

- will be under age 55 at 5 April 2010, and
- needs their employer's consent to retire / draw benefits (or to take flexible retirement), 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 - see page [RPSM03106020](#) from the HMRC Technical Manual for more details. If the employee retires (or takes flexible retirement) 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, the payment of benefits be regarded as an unauthorised payment.

LGPS 2008 – Death in Service Enhancement for a part-time member at the date of death

Regulation 24 of the LGPS (Benefits, membership and Contributions) Regulations 2007 says:

24 Survivor benefits: active members

(1) If a member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.

(2) The pension is calculated by multiplying his total membership, augmented as if Regulation 20(2) applied, by his final pay and divided by 160.

(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

Regulation 20(2) says:

(2) If the authority determine that there is no reasonable prospect of his obtaining any gainful

employment before his normal retirement age, his benefits are increased-

- (a) as if the date on which he leaves his employment were his normal retirement age; and*
- (b) by adding to his total membership at that date the whole of the period between that date and the date on which he would have retired at normal retirement age.*

But this is qualified, in relation to the member, by regulations 20(12) and 20(13) which say:

(12)(a) Subject to sub-paragraph (b) and to paragraph (13), in the case of a member in part-time service, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is calculated in accordance with regulation 7(3) as if he had remained in such part-time service until his normal retirement age.

(b) If the certificate obtained under paragraph (5) states that, in the medical practitioner's opinion, the member is wholly or partly in part-time service as a result of the condition that has caused him to be incapable of discharging efficiently the duties of the relevant local government employment, no account shall be taken of such reduction in his service as is attributable to that condition.

(13) But if, in the case of a person who is a member before 1st April 2008, and who has attained the age of 45 before that date, the period to be added under paragraph (2)(b) or (3)(b) is less than the period that would have been added had regulation 28 of the 1997 Regulations applied, then his benefits are increased by adding the latter period.

However, it is not entirely clear whether the protections afforded by regulations 20(12)(b) and (13) apply to the survivor benefits. The list of recommendations for possible regulatory changes that has been considered by the Ill Health Monitoring Group contains the following:

"9. Provide that the protection for a member who reduces their hours of employment as a result of a medical condition which results in early release of ill health benefits also applies for the calculation of survivor and death benefits. The aim is to provide that no account shall be taken of the reduction in hours as is attributable to the condition that results in the death of the member when considering survivor benefits."

The Secretariat believes the intention is that the protections afforded by regulations 20(12)(b) and (13) should apply to the survivor benefits. This means that there will be circumstances where the period of enhancement will not be pro-rated based on the proportion of hours worked at the date of death in service but will be based on some other figure i.e. :

(a) where the member had reduced their contractual hours prior to the date of death in service and the reduction in hours was the result of the condition that caused the death in service, the reduction in hours would be ignored

(b) where the period of enhancement under the LGPS Regulations 1997 for a member who was in the scheme on 31st March 2008 and was aged 45 or over on that date is greater than the period of enhancement under the 2007 Benefits Regulations

LGPS Annual Benefit Statements

The LGPC has received a few queries asking whether it is compulsory to provide a hard copy of the Annual Benefit Statement (ABS) to a member. There is nothing in the Pension Schemes Act 1993, the Pensions Acts 1995, 2004, 2007 and 2008 which prescribes the format of ABS. In addition, the

Pensions Advisory Service's and the Pensions Regulator's websites have very little information with respect to the provision of ABS.

Regulation 68 of the Administration Regulation only specifies the content of ABS and when they should be issued.

The only reference to ABS in over-riding legislation is regulation 5 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (as amended) [SI 1996/1655]. Regulation 5(4) of those regulations states:

(4) Except in relation to money purchase benefits, the information mentioned in paragraph 4 of Schedule 2, so far as it relates to any active member, deferred member or pension credit member, shall be furnished to such member, on request (not being a request made within 12 months of the last occasion on which any such information as is mentioned in that paragraph was furnished to the member making the request) as soon as practicable and, in any event, within 2 months of the request being made.

And paragraph 4 of Schedule 2 to SI 1996/1655 states:

4 In the case of-

(a) an active member, the information specified in either (the trustees having the option to choose which one) of paragraphs (i) or (ii), together with the information specified in paragraph (iii)-

(i) the amounts of his own benefits and of his survivors' benefits which would be payable from normal pension age or death if his pensionable service were to terminate within 1 month of the date on which the information is furnished to him, calculated without regard to possible increases in his salary;

(ii) the amounts of his own benefits and of his survivors' benefits which would be payable from normal pension age or death thereafter if his pensionable service were to terminate on his attaining normal pension age, calculated without regard to possible increases in his salary;

(iii) except in the case of a simplified defined contribution scheme, the amount of any death in service benefits that would be payable if the member were to die on a specified date which is within 1 month of the date on which the information is furnished to him, with details of how those benefits are calculated;

(b) a deferred member, the date pensionable service ceased and the amounts of his own benefits and of his survivors' benefits payable from normal pension age or death.

(c) a pension credit member, the amounts of his own benefits and of any survivors' benefits payable from normal benefit age or death.

In the case of an active member or a deferred member, the information must include:

-the date on which the member's pensionable service commenced;

- the accrual rate or formula for calculating the member's own benefits and any survivors' benefits;
- the amount of the member's pensionable remuneration on a specified date being, in the case of an active member, the date on which the information is furnished to him or a date within 1 month thereof, and in the case of a deferred member, the date pensionable service ceased; and
- details of how any deduction from benefits is calculated.

In the case of a pension credit member, the information must include:

- the method or formula for calculating the member's own benefits and any survivors' benefits; and
- details of how any deduction from benefits is calculated.

Again, the legislation prescribes the content and when a pension scheme should provide an ABS but there appears to be nothing which states that an administrator of a pension scheme must issue an ABS as a hard copy.

In summary, the clear implication is that there is no legal requirement to issue a hard copy but it would be advisable for LGPS Funds to make a hard copy available where a member requests it (i.e. to cover those cases where the member does not have internet / intranet access).

LGPS 2008 – TUPE transfer after 27 June 2008 where employees switch funds

Where employees are subject to a TUPE transfer after 27 June 2008 and their new employer is with a different LGPS fund from their previous employer, there is no requirement for the employees to make an election to aggregate membership.

For TUPE cases, aggregation of membership is automatic by virtue of regulation 16(7) of the Administration Regulations which disapplies regulation 16(6) and effectively nullifies the rest of regulation 16. The sending scheme, therefore, has to make a payment to the receiving scheme where relevant. The amount of payment is determined by regulations 86(2) or 86(3) as they cover the calculation of interfund adjustments.

LGPS – Outward transfers and provision of information with respect to Section 9(2B) Rights

In light of the changes of the Occupational Pension Schemes (Transfer Values) (Amendment) 2008 Regulations [SI 2008/1050] and the move from the use of GN11, are schemes still required to provide information with respect to Section 9(2B) rights?

Regulation 4(e) of the Protected Rights (Transfer Payment) Regulations 1996 [SI 1996/1461] and regulations 7, 8 and 13A of the Contracting-out (Transfer and Transfer Payment) Regulations [SI 1996/1462] are still on the statute book. The fact that all these regulations are still present on the statute scheme indicates that the sending scheme is still required to provide information in respect of Section 9(2B) rights where a member transfer his benefits from one contracted-out scheme to another contracted-out scheme.

Regulation 7 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 [SI 1996/1847] was replaced by a new regulation 7 as a result of regulation 4 of the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 [SI 2008/1050]. The amendments made by SI 2008/1050 prescribed how a pension scheme calculates the value of a member's benefits.

In summary, the way the pension values the member's benefits may have changed but the requirement to produce information with respect to section 9(2B) rights is still present.

The LGPC Tax Guide (version 11) - Correction

On page 75, in the section entitled, "Lump sum protection as at A-day", paragraph 269 states:

"In order to ascertain whether this protection applies, you will need to check whether the uncrystallised PCLS is 25% or more of the value of the uncrystallised benefits. This is a straightforward formula where the value of uncrystallised benefits is calculated in the same way as for the lifetime allowance (i.e. 20 x pension plus retirement grant):

Deferred pension x 100 / Value of uncrystallised deferred benefits"

The above formula is incorrect. Paragraph 31(6) of Schedule 36 to the Finance Act 2004 states the lump sum percentage of an individual's uncrystallised pension rights under a pension scheme on 5th April 2006 is-

$$\frac{(\text{VULSR}) \times 100}{\text{VUR}}$$

where-

VULSR is the value of the individual's uncrystallised lump sum rights under the pension scheme on 5th April 2006, and

VUR is the value of the individual's uncrystallised rights under the pension scheme on 5th April 2006.

The point is best made by a worked example:

Crystallised GMP = £600 pa;

Uncrystallised deferred pension = £400 pa; and

Uncrystallised lump sum = £3,000

The value of uncrystallised benefits = (£400 x 20) + £3,000 = £11,000.

Applying the formula from paragraph 31(6) of Schedule 36 to the Finance Act generates

$$(\text{£3,000} / \text{£11,000}) \times 100 = 27.27\%$$

The formula in the paragraph 269 of the Tax Guide would produce: £400 x 100 / £11,000 = 3.636 (which is a meaningless figure). The formula in paragraph 269 should read:

$$\text{(Uncrystallised lump sum / value of uncrystallised deferred benefits) x 100}$$

LGPS 1997 – Age 50 Protections for councillor members

At the present time, councillor members in England and Wales are covered by Schedule 8 to the LGPS Regulations 1997. The Schedule, when read in conjunction with regulation 31 of the LGPS Regulations 1997, permits a councillor member to draw benefits from age 50 (with the consent of their Authority).

Schedule 36 to the Finance Act 2004 permits age 50 to be retained as the earliest minimum pension age provided:

- (a) on 5th April 2006 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 55,
- (b) the rules of the pension scheme on 10th December 2003 included provision conferring such a right on some or all of the persons who were then members of the pension scheme, and
- (c) such a right either was then conferred on the member or would have been had the member been a member of the scheme on that date.

So, as things stand at present:

- (1) under the LGPS Regulations 1997, all councillors retain an age 50 earliest minimum pension age; but
- (2) because the councillor would, under regulation 31, require employer consent for payment of benefits before age 60, benefits paid
 - (i) on or after age 50 and before age 55 will be an authorised payment provided the BCE occurs before 6th April 2010;
 - (ii) on or after age 50 and before age 55 will be an unauthorised payment if the BCE occurs on or after 6th April 2010 ; or
 - (iii) on or after age 55 will be an authorised payment

LGPS 1997 – Late retirements for councillor members

For councillor members who remain in the LGPS beyond age 65, the GAD guidance issued in respect of late retirements under the 1997 Regulations should be used for councillor members. The Secretariat understands that CLG intend to amend the 2007/2008 regulations to bring councillors into the current scheme and updated GAD guidance will be also issued. At the moment, there is no specific timeframe for the consultation in respect of councillor members.

LGPS 1997 – Nominated co-habiting partners for councillor members

Nominations of co-habiting partners are only permitted for those members who have membership under the Benefit Regulations 2007. Councillor members are members of the LGPS under the LGPS 1997 Regulations and therefore are unable, at the moment, to nominate a co-habiting partner.

Designed Guides

The Secretariat is currently working to produce a designed version of the Brief Guide to the LGPS for employees. It is intended that this will be available on the LGE website for Funds to use / link into as they wish (from April 2010).

The Occupational and Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009 [SI 2009/2930]

[Bulletin 62](#) contained an article which stated that DWP had commenced a consultation process on the draft Occupational and Personal Pension Schemes (Authorised Payments) Amendment Regulations. The [actual SI](#) was laid before Parliament on 9 November 2009 and comes into force on 1 December 2009. It mirrors the changes to the HMRC regulations made by The Registered Pension Schemes (authorised Payments) Regulations 2009 [SI 2009/1171].

The Pensions Advisory Service

The Pensions Advisory Service is working with employers to promote better understanding of the issues surrounding retirement and to help employees plan for their future. As part of this they offer free talks for employees to go through the issues in planning for retirement and to point them to sources of further information including the Pensions Advisory Service website and helpline. They are also recruiting volunteers to be PENpals to help promote better understanding in the workplace. Further information is available from [the Pensions Advisory Service](#).

Bits and Pieces

Timeline Regulations

There has not been any further update of the Timeline Regulations website since the changes identified in last month's Bulletin.

Legislation

United Kingdom

SI Reference Title

2009/2930	The Occupational and Personal Pension Schemes (Authorised) Payment Amendment Regulations 2009
2009/3055	The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2009

Northern Ireland

SR Reference Title

2009/365	The Occupational and Personal Pension Schemes (Authorised) Payment Regulations (Northern Ireland) 2009
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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

Pension managers (internal) of administering authorities
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