

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 69 – April 2010

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

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 articles on the update of [the Timeline Regulations](#) and [an update of Pension Trends by The Office of National Statistics](#).

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LGPS 2008 – Rule of 85

Last month's bulletin contained an article which summarised counsel's opinion on the rule of 85 protection. The article stated that the Secretariat had also sought counsel's opinion on whether or not membership, which accrues after the member flexibly retires, will continue to have rule of 85 protection. We have now received counsel's opinion on that point and it is counsel's opinion that the continuing employment **does not** have rule of 85 protection. For completeness, all of counsel's opinions on rule of 85 protection are reproduced below:

- (1) amendments to Schedule 2 to the Transitional Provisions Regulations 2008 are required (i.e. regulation 10 and schedule 2 to the regulations should each refer to both regulation 18 and regulation 30 of the Benefits Regulations);
- (2) a member (active or deferred) at 30 September 2006 does not lose the right to rely on the rule of 85 when they aggregate membership in the LGPS after 31 March 2008, even if there is a break in service. Thus, the scenario 3 cases outlined in [Bulletin 55](#) do not lose the 85 year rule protection upon aggregating benefits;
- (3) the regulations set out the framework which permits the application of actuarial reductions to member's benefits;
- (4) the GAD guidance is issued alongside the regulations and details the implementation of the actuarial reductions. Therefore, the calculation of actuarial reductions applied to members' benefits should follow the GAD guidance: and
- (5) the period of membership in the continuing employment following flexible retirement **does not** retain the rule of 85 protection.

The Registered Pension Schemes (Standard Lifetime and Annual Allowances) Order 2010

As previously announced by The Government, [the Registered Pension Schemes \(Standard Lifetime and Annual Allowances\) Order 2010 \[SI 2010/922\]](#) has set the standard lifetime allowance to £1.8 million for the tax years from 2011-12 until 2015-16 inclusive. The SI also sets the annual allowance at £255,000 for the same tax years.

The LGPS, the date GMP is payable and the date that NI Modification is applied to a pension

As reported in [Bulletin 66](#), paragraph 17 of Part III of Schedule 4 to the Pensions Act 1995 introduced changes to the State Pension Age (SPA) for females born after 5 April 1950 and before 6 April 1955. The SPA for these women will gradually increase from age 60 to 65 as detailed in paragraph 1 of Schedule 4 to the Pensions Act 1995. All females born after 5 April 1955 will have a SPA of age 65. The Pensions Act 2007 further amended the SPA for everyone born after 5 April 1959 so that by 2046, the SPA for both men and women will be age 68.

Despite the changes to SPA, the age at which the GMP is payable remains at age 60 for women and age 65 for men. This is set out in section 181(1) of the Pension Schemes Act 1993 which says:

"pensionable age"-

(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, and

(b) in any other case, has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.

The Secretariat has been asked, given the change in SPA, from what date NI Modification should be applied. The LGPS Regulations require that NI Modification (for those who were in the scheme prior to 1 April 1980 and who left before 1 April 1998) is applied as from the date the member attains state pensionable age (see, for example, regulation D20 of the LGPS Regulations 1995 and regulation E32 of the LGPS (Scotland) Regulations 1987). N.I. Modification should, therefore, be deducted from the date the member attains the adjusted SPA as per section 181(1) of the Pension Schemes Act 1993 - see (b) above.

The LGPS and deferment of the date GMP is payable

The Secretariat has received a number of enquiries regarding when a member is able to consent to deferment of payment of their GMP. As a result the Secretariat has produced a table which details the Secretariat's understanding of the current legislation applicable in England and Wales. The table is contained in [Appendix 1](#) at the end of this Bulletin. It will also be loaded onto the [Guides](#) section of the LGE website and we are currently considering adding some additional notes of guidance to accompany the table. Once SPPA introduce the equivalent of regulation 50A of the LGPS (Administration) Regulations 2008 into the LGPS (Administration) (Scotland) Regulations 2008 the Secretariat will produce a version of the table for Scottish administering authorities.

The LGPS and the operation of pensions increase legislation

[Bulletin 64](#) contained an article on pensions increase and the new state pension age. It stated:

"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)."

Administering authorities should note that although the above is the logical / moral position there has been no official confirmation of this from DWP (see [NISPI Newsletter 36](#)) or HM Treasury. The Secretariat has contacted HM Treasury to ask when official confirmation will be issued. HM Treasury has responded by stating they cannot give a definitive answer as discussions between themselves and DWP have not yet commenced.

On a similar matter, the Secretariat has been asked for its view on whether the GMP for spouses who have not attained SPA and who are not receiving widowed parent's allowance should be fully inflation proofed by the LGPS. The Secretariat has reminded HM Treasury that this old issue has not been resolved and has forwarded all the background papers to them for consideration.

Lastly, the DWP have asked the Secretariat to be involved in a working group which will consider technical problems experienced by schemes in relation to GMP notifications (or the lack of them). Any administration authorities, who are experiencing any problems, should e-mail details to terry.edwards@lge.gov.uk who will raise them on behalf of the administering authorities with the DWP.

The Finance Act 2010

[Schedule 2 to the Finance Act 2010](#) adds the restrictions on tax relief on pension contributions for high earners, as covered in the LGPS leaflets for high earners. The provisions were rushed through Parliament before the dissolution of Parliament for the General Election. Schedule 2 to the Finance Act 2010 adds new sections 213A to 213P to the Finance Act 2004.

The LGPC has had further discussions with HMRC and tax experts subsequent to the publication of the original LGPC leaflet for high earners. As a consequence of these further discussions, [revised leaflets for high earners are available on the LGE website](#).

HMRC have confirmed that there is no anomaly between the way "net pay" and "tax relief at source" schemes are treated for the purposes of the removal of the tax free allowance from 6 April 2010. The "Matters to consider" note under item (a) of the Leaflet for High Earners has, therefore, been updated accordingly. In addition, as (due to the anti-forestalling measures) it is extremely unlikely that a scheme member with income (from all sources) of over £150,000 will be able to pay AVCs to reduce taxable income to below £150,000 without falling foul of the anti-forestalling measures, the "Matters to consider" and "Warning" notes under item (b) in the original leaflet for high earners have been deleted.

Authorised payments

In [Bulletin 59](#), there was an article on the easement in the treatment of trivial commutations for pension schemes. The article stated that easement provisions contained in The Registered Pension Schemes (Authorised Payments) Regulations [SI 2009/1171] could not be relied upon until there was an amendment to regulation 60(1) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 as this would prevent commutation of the GMP below pensionable age.

Regulation 4(4) of the [Occupational and Personal Pensions Schemes \(Authorised Payments\) Amendments Regulations 2009 \[SI 2009/2930\]](#) amended regulation 60(1)(b) (i) so that the GMP can be commuted in any circumstances. As a result of the amendment in SI 2009/2930, the article in [Bulletin 59](#) requires amending and the updated version follows.

"[Bulletin 55](#) highlighted the draft Registered Pension Schemes (Authorised Payments) Regulations 2009. At that time, HMRC had confirmed that scheme administrators could anticipate the regulations provided that they notified the HMRC of any payments which were expected to become authorised but remained as unauthorised payments. Scheme administrators would have had to submit an amended Event Report.

The actual Statutory Instrument, [The Registered Pension Schemes \(Authorised Payments\) Regulations 2009 \[SI 2009/1171\]](#), which came into force on 1 June 2009, was laid before the House of Commons on 8 May 2009 and contains a couple of additional provisions which did not appear in the draft instrument.

Regulation 3 in conjunction with Part 2 (Commutation Payments) of SI 2009/1171 will treat trivial commutation payments as authorised payments in certain circumstances. This is a real easement for schemes when dealing with trivial commutation payments (although the limit of £2,000 is somewhat low and it is to be hoped that the Government will review this limit otherwise its usefulness to schemes will diminish over time). It should be noted, however, that unless / until an amendment is made to regulation 39 of the Benefits Regulations, administering authorities will **not** be able to utilise the commutation options allowed for by **Part 2** of SI 2009/1171¹. This is because all of the payments made under SI 2009/1171 are made in accordance with section 164(1)(f) of the Finance Act 2004, not section

¹ Administering authorities will, however, be able to utilise the commutation option offered in the very limited number of cases covered by SI 2009/1172, as a payment under that SI would be made in accordance with section 166 of the Finance Act 2004. SI 2009/1172 is of very limited application as it only appears to cover those whose accrued lump sum at 5 April 2006 was greater than 25% of their uncrystallised rights at that date (and the LGPS would have few, if any, such cases).

166 of the Finance Act 2004. By virtue of regulation 39 of the Benefits Regulations, however, administering authorities can only commute trivial pensions if the payment is to be made under section 166 of the Finance Act 2004. The Secretariat understands that CLG are considering making an appropriate amendment to regulation 39 of the Benefits Regulations.”

[Note: the following wording from the original article in [Bulletin 59](#) no longer applies:

“Even if such an amendment is made, there will still be a problem in cases where the member is entitled to a GMP. As far as the commutation of a GMP is concerned, regulation 60(1) of The Occupational Pension Schemes (Contracting-out) Regulations 1996 [SI 1996/1172] only permits commutation if:

*(a) a guaranteed minimum pension has become payable; and
(b) the payment of a lump sum is authorised under section 164 of the Finance Act 2004 and the payment is permitted -*

(i) by the lump sum rule in section 166 of that Act and qualifies as-

(aa) a trivial commutation lump sum for the purposes of paragraph 7 of Part 1 of Schedule 29 to that Act

So, unless / until regulation 60(1) of The Occupational Pension Schemes (Contracting-out) Regulations 1996 is amended to also refer to payments made under paragraph 7A of Part 1 of Schedule 29 to the Finance Act 2004 and to payments made under Part 2 of SI 2009/1171 the following will apply where a member is entitled to a GMP:

A) where a female is entitled to a GMP, only the standard trivial commutation route can be followed (which allows the GMP to be commuted). The easement routes in Part 2 of SI 2009/1171 cannot be used at all as regulation 60(1) of The Occupational Pension Schemes (Contracting-out) Regulations 1996 does not permit the commutation of the GMP in these circumstances.

B) where a male is entitled to a GMP, the standard trivial commutation route can be followed (which allows the GMP to be commuted) BUT only where the member is aged 65 or over. Where the member is under age 65, the standard commutation route cannot be applied until the member attains age 65. The easement routes in Part 2 of SI 2009/1171 cannot be used at all as regulation 60(1) of The Occupational Pension Schemes (Contracting-out) Regulations 1996 does not permit the commutation of the GMP in these circumstances.”

Scheme sanction charge

HMRC has announced a new process that schemes can choose to follow to reduce the scheme sanction charge in respect of an unauthorised payment. From 6 April 2010, if an administering authority has to make an unauthorised payment and wants to obtain certainty about the amount of scheme sanction charge payable, as well as minimising the work the member has to do in reporting their tax charge, the administering authority can ask members to complete a mandate permitting the administering authority to withhold from the unauthorised payment an amount equivalent to the tax (and, if applicable, any surcharge) the members will have to pay via their Self Assessment tax returns. Further details are contained in [HMRC’s Pension Schemes Newsletter 40](#).

LGPS members' website

All Funds are requested to check that their contact details on the [LGPS members' website](#) are correct.

Remember, these are contact details for scheme members who require further information to that provided on the website & as such may be different to those held on the LGE website's Pension Manager contacts page.

Please e-mail Irene.Wass@lge.gov.uk if you wish to amend your contact details.

Bits and Pieces

Timeline Regulations

The April 2010 update of the Timeline Regulations website included:

England and Wales

- a minor amendment to the definition of "qualified in occupational health medicine" in regulation 20(14) of the Benefit Regulations as per The General and Specialist Medical (Education, Training and Qualifications) Order 2010 [SI 2010/234]; and
- the Statutory Instrument page has been updated with CLG's cover letter to The LGPS (Amendment) Regulations 2010 [SI 2010/528].

Scotland

- a minor amendment to the definition of "qualified in occupational health medicine" in regulation 20(7) of the Scottish Benefit Regulations as per The General and Specialist Medical (Education, Training and Qualifications) Order 2010 [SI 2010/234]; and
- the addition of 4 items to the post 31 March 2009 GAD guidance page:
 - Late Retirements on or after 1 April 2009, 'Trivial Commutations:
 - Lump Sums paid on or after 1 April 2009,
 - Protected Regulation 65(8) - AVC Service Credits; and
 - Individual Incoming and Outgoing Transfers: Members in Service on or after 1 April 2009.

United Kingdom

The Pensions Increase page now includes the Pensions Increase multiplier spreadsheet for 2010 issued by HM Treasury together with their explanatory note. The Social Security Revaluation of Earnings Factors Order 2010 [SI 2010/470] has been uploaded to the Section 148 Orders page along with the accompanying Explanatory Memorandum.

The Office of National Statistics: Pension Trends

[The Office of National Statistics has updated Chapters 2 and 8 in its Pension Trends series.](#) Not surprisingly, chapter 2 now states that the ratio of the number of people of state pension age to every 1000 people of working age is projected to increase in the future. Two years ago the ratio reached 310 and is expected to reach 495 by 2051 provided there were no increases in state pension age. The changes in the state pension age, which are already on the statute book, are expected to limit the increase in the ratio to 343 by 2051.

Chapter 8 reveals that the total contributions to private sector schemes decreased by £4 billion between 2007 and 2008. The fall was caused by a reduction in employers' contributions.

Legislation

United Kingdom

SI Reference Title

| | |
|-----------|--|
| 2010/725 | The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 |
| 2010/772 | The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 |
| 2010/788 | The Social Security Benefit (Persons Abroad) (Amendment) Regulations 2010 |
| 2010/793 | The Social Security Benefits Up-rating Order 2010 |
| 2010/834 | The Social Security (Contributions) (Amendment) Regulations 2010 |
| 2010/899 | The Police Pensions (Descriptions of Services) Order 2010 |
| 2010/903 | The Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order (Amendment) Order 2010 |
| 2010/922 | The Registered Pension Schemes (Standard Lifetime and Annual Allowance) Order 2010 |
| 2010/990 | The Teachers' Pension Scheme 2010 |
| 2010/1055 | The Additional Paternity Leave Regulations 2010 |
| 2010/1056 | The Additional Statutory Paternity Pay (General) Regulations 2010 |
| 2010/1057 | The Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010 |
| 2010/1059 | The Additional Paternity Leave (Adoptions from Overseas) Regulations 2010 |
| 2010/1060 | The Additional Statutory Paternity Pay (Weekly Rates) Regulations 2010 |
| 2010/1145 | The Pensions Act 2008 (Commencement No.7 and Saving, Consequential and Incidental Provisions) Order 2010 |
| 2010/1221 | The Pensions Act 2008 (Commencement No.8) Order 2010 |

Northern Ireland

SR Reference Title

| | |
|----------|---|
| 2010/96 | The Social Security Pensions (Low Earnings Threshold) Order (Northern Ireland) 2010 |
| 2010/97 | The Social Security Revaluation of Earnings Factor Order (Northern Ireland) 2010 |
| 2010/100 | The Pensions (2005 Order) (Commencement No.14) Order (Northern Ireland) 2010 |
| 2010/101 | The Pensions Regulator Tribunal (Transfer of Functions) (2010 Act) (Commencement) Order (Northern Ireland) 2010 |
| 2010/102 | The Pensions Regulator Tribunal (Transfer of Functions) (2010 Act) (Consequential Provisions) Order (Northern Ireland) 2010 |
| 2010/103 | The Social Security (Equalisation of State Pension Age) Regulations (Northern Ireland) 2010 |
| 2010/106 | The Occupational Pension Scheme (Fraud Compensation Payments) (Amendment) Regulations (Northern Ireland) 2010 |
| 2010/108 | The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2010 |
| 2010/110 | The Social Security Benefit (Persons Abroad) (Amendment) Regulations (Northern Ireland) 2010 |
| 2010/111 | The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations (Northern Ireland) 2010 |
| 2010/121 | The Transfer Values (Disapplication) Regulations (Northern Ireland) 2010 |
| 2010/122 | The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 |

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
Pension managers (outsourced) and administering authority client managers
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Appendix 1 – England and Wales

Under 2008 Administration Regulations (as amended)

Females

| (1) Scenario | (2) Entitled to receive GMP? | (3) Work status at (2) | (4) Can consent NOT to receive GMP? |
|---|---------------------------------|---------------------------|--|
| Leaves LG < 60 | @ age 60 | Ceased ALL jobs | No |
| Leaves LG < 60 | @ age 60 | Ceased LG only | Yes |
| Leaves LG at 60 | @ age 60 | N/A | No |
| Still in LG at 60 | No, but see rows below | | |
| Leaves LG >60 <65 | @ leaving LG | Ceased ALL jobs | No |
| Leaves LG >60 <65 | @ leaving LG | Ceased LG only | Yes |
| Still in LG at 65 | @ age 65 | N/A | Yes |
| Leaves LG > 65 and had consented not to receive GMP at age 65 | @ leaving* | Ceased ALL jobs | No (although Admin reg 50A would appear to permit consent, this is not permissible under section 13 of the Pension Schemes Act 1993) |
| Leaves LG > 65 and had consented not to receive GMP at age 65 | @ leaving* | Ceased LG only | Yes |

* or age 75 if earlier. LGPS benefits must be paid by that age.

Under 2008 Administration Regulations (as amended)

Males – same table as above except all references to 60 and 65 have been amended to 65 and 70 respectively

| (1) Scenario | (2) Entitled to receive GMP? | (3) Work status at (2) | (4) Can consent NOT to receive GMP? |
|---|---------------------------------|---------------------------|--|
| Leaves LG < 65 | @ age 65 | Ceased ALL jobs | No |
| Leaves LG < 65 | @ age 65 | Ceased LG only | Yes |
| Leaves LG at 65 | @ age 65 | N/A | No |
| Still in LG at 65 | No, but see rows below | | |
| Leaves LG >65 <70 | @ leaving LG | Ceased ALL jobs | No |
| Leaves LG >65 <70 | @ leaving LG | Ceased LG only | Yes |
| Still in LG at 70 | @ age 70 | N/A | Yes |
| Leaves LG > 70 and had consented not to receive GMP at age 70 | @ leaving* | Ceased ALL jobs | No (although Admin reg 50A would appear to permit consent, this is not permissible under section 13 of the Pension Schemes Act 1993) |
| Leaves LG > 70 and had consented not to receive GMP at age 70 | @ leaving* | Ceased LG only | Yes |

* or age 75 if earlier. LGPS benefits must be paid by that age.

Under 1995 and 1997 Regulations

Females

| Scenario | Entitled to receive GMP? | Can consent not to receive GMP? |
|--|--------------------------|---------------------------------|
| Leaves LG < 60 | @ age 60 | No |
| Leaves LG at 60 | @ age 60 | No |
| Still in LG at 60 | No, but see rows below | |
| Leaves LG >60 <65 | @ leaving LG | No |
| Still, at 65, in LG and in the same employment that member was in at 60 | @ age 65 | Yes |
| Still, at 65, in LG but not in the same employment that member was in at 60 | @ age 65 | No |
| Leaves LG > 65 and had consented not to receive GMP at age 65 | @ leaving* | No |

* or age 75 if earlier. LGPS benefits must be paid by that age.

Under 1995 and 1997 Regulations

Males – same table as above except all references to 60 and 65 have been amended to 65 and 70 respectively

| Scenario | Entitled to receive GMP? | Can consent not to receive GMP? |
|--|--------------------------|---------------------------------|
| Leaves LG < 65 | @ age 65 | No |
| Leaves LG at 65 | @ age 65 | No |
| Still in LG at 65 | No, but see rows below | |
| Leaves LG >65 <70 | @ leaving LG | No |
| Still, at 70, in LG and in the same employment that member was in at 65 | @ age 70 | Yes |
| Still, at 70, in LG but not in the same employment that member was in at 65 | @ age 70 | No |
| Leaves LG > 70 and had consented not to receive GMP at age 70 | @ leaving* | No |

* or age 75 if earlier. LGPS benefits must be paid by that age.

Extract from the Pension Schemes Act 1993

Section 13 of the Pension Schemes Act 1993 says:

(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.