Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 72 – July 2010

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

As a result of a change in corporate branding throughout the LGA group, this month's Bulletin uses the new LGE logo. Other changes have also been made. The LGE website address is now www.local.gov.uk/employers (although the old web address of www.lge.gov.uk will continue to work) and the e-mail addresses for the pensions team have also been changed, as has the work telephone number for Tim Hazlewood – see LGPC contact details at the end of this Bulletin. The old e-mail addresses will continue to work for the foreseeable future.

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

This month, Bits and Pieces includes a brief update on the legal challenge to HMRC charging VAT on investment management services and an update on the Timeline Regulations.

LGPS 2008 – CLG letters on CETVs and CPI

On 6 July, CLG issued a letter stating that, as a result of the change in indexation from RPI to CPI with effect from April 2011, administering authorities should not process any outward CETVs to non-Club schemes or any inward non-Club CETVs. The use of the current transfer factors would overstate the outward CETV payable to a non-Club scheme and understate the service credit resulting from a non-Club transfer in. Equally, the cost of awarding augmented membership would be incorrect where the administering authority uses non-Club CETV factors to calculate the cost of the award.

The Secretariat assumes that HM Treasury were prepared to let transfers between Club schemes go ahead (on a knock for knock basis) as the size of the transfer does not directly affect the member's service credit in the receiving scheme. The same logic applies to IFAs.

In the letter of 6 July, CLG stated that they were attempting to obtain answers on the treatment of:

- transfers in from, and out to, non-Club schemes where the transfer was already in the pipeline;
- CETVs / CEVs for divorce purposes; and
- quotes for ARCs.

In addition to the transfer and ARC factors, the scheme annuity factors and factors for old style added years contracts may need to be reviewed in the light of the change in indexation from RPI to CPI.

In a subsequent letter of 20 July CLG state that, until revised GAD guidance is issued (with a possible operative date of 1 October 2010), administering authorities should "proceed with cases in the pipeline, in particular those where quotes and guarantees have been given, using extant guidance". They also point out that in doing so, administering authorities "may need to consider the degree of risk such an approach might entail, and balance this, where appropriate, with the risk of not processing cases which might result in challenge."

Following CLG's letters the Secretariat has received a number of requests seeking further guidance. Unfortunately, it is difficult for the Secretariat to give such guidance. The Secretariat can report, however, that at one of the Pension Officer Groups the general line being taken was as follows:

Description	View	Comment
A. Club incoming transfers	Proceed	
B. Club outgoing transfers	Proceed	
C. Non-club outgoing transfers where quote has been issued (i.e. prior to 6 July 2010)	Proceed, providing the election to transfer is received within the 3 month guarantee period	

D. Non-club outgoing transfers where quote has not been issued	Suspend	
E. Non-Club incoming transfer where the CETV estimate has not been requested	Suspend	
F. Non-Club incoming transfer where the CETV estimate has been requested but not received	Suspend Write to former scheme explaining that the request should be put on hold until such time as GAD have clarified factors to be used for non-Club transfers in.	Hopefully the sending scheme will accept the "please hold" request but if they say they are too far down the line in processing the original request and will charge for a new quote, revert to G below.
G. Non-Club incoming transfer where the CETV estimate has been requested and received	Proceed	There is concern that if the administering authority does not proceed a) the sending scheme may issue a charge to calculate a new CETV b) if the member has been offered a service credit and elected to accept, the scheme may be challenged via IDRP if it does not act upon the member's wishes within the prescribed timescales
H. Pension Sharing on Divorce transfer quotes	Proceed but append a caveat to the quote saying that it is based on GAD guidance which is currently being reviewed due to the change in public sector pension indexation from RPI to CPI. This change	This seems a reasonable approach given the statutory timescales attached to the production of pension sharing on divorce quotes.

	may have the effect of meaning that the current quote provided overestimates the correct value of the member's pension rights.	

Effect of the move to indexation by reference to CPI instead of RPI from April 2011

In last month's Bulletin we reported on the Government's announcement to index pensions and deferred pensions under the LGPS to the rise in the Consumer Prices Index (CPI), rather than to the rise in the Retail Prices Index (RPI). This would apply as from the increases due in April 2011.

In the July edition of Investment News, the Government Actuary's Department has provided a useful briefing on how RPI and CPI are calculated and what the differences between RPI and CPI may be in the short and long term.

The Government's Independent Public Service Pensions Commission

Lord Hutton, chairman, of the Government's Independent Commission on Public Service Pensions requested all interested parties and stakeholders to submit evidence by the end of July to assist him in considering:

- the affordability, fairness, and impact on mobility and plurality of current public service provision of the current public sector pension schemes; and
- the objectives that should guide public service pensions in future.

He also asked for any thoughts or observations on whether, given the long term nature of structural reform, there is a case for more immediate action on public service pensions, in the context of affordability and fairness, and if so, what options there might be to deliver savings within the current spending review period.

The LGA has submitted its response to the Commission. A link to the submission will shortly be added to "Latest News" on the LGE website.

Other useful documents relating to the review of public service pension schemes are listed below:

- the Audit Commission's report on local government pensions in England
- GMB's submission to the Public Service Pensions Commission
- the report of the Public Sector Pensions Commission (set up by the Institute of Economic Affairs, the Institute of Directors and other groups)

Review of the Parliamentary Contributory Pension Fund 2010

The Review Body on Senior Salaries has produced a report (July 2010) recommending that the scheme for MPs moves from the current scheme which has the following main features:

- a final salary scheme
- an accrual rate of 1/40th, 1/50th or 1/60th
- a normal retirement age of 65
- a member's contribution rate of 11.9% for 1/40th accrual, 7.9% for 1/50th accrual and 5.9% for 1/60th accrual
- full RPI increases applied to pensions and deferred pensions
- a surviving spouse's or partner's pension based on 5/8ths of the member's pension
- death in service: three months salary plus lump sum of four times pensionable salary

to a scheme that provides:

- a career average scheme
- an accrual rate for future service of 1/60th
- a normal retirement age for future service of age 68 (but 65 for accrued service)
- a member's contribution rate of 5.5%
- the career average benefits to be revalued for active members, deferred members and pensioners by lower of RPI and 2.5%
- a surviving spouse's or partner's pension based on 5/8ths of the member's pension
- death in service: three months salary plus lump sum of four times pensionable salary
- the accrued benefits up to the point of change from a Final Salary scheme to a CARE scheme to be calculated by reference to the final salary as at the point of change and revalued thereafter by RPI.

The recommendations for the Parliamentary Contributory Pension Fund, if accepted, could influence the shape of the rest of the public service pension schemes that result from the eventual report from the Hutton Commission.

Review of State Pension Age

In last month's Bulletin we listed those announcements in the emergency Budget of 22 June which impacted on pensions.

One of the announcements was that the Government was going to review the date at which the State Pension Age will increase from age 65 to age 66. Currently, the state pension age is set to rise to 66 between 2024 and 2026, then rise by 1 year in each subsequent decade until reaching 68 in 2046.

As part of the review, the Government has asked for evidence to be submitted on the following:

- changes in life expectancy and the changed economic context

- the notice period for individuals affected by an increase in the State Pension Age
- ensuring no group is disproportionately impacted

The call for evidence applies to England, Wales, Scotland and Northern Ireland and closes on 6 August 2010.

The terms of reference for the review and the call for evidence are available on the Department of Work and Pensions website at: www.dwp.gov.uk/policy/pensions-reform/latest-news/.

Further information is available on the LGE website.

Review of the Default Retirement Age

As reported in last month's Bulletin the Government is committed to phasing out the Default Retirement Age (DRA) of 65.

In line with that commitment, a formal joint BIS-DWP consultation document has now been issued on the Government's proposals on how the DRA might be phased out.

The key points are:

- the DRA will be abolished from 1 October 2011.
- no new notices for compulsory retirement using the DRA procedure will be permitted from 6 April 2011.
- between 6 April 2011 and 1 October 2011, only people who were notified before 6 April, and whose retirement date is before 1 October can be compulsorily retired.
- after 1 October 2011 any use of retirement age will have to be objectively justified and will be subject to claims of age discrimination and subject to challenge at tribunal.

Further information is provided on the LGE website.

The closing date for submission of views on the consultation document is 21 October 2010.

Restriction of pensions tax relief for high earners

Also mentioned in last month's Bulletin was the Government's intention to repeal the restrictions on tax relief on pension contributions for high earners which had been introduced under the Finance Act 2010. The Government announced that it was going to consult with pension schemes, industry experts etc on an alternative proposal to substantially reduce the annual allowance to somewhere in the range of £30,000 to £45,000. The anti-forestalling measures, however, would remain in place. The HM Treasury document *Restricting Pensions Tax Relief* provided further information.

The promised discussion document has now been issued and is available on a dedicated page on the HM Treasury website. The discussion document poses a number of questions relating to:

- policy design – e.g. among other issues, how pension accrual in Defined Benefit schemes should be valued;
- managing impacts – options to protect basic-rate taxpayers, and support for hard cases caused by one-off 'spikes' in pension accrual; and
- design and delivery – how compliance and delivery would operate in practice.

The Government would welcome written submissions on the specific issues discussed in the document by 27 August 2010. The Secretariat will be considering the discussion document and will make a response. If the Government decides that the alternative approach to substantially reduce the annual allowance to somewhere in the range of £30,000 to £45,000 will meet its objectives then it will repeal the legislation passed in the Finance Act 2010. The new approach would apply from April 2011 and be legislated for in the Finance Bill 2011.

Compulsory Annuity Age of 75

Further to the report in last month's Bulletin the Treasury has launched an 8 week consultation on plans to remove, from April 2011, the requirement to purchase an annuity by age 75. The consultation paper proposes that the age 75 limit that applies to the purchase of an annuity, the payment of a pension commencement lump sum and the payment of a trivial commutation lump sum should be abolished. However, tax relief of pension contributions would still stop at age 75. The closing date for responses is 10 September 2010.

In the meantime, interim provisions have been included in the Finance (No. 2) Act 2010 so that various references in the Finance Act 2004 to age 75 should now be taken to be references to age 77 where a person attains age 75 on or after 22 June 2010.

In the Secretariat's opinion, depending on the outcome of the Treasury consultation, consideration will then need to be given by CLG and SPPA as to whether or not to remove the various age 75 restrictions / limitations contained in the LGPS Regulations (in relation to the payment of benefits). Until then, the changes made to the Finance Act 2004 by the Finance (No. 2) Act 2010 have no direct effect on the Local Government Pension Scheme.

Review of auto-enrolment

Ian Duncan Smith (the Work and Pensions Secretary) and Steve Webb (Pensions Minister) have announced a review of the auto-enrolment legislation with the intention of 'making auto-enrolment work'. The review will last three months and will report back by 30 September 2010.

The Government has stated that it remains committed to auto-enrolment but wants to review the 'cost and benefits' to individuals and employers and value for money for HM Treasury. The terms of reference for the review detail which parts of auto-enrolment will be reconsidered.

The main features which will be re-evaluated are:

- the earnings threshold for the application of automatic enrolment;
- the introduction of a minimum contributions level for the application of automatic enrolment;
- the age group to which automatic enrolment will apply;
- the size of employer to which automatic enrolment will apply; and
- whether employees should be automatically enrolled on the day employment commences or at a later date.

The current auto-enrolment legislation is the result of several years' work. The review team have roughly three months to consider all the legislation and to identify areas of improvement.

Two reports published by DWP should assist the Review team in their deliberations. The first report is entitled "Consultation on Workplace Pensions Reforms: Qualitative Research with Small and Medium Sized Companies". It is an attempt to analyse the impact auto-enrolment will have on employers. The DWP surveyed 500 small to medium sized companies. From DWP's perspective, the survey results will have been disappointing as the majority of respondents were unaware of the existence of the National Employment Savings Trust (NEST).

The DWP have also issued a research report called "Likely treatment of different types of worker under the workplace pensions reforms: Qualitative research with employers".

HMRC – QROPS

In the article in last month's bulletin on QROPS, we referred to the wording at the top of the published QROPS list which says that where a scheme administrator relies on the QROPs list and does so in good faith, this should normally provide just and reasonable grounds for HMRC to discharge any liability to the scheme sanction charge should it arise. HMRC were implying that this wording could be relied upon in the case of transfers to the Britannia Superannuation Scheme and Southern Star Retirement Fund. This did not seem to be the case, however, in respect of transfers to the Wenns International Pension Scheme. An administering authority has subsequently contacted HMRC and received the following reply in respect of a potential transfer to that scheme:

> *"The current position is that HMRC is unable to confirm that any transfer to Wenns International is a recognised transfer and scheme administrators could be liable to the scheme sanction charge if it transpires that an unauthorised payment has been made. The member himself could be liable to a tax charge of 55% of the transfer value if the transfer turns out not to be a recognised transfer. The possibility exists that members may not be aware that the danger of substantial tax charges is a real one and should UK schemes wish to contact members who have transfer requests to Wenns International pending they might care to use something along the lines of the following wording:*

‘We understand that you are thinking of transferring the fund value of your XXXXX pension plan to Wenns International. We have been made aware by HM Revenue & Customs (HMRC) that a transfer to this scheme might not be a recognised transfer under s169 of the Finance Act 2004 and could be an unauthorised payment subject to penal tax charges. If the transfer was an unauthorised payment, I have briefly explained the tax consequences below.

- *You would incur a tax charge of 40% of the amount of the transfer payment. This tax charge is intended to recover the tax relief you have received on contributions paid by you or on your behalf and on the income from the investment of these. You would also be liable to an unauthorised payments surcharge of 15% on the amount of the pension transfer. You would be responsible for the payment of these tax charges to HMRC.*

- *We would incur a scheme sanction charge of up to 40% of the transfer payment, which we would be responsible for paying to HMRC.*

Therefore, we are sorry that we are unable to proceed with the transfer payment until we have received confirmation from HMRC this will be a recognised transfer.’”

The HMRC response stated that it would be helpful if the administering authority concerned notified them of any previous transfers to Wenns International Pension Scheme in respect of other individuals, and provided HMRC with copies of documentation, emails etc.

Another administering authority has received an email from HMRC in which they stated they would be interested in knowing of any requests for transfers to a Dutch QROPS called Amstel Pulitzer Stichting Pensioenfoonds via an organisation called Windsor Pensions.
It has also come to light that two further schemes are under investigation by HMRC. These are:

Brewer Collins Group Pension Scheme (QROPS 502087)
Esprit Power Yacht Charter Pension Scheme (QROPS 500196)

The following lists the pension schemes about which the Secretariat understands HMRC have concerns:

- Amstel Pulitzer Stichting Pensioenfoonds (transfers via Windsor Pensions);
- Britannia Superannuation Scheme;
- Southern Star Retirement Fund;
- Wenns International Pension Scheme;
- Brewer Collins Group Pension Scheme; and
- Esprit Power Yacht Charter Pension Scheme.

If there are any reservations whatsoever about the nature of the receiving scheme and, in particular the fact that such transfers could result in a scheme sanction charge, Alan Bush, the Head of the Anti Fraud Unit at HMRC has confirmed that he is willing to field questions from administering authorities where they need reassurance before making a transfer. Alan can be contacted on 0115 974 1841 or at alan.bush@hmrc.gsi.gov.uk.

If an administering authority decides not to make a transfer payment and is challenged over non-payment the rationale to use would be as follows:

Regulation 79(1) of the LGPS (Administration) Regulations 2008 or, in Scotland, regulation 74(1) of the LGPS (Administration) (Scotland) Regulations 2008 states:

Rights to payment out of fund authority's pension fund
(1) A member may apply for a transfer under Chapters 4 or 5 …… and where the member does so the amount of any transfer payment due in respect of the member under the relevant Chapter may only be paid by the fund authority from its pension fund if it is a recognised transfer (within the meaning of section 169 of the Finance Act 2004).

The phrase "if it **is** a recognised transfer" indicates that there must be no doubt about the status of the receiving scheme on the QROPS list. If there is any doubt that a transfer to the receiving scheme would not be regarded by HMRC as a recognised transfer, then the administering authority can rely on regulation 79(1), or 74(1) in Scotland, as reason not to pay the CETV.

Circular 239: Equal Pay

The Secretariat has published Circular 239 giving on opinion on the pensionability of equal pay settlements.

Parties involved in equal pay claims will wish to consider the information in the Circular, the relevant provisions of the Local Government Pension Scheme Regulations, the wording of any compromise agreement, and any legal advice they may obtain, when deciding on the pensionable status of equal pay settlements.

LGPS – incorrect completion of the commutation option form by a member

The Secretariat where consulted on a situation where a member of the LGPS retired and elected to receive 17% of the capital value of his benefits as a lump sum. When the member received his benefits he complained as his calculation of the lump sum he had expected to receive was significantly different to the administering authority's calculation. The member subsequently invoked the Internal Dispute Resolution Procedure (IDRP).

At stage 1 of the IDRP, the nominated person ruled that the lump sum commutation question on the election form the member had signed was unclear and the question should have been asked in a clearer way. However, the nominated person felt he did not have the power to force the administering authority to accept a second option form.

The member took the case to stage 2 of the IDRP.

The nominated person who was considering the case at stage 2 contemplated whether the member could have their benefits adjusted, as it was agreed by all of the parties concerned that the question on the election form was unclear. Rather than suggest that the only recourse may lie with the Pensions Ombudsman, the nominated person would have preferred to recognise that there had been an administrative error and allow a clarification of the election. However, if the administering authority accepted a second election form would it constitute a second BCE and as such would it result in an unauthorised payment?

The Secretariat raised this with HMRC. An extract from their response is reproduced below:

> *"The issue appears to arise from a misunderstanding of what the scheme rules actually provided. The member thought it was one thing when in fact it was another and so he received a lower Pensions Commencement Lump Sum (PCLS) than he expected.*
>
> *The nominated person considering the case under the LGPS internal dispute resolution procedure considers that the election form the member had to complete was ambiguous and has asked whether the handling of elections for PCLS could be considered to be an administrative error allowing a further PCLS to be paid as an authorised payment. You have asked us to comment on this suggestion.*
>
> *Before doing so, I would like to comment on the unauthorised payment (UP) aspect. The member has already taken all their benefits as pension and PCLS – what is proposed is that these be reconfigured so the individual receives an additional lump sum and a reduced pension. My view is that if this were to happen and the 12 month window for payment of a PCLS has expired then clearly the additional lump sum would be a PCLS. But there is also the question of the reduced pension. To be a scheme pension a pension must be both payable for life at least annually and the rate of pension payable must not reduce during any 12 month period. – paragraph 2(3) of Schedule 28 to Finance Act 2004 – other than in the circumstances set out at paragraph 2(4), none of which apply in this case. So all payments of the reduced pension would also be liable to UP tax charges.*
>
> *Turning now to whether the initial benefit entitlements can be revisited on the grounds of 'administrative error ', I have to tell you that the answer is no.*
>
> *The HMRC guidance on "genuine errors" is in the Registered Pension Schemes Manual at page http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM12101000.htm onwards. You will see from [RPSM12101010]() that the intention behind the 'genuine errors' guidance is to cover situations where a scheme has made a payment that is a UP but only did so inadvertently as a result of a genuine error. In other words the scheme thought the payment was authorised and would not have made it but for a 'genuine error'. The scheme administrator must have been unaware that the payment was unauthorised at the time it was made ([RPSM12101041]()). And the scheme must seek recovery of the unauthorised element of the payment. So the guidance on 'genuine errors' only applies where a UP has been paid. The guidance does not extend to cases where the payment made was authorised but, had there not been a genuine error, the payment would have been different.*

Accordingly, any revision of the member's benefits now would result in UPs under the legislation and HMRC has no discretion to disapply the consequent tax charges There is scope to apply for a discharge of the scheme sanction charge or the UP surcharge but not the basic UP charge itself – see RPSM04104780 and RPSM04104870 respectively.

I am sorry to send what I know will be a disappointing reply."

This answer ties in with a similar case reported in paragraphs 304 to 306 of version 11 of the Tax Guide.

The Pensions Regulator – new record keeping guidance

The Regulator has published revised guidance for trustees, pension providers and administrators concerning the standards it expects them to meet in respect of record-keeping. It sets out a framework for data checking and includes good practice for assessing the risks associated with record-keeping. The guidance recommends regular data measurement and testing. There are targets for what the Regulator refers to as common data i.e. information held to uniquely identify to whom a benefit is due and how to contact the beneficiary (e.g. up to date address). The common data accuracy target for records created after June 2010 is 100% (and is 95% for older records). Enforcement action may be taken where there is evidence of poor record-keeping and no plans to correct it. For conditional data (i.e. the data that is used to calculate a benefit, such as membership and pensionable pay) schemes are expected to set their own data accuracy target levels (which must be set at a reasonably high level). The Regulator expects all reasonable endeavours to have been taken to meet the target levels by the end of 2012.

Bits and Pieces

VAT on investment management services

Bulletin 60 included a brief update on a legal challenge jointly brought by the NAPF and the Wheel Common Investment Fund, which is a multi-employer scheme for the Ford Motor Company and its affiliates, against HMRC's decision to apply VAT to investment management services in the UK.

At the end of last year, five witness statements were served on behalf of the Appellants. These statements provided evidence that pension funds should receive the same kind of VAT treatment as other types of funds. HMRC have now responded with their own evidence in the form of two witness statements. The case is unlikely to be heard before the end of this year.

Timeline Regulations

The June and July 2010 update of the Timeline Regulations website included:

June 2010

England and Wales

The GAD guidance note (dated 29 April 2010) on the application of Pension Debits together with CLG's covering letter have been added to the post March 2008 GAD Guidance page.

Scotland

The LGPS (Management and Investment of Funds) (Scotland) Regulations 2010 [SSI 2010/233] and The LGPS Amendment (Scotland) Regulations 2010 [SSI 2010/234] with the associated Executive Notes have been added to the Statutory Instruments page.

SPPA Circulars 2010/No.4 and 2010/No.5 and the guidance with respect to regulation 12(3) of the LGPS (Management and Investment of Funds) (Scotland) Regulations 2010 have been added to the Statutory Guidance & Circulars page.

July 2010

England and Wales

The two CLG letters (dated 6 July 2010 and 20 July 2010) on non-Club CETVs and CPI have been added to the post March 2008 GAD guidance page.

Scotland

The update includes the creation of timeline regulations for the LGPS (Management and Investment of Funds) (Scotland) Regulations 2010 and the archiving of the historical versions of the LGPS (Management and Investment of Funds) (Scotland) Regulations 1998.

The pdf versions of SSIs 2010/233 and 2010/234 have been replaced with webpage versions on the Scottish Statutory Instruments page.

A new set of LGPS (Scotland) Regulations 2008 has been created to incorporate the amendments made to the LGPS (Administration) Regulations 2008 and the LGPS (Benefits, Membership and Contributions) Regulations 2008 as amended by SSIs 2010/233 and 2010/234.

Legislation

United Kingdom

SI Reference	Title
2010/1642	The Authorised Investment Funds (Tax) (Amendment No.2) Regulations 2010
2010/1676	The Social Security (Claims and Payments) Amendment (No.3)Regulations 2010

Northern Ireland

SR Reference	Title
2010/212	The Personal Accounts Delivery Authority Winding Up (Consequential Provisions) Order 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

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