Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 78 – January 2011

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. LGPC contacts can be found at the end of this Bulletin.

This month Bits and Pieces includes an item on LGPC Communications, the Timeline Regulations, Occupational Pensions survey and the Social Market Foundation's publication entitled "Public Sector Pensions: planning the future".

Contents

LGPS 2008 - LSC Transfers

During January the LGPC Secretariat issued an e-mail to Pension Managers and Pension Client Managers in England which:

a) set out the process for obtaining redundancy estimates from *My Civil Service Pension* of the benefits that would have been payable under the Civil Service Compensation Scheme if the transferred LSC employee had remained in the civil service to the date of redundancy;
b) provided details of a mechanism where, in cases where pension benefits would have been payable under the civil service on or after age 50 and before age 55 the release of pension benefits under the LGPS can be achieved; and
c) confirmed that the deadline to elect for the special pension transfer terms applicable to LSC staff who were compulsorily transferred to local authorities on 1 April 2010 has been extended to 31 March 2011 for the 19 transferees who had asked for consideration to be given to their application to transfer to the Young People's Learning Agency (YPLA). Those administering authorities in whose Funds the 19 staff participate have been contacted directly by the Secretariat.

If any Pension Manager or Pension Client Manager in England has not received the e-mail referred to above, please contact terry.edwards@local.gov.uk for a copy of the e-mail.

The Government's Independent Public Service Pensions Commission

In Bulletin 77 we reported on the LGA's response to the Independent Public Service Pensions Commission's request for further evidence.

Unison, Unite and GMB submitted a joint submission to the Pensions Commission. In summary, the unions:

- do not believe the case for increased employee contributions has been made;
- are supportive of consideration being given to a move to a CARE scheme provided the scheme is of no less overall value than the current LGPS;
- do not support the introduction of a hybrid scheme;
- are keen to explore potential savings from shared services or fund mergers in relation to administration and / or investment management costs but recognise this needs thorough investigation (to ensure it doesn't actually lead to increased costs); and
- want open admission agreements as the norm on outsourcing with the letting authority retaining responsibility for pension costs as a "pass through" cost.

The NAPF has also responded to the Commission. NAPF consider a CARE scheme as the best option for the public sector pension schemes. NAPF's suggestion of a CARE scheme is based on the following points:

- in a CARE scheme risks are shared more effectively between employers and employees. The Government, and therefore the taxpayer indirectly, would have less risk to bear;

- a CARE scheme would build on the best features of the current system, thereby ensuring the transition to the new scheme would be quicker and easier to implement and scheme administrators would be able to provide high quality and efficient administration and governance;
- it will protect the lower paid employees in the public sector who do not receive significant salary increases towards the end of their career;
- benefits could be capped and top-up money purchase arrangements could be made available; and
- it will produce more predictable benefits than the other options so will provide greater transparency and will be easier to administer.

NAPF further argued that the future costs of the public sector pensions could be controlled by amendments to the Normal Retirement Age, accrual rates, employee contributions and the level of indexation.

Increase in employee contributions

During his speech on the Public Sector Spending Review on 20 October 2010 the Chancellor of the Exchequer announced that the Government intends to implement progressive changes to the level of employee contributions that lead to an additional saving by 2014/15 equivalent to three percentage points on average, to be phased in from April 2012 (with potential protection for the lower paid). A discussion paper on possible contribution rates in the LGPS was issued for discussion at the Policy Review Group on 25 January 2011 and the members of the PRG expressed concerns about the potential level of increases.

LGPS (Scotland) 2008 – draft LGPS Amendment (Scotland) Regulations 2011

The LGPC has responded to SPPA's consultation on the draft LGPS Amendment (Scotland) Regulation 2011.

Draft Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011

On 22 December 2010 DCLG issued the draft Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011.

The draft regulations revoke the extant provisions of the Local Government (Discretionary Payments) Regulations 1996 covering:

(Part V) Injury Allowances;
(Part VI) Gratuities; and
(Part VII) Miscellaneous and Supplementary (covering appeals).

and provide revised regulations allowing local authorities to deal with injury allowances and appeals at local level. The deadline for comments on the draft regulations is 31 March 2011.

Draft LGPS (Benefits, Membership and Contributions) Regulations 2011

On 24 December 2010 DCLG issued the draft Local Government Pension Scheme (Benefits, Membership and Contributions) (Amendment) Regulations 2011.

The draft regulations make a small number of minor technical or clarificatory amendments to ill-health related provisions in the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.

The deadline for comments on the draft regulations is 28 January 2011.

The LGE Compensation, Severance and Redundancy Payments: Guide for Practitioners

The LGE has published the latest version of its "Compensation, Severance and redundancy payments: a guide for practitioners" in England and Wales. A copy of the guide has been sent to all Pension Managers and Pension Client Managers in England and Wales. Details of how to obtain further hard copies and how to access a pdf version on line are contained on the LGE website. The LGE also intend to produce an updated guide for Scotland.

Redundancy Payments

The Employment Rights (Increase of Limits) Order 2010 [SI 2010/2926] came into force on 1 February 2011. It increased the maximum "week's pay" for calculating a statutory redundancy payment from £380 per week to £400 per week where the appropriate date falls on or after 1 February 2011. In the case of entitlement to a redundancy payment by virtue of section 135(1)(a) [dismissal by reason of redundancy] or section 135(1)(b) [lay-off or short time] of the Employment Rights Act 1996, the appropriate date means the relevant date as defined by, respectively, sections 145 or 153 of that Act.

Unauthorised pension payments

The Secretariat has received a number of enquiries on how to calculate the tax charge on a pension, as defined by paragraph 2 of Schedule 28 to the Finance Act 2004 (FA04), to which entitlement under the scheme arises before age 55 but which are unauthorised pension payments. HMRC have confirmed in an email that it is each of the individual pension payments made before age 55 which are unauthorised, but not any payments made on or after age 55.

Section 164(1) of FA04 sets out the **authorised** member payments that may be made to a scheme member by a registered pension scheme. These include pensions permitted by the pension rules in section 165 (for pensions payable to members). Pension Rule 1 says that, to be an authorised payment, the payment must not be made before the member reaches normal minimum pension age (except in the case of qualifying ill-health pensions). In essence, for a member without age 50 protection under FA04, payments of pension made before age 55 are allowed but, by virtue of Pension Rule 1, these payments (other than in the case of qualifying ill health pensions) are unauthorised payments. Once the member reaches age 55, subsequent payments of pension are authorised.

So it is only each one of the individual pension payments made before the member reaches age 55 that are unauthorised, not any of the payments made on or after age 55.

The unauthorised payment tax liability therefore attaches to the individual pension payments made before age 55 rather than capitalised value of the pension (i.e. the initial rate of pension x 20).

For a lump sum to be a pension commencement lump sum (PCLS), it must be paid when the member has reached normal minimum pension age (unless it is paid in respect of a qualifying ill-health pension). So, apart from qualifying ill health cases, or cases where a member has a protected age 50 minimum pension age under FA04, a lump sum paid before age 55 cannot be a PCLS and will be an unauthorised payment.

Where a lump sum is taken, the aggregate value of the lump sum and the pension payments in the first year are likely to exceed 25% or more of the value of the members rights so all the unauthorised payments in that year (i.e. the lump sum and the pension for the year) will be liable to the 15% unauthorised payment surcharge under section 209 of FA04 in addition to the 40% unauthorised payment tax charge under section 208 of FA04. The lump sum will thereafter drop out of the equation, and subsequent pension payments made before age 55 will be liable only to the 40% unauthorised payment tax charge under section 208 of FA04. There will also be liability to the scheme sanction charge.

HMRC guidance on increase in minimum retirement age from 50 to 55

HMRC have issued a new factsheet covering questions related to the increase, from 6 April 2010, in the minimum retirement age.

Restriction of pensions tax relief

HMRC have created a webpage entitled "How does the reduced annual allowance affect me?" The page has a brief preamble on the new annual allowance (AA) regime followed by more than 30 questions and answers in which HMRC indicate how the new regime will work.

On 30 November, HM Treasury published a discussion document entitled "Options to meet high annual allowance charges from pension benefits". The Government "plans to legislate for individuals to meet AA tax charges from their pension in Finance Bill 2011". The closing date for responses to the discussion document was 7 January 2011 with the intention that the Government will publish the draft legislation by February which will permit scrutiny of the proposed amendments to the Finance Act 2004.

The discussion sets out the guiding principles which will underpin any amendments to the current regime. These are:

- meeting any AA charges from pension benefits is not intended to offer individuals any advantages in terms of the tax charges he or she is required to pay. Permitting individuals to defer meeting the tax charges is to ensure the payment is manageable rather than the individual reducing the amount of tax charge they pay;
- the Government will collect all of the tax charges due;
- the Government wants to collect the AA tax charges as soon as possible; and
- the Government wants to minimise the administrative impact on individuals, employers, pension schemes and HMRC.

Default Retirement Age (DRA)

Earlier this month, the Department for Business, Innovation and Skills (BIS) published its response to the consultation on the removal of the DRA. The response confirms that the Government intends to go ahead with its plan to replace the DRA with the new concept of the Employer Justified Retirement Age which will operate under the legislation contained within the Equality Act 2010. The Government has also confirmed that Schedule 6 to the Employment Equality (Age) Regulations (EAR06) will also be removed.

The Government has scheduled 6 April 2011 as the effective date for the new regulations, subject to Parliamentary procedures. From that date, employers will be unable to issue retirement notifications under the DRA procedure. Employers can issue notifications prior to 6 April 2011, provided that the employee's retirement will occur before 1 October 2011. It will be impossible to use the DRA procedure for retirements which are planned for after 30 September 2011. An employer will have to reply upon the short notice provisions (under which an employee can claim a maximum of 8 weeks' wages) where an employer wishes to retire an employee using the DRA procedure during the very brief period between 30 March and 6 April 2011.

The response to the consultation document reveals that the majority of respondents were concerned about relying on unfair dismissal and age discrimination legislation after the intended removal of Schedule 6 to EAR06. Respondents believed that there would be an increase in claims for unfair dismissal and age discrimination dismissals, which are based on capability and performance procedures, will also increase.

The Government has addressed concerns surrounding the provision by employers of group risk benefits such as income protection, death in service benefits or health insurance. There will be an exception to the general principle of equal treatment on the grounds of age which will permit employers to withdraw such benefits on the attainment of State Pension Age by the employee.

Not surprisingly, given the tight timetable, a number of employers are concerned about the short time available to adapt their procedures for dismissals. As part of the preparations for the removal of DRA, the DWP have issued new guidance under its Age Positive initiative and ACAS has published an advisory booklet entitled "Working without the default retirement age". There is also guidance on "Managing without a fixed retirement age" on the Business Link website.

HM Treasury consultation on early access to pension savings

HM Treasury have published a consultation document entitled "Early access to pension savings". The background is that Government wants to encourage more people to save because recent levels of saving have been too low. The Government believes saving will increase if there is greater flexibility and by promoting personal responsibility when making financial choices.

The state pension alone will not provide enough income for individuals in retirement even with triple guarantee announced in the emergency Budget (June 2010). Individuals will need to augment their state pension with their own pension provision. The Government has already taken steps to encourage private pension saving through the auto-enrolment legislation but is keen to find further methods.

One option the Government is considering is early access to pensions because it could encourage more pension saving or provide flexibility for individuals facing financial hardship and give more choice during the accumulation of pension savings. Early access, on the other hand, could have an adverse effect on retirement income in the long run.

The government is requesting all interest parties to submit evidence or research on the possibility of early access to boost pension savings, the risks and complexities involved and whether there is a best way to implement early access to pension savings.

The closing date for the consultation exercise is Friday, 25 February 2011.

HMRC pension scheme inspections

The HMRC's Pension Scheme Services (PSS) have changed their inspections regime as part of the modernisation of the pensions audit process. PSS will still visit scheme administrators as part of the new regime but administrators will have to provide more information in advance of any visit via the completion of a pre-inspection questionnaire. The intention behind the questionnaire is to assist inspectors in understanding how a scheme is administered and "to identify any specific areas where assurance is required". The questionnaire will request information on the following:

- the IT systems used;
- how Relief at Source and repayment of tax claims are compiled;
- how data is identified, extracted, and reported at the appropriate time to make returns; and
- the scheme (or LGPS fund) investment policy.

Inspectors can organise a visit based on the information from the questionnaire which will reduce the length of the visit. Any compliance issues will be addressed and tax charges will be raised where necessary. Scheme administrators can request advice from investigators on compliance issues in respect of scheme administration.

Review of auto-enrolment

Bulletin 72 (July 2010) contained an article which reported that the Government was going to review the auto-enrolment legislation with the intention of making auto-enrolment work. The Review's panel accepted, as a starting point, that auto-enrolment should go ahead but concluded that certain aspects of the legislation needed reconsideration. In summary, the Review panel decided that:

- the earnings threshold, at which an employee is automatically enrolled into an occupational pension scheme, should be aligned to the income tax personal allowance;
- once an individual's earnings are above the threshold, contributions will be payable on earnings over the national insurance primary threshold;
- employees will be able to opt into their occupational pension scheme and receive the benefit of an employer contribution if their pay falls between the two thresholds;
- there should be an optional waiting period of up to 3 months which employers can operate before a new employee needs to be automatically enrolled but employees should be able to opt in during the waiting period; and

- employers should be granted flexibility regarding the date they re-enrol employees who have previously opted out by allowing a 6 month window for this to be carried out.

More information on the review of auto-enrolment is available from the DWP website.

Following on from the recommendations of the Review panel the Pensions Bill 2011

- introduces an earnings trigger of £7475 for eligibility for auto-enrolment
- allows employers to delay auto-enrolment for 3 months from the employer staging date, the first day of the employee's employment, the day the employee reaches age 22, or the day the employee reaches the earnings trigger. An employee can, however, elect to join the scheme if they wish during the 3 month waiting period.

Bits and Pieces

LGPC Communications

Updated Guides and Leaflets

For employees in England and Wales

The LGPC has updated the leaflet "Options available if you have previous LGPS benefits" (December 2010). An updated designed version of the "Brief Guide to the LGPS" will be available on the LGE website very shortly. Pension managers will be notified when this is available.

For councillors in England and Wales

The guide and the introductory leaflet to the LGPS for eligible councillors in England and Wales have been updated (December 2010).

For employees in Scotland

The LGPC has updated the guides and leaflets for employees in Scotland (January 2011).

All guides and leaflets are available from the LGE website.

Timeline Regulations

There have been no updates to the Timeline Regulations website this month.

Occupational Pensions survey - Final salary scheme closures

At the end of last year, the publication Occupational Pensions conducted a survey on defined benefit schemes. The majority of final-salary schemes no longer accept new entrants and the trend is now to close the scheme for all future service accrual. This has continued apace in the past 12 months. In a small sample of 30 organisations, 26 have made or are planning changes to the pension scheme which will affect existing employees. This is a higher percentage than the survey undertaken 12 months previously.

In 22 of the 26 cases, the closure of the final-salary scheme to future accrual has been replaced with a defined contribution scheme. Three have switched from final-salary to CARE and one scheme, which had previously switched from final-salary to CARE no longer permits any future accrual.

The Social Market Foundation – Public Sector Pensions: Planning the Future

The Social Market foundation has published a collection of essays entitled "Public Sector Pensions: Planning the Future". The essays discuss the provision of public sector pensions from a variety of perspectives.

Legislation

United Kingdom

SI Reference	Title
2010/2955 (L.17)	The Family Procedure Rules 2010
2010/2961	The Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) (Amendment) Order 2010
2010/2986 (L.18)	The Family Procedure (Civil Partnership: Staying of Proceedings) Rules 2010
2010/2996 (c.37)	The Superannuation Act 2010 (Repeals of Limits on Compensation) Order 2010

Northern Ireland

SR Reference	Title
2010/410	The Occupational Pension Scheme (Revaluation) Order (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

LGPC Contact Details

Terry Edwards (Head of Pensions)

Telephone: 01954 202 787 or 0207 187 7346
Email: terry.edwards@local.gov.uk

Tim Hazlewood (LGPC Training & Development Manager)

Telephone: 01455 824 850
Email: tim.hazlewood@local.gov.uk

Irene Wass (LGPC Communications Officer)

Telephone: 01246 414 902
Email: irene.wass@local.gov.uk

Elaine English (LGPC Executive Officer)

Telephone: 0207 187 7344
Email: elaine.english@local.gov.uk

Dave Friend (LGPC Pensions Adviser)

Telephone: 01457 859 016
Email: david.friend@local.gov.uk

Alison Hazlewood (Part-time Administration Assistant - Training & Development)

Email: alison.hazlewood@local.gov.uk

Distribution sheet

Pension managers (internal) of administering authorities
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LGPC
Local Government Employers
Local Government House
Smith Square
London, SW1P 3HZ

or email: david.friend@local.gov.uk
tel: 01457 859016