



Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 107 – September 2013

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

Please contact Mary Lambe with any comments on the contents of this Bulletin or with suggestions for other items that might be included in future Bulletins. [LGPC contacts](#) can be found at the end of this Bulletin.

Contents

[LGPS 2014](#)

[LGPS Regulations 2013 Communications](#)

[News and Updates](#)

[GAD Guidance: Revised Factors for pre 1 April 2012 ARC Contracts](#)
[The Pensions Regulator: Overview of public service pensions governance published](#)
[Application of GMP for deceased members](#)
[Nominated co-habiting partners – the Brewster judgment](#)
[Automatic enrolment – qualifying scheme, new certification guidance](#)

LGPS 2014

LGPS Regulations 2013

The Local Government Pension Scheme Regulations 2013 (SI 2013/2356) were made on the 12 September and laid before parliament 19 September 2013, coming into force 1 April 2014. The regulations can be found on the government's [legislation website](#). Over the coming months they will be added to the new website for LGPS 2014 regulations www.lgpsregs.org.

Communications

An [updated draft communications plan \(version 3\)](#) for LGPS 2014 was published on 25 September 2013 on the [LGA's website](#). This version includes additional information on planned scheme guides for 2014 as well as updated timetabling information on the work of the various communication sub-groups and when items of communication are due to be released. One change from the previous version of the plan is that the next set of three topic based videos will now be released at the end of October alongside the re-launching of the scheme members' website, www.lgps2014.org which, in the coming month, will be updated in line with laid regulations. This is to ensure that all information released is done so in a consistent manner where all messages are the same across the various layers of communications being prepared.

News and Updates

GAD Guidance: Revised Factors for pre 1 April 2012 ARC Contracts

In [Bulletin 100](#) an update on [revised factors for pre 1 April 2012 ARC contracts](#) was provided which came into force from 1 April 2013.

We noted in this update that a number of funds had contacted the LGPC secretariat regarding the correct indexation rate to use for ARC contracts taken out prior to 1 April 2012. We stated that:

Our understanding (as outlined in paragraph 10.2.10 of Annex A of the Guidance) was that the additional pension bought under a pre 1 April 2012 ARC contract is increased by the Retail Prices Index (RPI) between the date of the first payment and the date of leaving, and thereafter (both during any period of deferment and when in payment) the additional pension is increased by the RPI (not the Consumer Prices Index (CPI)). However, the point has been made that once a member has ceased membership of the LGPS the Pensions (Increase) Act 1971 applies to deferred pensions and pensions in payment from the LGPS (and the ARC pension is a pension payable from the LGPS).

We also outlined that we had raised this with DCLG who were seeking further advice on the issue. This month we received a response from DCLG which stated that the additional pension purchased under all ARC contracts taken out pre 1 April 2012 should, in accordance with paragraph 10.2.10 of Annex A of the [current GAD guidance](#) is to be increased with reference to the RPI, both from the date of the first contribution to the date of the award of benefits, and once the additional pension is in payment. DCLG went on to confirm that "we are of the view that the Pensions (Increase) Act 1971 does not prevent differential treatment" i.e. the Act does not debar a different increase (RPI) being applied to a pre 1 April 2012 ARC benefit and CPI to other pensions.

The Pensions Regulator: Overview of public service pensions governance published

The Pensions Regulator (tPR) published their first report on governance and administration of public service pension schemes, together with the findings of a research survey which gives an overview of current arrangements. To view the report visit the [tPR's website](#). In addition tPR are expected to consult on regulatory strategy and codes of practice later in 2013.

Application of GMP for deceased members

A fund has brought to the attention of the Secretariat correspondence they have received from HMRC regarding the application of GMP for deceased members.

Uprating survivor's GMPs before State Pension Age

Where there is an entitlement to a Widowed Mother's Allowance, Widow's Pension or Widowed Parent's Allowance (and Widower and Civil Partner equivalents), the pension scheme is only responsible for paying annual increases of up to 3% on the post-88 GMP because the state will be paying any excess over 3% along with the state benefit.

If there is no entitlement to one of these benefits however, or when entitlement ceases before the survivor's State pension age, the scheme assumes responsibility for all increases (including on any pre and/or post-88 GMP) until the survivor's State Pension Age. For example, in the majority of cases where Widowed Parent's Allowance is claimed, the AP will be greater than the GMP. However, when the youngest child leaves full time education, the Widowed Parent's Allowance is stopped. Similarly, if the surviving spouse remarries or lives with another person as a husband or wife, the State will stop the Widowed Parent's Allowance. As the widow/er or surviving civil partner no longer receives any payment from the State, the AP becomes less than the GMP and the scheme would assume responsibility for all increases.

Uprating survivor's GMPs from State Pension Age

Where there is an entitlement to a Category B State retirement pension, the pension scheme is only responsible for paying annual increases of up to 3% on the post-88 GMP because the state will be paying any excess over 3% along with the benefit (unless the administering authority receives an AP less than GMP notification).

Notification of GMP, etc

Where the deceased and the spouse are both over SPA, it is DWP's responsibility to issue BR431 to the scheme showing the GMP amount. However, this is a clerical form. If the administering authority has not received this form, they should contact:

Glynis Surrey
Room TA112
DWP Tyneview Park,
Newcastle upon Tyne
NE98 1YX.

who will look into this and issue BR431 where appropriate.

For other scenarios, i.e. where the spouse is under SPA, form CA1633 is issued by HMRC where a successful Bereavement Benefit claim has been made by the spouse. However, there is no subsequent notification to inform the administering authority when the Widowed Parent's Allowance is stopped and the scheme becomes responsible for all increases. Clearly, there is a danger that administering authorities will not be aware that they should be providing such increases and so administering authorities will need to either:

- a) make ongoing enquiries in each case, or
- b) rely on the recipient of the survivor's pension from the LGPS to inform the administering authority what their state pension circumstances are and to provide updates as and when their state pension circumstances change.

In the absence of any information the administering authority will either have to:

- a) assume that the recipient of the survivor's pension from the LGPS is in receipt of a state benefit and apply WGMP, potentially underpaying PI in some cases, or
- b) assume that the recipient of the survivor's pension from the LGPS is not in receipt of a state benefit and assume responsibility for increasing the full pension, potentially overpaying PI in some cases.

Nominated co-habiting partners – the Brewster judgment

In [Bulletin 98](#) we reported on the decision in the Brewster case and reported that NILGOSC and the Department for Environment (DoE) had decided to appeal the decision.

On 1 October 2013 the Court of Appeal in Northern Ireland determined, in a majority 2:1 decision, to allow the appeal by NILGOSC and the Department for Environment (DoE). The Court of Appeal determined that the requirement for a member to complete a declaration on a nomination form signed by both parties and notified to the administering authority is not unjustified or disproportionate and gives rise to no discrimination under Article 14 of the European Convention on Human Rights (ECHR) and Article 1 of the First Protocol of that Convention. The requirement for a signed nomination form is an integral part of the scheme (rather than an 'additional hurdle') and the requirement for a nomination form had not been shown to be 'manifestly without reasonable foundation'. Thus, in the absence of a valid nomination form, no survivor benefit is payable to a co-habiting partner. The judgment should eventually be available on the [Northern Ireland Courts and Tribunals Service](#) website.

Automatic enrolment – qualifying scheme, new certification guidance

The Department for Work and Pensions has updated the following guidance for employers who wish to certify that the scheme they are using as their automatic enrolment scheme in relation to their automatic enrolment duties satisfies the relevant quality requirements.

[Automatic enrolment: guidance for employers on certifying defined benefit and hybrid pension schemes \(September 2013\)](#)

[Automatic enrolment: guidance for actuaries on certifying defined benefits and hybrid pension schemes \(September 2013\)](#)

[Automatic enrolment: guidance on certifying money purchase pension schemes \(September 2013\)](#)

The updated guidance confirms the following:

The legislation provides that defined benefit schemes meet the quality requirements in relation to jobholders who are in contracted-out employment. The contracting-out certificate is taken as evidence that the scheme satisfies the quality requirement provided that all relevant jobholders are in contracted-out employment. Where some of the jobholders are not in contracted-out employment (e.g. because they are over State Pension Age (SPA) and thus not paying National Insurance) it will be necessary for the scheme to satisfy the test scheme standard in respect of those jobholders.

When determining whether a contracted-out scheme satisfies the test scheme standard in relation to a jobholder who is not in contracted-out employment a simplified approach can be used. It will be sufficient to establish that the benefits to be provided for that jobholder and any other members of the scheme who are not in contracted-out employment are calculated in the same way as the benefits which would be provided for the other members of the scheme who are in contracted-out employment. This means that there must be no differences in normal retirement age, accrual rate, definition of pensionable pay, maximum service periods, methods of indexation and revaluation, etc.

If there is no difference in treatment between members who are in contracted-out employment and those who are not, then the scheme satisfies the test scheme standard. If there are any such differences, then the standard approach as set out in the rest of this guidance must be applied.

A career average scheme, whether contracted-out or not, must also provide for at least minimum level revaluation of benefits in-service to be a qualifying scheme. That additional requirement is separate from the process of determining whether a scheme has satisfied the test scheme standard.

Thus, the current LGPS satisfies the test scheme standard because it is a defined benefit contracted-out scheme and there is no difference in treatment between members under and over state pension age.

The LGPS CARE scheme to be introduced from 1 April 2014 in England, Wales and Northern Ireland, and from 1 April 2015 in Scotland, will also satisfy the test scheme standard because it will be a defined benefit contracted-out scheme, there will be no difference in treatment between members under and over state pension age, and the minimum level of revaluation of in-service benefits will be met (because the revaluation rate will be CPI).

The LGPC's [automatic enrolment guide](#) will be updated to reflect the revised guidance from DWP.

Useful Links

[The LGA Pensions page](#)

[The LGPS members' website](#)

[The LGPS 2014 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.

[The Timeline Regulations](#)

Pensions Section Contact Details

Jeff Houston (Head of Pensions)

Telephone: 020 7187 7346

Email: jeff.houston@local.gov.uk

Terry Edwards (Senior Pensions Adviser)

Telephone: 01954 232 834

Email: terry.edwards@local.gov.uk

Tim Hazlewood (Pensions Training & Development Manager)

Telephone: 01455 824 850

Email: tim.hazlewood@local.gov.uk

Elaine English (LGPS Executive Officer)

Telephone: 020 7187 7344

Email: elaine.english@local.gov.uk

Mary Lambe (Pensions Adviser)

Telephone: 020 7187 7374

Email: mary.lambe@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
Pension managers (outsourced) and administering authority client managers
Officer advisory group
Local Government Pensions Committee
Trade unions
CLG
COSLA
SPPA
Regional Directors
Private clients

Copyright

Copyright remains with Local Government Group. This Bulletin may be reproduced without the prior permission of LG Group provided it is not used for commercial gain, the source is acknowledged and, if regulations are reproduced, the Crown Copyright Policy Guidance issued by HMSO is adhered to.

Disclaimer

The information contained in this Bulletin has been prepared by the LGPC Secretariat, a part of the LG Group. It represents the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the LG Group for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in this Bulletin. Whilst every attempt is made to ensure the accuracy of the Bulletin, it would be helpful if readers could bring to the attention of the Secretariat any perceived errors or omissions. Please write to:

LGPC
Local Government Group
Local Government House
Smith Square
London, SW1P 3HZ

or email: [Mary Lambe](mailto:Mary.Lambe@lgpc.gov.uk)
tel: 020 7187 7374