



Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 109 – November 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.

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LGPS 2014

LGPS (Transitional Provisions, Savings and Amendment) Regulations 2013

We understand following conversations with the Department for Communities and Local Government (DCLG) that work is ongoing on the preparation of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2013. A number of scheme wide issues outside the gift of DCLG in addition to the requirement to obtain clearance from HM Treasury are adding to the time required to finalise these regulations.

LGPS 2014 Communications

On the 18 November 2013 the LGPS 2014 member website (www.lgps2014.org) was re-launched. This re-launch included a new look for the website as well as updated content and information. The content reflects, where possible, regulations which have been agreed for LGPS 2014. When the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2013 are made and laid this website will be further updated to reflect the content of those regulations.

As part of the re-launch of www.lgps2014.org three topic based videos were also released. Each of the three videos is available with and without subtitles in both English and Welsh. The three topics covered include:

- Contributions and the flexibility to pay more or less
- How is my pension worked out?
- When can I take my pension?

A suite of topic based leaflets were also made available to funds in November 2013. These are available on the [LGA's website](#) and include the following:

- Contributions and the flexibility to pay more or less
- How is my pension worked out?
- When can I take my pension?
- Mythbusting LGPS 2014

Finally an updated LGPS 2014 Communications Plan was also published on the [LGA's website](#) on the 18 November 2013 and includes updated release dates for various communication items as well as additional information including a planned poster, communication items for elected members on LGPS 2014 and the administering authority (scheme manager) guide.

News and Updates

LGPS Scotland – Draft Regulations Consultation

On the 30 October 2013 the Scottish Public Pensions Agency (SPPA) issued for comment draft LGPS (Administration)(Scotland)(Amendment) Regulations 2014. These regulations introduce amendments relating to automatic-enrolment and AVCs. The closing date for technical comments on these draft regulations is no later than close of play on Monday 2 December 2013. To view the consultation documents please visit the [SPPA's website](#).

Scotland LGPS 2015

Agreement on the new design of the LGPS in Scotland from 1 April 2015 as set out in the [draft Heads of Agreement](#) has been reached with local authority employers and trade unions. COSLA leaders approved the new scheme design in September 2013 and

UNISON has also confirmed that they had received an overwhelmingly positive response to the new design with a 94% positive response to the ballot. The key features of the new LGPS 2015 scheme include:

- A Career Average Scheme
- A 1/49th accrual rate
- Inflation protection linked to CPI
- 50/50 option
- Protected final salary benefits for existing members

Further information and material regarding this agreement is expected to be released in due course.

Call for Evidence

On the 15 November 2013, DCLG wrote to LGPS Pension Managers to provide an update on the progress being made following the call for evidence process which closed to responses at the end of September. In this letter it outlined responses are being analysed and have also been shared with the Shadow Scheme Advisory Board. In addition the letter outlined that to complement the Call for Evidence, DCLG and Cabinet Office have commissioned Hymans Robertson 'to undertake some more detailed analysis of three of the potential options for reform'. To view the letter in full please visit the [Shadow Board's website](#) where it can be found under the documents (item 3c) for the Value for Money and Collaboration sub-committee held on the 2 December 2013.

Technical Changes to Automatic Enrolment

A number of technical changes to automatic enrolment legislation have recently come into force. The changes include:

- the introduction of alternative definitions of 'pay reference period'
- extension of the automatic enrolment joining window, the deadline for employers to provide information to workers on their opt in and joining rights and the extension of the deadline for issuing postponement notices from one month to six weeks
- provide that member contributions deducted in the first three months must reach the scheme by the 19th/22nd day of the fourth month
- extension of the period within which an employer must register with the Pensions Regulator after its staging date from four months to five months
- amend the opt-out notice provisions to make clear that schemes can tailor their opt-out notices.

These technical changes will come into force on 1 November 2013, except for the extension to the joining window, extension of the deadlines for issuing postponement notices, providing information to workers and registering with the Pensions Regulator, which will come into force on 1 April 2014.

For full details please read the DWP's '[Technical Changes to Automatic Enrolment document](#)'. In addition the Pensions Regulator (tPR) has updated their guidance following the changes and this guidance can be found on [tPR's website](#).

Probation Trust Industrial Action

The LGPC Secretariat recently received enquiries regarding the treatment of 24 hour strike action taking place across Probation Trusts in England and Wales. The queries raised stemmed from the fact that those members taking part in the strike action are absent for

half of one calendar day and half of the next calendar day i.e. from 12 noon Tuesday 5th November to 12 noon Wednesday 6th November.

Clarification was required as to whether a continuous 24 hour period also constitutes a day in the context of regulation 20 of the LGPS (Administration) Regulations 2008. Regulation 20(1)(a) states that if a person *'is away from work without permission for a period of one or more days during and because of a trade dispute ("a trade dispute absence") ... he may make a contribution for the relevant contribution period at the rate of 16% on his lost pay for that period'*. If a person was absent for one whole calendar day (or more) then regulations 20 would clearly apply.

Having sought an informal view from DCLG they confirmed *'that the word 'day' isn't given any special definition in the LGPS regulations, nor is it defined in the Interpretation Act 1978. It is thus an ordinary English word to be given its ordinary English meaning. We [DCLG] think it has to be interpreted as meaning "a period of 24 hours". There are instances in statute where specific definition has been given to the term - e.g. in the Licensing Act 2003 "day" was defined as a period of 24 hours starting from midnight. Absent any such definition, I doubt it is interpreted as such. There are arguments to the contrary. It has been said in some cases that in English law a day starts at midnight and one could seek to rely on that general assumption. We [DCLG] are of the view that it is not appropriate to rely on common law assumptions to assist in statutory interpretation when there is an Interpretation Act and interpretative provisions in the statute itself. It follows, therefore, that if a person loses pay equivalent to one 5th of what he earns in a normal 5 day week due to strike action lasting 24 hours he has been on strike for a day and is entitled to pay his 16% contribution to cover that period.'*

The LGPC Secretariat view is that were regulation 20 of the LGPS (Administration) Regulations 2008 to cover a period of 24 hours or more then the regulation could have been phrased in this way, but as outlined above it wasn't. To follow the informal view of DCLG would mean that, where the person does not pay for the strike period, their pension record would need to show a break for half a day on each of the two days, something which itself would cause difficulty for most pensions administration software systems.

In addition another matter to consider is that if the person does not pay for the strike period, regulation 9(4) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 only allows final pay to be grossed up where the member is only entitled to count part of the year as a period of active membership. There is an argument that the member is only entitled to count part of the year (because he / she only received pay covering 364 days and did not pay contributions to cover the extra day) and so the final years pay could then be grossed up by 365/364. That adds weight to DCLG's informal view that the period should be treated as a day of 'lost' membership. If the final year commenced on the second day of the strike period the pay in the final year would be grossed up by 365/364.5. So, the informal view given by DCLG has some weight in that it leads to a position in which we can calculate the correct final pay figure for someone who leaves within a year of the strike.

Nonetheless the LGPC Secretariat would find it difficult to arrive at the conclusion where the concept of a day is any consecutive 24 hour period rather than the everyday meaning of a calendar day. For example in the Stone's Justices' Manual 2013, Part II Evidence, Interpretation of statutes and statutory instruments it states that:

- *'A day normally runs from midnight to midnight, but in certain contexts can mean a period of twenty-four hours, or the period between sunrise and sunset.'* and,

- *'The running of a statutory period often excludes the first day and includes the last day, but a number of phrases and words have been construed as meaning clear days, thus excluding the day of the commencing event and the day of the resulting happening.'*

The above statements would seem to suggest that in law a day normally runs from midnight to midnight.

It's therefore clear that there is no definitive answer, and in reality only a Court could deliver such an answer. The view of the LGPC Secretariat is that in the context of regulation 20 of the LGPS (Administration) Regulations 2008 a day means midnight to midnight. Therefore the strike action which took place over the 24 hours from noon on the 5 November to noon on the 6 November 2013 across Probation Trust's in England and Wales would not result in a break in membership in the LGPS. We have also shared the above conclusion with the Probation Association.

Pensions Bill 2013/14

The LGA continues to lobby government as the Pensions Bill 2013/14 makes its way through parliament. The second reading in the House of Lords takes place on the 3 December 2013 with committee stage expected to commence on the 16 December 2013. The emphasis of the lobbying which the LGA is undertaking is to manage the cliff edge which could potentially occur in April 2016 with the increase in National Insurance Contributions for both employees and employers. The LGA believe there are a number of practical options that could ease the impact of this, such as a possible deferral of the ending of contracting out for public service pension schemes or a cash injection by Government into fund deficits, and will be looking to press on Government the benefits of these options in the coming weeks. In addition the LGA is lobbying to ensure the Government recognise the impact on LGPS funds of potentially having to meet the cost of Pensions Increase on GMP.

Centre for Policy Studies – Michael Johnson Paper

On the 25 November 2013, the Centre for Policy Studies published a paper entitled 'The Local Government Pension Scheme: opportunity knocks'. The paper can be found on the [Centre for Policy Studies website](#).

Pensions Team – New Team Members

In [Bulletin 104](#) we outlined that the vacancy left by Irene Wass was due to be filled. Following the recruitment process we now welcome Con Hargrave to the LGA Pensions Team. Con joined the team in mid-November from the London Pensions Fund Authority where he worked on the Employer Services team for six years in varying roles. Amongst other duties, Con will be taking the lead on employer communications in the lead up to the implementation of the new scheme in April.

Liam Robson also joined the team at the end of October. Liam joined from Lane Clark & Peacock LLP and is undertaking the role of Pensions Analyst working specifically on the analysis of the Call for Evidence submissions. Both Liam and Con's contact details can be found at the end of this Bulletin.

Brian Russell

Finally we wanted to make colleagues in the LGPS pension's community aware of the sad news that Brian Russell passed away on the 13 August 2013. Some of you may remember Brian who headed the UK Steering Committee up until 1991.

Legislation

United Kingdom

SI Reference	Title
2013/2818	The Public Service Pensions Act 2013 (Commencement No.2 and Transitional Provisions) Order 2013.

Useful Links

[LGA Pensions page](#)

[LGPS members' website](#)

[LGPS 2014 members' website](#)

[LGPS Advisory Board website](#)

[LGPS 2014 Regulations and Guidance 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](#)

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