

Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 98 – January 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.

This month's [Bits and Pieces](#) includes items on [LGPC Bulletins](#) and [LGPC Circulars](#).

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Scheme Regulations and Guidance

Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2012

[The Local Government Pension Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012](#) (SSI 2012/347) come into force on 1 February 2013.

The main changes introduced through SSI 2012/347 relate to Annual Allowance (scheme pays) and automatic enrolment as well as amendments to clarify some existing provisions in scheme regulations. The LGPC Secretariat will update the employee guides and leaflets to the LGPS for employees in Scotland to ensure the information is up to date and in line with the Miscellaneous Regulations.

[SSI 2012/347](#), and the amendments to the LGPS Benefits, Membership and Contributions, Transitional Provisions and Administration (Scotland) Regulations 2008, will be added to the Timeline Regulations website in due course.

Automatic Enrolment

LGPC Automatic Enrolment Guide - Updated

The LGPC Automatic Enrolment Guide has been updated and version 5.1 is now available on our website. Please [click here](#) to read the amended guide. A copy showing the tracked changes since version 5.0 has also been added to the LGE website.

Information on NEST (National Employment Savings Trust)

[Bulletin 96](#) included information on NEST and provided relevant links and contact information. It has come to light that the email address quoted was incorrect; the correct email address to contact NEST is listed below.

Email: employer.enquiries@nestpensions.org.uk

LGPS 2014 Update

Joint Statement

The LGPS 2014 project board released a [joint statement](#) on the 17 January 2013 which contained information on the current Statutory Consultation, progress on workstream 2 issues, and further details on the likely timetable of events for the coming months as well as planned communication initiatives relating to LGPS reform.

LGPS 2014 – Website

The LGPS 2014 website www.lgps2014.org has now been launched as the national website for scheme members on the reform of the LGPS from 1 April 2014. The site contains information on the new scheme including member scenarios and a dedicated area for news and updates. To keep informed of updates to the website you can subscribe to receive [news alerts](#).

LGPS 2014 – Communication

Members of the Communication Working Group have started work with the LGPS 2014 project team to develop various methods of communication to inform members of the scheme about the scheme changes from April 2014.

Five different areas are being developed including:

- leaflets and paper-based information
- benefit modellers
- videos and podcasts
- social media
- PowerPoint presentations.

The first meetings of the leaflets and paper-based information group and the social media group took place in November and the other groups are due to meet up in the coming months. Further updates on the progress of these groups and the development of communications for LGPS 2014 for scheme members and employers will be included in future bulletins.

LGPS 2014 – Timetable

Employers and administering authorities are reminded that the Statutory Consultation as outlined in [Bulletin 96](#) closes on 8 February 2013. The Local Government Association (LGA)/Local Government Pensions Committee (LGPC) are currently putting together a formal response to the consultation. A copy of the LGPC Secretariat's initial comments on the draft regulations was issued to all LGPS Pension Managers and Client Managers on 30 January 2013 asking that any additional comments, particularly on matters that the Secretariat has not already picked up on, should be sent to Terry Edwards (terry.edwards@local.gov.uk) as soon as possible so that the Secretariat can consider including them in the LGA/LGPC formal response to DCLG. Alongside this formal consultation response, work is on-going between the LGA, trade unions and the Department of Communities and Local Government (DCLG) on the items which need to be considered as part of the transitional regulations. A separate consultation is expected to commence on these transitional regulations at the beginning of March 2013. In addition a further set of regulations are expected later in the year covering the areas of governance and cost management as well as other remaining items from the LGPS administration regulations which will need to be provided for from April 2014.

Given the additional volume of work which members of the LGPC Secretariat are undertaking at the moment response times to queries from employers and administering authorities will be longer than usual. Please bear with us during this particularly busy time and understand that work on LGPS 2014 will take precedence over the coming months.

LGPS 2014 – Rule of 85

A number of funds and employers have mentioned to the LGA/LGPC that one of the most frequent questions they receive regarding LGPS 2014 is how rule of 85 protections will work. The LGA/LGPC has put together an updated rule of 85 table to take into consideration the changes to the scheme from April 2014.

The information and table outlined below should not be viewed as the definitive position on the rule of 85 from April 2014 but is our suggested understanding of how it might work in the new scheme.

The Rule of 85 table for the 2014 Scheme is as follows:

CRA = Critical Retirement Age

SPA = State Pension Age

	Group 1	Group 2	Group 3	Group 4
Part A	CRA (can't be later than 65)	CRA (can't be later than 65)	CRA (can't be later than 65)	65
Part B1	CRA (can't be later than 65)	Taper (proportion of normal % reduction to 65)	65	65
Part B2	CRA (can't be later than 65)	Taper (proportion of normal % reduction to 65)	SPA	SPA
Part C	SPA	Taper (proportion of normal % reduction to 65)	SPA	SPA
Part D1	SPA	SPA	SPA	SPA
Part D2	65	65	65	65

Part A = membership to 31 March 2008

Part B1 = membership 1 April 2008 to 31 March 2014

Part B2 = membership 1 April 2014 to 31 March 2016

Part C = membership 1 April 2016 to 31 March 2020

Part D1 = membership 1 April 2020 onwards (including Part D1 benefits as defined in the notes below)

Part D2 = membership defined as D2 membership in the notes below.

Notes:

1. The 85 year rule does not apply to voluntary retirement aged 55 and over and under age 60.
2. Membership credited under Regulation 84 of the Local Government Pension Scheme (Administration) Regulations 2008 (the "Administration Regulations") or

- equivalent previous Regulations (transferred-in membership) in respect of Group 1, 2 or 3 members should be treated as Part A membership if the member was an active member immediately before 1 April 2008 or if the transfer occurred before 1 April 2008. Other membership credited under Regulation 84 of the Administration Regulations should be treated as Part D2 membership. Pension purchased by a transfer in under the 2013 Regulations will purchase Part D1 benefits.
3. Membership credited under Regulation 55 of the 1997 Regulations or equivalent previous Regulations (Added Years) should be treated as Part A membership if the election was before 1 October 2006. Other membership under Regulation 55 of the 1997 Regulations (where the contract was taken out between 1 October 2006 and 31 March 2008) should be treated as Part D2 membership.
 4. Membership credited under Regulation 40 of the Administration Regulations or equivalent previous Regulations (employer Augmented Membership) in respect of Group 1, 2 or 3 members should be treated as Part A membership if it was credited before 1 April 2008. Other membership under Regulation 40 should be treated as Part D2 membership.
 5. Pension awarded under Regulation 23 of the Administration Regulations (Added Pension) should be treated as if it is payable unreduced from age 65 or, if awarded under the 2013 Regulations, as if payable from Normal Pension Age.
 6. A transfer credit awarded under protected Regulation 66(8) of the 1997 Regulations or equivalent previous Regulations should be reduced if it is taken earlier than the retirement age assumed for the calculation of the credit. For example, transfer credits awarded after 1 September 2011 and before 31 March 2014 are calculated based on a retirement age of 65. Therefore, if taken before age 65 a reduction factor should be applied to the pension based on the period from the date of early retirement to age 65. Similarly, if a credit was previously calculated based on a member's CRA, then if taken early the pension should be reduced based on the period from the date of early retirement to the CRA.

Public Service Pensions Bill update

The draft Public Service Pensions Bill is currently in the House of Lords with the final day of committee stage having taken place on 21 January 2013. The Bill is now due to reach report stage on 12 February 2013 and the LGPS 2014 Project Board continue to make representations to ensure that the Bill effectively implements the Heads of Agreement reached for the LGPS. Numerous amendments have been tabled and one of these which has been approved is the addition of a new clause relating to a Scheme Advisory Board (new Clause 7). Once the report stage has been completed in the House of Lords the Bill will return to the House of Commons and it's expected to receive Royal Assent this spring. For further details on the progress of the Bill please visit the [UK Parliament website](#).

News and Updates

Contribution Banding from April 2013 England and Wales – Updated

In [Bulletin 96](#) we included information on the contribution banding table from 1 April 2013. Please note that the employee contributions rate for 7.2% stated that the whole time equivalent pay range was £46,500 to £87,100 and it should have stated **£46,501** to £87,100.

[Bulletin 96](#) has been updated to show the correct information which is also reflected below.

Whole time equivalent pay range	Employee contribution rate
£0 - £13,700	5.5%
£13,701 - £16,100	5.8%
£16,101 - £20,800	5.9%
£20,801 - £34,700	6.5%
£34,701 - £46,500	6.8%
£46,501 - £87,100	7.2%
More than £87,100	7.5%

Government Actuary's Department (GAD) – Broad Comparability against the LGPS

On the 29 January 2013 GAD made an announcement on their [website](#) to alert practitioners to forthcoming changes to the LGPS regulations which will have implications for GAD certificates when staff eligible for the LGPS are offered membership of a broadly comparable scheme when they are transferred to an external providers. Please visit [GADs website](#) to read the announcement in full.

Brewster Judgement: Cohabiting Partners Pension

On the 9 November 2012 a high court judge granted the partner (Ms Denise Brewster) of a deceased member of the LGPS in Northern Ireland an application for judicial review. The application challenged the decision of the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) who declined to make payment of a survivor's pension to Ms Brewster following the death of her cohabiting partner, Mr McMullan.

The judge stated that the decision by NILGOSC not to award Ms Brewster a survivor's pension breached her rights under Article 14 of the European Convention on Human Rights (ECHR) read in conjunction with Article 1 of the First Protocol ECHR and discriminated against her on the basis of her status as the unmarried partner of the deceased.

Ms Brewster has been in a long-term relationship with her partner and had been cohabiting for 10 years. The couple were engaged to be married: however, a nominated cohabiting partner's form had not been completed. Mr McMullen died suddenly on 26 December 2006 and at the time of his death he had been employed by Translink for approximately 15 years.

NILGOSC paid half the death grant in respect of Mr McMullan's death to Ms Brewster. However, they declined to pay a survivor's pension in the absence of a nomination form stating that they had no discretion to do so under the scheme regulations.

Ms Brewster challenged this decision on the grounds that cohabiting partners are treated less favourably than married partners by virtue of the requirement placed upon cohabiting partners to make a nomination. The judge in the case observed that the aim of this aspect of the pension scheme was to place unmarried, stable, long-term partners in a similar position to married couples and those in a civil partnership so as to facilitate entitlement to a pension without discrimination on the grounds of status. The judge went on to say that "the unusual feature of this case is that the means [i.e. the requirement for nomination] appear to be inconsistent with the legitimate aim." Having the additional hurdle for cohabiting partners the judge felt was "irrational and disproportionate" and resulted in the means defeating the aim. Justice Treacy allowed the application for judicial review.

NILGOSC and the Department for Environment (DoE) have decided to appeal the decision and it could take a number of months for this appeal hearing to take place. As readers will appreciate the outcome of this decision could have an impact on how the provision of survivor's pensions for cohabiting partners operates within the LGPS as well as other public sector schemes. Information on the outcome of the appeal made by NILGOSC and the DoE will be provided in a future bulletin. If you are interested in reading the full determination please visit the [Northern Ireland Courts and Tribunals Service website](#).

Public Health Transfer – Information for Employers

The forthcoming transfer of staff from Primary Care Trusts (PCTs) to Local Authorities in England under the Health and Social Care Act 2012 will take place on 1 April 2013.

The LGA has been working closely with the Department of Health and the Business Services Authority (BSA - the administrators of the NHS Pension Scheme) to put together guidance to assist employers with this transfer.

Information on the administration of the scheme has been added to the BSAs website. Please [click here](#) to view this guidance note. Employers who will be responsible for administering the NHS Pension Scheme from 1 April 2013 should familiarise themselves with this guidance note.

Further guidance for employers regarding the transfer is being finalised and should be distributed from the LGA and the Department of Health in the coming weeks.

Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006: consultation on proposed changes

On 17 January 2013 the Government issued a consultation on proposed changes to the TUPE regulations. The consultation seeks views on a range of aspects of the current TUPE regulations including:

- service provision changes
- employee liability information
- restrictions on changes to terms and conditions and protection against dismissal
- economic, technical or organisational reasons for dismissal
- duty to inform and consult representatives
- micro businesses

The consultation will close on 11 April 2013, with a view to introducing change in October 2013. Full details of the consultation can be found on the [Inside Government website](#).

Single Tier State Pension – White Paper

The Government has recently set out plans for a new flat-rate state pension which is expected to replace the current system from April 2017.

A [white paper](#) (and subsequent [draft pensions bill](#)) sets out proposals to create a flat-rate pension set above the means test and based on 35 years of National Insurance contributions (NICs). Based on current prices the Government assumes a starting rate of £144 per week which is guaranteed by its 'triple lock' compared to the current basic state pension of £107 per week. The 'triple lock' is a Government guarantee to uprate the basic state pension annually by the higher of 2.5% or the increase in earnings or prices.

The government have also announced that they will carry out a review of the state pension age (SPA) every five years to ensure the system is sustainable with the first review likely to take place in the next Parliament.

The changes will also mean increased employee and employer NICs due to the cessation of 'contracted out' status for the LGPS. This will mean an extra 1.4% in NICs for LGPS members (on earnings between the lower earnings limit and upper accrual point) although some members will see an increase in their overall income on retirement. Also public service employers and private sector employers in public sector schemes will not be allowed to pass on the increase in their NICs to employees through changes to their pension arrangements therefore leading to an increase of 3.4% NICs for employers (on earnings between the lower earnings limit and upper accrual point).

The LGA/LGPC is currently working on the estimated costs to employers if this increase in NICs of 3.4% were to take place from April 2017 and will also be responding to this consultation in due course.

Review of Pensioner Taxation

On 23 January 2013 the Office of Tax Simplification published its final report on pensioner taxation. Their recommendations included simplifying pensioner taxation in two broad parts: legislative change to remove complexity in the tax system, and administrative changes to make it simpler for pensioners to comply with their obligations and claim their entitlements. To read the report in full please [click here](#).

Bits and Pieces

Bulletins

[Bulletin 97](#) was issued to administering authorities in January and contains updated transfer out forms, updating those forms included in [Bulletin 92](#).

Circulars

[Circulars 265](#) and [266](#) have recently been issued. [Circular 265](#) advertises the tenth Annual LGPS Trustees' conference organised by the LGPC. The conference will be held on the 27th and 28th June in Sheffield. [Circular 266](#) contains updated forms for ill-health retirement cases.

Recently the LGPC Secretariat have been informed by funds of cases where tier 3 ill-health benefits are ending (having been in payment for 3 years) whilst the employer hasn't carried out the 18 month review (due in some cases to the employer not undertaking their duty or failing to make contact with the tier 3 pensioner). In light of these cases a fund has shared a copy of their member

review certificate with the LGPC. It provides a backstop for administering authorities requiring that the member signs a form when they are awarded a tier 3 pension making them aware that their pension must be reviewed after 18 months and that they are also obliged to keep their former employer fully informed of any employment they undertake whilst receiving their tier 3 pension. For funds interested in obtaining a copy of this form to use for their tier 3 ill health retirement cases please contact [Mary Lambe](#) via email.

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.

[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

Irene Wass (Pensions - Communications Adviser)

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

Elaine English (LGPS Executive Officer)

Telephone: 0207 187 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

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

or email: [Mary Lambe](#)
tel: 020 7187 7374