

Local Government Pensions Committee  
Secretary, Jeff Houston

## **LGPC Bulletin 119S – October 2014**

This month's summary 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 (Amendment) Regulations Consultation - Governance and Cost Management

On the 10 October 2014, the Department for Communities and Local Government (DCLG) commenced a consultation on draft LGPS (Amendment) Regulations 2014. These draft regulations include a second iteration of the regulations issued for consultation this summer covering the new governance arrangements from next April including the establishment and operation of Local Pension Boards and the Scheme Advisory Board (as required by the Public Service Pension Scheme Act 2013). In addition draft regulations for the new cost control mechanism are included.

The main changes between these new draft governance regulations compared to those issued earlier this year include:

- Draft regulation 106(5) - administering authorities will have discretion and flexibility to determine the terms of reference for their Local Pension Board (rather than it being required to fit within section 270 of the Local Government Act 1972).
- Provisions which barred elected members from sitting on Local Pension Boards have been removed from this new set of draft regulations. Instead a provision has been added which prevents elected members or officers of an administering authority who are responsible for the discharge of any function under LGPS regulations from being a member of a Local Pension Board.

New provisions for both Local Pension Boards and the Scheme Advisory Board include:

- New draft regulations 106(6) and 110(5) which provide that Local Pension Boards and the Scheme Advisory Board are not unduly restricted in the way they choose to discharge their functions under the regulations.

For the Scheme Advisory Board:

- The responsibility for appointing voting members of the Board has been transferred to the Secretary of State (no longer the Chair of the Board with the approval of the Secretary of State).
- Provisions included for the appointment of non-voting advisory members to the Board and any sub-committees (appointments to be made by the Chairman of the Board with the agreement of the Board).

The consultation can be found on the [Government's website](#). Responses to the consultation are invited by the 21 November 2014.

### Guidance on the creation and operation of Local Pension Boards

The Shadow Scheme Advisory Board issued draft guidance for consultation on the 17 October 2014. The draft guidance which deals with the creation and operation of Local Pension Boards is designed to assist administering authorities. The draft guidance has been prepared based on the current iteration of draft regulations and the Pension Regulator's draft code of practice no.14. Should further amendments be made to these draft regulations in advance of the regulations being made and laid before Parliament (or to the draft code of practice no.14) this may require the appropriate amendments to be made to the guidance to ensure it fully reflects legislation. In addition any feedback via the consultation process may result in possible amendments to this draft guidance.

For further information about the consultation and to read the draft guidance please visit the [Board's website](#).

## HR, Payroll and Administration Guides

During September and October the following guides and administration papers were updated for England and Wales:

- [HR Guide](#) (version 3.5) issued 30 October
- [Payroll Guide](#) (version 3.4) issued 30 October
- [Additional Pension Contributions Paper](#) (version 1.5) issued 9 September
- [AVC Scenarios Paper](#) (version 8) issued 16 October
- [85 Year Rule Paper](#) (version 1.8) issued 1 September

Please see the tracked changes versions of each of the above documents for details on the changes that have been made.

## LGPS 2015

### LGPS 2015 Payroll Guide

In September the Payroll Guide for LGPS 2015 in Scotland was published on the [LGPS Regulations website](#) (an updated version was added 30 October 2014 - see tracked changes version for details on the amendments made to the Guide). It's anticipated that the HR Guide will be released in the coming weeks and thereafter a host of administration guides (similar to those produced in England and Wales for LGPS 2014) will be made available on the [LGPS Regulations website](#).

### LGPS (Governance) (Scotland) (Draft) Regulations 2014

The draft governance regulations for the establishment of Local Pension Boards and the Scheme Advisory Board in Scotland were issued for consultation on the 30 September 2014. The consultation period runs until 11 November and the draft regulations can be found on the [SPPA website](#).

## Automatic Enrolment

### Automatic Enrolment Earnings Thresholds Review and Revision 2015/16

On the 15 October the Department for Work and Pensions (DWP) published a consultation on revision proposals for the automatic enrolment thresholds for 2015/2016. The consultation closes on the 25 November.

The Government has decided to consult on four options for the 2015/16 earnings trigger:

- Option 1 – Freeze the trigger at its current level of £10,000
- Option 2 – Raise the trigger by indexation (i.e. to £10,183 if indexed by CPI or to £10,045 if indexed by reference to Earnings)
- Option 3 – Increase the trigger to £10,500 in line with the threshold for paying income tax
- Option 4 – Use the Pension Commission benchmark replacement rate of £9,876 to determine the trigger

The Government is also proposing that the lower earnings threshold (currently £5,772) and the upper limit of the qualifying earnings band at which mandatory employer contributions are capped (currently £41,865) should be equal to the National Insurance Lower Earnings Limit (Primary Threshold) and Upper Earning Limit for 2015/16 (i.e. £5,798 and £42,285 respectively).

The impact of each of these options is explored can be found in the consultation document on the [Government's website](#).

### **DWP consults on draft laws to remove restrictions on NEST**

On the 9 October DWP published a consultation to remove the annual contribution limit and transfer restrictions on pension schemes held with the National Employment Savings Trust (NEST) from 1 April 2017. The consultation closed on the 29 October 2014.

### **TPR automatic enrolment compliance and enforcement bulletin**

The quarterly update from the Pensions Regulator (tPR) on the compliance and enforcement of automatic enrolment reveals that there were 363 cases closed between 1 July and 30 September this year. The total number of cases closed since the start of automatic enrolment is now 1,280. To read the full report, visit [tPR's website](#).

### **TPR publishes automatic enrolment research**

TPR has published research on the awareness, understanding, knowledge, actions and intended actions of employers in relation to automatic enrolment. To read the full report, visit [tPR's website](#).

### **Article on the rise in automatic-enrolment breaches**

Following a Freedom of Information request, tPR have revealed the proportion of automatic enrolment non-compliance investigations resulting in potential breaches has risen from 23% to 47% since January 2014 with the percentage of employers that have faced investigation falling in the same period. To read the article, visit the [Pension Age](#) website.

## **Other News and Updates**

### **Councillor Members' Actuarial Increase for Post Normal Pension Age Retirement**

In [Bulletin 117](#), the LGPC Secretariat confirmed that a slight amendment is required to the late retirement guidance for councillor members. We stated:

#### **Late Retirement Guidance**

**Point raised:** *Should councillor members who leave the scheme on or after 1 April 2014 with an entitlement to a late retirement increase have that increase based on all benefits up to date of leaving or just those up to age 65 given the wording of the latest Late Retirement guidance (dated 26 March 2014).*

**Response:** *Paragraph 1.2 of the Late Retirement guidance dated 26 March 2014 says "This guidance also applies to benefits accrued before 1 April 2014, including members who left active service before 1 April 2014, **and to councillor members.**"*

*However, regulation 26 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 provides that the LGPS Regulations 1997 shall still apply to councillor members. Paragraph 5 of Schedule 8 to the LGPS Regulations 1997 amends regulation 20 of those Regulations and provides that:*

*"(5) Benefits payable to a councillor member who remains in service after his 65th birthday as referred to in regulation 25A(1) (as that regulation applies to a councillor member) shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary in respect of each day that payment of benefits is delayed between his 65th birthday and the date of his retirement."*

*It therefore appears that the Late Retirement guidance dated 26 March 2014 should be used but with one proviso, that benefits accrued post 31 March 2014 should, for the purposes of the guidance, be treated as if it were service accrued pre 1 April 2014 i.e. it has a Normal Retirement Age of 65. DCLG have been notified of this point and a correction slip has been requested.*

Following publication of this article, the LGPC Secretariat received a query regarding the wording used in the LGPC's Guide to the LGPS for Eligible Councillors in England and Wales and whether this accurately reflected the correct position for late retirement for Councillors.

The GAD guidance issued under the 1997 Regulations dated 28 June 2000 (see the [Timeline Regulations website](#)) provided that it was only the benefits accrued up to age 65 that would be increased. When the 2008 Scheme was introduced new late retirement guidance dated 28 April 2008 was issued (see the [Timeline Regulations website](#)) and this was replaced by guidance dated 14 February 2012 (see the [Timeline Regulations website](#)). Those guidance notes did not limit the increase to only the benefits accrued to age 65 but, importantly, only referred to benefits under the 2008 Scheme regulations. The LGPC Secretariat therefore queried with DCLG whether the new guidance or the guidance dated 28 June 2000 should be applied to councillors and were informed that the 2000 guidance should continue to be applied. However, DCLG subsequently changed their position as confirmed in [Bulletin 87](#) (November 2011) which stated:

*“On 20 November 2009 DCLG confirmed that the actuarial increase guidance issued under the LGPS Regulations 1997 should continue to be applied to Councillor members who retire after age 65.*

*At its meeting on 1 December 2011 the Technical Group were presented with a copy of an e-mail from DCLG to an Administering Authority dated 7 July 2011 stating that the current late retirement guidance issued under the LGPS (Benefits, Membership and Contributions) Regulations 2008 should now be applied as “the numbers involved make it impractical to do otherwise”.*

Given the position outlined above this means that page 19 of the LGPC's Guide to the LGPS for Eligible Councillors in England and Wales (current version June 2014) is incorrect (as it still reflects the former DCLG position) and needs to be updated to clearly reflect that any increase is applied to all of the accrued benefits, including those accrued post (Normal Pension Age i.e. post age 65) as per current Secretary of State guidance. This update will be made shortly and the updated version made available on the [LGA's website](#).

### **Pay in Lieu of Holiday Query**

Over recent months the LGPC Secretariat has received an increase in queries relating to pay in lieu of holidays. Whilst the Secretariat acknowledges that employers will have their own arrangements for pay in lieu of holidays which may result in differing scenarios, we believe that it would be beneficial to share the detail of this query for clarification.

Query - Should payments to a casual employee who is a member of the LGPS in respect of accrued holiday be pensionable?

The scenario provided to the Secretariat which accompanied this query was as follows:

- the employee builds up annual leave entitlement on the hours they have worked, banks these hours and takes their annual leave entitlement
- when taking that leave entitlement the employee receives payment from their employer
- should the payment received in respect of this leave entitlement be pensionable?

The response from the Secretariat is that it should be for the following reasons.

Firstly regulation 20 of the LGPS Regulations 2013 covers the meaning of pensionable pay from April 2014. One of the exclusions noted in 20(2) is that *(c) any payment in consideration of loss of holidays*, is not included in an employee's pensionable pay.

The provision to exclude such payments in consideration of loss of holidays was designed to head off the possibility of someone in their final year of service not taking any of their holiday and then getting paid 'pay in lieu of holiday' with a view to inflating their final year's pay. It has remained an exclusion in the Scheme post 1 April 2014 given that the majority of members will have pre 1 April 2014 membership for a number of years to come and therefore have final salary benefits to be calculated. Without this exclusion, a member's final year's pay would have been greater than if the member had taken their paid leave when they should have done.

Casual employees are often paid an increased hourly rate to buy-out their right to holiday entitlement. In essence, such a scenario results in an increased payment to the employee in lieu of those holidays, and such payments would not be pensionable (in line with regulation 20(2)(c)).

However, in the scenario presented above, it appears that the employer is paying an amount of 'pay' due to the employee who has worked sufficient hours to accrue this annual leave. As the employee is taking their leave, it would mean that this employee isn't receiving payment in lieu of holidays and instead in such a scenario they are receiving payment in respect of holidays accrued and therefore such a payment should be pensionable as it's not a payment in consideration of loss of holidays.

### **SF3 Statistics 2013/14 release for England and Wales**

DCLG issued the latest statistics relating to the LGPS for England and Wales on the 29 October. To view the results in full please click on the link below:

- [LGPS SF3 statistics for England 2013/14](#)
- [LGPS SF3 statistics for Wales 2013/14](#)

### **Research published on performance of passive funds**

Charles Stanley Pan Asset has published research entitled "[The Case for a Passive Fund Premium](#)", which reveals that a passive investment strategy could give large DB pension schemes an additional annual return of £3.8m. The research also found that the LGPS could improve performance by £441m a year if £85bn of actively managed investments in listed asset classes were switched to passive strategies.

### **Taxation of Pensions Bill**

[Bulletin 117](#) included details of the Government's response to the Freedom and Choice in Pensions consultation and noted that a Bill covering taxation issues was expected shortly. The Taxation of Pensions Bill has now been placed before Parliament and includes the changes to tax legislation required to enable the flexibility introduced via the Freedom and Choice in Pensions consultation. These new flexibilities are due to take effect from 6 April

2015. The potential impact for the LGPS would be around provisions for AVCs and also for transfers from the LGPS to DC schemes. Once further details on how the provisions of this Bill will impact the LGPS there will be an update in a future Bulletin. To find out more about this Bill visit the [Government's website](#).

### **State Pension Scheme Communications**

On 4 October the Department for Work and Pensions (DWP) launched a new campaign called "Your future, your pension". This is aimed at ensuring that today's workers understand the new State Pension Scheme being introduced in April 2016 and what the reforms mean. As part of this campaign advertisements will be appearing later this year. In addition a new service giving people a personalised written statement of what they can expect to receive under the new system (based on their work history and National Insurance (NI) contributions to date) has been launched. At the moment it is available to approximately 2.5 million people who will reach State Pension age in the first 5 years of the new scheme (currently between April 2016 and August 2021). The service will be expanded gradually over the next 18 months, eventually becoming available to all working age people. For more information visit the [Government's website](#).

### **TPAS publishes annual review**

The Pensions Advisory Service (TPAS) has published its annual review of activities for 2013/14. The review details that TPAS received 974 calls and enquiries about pension liberation and that its new web chat service was used 5,535 times. Visit [TPAS's website](#) for more information.

### **New Pensions Ombudsman Website Launched**

The Pensions Ombudsman has announced that they've launched their new website (<https://www.pensions-ombudsman.org.uk>) to provide simpler, clearer information about what they do and how they can help.

### **State Pension Information - Pension Credit qualifying age?**

The Government recently issued a state pension credit toolkit alongside advice on what the pension credit qualifying age is, details on who may be entitled to receive a pensions credit as well as a quick guide on this topic. For more information visit the [Government's website](#).

### **State pension top-up scheme open for pre-registration**

Individuals can now pre-register to increase the value of their State Pension. The State Pension top-up scheme is open to all those who will have reached State Pension age before 6 April 2016 and it will be a one-off opportunity. Full details can be found on [DWP's website](#).

### **Countdown Bulletin to ending of Contracting-out issue 3**

HMRC has now published [issue 3 of their Countdown Bulletin](#) covering changes to contracting-out due to the introduction of the New State Pension in April 2016.

### **ONS publishes Occupational Pension Schemes Survey**

The Office for National Statistics (ONS) has published [its Occupational Pension Schemes Survey](#), which gathers information about scheme membership, benefits and contributions in order to provide a detailed view of the nature of occupational pension provision in the UK. The report reveals that total membership of occupational pension schemes with two or more members was an estimated 27.9 million in 2013, up by 300,000 compared with 2012.

## Legislation

### United Kingdom

SI	Reference Title
2014/560	The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014

### 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.

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in Scotland.

[Qualifying Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

[The Timeline Regulations](#)

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### **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

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