

Local Government Pensions Committee

Secretary, Terry Edwards

## **LGPC Bulletin 68 - March 2010**

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.

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## **LGPS 2008 - The LGPS (Amendment) Regulations 2010**

The Local Government Pension Scheme (Amendment) Regulations 2010 [SI 2010/528] were laid before Parliament on 4 March 2010 and amend the LGPS Regulations applying in England and Wales. The key amendment is the substitution of the phrase “before 31<sup>st</sup> March 2010” with “before 1<sup>st</sup> April 2010” in regulation 19(2) of the Benefits Regulations. This means that the age 50 protection for employees who were in the LGPS on 31 March 2008 and are being made redundant or retired on business efficiency grounds has been extended by one day i.e. it now covers such members who are retired on 31 March 2010.

The SI adds a new Part 3 into Schedule 4 of the Administration Regulations, detailing the appropriate fund for probation trusts.

The SI also inserts new regulations 16A and 18A into the Benefit Regulations and regulations 88 and 89 into the Administration Regulations in order to deal with the pension protections and bulk transfer terms for staff transferring to local authorities from the Learning and Skills Councils for England.

The Secretariat understands that although most of the transferring employees were in the PCSPS Classic, Classic Plus, Premium or Nuvos schemes, some employees were in the Partnership (stakeholder) scheme. The pensions options material prepared by the Government Actuary's Department, which the transferring employees have been sent, are only relevant to the Partnership members insofar as they describe the future service benefits that the members will be receiving in the LGPS, but they clearly do not specifically refer to Partnership members and so it is not clear to these members exactly how they are to be treated. This lack of clarity is being addressed and GAD are currently preparing a short summary document explaining the terms which are available to Partnership members. This should be issued to the relevant members shortly.

We also understand that the Bulk Transfer terms referred to in regulations 88 and 89 of the Administration Regulations for transferring LSC staff only apply to those who were in the Classic, Classic Plus or Premium sections of the PCSPS; they do not apply to those who were in the Nuvos or Partnership schemes.

### **LGPS 2008 - The draft LGPS (Miscellaneous) Regulations 2010**

The LGPC Secretariat has responded to the CLG consultation on the draft LGPS (Miscellaneous) Regulations 2010. The draft regulations, covering letter from CLG and the LGPC response can be viewed on the [LGE website](#).

### **Amendment to the LGPS (Benefits, Membership and Contributions) Regulations 2007 and the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008**

Paragraphs 15(2)(k) and (l) (Amendment of firefighters' and local government pensions legislation) of Schedule 3 to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 [[SI 2010/234](#)], which came into force on 11 February 2010, amend regulation 20(14) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulation 20(7) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008. The definition of "qualified in occupational health medicine" in those regulations is amended so that the phrase "the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003" is substituted with the words "section 55(1) of the Medical Act 1983".

## LGPS 2008 - Rule of 85

The LGPC has sought Counsel's advice on certain aspects of the 85 year rule protections that apply in England and Wales under the LGPS (Transitional Provisions) Regulations 2008. The instructions to Counsel outlined the difficulties in interpreting the rule of 85 as currently set out in the LGPS (Transitional Provisions) Regulations 2008. The instructions largely reproduced the queries identified in [Bulletin 55](#) and set out the LGPC's understanding of the regulations. The LGPC also sought counsel's advice on whether or not the rule of 85 protection extends to membership which accrues after flexible retirement.

The advice has now been received, and although the Secretariat is unable to copy counsel's advice in full, the key points are summarised below:

- (1) amendments to Schedule 2 to the Transitional Provisions Regulations 2008 are required (i.e. regulation 10 and schedule 2 to the regulations should each refer to both regulation 18 and regulation 30 of the Benefits Regulations);
- (2) a member (active or deferred) at 30 September 2006 does not lose the right to rely on the rule of 85 when they aggregate membership in the LGPS after 31 March 2008, even if there is a break in service. Thus, the scenario 3 cases outlined in [Bulletin 55](#) do not lose the 85 year rule protection upon aggregating benefits;
- (3) the regulations set out the framework which permits the application of actuarial reductions to member's benefits; and
- (4) the GAD guidance is issued alongside the regulations and details the implementation of the actuarial reductions. Therefore, the calculation of actuarial reductions applied to members' benefits should follow the GAD guidance.

## LGPS 2008 - Outsourcing and re-tenders

The Secretariat has received a query regarding 'The Best Value Authorities Staff Transfers (Pensions) Direction 2007' ("the 2007 Direction") made under section 101 of the Local Government Act 2003. The query was:

An employer is re-tendering their leisure services. The original contract started in 1997 and at that time there were no pension protection requirements on outsourcing. From consideration of the 2007 Direction, it would appear that some protection applies as paragraph 9(ii) says-

*(ii) "pension protection" is secured for the transferring original employee if after the change in his employer referred to in paragraph (i)(a) he has, as an employee of his new employer, rights to acquire pension benefits and those rights –*

*(a) are the same as, or*

*(b) count as being broadly comparable to or better than,*

*those that he had, or had a right to acquire, before that change of employer.*

The definition of a transferring original employee encompasses any staff who were originally employed by the local authority and who have since been TUPE'd over [under a second or subsequent generation contract] to the contractors now providing the service under contract to the local authority.

The questioner asked whether:

- (i) the clause 'those that he had, or had a right to acquire, before that change of employer' referred to the rights the employee whilst employed by the local authority or those the employee had with the contractor; and
- (ii) whether the LGPS employer in their tendering process has to make sure any bidders are going to either participate in the LGPS or provide a scheme which is broadly comparable to the LGPS, or whether the second contractor need simply match what the first contractor has provided in terms of pensions

CLG responded to the query in an email. An extract from the response states:

*"...in our view the alternative [the questioner] gives that contractor number 2 needs "to simply match what contractor number 1 has provided in terms of pensions" is correct.*

*The Direction is not retrospective and applies to new contracts and tenders of contracts made on and after 1 October 2007. However, although the Direction does not apply to contracts or tenders made before 1 October, the employees who gain pension protection on a transfer on the occasion of a contract made between a local authority and a contractor from 1 October 2007 include those who were employed by the local authority and left that employment on a letting of a contract before 1 October 2007 as long as they have been in TUPE-transferred employment in connection with the services since then.*

*This is dealt with in paragraphs 7 -10 of the Direction, which are intended to ensure that authorities in second, third (and so on) generation transfers contract to provide "pension protection" for those ex-authority employees who transfer between contractors as a result of the authority's contract and the effect of TUPE. These employees are the original transferring employees, as defined. Paragraph 9(ii) of the Direction confirms that the test of broadly comparable is in relation to the position with the immediately previous contractor (i.e. not the authority).*

*The only time the comparison is with the LGPS is when the employee moves from employment with the LA to the contractor, which is dealt with in paragraphs 4 - 6 of the Direction and applies to contracts entered into from 1 October 2007."*

In summary, this means:

(a) for contracts first let on or after 1 October 2007 by best value authorities in England and police authorities in Wales, the transferring staff who are in (or eligible to be in) the LGPS at the point of transfer must be offered the LGPS or a broadly comparable scheme, and this protection carries on at each subsequent TUPE transfer (subject to the member of staff remaining eligible for membership of the LGPS); and

(b) for contracts first let before 1 October 2007 by best value authorities in England and police authorities in Wales, where the contract is re-let on or after 1 October 2007 the original transferring staff (i.e. those who were transferred from the local authority when the contract was first let) must be offered membership of a scheme that is broadly comparable to

the scheme they were in prior to the re-let. If prior to the re-let of the contract the staff were in, or eligible to be in, the LGPS or a scheme broadly equivalent to the LGPS, then the new contractor would have to provide access to the LGPS or, alternatively, to a broadly comparable scheme. If, however, the staff were in a different scheme (e.g. one of lesser value than the LGPS, which could be the case given that the Direction did not apply when the contract was first let), all the new contractor has to do is provide a scheme for the original transferring staff which is broadly equivalent to the scheme that the outgoing contractor had offered them.

### Age 50 protections and implications of re-employment

HMRC have published [guidance on the loss of protection](#) due to employment after taking benefits between 50 and 54.

The Secretariat has considered the guidance and the only cases within the LGPS that would appear to be affected are redundancy or business efficiency retirements in Scotland where the member:

- was a member of the LGPS (Scotland) on 5 April 2006, and
- is made redundant or retired on the grounds of business efficiency on or after 6 April 2010, and
- is aged 50 or over but under age 55, and
- is re-employed within one month of retirement by a (non-admitted body) employer in Scotland offering membership of the LGPS and the person is still under 55 at the date of re-employment, or
- is re-employed within one month of retirement by an admitted body in Scotland offering membership of the LGPS, the person takes up the offer of membership, and is still under 55 at the date of re-employment, or
- is re-employed within six months of retirement by an admitted body in Scotland offering membership of the LGPS, the person does not take up the offer of membership, and is still under 55 at the date of re-employment and the new employment is not materially different from their former job

Employees who meet the first three criteria above should be warned in their notification of benefits that if they are re-employed in the circumstances set out in the last three criteria above, the benefits already paid to them following their retirement on redundancy or efficiency grounds will become unauthorised payments and be subject to unauthorised payment tax charges.

## Budget 2010

As a result of the 2009 Budget and the December 2009 Pre-Budget report employee tax relief on pension contributions will be tapered from April 2011 for individuals with gross incomes of £150,000 or more including the value of employer pension contributions. Those with gross incomes of £180,000 and over will receive relief at 20 per cent, the same rate as a basic-rate taxpayer. Those with income of £130,000 or more will need to establish the value of their employer's pension contributions to ascertain whether their gross income, including the value of the employer contributions, is over £150,000.

Alongside the 2009 Pre-Budget Report, HM Treasury and HM Revenue and Customs (HMRC) published a joint consultation document, Implementing the restriction of pensions tax relief. The aim of the consultation was to gather views on the technical details of policy, to ensure that the restriction is implemented as fairly as possible and in such a way as to minimise administrative burdens for employers, pension schemes and individuals. The results of this consultation have been published as part of the 2010 Budget.

The [consultation response](#) confirms that:

- the Government has decided that a stepped taper of one per cent of relief for every £1,000 of gross income is the most appropriate way to taper down the rate of relief available. The Government intends that legislation in the Finance Bill 2010 will reflect this.
- the Government remains of the view that for the purposes of valuing an employer's contribution under a defined benefit scheme, age related factors (ARFs) represent the best balance of fairness and simplicity. Therefore, the Government intends to legislate in the Finance Bill 2010 for the core ARFs methodology with a provision for the Government to set out the ARFs through regulations ahead of implementation in 2011.

## HMRC - Update of the death and inheritance tax manual

The [online manual](#) on the treatment of pensions schemes with respect to inheritance tax has been updated by HMRC. HMRC helpfully provide [an index page](#) (sorted by dates) which will allow pensions scheme administrators and the tax industry to identify what changes have been made. The manual now has a number of calculations which explain the operation of inheritance tax in a variety of



circumstances.

## **The Occupational and Personal Pension Schemes (Auto-enrolment) Regulations 2010**

[Bulletin 59](#) contained an item which reported that the LGPC/LGE had responded to the DWP's consultation on the draft auto-enrolment regulations. The actual statutory instrument ([The Occupational and Personal Pension Schemes \(Auto-enrolment\) Regulations 2010 \[SI 2010/772\]](#)) was made on 11 March 2010 and will come into force on 1 October 2012.

## **NAPF response to the implementation of the restriction of pensions tax relief**

[The NAPF have published their response](#) to HM Treasury's and HMRC's joint consultation on the implementation of the restriction of tax relief on pensions contributions from April 2011. NAPF are opposed to the Government's plans for three main reasons:

- the proposals run counter to the established EET principle within the UK's taxation system. Money invested in and funds accumulated within a pension scheme are exempt from taxation and it is only when the individual draws down pension income that taxes are applied;
- NAPF have conducted analysis of the Government's intentions which indicate that individuals, who earn less than the Government's target group, will be affected by the proposals; and
- the cost to pension schemes of administering the Government's plans are likely to be far in excess of HM Treasury's estimates.

NAPF have identified a number of specific problems with the Government's proposals:

- there will be an increase in costs for pension scheme administrators as high-earners request information, advice or guidance;
- employers will be obliged to identify affected employees within extremely tight deadlines;
- the treatment of redundancy payments in excess of £30,000. NAPF argue that the Government should exclude all of an individual's redundancy payment;

- the inclusion of unreduced final salary benefits within deemed employers contributions will affect an individual's ability to take early retirement;
- the proposals may disproportionately penalise members of defined benefit schemes in comparison to members of defined contribution schemes;
- the valuation of defined benefits are counter to the simplification of the pension tax regime introduced on A-Day;
- the option for Schemes to pay the tax charges on the member's behalf is beset with operational difficulties; and
- an individual may be taxed on benefits he or she may never receive if the sponsoring employer becomes insolvent. (This objection does not affect the LGPS).

The NAPF's alternative to the Government's proposals is to lower the annual allowance from £245,000 to somewhere between £45,000 and £60,000.

## Bits and Pieces

### Circulars

The LGPC has issued three circulars since the publication of last month's Bulletin. Circular 234 advertises practitioner and employer training events for the forthcoming year. Additional dates have been added for the "Understanding the Employer role and the LGPS" workshop. The LGPC will be running "Understanding..." courses on "Compensation, Augmentation, Injury Awards and Gratuities" and on "Employer Discretions and Policies". Circular 234 also included details of two "Insight" residential training courses which are to be held in Scarborough from 17 to 20 May and in Eastbourne from 20 to 23 September.

Circular 235 was issued this month and contains information on age 50 protections for redundancy or efficiency retirements, on tax codes for disablement pensions and on leaflets for high earners. Circular 236 is the annual update which details the National Insurance contribution rates for 2010/2011, the earnings factors to be used with effect from 6 April 2010 and the standard lifetime allowance and the annual allowance for 2010/2011.

### Timeline Regulations

The March 2010 update of the Timeline Regulations website included:

### England and Wales

- a new set of LGPS Regulations 2007/2008 to reflect the amendments made to the Benefit Regulations and the Administration Regulations by The Local Government Pension Scheme (Amendment) Regulations [SI 2010/528];
- the addition of SI 2010/528, a pdf version of the SI and the associated Explanatory Memorandum to the Statutory Instrument page; and
- the upload of three documents to the Statutory Guidance and FAQs page. They are CLG's letter (dated 19 February 2010) on admission agreements ceasing to have effect and the ability to collect outstanding contributions, CLG's note (issued 4 March 2010) on the pooling of pension funding assets after 31 March 2010 and CLG's supplementary informal guidance (issued 4 March 2010) on investing with a local authority.

### Scotland

The Statutory guidance page has been updated with version 3 of the Statutory Guidance on the assessment of members' contribution rates. The link to the Statutory Guidance from regulation 4 of the Benefit Regulations 2008, as amended by SSI 2009/187, has been updated to reference the latest guidance.

### LPFA Symposium (24 February 2010)

The LPFA hosted a [symposium on the future of the LGPS last month](#). Anthony Mayer, Chairman of LPFA, argued that the LGPS is sustainable in the future subject to appropriate reforms of the scheme and called for an independent commission to be created in order to remove politics from public sector pension schemes. As a result of the symposium, the [London Evening Standard printed an article](#) the following day which argued in favour of public sector pensions.

## National Audit Office (NAO) report on the cost of public pensions

The NAO has issued a brief report entitled, "[The cost of public sector pensions](#)". The report covers the unfunded public sector schemes only and therefore does not include the Local Government Pension Schemes. According to the report, GAD estimate (at 2008/09 prices) that payments from the unfunded schemes will increase from £25.4 billion in 2009/10 to £79.1 billion in 2059/60. In real terms, the increase will only be 0.2% of GDP.

## Legislation

### United Kingdom

#### SI Reference Title

2010/426	The Social Security (Maximum Additional Pension) Regulations 2010
2010/429	The Special Annual Allowance Charge (Protected Pension Input Amounts) Order 2010
2010/443	The Pension Act 2004 (Commencement No. 14) Order 2010
2010/467	The Pension Act 2008 (Commencement No. 6) Order 2010
2010/468	The Social Security Pensions (Low Earnings Threshold) Order 2010
2010/470	The Social Security Revaluation of Earnings Factors Order 2010
2010/483	The Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) (Amendment) Regulations 2010
2010/499	The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010
2010/506	The Occupational Pension Schemes (Contracting-out) (Amount Required for Restoring State Scheme Rights)
2010/528	The Local Government Pension Scheme (Amendment) Regulations 2010
2010/529	The Pension Schemes (Transfers, Reorganisations and Winding Up) (transitional Provisions) (Amendment) Order 2010
2010/536	The Taxation of Pension Schemes (Rates, etc.) Order 2010
2010/560	The Pension Protection Fund (Miscellaneous Amendments) Regulations 2010
2010/572	The Special Annual Allowance Charge (Variation of Rate) Order 2010

- 2010/581 The Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2010
- 2010/599 The Learning and Skills Councils for England (Transfer Schemes) (Permitted Transferees) Order 2010
- 2010/641 The Social Security (Miscellaneous Amendments) (No.2) Regulations 2010
- 2010/646 The Social Security (Contributions) (Amendment No.3) Regulations 2010
- 2010/650 The Registered Pension Schemes etc. (Information) (Prescribed Descriptions of Persons) Regulations 2010
- 2010/651 The Registered Pension Schemes (Enhanced Lifetime Allowance) (Amendment) Regulations 2010
- 2010/652 The Registered Pension Schemes and Overseas Pension Schemes (Electronic Communication of Returns and Information) (Amendment) Regulations 2010
- 2010/666 The Occupational Pension Schemes (Levy Ceiling) Order 2010
- 2010/667 The Pension Protection Fund (Pension Compensation Cap) Order 2010
- 2010/721 The Social Security (Contributions) (Amendment No. 4) Regulations 2010
- 2010/725 The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010
- 2010/772 The Occupational and Personal Pension Schemes (Auto-enrolment) Regulations 2010
- 2010/788 The Social Security Benefit (Persons Abroad) (Amendment) Regulations 2010
- 2010/826 The Social Security Benefits Up-rating Regulations 2010
- 2010/834 The Social Security (Contributions) (Amendment) Regulations 2010

## Northern Ireland

### SR Reference Title

- 2010/50 The Pension (2008 No. 2 Act) (Commencement No. 4) Order (Northern Ireland) 2010
- 2010/56 The Social Security (State Pension and National Insurance Credits) Regulations (Northern Ireland) 2010
- 2010/62 The Social Security (Maximum Additional Pension) Regulations (Northern Ireland) 2010
- 2010/73 The Occupational Pension Schemes (Levy Ceiling) Order (Northern Ireland) 2010
- 2010/74 The Pension Protection Fund (Pension Compensation Cap) Order (Northern Ireland) 2010

2010/80      The Pension Protection Fund (Miscellaneous Amendments) Regulations (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](#)

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