

LGPC Bulletin 168 – March 2018

Please contact [Jayne Wiberg](#) 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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Freedom and Choice AVC technical guide published

In [bulletin 164](#), the Secretariat informed administering authorities that the Freedom and Choice guide had been withdrawn and that a new version would be published in 2018. We advised that the content of the guide needed to be reviewed along with the format of the guide.

Due to the complexity and volume of the material that needs to be included in the guide, a decision has been made to split it into two separate guides going forward; one in relation to AVCs and the other in relation to main scheme transfers.

On 23 March 2018, we notified administering authorities that the new Freedom and Choice AVC technical guide is now available on [the guides and sample documents](#) page of www.lgpsregs.org. Template letters and a template AVC risk warning accompany the guide and can be accessed via links in the guide, or as separate documents on www.lgpsregs.org

Within the guide, it refers to a transfer risk warning being included with the transfer discharge forms, this is not yet available but will be in due course. The transfer guide will follow later in the year.

LGPS Scotland

Scottish rate of Income Tax 2018/19

Further to the article in [bulletin 165](#), on 20 February 2018, the Scottish Parliament set the following income tax rates and bands for 2018/19.

Bands	Band name	Rates (%)
Over £11,850*-£13,850	Starter Rate	19
Over £13,850-£24,000	Basic Rate	20
Over £24,000-£43,430	Intermediate Rate	21
Over £43,430-£150,000**	Higher Rate	41
Above £150,000**	Top Rate	46

* Assumes person is in receipt of the Standard UK Personal Allowance

** Personal Allowance reduces by £1 for every £2 earned over £100,000

Scottish income tax is only payable by Scottish taxpayers. Scottish taxpayers are those who have their main place of residence in Scotland.

SPPA Circular 2/2018 – tiered contribution rate system

On the 12 March 2018, SPPA published [circular 2/2018](#) on their website. The purpose of this circular is to notify all interested parties of the release of version 12 of the guidance on the tiered contribution rate system for the Local Government Pension Scheme in Scotland.

Under the Local Government Pension Scheme (Scotland) Regulations 2014, the earnings ranges used to determine annual contribution rates are to be increased each

year by any increase applied to pensions under the Pensions (Increase) Act 1971. [Version 12](#) replaces [version 11](#), which was issued in March 2017. The tables have been amended to show salary bands updated by the Consumer Prices Index (CPI) increase for 2018/19. All documents have been published on www.scotlgpsregs.org.

SPPA Circular 3/2018 – Public service pensions indexation and CARE revaluation 2018

On 15 March 2017, SPPA published [circular 3/2018](#) on their website. The purpose of this circular is to notify stakeholders of the increase to public service pensions with effect from 9 April 2018 and advise that the rate to be used for the 2017/18 annual revaluation of Career Average Revalued Earnings (CARE) benefits accrued in the 2015 Local Government Pension Scheme (Scotland) is 3%, effective from 1 April 2018.

This circular should be brought to the attention of pension managers, pension sections and scheme employer payroll departments. Administering authorities may also wish to draw it to the attention of the Directors of Finance and Administration. The circular has also been published on www.scotlgpsregs.org.

DWP

Tell Us Once – system security compliance

On 28 March 2018, the Secretariat forwarded a communication from DWP on the 'housekeeping' activities administering authorities are expected to undertake in order to comply with the system security requirements.

The communication is attached at [appendix 2](#) and includes a checklist for administering authorities to work through in order to ensure they are compliant.

HMRC

Pension Schemes Newsletter 96

On 6 March 2018, HMRC published [pension schemes newsletter 96](#) including articles on:

- Scottish Budget 2017 – Taxation of Pension Income
- Relief at source - annual return of individual information for 2017 to 2018 onwards
- Look up residency status for relief at source
- Relief at source – excess relief
- New pensions online service
- Reporting of non-taxable death benefits

Other News and Updates

Chancellor's inaugural spring statement

On the 13 March 2018, the Chancellor delivered his inaugural spring statement. The statement did not contain any pension's policy announcements. However, the Chancellor's broader macroeconomic updates were welcomed as having positive implications for the industry. These will be appreciated by the trustees of defined benefit schemes who are considering the strength of their employer covenant, and bodes well for the ability of their sponsor to provide additional financial support to their scheme.

Contracted-out reconciliation exercise – stalemate cases

During the course of the contracted-out reconciliation exercise, the Secretariat has been informed that a number of administering authorities have reached a stalemate with HMRC regarding a number of individual cases. The most problematic of which, appear to be those cases for which the administering authority cannot find any liability, though HMRC are insistent that the liability lies with the administering authority.

In our view, a guaranteed minimum pension (GMP) is not a scheme benefit, it is merely the guaranteed minimum that a scheme must pay. The LGPS is a defined benefits scheme and as such, the benefits are calculated on a period of membership accrual and pay, following which the level of those benefits are assessed against the value of the GMP. Therefore, in order to pay a scheme benefit the scheme must have the necessary accurate data (prescribed within the scheme regulations and be in compliance with the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 [SI 2014/3138]) with which to calculate the defined benefits. HMT are aware of this problem and will consider this further in due course.

GDPR - Q&A for members

On the 6 March 2018, the Secretariat informed administering authorities that the Communications Working Group in conjunction with the LGA have published a Q&A for members on the GDPR. The document is available under [guides and sample documents](#).

GDPR – template privacy notices

As confirmed previously, the Secretariat, on behalf of LGPS Administering Authorities, commissioned Squire Patton Boggs to produce the following three documents:

1. **'Template privacy notices'** specifically for LGPS administering authorities to use /adapt:
 - a detailed privacy notice – setting out the information to be provided under articles 13 and 14 of the GDPR. This notice will take into account that most likely, the data will be obtained directly from both the employer and the member.
 - a summary privacy notice for use in newsletters / annual benefit statements etc. – this will link to the detailed privacy notice that would be held on the administering authority's website or made available upon request.

On 13 March 2018, the Secretariat circulated the above two documents to all LGPS administering authorities. As both documents state, the privacy notices will need to be tailored to the specific circumstances of each fund. The footnotes in both notices should be considered when tailoring the templates in addition to the text in square brackets, which is highlighted yellow.

Also included in the communication on 13 March 2018 was a paragraph that WMPF are planning to use in their first contact letters, P60s, newsletters and annual benefit statements. This is provided as example text that administering authorities may wish to adapt for their own use, as below:

The [] Pension Fund is a Data Controller under the <General Data Protection Regulations>. This means we store, hold and manage your personal data in line with

statutory requirements to enable us to provide you with pension administration services. To enable us to carry out our statutory duty, we are required to share your information with certain bodies, but will only do so in limited circumstances. For more information about how we hold your data, who we share it with and what rights you have to request information from the Fund, please visit [[link to online privacy notice](#)]

2. A **memorandum of understanding** document for employers - the aim of this document is to set out that participating employers in the LGPS are able to share data with the LGPS administering authority without a data sharing agreement being in place (i.e. that there is no legal requirement for employers to have a data sharing agreement with LGPS administering authorities as they are both data controllers). The document will quote the relevant statutory references to inform an employer's data protection officer and legal department of the legal position, to head off any issues with employers uncertain about what data they can / cannot share with LGPS administering authorities.

The final version of this document is now expected to be published in early April 2018 along with the example documents listed below which WMPF have created and kindly agreed to share:

- template privacy impact assessment
- data protection policy
- template incident report form

McDonald (Respondent) v Newton or McDonald (Appellant) (Scotland) - Supreme Court Ruling – Pensioner on Divorce

In [bulletin 166](#) we included the following article under the LGPS Scotland. We would like to make clear that this article applies equally to benefits held in the LGPS Scotland, LGPS England and Wales and the LGPS Northern Ireland, where the divorce is made under Scottish law.

Paragraph 2.3.1 in the guidance issued by Scottish Ministers titled 'Pension Sharing Following Divorce Calculation of Cash Equivalents' dated 23 May 2011, confirms that "*Regulation 10 of the Family Law (Scotland) Act 1985 states that for divorce cases in Scotland, only the pension rights built up since the beginning of the marriage will be taken into account up to the earlier of the date of separation and the date of divorce when the court has granted the decree absolute*".

We understand this has been interpreted as meaning, as per regulation 4 of The Divorce etc. (Pensions) (Scotland) Regulations 2000 [SSI 2000/112], that the CETV for Divorce (factor 'A') is adjusted to reflect the period of time for which the member was married during active membership (factor 'B'), by the total period of time for which the member was an active member (factor 'C').

For example, a member who:

- joined the scheme on 1 April 1990, left active membership of the scheme on 31 March 2000, and took payment of their benefits from 1 April 2000, and
- was married on 1 April 1998 and divorced on 31 March 2017.

The CETV (factor 'A') would be adjusted by 2/10 (factors 'B'/'C')

It has recently come to light that a judgement made on 26 July 2017 by the Supreme court in the case of McDonald (Respondent) v Newton or McDonald (Appellant) (Scotland), brought to light a dispute between the parties that relates to the definition of factor 'C' which consequently affects factor 'B'.

Mr McDonald argued that the court should apportion the value of his pension rights by reference only to the period in which he was an "active member" of the scheme, which is the period during which he was making contributions to the scheme. This would reflect the current process adopted by LGPS funds set out in the above example.

Conversely, Mrs McDonald argued that the cash equivalent transfer value should be apportioned by reference to the period of Mr Macdonald's membership of the scheme, both when in pensionable employment and also when drawing a pension. If we use the example above this would mean that the CETV (factor 'A') would be adjusted by 19/27 (factors 'B'/'C'), which is a considerably higher proportion than 2/10. Mrs McDonald's appeal was initially dismissed by an extra division of the Inner House.

However, the Supreme Court unanimously allowed Mrs McDonald's appeal and subsequently agreed that the period of membership covered by factor 'C' should be interpreted as "*the period of the person's membership of the pension arrangement, whether or not contributions are being made in that period*" citing various reasons for doing so.

Clearly, this ruling sets a precedent and indicates a move away from current practice with regards to deferred and pensioner members.

Publication of GMP actuarial adjustment addendums

In [bulletin 166](#) and [bulletin 167](#) we reported that HMT had published its [response](#) to the consultation on the options for the indexation of GMP elements for members of public service pension schemes who will reach State Pension age (Spa) on and after 6 December 2018. The response confirmed that the government had been implementing an "interim solution" between 6 April 2016 and 5 December 2018 and that this will be extended to cover those members of public service schemes with a GMP who reach SPa on or after 6 December 2018 and before 6 April 2021.

We also confirmed in those bulletins that the outcome of the consultation may have an effect on the calculation of non-club cash equivalent transfer values (CETV) in/out and CETVs for the purpose of divorce, including pensioner CETVs. Section 11 of the Secretary of State guidance title '[Individual incoming and outgoing transfers](#)' dated 8 April 2016 and the '[Non Club GMP adjustment addendum](#)' dated 19 April 2016 issued by Scottish Ministers, both contain adjustments to the CETV where the member has an entitlement to a GMP. These adjustments apply, in prescribed circumstances, where the members SPa falls between 6 April 2016 and 5 December 2018 inclusive (the existing 'interim period').

LGPS Scotland

On 5 March 2018, SPPA issued an email to all Scottish administering authorities confirming that a new [non-Club GMP adjustment addendum](#) had been published on the [Actuarial Guidance](#) section of the SPPA LGPS webpage. This addendum applies to non-club cash equivalent transfer values (CETV) in/out and CETVs for the purpose of divorce, including pensioner CETVs. The addendum is effective from 27 February 2018 as per SPPA later email of 7 March 2018. These adjustments apply, in prescribed

circumstances, where the members SPa falls between 6 December 2018 and 5 April 2021 inclusive. The addendum has also been published on www.scotlgpsregs.org.

LGPS England & Wales

On 13 March 2018, MHCLG published a [covering letter](#) and [addendum](#) to administering authorities in England & Wales, covering non-club cash equivalent transfer values (CETV) in/out and CETVs for the purpose of divorce, including pensioner CETVs. These adjustments apply, in prescribed circumstances, where the members SPa falls between 6 December 2018 and 5 April 2021 inclusive. The addendum has effect from 13 March 2018 (the date of MHCLG letter) and should be applied accordingly. However, MHCLG have also advised that in the following scenarios scheme administrators should only apply the addendum if it would be in the member's interests to do so i.e. in ongoing cases where a:

- a) Non-Club CETV out quotation was provided to a member before the date of the MHCLG letter and the member elects to transfer within the guarantee period.
- b) Non-Club transfer in credit quotation was provided to a member before the date of the MHCLG letter and the member elects to transfer within any guarantee period from the sending scheme.

In all other scenarios, the addendum should be applied to all relevant cases with immediate effect.

Publication of the Pensions Ombudsman public pension scheme statistics enquires & investigations

[Appendix 1](#) provides a summary of the statistics collated by the Pensions Ombudsman concerning the enquiries and investigations undertaken on behalf of the Local Government, Police, Firefighters and Teachers Pension Schemes. For the LGPS, the statistics reveal that ill health remains the most common type of complaint, followed by incorrect calculations.

Technical group minutes of 9 March 2018

Minutes of the national technical group meeting held on 9 March 2018 have now been published on www.lgpsregs.org and www.scotlgpsregs.org on the technical group minutes page ([England & Wales](#) / [Scotland](#)).

Transfer out declaration forms – version 7.0 March 2018

On 27 March 2018, the Secretariat published version 7.0 of the transfer out declaration forms in the [‘Guides and sample documents’](#) (England & Wales) [‘Guides and sample documents’](#) (Scotland) areas of our web-sites, located under the new title of ‘Transfers Out’ replacing the old title of ‘Freedom & Choice’.

In particular, we have removed reference for the requirement to be a ‘nominated’ co-habiting partner in respect of the Northern Ireland LGPS and made clear that where a transfer is in respect of a deferred refund, this is a ‘Cash Transfer Sum’. We have also made a technical adjustment to the areas concerning what sums should be included when assessing whether or not the aggregate value of a members benefits has exceeded £30,000 or not.

In addition as reported earlier in this bulletin, on 23 March 2018, the Secretariat published the Freedom and Choice AVC technical guide in respect of the LGPS England & on the sample documents page of www.lgpsregs.org. This publication included template letters and a template AVC risk warning that can either be accessed via links in the guide or as separate documents on www.lgpsregs.org. Within the guide, it refers to a

transfer risk warning being included with the transfer discharge forms. This is not yet available but will be available in due course. A revised transfer guide will also follow later in the year.

Training

LGPC Circular 305

On 5 March 2018, the Secretariat issued [circular 305](#), which includes details of the practitioner and employer training surveys. Please complete one survey per administering authority and forward the circular onto your scheme employers.

Both surveys close on 10 April 2018.

Employer survey - <https://lgpsregs.org/survey/employer-training.php>

Practitioner survey - <https://lgpsregs.org/survey/administering-authorities-training.php>

Summary of publications by the Secretariat in March 2018

6 March 2018	GDPR – Q&A for members
13 March 2018	GDPR –Template Full Privacy notice – version 1.0
13 March 2018	GDPR – Template Summary Privacy notice – version 1.0
23 March 2018	Freedom and Choice - AVC technical guide – version 1.0
27 March 2018	Transfer out - Declaration forms – version 7.0

The wider landscape

During March 2018 there have been various publications issued:

- [Financial Guidance and Claims Bill 2017-19](#) progresses through Parliament
- White paper issued by DWP titled “[Protecting Defined Benefit Pension Schemes](#)”
- Joint call for input by TPR titled “[Regulating the pensions and retirement income sector](#)”

Legislation

United Kingdom

Act	Title
2018	Finance Act 2018

SI	Reference Title
2018/373	The Pension Schemes (Application of UK Provisions to relevant Non-UK Schemes (Amendment) Regulations 2018
2018/372	The Relevant Overseas Schemes (Transfer of Sums and Assets) Regulations 2018
2018/368	The National Employment Savings Trust (Amendment) Order 2018

2018/367	The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2018
2018/338	The Public Service Pensions Revaluation Order 2018
2018/337	The Social Security (Contributions)(Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2018
2018/333	The Pension Increase (Review) Order 2018
2018/279	The Guaranteed Minimum Pension Increase Order 2018
2018/262	The Police Injury Benefit (Amendment) (England and Wales) Regulations 2018
2018/271	The Social Security Revaluation of Earnings Factors Order 2018
2018/194	The Employment Rights (Increase of Limits) Order 2018

Scotland

SSI Reference Title

Useful Links

[LGA Pensions page](#)

[LGPS member website](#) (England and Wales)

[LGPS 2015 member website](#) (Scotland)

[LGPS Advisory Board website](#) (England and Wales)

[LGPS Regulations and Guidance website](#) (England and Wales)

[LGPS Regulations and Guidance website](#) (Scotland)

[Public Sector Transfer Club](#)

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

Pensions Section Contact Details

If you have a technical query, please email query.lgps@local.gov.uk and one of the team's LGPS pensions advisers will get back to you.

Jeff Houston (Head of Pensions)

Telephone: 0207 187 7346

Email: jeff.houston@local.gov.uk

Jayne Wiberg (Pensions Adviser – LGPC Secretariat)

Telephone: 07979 715825

Email: jayne.wiberg@local.gov.uk

Lorraine Bennett (Pensions Adviser – LGPC Secretariat)

Telephone: 0207 187 7374

Email: lorraine.bennett@local.gov.uk

Con Hargrave (Pensions Adviser – LGPC Secretariat) - currently on secondment to MHCLG ([see bulletin 165](#))

Karl White (Pensions Adviser (Training) – LGPC Secretariat)

Telephone: 07464 652886

Email: karl.white@local.gov.uk

Bob Holloway (Pensions Secretary – LGPS Scheme Advisory Board (E&W))

Telephone: 07919 562847

Email: robert.holloway@local.gov.uk

Liam Robson (Pensions Analyst – LGPS Scheme Advisory Board (E&W))

Telephone: 0207 664 3328

Email: liam.robson@local.gov.uk

Elaine English (LGPS Executive Officer)

Telephone: 0207 187 7344

Email: elaine.english@local.gov.uk

Distribution sheet

Pension managers (internal) of administering authorities

Pension managers (outsourced) and administering authority client managers

Local Government Pensions Committee

Trade unions

CLG

COSLA

SPPA

Regional Directors

Private clients

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LGPC Secretariat

Local Government Association

18 Smith Square
Westminster
London
SW1P 3HZ

or email: [Jayne Wiberg](mailto:Jayne.Wiberg)
tel: 07979 715825