

LGPC Update – 18 March 2016 – Technical Group

Budget

Items of interest in the budget were:

Para 1.108 - the Chancellor announced the introduction of a 'lifetime ISA' available to under 40s to use to save towards a lump sum or their retirement. People will be able to put in a max of £4,000 per year and for every £4 they put in the Government will give them £1 (the Government bonus will only be accessible if they don't withdraw their funds before they are 60)

Para 1.58 – the Government has reviewed the discount rate for unfunded pension schemes. There has been a reduction in the rate so employer contributions in the unfunded schemes will be going up from 2019/20 onwards. There is also an immediate impact on CETVs out of public service pension schemes (including the LGPS) and on CETVs / CEVs for pension sharing on divorce as the discount rate will affect the transfer value factors.

[For details of the impact on transfers / CETVs for divorce, see the article below on transfers]

The change in the discount rate has immediate effect (i.e. from 16th March 2016).

Para 1.83 – an individual's Personal Allowance will be going up to £11,500 from April 2017.

Para 1.85 – the Higher Rate of income tax will be going up to £45,000 from April 2017.

Para 1.114 – to help people understand their pensions savings, the Government will ensure that 'the industry designs, funds and launches a pensions dashboard by 2019. This will mean an individual can view all their retirement savings in one place.'

Para 1.115 – the Government will

- increase the existing £150 Income Tax and National Insurance relief for employer arranged pension advice to £500
- consult on introducing a Pensions Advice Allowance. This will allow people before the age of 55 to withdraw up to £500 tax free from their defined contribution pension to redeem against the cost of financial advice.

Para 1.116 - the government will restructure the delivery of public financial guidance (from the Money Advice Service, the Pensions Advisory Service and Pensions Wise) to make it more effective

1.145 and 1.146 - Tax and NICs rules for pay-offs - certain forms of termination payments are exempt from employee and employer National Insurance contributions and the first £30,000 is income tax free. The rules are complex and the exemptions incentivise employers to manipulate the rules, structuring arrangements to include payments that are ordinarily taxable such as notice and bonuses to minimise the tax and National Insurance due. From April 2018, the government will tighten the scope of the exemption to prevent manipulation and align the rules so employer National Insurance contributions are due on

those payments above £30,000 that are already subject to income tax. The government will continue to support those individuals who lose their job. The first £30,000 of a termination payment will remain exempt from income tax and the full payment will be outside the scope of employee NICs.

Para 1.147 – salary sacrifice - the Government are considering limiting the range of benefits that attract income tax and NIC advantages benefits. However, the government's intention is that pension saving, childcare and health-related benefits such as Cycle to Work should continue to benefit from income tax and NICs relief when provided through salary sacrifice arrangements.

Para 1.284 – LGPS pooling – the Government will continue to work with the sector on pooling proposals to achieve savings of £200-300mn per year.

Para 2.53 – this paragraph lists some technical changes the Government is proposing on Freedom and Choice.

Para 2.246 - the government expects all schools to become academies by 2020, or to have an academy order in place in order to convert by 2022.

HM Treasury statement on indexation of GMPs

On 1st March 2016, HM Treasury announced a decision on the interim solution regarding the indexation of GMPs – the HM Treasury statement is available [here](#).

The statement confirms that public service pension schemes will be responsible for paying full pensions increases on both the pre and post 88 GMP (for the life of that member and any subsequent dependents) for members who reach State Pension age between 6 April 2016 and 5 December 2018 inclusive.

The Government will take forward a public consultation on the indexation of GMPs for members who reach State Pension age after 5 December 2018.

Please note, we have previously communicated the interim solution period as running from 6 April 2016 to 5 November 2018, to align with the date that men and women's State Pension ages will become equalised. We have been informed that GAD have recalculated the date at which this equalisation will occur and as a result the interim solution period now runs from 6 April 2016 to 5 December 2018.

We are working with HM Treasury and DWP on a revised Treasury Direction which will confirm the cases where public service pension schemes will be required to fully inflation proof GMPs in line with existing procedures covering the application of GMP's.

The inflation proofing of GMPs will have an impact on transfers. [For details, see the article below on transfers]

Transfers

As already mentioned:

- i) the change in the discount rate announced in the Budget has an immediate impact on CETVs out of public service pension schemes (including the LGPS) and on CETVs / CEVs for pension sharing on divorce as the discount rate will affect the transfer value factors – see https://www.gov.uk/government/publications/basis-for-setting-the-discount-rates-for-calculating-cash-equivalent-transfer-values-payable-by-public-service-pension-schemes?_cldee=c2FyYWgucmV4QGRlcmJ5c2hpcmUuZ292LnVr&urlid=1.
- ii) the inflation proofing of GMPs for those attaining SPA between 6 April 2016 and 5 December 2018 will have an impact on transfers. We are expecting a letter from GAD to be issued shortly detailing how this should be dealt with in non-Club transfer in and out calculations and in divorce CETV / CEV calculations. We understand that, Club transfers in and out will continue to be calculated as now (on a knock for knock basis).

In our view, administering authorities should take the following action:

- i) for transfers in and out (both Club and non-Club) and CETVs/CEVs for divorce where the relevant date is before 16 March 2016 use:
 - the existing Secretary of State / Scottish Ministers transfer guidance / factors for cases for non-Club transfers
 - the existing Secretary of State / Scottish Ministers transfer guidance / factors for cases for Club transfers coupled with the Cabinet Officer Club memorandum transfer guidance for Club transfers
 - the Secretary of State / Scottish Ministers' divorce guidance
- ii) for transfers in and out (both Club and non-Club) and CETVs/CEVs for divorce where the relevant date is on or after 16 March 2016 stockpile cases until the following have been received
 - updated Secretary of State / Scottish Ministers' transfer and divorce guidance and factors
 - await confirmation of whether updated Cabinet Office Club memorandum transfer guidance / factors are required or whether to continue using existing factors
 - notification from GAD / Secretary of State / Scottish Ministers of how to take account, within Club and non-Club transfers and CETVs/CEVs for divorce, of full inflation proofing of GMPs for those who attain SPA between 6 April 2016 and 5 December 2018

Of course, if the relevant guidance and factors have not been provided in cases falling within (ii) by the time the deadline for providing a CETV / CEV for divorce is near, administering authorities may need to issue a CETV / CEV using existing factors with a caveat that the CETV / CEV is based on factors that may be incorrect as updated factors and guidance is awaited.

For Club transfers falling within (i) that include a CARE element administering authorities should, for the time being (and until updated Secretary of State / Scottish Ministers' guidance is issued) follow the guidance and factors in the Club memorandum.

Interfund adjustments

Should payments on or after 16 March 2016 be stockpiled? We don't yet know and will let administering authorities know as soon as we can.

HM Treasury letter on contracted-out reconciliation

On 4th February, the LGPC secretariat circulated a letter on behalf of HM Treasury to all LGPS pension funds outlining their recommended approach to the contracted-out reconciliation exercise, including in respect of overpayments and tolerances. If your fund has decided not to follow any of the recommendations and you have not done so already, please contact [Jayne Wiberg](#) stating:

- the recommendation(s) which will not be followed
- what alternative approach is being taken, and
- the reasons for taking the alternative approach.

The letter was subsequently amended and re-circulated to funds on 10th February. The amended version was attached as an appendix to [Bulletin 140](#) (see below).

Bulletin 140 on the ending of contracting-out

On 12th February, the LGPC secretariat issued [Bulletin 140](#), a special bulletin on the linked topics of the new state pension and the ending of contracting out. It included the below topics and will be of interest to administering authorities, and in sections, to employers:

- A background to the changes,
- A description of the cost implications for employees and employers,
- A summary of the new payroll codes to be used after the end of contracting out in April 2016,
- Employee and employer communications,
- In respect of scheme reconciliation:
 - A summary of what needs to be done,
 - The LGA view as to whether this is compulsory or not,
 - A list of the benefits of reconciliation, and
 - The recommended approach set out in the HM Treasury letter mentioned above,
- Links to the HMRC countdown bulletins,
- A description of the Contracted out Pension Equivalent figure (COPE),
- An overview of pensions increase on GMPs post-April 2016, and
- Links to the relevant legislation.

LTA / AA Communications

At the communications working group meeting in February, it was agreed that member factsheets on the lifetime allowance and the annual allowance would be beneficial, particularly in light of the changes that have been and are soon to be made to both. The factsheets were issued on 8th March 2016 – see

<http://www.lgpsregs.org/index.php/guides/employees-guides>

Work continues on the annual allowance administration guide and it is hoped that this will be issued during April. GAD have agreed to prepare more realistic examples of how a Club transfer should be treated for annual allowance purposes.

Negative revaluation

In early February, it was confirmed that the Government intended to proceed with the issue of a negative revaluation order of -0.1% following September 2015 CPI of the same level. A [written ministerial statement](#) given by Greg Hands MP, the Chief Secretary to the Treasury confirmed this intention. The draft Order [was debated](#) in the House of Commons General Committee on 2nd March 2016 and passed.

Which LGPS members will this impact?

The negative revaluation would apply to:

- active pension accounts,
- any intervening periods between aggregated periods of membership where the break was less than 5 years,
- deferred, deferred pension and retirement pension accounts where the member ceased to be an active member between 1 April 2015 and 31 March 2016,
- partners' and childrens' pension accounts where an active member died in service between 1 April 2015 and 31 March 2016,
- partners' and childrens' pension accounts where an active member became a deferred member between 1 April 2015 and 31 March 2016 and died in the same year, and
- partners' and childrens' pension accounts where an active member became a pensioner member between 1 April 2015 and 31 March 2016 and died in the same year.

This is in accordance with:

- regulations 22(9) (aggregate account where break was less than 5 years), 23(2) (active members), 24(7) (deferred members), 25(6) (retirement from active members), 27(5) (flexible retirement members), 41(5) (partner's pension following death of an active member), 42(12) (child's pension following death of an active member), 44(5) (partner's pension where active member became deferred member and died in the same scheme year), 45(12) (child's pension where active member became deferred member and died in the same scheme year), 47(5) (partner's pension where active member became pensioner member and died in the same scheme year) and 48(12) (child's pension where active member became pensioner member and died in the same scheme year) of **the LGPS Regulations 2013**.

It should be noted that the LGPC has requested an amendment to regulation 26 to deal with cases where a member ceases to be an active member, becomes a deferred member and starts to draw pension all within the same Scheme year i.e. to add a new regulation 26(9) If the member ceased to be an active member, became a deferred member and a pensioner member all within the same Scheme year, the balance in the member's retirement pension account at the end of the Scheme year in which the retirement pension account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the retirement pension account was opened, in accordance with actuarial

guidance issued by the Secretary of State. Similarly, the LGPC has requested an amendment to regulation 28 to deal with cases where a member ceases to be an active member, becomes a Tier 3 pensioner member and has the Tier 3 pension stopped all within the same Scheme year i.e. to add a new regulation 28(5) If the member ceased to be an active member, became a pensioner member in receipt of Tier 3 benefits and had those benefits discontinued under regulation 37(3) or (7)(c) all within the same Scheme year, the balance in the member's deferred pensioner member account at the end of the Scheme year in which the deferred pensioner member account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the deferred pensioner member account was opened, in accordance with actuarial guidance issued by the Secretary of State.

- regulations 22(7) (aggregate account where break was less than 5 years), 23(2) (active members), 24(7) (deferred members), 25(6) (retirement from active members), 27(5) (flexible retirement members), 39(5) (partner's pension following death of an active member), 40(12) (child's pension following death of an active member), 42(5) (partner's pension where active member became deferred member and died in the same scheme year), 43(12) (child's pension where active member became deferred member and died in the same scheme year), 45(5) (partner's pension where active member became pensioner member and died in the same scheme year) and 46(12) (child's pension where active member became pensioner member and died in the same scheme year) of **the LGPS (Scotland) Regulations 2014**.

It should be noted that the LGPC has requested an amendment to regulation 26 of the LGPS (Scotland) Regulations 2014 to deal with cases where a member ceases to be an active member, becomes a deferred member and starts to draw pension all within the same Scheme year i.e. to add a new regulation 26(8) If the member ceased to be an active member, became a deferred member and a pensioner member all within the same Scheme year, the balance in the member's retirement pension account at the end of the Scheme year in which the retirement pension account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the retirement pension account was opened, in accordance with actuarial guidance issued by the Scottish Ministers.

How should a negative revaluation order be applied to mid-year leavers?

For a mid-year leaver, in the case of positive revaluation, the Treasury Order revaluation would be an adjusted calculation in order to ensure there would be no double indexation (for example, if September 2015 CPI had been 1% and revaluation was not adjusted, the member could end up receiving a total increase to their pension account of a figure in excess of 1%).

However, as this would not be a problem in the case of negative revaluation (because in the event of a negative Treasury Order, PI would be 0.0% and so there would be no double application of -0.1%), what approach should be taken?

One view is that the -0.1% Treasury Order should be applied in full to all mid-year leavers regardless of when it was during the year they left. However, an alternative view is that, there is no legislative reason a negative Treasury Order should be treated differently from

a positive Treasury Order, and the negative Treasury Order should therefore be apportioned.

We are seeking urgent clarification on this question from both DCLG and SPPA.

Wouldn't there be unauthorised payments if we reduced pensions in payment?

We are seeking urgent clarification on the matters we have been raising with DCLG and HMT since the beginning of February.

Given the statement from the Chief Secretary of the Treasury what should administering authorities do on the April payroll for those who retired during 2015/16 i.e. should they reduce the pension in payment and, if so, should they pro-rate the 0.1% reduction depending on when, during 2015/16 the member retired, or should they not reduce the pension in payment. Unfortunately, the statement from the Chief Secretary to the Treasury can be read in one of two ways i.e.

- i) pensions in payment should not be reduced, or
- ii) pensions in payment should be reduced but legislation will be amended to ensure that any resulting unauthorised payments are not unauthorised.

Given the lack of a definitive answer at the present time administering authorities should await the outcome from the MOCOP meeting on 24 March 2016 which will, hopefully, confirm which of the above two approaches should be taken and, if it is (ii), confirm whether the reduction should be pro-rated (with pro-ration seeming to be the most logical approach). The LGPC will advise administering authorities of the outcome as soon as details are known.

Tell Us Once and the NI Database

For those funds who have completed their Tell Us Once on-boarding and uploaded their membership data to the Database (25 funds as at 17th March), Tell Us Once went live on Monday 7th March (with funds that are part of the service beginning to receive death notifications from Tuesday 8th March onwards).

Following feedback that it could be clearer what needs to be done to get Tell Us Once set up, the LGPC secretariat will be working with some funds who have on-boarded already to produce a short document explaining what funds need to do, from the perspective of funds who have already successfully on-boarded. It is hoped this will be issued by early April.

As at 2nd March 2016, exactly 54 funds had uploaded their membership files into the NI Database. If the remaining funds could upload their files into the system as soon as possible it should help to ensure that the system is of most use for monitoring duplicate death grants.

TPR annual benefit statement guide

In March the Pensions Regulator issued:

- An essential guide to issuing annual benefit statements
- Checklist: Preparing annual benefit statements for public service pension schemes

These will be posted to the TPR section on www.lgpsregs.org

LGA survey on LGPC service

The LGPC Secretariat currently provides a wide range of services to LGPS administering authorities in return for a small annual fee depending upon the size of the membership of the LGPS fund. Over the last decade pensions administration has become more and more complex, as a result of both over-riding changes to pensions law and our very own scheme changes. During this time, the Secretariat's service has expanded to reduce the pressures in individual administering authorities (e.g. template letters and forms, detailed regulatory guidance etc.) without a comparative increase in the annual fee. Over the past 12 months the Secretariat has received requests from its membership to increase its current range of services and we are keen to explore this avenue in order to make sure that the services we provide continue to be appropriate to the needs of our members. In addition, increased collaborative working may help to reduce the overall costs of funds' pensions administration. Before we proceed any further, we would like to understand if additional services are required by our membership. Accordingly, we emailed all Administering Authorities on 17 February 2016 asking for a simply 'yes' or 'no' (one per administering authority) response to the following question: -

Whether or not in general principle you would be willing to pay a higher annual fee, in return for a more comprehensive service? (Please note that any enhancements to the subscription service would exclude the self-financing training service which will be subject to a separate discussion).

The responses, as at 11th March, were as follows:

MAYBE	1
NO	6
YES	55
Not responded	38
	100

We will be seeking a reply from the 38 administering authorities that have not responded before we decide upon the next steps.

£95k cap on exit payments

Updated draft regulations have been published:

<https://www.gov.uk/government/consultations/consultation-on-a-public-sector-exit-payment-cap> with "minor changes, including a footnote to clarify an instance where a power to relax the £95,000 cap can be used".

The footnote on the Regulations says:

"The Treasury will issue guidance on the operation of the cap which will include directions as to how the power to relax the restrictions should be exercised. This will include, for example, how cases involving public interest disclosures (whistleblowing) or discrimination should be considered."

Draft Miscellaneous Regulations for England and Wales

We are still awaiting publication of the draft Miscellaneous Regulations (dealing with the list of known corrections needed to the LGPS Regulations 2103 and the Transitional

Provisions Regulations 2014, together with changes to the AVC provisions to allow an UFPLS).

Auto-enrolment

Further updates to the auto-enrolment guide will be made to amend references from “2015/16” to “2016/17”, reflect that the LGPS is no longer a Contracted-out scheme from 6th April 2016 and to take account of the recent changes made by the Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 [SI 2016/311] (although the changes in that SI are only likely to have any effect on a very limited number of employers in the LGPS).

Early payment of deferred benefits on ill health grounds

Following a stage 2 IDRPs where it was held that an employer did not have to agree to the early payment of a deferred benefit under the LGPS (Benefits, Membership and Contributions) Regulations 2007 even where the member met the ill health criteria, the LGPS sought a view from DCLG. As shown in the copy response below, DCLG take the view that the IDRPs decision is correct.

In order to determine whether or not to place a report before the Scheme Advisory Board suggesting that we recommend a change to the regulations we wish to gauge the views of the Technical Group.

I agreed to look at this the case and the drafting of the relevant LGPS regulation. In summary, we agree with [the IDRPs decision]. For a deferred or deferred pensioner member who is determined by an IRMP to be incapable of work there is the second hurdle of whether the employer decides to give that deferred member or deferred pensioner member early access to benefits without reduction. I deal with possible next steps later in the email.

The LGPS (Benefits, Membership and Contributions) Regulations 2007, regulation 20 deals with active members who are dismissed on ill-health grounds and provides that if the member is determined by an IRMP to be incapable of work and has a reduced likelihood of being capable of undertaking any gainful employment before his normal retirement age, the member is entitled to and must take the appropriate Tier of ill-health retirement pension. By contrast, Regulation 31 deals with early payment of retirement pension on ill-health grounds for deferred and deferred pensioner members and provides that such a member who is incapable of work may ask for benefits. In our view the difference between the position of an active member “entitled to and must take” and that of a deferred member “may ask to receive” retirement pension is significant. Regulation 31 could provide for an IRMP to make the decision but it does not – it provides that a certificate must be obtained before the employer makes a decision whether to agree to a request. There is no equivalent provision in regulation 20 relating to active members dismissed on ill-health grounds conferring on the employer the role of deciding whether to agree to payment of the benefits.

Other provisions in the Regulations do allow a deferred or deferred pensioner member who is aged over 55 to access his benefits without employer consent – but with actuarial reduction rather than receipt of the retirement pension that he would have received if he had reached normal pension age on the date from which benefits are awarded. A deferred or deferred pensioner member who is aged below 55 who is incapable of work will not receive any benefits without the employer’s agreement. That agreement is not automatic and may be withheld on reasonable grounds (and is subject to the dispute resolution process).

We do not think that it is irrational to have different standards applying depending on whether the employer actively dismisses the employee or whether the former employer is approached some time after the person was an active member and requests (effectively) early release of benefits with waiver of

any actuarial reduction. The amounts that are paid to persons who receive retirement pension on ill-health grounds differ depending on whether the member was an active member at the time ill-health benefits were granted or a deferred or deferred pensioner member so it is not surprising that the difference extends to whether those payments should be allowed in the first place.

If there is disquiet about the effect of the drafting of regulation 31 in the Benefits Regulations 2007 and now regulation 38 of the 2013 Scheme regulations, we suggest that this could be an issue that might be raised with the Scheme Advisory Board, administration and communications sub committee, as part of their current review of the Schemes' ill health regulatory framework. In fact one suggestion from colleagues is whether, both in the case of active and deferred members who satisfy the incapacity test, there ought to be any employer discretion involved in either situation; this might not be acceptable to some parties but worth raising with you as it has been put to me. The other issue is, would it be preferable to make it more explicit what the employer's discretion is, rather than to leave the rather ambiguous position that currently applies?

Freedom and choice

Updates to the Freedom and Choice technical note are being worked on to take account of the changes being introduced by The Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2016 [SI 2016/294] and by the Pension Sharing (Miscellaneous Amendments) Regulations 2016 [SI 2016/289]. These relate to the need to provide members using Freedom and Choice flexibilities with a risk warning and changes to the legislation relating to obtaining appropriate independent financial advice (so that it covers pension credit members). These changes are operative from 6 April 2016.

Member website

Work is ongoing on the member website. It is hoped to launch the version for members in England and Wales during April.