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pay, pensions and employment solutions

Local Government Pensions Committee
Secretary, Terry Edwards

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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.

Contents

This month Bits and Pieces includes items on recent LGPC Circulars, the Pensions Regulator's guidance on retirement options for members of DC schemes, the Timeline Regulations, and a reminder of the deadline for members to register with HMRC for primary or enhanced protection.

LGPS - Divorce Case Deadlines

Given that updated Pension Credit factors have not yet been issued, administering authorities might wish to delay awarding a Pension Credit following receipt of a Pension Sharing Order (PSO). However, a PSO has to be implemented within the 4 month implementation period. Where an administering authority is facing the end of that 4 month period it would appear that, until such time as new Pension Credit factors have been issued, there are only two options available where the Pension Credit is to be awarded in the LGPS (as opposed to transferred to a qualifying pension arrangement) i.e. :

a) award the Pension Credit based on the existing factors (even though this would appear to produce a financial hit on the Fund), or
b) apply to the Regulatory Authority under section 33(4) of the Welfare Reform and Pensions Act 1999 for an extension to the implementation period. Such an application must, in accordance with regulation 3 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000, be made before the end of the implementation period. The Regulatory Authority must be satisfied that the administering authority has not been provided with such information as the administering authority reasonably requires to properly discharge their liability for the pension credit within the implementation period.

Rule of 85 Protections

The position as set out in LGE Circular 193 explained CLG's position at that time i.e. that the member must have been an **active member** immediately before 1st October 2006 in order for the protection to apply. However, during the discussions on the 2008 Scheme, this line was changed and paragraph 6 of Schedule 2 to the LGPS (Transitional Provisions) Regulations 2008 now says that the person only had to have been a **member** before 1st October 2006 i.e. the person could have been an active member at 30th September 2006 or a deferred member at that date.

It says that the 85 year rule protection applies where a member

- was a member before 1st October 2006, and
- left / leaves the LGPS before, on or after 1st October 2006 (i.e. so the person did not have to be an **active** member on 30th September 2006); and
- rejoins the scheme before the "relevant date"

Paragraph 2 of Schedule 2 to the LGPS (Transitional Provisions) Regulations 2008 defines the relevant date as:

> (a) in the case of a member who will be aged 60 or more on 31st March 2016, the earlier of—
>
> > (i) 1st April 2016, and
> >
> > (ii) the date on the day after the day on which the member leaves local government employment; or
>
> (b) in any other case, 1st April 2008.

Paragraph 6(1)(b) of Schedule 2 to the LGPS (Transitional Provisions) Regulations 2008 should, of course, be amended to specify that the "relevant date" is that referred to in (a)(i) and (b) above only and not to (a)(ii) above (as the inclusion of (a)(ii) produces a nonsensical result).

Assuming that amendment is made, the above would appear to produce the following results.

1. A member (active or deferred) at 30th September 2006 who rejoins the scheme before 1st April 2008, or before 1st April 2016 if he/she would be 60 or more by 31st March 2016, and who aggregates membership will have a protected CRA (although if there was a break in employment the CRA will shift backwards upon aggregation).

2. A member (active or deferred) at 30th September 2006 who rejoins the scheme before 1st April 2008, or before 1st April 2016 if he/she would be 60 or more by 31st March 2016, and who does not aggregate membership will have the original protected CRA on the unaggregated membership but an age 65 NRD (i.e. no earlier CRA) on the new membership.

3. A member (active or deferred) at 30th September 2006 who rejoins the scheme after 31st March 2008, or after 31st March 2016 if he/she would be 60 or more by 31st March 2016, and who aggregates membership will lose their right to a protected CRA and all membership will have an NRD of 65. This seems rather harsh but it is what the regulation appears to say, although whether this is the policy intention is not clear.

4. A member (active or deferred) at 30th September 2006 who rejoins the scheme after 31st March 2008, or after 31st March 2016 if he/she would be 60 or more by 31st March 2016, and who does not aggregate membership will have the original protected CRA on the unaggregated membership but an age 65 NRD (i.e. no earlier CRA) on the new membership.

5. A member who was not active or deferred at 30th September 2006 does not have any entitlement to a CRA. All benefits have an NRD of 65.

Scenario 3 appears to be at odds with the relevant GAD guidance and does not feel entirely correct. The Secretariat has therefore asked CLG to consider whether the above interpretation is correct and, if so, whether any clarifying amendments are required. Further details are contained in page 21 and 22 of the LGE's response to the draft LGPS (Miscellaneous) Regulations 2009.

Calculation of the maximum Pension Commencement Lump Sum (PCLS)

Members can commute part of their pension to increase their lump sum under regulation 21 of the Benefit Regulations. Regulation 21(4) states, "The capital value of member's accrued rights shall be calculated in accordance with guidance issued by the Government Actuary”. The relevant GAD guidance on "Lifetime Allowance and Additional Cash Commutation" dated 18th June 2008 does not include any reference to PI in general or PI on the post 88 GMP in particular, nor does it include guidance on whether or not certain elements of the member’s pension (such as GMP increments) can be included in the calculation of the maximum PCLS.

The two examples set out below demonstrate how the Secretariat believes the maximum PCLS should be calculated where the member’s benefits include PI and, in the second example, where the pension includes PI, PI on the post 88 GMP and increments on the GMP.

The initial pension and lump sum amounts input into the GAD formula are the pre-commutation amounts. In other words, they are the amounts which would be used to calculate what percentage of the member’s Lifetime Allowance would have used but for commutation of the pension to increase the lump sum. In the Secretariat’s view, the GAD formula does not work if it is used before the application of PI (including PI on the post 88 GMP).

Whilst the GMP and GMP increments are used in the formulae it must be remembered that the amount of pension commuted must not reduce the pension to below the level of the GMP.

Example 1

A member has elected to bring deferred benefits into payment.

The value of the deferred pension is £5,500 (including PI of £500)
The value of the deferred lump sum is £16,500 (including PI of £1,500)
For the moment, let us ignore the GMP.

Applying GAD’s formula to calculate maximum PCLS

¼ *[((120 * £5,500) + (10 * £16,500)) / 7]
= 1/28 * (£660,000 + £165,000)
= 1/28 * £825,000
= £29,464.28

Pension commuted

£29,464.28 - £16,500 = £12,964.28 / 12 = £1,080.35

Pension after commutation

£5,500 - £1,080.35 = £4,419.65

Check maximum PCLS has been calculated

(£4,419.65 * 20) + £29,464.28 = £117,857.28 / 4 = £29,464.32 (✓)

Example 2

At the date the member retired (age 61), her pension was £5,000, the lump sum £15,000 and the GMP at age 60 (all post '88) was £1,040.

The member attained SPA before the first PI review date which, in turn, occurred before the benefits were paid (i.e. the woman retired at age 61 and an earlier year's pay has been used as 'final pay' to calculate her benefits). The PI applied to scheme benefits is 5% and the PI on the post 88 GMP is 3%.

After the PI review the member's benefits are:

GMP = (£1,040 / 52) * 1.03 = £20.60 * 52 = £1,071.20
(including PI on post 88 GMP = £31.20)
GMP increments for 52 weeks of deferral beyond SPA = £20.60 * 52/700 = £1.53 * 52 = £79.56

PI on Pension = (£5,000 - £1,040) * 0.05 = £198.00
[or PI on Pension = (£5,031.20 - £1,071.20) * 0.05 = £198.00]
PI on post 88 GMP = £31.20
GMP increments = £79.56
Total = £198.00 + £31.20 + £79.56 = £308.76

Total Pension after PI review and increments = £5,308.76

Lump Sum = £15,000 * 1.05 = £15,750

Applying GAD's formula to calculate maximum PCLS

¼ *[((120 * £5,308.76) + (10 * £15,750)) / 7]
= 1/28 * (£637,051.20 + £157,500)
= 1/28 * £794,551.20
= £28,376.82

Pension commuted

£28,376.82 - £15,750 = £12,626.82 / 12 = £1,052.23

Pension after commutation

£5,308.76 - £1,052.23 = £4,256.53

Check maximum PCLS has been calculated

(£4,256.53 * 20) + £28,376.82 = £113,507.42 / 4 = £28,376.86 (✓)

Draft LGPS (Miscellaneous) Regulations 2009

On 28 November 2008, CLG issued a letter and draft amendments to the LGPS Regulations 1997, to the current Benefits Regulations, Administration Regulations, Transitional Provisions Regulations and the Discretionary Compensation Regulations. The LGE / LGPC has issued a response to the draft regulations. The response also includes a list of;

a) all the matters where the scheme regulations may need clarification or amendment,
b) the GAD guidance that the Secretariat thinks is still outstanding,
c) those bits of the current GAD guidance which the Secretariat thinks need clarification or amendment.

Draft LGPS (Amendment) Regulations 2009

On 27 November 2008, CLG issued a letter and draft amendments to the LGPS Regulations in England and Wales. These deal with a number of administrative aspects of the proposed cost sharing mechanism. The LGE/LGPC has issued a response to the consultation.

LGPS (Scotland) – Assessment of Member Contribution Rate

On 12th February, SPPA issued circular 2009/1 to accompany the updated information contained in version 2 of the Statutory Guidance in respect of the assessment of members' contribution rates for the new LGPS in Scotland. It is important to note that this version replaces version 1 of the Statutory Guidance which was issued under Circular 2008/3 in June 2008.

Draft Pensions (Increase) Order 2009

The draft Pensions (Increase) Order 2009 and cumulative multiplier tables are now available on the HM Treasury website.

The draft Order provides that public service pensions which have been in payment for a year will be increased by 5.0 % from 6 April 2009 (i.e. based on the RPI in September 2008). Any pension which has been in payment for less than a year will be increased by a proportionate amount depending upon the number of months it has been in payment.

Payment of Pension Credit Members' Benefits

Last year, DWP consulted on the draft Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2008 which would permit occupational pension schemes to pay pension credit benefits from age 50, rising to age 55 in 2010, or in circumstances where the Pension Credit member meets the ill health condition set out in the Finance Act 2004. At present, a Pension Credit can only be paid under the LGPS from age 65 unless the Pension Credit member is suffering from serious ill health and has a life expectancy of less than a year.

If the above regulations reach the statute books, a decision will need to be taken as to whether the LGPS regulations should be amended to incorporate the early payment provisions.

The Secretariat believes that CLG are going to consult on changes to the Pension Sharing provisions of the LGPS later this year with a proposal that the LGPS permits the payment of Pension Credit benefits from age 60 with an actuarial reduction.

The CIPFA Pensions Panel Investment Report and draft Management and Investment of Funds Regulations

The CIPFA Pensions Panel has published a report on the investment regulations. CIPFA have submitted the report to CLG for consideration. The report's aim is a simplification and modernisation of the LGPS (Management and Investment of Funds) Regulations and includes detailed recommendations to clarify the rules on permitted investments and the use of overseas managers. On 6th February 2009, CLG issued draft LGPS (Management and Investment of Funds) Regulations which consolidate and make various amendments to the current regulations. The closing date for responses to the draft regulations is 3rd April 2009.

Flexible Retirement and Pension Provision

The DWP has issued its proposals for draft regulations to provide exemptions designed to overcome concerns employers have over the age discrimination legislation and its interaction with flexible retirement.

The LGPS is not really affected by the proposals as the Scheme already permits employees to continue contributing post flexible retirement and to accrue additional membership / benefits right up to age 75. During that time they are covered for all benefits, including death in service benefits.

Pensions Act 2008

The Pensions Act 2008 (Commencement No.2) Order 2009 [SI 2009/82] was made on 21st January 2009. Included in its provisions is an effective date of 6th April 2009 for section 100 of the Pensions Act 2008 which provides that Part 3A (Safeguarded Rights) of the Pensions Scheme Act 1993 ceases to have effect. Thus, from that date, the requirement for the provision of safeguarded rights in pension sharing on divorce cases will cease.

HMRC - Draft Authorised Payments Regulations

Last year, HMRC published a draft of the new Authorised Payments Regulations as part of a consultation exercise. The draft regulations have not become actual legislation due to the large number of responses received by HMRC. Under Parts 3 and 4 of the draft regulations, certain existing unauthorised payments will be classified as authorised payments retrospectively to A-Day.

The question now arises whether schemes are able to anticipate the introduction of the regulations for the purposes of deciding which unauthorised payments to include on the Event Report. HMRC have confirmed that if scheme administrators act in accordance with the draft regulations, neither they nor members will be subject to HMRC sanctions for failing to operate in accordance with existing legislation. HMRC further added that the term, 'sanctions' means penalties such as those imposed for late notification of an unauthorised payment or late payment of a tax due.

HMRC have provided two illustrative examples. In the first example, a scheme made an unauthorised payment in tax year 2007/08 but this would have been an authorised payment had the draft legislation been in force. Under current legislation, the scheme administrator would have had to include the unauthorised payment in the Event Report submitted to HMRC by 31 January 2009. If the draft legislation had been in force, the payment would have been treated as authorised and so would not have been included in the Event Report. HMRC have confirmed that penalties will not be incurred if the unauthorised payment is omitted from the Event Report submitted by 31 January 2009.

The second example caters for the situation where the final version of the regulations differs from the draft version. A scheme omits what was expected to be an authorised payment from the Event Report but it is not covered in the final version of the regulations. HMRC will not charge a sanction on the scheme or the member but will expect an amended Event Report (including the unauthorised payments) to be submitted quickly once the regulations are laid.

Reclaiming Tax from the Netherlands

A European Court of Justice case held that European union member states breached the free movement of capital principle of the European Commission (EC) treat if they imposed higher withholding taxes on foreign investors than on domestic investors. As a result of the ruling, the Netherlands has not withheld tax on dividends since 1 January 2007.

Pension funds in the United Kingdom can now reclaim tax which was withheld by the Dutch tax authorities on any dividends received before 1 January 2007. It is expected that pension funds will be able to make back-dated claims to 2003. Funds should submit any claims as soon as possible to avoid the Dutch tax authorities refusing the claim on the grounds that it was made out of time. A claim form is available from the Netherlands tax administration website.

The case will affect a number of other member states, such as Spain and Portugal, who have also withheld tax on dividends paid to tax exempt pension funds. The EC is currently taking action against these member states. Funds should be able to reclaim the tax withheld on dividends from these countries once they have complied with the EC's requirements.

LGPC Communications Update

The New Look LGPS in Scotland

- The LGPC has produced a DVD and CD-Rom explaining the new scheme and how existing scheme members are affected by the changes. Master copies of the DVD and CD-Rom were sent to all LGPS Pension Fund administering authorities in Scotland in January. It will be for each administering authority to decide how best to use the DVD and CD-Rom as part of their communication strategy with scheme members and employers. A version for loading onto intranet / internet sites has also been sent to the administering authorities in Scotland.
- The LGPC has also updated the Promotional Guide and the Brief Guide to the LGPS to cover the provisions of the Scheme for employees in Scotland from 1 April 2009. These are available on the Local Government Employers' website.
- Circular 224 has been issued to provide administering authorities in Scotland with a Newsletter which they may wish to utilise to help communicate the New Look LGPS in Scotland to employees in the run up to April 2009, and Circular 226 provides authorities in Scotland with a sample letter notifying scheme members of the pension contribution rates that will be applicable from 1 April 2009.
- The "Latest" pages on the LGPS members' website have also been updated with information on the new scheme with the relevant pages in the main body of the site linked into this information.
- We are currently working on producing an updated Employees' Guide to the LGPS in Scotland. The new guide is in sections, so that administering authorities can use the guide for a composite booklet or for separate leaflets as they wish. We are also working on updating the LGPS members' website. It is planned that that these will be ready for April 2009.

The LGPS in England and Wales

- The LGPC will be producing an updated version of the DVD and CD-Rom presentation for administering authorities in England and Wales. In the updated version, the "Introduction - Why the Scheme is Changing" section will be cut, the "Overview of the LGPS from 1 April 2008" section will be updated with the 2009 pay bands, and the "Questions & Answers for existing members" section updated to contain only those Questions that are not fully dealt with in the "Overview" section. It is planned that this will be available late April 2009.
- The following sections of the Employees' Guide for England and Wales have been updated:

Choice and Joining - updated response to "I'm already receiving an LGPS pension – will it be affected if I join again?"

Your LGPS retirement benefits - updated response to "What If I get another job after I retire?"

Tax controls and your LGPS benefits - correction to amount of fine for non-notification of loss of enhanced protection.

The revised versions are on the LGE website.

Bits and Pieces

LGPC Circulars

The Secretariat has issued three circulars since the previous bulletin was published. Circulars 224 and 226 cover the topic of communicating the changes to the LGPS (Scotland) to members of the Scheme in Scotland. Circular 225 advertises additional dates for the Understanding Employer Discretions and Policies training courses.

Pensions Regulator – DC Schemes Member Retirement Options Guidance

The Pensions Regulator has issued guidance on trustees' responsibilities and good practice when providing retirement options in relation to Defined Contribution benefits, including the open market annuity option. The guidance is relevant to administrators of the LGPS because in-house AVC schemes are DC schemes. The guidance encourages "trustees" and employers to follow practice that is likely to lead to members taking informed decisions.

Timeline Regulations

The February 2009 update of the Timeline Regulations website included the addition of the LGPS Regulations 1995 for English and Welsh administering authorities. The SPPA circular on overpaid GMP entitlement, which was issued in December of last year, has also been added to the website. The update also includes an enhancement to the navigation within the website and to the hyperlinks to external documents.

Deadline Reminder

The deadline for individuals to register for primary or enhanced protection with HMRC is 5 April 2009. As mentioned in the previous Bulletin, the announcement that the SLA will remain at its 2010/2011 level of £1.8 million might make more people consider applying for enhanced protection.

Legislation

United Kingdom

SI Reference	Title
2008/3070	The Occupational Pensions (Revaluation) Order 2008
2008/3157	The Social Security (Miscellaneous Amendments) (No.7) Regulations 2008
2008/3241	The Pensions Act 2008 (Commencement No.1 and Consequential Provision) Order 2008
2008/3245	The Local Government Pension Scheme (Administration) (Amendment) Regulations 2008

Scotland

SSI Reference	Title
2008/387	The Police Pensions (Amendment) (Scotland) Regulations 2008

Northern Ireland

SR Reference	Title
2008/485	The Occupational Pensions (Revaluation) Order (Northern Ireland) 2008
2008/498	The Social Security (Miscellaneous Amendments) (No.7) Regulations (Northern Ireland) 2008

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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