

Local Government Pensions Committee  
Secretary, Terry Edwards

## LGPC Bulletin 62 – September 2009

This month's Bulletin contains a number of general items of information.

It is intended that next month's Bulletin will contain an updated version of all the guidance included in the Bulletins over the last 18 months on transfers, interfund adjustments, Pension Sharing on Divorce etc. The process of drawing all this information together into a single document has thrown up a number of queries which we are seeking to resolve before publishing the consolidated guidance next month.

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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This month [Bits and Pieces](#) includes one item on [the Timeline Regulations](#).

## Compensation and redundancy payments – Increase in statutory weeks' pay limit

The Work and Families (Increase of Maximum Amount) Order 2009 [[SI 2009/1903](#)] increased the maximum amount of weekly pay, which can be used in the calculation of compensation and redundancy payments, from £350 to £380. The SI was laid before Parliament on 15 July 2009 and comes into force on 1 October this year. The increase was announced in this year's [Budget](#).

## Heyday challenge dismissed in the High Court

The decision in the Heyday case was handed down by the High Court on 25 September 2009. The High Court found that the default retirement age (DRA) of 65 under regulation 30 of the Employment Equality (Age) Regulations 2006 is lawful within the EC Equal Treatment Framework Directive (2000/78/EC). Regulation 30 of the Age Regulations provides that nothing in Part 2 or 3 of the Regulations shall render unlawful the dismissal of a person to whom that regulation applies at or over the age of 65 where the reason for the dismissal is retirement.

In his judgment, Mr. Justice Blake decided that:

- the government had not adopted the idea of a DRA on the basis of any generalised assumption that people over 65 are not reasonably capable of competent performance of their duties, or as a class are more likely to be incompetent than people below that age
- the government had proved to a high standard that the concept of a default retirement age was based upon a social policy aim that may generally be described as maintaining confidence in the labour market
- the decision to adopt a DRA was a proportionate way of giving effect to the social policy aim of labour market confidence

Mr. Justice Blake concluded:

"I do not consider that Regulation 30 as adopted in 2006 was beyond the competence of the government in applying the Directive or outside the discretionary area of judgment available in such matters. It was not a bold decision at the time but that is not the test. It was not a decision for the long term but that fact alone does not make it unlawful.

It will, however, be apparent from my observations at [paragraph 128 of the judgment] that the position might have been different if the government had not announced its timely review. I cannot presently see how 65 could remain as a DRA after the review."

As reported in Bulletin 60, the Government, in a wide-ranging consultation document [Building a society for all ages](#), announced a series of proposals to help encourage a major cultural shift and help Britain prepare for demographic change which is seeing people live longer lives. A key feature of the document was the statement that the government intends to bring forward its review of the age 65 default retirement age (DRA) to 2010.

Interestingly, the LGE's survey of authorities in July 2009 elicited strong support from respondents for the retention of the DRA. This will be reported in further detail on the LGE website in due course.

## Delivering affordability, viability and fairness

The LGE/LGPC have [responded](#) to the [CLG consultation](#) "The LGPS: Delivering affordability, viability and fairness". The response:

- supports the suggestion that, at and from the 2010 valuation, each Pension Fund administering authority should prepare a Financing Plan to demonstrate how over the short, medium and then long term they will fund pension liabilities for their fund, and
- states that, whilst not being fundamentally averse to a change to the employee contribution rates and bandings from April 2010, the rationale for any such change should be evidence based.

## Flexible retirement

The LGE/LGPC have [written](#) to CLG asking that consideration be given to consulting with interested parties on appropriate changes to the LGPS Regulations which would:

- make flexible retirement cost neutral for employers from a pension perspective, and
- permit scheme members to agree to have their benefits actuarially reduced where they are seeking agreement to voluntary retirement (or early release of a deferred benefit) prior to age 60.

## Governance

The LGE/LGPC have [responded](#) to the [CLG consultation](#) on governance. The response reiterates our stance in previous consultations on governance i.e. that there is no "one size fits all" solution and each administering authority must be free to decide upon how good practice is best achieved for their Fund. It endorses good practice in relation to training, facility time and expenses, being areas where CLG note there is a lack of consistency across Funds in matching the standards set out in the statutory guidance on governance.

The LGPC is highly supportive of the training needs of councillors and other members sitting on pension or investment committees / panels, as signified by the number of [training events](#) the LGPC organises each year at a range of venues nationwide.

## CLG draft LSC Regulations

On 18 September 2009 CLG issued the draft Local Government Pension Scheme (Amendment) Regulations 2010 and a covering letter. The draft regulations amend the Local Government (Benefits, Membership and Contributions) Regulations 2007 and the Local Government Pension Scheme (Administration) Regulations 2008 to:

- comply with Fair Deal for Staff Pensions for staff who (subject to the Apprenticeships, Skills, Children and Learning Bill being enacted) will transfer from the Learning and Skills Council to Local Education Authorities on 1 April 2010 , and
- to manage the transfer of assets and liabilities in administering authorities affected by the merger of Probation Boards to Probation Trusts.

The LGPC is currently considering the draft regulations and will make a response before the consultation closes on 18 December 2009.

### **Personal accounts consultation**

On 24 September 2009 the DWP published a [consultation on draft regulations](#) that will require employers to automatically enrol all eligible jobholders into a qualifying workplace pension and to make minimum contributions into it. All eligible employees under age 75 who have a contract for 3 months or more are, of course, already automatically enrolled into the LGPS. It is proposed the regulations currently being consulted upon will come into force from October 2012. The LGPC will respond to the consultation once the potential implications for the LGPS have been considered. The consultation closes on 5 November 2009.

### **DWP Consultation – Authorised Payments**

HMRC identified a number of situations where the tax rules treated certain lump sum payments from a pension scheme as unauthorised but where it would be fairer for the recipient if they were treated as authorised payments. As a result, HMRC introduced appropriate changes to the law via the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] which come into force on 1 December 2009 (see [Bulletin 59](#) for further information on those changes).

The Department for Work and Pensions (DWP) has decided to mirror the changes made by HMRC and has commenced a [consultation](#) on the draft Occupational and Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009. The amendments are due to be operative from 1 December 2009 and are being made to ensure that DWP's own legislation is consistent with the amendments made by HMRC to the authorised payment legislation (covering such items as trivial commutation lump sums).

### **Admission body guide**

The West Midlands Pension Fund in collaboration with Mercer and Wragge and Co have produced a helpful 24 page guide called [Information and Guidance on Arrangements for Admitting Non-Scheduled Bodies into the Local Government Pension Scheme](#). Whilst tailored to the WMPF much of the information is generic and will be equally helpful to other administering authorities.

### **Dismissal just before age 50**

In the Mayor and Burgesses of the London Borough of Tower Hamlets v Wooster (UKEAT/0441/08), the EAT held that a 49½ year old local authority employee suffered unlawful age discrimination when he was made redundant instead of being redeployed, so as to deny him becoming entitled to an early retirement pension.

Mr. Wooster had been seconded by the London Borough of Tower Hamlets (the Council) to a Housing Association. When the Council decided that all secondments to registered social landlords should be brought to an end, Mr. Wooster was sent a letter giving him twelve weeks' notice of the end of his secondment. As Mr. Wooster had no substantive post to return to at the end of the secondment he would therefore be redundant unless he found alternative employment with the Council. Mr Wooster was unsuccessful in securing an alternative position and the Council refused the housing association's offer to extend Mr Wooster's position and pay his salary until he reached age 50 and became entitled to the enhanced pension benefits under the LGPS.

The EAT agreed with the original tribunal's findings of age discrimination because of the Council's failure to properly explore redeployment opportunities for Mr. Wooster. Based on the evidence presented, that failure was connected to the fact that the Council appeared to wish to dismiss him while it was cheaper for them to do so (i.e. before his 50<sup>th</sup> birthday). However, this does not mean that the council were expected to artificially extend Mr Wooster's employment. The Employment Equality (Age) Regulations 2006 do not have the effect of obliging an employer to postpone a dismissal to ensure that an employee can become entitled to age-related benefits. It is justifiable for an employer to dismiss an employee who is genuinely redundant, providing that they have exhausted all opportunities to redeploy the employee into suitable alternative employment where it exists.

## Bits and Pieces

### Timeline Regulations

This month's update of the [Timeline Regulations](#) website included:

#### For Scotland

- the addition of the Local Government Superannuation (Scotland) Regulations 1987 to the Timeline Regulations page for Scotland.

## Legislation

### SI Reference Title

2009/1903	The Work and Families (Increase of Maximum Amount) Order 2009
2009/2206	The Social Security (State Pension and National Insurance Credits) Regulations 2009
2009/2343	The Social Security ( Miscellaneous Amendments) (No.3) Regulations 2009

#### Northern Ireland

### SR Reference Title

2009/294	The Pensions Regulator (Delegation of Powers) Regulations (Northern Ireland) 2009
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## 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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**Distribution sheet**

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