

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 66 – January 2010

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

The consolidated LGPC guidance on transfers is still being worked on and will be issued as soon as possible.

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 – Pensions Increase 2010

CLG issued a letter on 21 January 2010 which stated that Pensions Increase for this year will be 0%. SPPA published a similar letter on 25 January 2010. The two letters have been uploaded to the appropriate pages of [the Timeline Regulations website](#).

DWP have also produced a document (called [Work and Pensions – Social Security Benefit Up-rating](#)) which lists the rates effective from April 2010. The section, at the bottom of page 12 and the top of page 13, details that the increase to the post 88 GMP for April 2010 will be 0%.

In summary:

- (a) on Tuesday 6 April 2010 there will be no PI applied to the post 88 GMP for members over age 60 (females) or 65 (males), and
- (b) on Monday 12 April 2010 there will be no PI applied to LGPS benefits i.e.
 - (1) pensions in payment;
 - (2) deferred pensions and lump sums;
 - (3) deferred lump sums previously brought into payment (i.e. supplementary PI).

Age 50 Earliest retirement date

For those cases subject to the rise in the minimum retirement age from 50 to 55 ([see Bulletin 65](#)), the Secretariat is seeking clarification from HMRC on the following two matters that have been raised by administering authorities in England and Wales:

- (i) a member retires just before the rise in the minimum retirement age but, because they are paid in arrears, it is not possible to calculate their final pay until after 5 April 2010. As the paperwork notifying actual final pay cannot be completed before 6 April 2010, will the payment of benefits post 5 April 2010 constitute reportable unauthorised payments; and if the benefits are based on a notional final pay figure before 6 April 2010 and recalculated based on the actual final pay figure post 5 April 2010, will the extra benefits derived from the recalculation constitute reportable unauthorised payments?
- (ii) a member retires before the rise in the minimum retirement age but, because there is a backdated pay award agreed and paid post 5 April 2010, necessitating a recalculation of benefits, will the extra benefits derived from the recalculation constitute reportable unauthorised payments?

LGPS 2008 - Pension Sharing Debits

The LGPC Secretariat's understanding of the principles behind the application of Pension Credits and Pension Debits is that they are intended to be actuarially neutral as far as possible. The GAD guidance "Calculation of Pension Debit for Divorced Member and Pension Credit for Ex-spouse" (which was issued in 2000) stated in its opening paragraph that "further guidance will be issued on the future application of the debit to a member's benefits following a divorce" but this has never been issued.

As a result of a recent case, [Slattery v Cabinet Office Civil Service Pensions](#), the Secretariat has contacted CLG to request that GAD guidance is issued as a matter of urgency on the treatment of Pension Debits where the member receives his or her benefits early. CLG have confirmed that they are actively pursuing this with GAD.

LGPS 2008 – Flexible Retirement and Certificates of Protection

The Secretariat has been contacted to give a view on a case where a scheme member was issued with a Certificate of Protection under regulation 23 of the 1997 Regulations and has subsequently drawn all benefits accrued up to the point of flexible retirement with the employer's consent. This gives rise to two questions in respect of final pay calculations. Can the member rely on the Certificate of Protection when calculating the benefits up to the point of flexible retirement? And, does the Certificate of Protection continue to apply in respect of the benefits accruing post the flexible retirement where the member ceases the post flexible retirement employment less than 10 years after the original reduction or restriction in pay?

Regulation 23(1) of the 1997 Regulations says that the certificate can be used provided the reduction or restriction in pay occurred not more than 10 years "before **the** date on which he ceases to be an active member". This seems to envisage that there can only be one date at which a person can cease to be an active member, Thus, the response to the questions posed above will depend on whether or not the member "ceases to be an active member" for the purposes of regulation 23(1) of the 1997 Regulations at the point of flexible retirement.

To answer this it would seem prudent to consider the wording of regulation 32(10) of the 1997 Regulations and regulation 16(6) of the Administration Regulations 2008.

Regulation 32(10) of the 1997 Regulations states:

"(10) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment with a different Scheme employer (SI1998/1238), for paragraph (1) of this regulation he shall be treated as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme."

In addition, regulation 16(6) of the Administration Regulations 2008 states:

(6) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, he shall be treated for the purposes of this regulation as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

These two regulations appear to indicate that the member has not ceased to be an active member but, for the purposes of regulation 32 of the 1997 Regulations and regulation 16 of the Administration Regulations 2008 he or she shall nevertheless be treated as if he or she had ceased to be an active member and thus can be awarded a deferred benefit.

If that interpretation is correct, the certificate of protection cannot be applied until the member ceases the post flexible retirement employment and so the member should be made aware of the potential impact of flexible retirement on the Certificate of Protection when considering whether or not to take flexible retirement.

Logically, a member who opts out of the LGPS on the date he or she takes flexible retirement ceases to be an active member so could then use the Certificate of Protection to calculate the benefits based on the membership accrued before the point of flexible retirement. It must be stated, however, that the timing of the notification is critical. Regulation 14(4) of the Administration Regulations states:

“(4) A member who gives notice under paragraph (2) stops being a member in the specified employment from the date the notice specifies.”

For example, if the member was going to take flexible retirement on 31 March 2010 - i.e. the member's last day of full-time employment – and the following day is the member's first day of part-time employment, the member would have to give notification to cease to be a member as from 1 April 2010. If the member opted out from an earlier date, the member would be a deferred pensioner which would mean the member could not take flexible retirement. Opting out from any later date would mean it would be too late to activate the Certificate of Protection on the benefits accrued before the member took flexible retirement.

LGPS – Anti-franking and commutation

Another question recently posed to the Secretariat concerns anti-franking and commutation. At the point a member's deferred benefits with the LGPS are brought into payment, the member was entitled to an anti-franking guaranteed addition. Is it permissible for the member to opt to convert part of the deferred pension to a lump sum?

Section 92(1) [Supplementary Provisions] of Pension Schemes Act 1993 [PSA93] states,

(1) In making any calculation for the purposes of this Chapter [the Chapter concerns Anti-Frinking] -

- (a) any commutation, forfeiture or surrender of,*
- (b) any charge or lien on, and*
- (c) any set-off against,*

the whole or part of a pension shall be disregarded.

In addition, the final important note on page 5 of the GAD Guidance on "Lifetime Allowance and Additional Cash Commutation" for the LGPS in England and Wales states:

"The amount of pension commuted must not reduce the remaining pension to below the level, if any, of the member's Guaranteed Minimum Pension, as defined in Schedule of the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239) nor must it be such as to affect any requirement to pay equivalent pension benefits under the terms of the National Insurance Acts 1965 to 1973."

and the penultimate note on page 5 of the equivalent GAD guidance for the LGPS in Scotland says:

"The amount of pension commuted must not reduce the remaining pension to below the level, if any, of the member's Guaranteed Minimum Pension."

GMP is defined in Schedule 1 to the Administration Regulations 2008 as:

"Guaranteed minimum" means the guaranteed minimum as defined in sections 14 and 17 of the Pension Schemes Act 1993 (minimum pensions for earners, widows, widowers and surviving civil partners), so far as it is attributable to earnings factors for the tax year 1988-89 or for subsequent tax years, increased in accordance with the requirements of section 109 of that Act (annual increase of guaranteed minimum pensions) and in this definition "earnings factors"

means the earnings factors referred to in section 14 of that Act and "tax year" means the 12 months beginning with 6th April in any year;"

There is no reference in this definition of GMP to sections 87 to 92 of the PSA93 which specify the anti-franking calculations.

The conclusion, therefore, is that the pre-commutation pension must be at least equal to the GMP and any anti-franking guaranteed addition. Commutation is then permitted, but the post commutation pension must be at least equal to the GMP.

Adjusted State Pension Age

The Pensions Act 1995 introduced changes to the State Pension Age (SPA) for females born after 5 April 1950 and before 6 April 1955. The SPA for these women will gradually increase from age 60 to 65. All females born after 5 April 1955 will have a SPA of age 65. The Pensions Act 2007 further amended the SPA for everyone born after 5 April 1959 so that by 2046, the SPA for both men and women will be age 68.

Despite the changes to SPA, the age at which the GMP is payable remains at age 60 for women and age 65 for men.

NISPI will accept termination notices after age 60 for females or age 65 for males up to the end of the final relevant year. NISPI will issue a CA1625 which will show the GMP (at age 60 or 65 as appropriate) plus any inflation-proofing increases, where applicable, up to the tax year of termination. Also, for members entitled to a refund of contributions, Contribution Equivalent Premiums will be accepted after age 60/65 up to the end of the final relevant year.

NISPI have admitted that due to a computer error, CA1625 statements were issued with an incorrect "payable from" date. NISPI are confident that the fault has been corrected. Any CA1625 statements produced after 20 January 2009 should show the GMP is payable from age 60 for a women and age 65 for a man. Any authorities which continue to receive CA1625 forms with either an incorrect or no "payable from" date should telephone the NISPI Technical team on 0191 225 0244 or email them at nispi.technical@hmrc.gsi.gov.uk.

CA1629 (Statement of Pension Liability) will no longer be issued for women at age 60 from April 2010 and for women and men at age 65 from 2024 because the individuals are not entitled to their State Pension at those ages. Schemes will receive a CA1629 when a claim to Retirement Pension is processed.

Pre-Budget Report 2009

HM Treasury and HMRC jointly held workshops on the implementation of the restrictions on tax relief on pensions contributions for high earners. The workshops discussed possible solutions for a number of the questions raised by the HM Treasury and HMRC consultation document, "[Implementing the restriction of pensions tax relief](#)". HM Treasury are maintaining a [webpage](#) which, in addition to the link to the consultation document, has further links to a technical note on the Special Annual Allowance Charge and a document which contains draft legislation and an explanatory note.

Responses to the consultation should be sent to HM Treasury by 3 March 2010. HM Treasury requests that the responses should be clearly marked and addressed to Pensions tax consultation, Room 2/E2, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Alternatively, respondents can email their responses to pensionstaxconsultation@hmtreasury.gsi.gov.uk.

The LGPC Secretariat will shortly be issuing a briefing note for high earners covering the impact of the 2009 Budget and the Pre-Budget Report of 9 December 2009.

DWP Consultation – Workplace Pension Reform: Completing the Picture

DWP have published [the Government's response](#) to the consultation on "Workplace Pension Reform: Completing the Picture". The regulatory changes resulting from the consultation are covered in detail in the Government's response. The regulations are currently scheduled to come into force in October 2012. The LGPC Secretariat will consider these and issue an update to [LGPC Circular 233](#) in due course.

DWP Consultation – Disclosure of Information requirements in pension schemes

The DWP have published their [response to the March 2009 consultation on Disclosure of Information](#). The document also includes the draft regulations with respect to disclosure requirements for Occupational, Personal and Stakeholder pension schemes.

As a result of many responses to the earlier consultation, the DWP are no longer going to progress the concept of a "single overarching disclosure principle". The chief concern for respondents was that this single principle would be increase the regulatory burden on schemes, extend the disclosure requirements and schemes would find compliance difficult and expensive.

The deadline for the latest consultation on Disclosure of Information requirements in pension schemes is 1 March 2010.

Personal Accounts – Change of name to NEST

The Personal Accounts Delivery Authority (PADA) announced earlier this month that the new name for the national pensions saving scheme (which is due to be launched in 2012) is the National Employment Savings Trust (NEST). The NEST Corporation, which will be launched in 2011 as a non-profit trustee corporation, will run NEST.

Bits and Pieces

[LGPC Communications Update - Guides for Employees in England and Wales](#)

[The Employees' Guide to the LGPS in England and Wales](#) and [the Brief Guide to the LGPS for Employees in England and Wales](#) have been updated with the provisions of the Local Government Pension Scheme (Miscellaneous) Regulations 2009.

In addition, the LGPC has produced [a brief leaflet](#) for employees in England and Wales explaining the changes to dependant's benefits introduced by The Local Government Pension Scheme (Miscellaneous) Regulations 2009.

New Leaflet: Is the Local Government Pension Scheme for me?

The LGPC has produced a new leaflet "[Is the Local Government Pension Scheme for me?](#)" for employees whose employer offers them membership of the Local Government Pension Scheme (LGPS) about the cost and benefits of joining the Scheme.

Timeline Regulations

This month's update of [the Timeline Regulations website](#) included the letters from CLG and SPPA in respect of the Pensions Increase Review for 2010.

Legislation

United Kingdom

SI Reference Title

2010/1	The Occupational Pension Schemes (Levy Ceiling – Earnings Percentage) Order 2010
2010/6	The Transfer Values (Disapplication) Regulations 2010
2010/8	The Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2010
2010/10	The Pensions Act 2008 (Commencement No.5) Order 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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