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pay, pensions and
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Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 70 – May 2010

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

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 articles on LGPC Circular 237 and the update of the Timeline Regulations

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LGPS 2008 - GAD Guidance: Individual Incoming & Outgoing Transfers (Version 2)

On 6 May, CLG published the GAD guidance for England and Wales for "Individual Incoming & Outgoing Transfers – Version 2: new transfer factors from October 2008". The guidance has raised a number of issues which the Secretariat is seeking to clarify with CLG / GAD.

LGPS 2008 – GAD guidance: Trivial commutations: lump sums paid on or after 1 April 2009

On 6 May, CLG published updated guidance with respect to the payment of trivial commutations paid on or after '1 April 2009'. The guidance updates the factors to be used in the calculation of trivial commutations in line with the factors used for the calculation of trivial commutations for members of the LGPS (Scotland). The updated guidance is available from the Timeline Regulations website.

As a result of the updated guidance on Trivial Commutations, the Secretariat has raised a number of points with CLG for onward transmission to GAD. The queries are reproduced below.

- On the front page, the guidance is dated 26 March 2010 (and was issued by CLG on 6 May 2010) but says it applies to all lump sums paid on or after 1 April 2009. Given that trivial commutation, by its very nature, is meant to be a one off payment which discharges all liability it is assumed that payments made since 1 April 2009 under the old guidance should stand (and not be recalculated) as it is the LGPC's understanding that once payment has been made, no further (authorised) payment can be made. It should, therefore, be clarified that the new guidance only applies to lump sums paid on or after 6 May 2010.

- Paragraph 1.1: The guidance only refers to trivial commutation payments made under regulation 39 of the LGPS (Benefits, Membership and Contributions) Regulations 2007. It does not:

  - mention payments made under regulation 49 of the LGPS Regulations 1997 (i.e. payments made to councillor members and members who left prior to 1 April 2008); or
  - specifically refer to payments under regulation 156(3) of those regulations (trivial commutation of a pension credit), although part 4 of the guidance does refer to pension credit members, and
  - the guidance does not state that the trivial commutation guidance for regulation 49 dated 21 January 1998 and 18 May 2000 has been replaced.

  Does the regulation 49 guidance (taking account of HMRC requirements) still applies to pre 1 April 2008 leavers and councillor members or is the guidance dated 26 March 2010 to be applied to them?

- Paragraph 2.1: Add a bracket at the end of the paragraph after the word "pensions".

- Paragraph 2.6.1: The calculation of the capital value of uncrystallised benefits appears to be incorrect. The Secretariat's understanding is that Section 277 of the Finance Act 2004 (see below) sets out the valuation assumptions as referred to in Section 212(6) and therefore the pension and lump sum used to determine whether the benefits exceed 1% of the lifetime allowance or not are:

  - before the application of any actuarial reduction:
  - after the application of any actuarial increase:
  - before any 1:12 type commutation of pension: and

- o ignoring any ill health enhancement

277 Valuation assumptions

For the purposes of this Part the valuation assumptions in relation to a person, benefits and a date are—

(a) if the person has not reached such age (if any) as must have been reached to avoid any reduction in the benefits on account of age, that the person reached that age on the date, and

(b) that the person's right to receive the benefits had not been occasioned by physical or mental impairment.

- Paragraph 2.9: This paragraph refers to the 'no more than £2,000' provision introduced by The Registered Pension Schemes (Authorised Payments) Regulations 2009 (2009 No. 1171). The Secretariat has previously pointed out that an amendment to the wording of regulation 39 of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 is required in order for this provision to be available to LGPS members. This is because regulation 39 only permits 'a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act' whereas a payment under the 'no more than £2,000' provision would be under section 164(1)(f) of the Finance Act 2004.

- Paragraph 2.10s and 2.16 with the note to Table A for males and the first note in Table B for female members: These paragraphs / notes are not correct. Regulation 4 of the Occupational and Personal Pensions Schemes (Authorised Payments) Amendments Regulations 2009 [SI 2009/2930] made amendments (operative from 1 December 2009) which allow the GMP to be commuted even if the member is under GMP age. For females this makes no particular difference as the commutation rules require that the member is at least age 60 (which coincides with the GMP age for females). However, male members aged 60 or over and under 65 will now be able to commute a trivial pension even though they have not attained GMP age (65).

- Paragraph 2.12: The last part of this paragraph seems to imply that a member may have commuted part of their benefits (at 12:1) but any such commutation should be ignored. However, given that the benefits under this paragraph are uncrystallised, should the words "but should not allow for any (non-trivial) commutation" be deleted and replaced with a sentence reading "A member wishing to commute before benefits have been crystallised is not permitted to commute any pension at 12:1 prior to the commutation calculation (as that would mean that benefits had crystallised)". [If a member wishes to commute part of his or her pension to reduce the overall value of crystallised benefits below 1% of the standard lifetime allowance, then he or she must crystallise benefits first. Only then can the member trivially commute benefits.]

- Paragraph 2.17: Should not this paragraph also refer to another key date (6 April 1978) which relates to post retirement widow's pensions?

- Table B for female members: In the paragraph under the heading, should the words "who is married, in a civil partnership or has a nominated cohabiting partner" be deleted?

- Table C: The factors in this table start at 20 rather than 16. Is there a reason for this? If an administering authority needs a factor for a surviving adult dependant or pension credit member aged between 16 and 19 presumably the authority should contact CLG to obtain a factor from GAD.

- Lastly, if a member aged 60 goes retires on ill health grounds with a tier 3 pension (which would probably be suspended after 18 months) should the regulations be amended to prevent commutation? By allowing commutation, the member is receiving a commutation payment based on the assumption the pension would have been in continuous payment whereas, in reality, the pension would have been suspended between 61½ and 65. Commutation would provide a very good deal for such a person. The alternative would be to only allow commutation when the tier 3 pension is brought back into payment following a period of suspension (or at the date at which the member opts for the pension to carry on in payment but at an actuarially reduced rate).

LGPS – Payment of trivial commutation lump sums

Bulletin 69 contained an article which stated that there had been an amendment to the authorised payments legislation with respect to trivial commutation lump sums. Both regulation 39 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulation 39 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 make reference to section 166 of the Finance Act 2004. Section 166 of the Act (together with paragraph 7 of Part 1 of Schedule 29 to the Act) permits LGPS funds to commute a member's benefits on the grounds of triviality provided:

- the member is aged between 60 and 75;
- the trivial commutation in the LGPS in England or Wales extinguishes all of the member's benefits in the LGPS in England or Wales, or a trivial commutation in Scotland extinguishes all of the member's benefits in the LGPS in Scotland;
- the value of all of the member's rights (crystallised and uncrystallised) in all pension schemes does not exceed 1% of the standard lifetime allowance; and
- any commutation payments must all be made within a 12 month period.

Currently, only this type of trivial commutation is permitted in the LGPS or LGPS (Scotland). A trivial commutation under the 'less than £2,000 easement' is not currently permitted as such a payment is made under section 164(1)(f) of the Finance Act 2004, and the LGPS Regulations only currently permits payments under section 166 of the Finance Act 2004.

LGPS - Application of pensions increase between pensionable age and adjusted SPA

The Secretariat has received a number of queries as a result of an article on page 6 of NISPI Newsletter No.37. The Secretariat contacted NISPI to question the content of the article. The initial query and NISPI's response are reproduced below. Throughout the correspondence the GMP age (60 for females and age 65 for males) is referred to as 'old SPa' and the adjusted state pension age as 'new SPa'.

The Secretariat sent the following email to NISPI:

> "Here is an extract from your Pensions Industry Newsletter No. 37 of March 2010:
>
> Schemes will continue to be responsible for paying an individual increases on the post 88 part of the GMP up to a maximum of 3% from age 60/65. However until the individual reaches SPa they will not be entitled to any pre1988 GMP increases or any increases above 3% on the post

1988 GMP. This is because these increases form part of the person's State Pension which will not be in payment until they reach their new SPa.

Example

Female with a date of birth of 5 May 1952 will attain age 60 on 5 May 2012. Her new SPa will be 6 May 2014.

GMP calculated at age 60

GMP= £20.00Pre 1988 = £10.00Post 1988 = £10.00

Inflation proofing to post 1988 amount until individual reaches SPa

Pre 1988 = £10.00Post 1988 = £10.00 April 2013 3% = £10.30Total GMP =£ 20.30

Pre 1988 = £10.00Post 1988 = £10.30 April 2014 3% = £10.61Total GMP at SPa = £20.61

Part of our role at the Local Government Pensions Committee Secretariat is to give guidance to all administering authorities (100 local authorities entrusted with the administration of the local government pension scheme, collectively having over 3.7 million scheme members including over 1.1 million pensioners).

LGPS pensioners enjoy the protection of the Pensions (Increase) Act 1971 and get whatever increase is announced by annual review order. Because of the interaction with the State, and the provisions of Section 5ZA of SSPA1975, to stop double-indexation, local authorities pay no PI on pre-88 GMP and only pay up to 3% on post-88 GMP at each review order simply because the State are paying those increases along with the State Pension.

I was convinced therefore, that because the State will only pick up PI from new SPa in future, that responsibility for full PI between old SPa and new SPa would rest with the scheme. However, your article infers to me that the Scheme is not responsible for the increases in question and neither is the State. This doesn't seem right and certainly not fair to me. I had assumed that the period between old SPa and new SPa would be dealt with as any other "AC less than GMP case" i.e. responsibility for full PI resting with the Scheme.

Can you enlighten me please?"

On 13 May, NISPI replied to the Secretariat's query. The key part of the response stated:

"Following the changes to State Pension Age (SPA), the scheme should continue to make the GMP available from 60/65. The GMP amount which should be made available at 60/65 should be the GMP at date of leaving revalued to 60/65 (if applicable); the GMP should then be inflation proofed each year after that, as you do now. CA1629s will no longer be issued for women at age 60 from 2010, and for men age 65 from 2024. This is because they cannot be issued until an individual has approached SPA. As you will continue to receive CA1625 notifications showing the GMP amount at date of leaving, this should be sufficient to enable you to revalue the GMP to 60/65. However, if you require a new GMP calculation from HMRC, you can use AGLS or form CA1604.

Schemes will continue to be responsible for paying an individual increases on the post 88 part of the GMP up to the maximum of 3% from age 60/65. However, until the individual reaches SPA, they will not be entitled to any Pre1988 GMP increases or any increases above 3% on the post 1988 GMP. This is because these increases form part of the person's State Pension and they will not receive this until they reach their new SPA.

The amount that will be deducted from the woman's Additional Pension when she does reach SPA will be her GMP entitlement at age 60 plus any inflation proofing increases to the post 88 GMP from age 60 to the new State Pension Age.

If an individual continues in contracted-out employment until their new SPA the scheme should calculate the GMP amount at age 60 then apply inflation proofing up to 3% to the post 88 GMP amount. The scheme will still be responsible for calculating any GMP increments applicable if employment continues after age 60 as now, i.e. if deferment is for 7 weeks or more the scheme must increase the GMP by 1/7% for each complete week in the decrement period.

As you are aware, there are additional requirements for public sector schemes relating to inflation proofing, whereby the scheme is required to inflation proof the whole of the pension, if there is no inflation proofing being provided by the State. For women whose State Pension falls after age 60, it will not be possible for the State to apply any increases until the individual reaches her new SPA. It therefore follows that for the public sector schemes there will be a requirement for the scheme to inflation proof the whole of the pension until the individual's new SPA. Once the individual has reached SPA, you should assume that the AP will be greater than the GMP. If the AP will continue to be less than the GMP, you will receive a RD614 advising you that the scheme must continue to inflation proof the whole of the pension until a further RD614 is received to advise when the State Additional Pension exceeds the GMP. "

LGPC Communications

Guides and Leaflets

The following guides and leaflets to the LGPS have been updated:

Employees in England and Wales and Employees in Scotland

- Promotional Guide to the LGPS
- Brief Guide to the LGPS
- Employees' Guide to the LGPS - booklet and leaflet versions
- Topping up your pension benefits
- Is the Local Government Pension Scheme for me?

They are available on the LGE's website.

Councillors in England and Wales and Councillors in Scotland

- Guide to the LGPS for eligible councillors
- Introductory Leaflet to the LGPS for eligible councillors

They are available on the LGPS website.

New Leaflet

The Local Government Pensions Committee (LGPC) has produced a leaflet on the options available for employees in England and Wales who re-join the LGPS and have previous LGPS pension rights.

The leaflet is available on the LGE website.

Designed Brief Guide to the Local Government Pension Scheme (LGPS) for employees in England and Wales

The Local Government Pensions Committee has produced a designed version of the brief guide to the Local Government Pension Scheme (LGPS) for employees in England and Wales – April 2010 version

Web version

The guide is provided as a PDF version for the website which can be printed off as single sheets. The information on Pension Fund contact details for this version is on page 23 and refers the reader to the "Contact us" section of the LGPS members' website at www.lgps.org.uk

Print version

The guide is also provided in a High Resolution PDF version formatted for printing by Pension Fund's as an A5 booklet. Pension Fund's can take the guide as provided and add their own name, contact details and logos onto page 23 (inside back cover) under "Contact details" and onto the back cover, which has been left blank for this purpose. Please note, the guide refers throughout to "You can find out how to contact the Pension Fund at the end of this guide", so Fund's who use this version for printing must add contact details on page 23. Two different formats for the print version are provided; single pages and printers pairs. Funds will need to work with their printer as to which version is preferred.

The guides are on the LGE website.

Please note: before using the guides, Pension Funds should also read the information on the Designed Brief Guide page with regard to the terms and conditions of using the designed guide.

The LGPC will be producing a similar guide for employees in Scotland.

The Equality Act 2010

The Equality Act received Royal Assent on 8 April 2010. The intentions underlying the Act are to consolidate, simplify and in some areas extend the laws on discrimination. Discrimination by age, disability, race, religion or belief, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity and sexual orientation are all covered by the Act.

Currently, occupational pension schemes including the LGPS and LGPS (Scotland) must have rules or regulations which prevent discrimination on the grounds of sex, age, disability, religion or belief and sexual orientation. The Act requires that all occupational pension schemes have:

- a non-discrimination rule – scheme managers or employers are prohibited from discriminating against, harassing or victimising scheme members or prospective scheme members;
- a sex equality rule – this rule replicates the provisions contained with the Pensions Act 1995 and the current exemptions from the sex equality rule which permit different actuarial factors for men and women will continue; and
- a maternity equality rule – this rule will require that a woman on maternity will be treated in the same manner with respect to scheme membership and benefits as if she was in employment.

Any exemptions to age discrimination will be detailed in secondary legislation.

At the time the Equality Act was granted Royal Assent, the effective date for the Act was thought to be 1 October 2010 although with a new government in place, this could get delayed. Most of the Act will require commencement orders before it becomes effective.

HMRC – Draft technical guidance: restriction on pensions tax relief for high earners

HMRC have produced draft technical guidance on the new restrictions on pensions tax relief which were included in the Finance Act 2010. It appears that the guidance itself will become a new section in the Registered Pensions Scheme Manual. The technical guidance includes how:

- to assess whether an individual is liable to the new tax calculation;
- the new tax charge will be calculated; and
- to determine an individual's "relevant income" for the purposes of the new tax charge.

The deadline for any comments on the draft guidance is 7 June 2010.

Auto-enrolment: employers' obligations

The Pensions Regulator has issued a leaflet which outlines employers' obligations under the reforms which are going to be introduced in 2012. The leaflet is aimed at employers in general rather than specifically at employers whose employees are members of the LGPS. The Pensions Regulator has created a webpage which displays further information in respect of the 2012 pension reforms.

The General Election 2010

The Conservative and Liberal Democrat coalition government published a document on 11 May 2010 which set out the terms of their agreements.

The key item in the agreement as far as the public sector is concerned is the commitment to establish an independent commission to review the long-term affordability of public sector pensions, while protecting accrued rights. The independent commission's review will depend to a large extent on its members and what terms of reference it is given.

With respect to pensions in general, the coalition government intends:

- from April 2011, to restore the earnings link for the basic state pension. The rise in the basic state pension will be the highest of the increase in earnings, price inflation or 2.5%;
- to review the date at which the state pension age starts to rise to 66 (although the rise will not be before 2016 for men and 2020 for women);
- to remove the default retirement age of 65;
- to provide that retirees will no longer have to buy an annuity by age 75;
- to implement the Parliamentary and Health Ombudsman's recommendations to make payments to Equitable Life policyholders through an independent payment scheme. This is more generous than the previous administration's commitment (see Bulletin 65); and
- to announce an emergency budget in June but there has been no reference to restrictions on tax relief on pensions contributions made by high earners..

In terms of the broader economy, the coalition government also plans to make arrangements to protect those employees on low incomes who otherwise will be affected by the constraints on public sector pay and other public spending.

Bits and Pieces

Circular

The Secretariat has issued Circular 237 since the previous Bulletin was published. The Circular contains details of the "Understanding Final Pay" workshops which will be held throughout August and September of this year.

Timeline Regulations

The May 2010 update of the Timeline Regulations website included:

England and Wales

- GAD guidance on incoming and outgoing transfers: version 2 new factors from October 2008; and
- GAD guidance on trivial commutations: lump sums paid on or after 1 April 2009

Scotland

- Circular SPN/LG No.3/2010 and version 4 of the guidance on Assessment of Membership Contribution Rates

Legislation

Northern Ireland

SR Reference	Title
2010/164	The Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 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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Distribution sheet

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