

Local Government Pensions Committee  
Secretary, Terry Edwards

## **LGPC Bulletin 82 – May 2011**

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. [LGPC contacts](#) can be found at the end of this Bulletin.

This month [Bits and Pieces](#) includes an item on [LGPC Communications](#), the [Timeline Regulations](#), [the end of contracting-out for defined contribution schemes](#), the [National Office of Statistics update of their publication Pension Trends](#) and [an OECD report on public sector pension provision](#).

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## **LGPS 2008: Counting Officers and Regional Counting Officers**

On 4 May 2011, DCLG issued a letter in respect of the pensionability of Counting Officers and Regional Counting Officers' fees. The letter reports that [paragraph 20\(9\) of Schedule 1 to The Parliamentary Voting System and Constituencies Act 2011](#) provides that local authorities' claims to the Electoral Commission for reimbursement in respect of Counting and Regional Counting Officers' charges at the UK referendum may include amounts due to an increase in pension contributions.

Although the Act and the accompanying guidance do not state the fees are pensionable, the Act and the associated guidance do expect the fees to be pensionable. Consequently, it would be inconsistent for the LGPS Regulations not to be amended to permit Counting and Regional Counting Officers' fees to be pensionable.

As there was not enough time to make the necessary legislative amendments before 5 May 2011, a Statutory Instrument will be laid before Parliament with the effective date set to the date of the referendum. DCLG's letter states that they will shortly conduct a statutory consultation exercise on the appropriate retrospective amendments.

## **LGPS 2008: Trivial Commutations**

Paragraph 2.9 of the GAD guidance (issued on 6 May 2010) on trivial commutation refers to the 'no more than £2,000' provision introduced by The Registered Pension Schemes (Authorised Payments) Regulations 2009 [[SI 2009/1171](#)]. 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. Therefore regulation 39 of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 needs to be amended to add a reference to section 164(1)(f) of the Finance Act 2004.

The Secretariat recently contacted DCLG to state that it has received a number of representations from administering authorities requesting that such a minor amendment be made in the next available amending SI in order to enable administering authorities to be able to discharge trivial benefits by using the provision contained in section 164(1)(f) of the Finance Act 2004.

DCLG have confirmed that they will consider making such an amendment.

## **LGPS: Proposed increase in employee contributions**

On 16 February 2011, [the LG Group wrote to the Chancellor of the Exchequer](#) expressing concerns over the proposed increase in employee contributions to the LGPS and the likely effect this will have on opt-out rates. The LG Group has sent [a follow up letter](#) to the Secretary of State for Communities and Local Government again setting out reasons for consideration to be given to an alternative approach to a simple increase in employee contributions.

## Judicial review of indexation by reference to CPI

On 6 May at the High Court, the trade unions (FBU, NASUWT, PCS, POA and Unite) jointly initiated proceedings for a judicial review of the Government's decision to use CPI as the basis for the indexation public sector pensions. The trade unions are arguing that:

- a change to use the CPI index is inappropriate;
- unreasonably negates members' legitimate expectations for pensions increases based on RPI;
- is legally wrong; and
- represents a change in members' benefits which was implemented without following an appropriate consultation exercise.

The outcome of the judicial review will be reported in a future Bulletin.

## The Independent Public Service Pension Schemes Commission

The LG Group has [written](#) to the Rt Hon Eric Pickles, Secretary of State for Communities and Local Government, setting out its views on the 27 recommendations summarised in Annex A to [the final report of the Independent Public Service Pensions Scheme Commission](#).

While the Group had no issue with several of the recommendations, there were a number of points that it wished to bring to the attention of the Secretary of the State. These include:

- the LG Group is concerned that the maintenance of the final salary link for accrued rights could potentially have significant implications for employers and / or employees participating in the LGPS (recommendation 4);
- it will be necessary to specify which average earnings index is to be used to uprate active member's pension benefits accruing in the new scheme as this will affect the level of the accrual rate and the required contribution rates (recommendation 8);
- there are arguments for and against tiered employee contribution rates in a CARE scheme. Whilst there is evidence that higher earners live longer (and so draw a greater benefit from the scheme), pensions are only part of the overall remuneration package and there is evidence that higher earners in the public sector earn less than their counterparts in the private sector (recommendation 9);
- a common framework for all public service pension schemes is a reasonable concept provided that the distinctive nature of the funded and locally accountable LGPS is not lost (recommendation 13);
- whilst high level key design features should apply to the LGPS, the details of the scheme should be designed to best meet the needs of the wide range of employers and employees who participate in the scheme (recommendations 14 and 15);

- the LG Group disagrees with the recommendation that non-public service workers should not have access to public service pension schemes because a basic assumption of LGPS funds' investment strategies is that the scheme remains open to new entrants. Closing the scheme to new entrants will mean Funds will mature at a quicker rate which, in turn, will affect investment strategies and, consequently, employer contribution rates (recommendation 16);
- careful consideration of the costs and practicalities will be required before seeking to move all public sector pension schemes to a common set of benchmarking standards (recommendation 22);
- the LG Group is not persuaded that there is a need, at this point in time, to introduce primary legislation to implement a new common legal framework for all public sector pension schemes throughout the UK (recommendation 24); and
- the timetable will be tight if the new LGPS is to be implemented in time for 2015. Therefore, there is a requirement for a clear plan and time-schedule which allows adequate time for regulations to be made and laid, the publication of actuarial guidance, the issue of communication materials and appropriate amendments to pensions administration systems (recommendation 26).

The letter also highlights that the LGPS (and the individual funds) already meet a number of the recommendations made by the Independent Public Sector Pensions Committee.

### **Public Accounts Committee Report: public service pension schemes**

On 25 May, the House of Commons Public Accounts Committee published a report entitled '[The impact of the 2007-08 changes to public service pensions](#)'. The report is an initial review of the changes made to public sector pension schemes in 2007 and 2008. The three main changes were an increase in normal retirement age (amendment of the 85 year rule in the LGPS), an increase in employee contribution rates and the introduction of a new cost sharing and capping mechanism "to transfer from employers to employees, extra costs that arise if pensioners live longer than previously expected".

The report came to a number of conclusions and made several observations:

- the Treasury is forecasting that the cost of pension payments to retired civil servants, NHS staff and teachers will stabilise at roughly 1% of GDP as a result of the 2007-08 changes over the next 50 years. It is not possible to be more precise as the analysis was incomplete. The Treasury has accepted the requirement for more robust analysis in future when contemplating further changes to the public sector pension schemes;
- the setting of the discount rate used to determine pension contribution levels in the unfunded public sector pension schemes raised concerns on how future costs of pensions are valued. Following the recent consultation exercise, the Government has recently set a lower discount rate. The Government will review the discount rate every 5 years;

- the report claims that “cost sharing and capping is the change intended to deliver 60% of the projected cost savings over the next 50 years”. The implementation of cost sharing and capping, however, has been delayed mainly due to the time taken to change the discount rate. The Hutton Commission recommended an alternative to cap and share which sets an upper limit for the Government’s contributions to the public sector pension schemes. The Treasury should publish its timetable for implementing cap and share or the alternative suggested by the Hutton Commission as soon as possible after the Government publishes its proposals in the autumn for new pension schemes;
- there is no (agreed and accepted) measure which defines an affordable level of expenditure on public service pensions and against which actual costs can be compared;
- the report argues that employees are not supplied with the appropriate information which would allow them to understand the value of their pensions;
- it is debatable whether or not wider measures to encourage pension saving through occupational schemes are effective. Pension savings is encouraged by tax relief on contributions and reduced NI contributions but the Treasury has not explained if those measures are cost-effective or well-targeted. The Treasury should identify the costs and benefits of each measure to support pension saving, who benefits from each measure and how it judges the success of each measure;
- changes to public sector pensions affect other areas of public spending (such as means-tested benefits) but not all impacts have been identified and assessed;
- there will be a further opportunity, as a result of the Hutton Commission, for the Government to set “a stable, long-term direction for public sector pensions”. As part of this the Treasury should set out clear objectives for any future changes to the public sector pension scheme.

### **LGPS: Part-time buy-back cases spreadsheet**

Representations have been made to the Secretariat requesting that the LGPC should pay for GAD to update the PTBB spreadsheet and make it available on the LGE website as used to be the case. The Secretariat contacted GAD regarding the re-instatement of the old system with the LGPC funding the provision of the spreadsheet. GAD responded by stating that they are happy to resume the monthly update of the PTBB spreadsheets. The next monthly spreadsheet update will be provided in June and placed on the LGE website. This means that employers will then no longer have to contact and pay GAD for an individual calculation.

### **HMRC Pension Schemes Newsletter 46: new Annual Allowance regime timetable**

HMRC have added [an appendix](#) at the end of Newsletter 46 which sets out the timetable for the provision of information and the reporting requirements under the new Annual Allowance regime. The appendix has been reproduced at [the end of this Bulletin](#).

## Academies

As reported in last month's Bulletin, the Secretariat has written to the Department for Education setting out a number of issues and concerns for LGPS funds that ensue from the setting up of Academies under the Academies Act 2010. A copy of the letter was emailed to all Pensions Managers earlier this month.

## HM Treasury consultation: Early access to pension savings

[Bulletin 77](#) reported that HM Treasury had issued its response to the submissions to the consultation exercise on the removal of the requirement to annuitise by age 75. As part of the consultation, the Government considered permitting early access to pension savings if it would encourage individuals to save more for their retirement income.

HM Treasury have decided not to proceed with plans to introduce early access to pension saving as there was limited evidence that early access would improve pension savings and because of the impending introduction of auto-enrolment.

The Treasury is, however, committed to:

- reconsidering early access to pension savings (after the full implementation of auto-enrolment) if there is evidence that this would reduce opt-out rates;
- working with the financial services industry to examine innovative savings products; and
- considering alignment of the trivial commutation rules which are applied to small occupational and personal pensions.

## HMRC Draft legislation

HMRC have published a number of [draft Statutory instruments](#). They are items of secondary amendment regulations which complement the changes in the Finance (No.3) Bill. The draft legislation falls into three categories:

### Annual Allowance regulations

- The Registered Pension Schemes (Provision of Information) (Amendment No. X) Regulations 2011;
- The Registered Pension Schemes (Notice of Joint Liability for the Annual Allowance Charge) Regulations 2011;
- The Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011;
- The Registered Pension Schemes (Accounting and Assessment) (Amendment) (No.2) Regulations;

### Lifetime Allowance Regulations

- The Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011;

- The Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2011;
- The Registered Pension Schemes (Authorised Payments) (Amendment) Regulations 2011;
- The Taxation of Pension Schemes (Transitional Provisions) (Amendment No.2) Order 2011;

### Age 75 Regulations

- The Registered Pension Schemes (Relevant Pension Income) Regulations 2011;
- The Registered Pension Schemes (Provision of Information) (Miscellaneous Provisions) Regulations 2011;
- The Registered Pension Schemes (Prescribed Requirements of Flexible Drawdown Declaration) Regulations 2011;
- The Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2011;
- The Registered Pension Schemes (Authorised Payments) (Amendment) Regulations 2011;
- The Registered Pension Schemes (Authorised Surplus Payments) (Amendment) Regulations 2011;
- The Pension Benefits (Insurance Company Liable as Scheme Administrator) (Amendment) Regulations 2011; and
- The Registered Pension Schemes (Meaning of Pension Commencement Lump Sum) (Amendment) Regulations 2011.

The DWP has also issued the [draft Occupational Pension Schemes \(Assignment, Forfeiture, Bankruptcy etc.\) Regulations 1997](#) which seek to achieve the policy objective of allowing a member to agree to a surrender of their rights under a pension scheme for the purpose of meeting an annual allowance charge.

### State pension reform

Further to the proposed amendments to the state pension contained in [the Government's Green paper](#), [A briefing note](#) entitled "What could be the implications of the Government's proposed state pension reforms?" has been issued by the Pensions Policy Institute PPI). The paper briefly outlines the likely outcomes of the two options identified in the DWP's consultation document.

The first option is to accelerate the existing reforms (included as part of the Pensions Act 2007) so that the state pension evolves into a two-tier flat-rate structure more quickly. Nevertheless, the switch to a fully flat-rate S2P component of the State benefits would not happen before 2070. This option would still involve an element of means testing and would preserve contracting-out.

The other more radical option is to switch to a single-tier flat-rate pension set at an amount above the (State) Pension Credit standard minimum guarantee: currently this is estimated to be at £140 per week. The single flat-rate pension would eventually replace the existing basic state pension and S2P. The removal of S2P would mean the demise of contracting-out. All employees would pay the same rate of NI contributions irrespective of what type of pension scheme they are a member.

## Pension Protection Fund

The [Pension Protected Fund](#) has confirmed the framework for the new levy. The key features of the framework are:

- (a) fixing the levy rules for three years to meet levy payers' request for certainty;
- (b) averaging funding levels so that short-term volatility in financial markets is not reflected in the measure of underfunding risk;
- (c) the levy calculation will now reflect investment risk; and
- (d) a system of 10 insolvency rating bands which is a response to industry concerns that the originally proposed 6 bands would create 'cliff-edges' so that schemes could potentially face large levy increases.

## Bits and Pieces

### LGPC Communications

#### **Updated guides and leaflets to the LGPS for employees in England and Wales - April 2011**

The LGPC has updated the following guides and leaflets to the LGPS for employees in England and Wales for April 2011:

- Promotional guide to the LGPS;
- Brief guide to the LGPS - text and designed versions
- Full guide to the LGPS - booklet and leaflets versions
- Is the LGPS for me?
- Topping up your pension benefits

The updated guides, along with tracked versions showing the changes made to the previous version, are available on the [LGE website](#).

The guides and leaflets for employees in Scotland are in the process of being updated and Pension Managers will be notified when they become available.

#### **Introductory guides to the LGPS for councillors in England and Wales and for councillors in Scotland - April 2011**

The LGPC has updated the Introductory guides to the LGPS for councillors for April 2011. The revised versions, and tracked versions showing the changes made, are available on the [LGE website](#).

The full guides to the LGPS for councillors are in the process of being updated and Pension Managers will be notified when they are available.

## Timeline Regulations

CLG's letter (dated 4 May 2011) in respect of Counting Officers and Regional Counting Officers' fees has been added to the Statutory Guidance / FAQs page in the England and Wales section of [the Timeline Regulations website](#). The latest GAD guidance on the calculation of cash equivalents for the purposes of pension



sharing on divorce has been added to the post 31 March 2009 GAD guidance page for the LGPS in Scotland.

### Abolition of contracting-out for defined contribution pension schemes

The Pensions Act 2007 (Commencement No.4) Order 2011 [[SI 2011/1267](#)] abolishes contracting-out of the state additional pension for defined contribution pension schemes with effect from 6 April 2012. The Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes) (Consequential Amendments) Regulations 2011 [[SI 2011/1245](#)] makes the necessary amendments to the subordinate legislation and makes transitional arrangements for the three years after 6 April 2012.

The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) Order 2011 [[SI 2011/1246](#)] and the Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) Order 2011 [[SI 2011 No.1266](#)] remove protected rights for members for contracted-out defined contribution pension schemes. These SIs accompany SI 2011/1267.

The SIs do not directly affect the LGPS but, along with the proposals contained in DWP's paper on the State Pension, they indicate that it is likely that contracting-out from S2P by defined benefit schemes will be reviewed by the Government.

### The National Office of Statistics: Pension Trends

The National Office of Statistics (NOS) has updated its [Pension Trends](#) publication on its website. The NOS has updated Chapter 9 (Pension Scheme Funding and Investment) and Chapter 14 (Pensions and the National Accounts). It has also inserted a brand new chapter on Saving for Retirement (Chapter 10).

### OECD Report

The Organisation for Economic Co-operation and Development (OECD) has published a report entitled, "[Funding in Public Sector Pension Plans: International Evidence](#)". The report does not detail every public sector pension scheme in each of the member countries, but it does attempt to give an overview of the way public sector pension schemes are organised within member countries of the OECD.

## Legislation

### United Kingdom

#### SI Reference Title

2011/1041	The Freedom of Information (Additional Public Authorities) Order 2011
2011/1042	The Freedom of Information (Removal of References to Public Authorities) Order 2011
2011/1159	The Equality Act 2010 (Guidance on the Definition of Disability) Appointed Day Order 2011
2011/1245	The Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes) (Consequential Amendments) Regulations 2011
2011/1246	The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) Order 2011
2011/1266	The Pensions Act 2008 (Commencement No.10) Order 2011
2011/1267	The Pensions Act 2007 (Commencement No.4) Order 2011
2011/1294	The Occupational Pension Schemes (Contracting-out) Amendment Regulations 2011

## 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](#)

## LGPC Contact Details

### **Terry Edwards (Head of Pensions)**

Telephone: 01954 202 787

Email: [terry.edwards@local.gov.uk](mailto:terry.edwards@local.gov.uk)

### **Tim Hazlewood (LGPC Training & Development Manager)**

Telephone: 01455 824 850

Email: [tim.hazlewood@local.gov.uk](mailto:tim.hazlewood@local.gov.uk)

### **Irene Wass (LGPC Communications Officer)**

Telephone: 01246 414 902

Email: [irene.wass@local.gov.uk](mailto:irene.wass@local.gov.uk)

### **Elaine English (LGPC Executive Officer)**

Telephone: 0207 187 7344

Email: [elaine.english@local.gov.uk](mailto:elaine.english@local.gov.uk)

### **Dave Friend (LGPC Pensions Adviser)**

Telephone: 01457 859 016

Email: [david.friend@local.gov.uk](mailto:david.friend@local.gov.uk)

### **Alison Hazlewood (Part-time Administration Assistant - Training & Development)**

Email: [alison.hazlewood@local.gov.uk](mailto:alison.hazlewood@local.gov.uk)

## Distribution sheet

Pension managers (internal) of administering authorities  
Pension managers (outsourced) and administering authority client managers  
Officer advisory group  
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LGPC  
Local Government Employers  
Local Government House  
Smith Square  
London, SW1P 3HZ

or email: [David.Friend](mailto:David.Friend@lge.gov.uk)  
tel: 01457 859016

## Appendix: HMRC's Timetable of key dates for the restriction of pensions tax relief

Date	Description
31 March 2011	<b>HMRC</b> - Publication of Finance Bill 2011 (FB 11)
5 April 2011	Special annual allowance regime comes to an end
6 April 2011	Start of 2011-12 tax year. AA is £50,000 for 2011-12
May/June 2011	<p>FB 11 Committee</p> <p><b>HMRC</b> - Draft regulations or description of regulations ready for FB committee (some already published in draft for example on information regulations)</p> <p><b>HMRC</b> – draft 2011-12 Self Assessment tax return should be available for software developers (around June/July)</p>
FB 11 Royal Assent	<p><b>Pension scheme</b> - Last date for retrospective nomination of pension input periods (day Royal Assent received)</p> <p><b>HMRC</b> - Laying of AA information regulations</p> <p><b>HMRC</b> - Laying of Lifetime Allowance (LTA) fixed protection notification regulations</p> <p><b>HMRC</b> - Application form for fixed protection published on HMRC website (once Royal Assent received)</p> <p><b>Individual</b> - Application forms for fixed protection can be submitted to HMRC</p> <p><b>DWP</b> - Laying of regulations to override s91 Pensions Act 1995 to allow schemes to pay tax charges from pension benefits</p>
October 2011	<p><b>HMRC</b> - Fixed protection database delivered</p> <p><b>HMRC</b> - First fixed protection certificates issued</p>
5 April 2012	<b>Individual</b> - Last date for completed fixed protection forms to be received by HMRC
6 April 2012	<p>LTA reduces to £1.5 million</p> <p><b>HMRC</b> - Notices to file or tax return for 2011-12 sent out</p> <p><b>HMRC</b> - Updated online Event Report for 2012-13 available</p> <p><b>HMRC</b> - Updated online Accounting for Tax (AFT) return ready for schemes to pay any AA tax charges individuals elect to meet from their pension benefits</p>
31 January 2013	<b>Individual</b> - Last date for filing 2011-12 tax return – with estimate if required. Payment date for Self Assessment tax liabilities (including AA tax charges paid direct by individual)
6 April 2013	<b>HMRC</b> - Notices to file or tax return for 2012-13 sent out

6 July 2013	<b>Employer</b> - Employers to provide information to DB schemes about pensionable pay etc for 2011-12 and 2012-13
6 October 2013	<b>Pension scheme</b> - Latest date for pension schemes to provide pension savings statements for those exceeding the AA in 2011-12 or 2012-13 (including details of pension input amounts in pension input periods ending in the previous three tax years)
31 December 2013	<b>Individual</b> - Last date for individuals to make an irrevocable election to their scheme to meet a 2011-12 AA liability from their pension benefits
31 January 2014	<b>Individual</b> - Last date for filing 2012-13 tax return. Payment date for Self Assessment tax liabilities (including AA tax charges paid direct by individual)  <b>Individual</b> - last date for individuals to amend 2011-12 tax returns
31 March 2014	<b>Pension scheme</b> - Last date for the scheme to submit an AFT return reflecting any 2011-12 AA charges schemes will be paying, as members have elected to meet them from their pension benefits
6 April 2014	<b>HMRC</b> - Notices to file or Self Assessment return for 2013-14 sent out
15 May 2014	<b>Pension scheme</b> - Last date to pay any 2011-12 AA charges reported on March quarter AFT
6 July 2014	<b>Employer</b> - Employers to provide information to DB schemes about pensionable pay etc for 2013-14
31 July 2014	<b>Individual</b> - Last date for individuals to make an irrevocable election to their scheme to meet a 2012-13 AA liability from their pension benefits
6 October 2014	<b>Pension scheme</b> - Pension schemes to provide pension statements for those exceeding the AA in 2013-14 (including details of pension input amounts in pension input periods ending in the previous three tax years)
31 December 2014	<b>Pension scheme</b> - Last date for the scheme to submit AFT return reflecting any 2012-13 AA charges schemes will be paying, as members have elected to meet them from their pension benefits
31 January 2015	<b>Individual</b> - Last date for filing 2013-14 tax return. Payment date for Self Assessment tax liabilities (including AA tax charges paid direct by individual)  <b>Individual</b> - last date for individuals to amend 2012-13 tax returns
14 February 2015	<b>Pension scheme</b> - Last date for scheme pay any AA tax charges for 2012-13 that members have elected to meet from their pension benefits (via the AFT system)
6 April 2015	<b>HMRC</b> - Notices to file or tax return for 2014-15 sent out