Local Government Pensions Committee
Secretary, Terry Edwards

# LGPC Bulletin 85 – September 2011

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

Please contact Dave Friend with any comments on the contents of this Bulletin or with suggestions for other items might be included in future Bulletins. LGPC contacts can be found at the end of this Bulletin.

This month's Bits and Pieces includes an item on LGPC Communications, LGPC Training, the Timeline Regulations, DWP analysis on life expectancy, the Pension Protection Fund Levy, the pensions of FTSE 100 company directors, an update of the Office of National Statistic Pensions Trends and a Smith Institute publication on inadequate pension provision in the UK.

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## LGPS contribution rates for employees

On 20 July 2011 the Secretary of State for Communities and Local Government wrote to the Local Government Group inviting it to conduct discussions with the local government trade unions with a view to establishing a package of measures to secure short term savings by 2014/15, equivalent to a 3.2% increase in employee contribution rates, with any necessary legislation to be in place by 1 April 2012. The package could include alternative ways to deliver some or all of the savings, whilst providing protections from contribution increases for the lower paid.

The LG Group has been in discussions with the trade unions since then.

The Secretary of State's letter of 20 July 2011 initially required the Group to provide him with an update on the outcome of the discussions by 9 September but a short extension to this deadline was subsequently allowed. However, despite constructive discussions with the trade unions, by mid-September it had not been possible to reach an agreement on a joint proposal to put to the Secretary of State.

The LG Group therefore wrote a letter to the Secretary of State on 21 September 2011, with backing papers, setting out the Group's proposals on how the required 3.2% savings can be achieved in a way which is fair to employees, protects the lower paid, and offers employees choice.

The key elements of the LG Group proposals are:

- no increase in employee contributions for staff with full-time equivalent earnings of less than £15,000, a moderate increase for those earning between £15,000 and £21,000 of 1.5% and an increase of between 2% and 2.5% for those earning over £21,000
- choice for employees, by giving those with full-time equivalent earnings of £15,000 or more who feel they cannot afford an increase in contributions the option of taking a reduced pension accrual rate instead for future service from April 2014. Any employees with full-time equivalent earnings of less than £15,000 who may be finding it difficult to meet the current level of contribution would have the option of taking a reduction in their contribution rate but would, as a result, have a reduced pension accrual rate for future service from April 2014
- some examples of the effect the choice has on individuals have been prepared
- raising the normal pension age from 65 to 66 for benefits built up from April 2014. Benefits built up prior to then would retain a normal pension age of 65.

The Secretariat understands that the Secretary of State will shortly issue a statutory consultation document setting out the DCLG proposals for how the 3.2% savings could be met and we anticipate that the consultation paper will make reference to the LG Group proposals.

Unison has written to Ministers formally advising them that a dispute over reforms to the LGPS exists. It is our intention to continue discussions with the trade unions once the DCLG consultation paper has been issued.

## LGPS 2008: GAD guidance on flexible retirement

On 26 August 2011, DCLG issued the final version of the GAD guidance in respect of flexible retirement. A copy of the GAD's flexible retirement guidance is available on the post 31 March 2008 GAD guidance page of the Timeline Regulations website along with the associated DCLG cover letter.

Administering authorities may find the following additional information helpful which is based on the Secretariat's current understanding.

DCLG have indicated to the Secretariat that amendments will be made to the LGPS (Benefits, Membership and Contributions) Regulations 2007 to make it clear that members who wish to flexibly retire will, as per paragraph 2.2 of the GAD guidance, be able to take:

(a) all or none of their pre April 2008 rights; and
(b) all, some or none of their post March 2008 rights.

In respect of paragraph 2.1(iii) of the guidance, there may be some cases where an employee is still paying additional contributions to purchase pre 1 April 1986 part-time membership under the 1990 buy-back terms (i.e. in accordance with regulation C7A of the Local Government Pension Scheme Regulations 1986 as carried forward into Schedule C6 of the Local Government Pension Scheme Regulations 1995 and regulations 12 and 15 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997). In such cases, paragraph 7 of Schedule 4A of the 1986 Regulations and paragraph 6 of Schedule C6 of the 1995 Regulations provided that where a person ceased to be a pensionable employee / scheme member before completing payment of the additional contributions the person would be entitled to count as a period of reckonable membership as determined by the formula:

X / Y multiplied by Z where

X = the aggregate additional contributions paid by the employee and, where the employer had agreed to meet part of the cost, the additional contributions paid by the employer;
Y = the total additional contributions that were due; and
Z = the period of reckonable membership that would have been purchased if contributions had been completed.

Paragraph 8 of Schedule 4A of the 1986 Regulations and paragraph 6 Schedule C6 of the 1995 Regulations went on to say that where the person ceased to be a pensionable employee / scheme member and this was because he had ceased to be employed by an LGPS employer, he could within one month of the date he so ceased pay off the balance of the contributions so that the whole period would count.

Clearly the precise wording of the 1986 and 1995 Regulations did not envisage flexible retirement. DCLG are of the view that as a BCE is occurring, the member should be treated as a retiree and so the above provisions should be applied.

Paragraph 2.1(iii) of the guidance –where a member who is paying part-time buy back contributions under the Preston judgment takes flexible retirement, DCLG are of the view that as a BCE is occurring the member should be treated as a retiree.

The part-time buy-back agreement with the national unions (see paragraph 26 of LGPC Circular 152) says:

> "If the person leaves with the **immediate payment of pension benefits** before completion of the contract owing an outstanding balance of contributions, the balance of the outstanding contributions (calculated in accordance with the agreed GAD model spreadsheet) will be deducted from the lump sum retiring allowance due and, if necessary, by making a deduction from the monthly pension in payment (although the deductions should not exceed the additional monthly pension payable as a result of the buy back of part time service unless the person agrees to a higher deduction) until any outstanding sum due is recovered. In these circumstances the respondent will need to reduce the amount recoverable by the amount of tax relief the employee will not receive on the outstanding contributions."

Thus, as immediate benefits are payable upon flexible retirement, the above provisions should be followed.

Note, where a member flexibly retires after his or her 65$^{th}$ birthday, regulation 18(3A) of the Benefit Regulations applies. Any benefits payable will be actuarially increased as per GAD guidance on late retirements.

DCLG have confirmed that, for a flexible retiree, the final pay protection as set out in regulation 8 of the Benefit Regulations does continue to apply to the subsequent employment (regardless of whether the reduction in pay occurred prior to, at or after the date of flexible retirement). This is reiterated in paragraph 3.6 of the GAD guidance.

Where a member flexibly retires as a result of reducing their hours or grade, regulation 10(3) of the Benefits Regulations provides that the final pay protection provisions contained in regulation 10 do not apply if the member's reduced pensionable pay in the ongoing employment is because the member chose to reduce their hours or grade upon flexible retirement.

Thus, regulation 10 would not apply, upon final retirement, to the benefits from the continuing employment, nor to any benefits not drawn prior to the flexible retirement (where the member opted to take partial rather than full benefits at the flexible retirement). However, if subsequent to the flexible retirement, the member again reduces their hours or grade (but without taking a further flexible retirement), regulation 10 would apply in respect of that second reduction in pay when the member eventually retires. What is less clear is what happens where a pay reduction or restriction occurred on or after 1 April 2008 but prior to flexible retirement. Clearly, regulation 10 would apply to the benefits drawn on flexible retirement and one would assume that, for consistency with the above, it would not continue to apply to any benefits not drawn (where the member opted to take partial rather than full benefits at the flexible retirement) nor to the benefits deriving from the ongoing employment. However, it is perhaps difficult to back this view up by reference to the wording of regulation 10. Clarification is being sought from DCLG.

Additionally, how would a Certificate of Protection be applied to a member's final pay if the member takes flexible retirement? Under Regulation 23 of the LGPS Regulations 1997, the protections afforded by that regulation can be used if the certificate was issued in respect of a reduction or restriction in pay and the member ceases to be an active member within 10 years of the date of the reduction or restriction. Logically, one would presume the certificate would be applied at the date of flexible retirement, but as the member has not ceased to be an active member at this point, should the certificate be ignored at this point (which could inadvertently disadvantage the member) and be applied only if the member subsequently retires fully at some future point which is still within the 10 year period? If the certificate is applied when calculating the final pay at the date of flexible retirement (notwithstanding that the member is still active), could it then be used again at the subsequent retirement? Clarification is being sought from DCLG.

Paragraph 3.7 of the GAD guidance states that all membership which accrues after a member's initial flexible retirement will be regarded as Part D membership. There will be no rule of 85 protection on the subsequent employment. This is backed up by the counsel's opinion obtained by the LGPC - see item (5) from the article in Bulletin 69.

DCLG believe that the guidance on flexible retirement does not need to cover:

- the calculation of post-retirement partners' benefits where a member marries following one or more flexible retirements;

- what happens if a women is 60 or over, or a man is 65 or over, at the date of flexible retirement and wants to take part of their post 2008 benefits but these include a GMP from a transfer in received post 31 March 2008. If a women is 60 or over, or a man is 65 or over, at the date of flexible retirement and wants to take part of their post 2008 benefits but these include a GMP from a transfer in received post 31 March 2008, the GMP is not payable - see the GMP table on the LGE website. Logic dictates that when the member does finally fully retire, the combined flexible retirement pension and the subsequent pension paid following full retirement should not be less than:

  (a) benefits based on post 97 membership; plus
  (b) the greater of the member's GMP and benefits based on pre 97 membership.

  However, for this to work, administering authorities would need to record the service credit as Part D membership, but also show what proportion of the service credit related to pre April 1997 service (with a GMP record attached) and what proportion related to post April 1997 service.

  The implication is that where authorities agree to a flexible retirement with an actuarial reduction, the total benefits might upon full retirement need to be made up to an amount equal to:

  (a) benefits based on post 97 membership; plus
  (b) the member's GMP.

  Thus there could be a hidden cost in agreeing to an actuarially reduced flexible retirement that the employer should take into account before agreeing to the flexible retirement;

- how or when, where a member chooses to draw some, or all, of their benefits on flexible retirement, any abatement and any clawback of Compensatory Added Years awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, and earlier equivalent regulations, is to be calculated. The Secretariat is of the view that the wording of regulations 16 and 18 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 mean that the abatement and clawback provisions would applied upon a flexible retirement occurring.

DCLG have stated that where administering authorities cannot resolve any of the above issues by reading the regulations, they should contact DCLG with the query.

What happens if a member taking flexible retirement has a pre-existing Earmarking Order attached to their benefits following divorce, nullity of marriage, dissolution or nullity of a civil partnership, or judicial separation?

By virtue of sections 25B, 25C and 25D of the Matrimonial Causes Act 1973 and Schedule 5 of the Civil Partnership Act 2004 the Courts are expressly required to take account of pensions on divorce, nullity of marriage, dissolution or nullity of a civil partnership, or judicial separation and have the power to make an Earmarking Order:

Where, after an Earmarking Order has been issued, an event occurs which is likely to result in a significant reduction in the benefits payable under the LGPS, the administering authority must inform the “ex-spouse” or “ex-civil partner” of the likely extent of the reduction in benefits within 14 days of the event occurring.

The Courts can vary an Earmarking Order.

There will, undoubtedly, be cases of flexible retirement where there is a pre-existing Earmarking Order issued by the Court which has to be applied to the member’s benefits.

There are a number of matters to consider in such a situation:

- what are the terms of the existing Earmarking Order?
- if the Earmarking Order was issued before 6 April 2006 the Court may not have envisaged a situation where benefits could be drawn on flexible retirement
- flexible retirement could materially reduce the overall benefits payable under the LGPS (i.e. where the benefits paid on flexible retirement are paid at an actuarially reduced rate)
- will the terms of the existing Earmarking Order apply both to the first set of benefits drawn from the LGPS under flexible retirement and to the subsequent benefits paid upon retirement after the flexible retirement?

This is not just a question applicable to the LGPS as many pension schemes may operate a flexible retirement policy. It is, therefore, a question that perhaps the Courts need to consider / address. In the meantime, administering authorities should carefully consider the terms of the existing Earmarking Order, apply it as appropriate to the benefits drawn on flexible retirement, notify the “ex-spouse” or “ex-civil partner” of the likely extent of any significant reduction in benefits within 14 days of the event occurring and, perhaps, suggest that either party might wish to seek legal advice as to whether they should ask the Court to consider whether the Earmarking Order should be varied to reflect the flexible retirement.

## LGPS 2008: GAD guidance on AVC Service Credits

DCLG issued a cover letter on 1 September which accompanied the latest GAD guidance on AVC Service Credits. Both documents have been added to the Timeline Regulations website. There a number of matters arising from this latest version of the GAD guidance on AVC Service credits.

Paragraph 8 of the GAD guidance states that the Transfer Credits should be calculated by reference to a pension age of 65 **and** if the member subsequently retires before or after 65, the relevant early/late retirement factor, taken from the GAD guidance on early/late retirement should be applied to the benefits derived from the calculated transfer credit.

Paragraphs 9 and 10 of the GAD guidance describe the methodology upon which the transfer credit is calculated (i.e. at a 1/60th etc). Paragraph 11 of the GAD guidance states that the Transfer Credit does count towards the membership for the purpose of calculating a member's CRA. Paragraph 11, however, then states that

> "*as the transfer credit is based on an assumed pension age of 65, the credit will need to be actuarially reduced for the period between age 65 and the resultant CRA using the reduction factors contained in the GAD guidance on Early Retirement before it is counted towards membership.*"

DCLG have been asked to confirm that the methodology, outlined below, is the correct procedure to follow in calculating a member's AVC Service Credit under the latest GAD guidance:

> (1) Calculate the transfer credits based on a pension age of 65. If the member is under age 60, this will result in a conversion factor based on the period between age 60 and age 65. If the member is over age 60 then the conversion factor will be based on the period from the date the transfer is received to age 65 . If the member retires prior to age 65, then the benefits derived from this element of membership (Part D) is reduced from the member's DOL to age 65, where appropriate, and vice versa where the member retires after age 65;
>
> (2) (a) In order to ensure that the transfer credit when calculated using a pension age of 65 does not artificially drag forward the CRA of all the membership, the transfer credit must be further reduced, before, calculating the member's CRA;
>
> (b) Determine the member's CRA (known as the "resultant CRA") taking into account the transfer credit calculated using a pension age of 65 (Step 1 above) and further reduce that transfer credit based on the period from the "resultant CRA" to age 65;
>
> (c) It is theoretically possible, although highly improbable, this could result in a reduction based on a relevant period of 15 years if an individual's "resultant CRA" is dragged forward to age 50;
>
> (3) When calculating the member's CRA on the remaining membership, include within the assessment of the CRA the transfer credit which has been reduced further in Step 2 above (i.e. reduced taking into account the relevant period from the "resultant CRA" to age 65);

In particular, if (3) above is a correct summary of the GAD guidance, DCLG have been asked to explain why the AVC Service Credit is not simply treated as Part A membership and the re-iteration process is applied in determining the credit in the first place.

The latest GAD guidance on AVC Service Credits is silent on the calculation of an AVC Service Credit for a member over aged 65 at the relevant date. In the earlier version (dated 6 April 2009), paragraph 7 stated:

> "*Where the member concerned is age 65 or over at the calculation date, the calculation should be undertaken using the non-ill-health pensioner divorce factors in relation to 80ths benefits (together with pension-only AMCs tabulated with these factors), and the adjustment described in paragraph 3 is that no lump sum term should be included in this calculation. No late retirement factors are applicable in such cases.*"

However, this no longer appears to be appropriate given that the AVC service credit under the current GAD guidance attracts a 1/60th pension and we assume that the calculation should now be performed in accordance with the non-ill health pensioner divorce factors contained in the Pension Sharing Following Divorce: Calculation of Cash Equivalents guidance dated 8 April 2011.

### LGPS 2008: Member uprated from Tier 3 to Tier 2 ill-health benefits

Paragraph 44 of the updated statutory Guidance on the Application of the LGPS Ill Health Regulations states

> "*44. The employer can determine that a member with 3rd tier benefits can receive the enhanced 2nd tier benefits upon the certification by the independent registered medical practitioner following the review or at any time up to 3 years after the payment of the 3rd tier benefit has been discontinued. The employer must take the same steps when determining the 2nd tier concerning certification by an independent registered medical practitioner. The date of the second determination will decide the date from which the uplift to 2nd tier will be put into payment and* ***the enhancement is calculated by adding 25% of membership between the date of that subsequent determination and normal retirement age (see Benefit Regulation 20(11)(b))****. There is no provision to make a determination for a 1st tier payment at the review or a subsequent occasion. If at the 3rd tier review or subsequently, the independent registered medical practitioner judges that the member is, because of the condition resulting in 3rd tier benefits, now permanently incapable of their local authority employment and has no prospect of undertaking gainful employment before normal retirement age, the employer only has powers to award a 2nd tier enhanced pension from the date of the later determination and can do this where the medical certification justifies it. The 2nd tier determination may be considered when 3rd tier payments are ongoing or up to three years after having have been discontinued. Also, the employer is not prevented from seeking a medical reassessment during the three year period should this be requested by the member.*"

DCLG have confirmed the view stated above in a response to an administering authority.

The Secretariat set out its position with respect to ill-health pensioners who are upgraded from tier 3 to tier 2 benefits on page 14 of Bulletin 74. In that Bulletin, the Secretariat's comments on the ill-health regulations after an amendment by the Local Government Pension Scheme (Miscellaneous) Regulations 2010 [SI 2010/2090] included the following observation:

> "*If an employer decides to uplift a member from tier 3 to tier 2 utilising regulation 20(11)(a) of the BR, then the employer is making a determination under regulation 20(3) of the BR. Regulation 20(3) says that an award under tier 2 shall include* ***enhancement equal to 25% of potential membership from the date of leaving to age 65.*** *The increased pension (i.e. the pension based on actual membership plus 25% of potential membership from leaving to age 65) is then payable, as per regulation 20(11)(b), from the date of the decision to uplift from tier 3 to tier 2.*"

Regulation 20(3) of the LGPS (Benefits, Membership and Contributions) 2007 says:

> *"his benefits are increased –*
> *(a) as if the date on which he leaves his employment were his normal retirement age; and*
> (b) *by adding to his total membership at that date 25% of the period between that date and the date on which he would have retired at normal retirement age.*"

The regulation does not set out a different method to calculate the ill-health enhancement where the member is upgraded from tier 3 to tier 2 ill-health benefits at a subsequent ill-health review i.e. there is no reference to "from the date of the review" in regulation 20(3).

In summary, the Secretariat's position where a member is upgraded from tier 3 to tier 2 ill-health benefits is:

(a) the ill-health enhancement for tier 2 ill-health benefits is based on the period from the member's original date of leaving to the member's 65th birthday; and
(b) the increased benefits are payable form the date of the review.

## Finance Act 2011

The Finance Act 2011 received Royal Assent on 19 July. Schedules 17 and 18 to the Act set out the changes to the Annual Allowance and the Lifetime Allowance regimes respectively. The Act was accompanied by 10 items of secondary legislation which are:

- The Registered Pension Scheme (Miscellaneous Amendments) Regulations 2011 [2011/1751];
- The Registered Pension Scheme (Lifetime Allowance Transitional Protection) Regulations 2011 [2011/1752];
- The Taxation of Pension Schemes (Transitional Provisions) (Amendment) (No.2) Order 2011 [2011/1782];
- The Registered Pension Schemes (Relevant Income) Regulations 2011 [2011/1783];
- The Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) (No.2) Regulations 2011 [2011/1790];
- The Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 [2011/1791];

- The Registered Pension Schemes (Prescribed Requirements of Flexible Drawdown Declaration) Regulations 2011 [2011/1792];
- The Registered Pension Schemes (Notice of Joint Liability for the Annual Allowance Charge) Regulations 2011 [2011/1793];
- The Registered Pension Schemes (Provision of Information) (amendment) (No.2) Regulations 2011 [2011/1797]; and
- The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011 [2011/1801.

The SIs make the necessary amendments that will enable transitional protection for those members affected by the reduction in the Lifetime Allowance and set out the ability for pension schemes to pay tax charges on the member's behalf resulting from the new Annual Allowance regime.

HMRC Newsletter 48 contains brief explanations of the secondary legislation. The Newsletter states that consequential amendments to HMRC's Registered Pension Schemes Manual (RPSM) are expected to be completed by late September. The updated Annual Allowance guidance is now available on the HMRC website.

**Note: the Policy Review Group minutes for 6 September 2011 contain the following statement –**

> *"It was questioned whether members who exceeded their annual allowance could pay the tax charges arising from accrued benefits. DCLG explained that later in the autumn they would be consulting on a draft SI which would include Regulations facilitating what had been permitted by HMRC, including proposals on ill-health benefit. Separately, GAD had drafted guidance for public service schemes on actuarially reducing benefits post scheme paying which they had submitted to HMT."*

We are currently awaiting the draft SI and the GAD guidance.

## LGPC guide to the new Annual Allowance regime

The Secretariat is currently working on a guide to the new Annual Allowance regime. A draft version of the guide was circulated round members of the Technical Group who had agreed to be members of an electronic working party.

The Secretariat intends to send the guide to HMRC in order that they can confirm that the contents of the guide are accurate. If required, the Secretariat is prepared to meet with HMRC as part of the guide's production process.

## Lifetime Allowance: Fixed protection

July's bulletin had an article on fixed protection following the reduction in the Lifetime Allowance.  HMRC have now made the fixed protection application form (APSS227) available along with the associated notes. **The form cannot be completed online**.

If an individual wishes to benefit from fixed protection, then HMRC must receive the application form by no later than 5 April 2012. If an individual already has enhanced protection then, if they apply for fixed protection, their application must be accompanied by a separate notification that they are giving up their enhanced protection. HMRC will not issue certificates of fixed protection before 12 October 2011.

## Lump sum payments on or after age 75

Changes have been made to the Finance Act 2004 by the Finance Act 2011 to remove the upper age limit of 75 for payment of certain types of lump sum benefit.

The Finance Act 2004 now permits the following types of lump sum to be paid on or after age 75 (subject to the rules of the LGPS allowing payment on or after that age):

- pension commencement lump sum
- defined benefits lump sum death benefit (for deaths after 5 April 2011)
- trivial commutation lump sum.
- serious ill-health lump sum

The Secretariat's understanding of the affect of the Finance Act 2011 changes on the payment of the latter three lump sums by LGPS funds are summarised below. More detail can be found in the draft guidance document.

### Lump Sum Death Grants

Under regulation 35 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 or regulation 35 of the LGPS (Benefits, Membership and Contributions) (Scotland) 2008, a death grant can only be paid if the pensioner dies before age 75 while, similarly, a death grant can only be paid under regulation 38 of the LGPS Regulations 1997 or regulation 37 of the LGPS (Scotland) Regulations 1998 if the pensioner dies before age 75. By contrast, regulations E3 and E4 of the LGPS Regulations 1995 and regulation E11 of the LGS (Scotland) Regulations 1987 do not stipulate an upper age limit for the purposes of payment of a death grant.

The lump sum death grant under the LGPS is a defined benefits lump sum death benefit and not a pension protection lump sum death benefit. On that basis, see pages 75 to 77 of the draft guidance document as amended by the Finance Act 2011 for more details. Although the Finance Act 2004 now permits a death grant to be paid where a member dies after age 75, the Benefits Regulations and the 1997/1998 Regulations have not yet been amended. Unless / until those Regulations are amended by DCLG/SPPA it is not possible to pay a death grant in respect of a member dying after age 75.

So, the changes introduced by the Finance Act 2011 in respect of death grants for members of pension schemes dying on or after 6 April 2011 when aged 75 or more are not relevant to death grants payable under the Benefits Regulations or the 1997/1998 Regulations.

In the unlikely event that a death grant is paid under regulations E3 or E4 of the 1995 Regulations or regulation E11 of the LGS (Scotland) Regulations 1987 in respect of a pensioner dying after age 75, administering authorities should apply the provisions of the Finance Act 2004 as described on pages 75 to 77 of the aforementioned guidance document.

## Trivial Commutations

A trivial commutation lump sum can only include the pension payable to the member in respect of his / her membership in the scheme (i.e. excludes any survivor benefit that the member might also be in receipt of). Survivor benefits are commutable as a trivial commutation lump sum benefit.

Apart from removing the upper age limit for paying a trivial commutation lump sum the other payment conditions have not changed.

Where the member died before 6 April 2011, the conditions for making a trivial commutation lump sum death benefit have not changed. However, subject to meeting the other conditions for making a trivial commutation lump sum death benefit, if the member died on or after 6 April 2011 then a trivial commutation lump sum death benefit can be paid whatever age the member was when they died.

No amendment to the LGPS (Benefits, Membership and Contributions) Regulations or to the 1995/1997 Regulations is required since, as explained below, they simply allow payment in accordance with the provisions of the Finance Act 2004 (as amended).

Regulation 39 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 permits the payment of a trivial commutation lump sum or trivial commutation lump sum death benefit, within meaning of sections 166 and 168 respectively of the Finance Act 2004, calculated in accordance with GAD guidance.

Regulation 49 of the LGPS Regulations1997 permits payment of a trivial commutation lump sum or trivial commutation lump sum death benefit, within meaning of sections 166 and 168 respectively of the Finance Act 2004, calculated in accordance with GAD guidance.

A trivial commutation payable under regulation H5 of the LGPS Regulations 1995 is to be dealt with in accordance with regulation 49 of the 1997 Regulations as per regulation 2 of the LGPS (Transitional Provisions) Regulations 1997.

The relevant regulations for members of the LGPS in Scotland are regulation 39 of the LGPS (Benefits, Membership and Contributions) (Scotland) 2008, regulation 48 of the LGPS (Scotland) Regulations 1998 and regulation E21 of the LGS (Scotland) Regulations 1987.

## Serious ill-health lump sum

In the unlikely event that a serious ill-health lump sum payment (i.e. serious ill-health commutation where life expectancy is less than 1 year) is made to a member of the LGPS who has attained the age of 75, administering authorities will need to be aware that paragraph 40 of Schedule 16 to the Finance Act 2011 inserted section 205A into the Finance Act 2004. This introduced a new income tax charge where a serious ill-health lump sum payment is made to a member who has attained the age of 75. The charge rate will be 55%. Scheme administrators must account for the new tax charge using the online Accounting For Tax form (AFT). The online form will be amended to incorporate the new serious ill-health lump sum tax charge in due course. If a scheme administrator has to record a serious ill-health lump sum charge before the online AFT has been amended, then HMRC state that administrators should complete the existing field for special lump sum death benefits charge under section 206 of the Finance Act 2004.

### Auto-enrolment

Sections 68 to 71 of the Finance Act 2011 (FA11) implement changes with respect to NEST and other qualifying pension schemes in preparation for the introduction of automatic enrolment in October 2012.

The Pensions Regulator has created a page on its website to assist employers in learning about their responsibilities under auto-enrolment. The webpage has four interactive tools which enable employers to:

- learn when their staging date is;
- discover which employees they need to auto-enrol;
- learn about how the auto-enrolment process will work; and
- determine the minimum contribution for each of their eligible employees.

The DWP have commenced a consultation on the latest draft auto-enrolment regulations which are intended to implement the changes recommended by the Government's "Making Auto-Enrolment Work" Review. There is a regulatory impact assessment and four draft Sis:

- The Automatic Enrolment (Miscellaneous Amendments) Regulations 2011
- The Automatic Enrolment (Miscellaneous Amendments) (No.2) Regulations 2011
- The Automatic Enrolment (Offshore Employment) Order 2011
- The Compromise Agreement (Pensions Act 2008) (Description of Person) Order 2011

The draft SIs contain proposed amendments with respect to employer duties. They include the introduction of the definition of a "micro employer" into the Employers' Duties (Implementation) Regulations 2010 [SI 2010/4]. A micro employer is an employer who had fewer than 10 full-time equivalent workers immediately before 1 April 2011 and who is part of a PAYE scheme with more than 239 persons within that scheme. A new staging date will be introduced for micro-employers.

The definition of a "PAYE scheme" will be amended in the Employers' Duties (Registration and Compliance) Regulations 2010 [SI 2010/5]. The draft SIs also includes amendments to information requirements imposed on employers, the time limit for registration during re-enrolment, employers' record-keeping duties and penalties and penalty notices.

The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 [SI 2010/772] are also amended. The proposed changes include amendments to enrolment information, the meaning of "pay reference periods" in the definition of a jobholder, an extension of the period for re-enrolment, the substitution of a new regulation in respect of jobholders excluded from automatic enrolment and a new Part to cover the postponement or disapplication of automatic enrolment.

Regulation 50 of SI 2010/772 defines the due date for the purposes section 37(3) of the Pensions Act 2008 (Unpaid contribution notices). It is intended to amend the due date from the 19th to the 22nd of the month following the month in which the employer deducted contributions. A similar amendment will be made to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 [SI 1996/1715]. Regulation 16(1) of SI 1996/1715 will be amended so that the definition of the "prescribed period" for the payment of contributions (deducted from employee's earnings) to paid to pension scheme trustees or administrators will become:

> "*(i) where the contribution payable on behalf of an active member is paid to the trustees or managers of the scheme by means of an electronic communication, 22 days; or*
>
> *(ii) in any other case, 19 days,*
>
> *commencing on the day following the last day of the month in which the amount is deducted from the earnings in question.*".

The closing date for the consultation is 11 October 2011.

The Pensions Regulator has commissioned a report on auto-enrolment from the Bostock Marketing Group. One-fifth of all employers were aware of their duties under the workplace pensions reform. The proportion increased with employer size as almost three-quarters of large employers understood their responsibilities under auto-enrolment. A majority of employers agreed with the principles behind automatic enrolment as over 60% believe the workplace pensions reform is a good idea.

Almost three-quarters of employers have yet to discuss auto-enrolment while a further 17% had discussed the issue but not made any preparations. Only 7% of employers had started planning while the number of employers, who reported being fully prepared, was only 3%. The numbers are slightly better for larger employers who have earlier staging dates: 13% are fully prepared, 49% had started planning, 22% had not commenced planning and 14% had not even discussed auto-enrolment.

Over three-quarters of employers expressed that complying with the legislation will be challenging. Top of the list of employer's concerns were costs implications at 40% and the administrative burden at 20%. Large employers were less concerned about the cost of auto-enrolment than the administrative burden.

JLT Benefit Solutions Limited surveyed 250 companies on auto-enrolment. Just under half of the respondents still did not know how much auto-enrolment will cost them. Almost a quarter of respondents expect 10% of their employees to opt out. There were significant regional variations as a quarter of those surveyed in London and the North of England expected between a quarter and a half of their workforce to opt out.

## State retirement age to increase more quickly?

The government says the timetable for raising the state pension age to 67 is too slow.

The BBC website reports that Work and Pensions Secretary Iain Duncan Smith told the BBC "We've always said that the timescale left by the last government was too slow".

At the moment, the age is due to rise to 67 in 2036 and 68 by 2046.

The Department for Work and Pensions stressed that no decision has been taken yet but added that an automatic mechanism was being considered.

"The [last] government left us with a deadline in the 2030s and we think that's too late because people's age levels have increased even since they made that announcement," Mr Duncan Smith said on BBC One's Andrew Marr Show

## DWP consultation: A state pension for the 21st century

Bulletin 81 contained an article on the DWP consultation paper regarding possible amendments to the state pension system. On 27 July, DWP published a summary of the responses received.

The original Green Paper outlined two options. The first was to accelerate the move to a flat-rate two-tier state pension where the basic state pension would remain separate from the state second pension. The alternative was to move to a single tier pension which combines the basic and second tier state pensions.

The consensus, among the respondents, was that the current state pension system should be reformed while the majority preferred the single tier pension in principle. The faster flat rate option was unpopular because it did not end the complexities of the current system. A small number, however, preferred the continuation of the existing system.

Over 50 employers and employer representative organisations submitted responses on ending contracting out. The respondents indicated that the ending of contracting out for defined benefit schemes would have implications for schemes, employers and members. Although the ending of contracting out for defined benefit schemes would require careful management, the ending of contacting-out is not insurmountable.

If the simplification of the state pension system necessarily involved the ending of contracting out for defined benefit schemes, then the Government could help employers, employees and pension schemes in the transition to the new system. Trade unions in particular were concerned that the ending of contracting out would lead to the closure of defined benefit schemes and about the increase in employees' National Insurance contributions.

The Green Paper also requested views on a mechanism to manage future increases to the State Pension age. The majority of respondents were in favour of a periodic review because that would permit input from experts on life expectancy, labour market conditions etc. A minority thought a formula, which would ensure a close link between life expectancy and State Pension age, was worth considering.

Although there were a variety of views on the adequate notice period for a change in the State Pension age, the majority of respondents were in favour of 10 years.

In November, the DWP intends to publish its response to the replies received in relation to the Green Paper and, in September, it plans to create a new alliance of organisations with Age UK with a remit of improving social justice for older people.

## Pension liberation

A High Court judge has issued a freezing order affecting over a million pounds of assets. Papers released by the High Court revealed that three related firms - Ark Business Consulting, Ark Commercial Pension Planning and Ark Commercial Retirement Planning - had been prevented by Mr Justice Henderson from moving around £1.08m from the country to Cyprus. The monies frozen relate to fees billed by the firms when a pension scheme member tries to "unlock" their monies while under age 55. The schemes claim to be able to circumvent minimum pension age rules by writing loans (of up to 50% of the pension scheme funds) to members instead of paying pension benefits.

The law firm McGrigors is acting on behalf of Dalriada Trustees and their pensions partner, Ian Gordon said:

> "*Many of these so-called unlocking schemes test the boundaries of what is legal and effective, and everyone should be made fully aware of the risks. The types of organisations who typically market schemes of this nature are often registered abroad and as such are not regulated by the FSA. We would advise anyone who is approached with an 'unlocking' or reciprocation proposition to proceed with the utmost caution. Some press reports have indicated that pensions reciprocation agreements are marketed as a means to free up investment for capital in overseas real estate ventures, and that type of arrangement should sound alarm bells.*"

A Dalriada Trustees spokesman added:

> "*We believe that schemes of this sort have been marketed to people who, through no fault of their own, have not fully understood their import and who do not realise that they could potentially be putting a substantial proportion of their pensions savings at risk.*"

At the end of May, the Pensions Regulator appointed an independent trustee firm - Dalriada Trustees Limited - for six firms offering pension reciprocation plans. The schemes concerned are:

- Cranborne Star Pension Scheme
- Grosvenor Parade Pension Scheme
- Tallton Place Pension Scheme
- The Lancaster Pension Scheme
- The Portman Pension Scheme
- Woodcroft House Pension Scheme

A Dalriada press release has details of the schemes involved as a well as a FAQ and a contact number for concerned members. The Pensions Regulator also issued warnings about such schemes last month.

## Salary Sacrifice and VAT

HMRC have set out their interpretation of an Astra Zeneca case (European Court of Justice (ECJ) case C-40/09) in their Revenue & Customs Brief 28/11. In summary, local authorities should account for VAT on salary sacrifice benefits provided to their employees from 1 January 2012.

Astra Zeneca operated a scheme whereby employees could opt to receive part of their remuneration in the form of goods and/or services instead of salary. The ECJ ruled on the correct VAT treatment of the provision of high street shopping vouchers which was one of the options available to employees.

The Court found that the provision of vouchers equated to a supply of services effected for consideration. Astra Zeneca could recover the VAT incurred on obtaining the vouchers but output tax was due on the consideration received from its employees. HMRC believe the principles established in the case will apply to the supply of other goods and services to employees.

The Annex to Brief 28/11 sets out how HMRC believe the Court ruling will affect salary sacrifice schemes involving cycle to work schemes, childcare vouchers, food and catering provided by employers, benefits provided to all employees for no deduction or reduction from their salaries, and motor cars as well as face value vouchers.

## Data sharing: Code of Practice

Following a consultation exercise on a draft version last October, the Information Commissioner's Office (ICO) has issued a new statutory code of practice on data sharing. The code contains advice on how and when personal information can be shared as well as how to maintain security on personal information. The code now includes more case studies from both the private and public sectors to explain how the Data Protection Act applies to data sharing. The ICO believes that organisations which follow the code will be able to demonstrate to their staff, residents and the public that they following best practice and are taking measures to reduce the risk of inappropriate disclosure of personal data.

The new code of practice is accompanied by a summary checklist which can be used as a quick reference guide on whether to share information.

## HMRC Guide: Pension Schemes Online

HMRC have updated their Guide to using the Online Service for Scheme Administrators and Practitioners. The guide is split into 10 chapters and it contains information on how to register a practitioner, file online and complete the event reports.

## The Workplace Retirement Income Commission

Bulletin 77 had a brief article on the Workplace Retirement Commission (WRIC) and its call for evidence. The WRIC's remit was to investigate why the UK's pension system fails to meet the needs of working people in retirement. The Commission has published its final report which is based on the 80 responses to its call for evidence, the views of 27 people who gave oral evidence to the WRIC and of the participants in the regional events held by the WRIC.

The report makes 16 recommendations based on the evidence accumulated by the WRIC. These include:

- the Government establishes an independent standing commission on pensions to remove politics from pensions;
- the Government should move quickly to implement a simple single-tier State Pension;

- a minimum contribution rate of 8% to a qualifying workplace pension scheme such as NEST) will not provide people with their expected income in retirement so it should be re-considered as part of the 2017 review of auto-enrolment;
- ahead of the 2017 review of auto-enrolment, the Government should lead the debate with employers to develop ways to encourage employees to save more;
- the financial services industry and the Pensions Regulator should jointly develop approaches which help smooth investment volatility for savers;
- more investigation is required to understand the causes of significant variation in outcomes when people buy the same type of annuity and whether it is possible to justify the differences;
- serious consideration should be given to ensuring schemes and providers direct members to an annuity price comparison website;
- the Government uses its regulatory powers to apply stakeholder charge caps to schemes that will be eligible for auto-enrolment;
- all schemes should be required to disclose costs and charges in a way that is transparent for consumers and which shows the impact of charges on the pension pot; and
- the pensions industry needs to improve disclosure, clearer communications and drive down costs and charges to increase consumers' trust in the pensions system.

## Bits and Pieces

### LGPC Communications

The LGPC will be updating the guides and leaflets for employees in England and Wales to take account of the recent GAD guidance issued on flexible retirement and on AVC service credits, and also to take account of the end of the "window of opportunity" with regard to aggregating previous LGPS benefits within England and Wales on 1 October 2011.

The LGPC is also currently working on a new leaflet for scheme members on "Changes to the tax controls on pension savings".

### LGPC Training

The tenth running of the LGPC's "Fundamentals" training course starts in October and runs through to December. It is aimed primarily at elected members but it is equally suitable for anyone attending pensions committees/panels in an officer, advisory or representative capacity. The three-day training event goes through the A-Z of the Local Government Pension Scheme including Scheme Design, Actuarial Valuations, Investment Types and Portfolio Construction etc. A full programme can be found in the Annex to Circular 250.

The dates and locations are as follows:

| | | |
|---|---|---|
| Leeds | Day 1 | 12 October |
| | Day 2 | 16 November |
| | Day 3 | 01 December |
| Cardiff | Day 1 | 26 October |
| | Day 2 | 23 November |
| | Day 3 | 13 December |

| | | |
|---|---|---|
| London | Day 1 | 19 October |
| | Day 2 | 09 November |
| | Day 3 | 07 December |

Any person who wishes to book a place must do so as soon as possible as some of the events are almost at full capacity.

The next round of LGPC training will be for practitioners. The normal cycle of "Understanding" workshops will be preceded by a special workshop on the changes to the Annual Allowance (possibly incorporating changes to the Lifetime Allowance as well). The training will complement the LGPC guide to the new Annual Allowance regime referred to earlier in this bulletin.

The training event is being devised because of the volume of requests from administering authorities and, due to expected demand, is likely to be held at 12 locations across Great Britain. A Circular should be issued by mid-October with full details, including how to book places at your preferred location.

## Timeline Regulations

The update of the Timeline Regulations website in August and September included:

**England and Wales**

The latest GAD guidance on AVC Service Credits and the GAD guidance on Flexible Retirement have been added to the post 31 March 2008 GAD guidance page.

## DWP analysis of life expectancy

In 2008, the DWP published life expectancy tables. They have now issued a report (differences in life expectancy between those aged 20, 50 and 80) which contains new analysis of updated life expectancy tables. The headline conclusions are that individuals who are 20 in 2011 are 1.6 times more likely to reach age 100 than those aged 50 and 3 times as likely to reach 100 as those who are aged 80 in 2011. The updated life expectancy tables will be issued in October of this year.

## Pension Protection Fund Levy

The Pension Protection Fund (PPF) has updated its guide to the levy and has begun issuing 2011/12 invoices (from the beginning of this month). LGPS funds are not required to pay the PPF levy.

## FTSE 100 companies' directors

The High Pay Commission has compared the pension arrangements of FTSE 100 directors to those of their employees in its report, 'Directors' pensions: in it for themselves?'. The median annual pension for a company director is approximately £175,000 compared to a median defined benefit scheme in the private sector of just under £5,900 for other workers.

The TUC's annual PensionsWatch survey has also analysed the pension arrangements of 362 directors of the FTSE 100 companies. The analysis reveals that the average transfer value for a director's defined benefit pension is £3.91 million which would provide annual pension of just over £224,000 per annum. PensionsWatch calculate that the average director's pension is 23 times the average occupational pension (£9,658) and 34 times the average public sector pension (£6,497).

## Office of National Statistics: Pensions in the National Statistics

The Office of National Statistics (ONS) has published a report entitled, 'Pensions in National Accounts'. The ONS intends to produce the first set of experimental statistics on pensions in December 2011, which will cover the year 2010. The statistics will be incorporated in a table which will include estimates of obligations for funded and unfunded pension schemes.

## The Smith Institute

The Smith Institute has issued a publication entitled "We can't carry on like this" which has been edited by the Shadow Pensions Minister Rachel Reeves, MP. The document contains a series of essays on the theme of a lack of adequate pension provision for a section of the UK population and the possible policy solutions.

## Legislation

## United Kingdom

### Acts

The Finance Act 2011

| SI Reference | Title |
|---|---|
| 2011/1751 | The Registered Pension Scheme (Miscellaneous Amendments) Regulations 2011 |
| 2011/1752 | The Registered Pension Scheme (Lifetime Allowance Transitional Protection) Regulations 2011 |
| 2011/1782 | The Taxation of Pension Schemes (Transitional Provisions) (Amendment) (No.2) Order 2011 |
| 2011/1783 | The Registered Pension Schemes (Relevant Income) Regulations 2011 |
| 2011/1790 | The Registered Pension Schemes (Transfer of Sums and Assets) (Amendment) (No.2) Regulations 2011 |
| 2011/1791 | The Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 |
| 2011/1792 | The Registered Pension Schemes (Prescribed Requirements of Flexible Drawdown Declaration) Regulations 2011 |
| 2011/1793 | The Registered Pension Schemes (Notice of Joint Liability for the Annual Allowance Charge) Regulations 2011 |
| 2011/1797 | The Registered Pension Schemes (Provision of Information) (amendment) (No.2) Regulations 2011 |
| 2011/1801 | The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011 |

| SR Reference | Title |
|---|---|
| 2011/280 | The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations (Northern Ireland) 2011 |
| 2011/296 | The Social Security (Exemption from Claiming Retirement Pension) Regulations (Northern Ireland) 2011 |
| 2011/305 | The Occupational Pension Schemes (Contracting-out) (amendment) Regulations (Northern Ireland) 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

## LG Group Pensions Section Contact Details

**Terry Edwards (Head of Pensions)**

Telephone: 01954 202 787
Email: terry.edwards@local.gov.uk

**Tim Hazlewood (Pensions Training & Development Manager)**

Telephone: 01455 824 850
Email: tim.hazlewood@local.gov.uk

**Irene Wass (Pensions - Communications Adviser)**

Telephone: 01246 414 902
Email: irene.wass@local.gov.uk

**Elaine English (LGPS Executive Officer)**

Telephone: 0207 187 7344
Email: elaine.english@local.gov.uk

**Dave Friend (Pensions Adviser)**

Telephone: 01457 859 016
Email: david.friend@local.gov.uk

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

Email: alison.hazlewood@local.gov.uk

## Distribution sheet

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LGPC
Local Government Group
Local Government House
Smith Square
London, SW1P 3HZ

or email: David Friend
tel: 01457 859016