

Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 94 – October 2012

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

Please contact Mary Lambe with any comments on the contents of this Bulletin or with suggestions for other items that 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 Circulars](#), [LGPC Communications](#) and [LGPC Training](#).

Contents

[Scheme Regulations and GAD Guidance](#)

[Local Government Pension Scheme \(Miscellaneous\) Regulations 2012](#)

[Revised Regulation 38 LGPS \(Administration\) Regulations 2008](#)

[Local Government Pension Scheme \(Administration\) \(Scotland\) Amendment Regulations 2012](#)

[LGPS 2008: GAD guidance on Augmentation](#)

[LGPS 2008: GAD guidance on Annual Allowance Tax Charge – Scheme Pays](#)

[LGPS 2008: GAD guidance on the Purchase of Additional Survivor Benefit – Pre 6 April 1988](#)

[LGPS 1997: GAD guidance on Inverse Commutation – Conversion of lump sum into pension \(Regulation 58\)](#)

[Automatic Enrolment](#)

[LGPC Automatic Enrolment Guide](#)

[Safeguarding individual's rights](#)

[Joining and opting out of membership of the LGPS](#)

[Certificate of Compliance](#)

[Categories of Teachers without eligibility to the Teachers' Pension Scheme](#)

[Disclosure of Information](#)

[Workplace Pension Reforms: Baseline Evaluation Report](#)

[LGPS 2014 Update](#)

[Consultation Results: Overwhelming approval for New LGPS 2014 proposals](#)

[Draft Public Service Pensions Bill](#)

Consultations

[Consultation on the Fair Deal policy: Treatment of pensions on compulsory transfer of staff from the public sector](#)

[Draft LGPS Regulations: The Local Government \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013](#)

News and Updates

[Strike Action Update](#)

[Police and Crime Commissioners](#)

[European Court of Justice: Gender-neutral pricing](#)

[VAT on investment management services](#)

[DCLG publish LGPS SF3 Statistics for England in 2011-12](#)

[New Investment Model used by Greater Manchester Pension Fund \(GMPF\)](#)

[Data Protection case: £250,000 fine for Local Authority Fund](#)

[Pension Liberation: Financial Services Authority \(FSA\) - Scams and Swindles webpage](#)

[HMRC liaison officer for the LGPS](#)

[GAD Subject to Pensions Ombudsman's jurisdiction](#)

[State Pension to be simplified](#)

[Local Government Association: Early retirement and redundancy compensation survey](#)

[Pensions Policy Institute briefing paper on impact of proposed reforms on public service pension schemes](#)

Scheme Regulations and GAD Guidance

Local Government Pension Scheme (Miscellaneous) Regulations 2012

[The Local Government Pension Scheme \(Miscellaneous\) Regulations 2012 \(SI 2012/1989\)](#) ('Miscellaneous Regulations') came into force on 1 October 2012. All documents relating to these regulations can be found on [DCLG's website](#). Many of the changes introduced are necessary to ensure the LGPS fits with the requirements of automatic enrolment as outlined in the Pensions Act 2008 (as amended).

The SI includes amendments which, amongst other things:

- Allows employees with a contract of employment that's for less than 3 months the option to join the LGPS
- Fundamentally changes the way employees of admission bodies join the LGPS
- Provides that employees cannot complete a form to opt-out of membership of the LGPS before their employment commences
- Changes the final pay calculation for those members who cease active membership on or after 1 October 2012 to include pensionable pay from membership of the LGPS with a previous employer
- Clarifies the position regarding flexible retirement where members have to take all of their benefits built up before 1 April 2008 on taking flexible retirement but can take all, some or none of their post 1 April 2008 benefits
- Extends power to administering authorities to award early payment of pensions where the employing authority ceases to exist
- Amends an anomaly in the Benefit, Membership and Contributions Regulations 2007 so that pensioner members with a suspended tier 3 pension benefit can now opt to take payment of benefits from age 60 at an unreduced rate should that member meet the rule of 85
- Allows pensioner members with a suspended tier 3 pension benefit who can prove that they are suffering from a medical condition which renders them permanently incapable of any gainful employment to apply for early payment of their benefits
- Amends the definition of an eligible child to cross reference to the Equality Act 2010
- Provides for children's pensions to take into account any additional contributions made by the deceased member and also ignores any reduction in the deceased's membership that resulted from a reduction in hours due to the member's ill health (as determined by an Independent Registered Medical Practitioner)
- Reintroduces the option to elect to pay additional contributions to allow pre 6 April 1988 membership to count for a nominated cohabiting partner's pension. Elections have to be made before 1 April 2013 or no later than 12 months from the date the

scheme member first signs a nominated cohabiting partner's nomination form in respect of that partner (whichever is later)

- Requires a separate admission agreement to be in place where a transferee admission body is performing the functions of a scheme employer in more than one contract (for contracts entered into from 1 October 2012)
- Extends the provision of an indemnity or bond to Community Admission Bodies
- Provides administering authorities with the power to obtain a closing actuarial valuation and a revised rates and adjustments certificate where an employing authority ceases to be a scheme employer or there is reason to believe they will cease to be a scheme employer in the future
- Allows a police and crime commissioner, and a chief constable to become a scheme employer from 22 November 2012
- Where an employing authority is required to contribute to more than one LGPS fund or merges or amalgamates with another employing authority in a different fund or moves its main place of business to a different geographical area, the Secretary of State can, on or after 1 October 2012 and upon application from the employing authority, decide whether to issue a direction substituting one fund for another
- Allows LGPS funds to pay the annual allowance tax charge following a request to do so from a member, with a consequential reduction in the member's benefits. This amendment has been backdated to 6 April 2011
- Requires administering authorities to issue an annual benefit statement to each of its active, deferred and pension credit members by no later than 6 months after the end of the tax year to which the statement relates
- Clarifies that the LGPS fund for an academy is the one within whose local government area the academy is located except in cases where the London Pensions Fund Authority (LPFA) was the administering authority prior to conversion as in such cases the LPFA remains the appropriate fund for the academy.

In addition there is a further amendment which updates the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. This now requires a local authority's policy statement (relating to the exercise of their discretion to base redundancy pay on actual pay and/ or to award a compensation payment of up to a maximum of 104 weeks pay) to include employees of both technical institutes and federated schools.

These changes will impact on procedures and documentation so it's important that Fund's read [Circular 262](#).

SI 2012/1989, and the amendments to the LGPS (Benefits, Membership and Contributions) Regulations 2007, the LGPS (Administration) Regulations 2008 and the LGPS (Transitional Provisions) Regulations 2008 will be added to the Timeline Regulations website in due course.

Revised Regulation 38 LGPS (Administration) Regulations 2008

The LGPS Secretariat has been informed by the Department of Communities and Local Government (DCLG) of a recent enquiry by Eversheds LLP regarding the intention of the changes made through the [Local Government Pension Scheme \(Miscellaneous\) Regulations 2012 \(SI 2012/1989\)](#) to regulation 38 of the LGPS (Administration) Regulations 2008.

The perception which led to the enquiry was that the amendment to regulation 38 now excluded admitted bodies. In response to the enquiry DCLG in a letter dated 26 September 2012 confirmed that “the intention of revised regulation 38 is to ensure that all employing authorities, including admitted bodies, are under the same obligation to meet unmet pension liabilities when they cease to participate as an employer in the LGPS”.

In summary DCLG confirmed that, “revised regulation 38 has extended the category of body in respect of which revised actuarial valuations and certificates should be obtained and has not removed any body from the ambit of the Regulation.”

Local Government Pension Scheme (Administration) (Scotland) Amendment Regulations 2012

[The Local Government Pension Scheme \(Administration\) \(Scotland\) Amendment Regulations 2012 \(SSI 2012/236\)](#) came into force on 12 October 2012.

These Regulations amend the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 to provide that employees (other than police officers) of the Scottish Police Authority established under section 1 of the Police and Fire Reform (Scotland) Act 2012 and employees (other than firefighters) of the Scottish Fire and Rescue Service established under section 1A(1) of the Fire (Scotland) Act 2005 are eligible to be members of the Scottish Local Government Pension Scheme. The Regulations also specify to which pension fund transferring and new employees are to belong.

SSI 2012/236, and the amendments to the LGPS (Scotland) Regulations 2008 will be added to the Timeline Regulations website in due course.

LGPS 2008: GAD guidance on Augmentation

On the 5 September 2012, DCLG issued the latest GAD guidance regarding augmentation of membership by an employing authority. This guidance relates to the requirement under regulation 40(3) of the LGPS (Administration) Regulations 2008 for GAD to issue guidance to be used to determine the cost to an employing authority of awarding augmentation (where the employing authority and the administering authority do not agree to an alternative approach under regulation 40(4) or (5) of those Regulations). A copy of GAD's augmentation guidance will be made available shortly on the post 31 March 2008 GAD guidance page of the Timeline Regulations website along with the associated DCLG cover letter.

LGPS 2008: GAD guidance on Annual Allowance Tax Charge - Scheme Pays

On the 12 September 2012, DCLG issued new GAD guidance to deal with the facility in regulation 68A of the LGPS (Administration) Regulations 2008 introduced in [the Local Government Pension Scheme \(Miscellaneous\) Regulations 2012 \(SI 2012/1989\)](#) which

allows scheme members who incur an annual allowance tax charge to pay for this charge from their benefits. The GAD guidance outlines how to calculate the pension offset amount to be applied to the member's benefits should the member elect to use the scheme pays mechanism to meet this charge. Administering authorities should be aware that administration costs incurred by them when scheme members choose to use this option cannot be recovered from the member.

The offset is calculated with a Normal Retirement Age of 65 and would take effect at the point when the scheme member's benefits are paid. If the scheme member leaves before they are entitled to their benefits then the pensions offset should be treated as if it were a pension debit following divorce. In all cases the annual allowance tax charge through scheme pays would have no impact on any surviving spouse's, civil partner's, nominated cohabiting partner's or children's pensions which may become payable.

A copy of GAD's annual allowance scheme pays guidance will be available shortly on the post 31 March 2008 GAD guidance page of the Timeline Regulations website along with the associated DCLG cover letter.

LGPS 2008: GAD guidance on the Purchase of Additional Survivor Benefit – Pre 6 April 1988

On the 25 September 2012, DCLG issued the latest GAD guidance regarding the purchase of Additional Survivor Benefits (ASBs) which replaces previous guidance issued on the 23 December 2009.

The factors supplied in this guidance are effective from 1 October 2012 to marry up with the reintroduction of the facility to purchase ASBs from this date. Members can choose to pay Additional Survivor Benefits Contributions (ASBCs) for all or part of their membership prior to 6 April 1988.

Administering authorities should also note that all existing ASB contracts taken out up to 31 March 2011 will need to be revised from 1 April 2013 in accordance with regulation 24A(8) of the LGPS (Administration) Regulations 2008.

A copy of GAD's purchase of additional survivor benefit guidance will be available shortly on the post 31 March 2008 GAD guidance page of the Timeline Regulations website along with the associated DCLG cover letter.

LGPS 1997: GAD guidance on Inverse Commutation – Conversion of lump sum into pension (Regulation 58)

On the 4 October 2012, DCLG issued updated GAD guidance in respect of inverse commutation replacing the previous guidance issued on the 27 December 2001 which should no longer be used.

Regulation 58 of the LGPS Regulations 1997 provided an opportunity for members to convert a lump sum benefit into pension ('inverse commutation') and regulation 59 provided an opportunity for "Class C" members to convert pension into lump sum under the more favourable terms offered by regulation 59 (i.e. more favourable than the 12:1 commutation rate). Those regulations were revoked as from 6 April 2006 by the LGPS (Amendment) Regulations 2006 [SI 2006/966]. However a deferred member as at 5 April 2006 could opt out of the effect of the deletion of regulations 58 and 59 provided he/she did so before 1

April 2007. There are some deferred pensioners who did so and to whom regulations 58 and 59 of the 1997 Regulations still apply. Based on the e-mail correspondence on the Timeline Regulations website from 7 May 2002 ([please click here to view](#) this email) it appears that for the protected regulation 59 cases, the regulation 58 factors should be applied in reverse.

A copy of GAD's inverse commutation guidance will be available shortly on the pre April 2008 GAD guidance page of the Timeline Regulations website along with the associated DCLG cover letter.

Automatic Enrolment

LGPC Automatic Enrolment Guide

LGPC have published a guide to automatic enrolment. This guide sets out the LGPC Secretariat's understanding of the automatic enrolment provisions and their interaction with the LGPS for England, Wales and Scotland (Northern Ireland is covered by a separate set of legislation). The guide is based on the regulations governing the LGPS, related Statutory Instruments, guidance and information provided by The Pensions Regulator and the Department for Work and Pensions. It also includes template letters and forms for employers to use when dealing with automatic enrolment. Please [click here](#) to view the guide. The Secretariat intends to keep this guide up to date and to issue revised versions as and when required.

Safeguarding individual's rights

All employers from 1 July 2012 must comply with workplace pension's reform legislation relating to the safeguarding of an individual's rights regardless of the 'staging date' of that employer.

The safeguards are intended to protect individuals, meaning there are certain things an employer must not do, both before a person starts working for them and once that person is a member of a pension scheme with that employer. These relate to prohibited recruitment conduct, inducements to opt out of a qualifying pension scheme and unfair treatment or dismissal of workers seeking to enforce their right to join a qualifying pension scheme.

Further information and guidance from The Pensions Regulator can be found on [their website](#).

Joining and opting out of membership of the LGPS

Prior to 1 October 2012 new employees who were eligible for automatic membership of the LGPS could make an election, before commencement of employment not to join the LGPS.

From 1 October 2012, new employees who wish to opt out of the LGPS will not be able to make an election to opt out of the scheme until the date their employment commences. This does not mean that contributions have to be collected from pay before they can opt out. It merely means that they cannot sign and date the opt out form until on or after the day they have commenced employment.

The LGPC Secretariat is of the view that regulation 29 of [the LGPS \(Miscellaneous\) Regulations 2012 \(SI 2012/1989\)](#) (which amends regulation 13 of the LGPS

(Administration) Regulations 2008) could have been more clearly drafted i.e. to make it clear that completing an opt out form prior to an employee joining the scheme isn't permitted. DCLG have stated that regulation 13(3) has been included to cover those employees who joined the scheme on or after the 1 October 2012 but who completed an opt out form prior to this date. DCLG have also confirmed it is their policy intention that opt out forms should only be completed once the member is an active member of the scheme. The LGPC Secretariat have resolved to go along with this policy intention as otherwise a farcical situation could arise where a person becomes employed by an employer that has passed its automatic enrolment staging date, opts out of the scheme prior to their contractual enrolment date, and then has to subsequently opt out again (from automatic enrolment) on commencement of employment. Please see page 7 of [Circular 262](#) for further information.

Certificate of Compliance

The LGPC Secretariat has been contacted by a number of employing authorities and administering authorities recently, regarding requests for a certificate of compliance to meet with automatic enrolment legislation as prescribed in the Pensions Act 2008 (as amended). The LGPC Secretariat has obtained confirmation from the Department of Work and Pensions (DWP) which confirms that as the LGPS is a public sector, final salary, contracted out occupational scheme there is no requirement for employers using the scheme to self-certify that it meets the quality requirements for being an automatic enrolment scheme. Guidance published in July 2012 by the DWP entitled [Automatic Enrolment: Guidance for employers on certifying defined benefits and hybrid pension schemes](#) outlines (in section 2.6) that final salary schemes that are contracted-out of the state second pension automatically qualify as automatic enrolment schemes. The contracting-out certificate is taken as evidence that the scheme satisfies the quality requirements. The LGPC Secretariat has been informed by DWP that when this guidance is next updated it will be amended to more clearly reflect that employers using the LGPS do not require a certificate of compliance.

Categories of Teachers without eligibility to the Teachers' Pension Scheme

There are three categories of teacher that are currently not eligible to join the Teachers' Pension Scheme (TPS) i.e.

- (i) in England and Wales, full-time teachers with an additional part-time teaching contract cannot join the TPS in the part-time contract,
- (ii) in Scotland, since 20 November 2000, full-time teachers with an additional part-time teaching contract cannot join the TPS in the part-time contract. However, this does not apply to any teachers who prior to that date had a part-time contract additional to full-time and who remain in the same posts. Such teachers would pay contributions on all of their earnings, but only 365 days service would count for pension purposes each year, and
- (iii) in England and Wales, current part-time teachers under normal pension age in the TPS who retired on the grounds of ill-health prior to 1 April 1997, and are thus permitted to undertake a degree of teaching work without losing the entitlement to the benefits involved, are not able to rejoin the TPS in respect of that part-time re-employment until they attain normal pension age.

Despite representation from the LGPC Secretariat, the Department for Education has decided not to amend the current TPS Regulations in England and Wales to allow the

teachers in categories (i) and (iii) to join that scheme. Those in category (i) are, therefore, eligible to join the LGPS in the part-time contract (until they cease the full-time contract) if they are employed by an employer participating in the LGPS in England or Wales under Part 1 of Schedule 2 of the LGPS (Administration) Regulations 2008 or if they are employed by an employer participating in the LGPS in England or Wales as a designation body or admission body and the person is covered by that employer's designation or admission agreement. Similarly, those in category (ii) who are excluded from the TPS in Scotland are thus eligible to join the LGPS in the part-time contract (until they cease the full-time contract) if they are employed by an employer participating in the LGPS in Scotland under Schedule 2 of the LGPS (Administration) (Scotland) Regulations 2008 or if they are employed by an employer participating in the LGPS in Scotland as an admission body and the person is covered by that employer's admission agreement.

This will have a considerable administrative impact. Take, for example, a teacher with a full-time contract and a part-time contract. The teacher is in the TPS in the full-time contract and the LGPS in the part-time contract. If the teacher ceases the full-time contract the teacher would then have to be taken out of the LGPS in the part-time contract and put in the TPS. This might result in a transfer of pension rights between the two schemes. If the teacher commences a further full-time contract one term later the teacher would then have to be taken out of the TPS in the part-time contract and put in the LGPS. If the full and part-time contracts are with different employers how will the employer issuing the part-time contract know which scheme to place the teacher in and when to revert from one scheme to another? There is clearly a major risk that mistakes will be made leading to employees being placed in the wrong scheme and retrospective adjustments having to be made. The teachers in category (iii) are eligible for membership of the LGPS until normal pension age in the TPS in England and Wales (if they are employed by an employer participating in the LGPS in England or Wales under Part 1 of Schedule 2 of the LGPS (Administration) Regulations 2008 or if they are employed by an employer participating in the LGPS in England or Wales as a designation body or admission body and the person is covered by that employer's designation or admission agreement) but would revert to being eligible for membership of the TPS when they attain normal pension age in the TPS.

Disclosure of Information

On 24 April 2012, the DWP issued a consultation paper "[The draft Occupational Pension Schemes \(Disclosure of Information\) \(Amendment\) Regulations 2012](#)". Under the Disclosure of Information Regulations as they stood at 24 April 2012 occupational pension schemes were required to provide basic scheme information to prospective members, or if that was not practicable, to new members within two months of joining. With the introduction of automatic enrolment, this could have meant that members might not have received this information until the opportunity for them to opt out of the scheme under the automatic enrolment rules had expired. The consultation paper proposed that the timescales for providing basic scheme information to new members subject to automatic enrolment should be amended, to make it more likely that schemes would disclose the information before the expiry of the one month automatic enrolment opt out period, thereby ensuring the member had information about the benefits of the scheme before making a decision to opt out.

The proposals were enacted in the [Occupational Pension Schemes \(Disclosure of Information\) \(Amendment\) Regulations 2012 \[SI 2012/1811\]](#). The requirement for the Pension Fund administering authority to provide basic scheme information to all prospective LGPS members, or to new members within 2 months of their becoming a

member, is amended as from 1 October 2012 in the case of those individuals who are enrolled under the Pensions Act 2008 for whom the Pension Fund administering authority has received the jobholder information from the employer. The basic scheme information, if not already given to the individual, must be given to them within 1 month of receiving the jobholder information from the employer. Where no jobholder information is received from the employer (or the employee is contractually enrolled), the 2 month time limit still applies. The basic information to be provided must set out how persons who are eligible to be members of the LGPS are admitted to it, which will include whether they are automatically enrolled and, as from October 2012, the member guides produced by the LGPC Secretariat will comply with this requirement.

Workplace Pension Reforms: Baseline Evaluation Report

The [Workplace Pension Reforms: Baseline Evaluation Report](#) was published by DWP on 31 July and describes the landscape before the implementation of automatic enrolment. It's the first in a series of reports that will be published annually by DWP during the workplace pension reforms and will feed in to the 2017 review of automatic enrolment as set out in the Pensions Act 2008 (as amended). The report will be updated each year to track the impact of automatic enrolment.

The key findings of the report are:

- Nearly three quarters of large employers support automatic enrolment
- Private sector pension participation has fallen from 7.9 million (55 per cent) in 2003 to 5.8 million (42 per cent) in 2011
- Low earners, individuals working for small and micro employers and those aged 22 to 29 show steep declines in pension participation
- Private sector workplace pension saving has fallen from £39.3 billion in 2007 to £35 billion in 2011.

LGPS 2014 Update

Consultation Results: Overwhelming approval for New LGPS 2014 proposals

Consultations undertaken by the Local Government Association (LGA), UNISON, GMB and Unite have overwhelmingly approved the proposals for a reformed LGPS in England and Wales published at the end of May. The consultations took place between the beginning of June and the end of August and included individual ballots for union members and a process enabling scheme employers to both express support (or not) and make comments on the proposals.

The consultations resulted in the proposals being supported by:

- 93% of employers
- 90% of UNISON members
- 95% of GMB members
- 84% of Unite members

The overwhelming majority of other unions with members in the LGPS have also accepted the proposals, including the National Association of Probation Officers (NAPO), Union of

Construction, Allied Trades and Technicians (UCATT), Association of Educational Psychologists (AEP) and Prospect.

The employer and trade union votes taken together give a clear mandate to accept the proposals. A statutory consultation process will now be undertaken by government in order to implement these proposals. This process will also include proposals currently being finalised under workstream 2 of the LGPS 2014 project covering scheme governance and cost management.

Draft Public Service Pensions Bill

On 13 September 2012 HM Treasury (HMT) published the [draft Public Service Pensions \(PSP\) Bill](#). In summary the Bill:

- Replaces current enabling legislation for public service pension schemes
- Reshapes governance arrangements
- Introduces wide ranging HMT control
- Defines the link between State Pension Age and Normal Retirement Age
- Extends the oversight of the Pensions Regulator to public service schemes
- Sets out protections for current scheme members.

The Bill contains reference to a number of new definitions including:

- Section 1 Scheme – A new public service pension scheme e.g. LGPS 2014
- Responsible Authority – the person who makes the regulations e.g. DCLG for the LGPS
- Scheme Manager – the person responsible for administering the scheme e.g. the administering authorities for the LGPS
- Relevant Authority – the LGPS Scheme Manager
- Scheme Board – responsible for assisting the Scheme Manager in relation to compliance.

The Bill also extends much greater control to HMT for public service pension schemes including:

- A requirement for HMT consent for regulation changes
- HMT to determine the types of schemes to be allowed in regulations
- HMT to determine revaluation based on changes in prices or earnings
- HMT to determine the timing, data and method of scheme valuations
- HMT to direct the settling of the employer cost cap
- HMT to set the parameters and target cost for the cap
- HMT to set a procedure by agreement or otherwise of achieving the target cost
- HMT to be able to require the publication of or provision to itself of scheme information.

There are a number of protections set out in the Bill including:

- Link to Final Salary – sets conditions for retention of a link for old scheme service
- Service between old and new schemes must be continuous and with a scheme employer

- Link may be protected by transfer between old schemes if member is in new scheme and service is continuous
- Gaps less than 5 years are to be counted as continuous unless any one gap is more than 5 years.

It appears to the LGPC Secretariat that there are a number of issues which will need to be addressed as the Bill makes its way through both Houses of Parliament. Through the LGPS 2014 Project Team and Project Board these issues will be raised with HM Treasury to help determine how it enables or otherwise, proposals for Workstream 2 and also any impact it may have on agreements reached through Workstream 1. The second reading of the Bill took place on the 29 October and it is currently working through Committee stage.

Consultations

Consultation on the Fair Deal policy: Treatment of pensions on compulsory transfer of staff from the public sector

Last year HM Treasury consulted on the Fair Deal policy in response to a recommendation in the interim report of the Independent Public Service Pensions Commission which found that the policy created a barrier to the plurality of public service provision. The Fair Deal policy required provision of broadly comparable pensions where staff are compulsorily transferred from the public sector to a new non-public sector employer.

On 4 July the Chief Secretary to the Treasury Rt Hon Danny Alexander announced that Government had [reviewed the Fair Deal policy](#) and agreed to maintain the overall approach, but would deliver this by offering access to public service pension schemes for transferring staff. This would mean that all staff whose employment was compulsorily transferred from the public sector under TUPE, including subsequent TUPE transfers, to independent providers of public services would retain membership of their current employer's pension arrangement. These arrangements would replace the current broad comparability and bulk transfer approach under Fair Deal, which will then no longer apply. We await further information which is anticipated in autumn 2012.

Draft LGPS Regulations: The Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2013

The Scottish Public Pensions Agency (SPPA) has invited comments on the draft Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2013. The draft Regulations relate mainly to annual allowance (scheme pays) and to automatic enrolment. Technical comments on these draft Regulations are invited by the SPPA and the closing date for comments is 15 November 2012. For further information please visit the [SPPA's website](#).

News and Updates

Strike Action Update

Following a day of strike action which took place in England, Wales and Scotland on the 30 November 2011 the LGPC Secretariat have received confirmation from UNISON, Unite and GMB that their dispute has now ended. For further information regarding absence due to a trade dispute please read [Circular 253](#) issued in November 2011.

Police and Crime Commissioners

The LGPS (Administration) Regulations 2008 have been amended to provide for both the Police and Crime Commissioner and the Chief Constable to be employers for the purpose of the LGPS from 22 November 2012.

The introduction of this new employer has raised a query amongst administering authorities as to whether guidance exists regarding how to split fund assets and liabilities (including pensioner and deferred pensioner liabilities) should some staff be TUPE transferred from the current Police Authority to employment with the Police and Crime Commissioner.

It is the understanding of the LGPC Secretariat that the Home Office project team tasked with looking into transitional arrangements for Police and Crime Commissioners have reached a tentative consensus with actuaries regarding the use of a pooled contribution rate for the Police and Crime Commissioners and the Police Authority organisations. Once confirmation of this approach has been reached we will provide information in a future Bulletin. It is expected that the split of assets and liabilities on reorganisation will be determined locally by the structure of the new organisations in each area.

European Court of Justice: Gender-neutral pricing

The UK Government issued a response in July 2012 to their consultation on the European Court of Justice (ECJ) judgement regarding Gender Directive (2004/113/EC) issued in March 2011 which rules that insurance benefits and premiums after 21 December 2012 should be gender-neutral. Please [click here](#) to read the response in full.

The ruling from the ECJ following the Test-Achats case has implications for the provision of annuities for scheme members with AVCs. It appears from the Government's response that scheme annuities (e.g. those covered by the regulation 26(4) of the LGPS (Administration) Regulations 2008) will continue to be allowed on a non gender-neutral basis. What is less clear is whether an annuity purchased from an annuity provider by the administering authority on behalf of a scheme member (rather than direct by the member) would also be exempt from the ECJ decision.

The LGPC Secretariat has been made aware that one AVC annuity provider Prudential has made the decision to use the new gender-neutral pricing across all annuities from 12 November 2012.

VAT on investment management services

The European Court of Justice (ECJ) is examining if workplace defined benefit pension funds should have to pay VAT on investment management services. Defined benefit pension schemes could save about £100m a year in VAT if the Court agrees that the fees should be exempt.

The ECJ is considering the case after a Tribunal hearing held in London in February 2011 decided that the ECJ should interpret the scope and meaning of the VAT exemption.

The National Association of Pension Funds (NAPF) and Wheels Common Investment Fund (WCIF) have been fighting a legal battle since 2008 following a JP Morgan Fleming Claverhouse Investment Trust plc ruling in the ECJ. This case stated that investment trusts were special investment funds and should be exempt from paying VAT on investment management services.

If the ECJ rules in favour of the NAPF and WCIF, defined benefit pension funds would no longer have to pay an estimated £100m a year in VAT.

DCLG publish LGPS SF3 Statistics for England in 2011-12

DCLG issued the latest statistics relating to data from 2007-08 to 2011-12 and updates to those statistics previously released on 12 October 2011. Please [click here](#) to view the results in full.

The key points from the latest release are:

- LGPS expenditure on benefits in 2011-12 was £7.5 billion, compared with £6.7 billion in 2010-11, an increase of 12 per cent
- Income from employees' contributions to the LGPS in 2011-12 was £1.8 billion, a decrease on 2010-11 of more than 6 per cent. Income from employers' contributions to the scheme in the same period also decreased, albeit by just 0.4 per cent
- In 2011-12, total expenditure accounted for 74 per cent of the LGPS income, up from 58 per cent in 2007-08
- Income from investments rose by 13 per cent on 2010-11 to £3 billion
- The market value of the funds at the end of March 2012 was £148 billion. This represents an increase of 4 per cent on March 2011
- There were less than 1.6 million employees in the LGPS at the end of March 2012, a 66 thousand, or 4 per cent, decrease over the figure for March 2011
- The number of people leaving the LGPS in 2011-12 because of redundancy was more than 27,400, an increase of more than 55 per cent over the 2010-11 figure
- The number of former employees entitled to deferred benefits rose to 1.4 million in 2011-12, an increase of 7 per cent over 2010-11

New Investment Model used by Greater Manchester Pension Fund (GMPF)

In September 2012 the GMPF signed a deal with both Manchester City Council and the Homes and Communities Agency to fund the building of new homes in the Manchester area.

The investment model is the first of its kind for an LGPS Pension Fund and the scheme will see GMPF deliver the funding for a scheme to build more than 240 new homes in phase one.

For more information on this agreement please [click here](#).

Data Protection case: £250,000 fine for Local Authority Fund

The Information Commissioner fined a local authority £250,000 for failing to safeguard pension scheme members' data.

Scottish Borders Council employed a third party company to digitise their pension records, but was found by the Information Commissioner to have failed to seek appropriate guarantees on how the personal data would be kept secure. For more information please [click here](#).

Pension Liberation: Financial Services Authority (FSA) - Scams and Swindles webpage

Further to an article in [Bulletin 91](#) regarding pension liberation the LGPC Secretariat would like to remind administering authorities of the FSA's website page for [Scams and Swindles](#) which contains a list of 'firms and individuals to avoid'. This is particularly important given the recent increase in IFA requests on behalf of scheme members. It would be advisable to check any requests from IFA's against this list to ensure the request is from a bona fide IFA.

HMRC liaison officer for the LGPS

On 19 September 2012, a representative from the LGPC Secretariat met with the HMRC liaison officer who has been allocated to the LGPS. The liaison officer is there to help funds with queries they may have on HMRC pension matters (e.g. annual returns, etc). The Secretariat will be contacting Pension Officer Groups (POGs) in due course to arrange for the liaison officer to visit the POGs and speak to them about her role and how she can assist Pension Managers. HMRC are keen to hear from LGPS Pension Managers about any QROPS transfers they have concerns about, or any suspected pension liberation transfers. These can be reported to HMRC (initially via Terry Edwards email terry.edwards@local.gov.uk) for HMRC to investigate before the LGPS Fund pays the transfer.

As a result of the meeting on 19 September, HMRC have agreed to a meeting with the LGPC Secretariat to seek to resolve all the outstanding questions the Secretariat has in relation to annual allowance calculations. The Secretariat is currently waiting for HMRC to confirm a date for the meeting.

GAD Subject to Pensions Ombudsman's jurisdiction Case: R (Government Actuary's Department) v Pensions Ombudsman

A complaint was made to the Pensions Ombudsman that GAD had been guilty of maladministration in respect of the Firefighters' Pension Scheme because it hadn't updated the commutation tables for the scheme between 1998 and 2006, and as a result members received a lesser amount of cash lump sum by way of commutation than they would have received had the tables been updated.

GAD contested that the Ombudsman did not have jurisdiction over the claim as GAD was providing independent advice and not acting as an administrator at the time. However, the court dismissed this contention on the grounds that the provision of commutation tables was part of the administration of the scheme.

State Pension to be simplified

On 21 August [DWP confirmed](#) that a White Paper setting out details of state pension reform would be issued in the autumn. The current state pension is made up of the basic state pension and various additional state pension entitlements. It will be replaced by a simple flat-rate state pension for new pensioners set above the level of the means test, currently estimated at around £140 a week.

Local Government Association: Early retirement and redundancy compensation survey

The third [Local Government Association \(LGA\) early retirement and redundancy compensation survey](#) was published at the end of September. The LGA set up a database of early retirement and redundancy schemes in operation in authorities in 2010 and this is updated each year by the survey data. The survey comprises two parts: staff eligible to join the LGPS and teachers.

This year over 180 local authorities participated in the LGPS survey. The data is only shared with those authorities that contribute to the survey; it is found to be extremely useful when reviewing local schemes. If you would like to know whether your authority responded to the survey, please contact [the LGA](#).

Pensions Policy Institute briefing paper on impact of proposed reforms on public service pension schemes

On 23 October the Pensions Policy Institute (PPI) published an independent assessment of the impact of the Coalition Government's proposed reforms to the NHS, Teachers, Local Government and Civil Service pension schemes for members of these schemes. The analysis was funded by the Nuffield Foundation.

The main findings of the briefing paper suggest that the Coalition Government's proposed reforms to the NHS, Teachers, Local Government and Civil Service pensions schemes will reduce the average value of benefits offered across all scheme members by more than a third compared to the value of the schemes before proposed reforms take place.

The comparisons used in the report calculates the value of the pension benefits offered in the scheme into an equivalent percentage of salary that the scheme members would need to be provided with to compensate for the loss of the pension scheme. For the LGPS the paper suggests that the proposals for reform of the scheme would reduce on average the value of the pension benefit from 22% of a member's salary before the proposed reforms to 14% of a member's salary after the reforms. Nevertheless the paper does indicate that the scheme will remain more valuable, on average, than the average benefits of a scheme member in a private sector Defined Contribution (DC) scheme (typically worth around 10% of a DC member's salary). To read the briefing paper in full please visit the [Pensions Policy Institute's website](#).

Bits and Pieces

Circulars

The LGPC Secretariat has published two Circulars recently. [Circular 262](#) informs Pension Fund administering authorities' and employers participating in the LGPS in England and Wales of the main changes to the LGPS that are contained in the Local Government Pension Scheme (Miscellaneous) Regulations 2012.

[Circular 263](#) issued a reminder to interested parties to keep the LGPC updated with correct contact details, to introduce our new team member and also to provide a reminder of the Pension Team's contact details.

LGPC Communications

The Communications Working Group has set up a series of sub groups to look at different ways we can communicate the LGPS 2014.

The sub groups are looking at a range of communications including video/pod casts, power point presentations, leaflets, social media and modellers.

LGPC Training

Normal service will be resumed in the New Year on the cycled practitioner training events. Next ones due are Pension Sharing on Divorce, Death and Survivor Benefits, and Guaranteed Minimum Pensions. Scheduling for these will be done shortly and a Circular with full course details, dates and locations will follow in November 2012. As always, if you have any suggestions for training events please contact [Tim Hazlewood](#) with your ideas.

Legislation

United Kingdom

Acts

The Finance Act 2012

SI Reference Title

2012/1257	The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012
2012/1477	The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (No. 2) Regulations 2012
2012/1506	The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2012
2012/1811	Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012
2012/1813	The Employers' Duties (Implementation) (Amendment) Regulations 2012
2012/1989	The Local Government Pension Scheme (Miscellaneous) Regulations 2012

SSI Reference Title

2012/236 The Local Government Pension Scheme (Administration) (Scotland) Amendment Regulations 2012

Northern Ireland

Acts

The Pensions Act (Northern Ireland) 2012

SR Reference Title

2012/240 The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order (Northern Ireland) 2012

2012/238 The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment No. 2) Regulations (Northern Ireland) 2012

2012/237 The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations (Northern Ireland) 2012

2012/232 Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012

2012/183 Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2012

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.

[The Timeline Regulations](#)

Pensions Section Contact Details

Jeff Houston (Head of Pensions)

Telephone: 020 7187 7346

Email: jeff.houston@local.gov.uk

Terry Edwards (Senior Pensions Adviser)

Telephone: 01954 232 834

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

Mary Lambe (Pensions Adviser)

Telephone: 020 7187 7374

Email: mary.lambe@local.gov.uk

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

Email: alison.hazlewood@local.gov.uk

Distribution sheet

Pension managers (internal) of administering authorities
Pension managers (outsourced) and administering authority client managers
Officer advisory group
Local Government Pensions Committee
Trade unions
CLG
COSLA
SPPA
Regional Directors
Private clients

Copyright

Copyright remains with Local Government Group. This Bulletin may be reproduced without the prior permission of LG Group provided it is not used for commercial gain, the source is acknowledged and, if regulations are reproduced, the Crown Copyright Policy Guidance issued by HMSO is adhered to.

Disclaimer

The information contained in this Bulletin has been prepared by the LGPC Secretariat, a part of the LG Group. It represents the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the LG Group for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in this Bulletin. Whilst every attempt is made to ensure the accuracy of the Bulletin, it would be helpful if readers could bring to the attention of the Secretariat any perceived errors or omissions. Please write to:

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

or email: [Mary Lambe](mailto:Mary.Lambe@lgpc.org.uk)
tel: 020 7187 7374