

Local Government Pensions Committee  
Secretary, Jeff Houston

## **LGPC Bulletin 106 – August 2013**

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](#) include articles on recent updates to Timeline Regulations and [Circulars](#).

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## LGPS 2014

### Update on ongoing consultations

**LGPS Regulations 2013:** In [Bulletin 105](#) reference was made to the LGPC's LGPS 2013 regulations consultation response being made available on the [LGA's website](#). Both the consultation response and annotated version of the draft regulation are now available to download under the [Latest News section](#) of the website.

**LGPS New Governance Arrangements Discussion Paper:** The LGPC have responded to the questions posed by DCLG in the new governance discussion paper issued in June 2013. The response is available to download on the LGA's website under the [Latest News section](#).

**Call for Evidence:** The LGPC would like to remind all funds that the joint (LGA and DCLG) call for evidence closes on 27 September 2013. Funds are invited to contribute their ideas and provide evidence. This will help inform the preparation of a consultation document to be issued later this year which it is intended will set out a number of broad principles for updating the LGPS with the aim of improving efficiency and cost effectiveness. To read the call for evidence visit the [LGA's website](#).

### Transitional Regulations – Final Pay

The Pensions Team at the LGA are in discussions to see if there is a way to simplify the final pay calculation required for members' pre 2014 benefits (and the underpin calculation) in the new scheme from April 2014. Various options have so far been considered, each of which has had its own difficulties. If we can find a proposal that we feel is workable we will share this with funds and make a request for an appropriate amendment to be made to the draft LGPS (Transitional Provisions and Savings) Regulations 2013.

### Shadow Scheme Advisory Board and Sub-Committees

[Bulletin 105](#) listed the various sub-committee meetings of the Shadow Scheme Advisory Board which were due to take place in August. The actions and agreements from four of these sub-committee (Administration and Communications, Value for Money and Collaboration Governance and Standards, and Investment and Engagement) are now available on the Board's new website:

<http://www.lgpsboard.org>

This website will be the home of all information relating to the Shadow Scheme Advisory Board and its five sub-committees. Agendas, papers, and actions and agreements from all meetings will be made available on this new website.

### Payroll and HR Specifications

The LGA, following meetings with interested stakeholders, have published a payroll specification to assist employers and their software suppliers when developing payroll systems for next April. In addition an HR specification has also been produced which contains information on the processes required to administer the scheme from April 2014. Both are expected to be updated as and when required in the run-up to LGPS 2014.

Both specifications are available online from a new website [www.lgpsregs.org](http://www.lgpsregs.org).

This new website will be the home of all employer and administering authority related information on the LGPS from April 2014. As well as the guidance noted above it will also contain the timeline regulations for the new scheme (once laid), access to statutory and

GAD guidance, links to other related legislation and in time the aim is to provide the facility to submit queries via the website.

## Automatic Enrolment

### Changes to NEST

The government has confirmed its intention to remove the annual contributions limit and restrictions on transfers into and out of NEST. Following a 'call for evidence' on the impact of the constraints earlier this year, the government decided that the contributions limit should be removed from April 2017 to address concerns that NEST members might be disadvantaged by being unable to contribute more to their pension than the current annual contributions limit of £4,500. The ban on individual transfers will be removed to coincide with the introduction of automatic transfers of small DC pension pots and bulk transfers will be permitted from April 2017. For more information please visit the [Government's website](#).

### DWP briefing paper on proposed AE changes

The DWP has published [a short briefing paper](#) that sets out how it plans to use the new power in the Pensions Bill 2013/14 that could result in certain classes of individuals being exempt from the requirement to be auto-enrolled into a workplace pension scheme. A formal consultation exercise on draft regulations is expected to be published in the autumn.

### DWP research with larger employers

On 8 August, the DWP published a report called 'Automatic enrolment opt-out rates: findings from research with large employers' which evaluates the experiences of employers and workers during the first six months of automatic enrolment; you can read the report [here](#).

### First compliance notice issued by the Pensions Regulator (tPR)

tPR have confirmed via a freedom of information request that they've issued their first compliance notice to an employer which failed to meet its duties under automatic enrolment legislation. Details of the freedom of information request can be found on [tPR's website](#).

## News and Updates

### Trivial Commutation of Councillor Pensions

The LGPC received an enquiry from a fund recently regarding the guidance that applies to councillor members in respect of trivial commutation. The query stemmed from the fact that regulation 49 of the LGPS Regulations 1997 which applies to councillor members is not referred to in the [current trivial commutation guidance](#) (issued 21<sup>st</sup> November 2012).

In addition, previous guidance on trivial commutation made no reference to councillor members. However, this previous guidance was released 18<sup>th</sup> May 2000 before councillor pensions were introduced in 2003. As no separate guidance for councillors was subsequently issued the 18<sup>th</sup> May 2000 guidance would have had to apply to councillor members.

The LGPC secretariat raised this anomaly with DCLG to understand which guidance should apply to councillor pensions for trivial commutation and received a reply which confirmed that trivial commutation factors currently in force (issued 21<sup>st</sup> November 2012) for employed members of the scheme can be applied to councillor members rather than using the guidance previously in force. It is expected that a brief addendum to the current trivial

commutation guidance note will be added to reflect this confirmation and will be made available in due course.

### Counsel's Opinion Annual Allowance

In [Bulletin 103](#) the LGPC Secretariat detailed the outcome of a meeting with HMRC regarding a number of outstanding issues relating to the annual allowance calculation. It was noted that the LGPC Secretariat would consider seeking Counsel's opinion in two areas where the opinion of HMRC differed from that of the Secretariat namely:

- Closing Values – Retirees – Commutation and;
- Club Transfers

The Secretariat has now received Counsel's opinion in both of these areas.

### Closing Values – Retirees – Commutation

At the earlier meeting with HMRC, they confirmed their view (as provided for on their website at [RPSM06107030](#) and [RPSM06107090](#)) that for the purposes of PE and LSE the annual rate of pension and the lump sum for a retiree should, by reason of section 236(8) of the Finance Act 2004, ignore any reduction to the pension or increase to the lump sum as a result of an election to commute pension for an increased lump sum. In other words, PE and LSE should be valued as if the member had not commuted any pension for lump sum.

The view of the LGPC Secretariat, however, was that the correct interpretation of section 236(8) of the Finance Act 2004 was that PE and LSE should be valued at their post (not pre) commutation levels. Counsel's opinion has now been obtained and it supports the view of the LGPC Secretariat. The Secretariat has now written to HMRC to make them aware, stating that the intention is to update the LGPC's annual allowance guide to confirm to administering authorities that the view of the Secretariat is now backed by Counsel's opinion. The Secretariat has also asked HMRC if they will be amending their view and, if not, has asked that they provide a detailed explanation as to why LGPS administering authorities may not rely on the Counsel's opinion. Once a reply to this letter has been received we will inform administering authorities of HMRC's response and make the necessary amendments to the LGPC annual allowance guide.

### Club Transfers

HMRC's view is that only the amount of benefit that a Club transfer would 'buy' in the LGPS (using non-Club factors) should be subtracted from PE and LSE respectively when calculating the Closing Value for the Pension Input Period in which the benefits are transferred into the LGPS. As a Club transfer provides a service credit greater than would have been purchased using non-Club factors, the pension deriving from the additional service credit in the receiving scheme (which, in effect, is a cost to the receiving Scheme) should be included as part of the Pension Input Amount for the Pension Input Period in which the benefits are transferred into the LGPS.

Whilst the LGPC Secretariat morally agrees with the HMRC view, the Secretariat does not believe section 236(5) of the Finance Act 2004 backs up the HMRC position and, in the Secretariat's opinion, an amendment to the Finance Act 2004 would need to be made before the HMRC view could be applied. The Secretariat's view, based on the wording of section 236(5) of the Finance Act 2004 is that the whole of the amount of benefit that a Club transfer has 'bought' in the scheme should be subtracted from PE and LSE respectively when calculating the Closing Value for the Pension Input Period in which the

benefits are transferred into the LGPS. Counsel's opinion is that the viewpoint of the LGPC Secretariat is technically correct, although Counsel adds "this is not to say, however, that there would be an 'easy ride' if the point were litigated". The intention is to now share this response with other members of the Club who are public sector pension schemes to see how they wish to proceed and how best to approach HMRC on this particular matter. Further updates on both these areas will be provided to administering authorities in due course.

### **Sickness Absence Guide**

A fully revised and updated edition of the 'Prevention and Management of Sickness Absence Guide' is now available from the LGA. The guide sets out the legal framework for managing sickness as well as providing a practical source of help, with model policies, procedures, letters and forms for dealing with sickness absence. In addition it explains the processes for implementing and managing sickness absence strategies and will be instrumental in helping employers address this important issue to ensure the well-being of staff and the efficiency of organisations. To purchase a copy of this guide please download the order form from the [LGA's website](#).

### **Update to QROPS forms**

HMRC has published new versions of following Qualifying Recognised Overseas Pensions Schemes (QROPS) forms:

- [APSS 262 – Transferring UK tax-relieved pension assets](#)
- [APSS 263 – Member information](#)

These forms have been amended following the new Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2013 (SI 1742/2013). For further information please visit [HMRC's website](#).

### **Pensions Tax Relief - Lifetime Allowance: Fixed protection**

New regulations clarifying the operation of fixed protection of individuals' lifetime allowance came into force on 12 August 2013 when HMRC published information about applying for 'Fixed Protection 2014'. Further information can be found on [HMRC's website](#) in their August Newsletter.

### **Finance Act 2013**

The Finance Act 2013 received royal assent on 17 July 2013. It includes a wide range of taxation measures and these include the reduction of the Lifetime Allowance from £1.5 million to £1.25 million from tax year 2014/15 onwards, the reduction of the annual allowance from £50,000 to £40,000 from tax year 2014/15 onwards and various transitional provisions.

### **Marriage (Same Sex Couples) Act 2013**

The Marriage (Same Sex Couples) Act 2013 received royal assent on 17 July 2013. Section 16 of the Act, headed "Survivor benefits under occupational pension schemes" provides that the Secretary of State must arrange for a review of the relevant differences in survivor benefits in occupational pension schemes, being differences between:

- a) same sex survivor benefits and opposite sex survivor benefits provided to widows and widowers,
- b) opposite sex survivor benefits provided to widows and opposite sex survivor benefits provided to widowers.

and review the costs, and other effects, of securing that relevant differences in survivor benefits are eliminated by the equalisation of survivor benefits.

The review must, in particular, consider the extent to which same sex survivor benefits are provided in reliance on paragraph 18 of Schedule 9 to the Equality Act 2010 and the extent to which same sex survivor benefits and opposite sex survivor benefits are calculated by reference to different periods of pensionable service.

The outcome of the review is to be published before 1 July 2014.

If the Secretary of State, having considered the outcome of the review, thinks that the law of England and Wales and Scotland should be changed for the purpose of eliminating or reducing relevant differences in survivor benefits, the Secretary of State may, by order, make such provision as they consider appropriate for that purpose.

### Other Publications

#### A single-tier pension: what does it really mean?

The Institute for Fiscal Studies has published an analysis of who will benefit from Government reforms to the state pension. The report can be found on the [IFS website](#).

#### Tax Relief for Pension Saving in the UK

The Pension Policy Institute has published a report providing an overview of the pension tax relief system and examines the rationale for tax relief. You can find the report on [the PPI website](#).

#### Government Interventions to Support Future Retirement Incomes

On 12 July the National Audit Office published a report 'Government interventions to support future retirement incomes' that examines what actions government has been taking to mitigate the risk of people living longer and how effectively it is being managed. The report can be found on the [NAO's website](#).

#### Pension Ombudsman Annual Report 2012/13

The Pensions Ombudsman's (PO) Annual Report for 2012/13 was published last month with the number of complaints to the PO in 2012/13 down on the previous year. To read the Annual Report in full visit the [PO's website](#).

#### Interim Report from the Office of Tax Simplification

The Office of Tax Simplification published an [interim report](#) which, amongst other things, considers section 401 of the Income Tax (Earnings and Pensions Act) 2003, which provides that termination payments are subject to tax insofar as they exceed £30,000. See section 7 of the [interim report](#) for more details.

Some of the main points include:

- the distinction in tax treatment is unfair with regard to pay in lieu of notice, where properly advised employers are better able to avoid paying tax
- there is widespread confusion over the different treatment of income tax and national insurance payments on termination payments
- the government should consider increasing the £30,000 threshold (which, adjusted for inflation, would be £71,000 today).

The Office of Tax Simplification outline that the next steps are for them to hold discussions with HM Treasury with their plan being to publish recommendations in stages towards the end of 2013/early 2014.

## Bits and Pieces

### Timeline Regulations

The following GAD guidance and files for LGPS Scotland have been added to the [post 31 March 2009 GAD guidance page](#):

- Factors for Individual Cash Equivalent and Club Transfers from 1 January 2012 (version 4.1 issued 22 February 2012)
- Factors for Councillors Individual (Non-Club) Incoming Transfers (issued 27 March 2013).

### Circulars

[Circular 273](#) was published at the end of August to advertise forthcoming LGPS 2014 seminars to be held in November 2013. Following the level of demand for places at the LGPS 2014 workshops advertised in [Circular 272](#) it has been decided to hold three large seminars in November 2013. The subject matter and material will be the same as that covered in the recent workshops. They are solely aimed at employing authority staff, particularly those involved in the day-to-day administration of the LGPS, be that from an HR, payroll or other perspective. For more information and to book a place please see [Circular 273](#).

### Useful Links

[The LGA Pensions page](#)

[The LGPS members' website](#)

[The LGPS 2014 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](#)

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