Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 119 – October 2014

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.

Contents

LGPS 2014

LGPS (Amendment) Regulations Consultation - Governance and Cost Management

On the 10 October 2014, the Department for Communities and Local Government (DCLG) commenced a consultation on draft LGPS (Amendment) Regulations 2014. These draft regulations include a second iteration of the regulations issued for consultation this summer covering the new governance arrangements from next April including the establishment and operation of Local Pension Boards and the Scheme Advisory Board (as required by the Public Service Pension Scheme Act 2013). In addition draft regulations for the new cost control mechanism are included.

The main changes between these new draft governance regulations compared to those issued earlier this year include:

- Draft regulation 106(5) - administering authorities will have discretion and flexibility to determine the terms of reference for their Local Pension Board (rather than it being required to fit within section 270 of the Local Government Act 1972).
- Provisions which barred elected members from sitting on Local Pension Boards have been removed from this new set of draft regulations. Instead a provision has been added which prevents elected members or officers of an administering authority who are responsible for the discharge of any function under LGPS regulations from being a member of a Local Pension Board.

New provisions for both Local Pension Boards and the Scheme Advisory Board include:

- New draft regulations 106(6) and 110(5) which provide that Local Pension Boards and the Scheme Advisory Board are not unduly restricted in the way they choose to discharge their functions under the regulations.

For the Scheme Advisory Board:

- The responsibility for appointing voting members of the Board has been transferred to the Secretary of State (no longer the Chair of the Board with the approval of the Secretary of State).
- Provisions included for the appointment of non-voting advisory members to the Board and any sub-committees (appointments to be made by the Chairman of the Board with the agreement of the Board).

The consultation can be found on the Government's website. Responses to the consultation are invited by the 21 November 2014.

Guidance on the creation and operation of Local Pension Boards

The Shadow Scheme Advisory Board issued draft guidance for consultation on the 17 October 2014. The draft guidance which deals with the creation and operation of Local Pension Boards is designed to assist administering authorities. The draft guidance has been prepared based on the current iteration of draft regulations and the Pension Regulator's draft code of practice no.14. Should further amendments be made to these draft regulations in advance of the regulations being made and laid before Parliament (or to the draft code of practice no.14) this may require the appropriate amendments to be made to the guidance to ensure it fully reflects legislation. In addition any feedback via the consultation process may result in possible amendments to this draft guidance.

For further information about the consultation and to read the draft guidance please visit the Board's website.

HR, Payroll and Administration Guides

During September and October the following guides and administration papers were updated for England and Wales:

- HR Guide (version 3.5) issued 30 October
- Payroll Guide (version 3.4) issued 30 October
- Additional Pension Contributions Paper (version 1.5) issued 9 September
- AVC Scenarios Paper (version 8) issued 16 October
- 85 Year Rule Paper (version 1.8) issued 1 September

Please see the tracked changes versions of each of the above documents for details on the changes that have been made.

Secretary of State Guidance - Outstanding queries update

On the 17 October, the LGPC Secretariat issued an email to pension managers in England and Wales which contained draft letters from DCLG noting the Government Actuary's Departments (GADs) recommendations for revisions which should be made to the actuarial guidance issued by the Secretary of State.

The draft letters are contained in appendices to this bulletin (see separate links) including:

- Appendix 1 - Miscellaneous Amendments to Guidance September 2014
- Appendix 2 - Formulae for calculating the maximum tax free lump sum (copy of email correspondence)
- Appendix 3 - LGPS Pension Scheme actuarial factors & guidance - DRAFT

The content of the email issued by the Secretariat is detailed below. One subsequent amendment to that original email should be noted. Reference was made in the original email to the 'Use of Accumulated AVCs to provide additional pension under the Scheme' guidance and that it should make reference in paragraph 1.7 of the guidance dated 20 March 2012 to also cover councillor members. This was inaccurate and has been removed from the list of queries to DCLG. For ease of reference the relevant text which is no longer required has been struck through in the text below.

The Secretariat's comments on the draft letters, sent to DCLG, are as follows:

Appendix 1: 'Miscellaneous Amendments to Guidance September 2014'

1. Individual Incoming and Outgoing Transfers

(a) Agreed
(b) Agreed
(c) Agreed

Paragraph 2.8 – does this need to be reworded to reflect the first two sentences in the revised wording being inserted by 1(a) above into paragraph 7.4?

Paragraph 7.3 – to reflect the wording at the end of the revised wording being inserted by 1(a) above into paragraph 7.4 delete the word "current" and at the end of the paragraph add "applicable at that time."

Paragraph 7.1 - although it is stated that DCLG policy is not to allow transfer credits less than 6 months before NPA, this is not backed up in the regulations. Regulation 100 in the LGPS Regulations 2013 would need to be amended to introduce such a time limit. However, it is not clear why there should be such a limit in a CARE Scheme and transfers in ought to be allowed up to age 75 (which the regulations, as currently written, do allow). Thus, it appears that Secretary of State guidance and not the regulations need to be amended. Alternatively, if DCLG wish to maintain their policy line of not permitting transfer credits less than 6 months before NPA they should amend the LGPS Regulations 2013 to reflect this policy.

2. Use of Accumulated AVCs to provide additional pension under the Scheme
(a) Noted, ~~but I think paragraph 1.7 should also say that the guidance dated 20 March 2012 also applies to councillor members regardless of whether they commenced payment of the AVCs before, on or after 1 April 2014 (because they are still members of the 1998 Scheme and also because the section on dependant's benefits in the current guidance at paragraphs 3.8 to 3.12 quotes the CARE survivor percentages, whereas the percentages for councillors would be different because they are still in the 1/60th 1998 Scheme).~~

As a general point, ~~even~~ for non-councillor members, the 2012 guidance allowed the scheme member to make a choice between a pension that included or excluded a survivor's benefit. The 2014 guidance does not allow such a choice and all members are purchasing a pension with an in-built survivor benefit (even if they are single). We have reported this as a possible inadvertent change in the regulations.

(b) Agreed

3. Limit on Additional Cash Commutation
(a) Agreed but shouldn't paragraph 1.7 also say that the guidance applies to councillors too?

Paragraph 2.11 - this says administering authorities should use the flowchart at RPSM09104490 but the HMRC guidance on that webpage comes with a caveat under *"Limitations"* which says *"This method should not be used where the lump sum is not derived from the commutation of pension, e.g. public sector schemes that calculate lump sums and pensions separately."* So the instruction in the Secretary of State guidance needs to have a similar caveat.

Paragraph 2.9 – the formulas at paragraph 2.9 stipulate that the capital value of a member's benefits (of which the member can take 25% in cash) include any in-house pension purchased by an AVC pot x 20. However, the methodology used on the HMRC web pages appears to indicate that, where AVCs are involved, it should be the accumulated value of the AVC fund that should be used, not the amount of the pension bought from that AVC fund x 20.

It would be extremely helpful if these points could be clarified in the Secretary of State guidance and the formulae produced by Dave Friend at Civica (appendix 2) for calculating the maximum tax free lump sum included (assuming GAD confirm that they are correct).

4. Trivial Commutation
(a) Agreed but in the first line of paragraph 1.7 amend "trivial or small benefit rights" to "trivial or, where applicable, small benefit rights". This is because whilst all members are covered by the trivial commutation rules not all members have a right to take a lump sum

under the small pension pot rules (as it depends on what set of LGPS Regulations they left under). Also, shouldn't this paragraph also say that the guidance applies to councillors too?

5. Flexible Retirement
(a) Agreed
(b) Agreed except it refers to "31 March 2023" but should refer to "31 March 2024" as the SPA is 66 (given that the member was born on 31 March 1958).

6. Pension credits on divorce
(a) Agreed
(b) Agreed

7. Scheme Pays
(a) Agreed
(b) Agreed
(c) Agreed

Paragraph 1.10 states that elections for scheme pays offset made prior to 1 April 2014 are not affected by this guidance but paragraph 2.23 goes on to state that the most recent Early Retirement and Late Retirement actuarial factors are to be applied. What happens if the Early Retirement and Late Retirement actuarial factors shown in the old guidance ever differ from the most recent Early Retirement and Late Retirement actuarial factors? Paragraph 1.10 would seem to suggest the factors in the old guidance should be used whereas paragraph 2.23 states that whatever the latest factors are should always be used. It makes sense to follow paragraph 2.23 but it would be helpful if this could be made explicit in the guidance.

Paragraph 2.5 states that the calculation of the Pension offset equals AATAX / [AAFAC * AAADJ] where

AATAX = the Annual Allowance Tax charge;
AAFAC = the factor selected form Table A1 based on the member's gender and age at the Relevant Date; and
AAADJ = the factor selected form Table A1 based on the member's gender and age at the Relevant Date.

The A1 factor tables are copies of factor tables from 5.1 and 5.2 of the Individual Incoming and Outgoing Transfers guidance. The last factor in the A1 factor tables, therefore, is the factor for age 64. What is the value of AAFAC where an active member is aged 65 or over and is not retiring with an immediate payment of benefits when he or she elects for the LGPS fund to pay the Annual Allowance tax charge? Should the factors from Table D1 be used? The guidance needs to be amended to clarify how such cases are to be calculated.

Other Comments

Interfund Transfers
Paragraph 2.1 – this says "and, where the member has the option to do so, he or she decides to aggregate". Whilst this reflects the wording of regulation 103 of the 2013 Regulations, that regulation requires an amendment (which we have asked DCLG to make) as it does not accurately reflect the position set out in regulation 22. That regulation provides that benefits are automatically aggregated unless, where the member has the option to do so, the member elects to retain separate benefits. I would suggest that the

wording in paragraph 2.1 is amended to read “and, where the member has the option to do so, he or she decides not to retain separate benefits”.

The GAD guidance for Interfund Adjustments (IFAs) under the 2008 Scheme provided that:
2.2.3 The effective date of the calculation should be the date of the election that triggers the transfer.
2.3 If the amount calculated is paid within three months of the effective date, then no interest is payable. If payment is delayed, then interest should be paid at the same rate as specified under Regulation 44(4) of the Administration Regulations.

The Secretary of State guidance for IFAs under the 2014 Scheme provides that:

3.1 The transfer amount for any interfund transfer should be calculated as an outgoing Club transfer from the member’s old fund.
3.2 As usual in a normal Club transfer, the effective date of the calculation should be the date of the election that triggers the transfer.

However, in virtually all cases there is no date of election to aggregate. For members subject to regulation 22 of the 2013 Regulations aggregation is **automatic** unless, in the case of members covered by regulation 22(7) or (8) the member elects, within 12 months of re-joining, or within 12 months of the concurrent employment ceasing, not to aggregate (or within such longer period as the new employer may permit). Members subject to regulations 10(1) to (5) of the Transitional Provisions Regulations 2014 similarly have benefits **automatically** aggregated. Thus, in the absence of an election not to aggregate (for those subject to regulation 22(7) or (8)), the relevant date will always be the date of re-joining the Scheme (or the day following the cessation of the concurrent employment). Only members covered by regulation 10(6) of the Transitional Provisions Regulations 2014 have to make an election to aggregate.

The Secretary of State guidance for transfers out under the 2014 Scheme provides that:

2.19 The relevant date for calculating a transfer value is the “guarantee date” as defined in The Occupational Pension Schemes (Transfer Values) Regulations 1996.
2.20 A transfer value should be guaranteed for three months from the guarantee date. If a request to pay the transfer value is made within three months of the guarantee date, it will not be necessary to recalculate the transfer value, provided the payment is made within 6 months of the guarantee date. If the payment is not made within those timescales, the administering authority must

- For a Club transfer, recalculate the Club transfer amount as at the date of payment.

So, it seems to me that:

i) in the case of all members, other than those covered by regulation 10(6) of the Transitional Provisions Regulations 2014, the “guarantee date” where an IFA is to be paid is the date of re-joining the scheme (because that is the date the benefits are automatically aggregated – there is no election to aggregate). Thus, if the IFA is paid within 3 months of re-joining (or cessation of the concurrent employment), the CETV as at the date of re-joining (or the day following the cessation of the concurrent employment) should be paid and if the IFA is paid more than 3 months after re-joining/cessation of the concurrent employment, the CETV as at the date the IFA is paid should be calculated and paid; and
ii) in the case of members covered by regulation 10(6) of the Transitional Provisions Regulations 2014, the relevant date for the calculation should be the date of the election

that triggers the transfer. If the amount calculated is paid within three months of the relevant date, then no interest is payable. If payment is delayed, then WHAT? Should interest be payable and, if so, at what rate? Or should the CETV as at the date the IFA is paid be calculated and paid?

This matter needs to be addressed in the guidance as, at present, it is not clear how administering authorities should proceed.

Early Payment of Pension
The Early Payment of Pension guidance should also be updated to make it clear that it applies to Councillor members too.

Paragraph 2.18 – this will need to be updated to reflect the following:

Where a member's pension includes an underpin "guarantee amount", both:

a) the underpin "guarantee amount", and
b) the amount of the pension in the member's post-14 pension account accrued prior to the member's 2008 Normal Pension Age (NPA), but excluding any element of that post-14 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence),

are treated as if they were pension accrued under the 2008 Scheme for the purposes of determining any actuarial reduction due on them.

Furthermore -
c) any element of the member's post-14 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence), is treated as pension accrued under the 2014 Scheme for the purposes of determining any actuarial reduction due on them (related to the member's NPA in the 2014 Scheme).

The rationale for (c) is twofold. Firstly, regulations 4(5)(b)(i), 4(5)(c) and 4(5)(d) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 exclude the elements in (c) from the underpin calculation (and so they must, therefore, be paid in addition). Secondly, the amount of pension credited to the member's account from a transfer in and the amount of the additional pension purchased via the APC / SCAPC were based on the member's NPA under the 2014 Scheme.

Paragraphs 2.10 and 2.13 – amend "the date of the member's 60th birthday" to "the day before the date of the member's 60th birthday". This is because paragraphs 1(1)(b) an 1(3) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 deal with members who have attained age 60 and paragraphs 1(1)(c) and 1(4) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 deal with members who have not attained age 60. Given that paragraph 1(4) cannot apply to a member who has attained age 60 the actuarial reduction should be for the period to the day before age 60. An amendment to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 has also been requested so that the Regulations also require the reduction period is to the day before age 60. [Note: it is appreciated that GAD may not be comfortable with this proposed amendment to the Secretary of State guidance until the amendment to the Regulations has been made].

Pension debits for divorced members
This guidance should make it clear that it also applies to Councillor members.

Also, there appears to be an error in paragraph 2.10 of the March 2013 pension debit guidance. It says:

2.10 No debit should be applied to the retirement grant payable on the death of a member who was contributing to the scheme at their death.

That statement is surely incorrect and needs amending because there was no retirement grant for an active member who died in service. There would have been a death grant of 3 times pay, not a retirement grant. I think paragraph 2.10 should therefore be amended read "No debit should be applied to the ~~retirement~~ death grant payable on the death of a member who was contributing to the scheme at their death."

Application of a Pension Credit to the Former Spouse or Civil Partner of the Member
At the end of paragraphs 3.6. and 3.7 it says that the elements for PC_1, PC_2 and PC_3 should be stored for possible future reference. I can understand why the elements of the Pension Debit have to be held separately (because, for example, each element of the debit might have to have a different actuarial adjustment applied if the Debit Member draws benefits early, or because the member might draw all pre 2008 benefits and no post 2008 benefits upon flexible retirement). However, I can think of no reason to have to hold the PC_1, PC_2 and PC_3 elements of the Pension Credit separately. Is this necessary and, if so, why?

Purchase of additional pension – elections on or after 1 April 2014
To reflect the regulations (and what appears to be DCLG policy) amend paragraph 4.3 to read:

4.3 On early retirement (before normal pension age under the 2013 Regulations), to allow for early payment an actuarial reduction will apply to the additional pension purchased (or granted) under
a) regulation 16 or
b) regulation 31 except where regulation 30(7) applies i.e. the member is aged 55 or over and is dismissed by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency.

Limit on Total Amount of Benefits – Lifetime Allowance
Section 5 – guidance on Individual Protection 2014 needs to be issued now that the relevant legislation has been enacted.

Also, in paragraphs 2.20 to 2.22 of the guidance it says that a member can commute pension above the ALTA for a lump sum. However, whilst that is permissible under the Finance Act 2004 it appears that, as the LGPS is a contracted-out scheme, it cannot allow commutation of pre 6.4.97 GMP or post 5.4.97 section 9(2B) rights for a Lifetime Allowance Excess Lump Sum. This is because, as you will see from the copy of regulations 20 and 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 [SI 1996/1172] below, those regulations do not permit such rights to be commuted. It appears from the draft Occupational Pension Schemes (Schemes that were Contracted-out) Regulations

2014 - which will come into force 6 April 2016 and effectively replace the Occupational Pension Schemes (Contracting-out) Regulations 1996, that these restrictions will continue post 2016.

20 Payment of a lump sum instead of a pension payable under a relevant scheme
(1) For the purposes of section 12C(1)(c) of the 1993 Act (regulations may prohibit or restrict the payment of a lump sum instead of a pension under a relevant scheme except in prescribed circumstances or on prescribed conditions), a relevant scheme may not provide for the payment of a lump sum instead of a pension unless the payment to be made is authorised under section 164 of the Finance Act 2004 (authorised member payments) and the payment –

(a) is permitted by the lump sum rule in section 166 of that Act (lump sum rule) and qualifies as-
(i) a pension commencement lump sum for the purposes of paragraph 1 of Part 1 of Schedule 29 to that Act;
(ii) a serious ill-health lump sum for the purposes of paragraph 4 of that Part;
(iii) a trivial commutation lump sum for the purposes of paragraph 7 of that Part;
(iv) a winding-up lump sum for the purposes of paragraph 10 of that Part; or

(b) is permitted by the lump sum death benefit rule in section 168 of that Act (lump sum death benefit rule) and qualifies as-
(i) a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or
(ii) a winding-up lump sum death benefit for the purposes of paragraph 21 of that Part ; or

(c) is-
(i) made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of "pension scheme"));
(ii) a payment that is described in Part 2 of the 2009 Regulations; and
(iii) made to or in respect of a member.

60 Payment of a guaranteed minimum pension as a lump sum
(1) For the purposes of section 21(1) of the 1993 Act (payment of a lump sum instead of a pension in prescribed circumstances and subject to prescribed restrictions and conditions) the circumstances are where-
(a) a guaranteed minimum pension has become payable; and
(b) the payment of a lump sum is authorised under section 164 of the Finance Act 2004 and the payment is -
(i) permitted by the lump sum rule in section 166 of that Act and -
(aa) qualifies as a trivial commutation lump sum for the purposes of paragraph 7 of Part 1 of Schedule 29 to that Act ; or
(bb) qualifies as a winding-up lump sum for the purposes of paragraph 10 of that Part; or
(ii) permitted by the lump sum death benefit rule in section 168 of that Act and qualifies as-
(aa) a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Part 2 of Schedule 29 to that Act; or
(bb) a winding-up lump sum death benefit for the purposes of paragraph 21 of that Part ; or
(iii) made by a registered pension scheme (within the meaning given in section 150(2) of the Finance Act 2004 (meaning of "pension scheme")), is a payment that is described in Part 2 of the 2009 Regulations and is made to or in respect of a member.

(2) The condition in paragraph (1)(a) shall not apply in cases where the scheme is being wound up or an earner retires before pensionable age, and a premium under section 55(2) of the 1993 Act (contributions equivalent premium) has been paid or treated as paid under Part VI or the scheme has made the provisions mentioned in section 16(2) and (3) of the 1993 Act, provided that-
(a) for the purposes of paragraph (1)(b), where the aggregate amount of the benefits which has accrued to the earner at the date of winding-up or, as the case may be, of his retirement, increased-
(i) in accordance with section 16(2) and (3) of the 1993 Act, or
(ii) in a case where that section 16(2) and (3) applies, to the amount that would have been payable at pensionable age,

that aggregate amount shall be treated as the amount of benefits currently payable to him under the scheme;

(b) in the case of an earner who retires before normal pension age, commutation is not permitted before the date on which benefits become payable to the earner under the scheme's early retirement provisions;

(c) in cases where the earner is a member of more than one scheme relating to the same employment, all those schemes are being wound up or, as the case may be, he is treated by all those schemes as having retired and, in each case, all those schemes have paid a contributions equivalent premium or have made the provisions mentioned in section 16(2) and (3) of the 1993 Act.

(3) Subject to paragraph (4), for the purposes of section 21(1) of the 1993 Act further circumstances are where the payment of a lump sum-
(a) is authorised under section 164 of the Finance Act 2004;
(b) is permitted by the lump sum rule in section 166 of that Act; and
(c) qualifies as a serious ill-health lump sum for the purposes of paragraph 4 of Part 1 of Schedule 29 to that Act.

(4) Where-
(a) under the scheme, an earner qualifies for a lump sum payment on the ground of serious ill-health; and
(b) the scheme also provides for the payment of a guaranteed minimum pension to the widow, widower or surviving civil partner of the earner ("a survivor's pension"),

the scheme must continue to include provision for a survivor's pension notwithstanding the payment of a lump sum to the earner.

Protected Regulation 66(8) guidance – Adjustment of Transfer Credits granted from accumulated AVCs

This guidance, dated 24 August 2011, needs updating to cross refer to the correct regulations and to the correct transfer factor suite factors (i.e. *the non-Club factors (Tables 2.1 and 2.2) set out in the guidance document "Actuarial Factors for Individual Cash Equivalent and Club Transfers from 1 January 2012" (issued on 22 February 2012 – see **here**) should continue to be used in conjunction with this guidance, where the benefit is payable from age 65.)*

Appendix 3: LGPS Pension Scheme actuarial factors & guidance - DRAFT

Section A
Footnote 2 should also say that the guidance dated 20 March 2012 also applies to councillor members regardless of whether they commenced payment of the AVCs before, on or after 1 April 2014 (because they are still members of the 1998 Scheme and also because the section on dependant's benefits in the current guidance at paragraphs 3.8 to 3.12 quotes the CARE survivor percentages, whereas the percentages for councillors would be different because they are still in the 1/60th 1998 Scheme).

In Footnote 4 amend "transfers in in" to "transfer in" and amend "effective date" to "relevant date" for consistency with terminology used in the current transfers in / out guidance.

Section B
The entry for "Payments to increase total membership" has, as requested, been removed from section B as no new added years contracts have been allowed since 1 April 2008. However, I'm not certain whether the guidance dated 17 January 2007 (see the Timeline Regulations website) should instead be shown as an entry in Section A (as, like ARC contracts, there are still existing added years contracts that are ongoing and, presumably, GAD could amend the factors from time to time for existing contracts) or whether it should be shown as an entry in Section C (if GAD never intend to amend the factors again for existing contracts). I think that is a question that should be posed to GAD and let them decide whether the entry should be inserted in Section A or Section C.

Section C
The entry for "Application of a pension debit for divorced members: 4 March 2013" should not appear in List C but, rather, should be included in List A as paragraph 1.2 of the "Application of a pension debit for divorced members" dated 28 March 2014 " says that the guidance dated 4 March 2013 should be used where the Transfer Day is before 1 April 2014. So, if I've understood it correctly, where the Transfer Day is before 1 April 2014 the debit to be applied to the member's benefits upon eventual retirement (which could be many years after April 2014) should be calculated in accordance with the 4 March 2013 guidance and not the guidance dated 28 March 2014.

The LGPC Secretariat believe that the above covers all the current outstanding matters related to the actuarial guidance from the Secretary of State.

LGPS 2015

LGPS 2015 Payroll Guide
In September the Payroll Guide for LGPS 2015 in Scotland was published on the LGPS Regulations website (an updated version was added 30 October 2014 - see tracked changes version for details on the amendments made to the Guide). It's anticipated that the HR Guide will be released in the coming weeks and thereafter a host of administration guides (similar to those produced in England and Wales for LGPS 2014) will be made available on the LGPS Regulations website.

LGPS (Governance) (Scotland) (Draft) Regulations 2014
The draft governance regulations for the establishment of Local Pension Boards and the Scheme Advisory Board in Scotland were issued for consultation on the 30 September 2014. The consultation period runs until 11 November and the draft regulations can be found on the SPPA website.

LGPS 2015 Workshops

Circular 285 contains information on forthcoming training for administering authority staff for LGPS 2015. Two events are taking place in Edinburgh in January 2015 (20 and 27 January 2015). Full details about the course content and how to book a place can be found in Circular 285 on the LGA's website.

Automatic Enrolment

Automatic Enrolment Earnings Thresholds Review and Revision 2015/16

On the 15 October the Department for Work and Pensions (DWP) published a consultation on revision proposals for the automatic enrolment thresholds for 2015/2016. The consultation closes on the 25 November.

The Government has decided to consult on four options for the 2015/16 earnings trigger:

- Option 1 – Freeze the trigger at its current level of £10,000
- Option 2 – Raise the trigger by indexation (i.e. to £10,183 if indexed by CPI or to £10,045 if indexed by reference to Earnings)
- Option 3 – Increase the trigger to £10,500 in line with the threshold for paying income tax
- Option 4 – Use the Pension Commission benchmark replacement rate of £9,876 to determine the trigger

The Government is also proposing that the lower earnings threshold (currently £5,772) and the upper limit of the qualifying earnings band at which mandatory employer contributions are capped (currently £41,865) should be equal to the National Insurance Lower Earnings Limit (Primary Threshold) and Upper Earning Limit for 2015/16 (i.e. £5,798 and £42,285 respectively).

The impact of each of these options is explored can be found in the consultation document on the Government's website.

DWP consults on draft laws to remove restrictions on NEST

On the 9 October DWP published a consultation to remove the annual contribution limit and transfer restrictions on pension schemes held with the National Employment Savings Trust (NEST) from 1 April 2017. The consultation closed on the 29 October 2014.

TPR automatic enrolment compliance and enforcement bulletin

The quarterly update from the Pensions Regulator (tPR) on the compliance and enforcement of automatic enrolment reveals that there were 363 cases closed between 1 July and 30 September this year. The total number of cases closed since the start of automatic enrolment is now 1,280. To read the full report, visit tPR's website.

TPR publishes automatic enrolment research

TPR has published research on the awareness, understanding, knowledge, actions and intended actions of employers in relation to automatic enrolment. To read the full report, visit tPR's website.

Article on the rise in automatic-enrolment breaches

Following a Freedom of Information request, tPR have revealed the proportion of automatic enrolment non-compliance investigations resulting in potential breaches has risen from 23% to 47% since January 2014 with the percentage of employers that have faced investigation falling in the same period. To read the article, visit the Pension Age website.

Other News and Updates

Councillor Members' Actuarial Increase for Post Normal Pension Age Retirement

In Bulletin 117, the LGPC Secretariat confirmed that a slight amendment is required to the late retirement guidance for councillor members. We stated:

Late Retirement Guidance
Point raised: *Should councillor members who leave the scheme on or after 1 April 2014 with an entitlement to a late retirement increase have that increase based on all benefits up to date of leaving or just those up to age 65 given the wording of the latest Late Retirement guidance (dated 26 March 2014).*

Response: *Paragraph 1.2 of the Late Retirement guidance dated 26 March 2014 says "This guidance also applies to benefits accrued before 1 April 2014, including members who left active service before 1 April 2014,* ***and to councillor members****."*

However, regulation 26 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 provides that the LGPS Regulations 1997 shall still apply to councillor members. Paragraph 5 of Schedule 8 to the LGPS Regulations 1997 amends regulation 20 of those Regulations and provides that:

"(5) Benefits payable to a councillor member who remains in service after his 65th birthday as referred to in regulation 25A(1) (as that regulation applies to a councillor member) shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary in respect of each day that payment of benefits is delayed between his 65th birthday and the date of his retirement."

It therefore appears that the Late Retirement guidance dated 26 March 2014 should be used but with one proviso, that benefits accrued post 31 March 2014 should, for the purposes of the guidance, be treated as if it were service accrued pre 1 April 2014 i.e. it has a Normal Retirement Age of 65. DCLG have been notified of this point and a correction slip has been requested.

Following publication of this article, the LGPC Secretariat received a query regarding the wording used in the LGPC's Guide to the LGPS for Eligible Councillors in England and Wales and whether this accurately reflected the correct position for late retirement for Councillors.

The GAD guidance issued under the 1997 Regulations dated 28 June 2000 (see the Timeline Regulations website) provided that it was only the benefits accrued up to age 65 that would be increased. When the 2008 Scheme was introduced new late retirement guidance dated 28 April 2008 was issued (see the Timeline Regulations website) and this was replaced by guidance dated 14 February 2012 (see the Timeline Regulations website). Those guidance notes did not limit the increase to only the benefits accrued to age 65 but, importantly, only referred to benefits under the 2008 Scheme regulations. The LGPC Secretariat therefore queried with DCLG whether the new guidance or the guidance dated 28 June 2000 should be applied to councillors and were informed that the 2000 guidance should continue to be applied. However, DCLG subsequently changed their position as confirmed in Bulletin 87 (November 2011) which stated:

"On 20 November 2009 DCLG confirmed that the actuarial increase guidance issued under the LGPS Regulations 1997 should continue to be applied to Councillor members who retire after age 65.

At its meeting on 1 December 2011 the Technical Group were presented with a copy of an e-mail from DCLG to an Administering Authority dated 7 July 2011 stating that the current late retirement guidance issued under the LGPS (Benefits, Membership and Contributions) Regulations 2008 should now be applied as "the numbers involved make it impractical to do otherwise"."

Given the position outlined above this means that page 19 of the LGPC's Guide to the LGPS for Eligible Councillors in England and Wales (current version June 2014) is incorrect (as it still reflects the former DCLG position) and needs to be updated to clearly reflect that any increase is applied to all of the accrued benefits, including those accrued post (Normal Pension Age i.e. post age 65) as per current Secretary of State guidance. This update will be made shortly and the updated version made available on the LGA's website.

Marriage (Same Sex Couples) - Amendments to 1997 Regulations

The LGPC Secretariat have recently identified that the LGPS Regulations 1997 have been amended following changes introduced through Statutory Instrument 2014/560, the Marriage (Same Sex Couples) 2013 Order (Consequential and Contrary Provisions and Scotland) Order 2014. Paragraph 17 of Part 2 of Schedule 3 of that SI inserts regulations 42B and 42C into the LGPS Regulations 1997. Below is the extract of these new regulations and the Timeline Regulations website will be updated shortly to reflect these amendments.

Marriage of a same sex couple [SI 2014/560]
42B.*—(1) In this Scheme—*
(a) a reference to civil partnership is to be read as including a reference to marriage of a same sex couple,
(b) a reference to civil partners is to be read as including a reference to a married same sex couple, and
(c) a reference to a person who is in a civil partnership is to be read as including a reference to a person who is married to a person of the same sex.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, or a reference to a person whose civil partnership has ended) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2) it does not matter how a reference is expressed.

(4) Paragraph 1 of Schedule 3 to the Marriage (Same Sex Couples) Act 2013 does not apply to the interpretation of this Scheme.

(5) Section 11(1) and (2) of, and paragraph 3 of Schedule 3 to, that Act have effect subject to paragraphs (1) to (3).

Living together as a same sex couple [SI 2014/560]
42C.*—(1) In this Scheme—*
(a) a reference to persons who are not in a civil partnership but are living together as civil partners is to be read as including a reference to a same sex couple who are not married but are living together as a married couple, and

(b) a reference to a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2) it does not matter how a reference is expressed.

(4) Paragraph 2 of Schedule 3 to the Marriage (Same Sex Couples) Act 2013 does not apply to the interpretation of this Scheme.

(5) Section 11(1) and (2) of, and paragraph 3 of Schedule 3 to, that Act have effect subject to paragraphs (1) to (3).

Pay in Lieu of Holiday Query

Over recent months the LGPC Secretariat has received an increase in queries relating to pay in lieu of holidays. Whilst the Secretariat acknowledges that employers will have their own arrangements for pay in lieu of holidays which may result in differing scenarios, we believe that it would be beneficial to share the detail of this query for clarification.

Query - Should payments to a casual employee who is a member of the LGPS in respect of accrued holiday be pensionable?

The scenario provided to the Secretariat which accompanied this query was as follows:

- the employee builds up annual leave entitlement on the hours they have worked, banks these hours and takes their annual leave entitlement
- when taking that leave entitlement the employee receives payment from their employer
- should the payment received in respect of this leave entitlement be pensionable?

The response from the Secretariat is that it should be for the following reasons.

Firstly regulation 20 of the LGPS Regulations 2013 covers the meaning of pensionable pay from April 2014. One of the exclusions noted in 20(2) is that *(c) any payment in consideration of loss of holidays,* is not included in an employee's pensionable pay.

The provision to exclude such payments in consideration of loss of holidays was designed to head off the possibility of someone in their final year of service not taking any of their holiday and then getting paid 'pay in lieu of holiday' with a view to inflating their final year's pay. It has remained an exclusion in the Scheme post 1 April 2014 given that the majority of members will have pre 1 April 2014 membership for a number of years to come and therefore have final salary benefits to be calculated. Without this exclusion, a member's final year's pay would have been greater than if the member had taken their paid leave when they should have done.

Casual employees are often paid an increased hourly rate to buy-out their right to holiday entitlement. In essence, such a scenario results in an increased payment to the employee in lieu of those holidays, and such payments would not be pensionable (in line with regulation 20(2)(c)).

However, in the scenario presented above, it appears that the employer is paying an amount of ‘pay’ due to the employee who has worked sufficient hours to accrue this annual leave. As the employee is taking their leave, it would mean that this employee isn't receiving payment in lieu if holidays and instead in such a scenario they are receiving payment in respect of holidays accrued and therefore such a payment should be pensionable as it's not a payment in consideration of loss of holidays.

SF3 Statistics 2013/14 release for England and Wales

DCLG issued the latest statistics relating to the LGPS for England and Wales on the 29 October. To view the results in full please click on the link below:

- LGPS SF3 statistics for England 2013/14
- LGPS SF3 statistics for Wales 2013/14

Research published on performance of passive funds

Charles Stanley Pan Asset has published research entitled “The Case for a Passive Fund Premium”, which reveals that a passive investment strategy could give large DB pension schemes an additional annual return of £3.8m. The research also found that the LGPS could improve performance by £441m a year if £85bn of actively managed investments in listed asset classes were switched to passive strategies.

Taxation of Pensions Bill

Bulletin 117 included details of the Government's response to the Freedom and Choice in Pensions consultation and noted that a Bill covering taxation issues was expected shortly. The Taxation of Pensions Bill has now been placed before Parliament and includes the changes to tax legislation required to enable the flexibility introduced via the Freedom and Choice in Pensions consultation. These new flexibilities are due to take effect from 6 April 2015. The potential impact for the LGPS would be around provisions for AVCs and also for transfers from the LGPS to DC schemes. Once further details on how the provisions of this Bill will impact the LGPS there will be an update in a future Bulletin. To find out more about this Bill visit the Government's website.

State Pension Scheme Communications

On 4 October the Department for Work and Pensions (DWP) launched a new campaign called "Your future, your pension". This is aimed at ensuring that today's workers understand the new State Pension Scheme being introduced in April 2016 and what the reforms mean. As part of this campaign advertisements will be appearing later this year. In addition a new service giving people a personalised written statement of what they can expect to receive under the new system (based on their work history and National Insurance (NI) contributions to date) has been launched. At the moment it is available to approximately 2.5 million people who will reach State Pension age in the first 5 years of the new scheme (currently between April 2016 and August 2021). The service will be expanded gradually over the next 18 months, eventually becoming available to all working age people. For more information visit the Government's website.

DWP announce abolition of short service refunds for DC schemes

On 22 October DWP announced their plan to abolish short service refunds, stating that the intention is that from October 2015, defined contribution schemes will be only able to make refunds within the first 30 days of membership. It should be noted that defined benefit occupational schemes will retain the facility to make short service refunds as these will not be within the scope of automatic transfers, whilst personal pension schemes are not affected by the change as they have never had the facility to make short service refunds. For further details of this announcement visit the Government's website.

Public Service Pensions (Valuations and Employer Cost Cap) - Amendments to directions order

On 24 September, HM Treasury published the Public Service Pensions (Valuations and Employer Cost Cap) (Amendment) (No2) Direction 2014 which makes amendments to the Public Service Pensions (Valuations and Employer Cost Cap) Directions 2014. For more information visit the HM Treasury website.

TPAS publishes annual review

The Pensions Advisory Service (TPAS) has published its annual review of activities for 2013/14. The review details that TPAS received 974 calls and enquiries about pension liberation and that its new web chat service was used 5,535 times. Visit TPAS's website for more information.

New Pensions Ombudsman Website Launched

The Pensions Ombudsman has announced that they've launched their new website (https://www.pensions-ombudsman.org.uk) to provide simpler, clearer information about what they do and how they can help.

State Pension Information - Pension Credit qualifying age?

The Government recently issued a state pension credit toolkit alongside advice on what the pension credit qualifying age is, details on who may be entitled to receive a pensions credit as well as a quick guide on this topic. For more information visit the Government's website.

HMRC Newsletter No. 65 and transfer of information to GOV.UK website

HMRC newsletter no. 65 was published in September and contains information on the following:

- October submission of RPSCOM100(Z)
- Transition of Pension Schemes Services (PSS) web content to GOV.UK
- Fit and proper person rules for pension scheme administrators
- Individual Protection 2014 (IP2014)
- Pension Statements and the annual allowance
- PSS helpline automated service

Detail is provided in the newsletter on the move of information from HMRC's website to the GOV.UK website. From the end of September HMRC moved its pension schemes guidance to the GOV.UK. It should be noted, however, that the Registered Pension Schemes Manual will not be moving to GOV.UK until later this year. For more details visit HMRC's website.

State pension top-up scheme open for pre-registration

Individuals can now pre-register to increase the value of their State Pension.
The State Pension top-up scheme is open to all those who will have reached State Pension age before 6 April 2016 and it will be a one-off opportunity. Full details can be found on DWP's website.

Countdown Bulletin to ending of Contracting-out issue 3

HMRC has now published issue 3 of their Countdown Bulletin covering changes to contracting-out due to the introduction of the New State Pension in April 2016.

ONS publishes Occupational Pension Schemes Survey

The Office for National Statistics (ONS) has published its Occupational Pension Schemes Survey, which gathers information about scheme membership, benefits and contributions in order to provide a detailed view of the nature of occupational pension provision in the UK. The report reveals that total membership of occupational pension schemes with two or more members was an estimated 27.9 million in 2013, up by 300,000 compared with 2012.

DWP issue Consultation on Disclosure Regulations

DWP commenced a consultation on the 3 November on technical amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.

The proposed amendments are expected to come into force in April 2015. DWP state that they will ensure that the regulations work as intended in relation to the new public service pension schemes which are being introduced from April 2015 under the Public Service Pensions Act 2013. They have also included some additional drafting amendments to the regulations which were identified as being desirable.

The closing date for responses is the 28 November 2014. DWP have indicated that they would particularly welcome views from those administering and managing the public service pension schemes as the main amendments do not apply to other schemes. For more information visit the Government's website.

Legislation

United Kingdom

SI	Reference Title
2014/560	The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014

Useful Links

LGA Pensions page

LGPS members' website

LGPS 2014 members' website

LGPS Advisory Board website

LGPS 2014 Regulations and Guidance website

LGPS Discretions lists all the potential discretions available within the LGPS in England and Wales.

LGPS Discretions lists all the potential discretions available within the LGPS in Scotland.

Qualifying Recognised Overseas Pension Schemes approved by HMRC and who agreed to have their details published.

The Timeline Regulations

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Pension managers (internal) of administering authorities
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Appendices

- Appendix 1 - Miscellaneous Amendments to Guidance September 2014
- Appendix 2 - Formulae for calculating the maximum tax free lump sum (copy of email correspondence)
- Appendix 3 - LGPS Pension Scheme actuarial factors & guidance - DRAFT