

Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 173 – June 2018

Please contact [Con Hargrave](#) 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.

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LGPS England & Wales

Statement from MHCLG following LGPS (Amendment) Regulations 2018

In [bulletins 171 and 172](#), we included articles on an issue contained in the recent LGPS (Amendment) Regulations 2018 [[SI2018/493](#)]. The issue concerned amendments made to the LGPS Regulations 1995 with the aim of allowing members aged 55 or over to access their benefits without needing their employer's consent.

MHCLG have now provided the following statement confirming the intention of the changes:

As stated in the 2016 Consultation Document, our policy intention has been and remains to remove the requirement for persons aged between age 55 and 60 to obtain their employer's consent before drawing their benefits early. This intention was restated in the Government response published earlier this year. There we said that we proposed to remove the need for an employer to give consent when a member aged between 55 and 59 chooses early payment of benefits to members who left the LGPS with deferred benefits prior to 1 April 2008.

Although it does not appear to have had this effect, our intention was that Regulation 24 of the 2018 Amendment Regulations should modify the LGPS Regulations 1995 (as preserved) to provide that this option is extended to members from the age of 55 who left the LGPS with a deferred benefit prior to April 2008.

MHCLG statutory guidance on investments – appeal outcome

In a [recent judgement](#), the Court of Appeal has overturned a decision of the High Court that the Secretary of State had exceeded his regulation making powers in MHCLG's statutory guidance on preparing and maintaining investment strategy statements.

The original ruling, reported in [bulletin 159](#), found that the section of the guidance stating that funds should not pursue policies that were contrary to UK foreign policy or UK defence policy was unlawful.

We understand that one of the respondents, the Palestine Solidarity Campaign, may be seeking permission to appeal the Court of Appeal's decision. In the meantime, [the statutory guidance](#), as amended by MHCLG last July following the High Court decision to remove the foreign boycott provision, remains in force.

SAB obtain QC's opinion on scheme employer wholly owned companies

The Scheme Advisory Board for the LGPS in England and Wales have obtained a Counsel opinion on the pensions responsibilities of scheme employer wholly owned companies (EOCs).

The opinion is available on the legal opinions page of www.lgpsboard.org and addresses the following matters:

- Whether the Best Value Authorities Staff Transfers (Pensions) Direction 2007 applies to the transfer of employees from a local authority to a local authority EOC.
- Whether the non-statutory Fair Deal guidance issued by HM Treasury in October 2013 applies to the transfer of employees from an academy to an academy EOC.
- Whether EOCs meet the requirements of paragraphs 5 or 6 of part 2 of schedule 2 of the LGPS Regulations 2013.
- The protections available to employees transferring under TUPE in relation to pensions, and the obligations placed on employers with regard to the provision of pensions.
- The situation were an employer to offer different schemes to different employee groups.

In addressing the final bullet point, Counsel states:

“20. This would be highly likely to contravene equal pay legislation. EOC employees would be comparators with each other and with the authority’s retained employees.”

We understand this does not mean that an employer would *automatically* be contravening equal pay legislation if it offered the staff it employed directly a different pension scheme to the staff it employed via an EOC. The usual potential defences could still apply, such as the material factor defence and whether a comparator is still a valid one in the particular circumstances of the case.

LGA and CWG publish member leaflet on LGPS (Amendment) Regulations 2018

The Secretariat, in conjunction with the national Communications Working Group, have produced a leaflet to assist administering authorities when communicating the material changes to the scheme made by the LGPS (Amendment) Regulations 2018 to scheme members.

An email was circulated to LGPC contacts regarding this on 18th June 2018 and the leaflet can be found under [guides and sample documents](#) on www.lgpsregs.org.

Updates to timeline regulations following LGPS (Amendment) Regulations 2018

Following the issue of the LGPS (Amendment) Regulations 2018 by MHCLG in April, the timeline regulations pages on www.lgpsregs.org have been updated to reflect the amendments made to the:

LGPS Regulations 2013:

- [Current Timeline Regs](#)
- [Tracked changes version](#)
- [List of amendments by SI](#)
- [List of amendments by regulation](#)

LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014:

- [Current Timeline Regs](#)
- [Tracked changes version](#)

- [List of amendments by SI](#)
- [List of amendments by regulation](#)

Updates to guides and websites following LGPS (Amendment) Regulations 2018

The national LGPS [member website](#) (both desktop and mobile versions) have been updated to incorporate the changes made by the LGPS (Amendment) Regulations 2018. In addition, the following guides have also been updated - clean and tracked versions are available under [guides and sample documents](#) on www.lgpsregs.org

- Councillors – update for councillors in England and Wales (version 1.8)
- Councillors – full guide (version 1.8)
- Councillors – introductory leaflet for councillors in Wales (version 1.5)
- Employees – brief guide (version 1.8)
- Employees – full guide (version 5.0)

Pension fund accounts 2017/18

Ahead of the publication of next year's scheme annual report by the England and Wales Scheme Advisory Board, we would be grateful if you could email your fund's 2017/18 annual report to [Liam Robson](#) when this is finalised.

As and when these are received, funds' annual reports will be uploaded to [the Board website](#).

HMRC

Launch of Manage and Register Pension Schemes service

On 4th June, HMRC launched the first phase of their new Manage and Register Pension Schemes service. This service will eventually replace Pension Schemes Online for the ongoing management and registration of all UK registered pension schemes.

At the launch of the service, HMRC [issued a newsletter](#) explaining what its plans are for the service. This followed a [previous newsletter](#) about Manage and Register Pension Schemes which was published in April.

After seeking clarification from HMRC regarding the new service, the LGPC Secretariat's understanding is that the new service is currently only operational for 'registering new schemes, and for registering new administrators who want to register a new scheme'.

A second release of phase one is planned for later in 2018. This will introduce new features for users of the new service. The rollout of Manage and Register Pension Schemes to existing users of Pension Schemes Online is due to take place in 2019 and 2020 as part of phase two. More details on HMRC's plans for the rest of phase one and for phase two are contained in the two newsletters linked above.

On 8th June, the LGPC Secretariat circulated an email to LGPS administering authorities inviting them to volunteer to attend two workshops on the development of the new service. The deadline for responding was Wednesday 20th June.

Scheme Reconciliation Service (SRS) communications issued by HMRC

During June, a number of emails from HMRC regarding the scheme reconciliation service (SRS) were circulated to administering authorities by the LGPC Secretariat.

The text of the emails sent is provided in [appendix 1](#), and any queries regarding these should be sent to CRM.schemereconciliationservice@hmrc.gsi.gov.uk.

The Pensions Regulator

Proactive engagement with LGPS funds planned for 2018 and 2019

The Pensions Regulator's (TPR) [Corporate Plan for 2018-2021](#) at page 18 includes three new Key Performance Indicators (KPIs) directly related to public service pension schemes. Following the publication of these new KPIs TPR has chosen the Local Government Pension Scheme as a cohort for proactive engagement throughout 2018 and 2019.

TPR has chosen Local Government schemes because, in their view, the results of the [2017 Governance & Administration Survey](#) show that improvements in governance & administration standards have slowed when compared to other public service pension schemes.

Over the coming months, all LGPS scheme managers will receive written communications from TPR (and others involved with LGPS may also hear from TPR). These will cover governance & administration matters including:

- the main risk areas scheme managers should already be focusing on
- what TPR's expectations are
- how those responsible for managing and running schemes can identify and mitigate such risks

TPR have asked us convey the message below to all LGPS administering authorities.

“We highly recommend that scheme managers and pension board members carefully consider the messages given. It is essential to have robust governance and administration in place for your scheme. However, it must be noted that there are no new expectations from us. All of the areas are already covered in [TPR’s Code of Practice 14 for Public Service Pension Schemes](#), and the [associated guidance](#).

If you haven’t already, we recommend that you complete [TPR’s Public Service toolkit](#) to learn about managing public service pension schemes and to increase your knowledge and understanding.

We will engage further with a small number of scheme managers to undertake deeper regulatory engagement into each risk area, to understand what the current status is, the challenges scheme managers face, the extent of mitigation and improvement plans and how they are being implemented.

Good scheme governance & administration is a key factor to achieving positive outcomes for members. TPR will use its discretion in deciding whether it is appropriate to carry out further investigations and use its powers in situations where failings are identified.”

Other News and Updates

GDPR – updated template full privacy notice (version 3)

In [bulletin 172](#), we confirmed that we had asked Squire Patton Boggs to update the template full privacy notice to include other LGPS administering authorities in the section which sets out which organisations LGPS funds share data with (p6 – 7 of the document). This update is now complete and a clean and tracked version of the privacy notice (version 3) is available under the guides and sample documents section of www.lgpsregs.org and www.scotlgpsregs.org.

To confirm, in our view, a member does not need to provide their consent for an administering authority to share details of their scheme membership with another authority. LGPS administering authorities process personal data on the basis that they need to do so in order to satisfy their legal obligations as scheme managers. Details of previous scheme membership is necessary to determine, amongst other things:

- the right to benefits under the scheme where the member leaves with less than two years’ membership.
- if automatic aggregation should occur.
- the death grant that should be paid in certain circumstances.
- if a refund is applicable where the member leaves without the right to a deferred benefit.
- to determine the statutory right to a CETV.

Burgess and others v BIC UK Ltd judgment – time limits for recovering overpayments

LGPS administering authorities should be aware of a judgment handed down by the High Court in April 2018, which clarifies that pensions overpayments recovered by way of adjustments to future payments are not subject to the statutory six year time limit on recovering overpaid amounts.

Whilst much of the Court's findings in the [*Burgess and others v BIC UK Ltd*](#) case were case-specific and without general relevance to the LGPS, this point is novel and was not addressed in the 2016 [*Webber v Department for Education*](#) case. It also goes against a determination from the Pensions Ombudsman on the matter, which found that time limits did apply.

The judgment goes on to state that where a pension scheme seeks to adjust future benefits to take into account prior overpayments and this approach is disputed by the recipient, an order by the County Court would be necessary to enforce the pension scheme's approach. This is in accordance with s91 of the Pensions Act 1995.

An [*Eversheds Sutherland speedbrief*](#) on the case states the following:

"...Mr Justice Arnold went on to consider whether... the Trustees could recover the resulting overpayment from the pensioners.

The arguments centred on the "equitable right to recoupment" which the judge described as an "equitable self-help remedy" which did not involve any claim for payment back of monies paid but an adjustment to payments made in the future. In a pensions context this would arise where the amount of an overpayment was offset against future pension instalments.

The judge considered the impact of section 91 Pensions Act 1995 which provides that where the amount of any set-off against future benefits is disputed, "set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court". He confirmed that a determination of the Pensions Ombudsman would not suffice for this purpose, but an order by the County Court pursuant to s150(5)(a) of the Pension Schemes Act 1993 declaring the Trustees' entitlement in accordance with the Pensions Ombudsman's determination would.

Mr Justice Arnold went on to say that the equitable right to recoupment was not subject to the six year limitation period in the Limitation Act 1980 (or indeed any other limitation period in that Act). This meant that the only possible limitation to reclaiming an overpayment by equitable recoupment was the equitable doctrine of laches, i.e. that a legal claim will not be allowed if there is a long delay in making that claim that has prejudiced the other party. The judge confirmed that as some sort of detrimental reliance is usually an essential ingredient in the equitable doctrine the court could not determine the question of whether laches could apply on a group basis as each pensioner's individual circumstances would need to be considered."

DWP commence consultations

Consultation on clarifying and strengthening trustees' investment duties

On 18th June 2018, [DWP commenced a consultation](#) entitled *Pension trustees: clarifying and strengthening investment duties*.

The consultation seeks views on the draft Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2018 and does not contain proposals which would directly impact the LGPS, as it covers trust-based pension schemes alone. However, the draft regulations have been consulted upon to tackle issues that also affect the LGPS and we understand the Scheme Advisory Board for England and Wales intend to respond to the consultation.

The proposed regulations would amend the required content of the Statement of Investment Principles (SIP), and the steps which trustees need to take when revising it, or preparing it for the first time. They would also require trustees of schemes offering money purchase benefits, subject to certain limited exceptions, to publish the SIP, and publish an annual report on how they implemented it, and tell members of its availability via the annual benefit statement.

The consultation closes on 16th July 2018.

Consultation on protecting defined benefit pension schemes

In addition, [DWP have commenced a consultation](#) on improving the Pensions Regulator's powers with a view to better protecting private sector defined benefit schemes. The Government hope the proposals will create a stronger Pensions Regulator which can be more proactive and get involved earlier when employers make changes which could affect their pension scheme.

The consultation closes on 21st August 2018.

European Court of Justice ruling on transgender rights

The [European Court of Justice has ruled in favour of a transgender woman](#) who was refused payment of her UK state pension in 2008 at age 60 (on the grounds that she did not have a Gender Recognition Certificate (GRC)). The full judgment of the Court is available [here](#).

The woman was refused payment of her pension because, on changing her gender, she had not annulled her marriage. Under the Gender Recognition Act 2004, it was not possible to obtain a GRC unless the applicant had annulled their marriage (where applicable) upon changing their gender.

This was changed by the Marriage (Same Sex Couples) Act 2013, meaning that transgender people no longer need to annul their marriage to obtain a GRC. However, the change was not introduced retrospectively. The ruling by the Grand Chamber of the European Court of Justice found that this meant UK legislation (in relation to individuals who changed gender prior to the introduction of the 2013 Act) treated a person who changed gender after marrying less favourably than it treated a person who had retained his or her birth gender and was married. On this

grounds, it was found that the UK legislation constituted direct discrimination based on sex.

The LGPC Secretariat will provide further information regarding the impact of this case for the LGPS in a future bulletin.

PSIG publishes updated version of code of practice on scams

The Pension Scams Industry Group (PSIG) has published version 2.0 of its code of practice on combatting pension scams.

The first version of the voluntary code was published in 2015 and set out key steps trustees, providers and administrators could take to identify possible scams.

The new version builds upon the content of the first but now:

- includes guidance on how schemes can talk to members about their transfer,
- recommends schemes refer insistent members to The Pensions Advisory Service (TPAS),
- makes it easier for schemes to report suspected scams to Action Fraud, and
- includes case studies portraying real cases.

Pensions dashboard – results of feasibility study delayed

In [bulletin 167](#), we reported that DWP were conducting a feasibility study to explore the options for delivering the dashboard and that this was due to be published at the end of March 2018.

At the time of writing, the findings of this feasibility study have still to be published. Given it is now less than a year until the dashboard was originally due to launch (in April 2019), this would appear to make these timescales increasingly difficult to achieve.

Minutes of June 2018 LGPS technical group meeting published

Minutes of the national LGPS technical group meeting held on 8 June 2018 have now been published on www.lgpsregs.org and www.scotlgpsregs.org under Technical Group minutes ([England & Wales](#) / [Scotland](#)).

Training

[Circular 307](#) was issued on 18th June to advertise our regional Employer Role training. Circulars to advertise Transfers training, the Insight residential course and our annual Fundamentals training programme will be issued in the coming weeks.

The LGA LGPS Training app is now available on the Apple and Google Play stores. This will be used for all training going forward to provide course material through a supplied code provided once a delegate has booked on a course. The application can be used on delegates' own Android and Apple devices, or alternatively the LGA will provide devices for training delegates to use on the day.

The wider landscape

- The [Work and Pensions Committee has published](#) the Government's responses to the recommendations it made on pensions freedoms.
- [Research by Canada Life](#) suggests 72% of UK workers expect to work beyond the age of 65, with 17% expecting to be older than 75 when they retire.
- [Eight people have pleaded guilty](#) to impersonating a company's temporary workers to opt them out of their pension scheme.
- [DWP has published its annual analysis](#) of statistics on workplace pension participation and savings trends. The average amount saved by UK workers was again down, to £5,110 per person in 2017, from £5,387 per person in 2016. In 2007, the corresponding figure was £6,645 per person.
- The [Environmental Audit Committee has published a report](#) in which it calls on the Government to make it compulsory for pension funds to report their exposure to climate change risks and opportunities.
- A [heterosexual couple have won their legal bid](#) for the right to have a civil partnership instead of marriage. The Supreme Court ruled that the Civil Partnership Act 2004, which only applies to same-sex couples, is incompatible with the European Convention on Human Rights.

Legislation

United Kingdom

SI	Reference Title
2018/716	The Pensions (Pre-consolidation) Measure 2018 (Commencement) Order 2018
2018/696	The Police, Fire and Crime Commissioner for Staffordshire (Fire and Rescue Authority) Order 2018
2018/676	The State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations 2018

Useful Links

[LGA Pensions page](#)

[LGPS member website](#) (England and Wales)

[LGPS 2015 member website](#) (Scotland)

[LGPS Advisory Board website](#) (England and Wales)

[LGPS Regulations and Guidance website](#) (England and Wales)

[LGPS Regulations and Guidance website](#) (Scotland)

[Public Sector Transfer Club](#)

[Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

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If you have a technical query, please email query.lgps@local.gov.uk and one of the team's LGPS pensions advisers will get back to you.

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Distribution sheet

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Pension managers (outsourced) and administering authority client managers

Local Government Pensions Committee

Trade unions

CLG

COSLA

SPPA

Regional Directors

Private clients

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