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pay, pensions and  
employment solutions

Local Government Pensions Committee  
Secretary, Terry Edwards

## **LGPC Bulletin 56S – March 2009**

Please contact Dave Friend with any comments you might have on the contents of this Bulletin or to suggest other items that you would wish to see included in future Bulletins.

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Local Government Employers is the business name of Employers Organisation for Local Government, a company limited by guarantee, registered in England and Wales, number 3676611  
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## **LGPS (Administration) (Amendment) Regulations 2009 (SI 2009/447)**

[SI 2009/447](#) was laid before Parliament on 9<sup>th</sup> March 2009 and comes into force on 1<sup>st</sup> April 2009. It makes a couple of minor amendments to the LGPS (Administration) Regulations 2008. It inserts new regulation 8A into the Administration Regulations to enable clerical staff in the Rent Service to whom the provisions of regulation 130C of the 1997 Regulations applied and who are active members of the LGPS immediately before 1 April 2009 to remain members of the Scheme on transfer to the Commissioners for Her Majesty's Revenue and Customs. The SI also replaces the original version of sub-paragraph (6) of regulation 12 (Further Restrictions on Eligibility) of the Administration Regulations. Sub-paragraph (6) permits employees to join the LGPS even though they are entitled to be members of the NHS scheme in England and Wales and has been amended to insert a reference to section 77 of the NHS Act 2006 and to enable former staff of the Commission for Social Care Inspection to remain in membership of the LGPS on transfer to the Care Quality Commission.

The [Timeline Regulations](#) have been updated to reflect the above changes.

## **LGPS Amendment (Scotland) Regulations 2009 (SSI 2009/93)**

[SSI 2009/93](#) was laid before the Scottish Parliament on 9 March and comes into force on 1<sup>st</sup> April 2009. It corrects a number of drafting errors in the set of the regulations which comprise the LGPS (Scotland) 2009.

The [Timeline Regulations](#) have been updated to reflect the changes.

## **The Social Security (Contributions) (Amendment) Regulations 2009 (SI 2009/111)**

[This SI](#), together with [the Social Security \(Contributions\) \(Amendment No. 2\) Regulations 2009](#), have an effective date of 6<sup>th</sup> April 2009. They reflect the changes made by the Pensions Acts 2007 and 2008 and the National Insurance Act 2008. The changes include the replacement of the upper earnings limit (UEL) with the upper accrual point (UAP) with effect from April 2009; the introduction of new administrative procedures (see [the latest edition of HMRC's Employer Bulletin](#) for details); and setting the earnings threshold and the lower and upper earnings limits. Further details are contained in [Circular 227](#).

## **The Heyday Case – Compulsory Retirement Age**

The European Court of Justice (ECJ) has given its judgment in the Heyday case. Heyday (which evolved from Age Concern) brought a claim against the UK government for the introduction of a national retirement age of 65. The UK's age discrimination legislation resulted from an EU directive so the UK courts sent the challenge back to the ECJ.

Last September, the Advocate General gave his opinion – [see page 25 of Bulletin 53 for details](#). The ECJ's judgment, which on the whole follows the majority of the opinion given by the Advocate General, is welcome news for employers as it has held that the compulsory retirement exception in the Age Regulations is capable of being lawful, provided that it is objectively justifiable within national law. The ECJ did add a proviso that any aims, which can be considered as legitimate with respect to age discrimination, must be "legitimate social policy aims".

Heyday has vowed to continue the action. In an article published on 5<sup>th</sup> March Heyday claimed, "European judges confirmed this morning that the UK government has to overcome a high hurdle to

justify forced retirement and so will struggle to show that its national default retirement age of 65 satisfies European Union age discrimination rules when the case returns to the British courts". The article went on to highlight there was a difference between the Advocate General's opinion and the ECJ's judgment, "The European Court of Justice in effect rejected the Advocate General's suggestion that ageism was less significant than other forms of discrimination and sends a message that ageism has no place in a fair society."

It is reasonable to assume that the Heyday case is not near a resolution any time soon. An interesting footnote is that Heyday as a separate organisation will cease to exist as at 31<sup>st</sup> March 2009 and it is assumed that Age Concern will continue to the challenge to the UK government's policy.

### **Pre Budget Report 2008 – Personal Tax Allowance and Pension Contributions Tax Relief**

A change to personal income tax allowance was announced in the pre-budget report 2008. From April 2010, an individual's personal tax allowance will be reduced by £1 for every £2 earned in excess of £100,000 until half of the personal allowance is withdrawn. If a person earns over £140,000 the remaining half of the personal allowance is withdrawn. The pre-budget report also stated that the new higher tax rate of 45 pence in the pound will be introduced from April 2011 for taxable non-savings and savings income above £150,000.

HMRC have confirmed in an email that, "A contribution to a registered pension scheme that operates the net pay arrangement has the effect of reducing the member's employment income that is chargeable to tax. This has the effect of giving relief at the member's marginal rate of tax. There is nothing on the legislation at it currently stands that would mean that relief could not be given at the proposed new 45% tax rate".

From HMRC's response, it would appear that HMRC do not accept that there is a "marginal" tax rate of 60% from April 2010 – i.e. if a person earns £100,002 then he or she will pay 80p on the £2 plus a further 40p from the loss of the £1 of tax allowance. The member will effectively pay £1.20 on the extra £2 over £100,000 which equates to a marginal rate of 60%. HMRC's view appears to be that loss of the personal tax allowance is simply that; it is not a 60% tax rate. Thus, tax relief on pension contributions can only be at the standard marginal tax rates.

### **HMRC – Change of Circumstances**

HMRC have added [a new secure page](#) which will permit individual scheme members to inform HMRC by email that there has been a change in their circumstances.

### **HMRC – Employer Bulletin**

HMRC have published the [February 2009 edition of its Employer Bulletin](#). The bulletin includes articles on the recording of National Insurance contributions from 6<sup>th</sup> April 2009 and the use of substitute forms by administrators of contracted-out schemes. HMRC are currently reviewing the forms and need to be aware of any forms where administrators use their own versions.

## Bits and Pieces

### Circular 227

The Secretariat has issued [Circular 227](#) which is the Annual Update for 2009. It contains details of the annual increase to qualifying pensions from 6<sup>th</sup> April 2009, the increase to GMPs in payment, the National Insurance contribution rates to apply from 6<sup>th</sup> April 2009, the maximum “weeks pay” for statutory redundancy payments, the standard Lifetime Allowance, the Annual Allowance and the notional earnings cap for the tax 2009/10.

### Timeline Regulations

In addition to the statutory instruments previously mentioned, the March 2009 update of the [Timeline Regulations](#) website includes the upload of:

- CLG correspondence with respect to non-Club transfers which award the member 1/80 pension and the 3/80 lump sum service credit;
- CLG update on the calculation of divorce cash equivalents;
- an update of GAD guidance issued in respect of the LGPS (Scotland) current and new schemes;
- version 2 of the Statutory Guidance on Tiered Contribution Rates for the LGPS (Scotland) 2009; and
- the latest version of the Public Sector Transfer Club memorandum.

### Other items

In addition to more detail on all the items covered in this summary version, [the full version](#) of Bulletin 56 contains information on the following topics:

- GMP into payment at State Pension Age;
- market yields used in individual cash equivalent transfer values;
- GMP Increase order 2009;
- The Social Security Revaluation of Earnings Factors Order 2009;
- Reducing pensions under deflation;
- Draft Inheritance Tax Guide;
- Statutory Money Purchase Illustrations;
- Pensions Regulator guidance on retirement options for DC schemes’ members; and

a reminder that employees wishing to register for primary or enhanced protection with HMRC need to do so by 5 April 2009.

## Useful Links

[The LGE Pensions page](#)

[The LGPS members' website](#)

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in England and Wales, and Scotland.

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

[Tax Guide \(Version 11\)](#)

[The Timeline Regulations](#)

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**Distribution sheet**

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