

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 63S – October 2009

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

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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LGPS - Age 50 protection for members not active at 5 April 2006

At its meeting on 6 October, the Technical Group discussed if there was age 50 protection for those employees who:

- were not active members of the LGPS or LGPS (Scotland) on 5 April 2006;
- will be under age 55 at 5 April 2010; and
- whose BCE date occurs on or after 6 April 2010.

Such members do not have age 50 protection under Schedule 36 to the Finance Act 2006 so their normal minimum pension age rises to age 55 with effect from 6 April 2010. If the employee retires on a date before 6 April 2010, on 31 March 2010 for example, but the BCE date does not occur until on or after 6 April 2010, will the payment of benefits be regarded as unauthorised payments?

The Secretariat contacted HMRC after the Technical Group meeting. HMRC has confirmed in an e-mail that an unauthorised payment will occur for employees falling into this category of members where the BCE is on or after 6 April 2010.

Example 1 from [RPSM 11102050](#) of HMRC's Technical Manual confirms that the payment of benefits is an authorised payment for these employees provided the BCE date is before 6 April 2010; i.e. the employee obtains an 'actual right' to receive benefits. As long as the employer and the member have, prior to 6 April 2010, provided all the information necessary to calculate benefits (such as the employer providing leaving details and final pay, and the member confirming his/her commutation option, bank details etc.), then the payment of benefits will be authorised even if the first payment of pension is on or after 6 April 2010.

So, to ensure that employees who were not active members of the LGPS or LGPS (Scotland) on 5 April 2006 and who are at least age 50 and less than age 55 at 5 April 2010 can receive payment of benefits without incurring an unauthorised payment tax charge, employers and administering authorities must ensure the member must have an 'actual right' to payment of benefits before 6 April 2010.

Employers and administering authorities in England and Wales will need to identify as soon as possible:

- a) those members who are taking flexible retirement before 31 March 2010 where the member:
- was a member of the LGPS on 31 March 2008; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of flexible retirement; and
 - has remained with the same employer since 31 March 2008

b) those members who are to be made redundant prior to 31 March 2010¹ where the member:

- was a member of the LGPS on 31 March 2008; but
- was not a member of the LGPS on 5 April 2006; and
- will be at least age 50 but younger than age 55 at the date of redundancy

¹ But see the next item in this Bulletin concerning the letter from CLG dated 7 October 2009.

- c) those members where the employer agrees to an election made by the member before 1 April 2010 for early release of benefits (prior to age 60) and the member:
- was a member of the LGPS prior to 1 April 2008; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of election

Employers and administering authorities in Scotland will need to identify as soon as possible

- a) those members who are taking flexible retirement before 31 March 2010 where the member:
- was a member of the LGPS on 31 March 2009; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of flexible retirement; and
 - has remained with the same employer since 31 March 2009

- b) those members who are to be made redundant prior to 31 March 2010 where the member:
- was a member of the LGPS on 31 March 2009; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of redundancy

- c) those members where the employer agrees to an election made by the member before 1 April 2010 for early release of benefits (prior to age 60) and the member:
- was a member of the LGPS prior to 1 April 2009; but
 - was not a member of the LGPS on 5 April 2006; and
 - will be at least age 50 but younger than age 55 at the date of election

It is imperative that the employer is aware, and it is also made clear to the employee, that in order to avoid paying a tax charge all the necessary forms, paperwork, and elections must have been completed and provided to the administering authority before 6 April 2010.

LGPS 2008 – CLG letter issued 7 October 2009

CLG issued a letter on 7 October 2009 addressing the question of whether an employee, who is aged between 50 and 55 and who is made redundant on 31 March 2010, will be entitled to receive benefits under regulation 19 of the Benefits Regulations. The letter confirmed that the policy intention is that such employees should be able to receive their benefits and that, if required, an appropriate amendment would be made to regulation 19 of the Benefit Regulations.

The letter further indicated that it is planned to amend the LGPS Regulations to permit Pension Credit members to receive their benefits before age 65. The standard actuarial reduction factors (i.e. those applying to a member with no 85 year rule protection) would be applied to the early release of the Pension Credit member's benefits, with the earliest payable age being age 60. The necessary changes will be included in the next set of consultation regulations with the effective date of the changes in the LGPS regulations backdated to 1 April 2009 as per the changes introduced by the DWP earlier year.

We are, of course, still awaiting the GAD guidance promised in 2000 on how to apply a Pension Debit to a debited member's benefits.

Pensions Increase April 2010

The RPI figure for September 2009 was 215.3 and this meant that the index had dropped by 1.4% from the previous September's figure of 218.4. In the 2009 budget announcement the government promised to increase the basic state pension by 2.5%. At the Technical Group meeting of 6 October, CLG indicated that there were ongoing discussions with HM Treasury as to what impact any of this might have on next April's Pensions Increase award. It is expected that an announcement will be made in the next few weeks. At this point in time, however, all we are able to confirm is that local government pensions will not be reduced next April.

LGPS 2008 – Third tier ill-health benefits (Technical Group meeting 6 October 2009)

At the Technical meeting of 6 October, the question of what age a suspended third tier ill health benefit becomes payable again was discussed. CLG confirmed that a suspended third tier ill-health does not come back into payment until the member attains the age of 65. The Technical Group backed the view of the Ill Health monitoring Group that suspended third tier ill-health pensioners should have the option to have the pension brought back into payment from age 60 onwards with, where appropriate, an actuarial reduction.

LGPS 2008 – Pensions for councillors (Technical Group meeting 6 October 2009)

Currently, pensions for councillors in England and Wales are still covered by the LGPS Regulations 1997. CLG confirmed at the Technical Group that they intended to issue a consultation paper on councillors pensions before the end of the year (although it was not clear whether this meant before the end of the calendar year or the end of the financial year).

Other items

In addition to the items covered in this summary version, [the full version](#) of Bulletin 63 contains information on the following additional topics:

- the calculation of the maximum pension commencement lump sum for a member with a Pension Debit
- whether LGPS Funds should accept the transfer in of pension rights from non-Club pension scheme
- whether Pension Credit members can commute part of their Credited pension for a lump sum
- whether children's pensions awarded under the Benefits Regulations should be reduced on account of earnings from vocational training

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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