

Local Government Pensions Committee
Secretary, Terry Edwards

Local Government
House, Smith Square,
London SW1P 3HZ

Tel 020 7187 7373
Fax 020 7664 3030

pay, pensions and
employment solutions

LGPC Bulletin 51S – Summary Version - June 2008

Bulletin 49, which was the first of the new style, was discussed at the Communications Working Party meeting of 15 May. The feedback was very positive but the members of the Working Party suggested that a shorter version of the Bulletin, which summarises the key points, should also be available with the intention that both the Bulletin and the shorter version be e-mailed to administering authorities who can then decide which version (if any) they might wish to forward to employers in their Fund. This suggestion has been taken on board and this is the first of the summary versions which will accompany all future bulletins.

The summary versions of the bulletins are intended to keep employers abreast of what is happening in the world of Local Government Pensions without the in-depth detail required by the administering authorities. Further information on the items covered in this summary is available in the [full version of bulletin 51](#).

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.

Contents

[LGPS 2008 –General Comments](#)

[LGPS 2008 Ill-health Guidance and Certificates](#)

[LGPS 2008 Partial Flexible Retirement](#)

[LGPS 2008 – GAD Guidance](#)

[LGPS 2008 Overseas Transfers In](#)

[LGPS 2008 Transfer In-house AVC Schemes](#)

[LGPS 2008 – Discretions](#)

[GAD Guidance – Civil Partners \(Scotland\)](#)

[LGPS \(Scotland\)](#)

[LGPS Website](#)

[Internal Disputes Resolution Procedure](#)

[ECJ Ruling – Fixed-Term Contracts](#)

[NRD – The Plewes Case](#)

[Agency Workers Deal](#)

[Local Government Reorganisation](#)

[Voluntary Services Overseas](#)

[Full Bulletin 51 – Other Topics](#)

Local Government Pension Scheme 2008 – General Comments

As was to be expected there has been a flurry of activity as a result of the introduction of the new look Local Government Pension Scheme (LGPS) in England and Wales on 1 April 2008. Communities and Local Government (CLG) have issued a [Commentary Guidance](#) which summarises the intention of the separate sets of regulations which comprise the new look LGPS. The Local Government Pension Scheme (Amendment) Regulations 2008 ([SI 2008/1083](#)) were laid before Parliament on 16 April 2008 with an effective date of 7 May 2008. The SI significantly amended the three sets of regulations which comprise the new look LGPS.

LGPS 2008 - Ill Health Guidance, Certificates, etc

The Secretariat understands that CLG are considering issuing a "comfort" letter shortly, which will address concerns which have been raised by practitioners, both administrative and medical, over the operation of the new ill-health provisions. The letter will include some draft ill health certificates (including ones sent to CLG by the LGPC Secretariat) which administering authorities can use or adapt for use by employers in their Fund. The letter will also explain the current position in relation to the publication of statutory guidance and give details of a proposed FAQ paper which CLG hope to issue at the beginning of June. This is intended to cover all the issues which the Secretariat and other members of the Ill Health Monitoring Group have raised with CLG.

The Ill Health Monitoring Group, which is chaired by CLG and includes employer, union, pension fund, personnel and medical representatives, had its first meeting on 15 May 2008. The role of the Group is to look at the practical application of the new tiered ill health benefit framework in the LGPS. Its aim is to evaluate the effectiveness of the framework and the supporting statutory guidance, and its cost relative to the initial assumptions used in the design of the new look Local Government Pension Scheme, and to offer views and make recommendations as appropriate.

Partial Flexible Retirement

[The Commentary Guidance published by CLG](#) includes a section on flexible retirement and final pay (commencing on page 40). It indicates that Government Actuary Department (GAD) guidance will be issued to show how flexible retirement benefits will be calculated and how flexible retirement will affect membership and benefits, particularly where the member draws down only part of their benefits. The guidance is currently awaited. It is difficult to see how employers can formulate a policy on partial flexible retirement until the GAD guidance is published.

The Commentary Guidance says the intention is that a member who only wants to draw down part of their accrued benefits will only be able to take benefits accrued post 31 March 2008. This approach effectively removes partial flexible retirement as an option in the short to medium term due to the small level of benefits that will have accrued post 31 March 2008. If the line taken in the Commentary Guidance is carried forward into the GAD guidance the only viable option for members in the short term will be to draw down all of their accrued benefits at the point they are permitted to take flexible retirement by their employer, following a reduction in their hours or grade.

LGPS 2008 – GAD Guidance

Over the last three months or so, CLG have issued the final versions of GAD guidance which are required to administer the LGPS. The full list of guidance issued is:

- actuarial reductions on early retirement or flexible retirement;
- actuarial increases on late retirements;
- incoming and outgoing transfers;
- interfund transfers;
- additional regular contributions; and
- payment of trivial commutations.

[The full version of this bulletin](#) set out the concerns the Secretariat has with all of the published GAD guidance with the exception of the guidance on additional regular contributions. The Secretariat's commentary on the GAD guidance with regard to additional regular contributions can be found in [Bulletin 49](#).

LGPS 2008 – Transfers In from Overseas Schemes

The wording of the LGPS (Administration) Regulations 2008 prevents the LGPS from accepting most, if not all, transfers from an overseas scheme. The LGPS (Administration) Regulations state that a member will only be able to transfer in benefits from a registered pension scheme. A scheme can only be a registered scheme if it is a registered scheme with HMRC and has a Pension Scheme Tax Reference (PSTR) number. Thus, although a scheme might be a Qualifying Registered Overseas Pension Scheme (QROPS) for the purposes of receiving a transfer from the LGPS, it is extremely unlikely that an overseas scheme will be a registered pension scheme for the purposes of transferring to the LGPS.

LGPS 2008 – Transfers In to the In-house AVC Scheme

Under the LGPS Regulations 1997 a member could transfer Free-standing AVCs (FSAVCs) and AVCs from another scheme into the in-house AVC scheme. However, under the LGPS (Administration) Regulations, only AVCs from another LGPS Fund in England or Wales can be transferred into the in-house AVC scheme. FSAVCs and AVCs from other schemes cannot be transferred to the in-house AVC scheme; instead, transfers of FSAVCs or AVCs from another scheme can only be used to purchase a service credit in the LGPS.

LGPS 2008 – Discretions

The LGPS Secretariat has published on the website a document which details all the [discretions](#) that are possible under the LGPS Regulations 2008 in England and Wales.

The document lists areas within regulations that provide that certain bodies "may" do certain things. There are, undoubtedly, differences of opinion as to what the meaning of the word "may" means in any given context e.g. in some contexts it is permissive (signifying that there is a discretion the body may exercise) and in other contexts it is argued that the word "may" essentially has the same meaning as "shall". The document makes no attempt to draw a distinction and, in recognition of the fact that there may be differences of opinion, merely lists all of the relevant regulations and details who may exercise the "discretion".

LGPS (Scotland) 1998 - GAD Guidance on Purchase of Pre-88 Service for Civil Partners' Benefits

On 21 May 2008, the Scottish Public Pensions Agency (SPPA) issued the GAD guidance on how to calculate the cost of purchasing pre-88 service for civil partners' benefits under the LGPS (Scotland) Regulations 1998 where a "qualifying member" elects to do so. A "qualifying member" is a pensionable employee who is in a civil partnership.

LGPS (Scotland) 2009

The effective date for the new regulations will be 1 April 2009. As in England and Wales, there are three separate sets of new regulations: the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations; the LGPS (Transitional Provisions) (Scotland) Regulations and the LGPS (Administration) (Scotland) Regulations. The regulations were signed by the Minister on Wednesday, 4 June and were laid before the Scottish Parliament on Friday, 6 June.

The benefit structure for the new scheme in Scotland is very similar to the changes effective in England and Wales from 1 April 2008. There are a couple of significant differences, however. The contribution paid by members will operate in a different manner. The regulations indicate that there will be a five-tier employee contribution structure based on a banding system.

Pensionable pay	Rate
On earnings up to and including £18,000	5.5%
On earnings above £18,000 and up to £22,000	7.25%
On earnings above £22,000 and up to £30,000	8.5%
On earnings above £30,000 and up to £40,000	9.5%
On earnings above £40,000	12%

The bands are expected to operate cumulatively in a manner similar to the application of PAYE. The employer will decide the rate from 1 April 2009 for existing contributors based on their pensionable pay and, for an employee joining the scheme on or after that date, will decide the rate based on the pensionable pay on joining. In both cases, the employer must have regard to guidance to be issued by Scottish Ministers.

The other major difference is the ill-health benefit provisions for members who cease active employment on the grounds of ill-health. In Scotland, there will, as in England and Wales, be a three tier system but the details are different. In Scotland, where a member who has at least 2 years membership (or has had a transfer in from another pension scheme) is retired on the grounds of permanent ill health and has a reduced likelihood of obtaining gainful employment before age 65, ill health benefits will be payable as follows:

- if the employer determines there is no reasonable prospect of the member obtaining gainful employment before age 65 the member's benefits are calculated on the membership the employee could have attained by age 65
- if the employer determines there is a reasonable prospect of the member obtaining gainful employment before age 65 the member's benefits are calculated on accrued membership plus 25% of the membership the employee could have attained between leaving and age 65

Gainful employment means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

A third tier will exist outside the LGPS; employers will be able to make a one-off discretionary lump sum payment.

Regulation 20 of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations does not cover those members who have less than two years' total membership and who have not transferred in any benefits. The assumption is that such members will be entitled to a refund of contributions or to transfer their benefits from the LGPS (Scotland).

Further details will be provided in a later Bulletin.

LGPS members' website

The [LGPS members website](#) has been now been updated to reflect the changes to the LGPS for employees in England and Wales from 1 April 2008.

To achieve this, the "Thinking of Joining" and "Already a member" sections have been split into the 4 categories of member:

- Employees in England and Wales
- Employees in Scotland
- Councillors in England and Wales
- Councillors in Scotland

The user has to select which group they are in from the overview page and, once selected, all sub pages relate to the group they have chosen. This means that pages will not be displayed to the user which are not relevant to them. The other sections on the site will be amended in the same way as time goes on.

The cost benefit calculator in the "Thinking of Joining" section for Employees in England and Wales and for Employees in Scotland is still being worked on and will be available by mid June.

The general appearance of the website has been retained, so as to give a degree of continuity and familiarity of use to users of the site.

Internal Disputes Resolution Procedure

As reported in [Bulletin 49](#), two Statutory Instruments were promulgated in March which will affect the procedures for the resolution of disputes. These were The Pensions Act 2004 (Commencement No.11) Order 2008 [SI 2008/627], which sets the effective date for the change as 6 April 2008, and The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 [SI 2008/649]. [Bulletin 49](#) summarised the changes.

CLG are seeking advice on the extent to which the LGPS (Administration) Regulations may need amendment as a result of SI 2008/649. In the meantime, CLG have suggested that Scheme employers and administering authorities may wish to reflect the changes anyway in their documentation and procedures. This also applies to employers and administering authorities in Scotland.

If it transpires that regulatory change is necessary, it will form part of a wider consultation exercise later this year on whether the LGPS should adopt a single stage internal dispute resolution procedure or retain the current two stage arrangements.

European Court of Justice Ruling – Fixed-Term Contracts

The European Court of Justice (ECJ) recently ruled on a case ([C-268/06](#)) brought by the Irish Trade Union, IMPACT, against the Irish government. While the majority of the findings were in respect of the Irish government failing to treat fixed-term contract employees as required under Irish law, there was one part of the ruling which may have consequences for pension scheme administration in the UK.

The Fixed-Term Workers Directive (99/70/EC) was published with an annexe entitled the Framework Agreement with respect to the treatment of fixed-term contract employees. Clause 4(1) of the Fixed-Term Workers directive states that non-discrimination rules in the directive have direct effect. This means they can be enforced irrespective of the national laws within a member state. The ECJ, as part of the ruling, believes that the term, "employment conditions" in clause 4 of the Framework agreement includes pay and pensions provided by the employer.

As reported in [Bulletin 50](#), Parliament passed SI 2002/2034, the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 as a response to Directive 99/70/EC. This SI gives fixed-

term contract employees the right to be treated no less favourably than a "comparable permanent employee". Under paragraph 3(3)(b) of the SI, employers can treat fixed-term contract employees less favourably if the less favourable treatment can be "justified on objective grounds". Where an employee is on a fixed-term contract that is shorter than the vesting period for a pension scheme, the employer may be able to justify excluding them from that scheme if including them has a disproportionate cost and/ or is of no benefit to them. The employer will not have to provide alternative compensation.

Regulation 2(3) of the LGPS (Benefit, Membership and Contributions) Regulations 2007 prevents an employee with a fixed-term contract of less than three months from joining the LGPS. The Secretariat understands that CLG has used an objective justification for this on the basis that as the scheme has a 3 month vesting period, not providing access to the scheme to those who will leave with less than 3 months employment will not be discriminatory.

In Scotland, the LGPS (Benefits, Membership and Contributions) Regulations also contain a clause which prevents employees from joining the LGPS (Scotland) if they have a fixed-term contract of less than three months.

Normal Retirement Date – the Plewes case

Authorities should be aware of the case of *Plewes v Adam Pork Produce* (ET/2600842/07) when retiring employees. This is an employment tribunal decision, and therefore does not set a precedent. However, it highlights a potential inconsistency between the drafting of the retirement provisions in the Employment Equality (Age) Regulations and the way that retirement works in practice.

Regulation 30 of the Employment Equality (Age) Regulations provides that an employer will not discriminate against an employee on the grounds of age if he dismisses him for retirement at or over the age of 65. Mr Plewes' contract contained a clause which provided that the normal retirement date was the day before the employee's 65th birthday. Mr Plewes did not want to retire, but his request to continue working was rejected. He brought a claim that he had been discriminated against on the grounds of age and unfairly dismissed. The employer's defence that they had complied with the statutory retirement procedure failed due to the fact that the contract had terminated the day before Mr Plewes' 65th birthday, whereas the default retirement "exemption" in the regulations only applies to retirement **at or over** age 65. The dismissal was therefore discriminatory and the employer was unable to justify it. The tribunal awarded compensation of over £36,000.

The tribunal's decision in this case was based on a literal reading of the regulations. It is common practice, when an employee retires, that their last day at work is the day before their 65th birthday and they will usually be eligible to draw their pension from the day of their birthday. Employers should take care to ensure that their documentation and any notice they provide to their employees does not put them in the same position as the employer in this case. It would be advisable to provide that the employee's employment will terminate on the day of the employee's 65th birthday. This could provide that termination occurs at one second past midnight. This is based on the fact that provisions in the Pensions Act 1995 (paragraph 1(5) of Part 1 of Schedule 4), which define when a person attains state pension age, provide that a person attains a given age at the commencement of the relevant day. Therefore, providing that a person's contract terminates just after the commencement of the date they become 65 the requirements of the age regulations should be satisfied and, at the same time, this should mean that an employee would not be required to work on their 65th birthday. Technically, however, this would mean that the date of leaving would be the 65th birthday (even if no pay was paid for that day as work ceased at 1 second passed midnight) and so the pension could not then commence until the following day.

Agency Workers Deal

The Department for Business, Enterprise and Regulatory Reform, the CBI and the TUC have agreed a [deal on agency workers](#). The aim of the deal is fairer treatment for agency workers.

Among the matters covered by the deal, agency workers in a given job will be entitled to equal treatment after 12 weeks. Equal treatment will include the basic working and employment conditions that would have applied if the workers had been recruited directly by the employer to carry out the same job. The agreement excludes "occupational social security schemes" which the Secretariat thinks covers occupational pension schemes. The Confederation of British Industry (CBI) believes so too as their press release says that "while pay is covered, occupational benefits that recognise the long-term relationship permanent staff have with an employer, like sick pay and pensions, are rightly excluded".

Local Government Reorganisation

The LGE has commented on "Local Government Reorganisation: Draft Staffing Regulations and Draft Guidance on Staffing Issues" which was published by CLG on 7 May 2008. The LGE made the point that it is not clear whether or not those staff being automatically transferred upon local government reorganisation will be treated under the Local Government Pension Scheme (Administration) Regulations 2008 as having ceased to be an active member in one employment and immediately become an active member in another employment. If they are to be so treated, the LGPS benefits they have accrued up to the date of transfer would be kept separate from the rights they would accrue thereafter unless they opted to aggregate them within 12 months, or such longer period as the new employer might allow. We are awaiting clarification of this point.

Voluntary Overseas Service (VSO) – Pensions Cost

CLG and the Secretariat met with Voluntary Services Overseas on 15 May 2008 to discuss the announcement of a [pilot arrangement](#) to encourage more public sector workers to volunteer for overseas work. The arrangement involves making monies available to cover loss of pension rights incurred by public sector workers who undertake an overseas volunteer assignment lasting between 7 and 24 months, starting between April 2008 and March 2011. The monies are only available to public sector workers who are granted leave of absence by their employer and who return to their original employer (or to pensionable employment with another public sector employer) for at least six months after the voluntary work has ceased.

CLG and the SPPA are considering the best mechanism which will permit monies from the VSO fund to be "transferred" into LGPS funds. An update will appear in a future Bulletin as soon as more information becomes available.

Other items

In addition to more detail on all the items covered in this summary version, [the full version](#) contains information on the following topics; transfer value disclaimer forms, overriding transfer regulations; the Pensions Bill 2007/08, Administration of Small Estates, GMP Overpayments and Underpayments and a list of legislation promulgated since the beginning of the year which affects the administration of pension schemes.

Useful Links

[The LGE Pensions](#) – This is the LGE Pensions home page.

[The members' website](#) – This is the address for the LGPS members' website.

[Tax Guide \(Version 10\)](#) - Please note that administrators should, for the time being, still refer to version 9 if the query is in respect of trivial commutation.

[LGPS Discretions](#) - This document contains a full list of all the potential discretions available within the LGPS in England and Wales.

LGPC Contact Details

Terry Edwards (Head of Pensions)

Telephone: 01954 202 787 or 0207 187 7346

Email: terry.edwards@lge.gov.uk

Tim Hazlewood (LGPC Training & Development Manager)

Telephone: 01530 242 777

Email: tim.hazlewood@lge.gov.uk

Irene Wass (LGPC Communications Officer)

Telephone: 01246 414 902

Email: irene.wass@lge.gov.uk

Elaine English (LGPC Executive Officer)

Telephone: 0207 187 7344

Email: elaine.english@lge.gov.uk

Dave Friend (LGPC Pensions Adviser)

Telephone: 01457 859 016

Email: david.friend@lge.gov.uk

Alison Hazlewood (Part-time Admin Assistant - Training & Development)

Email: alison.hazlewood@lge.gov.uk

Distribution sheet

Pension managers (internal) of administering authorities
Pension managers (outsourced) and administering authority client managers
Officer advisory group
Local Government Pensions Committee
Trade unions
CLG
COSLA
SPPA
Regional Directors
Private clients

Copyright

Copyright remains with Local Government Employers (LGE). This Bulletin may be reproduced without the prior permission of LGE provided it is not used for commercial gain, the source is acknowledged and, if regulations are reproduced, the Crown Copyright Policy Guidance issued by HMSO is adhered to.

Disclaimer

The information contained in this Bulletin has been prepared by the LGPC Secretariat, a part of LGE. It represents the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by LGE for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in this Bulletin. Whilst every attempt is made to ensure the accuracy of the Bulletin, it would be helpful if readers could bring to the attention of the Secretariat any perceived errors or omissions. Please write to:

LGPC
Local Government Employers
Local Government House
Smith Square
London, SW1P 3HZ

or email: david.friend@lge.gov.uk
tel: 01457 859016