FEBRUARY, 2017

LGPS CURRENT ISSUES

NEWS IN BRIEF

BREXIT UPDATE

At the end of last year, the UK Government challenged the High Court's ruling that Parliament must be allowed to vote before the Government can give formal notice of the UK's decision to withdraw from the European Union (that is, to trigger Article 50). On 24 January the Supreme Court published its judgment that an Act of Parliament will indeed be required. Further, the Supreme Court held that the Scottish Parliament and the Wales and Northern Ireland Assemblies do not have a veto on the UK's decision to withdraw from the EU.

The briefly worded European Union (Notification of Withdrawal) Bill has now been published, and at the time of writing will be given priority over other business by Parliament.

Rather than blocking the triggering of Article 50, it is likely that "remainers" will seek concessions from the Government on the terms of the UK's withdrawal. The Prime Minister, Theresa May, made a key speech on 17 January about her plans for a "hard" Brexit, and has since announced that the Government will set out its plans formally in a white paper.

The plans include:

- Taking the UK out of Europe's single market. The intention is that the UK pursues the greatest possible access to the single market, on a fully reciprocal basis, through a comprehensive free trade agreement.

IN THIS ISSUE

- Taking control of who enters the UK from Europe. The intention to reach an early deal to guarantee the rights of EU nationals living in the UK, and UK nationals living in the EU.

- The UK taking back control of making its own laws. The Government will adopt EU law in the Great Repeal Bill, and Parliament will then decide what laws it wants to change. In addition, the Prime Minister does not intend the UK to be bound by decisions of the Court of Justice of the EU after Brexit.

- A phased transitional deal for Brexit. This will vary in length for different aspects of Brexit.

Although the Government has set out what it is seeking from Brexit, it will not be certain until a deal is concluded on what can be negotiated with the EU. In the meantime, markets will continue to react to developments around Brexit and perhaps more widely to the changes in the political and fiscal outlook globally and in particular the changes in the US.

ONS INFLATION ANNOUNCEMENT AND SEPTEMBER 2016 CPI

On 10 November, it was announced that the Office for National Statistics (ONS) will make CPIH – a variant of the standard Consumer Price Index (CPI) – its preferred measure of consumer price inflation from March 2017. For September 2016, the rate of CPIH was 1.2%.

The announcement has led to speculation that CPIH will be used by the Government for the uprating of social security benefits and indexation of pensions. There is, however, no indication at the moment that the Government plans to use CPIH as its measure for uprating public service pensions.

In recent years the Government has based both pension increases and revaluation of pension accounts to be applied in April, on the Consumer Prices Index (CPI) rate of inflation for September of the previous year. On 18 October 2016, the Office for National Statistics (ONS) announced that the Consumer Prices Index (CPI) rate of inflation for September 2016 was 1.0%. We await confirmation, although it is our expectation that this rate will be applied for the LGPS.

INDEXATION AND EQUALISATION OF GMPs

On 28 November 2016, the Government issued a consultation about equalisation and indexation of Guaranteed Minimum Pensions (GMPs) for public service scheme members who reach State Pension Age (SPA) after 5 December 2018.

The consultation aims to address two issues simultaneously, namely:

1. The equalisation of male and female GMPs accrued after 17 May 1990

2. Historic commitments by previous Governments that all public sector workers will receive full indexation on their pensions (including GMPs).

Under the proposals, the burden of providing indexation on GMPs will now fall on the public service schemes themselves and all the associated employers in those schemes, whether public sector or not. This is because these increases will no longer be provided through the Additional State Pension (ASP) following recent changes to state pension provision.

The proposals are either administratively complex and costly, or increases the cost of the LGPS, or possibly both. Currently there appears to be no expectation that extra funding might be available to LGPS to cover the cost. As part of the consultation the

Government have asked for alternative proposals. We are currently finalising our response to the consultation and intend to put forward our suggested alternative to Treasury. The consultation closes on 20 February 2017.

END OF CONTRACTING-OUT

HMRC have confirmed that they will automatically close all open periods of contracted out employment held on their records (i.e. for active members) in December 2016. HMRC will then be contacting pension schemes with their data (active members only) between January 2017 and March 2017 to allow schemes to reconcile their active member records. HMRC countdown bulletin 21 provides information on how to obtain "closure scan" data for your active members. Funds are reminded to complete and return a closure scan request form as soon as possible. We would urge Administering Authorities who have not yet looked at reconciling their GMP data to send any queries in relation to deferred and pensioner members to HMRC as soon as possible. Speak to your usual Mercer consultant if you would like any assistance with this.

AGE DISCRIMINATION CHALLENGE TO JUDICIAL PENSION SCHEME SUCCEEDS

An Employment Tribunal has held that transitional pension protections that favoured older judges are discriminatory. When the public service pension arrangements for the judiciary were reformed by the Government, older judges were permitted to remain in the old scheme, while younger judges were required to leave it for a scheme with much less favourable benefits, either immediately or at the end of their protection period.

This decision could open the way to further challenges, indeed we are aware that a similar case has been brought by the Fire Brigades Union in respect of changes made to the Firefighters' Pension Scheme.

Although Employment Tribunal decisions are not binding on other tribunals or the courts, the ruling could have implications for the other public service pension schemes, where some similar reforms were made and protections for older members were included. For the LGPS a Statutory Underpin was introduced, but only applied to those within 10 years of retirement in 2012. The Government may appeal the decision and so we await developments.

THE PENSIONS REGULATOR (TPR)

Following a recent survey that the Regulator undertook with regards to record keeping standards in occupational pension schemes, it found that little improvement had been made on standards recently. Improving record keeping standards will be a continued focus for the Regulator over the next year. It has published a short guide to assist managers of pension schemes in meeting their duties.

The Regulator has also published a self-assessment tool for those involved in running public service pension schemes to assess how they are getting on with both meeting their legal requirements and complying with the guidance set out in the Regulator's code of practice number 14.

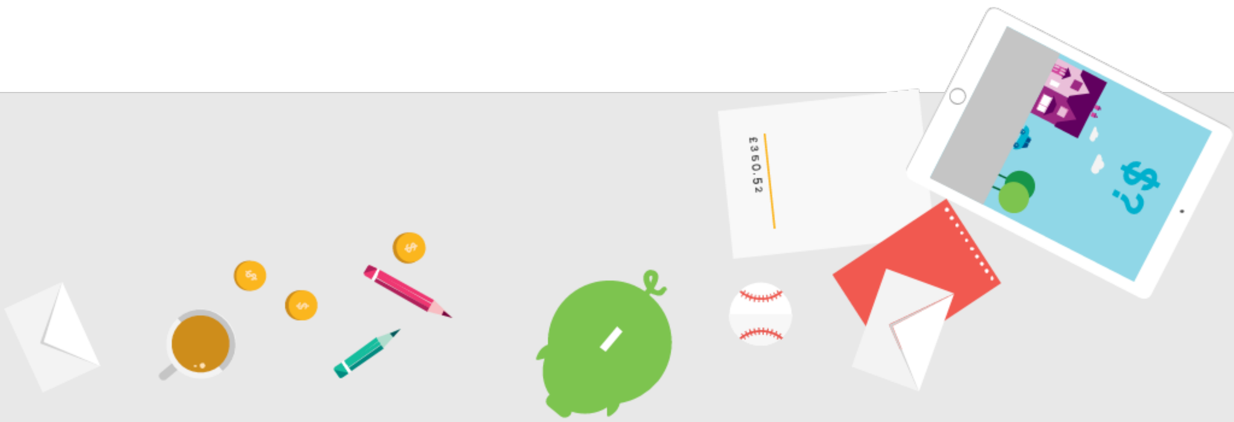
Building upon the survey TPR carried out last year on the governance and administration of public service pension schemes, it started work on its 2016 survey during November. More focus will be given to record-keeping, internal controls and communications as part of this survey.

ALTERNATIVE DELIVERY MODELS

In October 2016, CIPFA published "a practical guide to alternative delivery models". This publication is designed to be a resource for people working in or with alternative delivery vehicles and for those who may be considering or are participating in setting one up. It will be useful for managers and officers involved in commissioning services or looking at new service delivery models. It can be read as a whole or dipped into for information on specific areas. Mercer can provide additional training to employers and managers to assist understanding in this area. If this is something you or your employers are considering, we would recommend involving your Mercer consultant at the earliest possible opportunity.

OTHER DEVELOPMENTS ON REGULATIONS AND CONSULTATIONS

- On 23 September 2016 the LGPS (Management and Investment of Funds) Regulations 2016 were laid before parliament effective from 1 November 2016. The regulations facilitate the pooling of investment funds and introduce:
  - A requirement to publish an investment strategy no later than 1 April 2017 in accordance with guidance issued by the Secretary of State.
  - A power for the Secretary of State to intervene where an authority fails to comply with its statutory obligations as regards its pension fund or were it fails to act in accordance with guidance.
- **MiFID II** – the EU Markets in Financial Instruments Directive (MiFID) introduced in 2007 is now being revised with the aim of improving the functioning of financial markets in light of the financial crisis and to strengthen investor protection. The changes are due to take effect on 3 January 2018 and the new provisions will be known as MiFID II. In the UK, the FCA is responsible for implementing the changes. They have been consulting on this, and one aspect included the impact on local authorities (and LGPS Funds). A critical area in this regard is the categorisation of investors (i.e. whether they are eligible counterparties, professional clients or retail clients) based on certain criteria. Under the new proposals, Local Authorities will be classified as retail clients, which could ultimately limit the range of investments available as well as the access to professional investment advice. Local Authorities will, however, be able to "opt-up" should they meet a series of qualitative and quantitative tests. At the current time there is some concern that Local Authorities would not necessarily be able to satisfy the opt-up criteria which would have potentially severe consequences. Interested parties are working with the FCA on this to ensure the process is clear and sensible to avoid any unintended consequences. Separately it is expected that the new investment "pools" will automatically qualify as "professional clients". Funds should seek further input from their advisors on the implications of this and we will update on progress in due course.



- **Education Sector –** Following the conclusion of the Government consultation undertaken earlier this year to introduce insolvency provisions for further education and sixth form colleges in England, the Government will now take forward their plans via primary legislation. Also in the education sector, on 27 October 2016 the Government reported that it had dropped its bill to require all schools in England to convert to academy status by 2022. This will still be encouraged by the Government but it will now be on a voluntary basis and as such no new primary legislation will be needed.

- **New Fair Deal –** following the consultation carried out last year, further details and clarifications needed have been identified. We believe that a further consultation may be needed on an updated set of provisions to apply the principles of New Fair Deal to the LGPS.

- **Freedom and Choice for AVCs –** similar to the above, further work has been identified and so our understanding is that a further consultation is likely. Separately a working party has been established to consider the practicalities in potentially implementing changes to the LGPS money purchase AVCs, with regards to making UFPLS payments.

- **Exit payments –** In September, the government responded to the further consultation on exit payments confirming that it intends to proceed with plans for further reform. The response confirms that the government expects departments to produce packages consistent with the framework set out and consult on these where appropriate with the aim of having completed negotiations and made the necessary amendments to exit arrangements within nine months of the publication of the government response (i.e. by 26 June 2017). A working group of the LGPS advisory board is considering whether it wishes to make a recommendation to DCLG on the reforms it wishes to see made.

  There is still no hard deadline for the implementation of the public sector exit payment cap or recovery regulations, as the secondary legislation is still being finalised. It is our understanding that further consultant will be undertaken before it formally comes into effect.

- **Plans for Single Financial Guidance Body –** Free and impartial financial guidance to individuals is currently provided by three public services: The Money Advice Service, The Pensions Advisory Service and Pension Wise. However, the Government is consulting on plans to change this model with the creation of a single financial guidance body (SFGB).

  The Government is of the view that there are gaps, as well as duplication, in the guidance currently available, and that a SFGB would be better suited to respond to the different financial needs of consumers.

  The Government is seeking feedback as to whether the proposed model would allow consumers to access the guidance they need to make effective financial decisions. The consultation closes on 13 February 2017 and it is anticipated that the SFGB will be launched no earlier than autumn 2018.

- **State Pension Age –** An independent report on the review of State Pension Age is expected early in 2017, and the Government must publish the outcome of the review by 7 May.

- **The General Data Protection Regulation** is expected to come into effect from 25 May 2018. Administering authorities should consider, in partnership with legal advisors what action may need to be taken during 2017 to ensure compliance.

OTHER THINGS IN THE PIPELINE...

- **ACADEMIES REVIEW** – PWC have been appointed to carry out a full review of the possible options and implications for Academies and Funds within the LGPS framework. Nothing has been ruled in, or out at present and we await their report with interest (currently expected in March). We have provided our direct input into the process on behalf of our clients.

- **COST MANAGEMENT 2016** – The GAD have been provided with the required data from the LGPS Funds and we await their findings in anticipation of potential action with effect from 1 April 2019. Funds should be mindful that current expectations are that the costs of the scheme will have increased (not least due to lack of 50:50 take-up), although we await more information – initial results are expected in May/June.

- **COST MANAGEMENT TRANSACTIONAL DATA** – The data request has been finalised, but we have yet to see any evidence that production of the transactional data in the required format is achievable for Funds. We will keep our clients updated as and when further details emerge.

- **DEFICIT WORKING GROUP** – This has been reconstituted and we attended a meeting on 8 November 2016 to consider a work plan for the coming months. Deficit management will be considered for three distinct groups; tax payer backed employers, academies and private sector employers with no central or local authority guarantee. Further separate pieces of work are underway and we will keep our clients updated on developments.

- **TRANSFER CLUB MEMORANDUM UPDATE** – A new transfer club memorandum is due to be released to coincide with the release of the revised Club Transfer Factors, proposed to be effective from 1 March 2017. We will keep Administering Authorities updated as more details emerge.

TAXATION ROUND UP

- The Finance Act 2016 received Royal Assent on 15 September. The key pension aspects of the Act for the LGPS were the reduction in the lifetime allowance to £1 million (effective from 6 April 2016), the introduction of new individual and fixed protections to enable members to protect a higher allowance in certain circumstances and the higher limits for trivial lump sums.

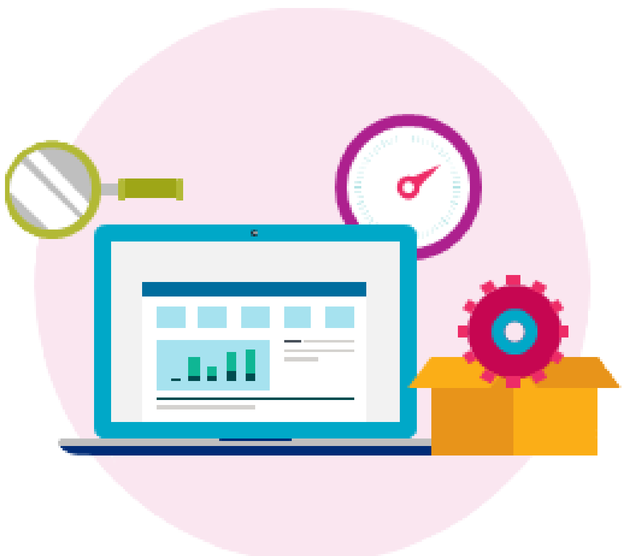
- Automatic Enrolment – previous powers for employers to exclude an individual from the automatic enrolment requirements where they held an active lifetime allowance protection have not currently been extended to include the new fixed protection 2016 or individual protection 2016. Until an amendment is made to the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010, an employer must automatically enrol (or re-enrol) an eligible jobholder into the LGPS even where that individual holds fixed protection 2016 or individual protection 2016. It will be up to the individual to make sure they opt-out of automatic enrolment (or re-enrolment) to maintain their tax protection if required. An individual who holds individual protection 2016 will not lose their tax protection if they make further pension savings but any pension savings in excess of their protected lifetime allowance will be subject to a lifetime allowance charge.

- Scheme Pays – Following the introduction of the Tapered Annual Allowance with effect from April 2016. Some affected members may not have the right to the "mandatory" scheme pays requirements and it is up to individual pension schemes to agree whether to allow "voluntary" scheme pays for those members. The LGA are currently seeking urgent legal advice on whether administering authorities have the power to agree to voluntary scheme pays without an amendment to the Regulations and will issue further comment in due course.

- Termination payments with effect from April 2018, which are over £30,000, will be subject to employer NICs as well as income tax. The first £30,000 of a termination payment will remain exempt from both.

- The income tax personal allowance threshold will rise to £11,500 for the 2017/18 tax year and the higher rate threshold will rise to £45,000. The Government intends to increase these further over the next few years, up to £12,500 and £50,000 respectively.

- Scottish taxpayers - If your scheme has any pensioner members resident in Scotland, you will need to ensure that your pensioner payroll is set up to handle the new higher-rate tax threshold (£43,430) that will apply for Scottish taxpayers from April 2017.



DATES TO REMEMBER

DATE	ISSUE	SUMMARY
31 March 2017	Actuarial valuation	Deadline for Funding Strategy Statements to be formally updated in order for Actuarial Valuation to be signed off by the Fund Actuary.
31 March 2017	Actuarial valuation	Deadline for the 2016 England and Wales actuarial valuation exercises to have been formally signed off by the Fund Actuary. Effective date of the Scottish LGPS actuarial valuations.
April 2017	Pensions Advice Allowance	The Government plans to introduce an allowance from this month for members to use against the cost of regulated financial advice. Subject to consultation.
April 2017	Lifetime ISA	The new Lifetime Individual Savings Account will be launched this month.
1 April 2017	Investments	Deadline for the new Investment Strategy Statement (ISS) to be published by the LGPS Funds.
6 April 2017	Scottish Income tax	The Scottish Parliament is proposing to vary the higher rate threshold for Scottish taxpayers from this date.
7 May 2017	State Pension Age	Deadline for publication of the first report on the independent review of the State Pension age.

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