

To: Salaries and Wages
Human Resources
Pension Contacts

Circular 05/2018
20 April 2018

At: All Employing Authorities

Dear Colleagues,

**Update to the maximum week's pay for statutory redundancy payments
Data Retention periods under Pensions Regulations
The Pensions Regulator**

1. Update to the maximum week's pay for statutory redundancy payments

In circular 04/2018, issued on 5 April 2018, we advised that no Orders had been made to update the maximum week's pay in Northern Ireland since February 2016. On the same day the Department for Economy issued a [press release](#) advising that Orders had been made to bring new limits into operation from 6 April 2018. The maximum week's pay for calculating redundancy payments has risen from £500 to £530. In addition, the rate for 2017 has been increased from £500 to £510. More information can be read on the press release link.

2. Data Retention Periods under Pensions Regulations

As you will be aware the new General Data Protection Regulations (GDPR) are coming into force from 25 May 2018 and all employers will be expected to comply with the new regulations.

Under GDPR rules personal data should be kept for no longer than is necessary for the purposes for which it is processed. Under recital 39 of the Regulations the retention periods should be limited to a strict minimum and you, as data controller, will be responsible for and will have to decide on what retention periods are chosen for holding employee records. However, in some circumstances account will need to be taken of other legislative requirements when developing retention periods.

To assist you with this aspect of your GDPR preparations we have compiled extracts from the **pensions regulations** relevant to retention periods. This is attached in the Appendix.

Please note that this list is not exhaustive, it is only in relation to pensions regulations and does not include any guidance on retention periods for any other information you hold in respect of your employees.

3. The Pensions Regulator

Employers are reminded that every three years they must put certain staff back into the pension scheme. This is known as [re-enrolment](#) and is usually three years after your automatic enrolment staging date. At this time employers must carry out their re-enrolment duties and complete a re-declaration of compliance to The Pension Regulator. This is a legal duty and if employers do not do it they can be fined. The Pensions Regulator has the power to issue compliance notices, fixed penalty notices (£400 for failure to comply with a statutory notice or some specific employer duties) and escalating penalty notices of between £50 and £10,000 per day (depending on size) for failure to comply with a statutory notice.

We are becoming more aware of The Pension Regulator taking action and in the quarter to 31 December 2017, it issued 7,435 Fixed Penalty Notices and 1,440 Escalating Penalty Notices. It also publishes information on cases where it has exercised or considered exercising its powers on the [enforcement section](#) of its website.

The Pension Regulator can investigate any non-compliance with legislation (whether automatic enrolment or pension rules) and therefore it is essential that employers be able to meet pension legal requirements.

If you have any questions regarding the content of this circular, please contact our Employer Liaison Officer, Hannah Berryman, or any of the staff in the Pensions Development Team.

Yours sincerely



Zena Kee
Pensions Manager

Appendix – Retention Periods

Employers’ Duties (Registration and Compliance) Regulations (NI) 2010.

In relation to record keeping and retention periods, under the Employers’ Duties (Registration and Compliance) Regulations (NI) 2010 employers are required to do the following:

Regulation 5

- Keep the records listed within the regulation applicable to them;
- Preserve the records for a period in accordance with regulation 8; and
- Provide those records on request to the Regulator

Regulation 6 - employers must keep the following records in relation to an occupational or personal pension scheme used to comply with the employers’ duties:

- Pension Scheme name and address
- Employer Pension Scheme Reference
- Where section 21 (issuing of contracting-out certificates) applies, a copy of the certificate issued in respect of the jobholder
- The name, National Insurance Number and date of birth of every jobholder who became active under automatic enrolment
- Every jobholder’s automatic enrolment date, and the date every worker became an active member
- An opt-in notice for every worker who opted in
- A joining notice for every worker who joined
- An opt-out notice in respect of every jobholder who gave notice to opt out.

Employers must also keep the following records where contributions are deducted by an employer:

- Gross earnings in any relevant pay reference period
- Evidence of contributions that the employee must pay
- The contributions payable by an employer during each pay reference period
- The dates contributions were paid to the pension scheme

All of the above records must be kept for 6 years starting on the day on which the record must first be kept, apart from Opt-out notices which must be kept for 4 years starting on the day on which the record must first be kept.

Where an employer issues an automatic enrolment postponement notice, the employer must keep a record of the individual’s Full name, National Insurance Number and the date the notice was given.

LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009

Under regulations 10 and 11 employers should keep pensionable pay figures and any fluctuating emoluments paid to members for a period of 10 years.

10 Final Pay: reductions

- (1) Subject to paragraph (2), where a member's pensionable pay in a continuous period of employment is reduced or restricted because he chooses to be employed by the same employing authority at a lower grade or with less responsibility, he may choose to have his final pay calculated as mentioned in paragraph (3) by giving notice in writing to the Committee no later than one month prior to the date on which he ceases active membership or within such period as the Committee may determine.
- (1A) where a member to whom paragraph (1) applies dies without giving notice, the Committee may give notice on his behalf (whether or not the period within which he could have given notice has expired).
- (2) Paragraph (1) does not apply if the member's employment at the lower grade or with less responsibility –
 - (a) Commences before the beginning of the period of 10 years ending with his last day as an active member;
 - (b) Immediately follows a period in which he occupies a post on a temporary basis; or
 - (c) Is because he chooses to take flexible retirement under regulation 18 (flexible retirement).
- (3) **The calculation is the average of the member's annual pensionable pay in any 3 consecutive years of his choice ending with 31 March within the period of 10 years ending with the last day he was an active member.**
- (4) Paragraph (1) applies to a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply as if the transferor employer were the same employer as the transferee employer.

11 Final Pay: fluctuating emoluments

- (1) Subject to paragraph 2, where a member's pensionable pay for the purposes of regulation 8(1) (final pay: general) consists of or included fluctuating emoluments on which the appropriate contribution rate has been paid, his final pay is calculated as the sum of –
 - (a) the average of all such fluctuating emoluments on which the appropriate contribution rate has been paid for the 3 consecutive years ending with the final pay period; and

- (b) any sums on which the appropriate contribution rate has been paid falling within regulation 4(1) (meaning of "pensionable pay"), other than fluctuating emoluments, for the final pay period.
- (2) But a member's employer may consent to him having his final pay calculated as the average of all such fluctuating emoluments on which the appropriate contribution rate has been paid for any 3 consecutive years ending 31st March within the period of 10 years ending with the last day he was an active member.**
- (3) But if he was only entitled to receive fluctuating emoluments during part of the period mentioned in paragraph (1)(a) that part is substituted for the period referred to in that paragraph.

LGPS Regulations (NI) 2002

Under regulation 24 employers are required keep a record of any certificates of protection issued to members and pensionable pay details for a period of 13 years. However, as the latest a certificate of protection could have been issued was 31 March 2009, the latest the certificates will expire will be on 1 April 2022. Therefore, they will only need to be retained for another 4 years.

24 Permanent reductions in pay: certificates of protection of pension benefits

- (1) Where a certificate has been issued as respects a member's pay under paragraph (3) or (5) and the date of reduction or, as the case may be, restriction specified in the certificate is not more than 10 years before the date on which he ceases to be an active member, he may elect that his final pay period should be –
 - (a) A year ending with a day –
 - (i) Falling within the period of five years ending with the last day he was an active member, and
 - (ii) Of which that last day is the anniversary; or
 - (b) Any three consecutive years –
 - (i) Falling within the period of 13 years ending with the last day he was an active member, and
 - (ii) Ending with a day of which that last day is the anniversary.
- (2) Where a member elects for the period specified in paragraph (1) (b), his final pay is the annual average of his pay during that period.

- (3) If, otherwise than by virtue of a member's own circumstances –
 - (a) His rate of pay is reduced; or
 - (b) The rate at which it may be increased is restricted in such a way that it is likely that the rate of his retirement

He is entitled to be issued with a certificate to this effect by his employing authority (but see paragraph (5)).

- (4) A member is not entitled to be issued with a certificate under this regulation if the reduction in his rate of pay –
 - (a) Is temporary; or
 - (b) Consists in the termination of, or a reduction in, a temporary increase in the rate of pay.
- (5) The employing authority may issue a certificate without an application from the member but need not issue a certificate if he does not apply for one within 12 months after the date of reduction or restriction.
- (6) A certificate issued under this regulation must specify the date of the reduction or restriction.
- (7) The employing authority must keep a record of the certificate including such information as would be necessary for applying paragraph (1) for the period of 10 years beginning with the date of reduction or restriction specified in it.**
- (8) An election under this regulation by a member must be made by notice in writing given to the Committee before the expiry of the period of one month, or such longer period as the Committee may allow, beginning with the date in which he is notified of his entitlement to a benefit.
- (9) Where a member has died without having made an election under this regulation, the Committee may make an election on his behalf (whether or not the period within which he could have elected has expired).

Despite the fact that the LGPS Regulations (NI) 2002 and LGPS Regulations (Benefits, Membership and Contribution) Regulations (NI) 2009 have been replaced by the current LGPS Regulations (NI) by virtue of regulation 3(14) of the LGPS (Amendment and Transitional Provisions) Regulations (NI) 2014 they remain in force.