

## Annex D

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### STATUTORY INSTRUMENTS

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**2013 No. 0000**

### **PENSIONS, ENGLAND AND WALES**

### **The Local Government Pension Scheme (Miscellaneous Amendments) Regulations 2013**

<i>Made</i>	- - - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- - -	***

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(1).

In accordance with section 7(5) of that Act, the Secretary of State has consulted such associations of local authorities as appeared to the Secretary of State to be concerned; the local authorities with whom consultation appeared to the Secretary of State to be desirable; and such representatives of other persons likely to be affected by the Regulations as appeared to the Secretary of State to be appropriate.

The Secretary of State makes the following Regulations:

#### **Citation, extent and commencement**

- 1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Miscellaneous Amendments) Regulations 2013.
  - (2) These Regulations extend to England and Wales(2).
  - (3) These Regulations shall come into force on \*\*\* but—
    - (a) regulation 3 shall have effect from 1st April 2013;
    - (b) the provisions inserted by regulation 5(1)(a) and (b)—
      - (i) relating to the deputy chair of the London Legacy Development Corporation shall have effect from 1st April 2012; and
      - (ii) relating to the Housing Ombudsman, shall have effect from 1st April 2013;

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(1) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

(2) The Secretary of State's functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

- (c) regulation 7 shall have effect as follows—
  - (i) the provision substituted has effect from 1st October 2012, but
  - (ii) the revocation of paragraphs (3A) to (3G) of regulation 38 of the Local Government Pension Scheme (Administration) Regulations 2008<sup>(3)</sup>, effected by the substitution of regulation 38, has effect from 1st April 2012.

**Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007**

2. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007<sup>(4)</sup> are amended in accordance with regulation 3.

3. In regulation 39(1)(c) for “regulation 6 (payment after relevant accretion)” substitute “regulations 6 (payment after relevant accretion), 11 (de minimis rule for pension schemes) or 12 (payments by larger pension schemes)”.

**Amendment of the Local Government Pension Scheme (Administration) Regulations 2008**

4. The Local Government Pension Scheme (Administration Regulations) 2008 are amended in accordance with regulations 5 to 7.

5.—(1) In regulation 9 (eligibility in certain cases of persons who are not employees)—

- (a) in paragraph (1) omit the word “or” at the end of sub-paragraph (f) and after sub-paragraph (g) insert—
  - “(h) the Housing Ombudsman; or
  - (i) a person appointed as chairman or deputy chairman of the London Legacy Development Corporation.”;
- (b) after paragraph (7A) insert—

“(7B) If the Housing Ombudsman is an active member, that Ombudsman must be treated as being in the employment of the Housing Ombudsman but any decision by the Ombudsman in the capacity of employing authority which affects the benefits to which the Ombudsman is or may be entitled, has effect only if confirmed in writing by the person who is chair of the Housing Ombudsman Service’s Audit and Risk Committee<sup>(5)</sup>.

**Comment: Doesn’t the Housing Ombudsman need to be added to Part 1 of Schedule 2 as, otherwise, the Ombudsman is treated as being in the employment of a body that itself is not entitled to have employees participating in the LGPS?**

(7C) If the chairman of the London Legacy Development Corporation is not the Mayor of London, and is an active member, that chairman must be treated as being in the employment of that Corporation.

**Comment: Doesn’t the LLDC need to be added to Part 1 of Schedule 2 as, otherwise, the chairman of the LLDC is treated as being in the employment of a body that itself is not entitled to have employees participating in the LGPS?**

(7D) If the deputy chairman of the London Legacy Development Corporation is an active member, that deputy chairman must be treated as being in the employment of that Corporation.

**Comment: Doesn’t the LLDC need to be added to Part 1 of Schedule 2 as, otherwise, the deputy chairman of the LLDC is treated as being in the employment of a body that itself is not entitled to have employees participating in the LGPS?**

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(3) S.I. 2008/239, amended by S.I. 2008/1083, S.I. 2008/2425, S.I. 2008/2989, S.I. 2008/3245, S.I. 2009/1025, S.I. 2009/3150, S.I. 2010/528, S.I. 2010/2090 and S.I. 2012/1989; paragraphs (3A) to (3G) of regulation 38 were inserted by S.I. 2008/2989.

(4) S.I. 2007/1166, amended by S.I. 2008/1083, S.I. 2008/2425, S.I. 2009/3150, S.I. 2010/528, S.I. 2010/2090, S.I. 2011/561 and S.I. 2012/1989.

(5) The Housing Ombudsman is required by the scheme approved by the Secretary of State under paragraph 3 of Schedule 2 to the Housing Act 1996 (c. 52) to appoint an Audit and Risk Committee to scrutinise the operation of the scheme.

(7E) A person appointed as deputy chairman of the London Legacy Development Corporation may not be an active member if that person is a member of the Greater London Authority.”; and

(c) in paragraph (8) at the end insert—

“Housing Ombudsman” means an individual appointed as housing ombudsman by the Secretary of State under Schedule 2 to the Housing Act 1996(6);

“Housing Ombudsman Service” means a scheme for the investigation of complaints approved by the Secretary of State under that Act;

“London Legacy Development Corporation” means the body established under the London Legacy Development Corporation (Establishment) Order 2012(7); and

“deputy chairman of the London Legacy Development Corporation” means the person appointed in writing by the chairman of that corporation to hold the position of deputy chairman”.

**General comment:** certain provisions within regulation 9 are now obsolete (e.g. regulations 9(1)(a), (e) and (f) and regulations 9(3) and 9(6)). The opportunity has been taken to delete the equivalent of these from the draft LGPS Regulations 2013. Should the opportunity not also be taken to delete them from the LGPS (Administration) Regulations 20008?

6.—(1) For regulation 13(3) (joining the Scheme) substitute—

“(3) But a person who, in respect of an employment, has given notice to his or her employer before 1st October 2012—

(a) before that person’s employment commenced, or before that person was designated as eligible to become a member of the Scheme, that he or she did not wish to become a member of the Scheme; or

(b) under regulation 14 (ending of membership),

does not become a member of the Scheme by virtue of paragraph (1) or (2).”.

**Comment:** I don’t think paragraph (3) is necessary. Firstly, sub-paragraph (a) was a time-limited paragraph and has passed its “sell by” date. Secondly, paragraph (b) is nonsensical as an election can only be made under regulation 14 after a person has become a member. Thus it is nonsensical to say that a person making an option under regulation 14 does not become a member – they are a member and then opt out.

(2) For regulation 13(4) substitute—

“(4) A person who would, apart from this paragraph, be an active member of the Scheme by virtue of paragraph (1) or (2) who is employed under a contract of employment of less than 3 months does not become a member on the day specified in paragraph (1) or (2) but becomes an active member—

(a) on the member’s automatic enrolment date in relation to that employment, or

(b) if the person applies to become a member.”.

**Comments:**

- additional wording added as a member with more than one employment might have become eligible for automatic enrolment in the other employment from an earlier date. The person should, however, only be automatically enrolled from the date they attain the automatic enrolment date in this employment.
- Sub-paragraph (a) means that an eligible jobholder with a contract of less than 3 months would join the LGPS on the first day of employment unless the employer issues a postponement notice delaying the automatic enrolment date. By that mechanism, employers can, if they wish, effectively debar such employees from automatic enrolment (although the employee could opt into the LGPS under sub-paragraph (b))

(3) After regulation 13(5) insert—

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(6) 1996 c. 52.

(7) S.I. 2012/310.

“(5A) A person who is eligible to be an active member of the Scheme in an employment but who is not an active member, becomes a member of the Scheme in an employment on the automatic enrolment date or automatic re-enrolment date relating to that employment.”.

Comments:

- additional wording added as a member with more than one employment might be an active member already in one of the employments and not be an active member in the other. The person only needs to be automatically enrolled in the employment in which they are not a member (from the date they attain the automatic enrolment date in that employment).
- where an employer (for example, an admitted body or an academy) has an eligible employee who has opted out of the LGPS and the employer has enrolled them into another qualifying scheme before what would have been the eligible jobholder's automatic enrolment date or automatic re-enrolment date, that person will not be covered by (b) because, as they are already in a qualifying scheme, they will not have an automatic enrolment date or automatic re-enrolment date. However, we need to include something in the Administration Regulations that requires those employers who have employees who are eligible for membership of the LGPS, but who have enrolled those employees in another qualifying scheme, to remind those employees on the employer's re-enrolment date under the Pensions Act 2008 that the employee has the right to be a member of the LGPS.

(4) After regulation 13(6) insert—

“(7) In this regulation—

“automatic enrolment date” means the automatic enrolment date ~~applicable to the member's employer~~ within the meaning of section 3 of the Pensions Act 2008<sup>(8)</sup>, subject to sections 4 and 30 of that Act.

Comment: wording deleted as the automatic enrolment date relates to the scheme member, not to the member's employer. The amended wording is now a better reflection of the draft definition in the LGPS Regulations 2013.

~~“automatic re-enrolment date” means the automatic re-enrolment date applicable to the member's employer within the meaning of section 5 of the Pensions Act 2008<sup>(9)</sup> and regulation 12 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>(10)</sup>.~~

“automatic re-enrolment date” means the automatic re-enrolment date chosen by a member's employer in accordance with section 5 of the Pensions Act 2008<sup>(11)</sup> and regulation 12 of the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010<sup>(12)</sup> for those of its eligible jobholders who are not active members of the Scheme (or the date the employer would have chosen if the employer does not have any such employees);

Comment: the above definition has been copied from the draft LGPS Regulations 2013 as it is a better / more accurate definition.

7. For regulation 38 substitute—

**“Special circumstances where revised actuarial valuations and certificates must be obtained**

**38.—(1) If a person—**

- (a) ceases to be a Scheme employer,
- (b) ceases to be a body specified in regulation 8(1),
- (c) ceases to be an admission body participating in the Scheme, or

<sup>(8)</sup> 2008 c. 30; section 3 was substituted by the Pensions Act 2011.

~~<sup>(9)</sup> 2008 c. 30; section 5 was substituted by the Pensions Act 2011.~~

~~<sup>(10)</sup> S.I. 2010/772.~~

<sup>(11)</sup> 2008 c.30: section 5 was substituted by the Pensions Act 2011.

~~<sup>(12)</sup> S.I. 2010/772.~~

(d) was an employing authority, but no longer has an active member contributing to a fund, that person becomes “an exiting employer” for the purposes of this regulation.

(2) When a person becomes an exiting employer, the appropriate administering authority must obtain—

- (a) an actuarial valuation at the exit date of the liabilities of the fund in respect of benefits due to the exiting employer’s current and former employees; and
- (b) a revised rates and adjustment certificate showing the exit payment due from the exiting employer in respect of those benefits.

(3) Where for any reason it is not possible to obtain all or part of the exit payment due from the exiting employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the exiting employer, the administering authority must obtain a further revision of any rates and adjustment certificate for the fund showing—

- (a) in the case where a body is a transferee admission body within the meaning of regulation 6(2)(a) or (b), the revised contribution due from the body which is the related employer in relation to that admission body; and
- (b) in any other case, the revised contributions due from each employing authority which contributes to the fund,

with a view to providing that assets equivalent to the exit payment due from the exiting employer are provided to the fund over such period of time as the administering authority considers reasonable.

(4) Where in the opinion of an administering authority there are circumstances which make it likely that a Scheme employer, a body specified in regulation 8(1), an—or admission body or an employing authority will become an exiting employer, the administering authority may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary’s opinion—

- (a) the contribution at the common rate should be adjusted; or
- (b) any prior individual adjustment should be increased or reduced,

with a view to providing that assets equivalent to the exit payment that will be due from the employing authority are provided to the fund by the exit date or, where the employing authority is unable to meet that liability by the exit date, over such period of time thereafter as the administering authority considers reasonable.

**Comment:** The additional wording has been inserted to cover all the categories covered in paragraph (1)

(5) When an exiting employer has paid an exit payment into a fund, no further payments are due from that authority in respect of any liabilities relating to the benefits due to any current or former employees of that employer as a result of these Regulations or the Benefits Regulations.

(6) Paragraph (6) applies where—

- (a) an administering authority agrees with an employing authority as mentioned in regulation 40(4) or (5); or
- (b) it appears likely to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with an employing authority exceeds the amount specified, or likely as a result of the assumptions stated for that authority, in a rates and adjustments certificate by virtue of regulation 36(8).

(7) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that employing authority.

(8) For the purposes of this regulation—

“exiting employer” means an employer of any of the descriptions specified in paragraph (1);

“exit payment” means the assets required to be paid over such period of time as the administering authority considers reasonable, to meet the liabilities specified in paragraph (2);

“exit date” means the date on which the employer becomes an exiting employer; and

“related employer” means any Scheme employer which is a party to the admission agreement (other than an administering authority in its role as an administering authority).”.

**Comment:** An administering authority is always a party to admission agreements. Thus, without the additional wording that has been added, the administering authority would have to make additional pension contributions under paragraph (3)(a). The administering should, however, be excluded from the definition of “related employer” except where the administering authority had, in its employing authority role, outsourced work and been a party to the admission agreement in its role as the outsourcing employing authority.

**General comment:** why have existing regulations 38(5), (6) and (7) not been replicated? It would appear that they are still necessary and should be replicated.

Signed by authority of the Secretary of State for Communities and Local Government

Date *Name*  
Parliamentary Under Secretary of State  
Department for Communities and Local Government

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations, which extend to England and Wales, amend the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (“the Benefits Regulations”) and the Local Government Pension Scheme (Administration) Regulations 2008 (“the Administration Regulations”).

Section 12 of the Superannuation Act 1972 (“the 1972 Act”) provides that regulations made under section 7 may have effect from a date earlier than the making of the Regulations.

Regulation 1 provides that the Regulations come into force on \*\*\* but makes provision for various provisions to have effect from different dates.

Regulation 3 adds to the categories of small payments authorised for commutation into lump sums.

Regulation 5 makes provision to permit the Housing Ombudsman, as a corporation sole, and the Chair and Deputy Chair of the London Legacy Development Corporation, to be eligible for membership.

Regulation 6 clarifies the provisions relating to membership of the Scheme following the introduction of the employer duties for automatic enrolment and re-enrolment. In particular, affected eligible members with a contract of less than three months will have no barrier to automatic entry to the scheme.

Regulation 7 recasts regulation 38 of the Administration Regulations to make it clear that all employers in the Local Government Pension Scheme are subject to this Regulation. It sets out the action to be taken when an employer ceases to participate in the LGPS or, in the opinion of the administering authority, participation is likely to cease at some point, so that any unmet liabilities are addressed at that point.

The effect of Regulation 7 is to also revoke the provisions in Regulation 38(3A) to (3G) of the Administration Regulations relating to the liabilities of the former Housing Corporation. These provisions are no longer required following the restructuring of the Homes and Communities Agency and the closure of the Tenant Services Authority.

An impact assessment has not been produced for this instrument as no impact on the private, public or voluntary sectors is foreseen.