

2014 No. 1146

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Offender Management) (Amendment) Regulations 2014

<i>Made</i> - - - -	<i>1st May 2014</i>
<i>Laid before Parliament</i>	<i>6th May 2014</i>
<i>Coming into force</i> - -	<i>1st June 2014</i>

These Regulations are made in exercise of the powers conferred by sections 1 and 3 of, and Schedule 3 to, the Public Service Pensions Act 2013(a).

In accordance with section 21 of that Act, the Secretary of State has consulted the representatives of such persons as appeared to the Secretary of State to be likely to be affected by these Regulations.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

The Secretary of State makes the following Regulations:

Citation, commencement and extent

1.—(1) — These Regulations may be cited as the Local Government Pension Scheme (Offender Management) (Amendment) Regulations 2014.

(2) These Regulations come in to force on 1st June 2014.

(3) These Regulations extend to England and Wales.

Amendment of the Local Government Pension Scheme Regulations 2013

2. The Local Government Pension Scheme Regulations 2013(b) are amended in accordance with regulations 3 to 10.

3. After regulation 3 (active membership) insert—

(a) 2013 c. 25; see section 28 of that Act which provides for regulations made under section 7 of the Superannuation Act 1972 to have effect as scheme regulations under the 2013 Act.
(b) SI. 2013/2356

“Civil servants etc engaged in probation provision

3A.—(1) A person who meets Condition A and Condition B shall for the purposes of these Regulations be deemed to be in the employment of the Secretary of State.

(2) Condition A is that the person is employed in the civil service of the State.

(3) Condition B is that the person is engaged in probation provision within the meaning of section 2 of the Offender Management Act 2007 (responsibility for ensuring the provision of probation services)(a).

(4) Upon and following the transfer of the responsibility for probation services from a probation trust to another person as a result of arrangements made for the provision of probation services under section 3 of the Offender Management Act 2007 (power to make arrangements for the provision of probation services), any provision of these Regulations which confers a function on a body by virtue of being or having been a member’s employer shall, subject to paragraph (6), have effect as if the Secretary of State were the employer of a person to whom paragraph (5) applies.

(5) This paragraph applies to—

- (a) any deferred member, deferred pensioner member, pensioner member or person entitled to a refund of contributions under a local government pension scheme by virtue of employment with a probation trust, or with a predecessor local probation board or probation committee, which ended before the transfer of the responsibilities referred to in paragraph (4) and in respect of whom the probation trust was the Scheme employer immediately prior to the transfer of responsibilities referred to in paragraph (4);
- (b) any member who becomes a deferred member, deferred pensioner member or pensioner member after the transfer of responsibilities referred to in paragraph (4) above who is a member of the Scheme by virtue of employment with a Scheme employer who is engaged in the provision of probation services (but only in respect of benefits relating to periods of membership whilst the member was engaged in the provision of probation services or periods of membership which have been aggregated with such periods, or benefits derived from a transfer into the Scheme during such periods of membership) and:
 - (i) either that employment was continuous with the same Scheme employer or it was compulsorily transferred on one or more occasions to another Scheme employer engaged in the provision of probation services;
 - (ii) the admission agreement under which that member was participating in the Scheme has terminated or the Scheme employer that last employed the member has ceased to be a Scheme employer engaged in the provision of probation services in relation to that employment; and
 - (iii) the member was in the employment of a Scheme employer engaged in the provision of probation services at a time when that employer was in the ownership of the Secretary of State;
- (c) a survivor member or pension credit member who is entitled to a survivor’s pension or a children’s pension or a pension credit (as the case may be) by virtue of the membership of the Scheme of a person to whom paragraph 5(a) or paragraph 5(b) applies;
- (d) a person specified in arrangements made under section 3 of the Offender Management Act 2007 as a person to whom this paragraph applies; or
- (e) such other person who is or was employed by a person engaged, either currently or in the past, in the provision of probation services or in activities associated with the provision of probation services, as the Secretary of State may specify as a person to whom this paragraph applies.

(a) 2007 c.21

(6) Paragraphs (4) and (5) do not apply in respect of any member of a local government pension scheme in respect of whose benefits an exit payment has been made which has met the liabilities of the fund in respect of those benefits.

(7) For the purposes of this regulation—

“exit payment” means a payment of that description under regulation 64 (special circumstances where revised actuarial valuations and certificates must be obtained) or its equivalent under any of the Earlier Schemes;

“probation trust” means a trust established under section 5 of the Offender Management Act 2007;

“a local government pension scheme” means the Scheme or any of the Earlier Schemes; and

“Earlier Schemes” has the meaning given in regulation 1(6) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014(a).”

4. In regulation 4 (restriction on eligibility for active membership)—

(a) in paragraph (1) for “paragraph (2)” substitute “paragraphs (2) to (4)”;

(b) after paragraph (3) insert—

“(4) Paragraph (1)(a) does not apply to a person who is eligible to join the Scheme by reason of employment described in regulation 3A(1) if—

(a) the person is designated, or belongs to a class of employees that is designated as eligible for membership of the Scheme pursuant to regulation 3(1)(b); and

(b) the person is not an active member of any other public service pension scheme in relation to that employment.”.

5. In regulation 64 (special circumstances where revised actuarial valuations and certificates must be obtained) after paragraph (8) insert—

“(9) Paragraph (10) applies—

(a) where the exiting employer is a probation trust established under section 5 of the Offender Management Act 2007 and the liabilities of the fund in respect of benefits due to or in respect of the probation trust’s current and former employees (or those of its predecessor local probation boards or probation committees) have been or are to be transferred to another person as a result of arrangements made for the provision of probation services under section 3 of that Act (power to make arrangements for the provision of probation services); or

(b) in any other case where the exiting employer is engaged in the provision of probation services, but only to the extent provided for under the relevant admission agreement, in relation to any liabilities of the fund in respect of benefits due to or in respect of the current and former employees of the exiting employer which have been or are to be, with effect from the day following the exit date, transferred to one or more other Scheme employers as a result of arrangements made for the provision of probation services under section 3 of that Act.

(10) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.”.

6. In regulation 103 (changes of administering authority)—

(a) in paragraph (1) for “paragraph (7)” substitute “paragraphs (7) and (8)”;

(b) after paragraph (7) insert —

(a) S.I. 2014/525.

“(8) This regulation does not apply where a member’s administering authority has changed in the circumstances described in regulation 104(1) (change of administering authority in connection with probation service arrangements).”.

7. After regulation 103 (changes of administering authority) insert—

“Change of administering authority in connection with probation service arrangements

104.—(1) This regulation applies where in connection with arrangements made for the provision of probation services under section 3 of the Offender Management Act 2007 (power to make arrangements for the provision of probation services) the employees of a probation trust are transferred to another person and—

- (a) an administering authority becomes a member’s appropriate administering authority (“the new authority”); and
- (b) immediately before it does so, another authority was that member’s appropriate administering authority (“the former authority”),

and for the purposes of this regulation it is not material whether the member in question was in the employment of the probation trust immediately before the transfer date or the subject of a transfer of employment to another person.

(2) Within 30 days of the transfer date—

- (a) the transferring member’s former Scheme employer and (where applicable) the transferring member’s new Scheme employer must supply the former authority and the new authority with such information as those authorities may reasonably require to perform their functions under these Regulations in respect of the transferring members under the Scheme;
- (b) the former authority must supply the new authority with such information as the new authority may reasonably require to perform its functions under these Regulations in respect of the transferring members under the Scheme.

(3) With effect from the transfer date the liability to pay benefits or a refund of contributions under the Scheme to and in respect of the transferring members shall transfer to the new authority and the former authority must make a transfer payment from its pension fund to the pension fund of the new authority in respect of the transfer share determined in accordance with actuarial guidance issued by the Secretary of State by agreement between an actuary appointed by the former authority and an actuary appointed by the new authority.

(4) Where the actuaries cannot agree the transfer share or any other matter that needs to be agreed in order to implement the provisions of this Regulation (assuming for this purpose that the payment date is the transfer date) on or before the agreement date—

- (a) the matter shall be referred to a third actuary, chosen by agreement between the actuaries or in default of agreement by the President of the Institute and Faculty of Actuaries; and
- (b) that actuary’s determination, including as to who shall pay the costs of the referral, shall be final.

(5) The transfer payment shall be made in such manner (including as to the proportion of cash and other permitted assets that will comprise the transfer payment and whether the transfer payment is paid in one or more instalments) as the new authority shall reasonably require.

(6) The transfer payment from each former authority must be paid on the payment date.

(7) Where agreement cannot be reached in relation to the payment date on or before the later of the agreement date and 30 days after the date on which the transfer share has been determined by agreement under paragraph (3) or by an actuary’s determination under paragraph (4), the new authority must notify the former authority of the date or dates, which

shall be no later than the final payment date, and the date or dates so notified shall become the payment date.

(8) If a transfer payment is not made in accordance with paragraph (6) or (7), the new authority may by notice in writing require the former authority to pay interest on the amount that falls due and is not so paid.

(9) Interest payable under paragraph (8) is to be calculated at 3 per cent per annum on a day-to-day basis from the date which falls three calendar months after the payment date to the date of actual payment, compounded with three-monthly rests.

(10) When the transfer payment has been made in full and any adjustments made in accordance with actuarial guidance issued by the Secretary of State —

- (a) no other payment or transfer of assets shall be made from the pension fund of the former authority by reason of membership covered by the transfer payment;
- (b) the former authority shall have no liability to make any benefit payments or right to receive contributions for any period prior to, on, or subsequent to the transfer date in respect of a transferring member other than as provided for under arrangements made under paragraph (12);
- (c) except where arrangements under paragraph (12) provide otherwise, any payment made or income received by the former authority in respect of a transferring member after the transfer date shall be reimbursed to the former authority by the new authority or paid by the former authority to the new authority (as the case may be) within 45 days of receipt or payment by the former authority.

(11) The former authority shall provide such assistance and further information in its possession (or to which it has access) as the new authority may reasonably require in relation to the calculation and administration of benefits payable to and in respect of the transferring members under the Scheme, subject to reimbursement by the new authority of the former authority's reasonable costs for doing so.

(12) The new authority and the former authority may agree such arrangements as may be necessary for the former authority to continue making benefit payments to or in respect of the transferring members for a period after the transfer date until the new authority is able to make such payments itself (such agreement not to be unreasonably withheld by the former authority).

(13) The former authority and new authority must cooperate in order to—

- (a) permit members to continue to make AVCs and SCAVCs pursuant to arrangements entered into prior to the transfer date notwithstanding the change of administering authority; or,
- (b) at the member's request, procure the transfer of the transferring members' accumulated AVCs and SCAVCs (including investment returns thereon) to arrangements established by the new authority.

(14) Where a member wishes to continue to make AVCs or SCAVCs in accordance with paragraph 13(a), regulation 17 (additional voluntary contributions) applies in respect of that member as if the references in that regulation to "appropriate administering authority" were references to the administering authority which was the member's appropriate administering authority at the time the arrangements were entered into.

(15) For the purposes of this regulation and save where the context otherwise requires—

"agreement date" means the date which falls 120 days after the date on which the administering authorities have been notified in writing of the transfer of employees, or the date the information described in paragraph (2) has been received, whichever is the later;

"final payment date" means the date that is 12 months after the later of the date on which the former authority has been notified in writing of the transfer of employees and the date the information described in paragraph (2) has been received;

“a local government pension scheme” means the Scheme or any of the Earlier Schemes within the meaning of regulation 1(6) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;

“member” includes deferred members, deferred pensioner members and pensioner members of a local government pension scheme and those entitled through them, including pension credit members;

“payment date” means the date or dates agreed between the former authority and the new authority for the making of the transfer payment to the new authority or the date or dates notified to the former authority in accordance with paragraph (7) where agreement cannot be reached;

“permitted assets” means liquid, transferable holdings of pooled vehicles which track market capitalisation weighted indices;

“transfer date” means the date on which the new pension fund becomes the member’s appropriate fund;

“transferring members” means the employees and former employees (and those entitled through them, including pension credit members) of a probation trust (or its predecessor local probation boards or probation committees) who are the subject of the changes of Scheme employer and appropriate administering authority referred to in paragraph (1) and any persons specified in accordance with regulation 3A(5)(d) or (e) (civil servants etc engaged in probation provision) as a person to whom regulation 3A(5) applies;

“transfer payment” means a transfer of cash in British pounds sterling or permitted assets equal in value to the transfer share;

“transfer share” means the value of the assets allocated to the actual and potential liabilities payable from the pension fund of a former authority in respect of the benefits that have accrued to or in respect of transferring members as at the transfer date (whether that accrual arose before the commencement of these Regulations or afterwards), adjusted to the relevant payment date, calculated in accordance with actuarial guidance issued by the Secretary of State;

“probation trust” means a probation trust established under section 5 of the Offender Management Act 2007.”.

8. In Part 2 of Schedule 2 (Scheme employers) after paragraph 13 insert—

“(14) The Secretary of State, in respect of persons specified in regulation 3A(1) (civil servants engaged in probation provision).”.

9. In Part 3 of Schedule 2 in paragraph 8 at the end of sub-paragraph (d) insert—

“or

(iii) which is a provider of probation services under section 3 of the Offender Management Act 2007 (power to make arrangements for the provision of probation services) or a person with whom such a provider has made arrangements under subsection (3)(c) of that section.”.

10. In the table in Part 2 of Schedule 3—

(a) in the column headed “Member” after the final entry insert the following entries —

“A person deemed to be in the employment of the Secretary of State by regulation 3A(1).” and

“A person to whom regulation 3A(5) applies.”.

(b) in the column headed “Appropriate administering authority”, next to the entries inserted by paragraph (a), insert “Tameside Metropolitan Borough Council.”.

Transitional provisions

11.—(1) For the purposes of the issue of actuarial guidance by the Secretary of State pursuant to regulation 104(3) (change of administering authority in connection with probation service arrangements) of the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”) the fact that any consultation with the Government Actuary’s Department was carried out before that provision was inserted into those Regulations shall be disregarded in determining whether there has been compliance with the requirement under regulation 2(3) of those Regulations (introductory) to engage in such consultation.

(2) Paragraph (3) applies to any person of the description in regulation 3A(5) of the 2013 Regulations (civil servants etc engaged in probation provision) who has not been a member of the Scheme within the meaning of the 2013 Regulations in relation to benefits accrued under the Earlier Schemes.

(3) Where this paragraph applies to a person, any such benefits accrued by or in respect of that person are payable by the administering authority which is the appropriate administering authority for persons who are deemed to be in the employment of the Secretary of State.

(4) Where paragraph (3) applies to a person—

- (a) regulation 3A(5) of the 2013 Regulations applies in relation to functions conferred on a body under the Earlier Regulations by virtue of having been a member’s employer as it applies to functions conferred by the 2013 Regulations; and
- (b) regulation 19(1) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (appropriate funds) does not apply in relation to that person.

(5) Where a body has any rights or obligations under regulation 104 of the 2013 Regulations (change of administering authority in connection with probation service arrangements) in relation to functions under the 2013 Regulations, those obligations apply equally in respect of functions under the Earlier Regulations.

(6) In this regulation “the Earlier Schemes” and “the Earlier Regulations” have the same meaning as in regulation 1(6) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (interpretation).

We consent to the making of these Regulations

Mark Lancaster
Anne Milton

30th April 2014

Two of the Lords Commissioners of Her Majesty’s Treasury

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

Brandon Lewis
Parliamentary Under Secretary of State

1st May 2014

Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”) to enable continued membership of the Local Government Pension Scheme by probation staff in England and Wales notwithstanding changes to the employment arrangements of those staff.

Regulation 3 inserts a new regulation 3A into the 2013 Regulations which has the effect that the Secretary of State takes on the role of employer for the purposes of those Regulations for probation staff employed as civil servants; in relation to former probation staff; and staff who transfer to new employers as a result of the changes to employment arrangements of probation staff where the new employer ceases to be involved in the provision of probation services.

Regulation 4 permits probation staff employed as civil servants to remain members of the local government pension scheme notwithstanding the fact that their employer offers membership of a different public service pension scheme.

Regulation 5 disapplies the obligation on probation trusts to pay an exit payment when the employment of probation staff transfers to different employers. It also modifies that obligation upon any further transfer of probation staff to different employers.

Regulations 6 and 7 make provision for the transfer of assets and liabilities between administering authorities consequent upon the appointment of Tameside Metropolitan Borough Council as the appropriate administering authority for all probation staff.

Regulation 8 amends Schedule 2 to the 2013 Regulations to insert the Secretary of State into the list of Scheme employers in relation to designated probation staff.

Regulation 9 permits the Secretary of State to give a guarantee in respect of the pension liabilities of admission body employers involved in the provision of probation services as an alternative to an indemnity or bond.

Regulation 10 identifies Tameside Metropolitan Borough Council as the appropriate administering authority for probation staff for whom the Secretary of State has employer functions under the 2013 regulations.

Regulation 11 contains transitional provisions which permit the Secretary of State to commence consultation with the Government Actuary's Department before these Regulations come into force; and which apply the obligations on employers and administering authorities in relation to probation staff under the 2013 Regulations also to rights and liabilities arising out of the regulations constituting earlier local government pension schemes.

An impact assessment has not been produced for these Regulations because no impact on the private or voluntary sectors is foreseen.

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