

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (TRANSITIONAL
PROVISIONS, SAVINGS AND AMENDMENT) REGULATIONS 2014

2014 No. 525

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations make transitional provision between the existing Local Government Pension Schemes in England and Wales and the new Scheme which will come into force on 1 April 2014. They preserve benefits already accrued by members under the existing Schemes and make provision to ensure that members within 10 years of their normal retirement age on 31st March 2012 do not suffer any detriment.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 These Regulations are made under sections 7 and 12 of and Schedule 3 to the Superannuation Act 1972 (“the 1972 Act”), but in anticipation of the superseding of the powers under that Act by the powers contained in the Public Service Pensions Act 2013 (“the 2013 Act”) which received Royal Assent on 25th April 2013 but is not yet completely in force.
 - 4.2 The Regulations deal with the replacement of the scheme (“the 2008 Scheme”) established by the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (S.I. 2007 No 1166) (“the benefits regulations”) and the Local Government Pension Scheme (Administration) Regulations 2008 (S.I. 2008 No 239) (“the administration regulations”). The 2008 Scheme is superseded from 1st April 2014 by a new scheme (“the 2014 Scheme”) constituted under the Local Government Pension Scheme Regulations 2013 (S.I. 2013/2356) (“the 2013 Regulations”).
 - 4.3 Provision is made in both the 2008 Scheme and the 2014 Scheme for pensions to be paid to surviving partners of members of the scheme. Where a marriage has taken place after the member has ceased to be an active member there is a restriction in the 2008 Scheme on the period of membership that can be taken into account in calculating the survivor pension payable and this restriction is carried through into the 2014 Scheme. There was an anomaly in the 2008 Scheme in that no equivalent restriction was imposed where a member entered into a civil partnership after ceasing to be an active member. Regulation 17(11)(a) corrects that anomaly and provides that the same restriction applies

whether a person marries or enters into a civil partnership after ceasing to be an active member. Section 12 of the Superannuation Act expressly permits the making of provision which applies to deferred and pensioner members, but requires that any such person who would be placed in a worse position by a regulation must be given an opportunity to elect not to have the provision apply. Regulation 17(14 to 16) provides a right before 1st April 2015 for deferred or pensioner members or those entitled through them to elect not to have the restriction apply to them.

- 4.4** Elected members of certain local authorities in England and Wales were permitted access to the Local Government Pension Scheme constituted by the Local Government Pension Scheme Regulations 1997 (S.I. 1997/1612). That access was preserved notwithstanding the revocation of those Regulations by the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (S.I. 2008/238). Regulation 26 of these Regulations removes access for newly elected members in England from 1 April 2014 whilst retaining membership for councillors in Wales. Existing members in England have the right to remain in the Scheme until the end of the term of office which they are serving on 1 April 2014. Section 10 of the 2013 Act when commenced will require scheme regulations under that Act to provide for the normal retirement age of members to be the same as their state retirement age. The provisions preserved by regulation 26 provide for a normal retirement age of 65 and appropriate transitional provision will be made when section 10 is commenced to ensure that the provisions continue to have effect.

5. Territorial Extent and Application

- 5.1** This instrument extends to England and Wales.

6. European Convention on Human Rights

- 6.1** As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1** The 2013 Regulations introduce the 2014 Scheme where pension benefits from 1 April 2014 are built up on a career average basis rather than, as in earlier schemes, linked to a final salary. They were the culmination of over two years of discussion and consultation with all interested parties, which began after the publication of Independent Public Service Pensions Commission's final report in March 2011. A full account of the consultation process regarding the 2013 Regulations was set out in paragraphs 7.1 to 7.7 of the explanatory memorandum accompanying the instrument. A copy of the explanatory memorandum can be found at <http://www.legislation.gov.uk/ukxi/2013/2356/memorandum/contents>
- 7.2** Paragraph 7.25 of that memorandum set out the intention to come forward with a separate statutory instrument on transitional protection and savings. Details

of the consultation with interested parties on these Regulations can be found at section 8. In addition to that formal consultation, there has been a continuous dialogue with practitioners, interested parties and a small technical group representing local government employers and trade unions, to help deliver the finalised instrument.

- 7.3** The primary aim of these Regulations is to protect any of the rights that members have accrued under any of the earlier schemes established under the Superannuation Act 1972 and to save those provisions in earlier schemes that are necessary to ensure this protection. The main protections and savings are described in paragraphs 7.4 to 7.20.
- 7.4** **Final salary protection** - Under Section 20 of the Public Service Pensions Act, if a member has continuous membership in an existing public service scheme and a new public service pension scheme or leaves and rejoins that public service scheme with a break of less than five years, the pension rights accrued in the earlier pension scheme must be calculated by reference to their final salary at point of final departure. For the Local Government Pension Scheme, this means benefits accrued in relation to service up to 31 March 2014 will continue to be based on a member's final salary when they leave the scheme (in certain circumstances, at a member's request, a different final salary figure can apply instead, where that would lead to a higher final salary). This principle is enshrined for the Local Government Pension Scheme in regulations 3, 4 and 17.
- 7.5** **Membership before 1st April 2014** – Regulation 3 provides for benefits derived from the pre-2014 Schemes to continue to be payable. Where membership of the earlier schemes is aggregated with membership in the 2014 Scheme, all benefits are payable at the same time. In such cases, benefits arising from the earlier schemes continue to be based on a member's final salary and subject to the same actuarial adjustment principles that would have been required under the earlier schemes. Where membership of the existing schemes is not aggregated with membership in the 2014 Scheme, regulation 3 provides for resulting benefits to be paid in accordance with the existing schemes.
- 7.6** **Statutory underpin** - Regulation 4 provides for certain persons to receive transitional protection from the changes to introduce new pension arrangements from 1 April 2014 where they would otherwise receive a pension that is lower than that they would have received if the current pension scheme had instead continued. The protection applies to persons who were active members of the 2008 Scheme on 31 March 2012 and who, on 1 April 2012, were 10 years or less from the normal retirement age applicable to them under the 2008 Scheme (age 65 for most members, but age 60 for some members). Where pension benefits are paid to such members on or after the date on which they could have chosen to take them under the 2008 Scheme (age 60 for most members, but earlier for certain members who had a normal retirement age of 60 under the 2008 Scheme), on or after age 65 (or age 60 where that was the member's normal retirement age under the 2008 Scheme), on ill-health grounds or by reason of redundancy then the underpin applies. This means that these members will receive benefits, in relation to any period where they were an active member of the scheme up to the date the pension is

paid, or their normal retirement age under the 2008 Scheme if later, at least equal to those that they would have received if the 2008 Scheme had continued. Other qualifying conditions are set out in regulation 4(1), including a requirement that there has been no disqualifying break in service of more than 5 years in a public service pension scheme since 31 March 2012.

- 7.7 Pensionable pay** – Regulation 8 preserves the protection to pensionable pay afforded to supplements paid by the Environment Agency or the Natural Resources Body for Wales or to an employee whose employment was transferred on 1 April 2010 from the Learning and Skills Council. Regulation 8(2) maintains the protection afforded by Regulation 13(8) of the 1997 Regulations in respect of the provision of a motor vehicle.
- 7.8 Ill-health retirement** - Regulation 12 carries forward a commitment in the Written Ministerial Statement of November 2012 to carry across the existing ill health retirement framework into the new Scheme. Therefore, regulation 12 continues to provide for those who would have benefited from the age 45 protection in regulation 20(13) of the benefits Regulations (transitional protection for those aged 45 before 1 April 2008) by ensuring the enhancement is calculated by reference to the period under the 1997 Scheme compared with the period under the 2013 Scheme.
- 7.9** Regulation 12 ensures continuity by deeming the 1st and 2nd tiers of ill health benefits where they have been paid under the 2008 Scheme regulations to be the same ill health tier benefits for the purposes of the 2013 Regulations. In respect of the 3rd tier (where it was awarded under the 2008 Scheme regulations), this regulation stipulates that where there is a need to make an adjustment to those benefits (eg such as an uplift to the 2nd tier) it would need to be dealt with under the benefits regulations and that the member would not be entitled to any 3rd tier benefits under the 2013 Regulations.
- 7.10** This regulation also deals with the situation whereby some ill health assessments may cover the pre and post 2014 implementation date and allows the certificate from the independent registered medical practitioner to remain valid under the regulatory framework with effect from 1 April 2014.
- 7.11** Finally, this regulation covers for situations whereby persons who retired on ill health grounds before the 2008 Scheme came into force, subsequently become active members of the 2014 Scheme and then seek a further ill health retirement.
- 7.12 Contributions** - Regulation 14 ensures that the payment of contributions is made according to the regulations pertaining to the period in question. Regulation 14(2) ensures that contributions paid in respect of earlier periods of membership aggregated with membership under the 2014 Scheme can also be refunded.
- 7.13 Survivor benefits** - where a member dies in active membership - are calculated in the same way for each category of eligible survivor. There were, under the 2008 Scheme, different provisions for survivor benefits where a marriage takes place after active membership ceases. In this situation, only membership from 1988 is taken into account for a widower and 1978 for a widow. This was to

prevent abuse of the system by so-called “deathbed marriages”. Thus if a woman who retired in 1996 with 40 years service were to marry in 2013 and then die shortly afterwards, her widower would only benefit from survivor benefits for 8 years between 1988 and 1996 rather than the full 40 years. Regulation 17 continues these provisions, reintroduces the provisions for civil partnerships which were mistakenly dropped in the 2008 Scheme and includes survivor benefits in respect of same sex marriages. This is where, in all occasions, the marriage or civil partnership takes place after the deceased had left active membership. In accordance with provisions in Sections 12(2) and (4) of the Superannuation Act 1972, this regulation includes the opportunity for a deferred member, who may be worse off as a result of the re-introduction of the restriction in amount of membership to be used in a calculation of survivor benefits for a surviving civil partner, to opt out of that restriction if an application to do so is made on or before 1 April 2015.

- 7.14 Pension sharing** - Regulation 20 provides that the valuation of benefits for the purposes of the 2014 Scheme under a Pensions Sharing Order will also take into account the benefits accrued by the member in any earlier Scheme.
- 7.15 Mis-sold personal pensions** – Regulation 21 maintains the power for administering authorities to provide scheme information to prescribed persons enquiring about the amount of restitution payment applicable in individual cases.
- 7.16 Decisions and adjudications of disagreements** – Regulation 23 ensures that questions concerning a member’s rights and liabilities under any earlier scheme but not determined by 1 April 2014 can be determined under the dispute resolution provisions in regulations 72 to 80 of the 2013 Regulations.
- 7.17 Councillors’ pensions** – Regulation 26 reflects the Government’s decision that new councillors in England, directly elected mayors, the Mayor of London and members of the London Assembly should no longer have access to the Local Government Pension Scheme after 31 March 2014. This issue was subject to a consultation undertaken between 10 April and 5 July 2013. Those members already in the Scheme may continue to accrue rights until the end of the term of office which they are serving on 1 April 2014, or age 75, whichever is the earlier. The regulation retains membership of councillors in Wales pending further discussion, consultation and agreement on their position in the Scheme.
- 7.18 Rule of 85** - Schedule 2 carries forward transitional arrangements that were put in place when provisions that enabled long serving members to take unreduced retirement benefits before reaching age 65 were removed from the earlier schemes in 2006. These arrangements relate to a provision known as the ‘rule of 85’, which was removed for new joiners from 1 October 2006. It broadly allowed for certain members who retire before age 65 to receive unreduced pension benefits if their period of scheme membership and age add up to 85 years or more at that point. This schedule preserves the transitional arrangements that were introduced in 2006 so they continue to apply to persons who were members of the earlier schemes prior to 1 October 2006, as they did prior to the introduction of the 2014 Scheme. This means that where such members retire on or after age 60, benefits arising from earlier service,

before 1 April 2008 for all members and before 1 April 2016 for those who reach age 60 before that date, will continue to be paid unreduced if they satisfy the 85 year rule. Further provisions apply in respect of persons who were members of the earlier schemes prior to October 2006 and who will reach age 60 before 1 April 2020, which provide for tapered reductions to apply to benefits arising from membership between 1 April 2008 and that point. The phased removal of the protection was objectively justified and continued by this Schedule. A useful summary of the rule of 85 can be found at <http://www.parliament.uk/briefing-papers/sn04002.pdf>

- 7.19** The 2014 Scheme provides for members to choose to receive their pension benefits between the ages of 55 and 60, whereas members previously needed their employer to agree to pay benefits before age 60. The Schedule provides that where a member chooses to take benefits before age 60 and the member satisfies the rule of 85, or would do so before reaching age 60, the employer can agree to the benefit being paid unreduced. Where they do not agree, benefits will be reduced by reference to age 60 instead – the earliest age the member could have chosen to take them from the earlier scheme without employer consent. This change retains parity with the existing arrangements, but members now have an additional option available to them – to choose to take reduced benefits before age 60 if they wish to do so and without the need for their employer’s consent.
- 7.20.** Where a person is a deferred member of the earlier Local Government Pension Schemes or the 2014 Scheme and rejoins the 2014 Scheme they can choose whether to combine the two periods of membership. If there was a continuous break in active membership of a public service pension scheme between those two periods of more than 5 years, the rule of 85 does not apply to the earlier service. Instead, where the member would have been entitled to receive the payment of their deferred benefits before their normal pension age under the rule of 85, the member will be awarded a higher amount of pension in the new scheme. The higher amount will reflect the fact that the deferred benefits that they are choosing to bring into the new scheme would have had a Critical Retirement Age earlier age than the member’s Normal Pension Age in the 2014 Scheme. Where there is not a continuous break in active membership of a public service pension scheme of more than 5 years and the member chooses to combine two period of membership, the rule of 85 protections will instead apply to any relevant periods of the combined service.

8. Consultation process and outcome

- 8.1** These Regulations were subject to statutory consultation between 27 March 2013 and 3 May 2013. The consultation papers were sent to the Welsh Assembly, the chief executives of all principal local authorities in England and Wales; the Local Government Association; all local government trade unions; the five main treasurer bodies in England and Wales; the Trades Unions Congress; the Government Actuary’s Department and eleven separate representative bodies, including the Association of Consulting Actuaries, the Chartered Institute of Public Finance and Accountancy and the Association of

Local Authority Medical Advisers. Copies of the consultation paper and a full list of consultees can be found at

<https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/local-government-pensions>

- 8.2** Since January 2012, the Department has chaired regular meetings with members of a Project Board representing local authority employers and local government trade unions. A smaller, technical group chaired by the Department was established to work up draft regulations. The same group assisted the Department in analysing and reaching conclusions on consultation responses. A further ongoing process of consultation via this group and other interested parties dealing with issues flowing from the Public Service Pensions Act and other technical points ran from July 2013, with a revised version more consistent with the final version made available on 18 September 2013. Work with this group assisted in the Government's response to comments made during the various consultation exercises and helped resolve a number of issues surrounding new policy principles and extent of special protections.
- 8.3** By the end of 2013, a decision on the outcome of the statutory consultation on the proposal to exclude councillors and other locally elected office holders had not been made. With introduction of the new Scheme only three months away, a "near-final" version of the draft regulations was circulated to key interested parties, including the 89 pension fund managers in England and Wales, for information only. A second, more complete version of the regulations was circulated to software providers and the 89 pension fund authorities on 31 January 2014.
- 8.4** Circulation of the draft regulations at these stages ensured that Scheme actuaries; software providers; payroll providers and pension administrators were fully conversant with drafting changes introduced in response to the earlier consultation exercise.
- 8.5** Section 3(5) of the Public Service Pensions Act 2013, which requires scheme regulations to be subject to Treasury consent, had not been commenced at the time these Regulations were made. The Department nevertheless engaged with Treasury officials to ensure that the draft regulations issued for consultation were consistent with the wider public service pension reform agenda.

9. Guidance

- 9.1** Where mentioned in these Regulations, guidance for the new Scheme will be issued by the Department. In addition, the Local Government Association and Scheme administering authorities will also publish scheme guidance.

10. Impact

- 10.1** No separate Impact Assessment has been carried out with specific reference to the Transitional Provisions as it is felt the report on the 2013 Regulations covers the necessary points under consideration. That report can be accessed at: <http://www.legislation.gov.uk/ukxi/2013/2356/impacts>

11. Regulating small business

11.1 The legislation applies to small business. (See Impact Assessment which accompanied the 2013 Regulations).

12. Monitoring & review

12.1 Together with the monitoring and review process in place for the 2014 Scheme (see section 12.1 of the explanatory memorandum (see section 7.1) which accompanied the 2013 Regulations) the issues covered by this instrument will continue to be appraised in terms of applications and cost implication, and also since some of the savings are for specific periods on and after 1 April 2014, the need for potential future revocation.

13. Contact

13.1 Bob Holloway at the Department for Communities and Local Government Tel: 030 3444 2182 or email: robert.holloway@communities.gsi.gov.uk can answer any queries regarding the instrument.