

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) (GOVERNANCE)
REGULATIONS 2015

2015 No. 57

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

The Regulations establish a national scheme advisory board to advise the Secretary of State on the desirability of changes to the Local Government Pension Scheme (“the Scheme”). Provision is also made for administering authorities to establish local pension boards to assist them with the effective and efficient management and administration of the Scheme. The Regulations provide for two separate sets of cost control mechanisms for the Scheme.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

- 4.1 The Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”) were made under section 7 of the Superannuation Act 1972 (“the 1972 Act”) 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.
- 4.2 Section 28 of the 2013 Act provides for regulations made under section 7 of the 1972 Act in respect of a person’s service on or after 1 April 2014 and which could have been made under the powers contained in the 2013 Act to have effect as if they were scheme regulations under the 2013 Act.
- 4.3 Certain provisions in the 2013 Act impose requirements in respect of scheme regulations under the 2013 Act: sections 5 to 7 in respect of local pension boards and a scheme advisory board; and sections 11 and 12 in relation to valuations and employers’ costs. Those provisions were not commenced initially in relation to the Local Government Pension Scheme but no significant practical consequences arise out of the initial absence of such provisions from the regulations. This is because all significant functions of the boards, in particular in relation to cost

control, will arise only after the first triennial valuation of the Scheme which is due to take place in 2016.

- 4.4 The commencement order bringing the remaining sections of the 2013 Act into force in relation to the Local Government Pension Scheme was made on 6 January 2015 S.I. 2015/4. The substantive provisions take effect from 1st April 2015 and section 13 of the Interpretation Act 1978 enables reliance on those provisions to give full effect to the 2013 Act.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

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 introduced the Scheme where accrual of pension builds up on a career average basis rather than linked to final salary. They were the culmination of over two years of discussion and consultation with all interested parties, which began after the publication of the Independent Public Service Pensions Commission final report in March 2011. A full account of the consultation process regarding the 2013 Regulations were set out in paragraphs 7.1 to 7.7 of the explanatory memorandum accompanying that instrument.
- 7.2. Paragraphs 7.20, 7.21 and 7.23 of that memorandum set out the intention to come forward with a separate statutory instrument on governance and cost management. Details of the consultation with interested parties on these regulations can be found at section 8 below. In addition to that formal consultation, there has been a continuous dialogue with practitioners, interested parties and the Scheme's shadow scheme advisory board representing local government employers, trade unions and practitioners, to help deliver the finalised instrument.
- 7.3 The primary aim of the Regulations is to introduce into the Scheme by 1 April 2015 the requirement under sections 5 and 7 of the Public Service Pensions Act 2013 for the 89 administering authorities in England and Wales to establish local pension boards and for a new national Scheme Advisory Board to be established by the same date. The regulations also include provision on valuations and employers' costs required by sections 11 and 12 of the 2013 Act
- 7.4. The main provisions are described in paragraphs 7.8 to 7.43.

Preliminary Provisions

- 7.5 Regulation 1 covers the citation, commencement, interpretation and extent of the Regulations. The regulations will apply to the Scheme in England and Wales and for the most part will come into operation on 1 April 2015.
- 7.6 Regulations 1 to 8 amend the Principal 2013 Regulations.
- 7.7 Regulation 9 inserts new regulations 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115 and 116 into the principal 2013 Regulations. These provisions are described in more detail below.

Main Provisions

Local pension boards: establishment

- 7.8 Regulation 106 provides for each administering authority in England and Wales to establish a local pension board to assist it to secure compliance with the 2013 Regulations; any other legislation relating to the governance and administration of the Scheme; and any requirements imposed by the Pensions Regulator in relation to the Scheme. Regulation 106(1)(b) further requires local pension boards assist authorities to ensure the effective and efficient governance and administration of the Scheme.
- 7.9. Section 5(7) of the 2013 Act allows scheme regulation to provide for a committee of the administering authority constituted under section 101 of the Local Government Act 1972 which discharges the authority's pensions functions and the local pension board to act as a combined body. Regulation 106(2) provides that this may occur only where approval has been granted by the Secretary of State.
- 7.10 Regulation 106(3) provides for a joint local pension board to be established where administration and management functions are wholly or mainly shared by two or more administering authorities and where approval has been given by the Secretary of State.
- 7.11. Regulation 106(6) makes provision for each administering authority to determine the procedures applicable to their local pension board.
- 7.12 To ensure that scheme member and employer representatives of local pension boards have a decisive influence, Regulation 106(7) restricts the right to vote on questions to those representatives. This does not apply where there is a combined committee discharging an authority's pension functions and acting as the local pension board.
- 7.13. Regulation 106(9) provides that the expenses of a local pension board can be charged to the fund managed by the administering authority.

Local pension boards : membership

- 7.14. Regulation 107 provides that each administering authority shall determine the membership of their local pension board; the manner in which members may be appointed and removed and the terms of their appointment.
- 7.15. Regulation 107(2) requires membership of a local pension board to consist of an equal number of scheme member representatives and employer representatives which is no less than four in total. This carries forward the requirement in section 5(4)(c) of the 2013 Act and ensures that each board will have the capacity to undertake the functions described at paragraph 7.5.
- 7.16. Before appointing scheme member or employer representatives to a local pension board, Regulation 107(2)(a) and (b) provides that the administering authority must be satisfied that they have the capacity to represent scheme members and employers respectively.
- 7.17. Except where a local pension board is the same committee as the one discharging an authority's pension functions Regulation 107(3)(a) provides that no officer or elected member of an administering authority responsible for any pensions function under the 2013 Regulations (apart from any function relating to local pension boards on the Scheme's Scheme Advisory Board) may be a member of that administering authority's local pension board. This will ensure that no officers and elected members appointed to a local pension board will be in a position of scrutinising their role elsewhere in the Scheme. Regulation 107(3)(b) provides that any elected member who is a member of a local pension board must be appointed as either an employer or member representative (and consequently will be entitled to vote on any questions).
- 7.18. Regulation 107(4) ensures that the requirement under Regulation 107(2) for an equal number of scheme member and employer representatives is maintained in the situation where a local pension board is the same committee as that discharging the authority's pension functions.

Local pension boards: conflict of interest

- 7.19 Regulation 108 provides that each administering authority must ensure that there is no conflict of interest relating to a person that is to be appointed to a local pension board or from time to time once appointed. To assist the administering authority, Regulation 108(3) and (4) requires the individual to provide such information that the administering authority believes to be reasonable for this purpose.

Local pension boards : guidance

- 7.20. Regulation 109 provides that each administering authority must have regard to any guidance issued by the Secretary of State about local pension boards.

Scheme advisory board : establishment

- 7.21 Regulation 110(1) establishes a new Local Government Pension Scheme Advisory Board (“scheme advisory board”) on 1 April 2015. Under Regulation 110(2), the role of the scheme advisory board will be to provide advice to the Secretary of State on the desirability of making changes to the Scheme.
- 7.22 For locally administered schemes like the Local Government Pension Scheme, the 2013 Act confers an additional function on the scheme advisory board to advise administering authorities and local pension boards. Regulation 110(3) carries forward this provision into the 2013 Regulations.
- 7.23. Regulation 110(4) provides that the scheme advisory board may determine its own procedures.

Scheme advisory board : membership

- 7.24. Regulation 111(1) provides that the scheme advisory board is to consist of a Chairman and at least 2, and no more than 12 members appointed by the Secretary of State. In making these appointments, Regulation 111(2) requires the Secretary of State to have regard to the desirability of there being an equal representation of scheme member and scheme employer representatives.
- 7.25 Regulations 111(3) to (7) provide the scheme advisory board with a range of powers to appoint up to three non-voting advisory members and to establish sub-committees to assist the scheme advisory board.
- 7.26. Regulation 112 provides that the Secretary of State must ensure that there is no conflict of interest relating to a person that is to be appointed to the scheme advisory board or from time to time once appointed. To assist the Secretary of State, Regulations 112(3) and (4) requires the individual to provide such information that the Secretary of State believes to be reasonable for this purpose.

Scheme advisory board: funding

- 7.27. Regulation 113 sets out the funding arrangements for the scheme advisory board. The expenses of the board are to be treated as administration costs of the Scheme with each administering authority paying a levy to the scheme advisory board based on the number of their scheme members.
- 7.28 Regulation 113(2) provides that the scheme advisory board must seek the Secretary of State’s approval for each annual budget before any levy can be requisitioned.

Scheme actuary

- 7.29. Section 11 of the 2013 Act requires the Secretary of State to appoint a scheme actuary to carry out the valuations in accordance with Treasury directions made under that section. Regulation 114 carries forward this requirement into the 2013 Regulations.

Employer cost cap

- 7.30. Regulation 115(1) provides that the employer cost cap for the 2014 Scheme calculated in accordance with Treasury directions made under section 11 of the 2013 Act is 14.6% of pensionable earnings.
- 7.31. Regulation 115(2) requires the Secretary of State to follow the procedure outlined in paragraph (3) for bringing scheme costs back to the employer cost cap when the margins specified in regulations made under section 12(5) of the 2013 Act are breached at any Scheme valuation.
- 7.32. Regulation 115(3) requires the Secretary of State to consult the scheme advisory board and seek a consensus on the steps necessary to achieve the target cost. Where such agreement is not possible within 3 months of the end of the consultation period, Regulation 115(4) provides that the Secretary of State must adjust the Scheme's accrual rate to achieve the target cost.

Scheme advisory board : additional functions

- 7.33. In addition to the employer cost cap process described at paragraphs 7.30 to 7.32, Regulation 116 introduces into the 2013 Regulations an additional cost control arrangement managed by the scheme advisory board.
- 7.34. Regulation 116(1) requires the scheme advisory board to obtain a cost assessment from the scheme actuary at each triennial valuation setting out the "overall cost of the Scheme" (see paragraph 7.40) and the proportions of that cost met by scheme employers and scheme members.
- 7.35. Where the scheme cost is above or below the target overall cost, Regulation 116(2) provides that the scheme advisory board may make recommendations to the Secretary of State about the steps to be taken to bring the overall cost of the scheme back to the target overall cost.
- 7.36. Where the target proportion (see paragraph 7.40) of the overall cost to be met by scheme employers is not achieved, Regulation 116(3) provides that the scheme advisory board may make recommendations to the Secretary of State to bring the proportion back to the target proportion.

- 7.37 Regulation 116(4) requires the scheme advisory board to publish a statement setting out its policy on recommendations to the Secretary of State before obtaining a scheme cost assessment under Regulation 116(1).
- 7.38 Regulation 116(5) switches off the scheme advisory board's process if the employer cost cap process described at paragraphs 7.30 to 7.32 is triggered.
- 7.39 Except where Regulation 116(5) applies, Regulation 116(6) provides that the scheme advisory board must make recommendations to the Secretary of State if the target overall cost is exceeded by 2% or more.
- 7.40 Regulation 116(7) defines "the overall cost of the scheme"; "the target overall cost" at 19.5% of pensionable earnings and the "target proportion" as scheme employers meeting two-thirds and scheme members one-third of the overall cost of the Scheme.
- 7.41 Regulation 116(8) ensures that administering authorities provide the scheme actuary with any data determined by the scheme advisory board that is required to carry out the valuations and publish the reports required by Regulation 116.
- 7.42 Unless the scheme advisory board's procedure is switched off under Regulation 116(5), Regulation 116(9) requires the Board to publish a report on its costings and any recommendations to the Secretary of State within 23 months of obtaining the Scheme cost assessment. Under Regulation 116(10), a copy of the Board's report must be sent to the Secretary of State and scheme actuary.
- 7.43 Regulation 116(11) provides that the Secretary of State must publish a response to the scheme advisory board's report within six months of that report being published.

8. Consultation outcome

- 8.1 The regulations were subject to three separate statutory consultations. The first, which dealt exclusively with the provisions on establishing the new scheme advisory board and local pension boards, commenced on 23 June 2014 and ended on 15 August 2014 with 93 responses. The second repeated the provisions consulted on in June 2014, with amendments reflecting the responses, as well as new provisions on cost management, commenced on 10 October 2014 and ended on 21 November 2014 with 52 responses. The final consultation dealt with the proposed employer cost cap of 14.6% and associated methodology and assumptions on which the cap figure was calculated by the Government Actuary's Department in accordance with Treasury directions. This consultation ran between 19 December 2014 and 2 January 2015.

- 8.2. The same format was used in the two major consultations, that is, a narrative section explaining the consultation process and policy context, a set of draft regulations and, in the case of the June 2014 consultation, a series of questions on outstanding policy issues.
- 8.3. In all cases, the consultation papers were sent to the Welsh Assembly, the Chief Executives of all principal local authorities in England and Wales; all local government trade unions; the Trades Unions Congress; the Government Actuary's Department and eleven separate representative bodies including the Association of Consulting Actuaries and the Chartered Institute of Public Finance and Accountancy. Copies of each 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.
- 8.4. As a result of the consultation responses and the feedback from regular meetings with the scheme's shadow scheme advisory board, a number of significant changes to the regulations have been introduced. In addition, the department maintained a high level of engagement with key interested parties throughout the consultation period in order to explain, respond to queries and revise various elements of the draft proposals to achieve as much consensus as possible.
- 8.5. A summary of responses and the outcome of each consultation is set out in a separate document available at https://www.gov.uk/government/organisations/department_for_communities-and-local-government/series/local-government-pensions.
- 8.6. The main alterations in the final version of the regulations are summarised below :-
- A change to allow joint local pension boards to be established where administration and management is wholly or mainly shared between one or more administering authorities. This was one of the outstanding policy questions included in the June 2014 consultation which received a very high level of support.
 - A change to allow elected members to be appointed to local pension boards. The June 2014 consultation proposed the exclusion of elected members from sitting on local pension boards but representations from the Scheme's shadow advisory board and other interested parties persuaded the Department to reverse the position in the October 2014 consultation. In the light of responses to that consultation and further discussions with scheme interested parties, a further change was introduced to allow all councillors and officers to be appointed as members of a local pension board provided that they do not perform any pension function under the 2013 Regulations within the same administering authority.

- In consequence of allowing elected members to sit on local pension boards, further changes were made to restrict voting rights to the core membership of member and employer representatives and that elected members may only be appointed as either employer or member representatives. This will ensure that employer and member representatives have an equal and decisive influence within the board as a whole however it is constituted.
- The June 2014 consultation included a provision requiring appointees to local pension boards to have relevant experience and the capacity to represent either scheme members or employers. In response to significant concerns that requiring relevant experience would represent a barrier to individuals putting themselves forward as local pension board members, the final regulations no longer include that requirement.
- A change to ensure that where a combined committee has been approved by the Secretary of State, that committee includes an equal number of scheme employer and scheme representatives that would otherwise have been required within a local pension board.
- In response to representations from the scheme's shadow advisory board, a change to provide for the Secretary of State to appoint all members of the new scheme advisory board, including the Chairman. Previously, the draft regulations had provided for the Secretary of State to appoint the Chairman and for the Chairman to then appoint members subject to the Secretary of State's approval.
- At both the June and October consultation, the employer cost cap figure had yet to be published and could not be included. Following a short consultation with all scheme interested parties on the valuation report required under Treasury directions, the final regulations include a figure of 14.6% of pensionable paybill.

8.7 Following an assessment of both consultation responses and representations made by key interested parties, including the shadow scheme advisory board, there appears to be a broad consensus of the final proposals, including both employees' representatives and employers.

9. Guidance

9.1 Where mentioned in the regulations, guidance for the new Part 3 of the 2013 Regulations will be issued by the Department. In addition, the shadow scheme advisory board will also publish guidance for participating employers and scheme members.

10. Impact

10.1 The legislation does not impact on business, charities or voluntary bodies.

10.2 The legislation does not impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 These regulations will be monitored by the Department and reviewed on a regular basis. To assist in this process, the Department will rely on the function conferred by these regulations on the scheme advisory board to advise the Secretary of State on scheme changes.

13. Contact

Robert Holloway at the Department for Communities and Local Government Tel: 0303 444 2182 or email: Robert.holloway@communities.gsi.gov.uk can answer any queries regarding the instrument.