

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

2015 No. 755

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 amendments to the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI2014/525) which came into force on 1 April 2014. The amendments provide clarifications and improvements to the Scheme regulations that have been requested by scheme administrators.

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

3.1 None

4. Legislative Context

4.1 The Local Government Pension Scheme Regulations 2013 (“the 2013 regulations) constitute a pension scheme under section 1 of the Public Service Pensions Act 2013 (“the 2013 Act”) from 1st April 2014. They were made in exercise of powers in the Superannuation Act 1972 (“the 1972 Act”) but in anticipation of the coming into force of the 2013 Act (see section 28 of that Act which provides for regulations made under the 1972 Act to have effect as scheme regulations under the 2013 Act).

4.2 These Regulations make amendments requested by Scheme practitioners who have now had experience of the day to day use of the Local Government Pension Scheme Regulations and have identified areas where additions or clarification will aid effective administration of the scheme. In addition some regulations update references to other publications. Section 3(3)(b) of the 2013 Act enables retrospective provision to be made, subject to safeguards contained in section 23 of that Act.

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 Local Government Pension Scheme Regulations 2013 introduced a new scheme where pension benefits accrued 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.
- 7.2** Since 1 April 2014 scheme administrators, employers and members have had experience of applying the scheme regulations in day to day operations. This has highlighted instances where the regulations require clarification and modification. In some instances, consultation responses included requests for amendments that had not been included in the consultation document. These were mainly minor modifications and improvements but, as a result, regulation 23 makes provision with regard to certain payments from the Ministry of Defence where a member is on reserve forces leave. Other issues raised by practitioners will require more work and discussion with interested parties
- 7.3** Regulation 1 specifies that the Regulations come into force on 11 April 2015 and take effect from 1 April 2014. The amendments made by regulations 3, 11 and 15(b) are not retrospective as this could require a member's date of entry to the scheme being changed to their disadvantage in the case of regulation 3, in the case of regulation 11 aggregation of accounts and assets transfers will have taken place since April 2014, and in the case of regulation 15(b) could lead to a lower death grant being payable.
- 7.4** Regulation 3 specifies the day that a person with a contract of 3 months or less joins the scheme.
- 7.5** Regulation 4 specifies that a member is treated as having 2 years qualifying service if they die before completing 2 years service. This enables survivor benefits to be paid.
- 7.6** Regulation 5 completes the list of circumstances when a member's election to opt out of the scheme is cancelled.
- 7.7** Regulation 6 specifies the information to be provided to a member on reserve forces leave, to enable them to continue to make additional payments to increase their pension.
- 7.8** Regulation 7 gives the employer the discretion to increase the period in which a member can make contributions to make up for absences. This eases the burden of administration. In addition it clarifies the wording of the regulation.

- 7.9** Regulation 8 includes the reference to the Occupational and Personal Pensions Schemes (Disclosure of Information) Regulations 2013 that are now the relevant regulations, and also completes the list of types of benefits, the drawing of which requires the member to notify the administrators that they are taking the realisable value of their Additional Voluntary Contribution arrangements.
- 7.10.** Regulation 9 corrects a cross reference.
- 7.11** Regulation 10 ensures that members are not disadvantaged by the use of an assumed pensionable pay calculation that takes into account periods when pay was reduced due to absences.
- 7.12** Regulation 11 completes the list of reasons for closing a member's account, and specifies that a member who opts out of the scheme and then elects to rejoin the scheme cannot aggregate the deferred account with the new active account.
- 7.13** Regulation 12 makes it clear that a member can make a notice asking for early release of their benefits before the member fulfils the qualifying criteria.
- 7.14** Regulation 13 amends regulation 36 of the 2013 Regulations to make it clear that contractual hours are taken into account in regulation 36(1)(c). It is further amended in response to a recent ruling by the Deputy Pensions Ombudsman where the use of two independent registered medical practitioners from the same occupational health provider, may have compromised the independent assessment for an ill health retirement. The amendment clarifies that an occupational health practitioner is not precluded from assessing a referral under the 2013 Regulations where a practitioner of the same occupational health provider organisation has already been involved.
- 7.15** Regulations 13, 14, 15, 16 and 17 ensure that survivor benefits made in regard to a member are not reduced because of a reduction in hours worked, where the reduction in hours was caused by the condition that contributed to the death or ill health of the member. Regulation 15 also limits the amount payable where a member dies while an active member but also has deferred, deferred pensioner membership or a pension in payment. The death grant would be the higher of the calculation result when the death grant for an active member under the regulations is compared with the death grants payable under the regulations relating to all deferred and pensioner member entitlement.
- 7.16** Regulations 18 and 19 provide that a survivor benefit calculation should exclude any pension commuted into a lump sum by the deceased member, and also improves cross references.
- 7.17** Regulations 20, 21, and 23 to 25 update references to other documents and make drafting improvements. In addition, provision is made in regulation 23 for the occasions when the Ministry of Defence makes payments to employers in regard to members on reserve forces leave.

- 7.18** Regulation 22 permits a Scheme administering authority to suspend the requirement for an exit payment in specific circumstances where the relevant employer is likely to employ an active member within a period of no more than 3 years.
- 7.19** Regulation 26 clarifies that the amount taken from a member's account following forfeiture is calculated by an actuary and paid to the relevant scheme employer.
- 7.20** Regulation 27 completes the list of categories of members for whom a change in administering authorities triggers a transfer value payment.
- 7.21** Regulation 28 amends Schedule 1 by adding the definition of a local authority, removing the definition of "Housing Ombudsman Service" as it is no longer required, ties the "revaluation adjustment" to the changes in prices rather than earnings, and another drafting improvement.
- 7.22** Regulations 29 to 32 provide clarification about the inclusion of combined authorities in the scheme and the appropriate administering authorities for combined, metropolitan and unitary authorities, and employers in the scheme where it is necessary to make specific provision.
- 7.23** Regulation 34 to 36 amend the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.
- 7.24** Regulation 34 extends the additional membership to be counted for a survivor benefits calculation.
- 7.25** Regulation 35 provides that, in specific circumstances, an administering authority can call, or continue to call, for payments to meet outstanding liabilities in respect of benefits accrued in relation to any person entitled to benefits under the 2014 Scheme or any of the Earlier Schemes. The specific circumstances are where there are current or former participating employers who have active contributing members in one or more funds but none in one or more other funds, there remain unmet liabilities in the non active fund but the employer is not exiting the Scheme completely. No previous exit payment should have been made in respect of these liabilities and payments can be made over such period as the relevant administering authority considers appropriate. The provision is needed to ensure that unmet liabilities in respect of certain Scheme employers can be adequately addressed.
- 7.26** Regulation 36 amends certain cross references and waives, on any ground, actuarial reductions in cases where the member retires before satisfying the 'rule of 85' protection.

8. Consultation process and outcome

- 8.1** These Regulations were subject to statutory consultation of 8 weeks duration that concluded on 30 January 2015. Prior to this discussions with practitioners highlighted the need for some amendments that clarified parts of the scheme

regulations. 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; the five main treasurer bodies 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, the Chartered Institute of Public Finance and Accountancy and the Association of Local Authority Medical Advisers, and other interested parties. Copies of the consultation paper, the government's response to the consultation, 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 Discussions have also been held with Her Majesty's Treasury, as Treasury have to give consent to any new regulations.

9. Guidance

9.1 These Regulations do not required specific guidance. Where specified in the Regulations, guidance for the Scheme has been issued by the Department. In addition, the Local Government Association, Scheme administering authorities, and the current Local Government Pension Scheme Shadow Advisory Board publish guidance from time to time as will the Scheme Advisory Board being constituted from 1 April 2015.

10. Impact

10.1 These regulations improve the administration of the Local Government Pension Scheme and will have no impact on businesses

11. Regulating small business

11.1 Small Business that are participating employers in the Scheme may benefit from the flexibilities the are being introduced with regard to exit payments in regulations 22 and 35.

12. Monitoring & review

12.1 The issues covered by this instrument will continue to be monitored and reviewed by the process in place for the 2013 regulations (see section 12.1 of the explanatory memorandum which accompanied the 2013 Regulations). In addition the Local Government Scheme Advisory Board will monitor and review the scheme from a national perspective, and Local Pensions Boards will monitor and review local administration of the scheme.

13. Contact

13.1 Robert Ellis at the Department for Communities and Local Government Tel: 030 3444 4001 or email: robert.ellis@communities.gsi.gov.uk can answer any queries regarding the instrument.

