

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (MISCELLANEOUS
AMENDMENT) REGULATIONS 2018

2018 No. 1366

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government (MHCLG) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 To amend the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”) and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (“the 2014 Regulations”) to respond to recent legal judgments and maintain the existing pensions policy to allow early access to deferred pensions benefits, subject to appropriate actuarial reduction to reflect the longer period over which the benefits will be paid.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Section 12(1) of the Superannuation Act 1972 confers a power to make regulations having effect from a date earlier than the date of their making.
- 3.2 Section 3(3) of the Public Service Pensions Act 2013 confers a power to make regulations having effect from a date earlier than the date of their making. Section 3 refers the reader to section 23.
- 3.3 The Department does not consider that section 23 of the Public Service Pensions Act 2013 applies in this case. That section provides the procedure to be followed when retrospective provisions are included within scheme regulations that will have a significant adverse effect in relation to the pension payable to or in respect of members of the scheme. The Secretary of State, as the responsible authority, does not consider that the retrospective amendments have any significant adverse effects for the purposes of section 23.
- 3.4 By virtue of paragraph 2 of Regulation 1, Regulation 4 has effect from 17th April 2018 and Regulation 5 has effect from 5th December 2005 in respect of a person who, at the time of a member's death, was in a civil partnership with the member and 13th March 2014 in respect of a person who, at the time of a member's death, was married to the member.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.5 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement on compliance with the European Convention is required.

6. Legislative Context

- 6.1 The Public Service Pensions Act 2013 (“the 2013 Act”) enables the Secretary of State to make regulations creating schemes of pensions for, amongst others, local government workers.
6.2 In England and Wales, such a Scheme is created by the 2013 Regulations, made exercising powers in the Superannuation Act 1972. Section 28 of the 2013 Act provides for them to take effect as Scheme regulations under that Act.
6.3 The Scheme created by the 2013 Regulations is a funded scheme administered by 89 administering authorities specified in Part 1 of Schedule 3 to those Regulations and include London boroughs.

7. Policy background

What is being done and why?

- 7.1 Since the Human Rights Act 1998 came into force, Local Government Pension Scheme (LGPS) administering authorities have needed to interpret LGPS regulations consistently with the human rights of Scheme members. Recently there have been a number of legal challenges on grounds that the plain meaning of the regulations can be inconsistent with the human rights of those affected by them. A number of those challenges have focussed on the issue of survivor benefits. For many decades all LGPS schemes have provided a variety of insurance-style benefits that are payable to surviving partners and children on the death of a scheme member. The nature of these benefits and to whom they can be paid has changed over time in line with societal developments and evolving family structures.
7.2 The changes proposed are to accommodate judgments already made, and to give some flexibility to respond to future developments.
7.3 Paragraphs 7.4 to 7.6 explain how the provisions in the Regulations add clarity and how other issues improve the overall administration as part of good stewardship of the regulatory framework of the Scheme.

Survivor benefits

- 7.4 Following the judgement in the case of Walker v Innospec¹, the Government has decided that all public service pension schemes should implement changes to provide that survivors of registered civil partnerships or same-sex marriage will be provided with benefits that replicate those provided to widows. The changes made in Regulation 5 will implement the necessary changes for LGPS as though they had applied from the respective dates on which civil partnerships and same-sex marriages were implemented.

Power to issue statutory guidance

- 7.5 Following the successful legal challenges in Walker v Innospec, as well as Brewster² and Elmes³, Regulation 2 creates a power to issue statutory guidance on the operation of the Scheme's regulations. The aim is to deliver greater standardisation of approach, in particular on how administering authorities meet the duties under the Human Rights Act to interpret the regulations in a way that is consistent with the human rights of affected parties.

Early access to benefits for deferred members of the Local Government Pension Scheme Regulations 1995

- 7.6 Regulation 4 makes a number of technical amendments to the Local Government Pension Scheme Regulations 1995, through which the Government aims to achieve the policy aim stated in the Government response to the 2018 amendment regulations⁴, which is to allow all deferred members over the age of 55 to draw down their pensions early, with an actuarial reduction where appropriate to ensure that there are no additional costs to the fund from the payment of benefits over a longer period.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 An up to date version of the 2013 Regulations as amended will be available on both legislation.gov.uk and the Local Government Association's website. The amendments made by these Regulations are relatively minor and it is not considered appropriate to consolidate the 2013 Regulations at this time.

10. Consultation outcome

- 10.1 There were 19 responses to the overall consultation from various stakeholders. All 19 responses were generally positive, with only one body strongly opposing the proposed power to issue statutory guidance. Most of the points made on drafting and implementation of proposals have been reflected in the final version of the regulations. The Government's response to the consultation may be accessed at:

¹ <https://www.supremecourt.uk/cases/uksc-2016-0090.html>

² <https://www.supremecourt.uk/cases/uksc-2014-0180.html>

³ R (Elmes) v Essex County Council 2018 EWHC 2055 (Admin)

⁴ <https://www.gov.uk/government/consultations/local-government-pension-scheme-regulations>

<https://www.gov.uk/government/consultations/local-government-pension-scheme-technical-amendments-to-benefits>

- 10.2 After careful consideration of the responses, the Department is implementing the amendments to regulations as proposed in the consultation as set out in paragraphs 6.1 and 6.6.

11. Guidance

- 11.1 In line with the view expressed in most responses, the Government will consult stakeholders on any new statutory guidance before it is issued. It is also our intention that nothing in statutory guidance should change or conflict with the meaning of the regulations, except where the courts require a new interpretation to ensure consistency with the Human Rights Act. The purpose of guidance will be to clarify the content of regulations and maintain an appropriate level of consistency in interpretations of its rules between funds.
- 11.2 The Local Government Pension Scheme Advisory Board publish guidance on the Local Government Pension Scheme from time to time. These documents will be updated as a result of the changes made by the instrument. Where possible, the Government will consult affected parties before issuing guidance to administering authorities. In cases of urgency, where consultation is not possible, the Government will engage with the Local Government Pension Scheme Advisory Board and duly take into consideration any representations made by the Board.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is minimal.
- 12.2 The impact on the public sector is minimal. There will be a saving in administrative expenses as a direct result of clarification and changes in approach which smooth the working of the Scheme.
- 12.3 An Impact Assessment has not been prepared for this instrument because the SI relates to maintenance of existing regulatory standards.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is by process of review on a regular basis by the Department as an integral part of good stewardship of the regulatory framework of the Scheme.

- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Rishi Sunak MP has made the following statement:

“This consultation and the earlier DWP Review of Survivor Benefits have provided important information on the costs and impacts of any changes to the existing system of survivor benefits. This is a complex area and the Government is actively reviewing the provision of survivor benefits in public sector pension schemes. The government will make a full response in due course.”

15. Contact

- 15.1 Jeremy Hughes at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 3131 or email: jeremy.hughes@communities.gov.uk can answer queries regarding the instrument.
- 15.2 Suzanne Clarke, Deputy Director for Local Government Finance Reform and Pensions at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Rishi Sunak at the Minister of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.