

**EXPLANATORY MEMORANDUM TO
THE PUBLIC SERVICE PENSIONS (RECORD KEEPING AND MISCELLANEOUS
AMENDMENTS) REGULATIONS 2014**

2014 No. 3138

1. This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This statutory instrument:

- sets out the records that scheme managers of public service pension schemes covered by the Public Service Pensions Act 2013 (“the 2013 Act”) [<http://www.legislation.gov.uk/ukpga/2013/25/contents>] are required to keep from 1st April 2015, and
- amends Regulation 16A of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996 No. 1715) (“the Scheme Administration Regulations”) [<http://lawvolumes.dwp.gov.uk/docs/a5-8721.pdf>] to remove an exemption to the requirement to report the late payment of contributions for those occupational public service pension schemes covered by the 2013 Act.

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

None.

4. Legislative Context

- 4.1 The 2013 Act provides for new pension schemes for public servants to be established by regulations, within the legal and regulatory structures being put into place by that Act. Regulations establishing these new schemes, which are planned to start to come into effect on 1st April 2015 for most public servants, are the responsibility of the relevant Government departments.
- 4.2 This statutory instrument is being made by the Secretary of State for DWP and covers one aspect of the new regulatory structure, the records that the scheme managers of public service schemes covered by the 2013 Act must keep (under section 16 of that Act). It also makes an amendment to the Scheme Administration Regulations.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As this instrument is subject to the negative resolution procedures and does not amend primary legislation, no statement is required.

7. Policy Background

• *What is being done and Why*

- 7.1 The 2013 Act sets out a common framework for the creation of new public service pension arrangements, which are due to start to come into effect on 1st April 2015 for most public service employees (civil servants, teachers, health service employees etc.).
- 7.2 The intention is to introduce a fairer basis for calculating public service pensions; manage longevity-related scheme costs; ensure long term sustainability; and improve the governance, regulation and administration of schemes.
- 7.3 The 2013 Act provides HM Treasury with a number of powers in respect of these new pension arrangements, and gives (at section 16) the Secretary of State the power to specify the records that scheme managers responsible for running these new, and connected (existing), public service pension schemes must keep. This meets the policy intention of improving the governance and administration of these schemes, in order to ensure that they are effectively administered with the correct benefits being speedily paid when due.
- 7.4 Regulation 4 sets out the records these schemes will need to keep on individual members and beneficiaries, as well as information relating to the rights that each member or beneficiary has to different types of pension benefits provided by these schemes.
- 7.5 Regulation 5 sets out the records that must be kept in order to account for the finances of these schemes, and Regulation 6 sets out the records that must be kept in respect of meetings of, and decisions made by, each pension board (see section 5 of the 2013 Act) and any committees or sub-committees of that board.
- 7.6 The 2013 Act also extends the powers of the Pensions Regulator (“the Regulator”), in respect of both new and existing public service pension schemes, in order to provide a clear regulatory structure for the governance and administration (but not funding) of these schemes, and for the independent oversight of their operation (see section 17 and Schedule 4 to the 2013 Act, which amends the Pensions Act 2004 (PA04)).
- 7.7 Under section 90A of the PA04 [<http://www.legislation.gov.uk/ukpga/2004/35/contents>] the Regulator is required to issue a Code, or Codes, of Practice containing practical guidance and the standards of conduct and practice expected of those governing and administering public service pension schemes in respect of a number of matters, including:
- o the discharge of duties imposed under section 16 (records) of the 2013 Act and other duties relating to record keeping; and
 - o the discharge of the duty imposed by section 49(9)(b) of the Pensions Act 1995 (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions

deducted from employee's earnings timeously).
[<http://lawvolumes.dwp.gov.uk/docs/a5-1801.pdf>]

7.8 Regulation 7 amends Regulation 16A of the Scheme Administration Regulations to remove an exemption to the duty to report the late payment of employee contributions by the employer to the member and the Regulator, where this is likely to be of material significance to the Regulator, so that this duty applies to scheme managers of these occupational public service schemes.

- **Consolidation**

7.9 The requirement for scheme managers of public service pension schemes covered by the 2013 Act to retain specific records is new. Consequently, there are no existing 'record keeping' regulations governing these schemes to which these requirements could be consolidated.

7.10 Regulation 7 makes an amendment to the Scheme Administration Regulations. Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available [here](#).

8. Consultation outcome

8.1 A consultation on a draft of these regulations was held from 10th December 2013 to 17th February 2014, aimed at those involved in designing and running public service pension schemes, pension industry professionals, advisors and members, member representative organisations, and anyone with an interest in public service pension regulation.

8.2 18 responses were received to the consultation providing a range of views on the draft regulations, including suggested additional records to be added to the draft regulations and records that should be removed. The Government considered these comments, accepting a number of the points made, before it issued its consultation response on 3rd July 2014, which is available on the GOV.uk website at: <https://www.gov.uk/government/consultations/public-service-pensions-regulations-2014-record-keeping-and-miscellaneous-amendments>

8.3 The Regulator undertook a consultation in Great Britain on a draft Code of Practice for public service pension schemes at the same time as the draft regulations were consulted on, followed by a separate consultation in Northern Ireland which ended on 17th July 2014. The Regulator has advised that it plans to seek approval from the Secretary of State in the autumn for the final draft of this Code to be laid in Parliament, as required by section 91 of the PA04, and will publish a full response to these consultations.

9. Guidance

The Regulator will provide guidance in a Code of Practice for public service pension schemes on a range of matters, as required by section 90A of the PA04, which include the discharge of duties imposed under section 16 of the 2013 Act (records) and other duties relating to record keeping; and the duty to report material failures by employers to pay contributions deducted from employees' earnings timeously.

10. Impact

- 10.1 HM Treasury produced an assessment of the impact of the 2013 Act (when it was a Bill), and a copy is available in the libraries of both Houses of Parliament and may be obtained from the Workforce, Pay and Pensions Team at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or from GOV.UK website: <https://www.gov.uk/government/publications/public-service-pensions-good-pensions-that-last--2>
- 10.2 The assessment considered two approaches to public service pensions – no further changes to those already announced (option 1) and additional changes to create a legislative framework to allow implementation of key recommendations from the final report of the Independent Public Service Pensions Commission (led by Lord Hutton) (option 2 – which the Government decided to take forward). This report can be accessed via the website noted in paragraph 10.1.
- 10.3 The assessment advised that the Government did not envisage that the cost of administering public service pension schemes will increase as a result of the changes to the governance and administration of these schemes as provided for in the Bill, which includes the record keeping provision.
- 10.4 The assessment advised that schemes should already be compliant with legislation and achieving good standards of administration, noting that the changes are concerned with providing members and other taxpayers with assurance that those standards are being met across all schemes.

11. Regulating small business

This instrument has no direct impact on small business.

12. Monitoring & review

- 12.1 The Government has not specifically committed to reviewing Public Service Pension reform. In fact, in the original policy document ('Good Pensions That Last'), it said that there would be "no more reform for at least 25 years".
- 12.2 However, the Government has committed to reviewing and monitoring certain elements of the reforms, including; the link between normal pension age and state pension age (SPA) (at each increase in the SPA), the costs of benefits being accrued in the schemes (through regular valuations and the employer cost cap mechanism), the fair deal policy and discount rate.

12.3 These regulations will be subject to on-going review through discussions with those responsible for running public service pension schemes, HM Treasury who owns the wider policy, and the Regulator.

13. Contact

Any queries regarding this instrument should be directed to Paul Bovey at the Department for Work and Pensions, Tel: 020 7449 7284 or e-mail: paul.bovey@dwp.gsi.gov.uk