

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (OFFENDER
MANAGEMENT) (AMENDMENT) REGULATIONS 2014

2014 No. 1146

- 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 To facilitate the continuation of membership of the local government pension scheme by probation staff notwithstanding changes to the arrangements for the provision of probation services which involve changes of employer; to appoint a single administering authority as the appropriate administering authority for all staff involved in the provision of probation services; and to prevent crystallisation of pension liabilities consequent to these changes.
- 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 section 7 of the 1972 Act to have effect as scheme regulations under the 2013 Act).
 - 4.2 Probation trusts established under section 5 of the Offender Management Act 2007 (“the 2007 Act”) are specified as Scheme employers by paragraph 9 of Part 1 of Schedule 1 to the 2013 Regulations.
 - 4.3 Regulation 4 of the 2013 Regulations restricts eligibility for membership of the Scheme constituted by those regulations (“the local government pension scheme”) and provides that a person entitled to membership of another public service pension scheme in an employment is not entitled to membership of the local government pension scheme in relation to that employment.
 - 4.4 Regulation 64 of the 2013 Regulations provides for a body which ceases to be a Scheme employer in the local government pension scheme to

pay an exit payment to meet the pension liabilities relating to that employer's current and former employees.

4.5 Regulation 103 of the 2013 regulations makes provision for when one administering authority takes over as appropriate administering authority in respect of members of the local government pension scheme as regards the transfer of assets and liabilities between the two.

4.6 Section 3 of the 2007 Act confers power on the Secretary of State to make arrangements for the provision of probation services.

5. Territorial Extent and Application

5.1 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 In "*Transforming Rehabilitation: A Strategy for Reform*", the Secretary of State for Justice set out plans to introduce a new system for the management and rehabilitation of offenders in the community, across England and Wales. The majority of probation services are currently delivered by 35 Probation Trusts under contract to the National Offender Management Service on behalf of the Secretary of State for Justice. Once the Secretary of State for Justice's reforms are fully implemented, the Probation Trusts will be closed and replaced with 21 Community Rehabilitation Companies, which will eventually be owned by private and voluntary sector providers, and the newly formed National Probation Service, which will be in the public sector and part of the National Offender Management Service.

7.2 The aim is to introduce new providers to the delivery of probation services who will be incentivised through payment by results to reduce reoffending. The National Probation Service, part of the National Offender Management Service, will retain responsibility for offenders who pose a high risk of serious harm to the public and certain other specified cases. The National Probation Service will determine whether an offender who has been sentenced is to be allocated to the National Probation Service or Community Rehabilitation Company to manage, and will inform the Community Rehabilitation Company of the offenders who have been allocated to it..

7.3 The Community Rehabilitation Companies will initially be wholly-owned by the Secretary of State for Justice for a period of approximately six months before being transferred to the private and voluntary sector providers by way of share sales. Following the sale, the Secretary of State for Justice

will retain certain rights through a special share in the Community Rehabilitation Company.

7.4 As part of the reforms, staff will be transferred on or from 1 June 2014, from the Probation Trusts to either one of the Community Rehabilitation Companies or the National Probation Service, under provisions in section 3 of the 2007 Act.

7.5 Ordinarily, National Probation Service staff would become eligible for membership of the Principal Civil Service Pension Scheme. However, staff in the Probation Trusts are currently eligible to join the Local Government Pension Scheme and the Ministry of Justice intends to facilitate continuity in pension provision for staff transferring from Probation Trusts. Amendments to the Local Government Pension scheme are required to achieve this.

7.6 Regulation 3 inserts new Regulation 3A (1) to (3) into the 2013 Regulations to permit probation staff employed in the National Probation Service to continue to be entitled to membership of the local government pension scheme, despite becoming civil servants and potentially eligible for membership of the civil service pension scheme. The Secretary of State for Justice is deemed to be the Scheme employer for the probation staff employed by the National Probation Service. The deeming provision is necessary as these staff are Crown employees and are not generally treated as employed by a particular department. The Secretary of State is named as a Scheme employer under Part 2 of Schedule 2 to the 2013 Regulations (by Regulation 8) and will designate which National Probation Service employees will be eligible for Scheme membership in accordance with Regulation 3(1)(b) of the 2013 Regulations.

7.7 Regulation 3 also inserts Regulation 3A (4) to (5) into the 2013 Regulations which provides for the Secretary of State to be deemed as the Scheme employer for the purposes of the 2013 Regulations in relation to the following categories of member:

- (a) all former probation staff who were previously employed by the Probation Trusts, local probation boards or probation committees and who are deferred members, deferred pensioner members, pensioner members or persons entitled to a refund of contributions under the local government pension scheme when responsibility for probation provision transfers from the Probation Trusts to the Community Rehabilitation Companies and National Probation Service. This is to reflect the intention that all past service liabilities attributable to former probation staff are to transfer to the single administering authority for probation staff, the Greater Manchester Pension Fund and become the responsibility of the National Probation Service and Community Rehabilitation Companies.
- (b) all deferred members, deferred pensioner members, or pensioner members of the Scheme who were employed by a Scheme employer engaged in the provision of probation services (i.e. the community

rehabilitation companies and any subcontractor), and who were themselves engaged in the provision of probation services, in circumstances where the Scheme employer has ceased to participate in the local government pension scheme, provided that they were always scheme members and employed by a scheme employer that was at some point in Government ownership (see Reg 3A(5)(b)). In other words, these provisions will not cover any employees of community rehabilitation companies or sub-contractors newly engaged after the community rehabilitation companies enter private/voluntary sector ownership.

7.8 Regulation 4 confirms that Regulation 4(1)(a) of the 2013 Regulations does not apply to probation staff employed by the National Probation Service who will be Crown employees and as such potentially entitled to civil service pension scheme membership. The employment terms for these employees will make it clear that they are entitled to local government pension scheme membership and not civil service pension scheme membership.

7.9 Regulation 5 amends Regulation 64 of the 2013 Regulations to achieve the following:

- a) to disapply Regulation 64 (2) of the 2013 Regulations when the Probation Trusts become exiting employers and all past service liabilities in relation to their current and former employees transfer to either the National Probation Service or a community rehabilitation company for future funding; and
- b) to disapply Regulation 64 (2) of the 2013 Regulations when there has been an assumption of past service liabilities by a new employer or the National Probation Service on a service provision change - but only to the extent provided for under the relevant admission agreement. This envisages admission agreements providing for what happens on a service provision change in relation to benefits accrued to the point of change i.e. (i) what liabilities will transfer to the new provider (or the National Probation Service) for future funding without an exit payment becoming due and (ii) what liabilities need to be the subject of an exit payment (e.g. enhanced early retirement rights and other discretionary benefits, liabilities attributable to higher than assumed salary increases) before transfer to the new service provider or the National Probation Service.

7.10 Regulation 6 disapplies Regulation 103 of the 2013 Regulations (changes of administering authority) in relation to the changes that are taking place in connection with the Ministry of Justice's Transforming Rehabilitation Programme.

7.11 Regulation 7 inserts a new regulation 104 into the 2013 Regulations setting out the arrangements for the transfer of assets from the other 34 administering authorities for the current Probation Trusts to the Greater Manchester Pension Fund. Specifically:

- (a) Regulation 104 (2) of the 2013 Regulations provides for the relevant members' former administering authorities and their former employers (the Probation Trusts, Boards or Committees) to provide the information necessary to allow the Greater Manchester Pension Fund to perform its functions under Regulation 104 of the 2013 Regulations and also to administer and pay the benefits to and in respect of the relevant members in the future. This must be done within 30 days of the date on which the staff transfer (referred to as the transfer date).
- (b) the Greater Manchester Pension Fund becomes responsible for paying benefits to the transferring members (and those entitled through them) with effect from the transfer date (Reg 104 (3) of the 2013 Regulations) (although actual payrolls may be run by the former administering authorities for a period after the transfer date, as agents for the Greater Manchester Pension Fund, until the Greater Manchester Pension Fund can transition the payrolls, ensuring that all benefits will continue to be paid on time);
- (c) Regulation 104(3) of the 2013 Regulations requires the other 34 administering authorities to make a transfer payment to the Greater Manchester Pension Fund to the value of the assets allocated to the probation service liabilities as at the date of payment of the transfer payment (using the value of the assets allocated to probation service liabilities at the last actuarial valuations of the relevant funds at 31 March 2013 and adjusted in accordance with actuarial guidance issued by the Secretary of State, taking into account investment returns, contributions received and benefits paid out), referred to as the transfer share;
- (d) Regulation 104 (4) of the 2013 Regulations requires that, if agreement cannot be reached on the transfer share or any other calculation contemplated by actuarial guidance issued by the Secretary of State (e.g. the refreshed calculation), the matter is referred to a third actuary appointed by agreement or by the President of the Institute and Faculty of Actuaries, whose determination shall be final;
- (e) Regulation 104 (5) of the 2013 Regulations requires the nature of the payment i.e. cash or otherwise, and whether as a lump sum or instalments to be made in such manner as the Greater Manchester Pension Fund reasonably requires. Regulation 104 (6) of the 2013 Regulations requires that the payment be made on the payment date.
- (f) Regulation 104(15) of the 2013 Regulations defines that the 'agreement date' by which the actuaries agree the transfer share (as referred to in Reg 104(4) of the 2013 Regulations), falls 120 days after the date that the administering authorities are informed of the transfer of staff, or 120 days after the necessary information has been passed from the transferring employees former or new employer to the administering authorities, whichever is the later. The actuaries have 120 days from the later of these two dates to agree the transfer share or

the matter will be referred to a third actuary under Regulation 104(4)(a) of the 2013 Regulations.

- (g) Regulation 104(8) of the 2013 Regulations provides the new administering authority with the power to require interest on the transfer payment if that payment is not paid by the dates as defined by Regulation 104(6) and 104(7) of the 2013 Regulations. Regulation 104(9) of the 2013 Regulations sets the interest rate as 3%, per annum calculated on a day to day basis, compounded with three monthly rests;
- (h) Regulation 104(10) of the 2013 Regulations confirms that after the transfer payment has been made in accordance with the actuarial guidance issued by the Secretary of State no further payment will be due from the former administering authority, nor will the former authority have any liability to make any benefit payments, unless both administering authorities have agreed under Regulation 104(12) of the 2013 Regulations to ensure the continuous payment of benefits to transferred members;
- (i) Regulation 104(11) of the 2013 Regulations provides for the reimbursement by Greater Manchester Pension Fund of the reasonable costs incurred by the former authority in providing assistance and information in relation to the payment of benefits to transferring members;
- (j) Reg 104(12) of the 2013 Regulations provides for the administering authorities to agree that the former authority will continue to pay benefits to transferring members past the date when the transfer payment has been made and the former authority no longer has responsibility for making such payments. This is to provide a mechanism to ensure continuity of payments of benefits to transferred members;
- (k) Regulation 104(13) of the 2013 Regulations requires that the administering authorities co-operate to permit members to continue as far as possible to continue with their existing Additional Voluntary Contributions and Shared Cost Additional Voluntary Contributions arrangements, and to transfer the accumulated Additional Voluntary Contributions and Shared Cost Additional Voluntary Contributions to Greater Manchester Pension Fund at the member's request.
- (l) Where the member continues to use their existing Additional Voluntary Contributions and Shared Cost Additional Voluntary Contributions arrangements, Regulation 104(14) makes clear that references to the member's "appropriate administering authority" refer to the members administering authority when the arrangements were entered into.
- (m) Regulation 104(15) of the 2013 Regulations defines the 'transfer share' as the value of assets calculated according to guidance issue by the Secretary of State (following liaison with the Government Actuary's

Department) payable by the former administering authority to the Greater Manchester Pension Fund.

7.9 Regulation 8 inserts the Secretary of State as a Scheme employer in Part 2 of Schedule 2 to the 2013 Regulations in relation to those people falling within Regulation 3A of the 2013 Regulations i.e. National Probation Service staff engaged in probation services and the deferred members, deferred pensioner members, pensioner members (and those entitled through them) and those entitled to a refund of contributions, referred to in Regulation 3A of the 2013 Regulations.

7.10 Regulation 9 makes clear that a guarantee from the Secretary of State for Justice is sufficient for the purposes of a guarantee under paragraph 8 of Part 3 of Schedule 2 to the 2013 Regulations in respect of the obligations of an admission body providing probation services in the event of its insolvency, winding up or liquidation.

7.11 Regulation 10 identifies Tameside Borough Council, the administering authority for the Greater Manchester Pension Fund, as the appropriate administering authority for the members referred to in regulation 3A(1) and 3A(5) of the 2013 Regulations.

7.12 Regulation 11(1) confirms that the Secretary of State may issue further actuarial advice to administering authorities, even though the actuarial advice has been given with these amending regulations. Further, regulation 11 provides for scheme members who have accrued benefits under previous Scheme regulations, and therefore before the transfers of staff to the new arrangements, to be able to receive their benefits from Greater Manchester Pension Fund (Regulation 11(2) -11(4), and where a body has obligations under the 2013 Regulations then these obligations apply to previous Scheme regulations (Regulation 11(5)).

7.13 The actuarial advice provided by the Secretary of State provided with the draft Regulations sets out the basis for determining the transfer share to be transferred from each former administering authority to the Greater Manchester Pension Fund.

- Consolidation

7.14 These are amongst the first amendments to the 2013 Regulations and no consolidation is anticipated at this time.

8. Consultation outcome

8.1 The summary of the responses to the consultation is available on the website:

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

8.2 Before making these Regulations and in accordance with section 7(5) of the Superannuation Act 1972, the Secretary of State consulted business partners.

8.3 The Consultation ran for 8 weeks ending on 10 February 2014

8.4 14 bodies responded to the statutory consultation. No consultee objected to the regulations. There were requests for clarification of wording, others concerned more substantive issues. In response to requests for drafting corrections the regulations have been amended as follows;

- a) Regulation 3 has been amended so that new Regulation 3A(5)(b) ensures that benefits derived from Additional Regular Contributions, Additional Pension Contributions, and transfers in to the scheme from schemes other than the Local Government Pension Scheme in England and Wales are included, as these benefits are no associated with a period of service that was referred to in the consultation draft;
- b) That “or” be deleted from the end of new regulation 3A(5)(b)(iii), and at the end of new Regulations 3A(5)(c) the full stop be deleted and “;or” has been added;
- c) That the defined of “a local government pension scheme” should read “regulation 1(6)” rather “than Regulations 1(5);
- d) References to the “Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2013” have been amended to read “Regulations 2014”;
- e) That regulation 4(1) should read “subject to paragraphs (2) to (4)” rather than “subject to paragraph (2)”;
- f) New regulation 64(9)(a) has been amended to refer to “probation boards or committees” to maintain consistency with the wording in new regulation 3A(5)(a).
- g) New regulation 103 to read “paragraphs (7) and (8)” rather than “paragraph (8)”

8.5 New regulation 3A(5)(b) does not make specific provision for scheme members who voluntarily leave employment with a contractor providing rehabilitation services and then enter into employment with an other contractor providing rehabilitation services. Contractors are not required to offer access to the Local Government Pension Scheme to new employees, but may do so.

8.6 It is not the intention that all employee’s under new regulation 3A(1) are given access to the Local Government Pension Scheme. Some probation employees are civil servants whose membership of the Principle Civil Service Pension Scheme will continue. This requires some designating process.

8.7 It is the intention that assets and liabilities of deferred and pensioner members are transferred. To give clarity on this issue regulation 7 amending regulation 140(1) of the 2013 Regulations has been amended to explicitly state that it is not material for the member to be the subject of a transfer of employment.

8.8 There has been no amendment to state that the exporting pension fund should supply information that is “reasonably necessary” for Greater Manchester Pension Fund to fulfil its obligations. This is to avoid disagreements of the definition of “reasonableness”. There has been no amendment to specifically require Greater Manchester Pension Fund to provide information to former pension authorities as there was no detail given about what this information was or what specific risks are associated with this issue.

8.9 No amendments have been made to regulation 7 to require that the payment date, composition of the transfer payments, and number of instalments be subject to agreement between the Greater Manchester Pension Fund and the former authority. This is to avoid uncertainty and inefficiency in the transfers from 33 different authorities and the Greater Manchester Pension Fund.

8.10 Amendments have been made to give greater flexibility in respect of the Additional Voluntary Contributions. Members will have the choice to either continue contributing to their existing arrangements or to end that contract and enter into a contract through any arrangements that Greater Manchester have with providers. This will allow the members right to take up to 100% of an Additional Voluntary Contribution pot as a lump sum for contracts entered into before 1 April 2014 to be protected.

8.11 The definitions of “agreement date” and “payment date” are dependent on the date on which the administering authorities are notified of the transfer of staff. No amendment is necessary to clarify the date of notification as this the Ministry of Justice will issue notifications as part of the Transforming Rehabilitation programme.

8.12 There have been no amendments to clarify the obligation for the Community Rehabilitation Companies to enter into Admission Agreements with Greater Manchester Pension Fund as this will be part of the contract between the Company and the Secretary State.

8.13 There have been no amendments concerning the ongoing compensatory added years and injury allowance payments, as these are currently the responsibility of the Probation Trusts and will become the responsibility of the Community Rehabilitation Companies and the National Probation Service

8.14 Regulation 22(8) of the Local Government Scheme Regulations 2013 does not need amending as they apply to all deferred members who become active again, including those who are transferred to Greater Manchester Pension Fund under these regulations.

8.15 Clarification was sought as whether former staff of Probation Committees were included in the transfer of assets. Amendments have been made to include former staff of Probation Committees in this transfer as long

as there has been no exit payment made in respect of the liabilities concerned. If an exit payment has been made the liabilities will not transfer.

8.16 Clarification was sought on new employees to Community Rehabilitation Companies, and what would be the consequences for employees on promotion or redeployment. There is no requirement for Community Rehabilitation Companies to offer scheme membership to new employees, as opposed to staff transferred as part of the Transformation of Rehabilitation Programme. The Company may do so, but the Ministry of Justice will not act as guarantor for these liabilities. The Company will have to enter into an Admission Agreement with Greater Manchester Pension Fund and provide a bond, indemnity or parent guarantor to the Fund's satisfaction. Transferred employees will retain membership of the scheme on promotion, compulsory transfer, or redeployment within the probation services by either the Company or the National Probation Service.

8.17 One responder noted that the Community Rehabilitation Companies will be transferred via share sales, and asked about the pension's implications that this will have. This will not have any impact on the pension arrangements.

8.18 Further clarification was sought on what pension liabilities the Community Rehabilitation Companies will take on. All past service liabilities accrued to active members transferring to the Community Rehabilitation Companies will become the responsibility of the Community Rehabilitation Companies for on-going funding. Those liabilities will be fully funded on an on-going basis as at the commencement of the admission agreement between the Greater Manchester Pension Fund and each Community Rehabilitation Company. All bidders will have access to detailed information on pension costs throughout the Community Rehabilitation Company's participation and on exit. Any salary increases above the assumed rate and any discretionary benefits awarded will be a cost met by the Community Rehabilitation Company concerned and will not be the subject of any adjustment to the fee for service.

8.19 Issues around any bonds that the Community Rehabilitation Companies will require for any Admission Agreements concerning new employees rather than transferred staff are not part of this regulation. The Ministry of Justice will respond to bidders for the new companies as part of the competition process. Also as part of the competition process Ministry of Justice will provide information as to who will be responsible for pensions past service liabilities if ownership of a Company is transferred to a third party, or in any circumstances where the assets are not sufficient to cover the liabilities. Bidders will be given access to detailed information on pension costs throughout the period on which they are participating in the Scheme.

8.20 It was requested that the new companies should be scheme employers rather than admitted bodies, or that the admission agreement they enter into will be open rather than closed. This would require the new companies to offer access to all employees, including new hires. Under the National Framework, only the employees transferring from the Probation Trusts will

continue to have the right to participate in the Scheme. These employees will be covered by an admission agreement with the Scheme and this will be backed by a guarantee from the Secretary of State. New employees may be given access to the Scheme by Community Rehabilitation Companies but this is at the discretion of the company and will require a separate admission agreement.

8.21 A responder sought confirmation that members “Rule of 85” protections, allowing early retirement for staff whose age plus length of service equals or exceeds 85, would transfer with them- these protections will be retained.

8.22 Clarification was sought on how the employers discretions to would be addressed. Assurances were sought that the new employer’s discretions would be no less generous than those adopted by the Probation Trusts. The National Probation Service will provide a template discretionary policy statement to the Community Rehabilitation Companies and this will be shared with trade unions once available. This is a discretionary policy statement and so cannot be mandated, however guidance will be issued for consistency in approach

8.23 A responders understanding is that the Community Rehabilitation Companies would pay a common contribution rate with past service liabilities for active members being pooled across all companies. Bidders are being asked to assume a 14% contribution rate for the purpose of their bid and setting the fee for service, this is just the initial rate. The employer contribution rate will be reviewed at each valuation and so will be subject to change. There will be an adjustment mechanism to allow the fee for service to change to reflect any change in employer contribution rates within defined parameters. Individual Community Rehabilitation Companies will be responsible for meeting costs arising out of certain discretionary actions both during their participation and on exit. While the 14% contribution rate may change, the pooling of the contribution rates will mean that generally the same contribution rate will be paid by the Community Rehabilitation Companies. A separate contribution rate will be set for the National Probation Service.

8.24 Publication of the financial modelling of the cost of the Ministry of Justice guarantee of pension liabilities was requested. No such financial modelling has taken place or is practicable. The assessment is that it is extremely unlikely that the guarantee will need to be called upon due to the various mechanisms in the services agreement and admission agreement which mean that all liabilities will be appropriately funded on an on-going basis by the Community Rehabilitation Companies while they participate in the Scheme and any extraordinary costs will generally be met when they are incurred or soon thereafter. The Ministry of Justice will be informed immediately of any non-payment of employer contributions and will have the power to deduct overdue contributions from the fee for service due to the Community Rehabilitation Company and pay them direct to the Greater Manchester Pension Fund. On termination of the services all accrued liabilities will be transferring to the new service provider for on-going funding (in respect of all active members transferring with the service transfer) or to

the National Probation Service (in respect of the deferred and pensioner members). Consequently it is unlikely that there will be any residual liabilities for an insolvent Community Rehabilitation Company (which is the only situation in which the Guarantee from the Secretary of State can be called on).

8.25 A guarantee was sought that any former Probation Trust employee, not currently in the scheme, could exercise an option to join the scheme upon when subject to auto enrolment into a pension on joining a Community Rehabilitation Company, and that this should apply to any employee who leaves the scheme for any reason when working for a Company, and who wishes to re-join the scheme. Transferring employees who are eligible to join the Scheme but have not yet done so or have opted-out of membership will retain their eligibility right under the Staff Transfer Scheme. This means that transferring employees can choose to join the Scheme upon auto-enrolment into a Community Rehabilitation Company. However members re-joining a Community Rehabilitation Company having left employment voluntarily will not continue to have access to the Scheme.

8.26 A responders asked for clarification about which residual probation that should follow into consolidation with their employer of origin, specifically the liabilities that remained in the West Sussex Pension Fund as a result of the merger of the East Sussex and West Sussex Probation Boards. All probation Trust liabilities are transferring to the Community Rehabilitation Companies and the National Probation Service. Most predecessor probation board liabilities should have transferred to the Probation Trusts. In relation to those liabilities which are not currently the responsibility of a Probation Trust, liabilities will transfer unless those liabilities have been the subject of an exit payment in the past.

8.27 A responder requested clarity on whether regulation 3A 2013 Regulations captured historical outsourcings from a probation employer to an admitted body which ceased before the transfer of responsibilities, leaving deferreds and pensioners in a Fund. These will not be covered unless the employees were transferred from the subcontractor back to the Probation Trust and the Probation Trust took responsibility for their past service liabilities. The assumption is that an appropriate cessation payment would have been paid by the subcontractor extinguishing any liabilities.

8.28 2 responders requested that preserved refund members be included within the categories of member covered by regulation 3. Amendments were made to regulation 3A(5) and 104(4) to secure this outcome.

8.29 Five respondents suggested that the regulations were deficient in dealing with how costs could be recovered by transferring funds from the Greater Manchester Pension Fund or the Secretary of State. Whilst the Regulations covered some of the investment transaction costs and limited administration costs there was no way of recovering other costs such as advisory costs. This would have an indirect effect on other employers in the funds as the costs would need to be met through the residual fund assets unless they were met directly or via a further adjustment in the transfer payment. It

was argued that this situation was unacceptable to the transferring funds and that they should be able to recharge all reasonable costs directly, unless the costs were accounted for in an adjustment to the transfer amount paid to the Greater Manchester Pension Fund. The mechanics set out in the Regulations for achieving an orderly transfer of assets and liabilities between Scheme funds are designed to minimise the need for incurring costs, over and above the costs usually incurred in effecting bulk transfers of benefits. Administering Authorities have been informed that they can recover any ‘reasonable’ costs associated with the migration of data and assets to the Greater Manchester Pension Fund. This arrangement will not be set out in the Statutory Instrument.

8.30 It was suggested that any delays in finalising the transfer date would lead to administrative complications around End of Year processing and the production of Annual Benefit Statements, causing significant cost. This is not expected to be a significant issue. The Greater Manchester Pension Fund will undertake year end posing for active members for the 2013/14 financial year, as well as Annual Benefit Statements for these members. For deferred members it is expected that ceding funds will have processed the Pensions Increase for 2013/14, but that the Greater Manchester Pension Fund will distribute Annual Benefit Statements.

8.31 Four respondents suggested that it was unfair that the ‘permitted assets’ in relation to the transfer payment should be restricted to a narrow range of pooled vehicles which track market capitalisation weighted indices. The funds argued that they were widely diversified in terms of asset allocation and some included a high proportion of illiquid assets. These assets should therefore be included as ‘permitted assets’ to avoid any negative impact on their asset allocation strategy. The regulations were drafted to ensure an efficient transfer and so no changes will be made. Any such changes would significantly increase the complexity of the transfers, costs and timescales. Given that the percentage of liabilities transferring from each administering authority is relatively small (of between 1.1% and 10.7%) it is not anticipated that this should be a significant issue for any administering authority in practice.

8.32 Two respondents noted that it was not clear if the return applied under paragraph 2.1 of the guidance was gross or net of investment expenses (excluding transaction costs). It should reference net returns as calculated by the transferring Fund. In addition under paragraph 2.6 an appropriate deduction for expenses should be made after applying the indexed returns as agreed between the existing fund and the Greater Manchester Pension Fund. They proposed that this be formalised in an Actuary’s Letter which would be supplemental to the guidance provided by Secretary of State. The guidance will be amended to reflect the fact that returns net of investment manager fees are to be included where available. A 0.3% per annum allowance for fees will be applied to gross return figures only.

8.33 Two respondents noted that paragraph 2.4 of the guidance referred to the use of the IPD UK Index All Property Monthly Total Return. Given that

this index is only published monthly, it was suggested that an index which is published daily such as the FTSE All UK Property (Gross asset value) total return index was more appropriate for use in the calculation. No changes have been made in this matter as the IPD UK Index All Property Monthly Total Return is the most appropriate index for this calculation and will ensure a consistent approach across all transfers. The FTSE All UK Property (Gross asset value) total return index would not be preferable because over short periods it correlates more with equity markets than property markets.

8.34 A responder noted the “refreshed calculation” in paragraph 2.6 of the guidance and that they would expect this to include any refinements to the data provided on cash flows and potentially membership categorisation changes identified e.g. if members were omitted or incorrectly allocated to the Probation employers. Whilst some due diligence would be expected this is likely to only be finalised once the records are transferred. Data on cash flows before June 2014 has to be received by 1 July 2014 and there are then 120 days to agree the “Transfer Share as at 1 June”. The drafting aims to keep the process as straightforward and efficient as possible, it was intended to provide finality to the “Transfer Share as at 1 June” and leave only roll forward calculations to be undertaken, expediting the transfer process. Therefore no changes will be made to the guidance.

8.35 A responder noted that under paragraph 2.8 of the guidance, the actuary of the paying Fund would be required to certify to the actuary of the Greater Manchester Pension Fund that the asset share identified at 31 March 2013 (i.e. the most recent valuation) is a fair share of the assets. They do not see this being an issue except that the certification will need to be qualified that it relies on the acceptance that the data provided as part of the 2013 valuation and previous valuations was correct within reasonable professional bounds. They will be recommending that this type of statement is included in a formal Actuary’s Letter and is agreed between all actuarial firms involved. This suggestion has been noted; however no changes will be made to the guidance.

8.36 Five respondents commented on the transaction cost allowance specified in the guidance. The way the guidance is drafted the allowance for transaction costs is shown as 0.2% of the proportion of the transfer share paid in cash. It was suggested that transaction costs were likely to vary in liquidating assets and therefore it should be possible to vary the transaction cost allowance of 0.2% by agreement between the transferring fund and the Greater Manchester Pension Fund. There was also the suggestion of a default figure only being used if agreement could not be reached. No changes will be made for this as the Statutory Instrument and the guidance have been drafted on the basis of ensuring certainty and simplicity and in light of the fact that no provision is usually made for transaction costs on bulk transfers. The intention is for a standard, pragmatic approach to be implemented for all Administering Authorities and to avoid long-running negotiations and disputes. The 0.2% figure was reached after taking actuarial advice. If provisions were made for negotiations over transaction costs, this would extend the transfer timelines and the complexity of the transfer process. There

would also be difficulties associated with verifying what transaction costs were actually incurred and this would give funds little incentive to minimise such costs.

8.37 Two respondents noted that the calculation of the investment return for periods when the actual return is not available appeared to provide for two options using associated asset class indices. The first was the component asset class weightings as set out in the consultation and the second was the investment strategy of the former fund. The chosen approach is to be agreed between the former fund and the receiving fund. Whilst this does provide some flexibility, it may also be more appropriate to assume that the return is based on the market movement of the assets to be transferred.

8.38 A respondent noted that Regulation 104 (10) (c) prescribes a 45 day window for Funds to reimburse funds for continuing to pay pensions for a limited period. Therefore each fund needs to be content with this timescale and consider the implications for system costs, treasury management and the practicalities and complexities for accounting purposes. This comment was noted; however no specific concerns were expressed during the consultation in relation to the 45 day period being unworkable.

8.39 A responder commented that, whilst they could see the broad logic behind determining the amount of assets that would need to be transferred, the way in which it was applied and worked in practice would need to be established and agreed. The formula referred to in the consultation is something the West Midlands Pension Fund would need to consider with their actuary and should not be something that is imposed. They expected to work with the Probation Trust and the Greater Manchester Pension Fund to agree terms that were equitable for all. It was suggested that the formula be fixed with reference to market movements in assets that have been agreed for transfer to Greater Manchester Pension Fund. With regard to the calculation of the transfer share, this was regarded as reasonable given that the ‘roll up’ is based on actual returns achieved by the fund during the period. However, it was suggested that the proposals for calculating the return in the event that the actual return was not available were inappropriate because the suggested asset allocation was not comprehensive and did not cover all asset classes. This was not viewed as equitable because it did not reflect the actual asset allocation of the funds and could lead to a significant over/under adjustment to the transfer share. The intention is to impose this mechanism on Scheme funds to help manage the whole process consistently, efficiently and pragmatically. Such a requirement to reach an agreement would increase timelines and the complexity of the transfer and therefore costs.

8.40 A responder requested flexibility in the actuarial guidance, to improve, where possible, the accuracy of the transfer share calculation. They requested that daily, weekly or monthly, rather than quarterly, time series be used for the calculation if available. Similarly, it was requested that significant investment cash flows be accounted for, particularly across periods when there is a strong move in asset prices, as this is when the maximum error can arise. The

actuarial guidance has been amended to refer to a monthly rather than quarterly basis as requested.

8.41 Six respondents queried the penalty interest charge of 3% per annum applied if the payment date cannot be agreed and the contingency dates under regulation 104(7) are breached. The concept of a “penalty adjustment” in relation to any delay was viewed as unreasonable and it was argued that if a penalty was applied then it could end up with all the employers in the paying fund unfairly meeting the cost. It was suggested that if a penalty charge was required where agreement could not be reached on a payment date then this should only be if the delay arises as a result of some failing by the paying administering authority. If it is as a result of any failing by the receiving administering authority then there should be a corresponding adjustment the other way. The penalty interest provision has been amended and will now only be charged if payment is not made within three months of the payment date. The penalty charge is included to encourage cooperation and ensure efficiency in the transfer process.

8.42 A responder commented that for the liquid aspect of a transfer, the timescales were workable and the interest rate proportionate. However, where complex liquidation of assets is required to maintain equity between the classes of stakeholders, the relevant processes could be protracted. It was suggested that if there was no flexibility around the payment of proceeds from such liquidation, there was a risk of additional disadvantage to the remaining stakeholders in the transferring authority.

9. Guidance

9.1 The Secretary of State has issued actuarial guidance to administering authorities regarding the calculation of the transfer share of assets that will pass from exporting pension funds to the Greater Manchester Pension Fund, as described at paragraph 7.13

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those entering into admission agreements.

10.2 An Impact Assessment has not been prepared for this instrument, as it contains technical provisions to reserve existing employees pensions rights, and to avoid crystallisation of the pensions liabilities of the Probations Trusts and previous probation providers.

11. Regulating small business

11.1 See 10.1

12. Monitoring & review

- 12.1 As part of the statutory responsibility to regulate the Scheme the Department for Communities and Local Government monitors data returns from pension funds and maintains an ongoing dialogue with the Scheme's interested parties. This process will continue although it is not envisaged that these amending Regulations will require a specific review after implementation. However, they could be included as part of any review and revision to the Scheme should this prove necessary, particularly in the light of any changes in Government policy.

13. Contact

Robert Ellis at the Department for Communities and Local Government email: Robert.ellis@communities.gsi.gov.uk, Tel 0303 4444 001 can answer any queries regarding the instrument.