

**EXPLANATORY MEMORANDUM TO  
THE LOCAL GOVERNMENT PENSION SCHEME (MISCELLANEOUS  
AMENDMENTS) REGULATIONS 2014**

**2014 No. No. 44**

1. This explanatory memorandum has been prepared by Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
  
2. **Purpose of the instrument**
  - 2.1 To make amendments to the regulations constituting the Local Government Pension Scheme.
  
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 2008 is established by the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (S.I. 2007 No 1166) (“the Benefits Regulations) and the Local Government Pension Scheme (Administration) Regulations 2008 (S.I. 2008 No 239) (“the Administration Regulations”).
  - 4.2 That Scheme is to be replaced from 1<sup>st</sup> April 2014 by a Scheme constituted by the Local Government Pension Scheme 2013 (S.I. 2013/2356) (“the 2013 Regulations”). Transitional regulations revoking the regulations, with savings, mentioned in paragraph 4.1 from 1<sup>st</sup> April 2014 will be made shortly.
  - 4.3 The regulations mentioned in paragraphs 4.1 and 4.2 are made under sections 7 and 12 of the Superannuation Act 1972. Section 12 of that Act makes express provision permitting regulations made under section 7 of the Act to take effect from a date before the regulations are made.
  
5. **Territorial Extent and Application**
  - 5.1 This instrument applies 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 2013 Regulations are to come substantively into effect on 1 April 2014 as part of the reform of public service pension schemes. Ahead of that it has become necessary to make a final set of amendments to the 2008 Local Government Pension Scheme before most provisions are revoked, with savings. These Regulations make amendments to the Benefits and Administration Regulations as part of the ongoing stewardship of the current Scheme. These are necessary so as to clarify certain measures already introduced in earlier sets of amending regulations but where change is required now. Paragraphs 7.3, 7.9 and 7.12 provide a more detailed explanation. They also amend the 2013 Regulations to carry forward one of the amendments to the 2008 Scheme, relating to the entitlement to membership of the Housing Ombudsman.

### Regulation 3: Commutation: small pensions – Benefit Regulation 39

7.2. Regulation 3, amending regulation 39 of the Benefits Regulations, builds on an earlier amendment, Regulation 17 of the Local Government Pension Scheme (Miscellaneous) Regulations 2012 (SI 2012 No. 1989). The original amendment refined authorities' powers to commute certain *de minimis* pensions into lump sums. However, it was suggested that this previous amendment did not cover all possible circumstances. The new amendment therefore allows administering authorities to compound small pension entitlements into a single lump sum payment capped at £2,000. This measure should remove the need for administrators to check that HMRC limits have not been breached due to the member compounding an earlier pension from another registered pension scheme.

### Regulation 5: Eligibility in certain cases of persons who are not employees – Administration Regulation 9

7.3 This amendment makes provision to permit the Housing Ombudsman, as a Corporation Sole, to be eligible for membership of the LGPS. The Independent Housing Ombudsman Limited (IHOL) is an employer in the LGPS. Following the introduction of the Localism Act 2011, the IHOL has been reviewing its current governance arrangements and decided from 2 April 2013 to abolish the IHOL limited company and vest its corporate functions in the Housing Ombudsman himself, acting as a Corporation Sole (which is now known as the Housing Ombudsman Service). That meant, for the first time, the Secretary of State for Communities and Local Government will appoint the Ombudsman, rather than the Board of the company.

7.4 Further, the Housing Ombudsman himself will not be an employee from 2 April 2013 and would fall outside the Local Government Pension Scheme. Therefore, this amendment will ensure the Housing Ombudsman's appointment continues to be pensionable from 2 April 2013.

7.5 This provision also makes it clear that any discretionary decisions under the Local Government Pension Scheme which may affect the Housing Ombudsman's pension benefits must receive the written approval of the Chair

of the Housing Ombudsman Service's Audit and Risk Committee. This provision takes effect from 2 April 2013.

- 7.6 Additionally, Regulations 8-10 make an equivalent amendment to the 2013 Regulations, to permit the Housing Ombudsman continued pension eligibility when the new Scheme comes into force on 1 April 2014.
- 7.7. DCLG consulted on a provision to permit the Chair and Deputy Chair of the London Legacy Development Corporation (LLDC) to be eligible for membership of the Scheme following the introduction of the Localism Act 2011. However, a response to the consultation from the LLDC requested that the provision be substantially amended so that it applied to Mayoral Development Corporations (MDCs) in general rather than just specifically to the LLDC as it would be administratively more straightforward and consistent with the Localism Act.
- 7.8 Both the current Chair and Deputy Chair of the LLDC are already members of the LGPS via their roles at the Greater London Authority. The Department has therefore decided that it is unnecessary to make this change at this point and will reflect further in the light of Ministers' decisions following the recent consultation on councillors' access to the local government pension scheme. The consultation can be found at:  
<https://www.gov.uk/government/consultations/taxpayer-funded-pensions-for-councillors-and-other-elected-local-office-holders>

#### Regulation 6: Joining the Scheme – Administration Regulation 13

- 7.9 New paragraph 13(3) makes it clear that notices given by individuals to their employer, to prevent enrolment into the Scheme, must have been given by 1st October 2012. On that date and subsequently, as a result of an earlier amendment to the Regulations employees no longer have the opportunity to submit such notices.
- 7.10. Regulation 6 amends Regulation 13 of the Administration Regulations on automatic enrolment. The amendment is being made in response to the view expressed by the Pensions Regulator that a scheme cannot be an automatic enrolment scheme in relation to a jobholder, if the scheme rules contain a barrier to automatic enrolment for that jobholder. It was considered that the scheme rules prevented an eligible jobholder with a contract of less than three months from being automatically enrolled into the scheme. This is contrary to s.17(2)(a) of the Pensions Act 2008 requiring there to be no provision preventing the employer from making the required arrangements to achieve active membership. The only way such an eligible jobholder could have become an active member of the scheme was if they requested to do so. This was contrary to s.17(2)(b) which says that the jobholder must not be required to make any decision or express an opinion before active membership is achieved.

- 7.11 As a consequence of the above, the amendment makes individuals with a contract of less than three months subject to the requirements of auto-enrolment.

Regulation 7: Special circumstances where revised actuarial valuations and certificates must be obtained – Administration Regulation 38

- 7.12. The regulation amends Regulation 38 of the Administration Regulations and extends the requirement to obtain an actuarial assessment of the amount of assets and liabilities in respect of any employer ceasing to participate in the Scheme. It puts it beyond doubt that there is an obligation to make an exit payment should the actuarial assessment require it but also adds greater flexibility to spread the cost of any payments over a reasonable period. It introduces more flexibility where an administering authority becomes aware that an employer is likely to become an exiting employer, to allow for liabilities to be better managed and so avoiding hefty exit payments at the point of cessation. These amendments have also been carried forward to Regulation 64 of the LGPS Regulations 2013.
- 7.13 Following the Government's "Arms Length Bodies Review" in 2010 and by virtue of the Localism Act 2011, it was decided that the Homes and Communities Agency (HCA) and the Tenant Services Authority (TSA) (the successor bodies to the former Housing Corporation (HC)) would undergo a reorganisation. It meant that:-
- the HCA would be retained albeit substantially reformed and their admission agreement with Westminster City Council Pension Fund would continue;
  - the TSA would be abolished from the end of March 2012 and the admission agreement with Westminster City Council Pension Fund would be closed
  - the majority of its staff and functions would transfer to the HCA and all of the remaining assets and liabilities in respect of staff of the former TSA, at the date of cessation, would transfer to the HCA for their continued management.
- 7.14 Now that agreement has been reached between all the main bodies and actuaries on the future management of the combined TSA and HCA deficit, Regulation 38(3A) to (3G) in SI 2008/2989 is now obsolete and no longer required. DCLG has, therefore, revoked these provisions. The revocation is backdated to 1 April 2012 to coincide with the closure of the TSA.

## **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 in writing, as listed at Annex A.
- 8.3 A period of time has elapsed between the closing of the consultation and the making of these regulations. This is because, when the Department consulted

in March, they formed part of a package with 2 other sets of draft regulations relating to the new LGPS. Following closure of the consultation, DCLG decided that work on the new Scheme regulations should take priority over these amending regulations. The opportunity has been taken, in the interval, to resolve some key technical issues in these regulations.

- 8.4 The consultation for these regulations took place from 27 March to 24 May 2013. A total of 19 responses were received, the proposals which attracted the most comment are detailed below.
- 8.5 There were two indications that Regulation 3 of the SI is welcome. There was also one suggestion that this provision should be amended to extend its use to members who left prior to 1 April 2008. However, this is not necessary as the relevant regulations have already been revoked.
- 8.6 One response stipulated that the provision relating to the LLDC in Regulation 5 should be broadened to refer instead to Mayoral Development Corporations in a generic sense rather than just specifically to the LLDC as the only Mayoral Development Corporation. As explained in Section 7 above, DCLG cannot take this proposal forward at the present time as it was not something on which the Department originally consulted. However, once the new LGPS regulations come into force on 1 April 2014 and a decision has been taken in response to the councillors' pensions consultation, DCLG will review the matter again.
- 8.7 One response advised that the Housing Ombudsman as a Corporation Sole came into effect on 2 April 2013 when the employees, assets and liabilities of the Independent Housing Ombudsman Limited were transferred to the Corporation Sole on that date. Therefore, in order for the Housing Ombudsman to continue to be eligible for LGPS membership, the backdating date in Regulation 1 of the consultation draft needed to be changed from 1 to 2 April 2013. DCLG has complied with the request.
- 8.8 One response queried whether the Housing Ombudsman and the LLDC should be added to the list of Scheme employers in Part 1 of Schedule 2 to the Administration Regulations. DCLG disagreed with this comment because the Housing Ombudsman staff gain access to the LGPS through an admission agreement with Westminster City Council. The LLDC staff gain access to the Scheme because they are already listed in Part 1 to Schedule 2 to the Administration Regulations. So DCLG believes that nothing further is needed for staff. The elements contained in Regulation 5 deals with non-employees where agreement is to provide the appointee with a pension. The response also queried whether some of the provisions contained in regulation 9 of the Administration Regulations should be deleted as they are obsolete. DCLG is of the view that this is somewhat overtaken as Part 4 in Schedule 2 of the new Scheme Regulations take this forward.
- 8.9 There were five indications that Regulation 6 of the SI is supported.

- 8.10 Two respondents requested that education-related employees in alternative pension schemes should be allowed to remain in those schemes. However, this would already be the case, as such individuals would not have an automatic enrolment or re-enrolment date.
- 8.11 There were two suggestions that the proposals are an example of over-regulation. However, DCLG reject this argument, as the amendment is being made in order to comply with the relevant primary legislation.
- 8.12 Two respondents indicated that the phrase “in relation to that employment” should be inserted as appropriate. However, there are already sufficient appropriate references in new paragraphs 5A and 7.
- 8.13 One respondent suggested that wording should be modified along the lines of the draft SI for the new Scheme. Such a modification has now been made, with the addition of a new sub-paragraph (4)(c) on the extension of contracts.
- 8.14 One respondent suggested that already-submitted opt-out forms should be respected. This will be the case, but under the terms of automatic enrolment, it is only possible with regard to notices submitted before 1<sup>st</sup> October 2012.
- 8.15 12 specific consultation responses have been considered in respect of Regulation 7 and there was a further statutory consultation in June 2013 for a similar provision for the 2013 Regulations. There were helpful suggestions from both consultations. Specifically, a request to make it clear that an employer has a duty to make an exit payment if this becomes due and for flexibility for the spreading of any exit payment over a reasonable period. The regulation has been revised to reflect the consultation responses where possible and the provision has also been carried forward as Regulation 64 of the 2013 Regulations.

## **9. Guidance**

- 9.1 There is no guidance associated with this instrument.

## **10. Impact**

- 10.1 An Impact Assessment is not required for this instrument as no additional costs are imposed.

## **11. Regulating small business**

- 11.1 Some small businesses participate in the Scheme on a voluntary basis. However, these regulations do not increase costs or regulatory burden.

## **12. Monitoring & review**

- 12.1 As part of its statutory responsibilities DCLG regularly attends and participates in high-level meetings where questions about auto enrolment, pension eligibility for non-employees and employers ceasing to participate in

the LGPS are often raised. It is through this level of participation that operational problems and regulatory improvements are identified.

- 12.2 DCLG will undertake to review the pension eligibility arrangements for chairmen and deputy chairmen in yet to be created Mayoral Development Corporations once the new 2013 LGPS Regulations come into force.

### **13. Contact**

- 13.1 Nicola Rochester at the Department for Communities and Local Government Tel: 030344 42179 or email: [Nicola.rochester@communities.gsi.gov.uk](mailto:Nicola.rochester@communities.gsi.gov.uk) can answer any queries regarding the instrument.

### **Annex A**

The Welsh Assembly

The Chief Executives of:

County Councils (England)  
District Councils (England)  
Metropolitan Borough Councils (England)  
Unitary Councils (England)  
County and County Borough Councils in Wales  
London Borough Councils  
South Yorkshire Pension Authority  
Tameside Metropolitan Borough Council  
Wirral Metropolitan Borough Council  
Bradford Metropolitan City Council  
South Tyneside Metropolitan Borough Council  
Wolverhampton Metropolitan Borough Council  
London Pension Fund Authority  
Environment Agency

Town Clerk, City of London Corporation  
Clerk, South Yorkshire Passenger Transport Authority  
Clerk, West Midlands Passenger Transport Authority

Fire and Rescue Authorities in England and Wales  
Police Authorities in England and Wales  
National Probation Service for England and Wales  
Local Government Association (LGA)  
Employers' Organisation  
Local Government Pensions Committee

Association of Local Authority Chief Executives  
Public Sector People Managers' Association  
Society of Local Authority Chief Executives  
Chartered Institute of Public Finance and Accountancy

Association of Local Authority Medical Advisors  
Association of Colleges

Association of Consulting Actuaries  
Association of District Treasurers

Society of County Treasurers  
Society of Welsh Treasurers  
Society of Metropolitan Treasurers  
Society of London Treasurers

Association of Educational Psychologists  
National Association of Pension Funds  
National Association of Local Councils  
Society of Local Council Clerks

Trades Union Congress  
GMB  
UCATT  
UNISON  
Unite  
National Association of Educational Inspectors, Advisers and Consultants  
NAPO

MOCOP Members  
Equality and Human Rights Commission

Homes and Communities Agency  
London Legacy Development Corporation  
Independent Housing Ombudsman Ltd