EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) REGULATIONS 2023

2023 No. 279

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The Local Government Pension Scheme Regulations 2013 established the Local Government Pension Scheme ("the LGPS") as a career average revalued earnings scheme. According to the Public Service Pensions Act 2013, a member's pensionable earnings under a career average revalued earnings ("CARE") scheme must be revalued each year to keep up with inflation until the member leaves pensionable service, based upon the index rate adjustment for the relevant period specified in a Treasury order. The effect of the changes made by these Regulations to the 2013 Regulations is that the revaluation adjustment is moved from 1 April to 6 April each year. The result is that the Scheme revaluation is brought into alignment with the HMRC process for assessing the annual allowance tax charge, ensuring that members do not breach the limit as a result of the revaluation process.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 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, the scheme is governed by the Local Government Pension Scheme Regulations 2013 ("the 2013 Regulations"). The 2013 Regulations were made exercising powers in the Superannuation Act 1972 but section 28 of the 2013 Act provides for them to have effect as if they were scheme regulations made under section 1 of the 2013 Act.

6.3 Currently in the LGPS, the scheme year runs from 1 April to 31 March. The scheme's revaluation occurs on 1 April each year, which is the first day of the LGPS scheme year. This means that on 1 April each year, active members' CARE pensions are revalued to take account of the impact of inflation over the previous scheme year. That date is set by the scheme regulations.

6.4 In accordance with the Public Service Pensions Act 2013, these regulations follow consultation and have received consent from HM Treasury.

7. Policy background

What is being done and why?

7.1 The tax year runs from 6 April to 5 April, and it is the growth in a member's pension over this period (known as the "Pension Input Amount", or PIA) which determines if there is a tax liability.

7.2 A pension may grow in line with inflation (based on the Consumer Price Index (CPI) in the September before the start of the tax year) without contributing to the "Pension Input Amount", but growth in the pension above CPI in the September before the start of the tax year is assessed against the annual allowance. Annual allowance is the maximum amount of pension savings an individual can make in any one year before potentially facing tax charges. The annual allowance is currently £40,000 for most people.

7.3 Typically, a tax liability would arise where growth over the period is more than the annual allowance of £40,000. Currently the calculation of the pension on 5 April takes account of the increase in accrued pension during the tax year due to additional length of service and the increase for inflation through the scheme revaluation process on 1 April, based on CPI during the scheme year.

7.4 For the 2022/23 tax year, a pension may grow 3.1% without contributing to the PIA (based on September 2021 CPI), but LGPS pensions are expected to increase by 10.1% on 1 April 2023 (based on September 2022 CPI). Individuals may face tax liabilities because while the PIA and LGPS are both based on CPI, they are based on CPI figures as at different dates.

7.5 The proposed changes to LGPS regulations would defer future revaluation increases to 6 April, so for example the 10.1% increase would apply on 6 April 2023, during the 2023-24 tax year. For the 2023/24 tax year, a pension may grow by 10.1% without contributing to the PIA (based on September 2022 CPI). In short, LGPS revaluation will be aligned with the tax calculations.

7.6 Without changes to scheme regulations, there will be a significant increase in the number of LGPS members breaching the annual allowance threshold, and potentially incurring a tax charge this year and in subsequent years with similar levels of inflation. This is despite the revaluation merely ensuring that accrued pensions of active members keep pace with changes in prices.

7.7 The Government Actuary's Department (GAD) undertook to illustrate the number of LGPS members that may exceed their annual allowance in the 2022/23 tax year as a result of the expected 1 April 2023 revaluation increase of 10.1%. GAD's findings showed that, depending on the level of salary increase in 2022/23, between 14,000-26,000 scheme members are at a higher likelihood of exceeding their 2022/23 Annual Allowance. Under the change where the revaluation date will move from 1 April to 6

April, GAD expect the number of members likely to exceed their annual allowance to reduce significantly. Under these scenarios, it is estimated that roughly 5,000 members would breach the threshold on a 7% salary increase, and just 1,000 members would breach the threshold on a 4% salary increase.

7.8 Changing scheme regulations to move the revaluation date from 1 April to 6 April means that inflation would be reflected in the value of the pension after HMRC assess the value of an LGPS pension for the purposes of annual allowance in tax year 2022/23. Thus, by taking revaluation out of scope of the annual allowance calculation for the 2022/23 tax year, we will reduce the number of members receiving an annual allowance charge for this year.

7.9 For tax years from 2023/24 onwards, the LGPS CARE revaluation would be aligned with the inflationary growth allowed for when calculating how much a pension had grown for annual allowance purposes.

7.10 For members unaffected by the annual allowance, the proposed change will have no effect on the amount of LGPS pension benefits they are entitled to on retirement. This is because the regulations have been drafted so as to ensure that, notwithstanding the change in the revaluation date, there is no change to the amount of Scheme benefits to which members are entitled.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 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 Under the Public Service Pensions Act 2013, prior to amendment of the 2013 Regulations, the Government is required to consult on changes to the LGPS. A consultation on changing the LGPS revaluation date and associated regulations was carried out from 10 February 2023 to 24 February 2023, which received 44 responses. Responses were mostly received from Local Authorities, but respondents also included individuals, the Association of Local Authority Chief Executives, software suppliers, the Local Government Association, and pension consulting services.

10.2 Overall, there was strong support for the proposal with 91% of respondents agreeing that the LGPS annual revaluation date should change from 1 April to 6 April. Some of these respondents expressed that the change was necessary given the increased number of LGPS members potentially facing a tax charge. One response highlighted that aligning the LGPS revaluation with the dates for tax calculations was a welcome return to the period when the Pension Input Period was in sync with the LGPS scheme year. Another response highlighted that this change would help with retention of more experienced staff members during a time where there is a shortage of skilled staff members.

10.3 96% of respondents broadly agreed that the draft regulations attached to the consultation would give effect to the intended policy aim. Some responses suggested minor amendments to the regulations. The Government adopted many of the changes suggested to the regulations. These included ensuring consistent and clear use of terminology; and removing any ambiguity where possible to make it clear that members due a revaluation receive such revaluation. A number of responses highlighted existing concerns with the 2013 Regulations, which the Government noted but, as these were outside the scope of the consultation and would require further more detailed consideration, does not consider it pertinent or timely to address with these new regulations.

11. Guidance

11.1 No guidance is necessary to accompany these regulations.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 These Regulations do not include a statutory review clause. The Department will review the effectiveness of these regulations through its continuing engagement with the sector and its work with the LGPS scheme advisory board. The Scheme Advisory Board is a statutory board with a function, under regulation 110 of the 2013 Regulations, to provide advice to the Secretary of State on the desirability of making changes to the scheme.

15. Contact

15.1 Nathan Rainsford at the Department for Levelling Up, Housing and Communities (email: nathan.rainsford@levellingup.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Suzanne Clarke, Deputy Director for Local Government Finance, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lee Rowley MP at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.