EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) (NO. 2) REGULATIONS 2023

2023 No. 522

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 This instrument makes changes to the administration of the Local Government Pension Scheme in England and Wales.

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 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, such a scheme is created 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 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 LGPS is a funded scheme administered by 86 administering authorities specified in the 2013 Regulations. The 2013 Regulations also established the Scheme Advisory

Board ('SAB'). The SAB may provide advice to the Secretary of State on the desirability of making changes to the scheme.

7.2 All the main 'Defined Benefit' public service pension schemes (PSPSs) are subject to 4-yearly valuations by the Government Actuary's Department (GAD) at which the value of pension benefits today that will be paid in the future are assessed.

7.3 As the LGPS is a funded scheme it differs from the other (unfunded) PSPSs in that the main relevance of the HM Treasury scheme valuation is to assess costs for the purposes of the cost control mechanism. In the unfunded schemes the HM Treasury scheme valuation is used to set the employer contribution rate but in the LGPS (with 86 administering authorities), the employer contributions are set by local valuations which determine the contributions to be paid by employers of each individual fund. With the introduction of cost management in the 2013 Act, it was agreed that the LGPS (England and Wales) Scheme Advisory Board would operate an additional check on scheme costs and the way they are shared between employers and employees. This is known as the SAB cost management process.

7.4 Following the SAB cost management process, HM Treasury undertakes the scheme cost control mechanism (alongside the other PSPSs) utilising for the LGPS a 'model' fund process. This ensures a fair balance of risk regarding the cost of providing the scheme between members and the Exchequer (and by extension employers and taxpayers).

7.5 In 2022 HM Treasury made changes to its cost control mechanism. Subsequently the SAB made recommendations to Government with the aim of ensuring that the SAB cost management process and the HM Treasury cost control mechanism remain generally aligned. The aim was to maintain enough flexibility so that the SAB mechanism can act to address cost changes in the LGPS as they arise.

7.6 Following a public consultation these Regulations make changes as recommended by the SAB and as detailed in the consultation document. The key changes are as follows.

7.7 **Correcting the regulation cost control dates to align with other public sector scheme valuation dates.** Currently the SAB cost control process must take place every three years because the timescale was set by Treasury directions in 2014. In 2018, the HM Treasury cost control mechanism was moved onto a four-year cycle for the LGPS. These Regulations now move the SAB cost control process to a four-year cycle, bringing it into line with the timescale for the HM Treasury cost control mechanism making the process administratively more efficient.

7.8 **Increasing flexibility for the SAB when making recommendations.** Currently if the SAB chooses to make recommendations to the Secretary of State about remedial action to take, it is only permitted to make recommendations in terms of steps to bring the cost of the scheme all the way back to target cost. These Regulations introduce additional flexibility so that if the SAB decides to make recommendations, it does not need to recommend that costs move all the way back to target cost. Recommendations may be made to move the scheme towards or to the target cost but not beyond. This change maintains the ability of the SAB to influence the HM Treasury cost control mechanism.

7.9 **Public sector equality duty**

Prior to the consultation Government made an initial assessment under the duty and considered that there would not be any equality impacts on protected groups from the proposals as there would be no change to member benefits arising from these procedural adjustments. The consultation did not identify any equality impacts on any of the protected groups from the proposals.

8. European Union Withdrawal and Future Relationship

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 The amending regulations in this instrument were subject to public consultation. There were only two responses, one from the SAB of the LGPS and the other from a professional firm of actuaries.

10.2 Both responses agreed with amending the regulations to bring the scheme valuation and cost control process in line with the scheme valuations in the other public service pension schemes (every four years), meaning that cost control mechanisms could be aligned. Both responses also agreed that additional flexibility should be provided so that if the Board decide to make recommendations, they do not need to recommend that costs move back to target.

11. Guidance

11.1 No guidance is proposed for these minor technical amendments.

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 Sheila Owen at the Department of Levelling Up, Housing and Communities sheila.owen@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.