

**EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT (DISCRETIONARY PAYMENTS) (INJURY
ALLOWANCES) REGULATIONS 2011**

2011 No. 2954

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (“DCLG”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument revokes and replaces Part 5 (injury allowances etc.) and regulation 45 (decisions and appeals) of the Local Government (Discretionary Payments) Regulations 1996/1680 (“the 1996 Regulations”), with a new discretionary injury allowance scheme for persons employed by a relevant Local Government Pension Scheme employer. This instrument also revokes the remaining parts of the 1996 Regulations not previously revoked, in particular Part 6 which concerns the payment of gratuities in respect of non-pensionable service.

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

3.1 None

4. Legislative Context

4.1 The payment of gratuities and allowances by way of compensation to or in respect of persons employed in local government service or such other persons as may be prescribed in regulations made under sections 7 and 24 of the Superannuation Act 1972 (c. 11), was originally provided under Parts 5 and 6 of the 1996 Regulations.

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 This instrument revokes Parts 5 to 7 of the 1996 Regulations and introduces an updated and reformed discretionary scheme of injury allowances based in part on the 1996 Regulations. In particular it brings the new injury allowance provisions into line with operational practice in the other public

service injury benefit/allowance schemes and other legislative changes specifically tax regime changes and changes driven by equalities legislation. It also introduces a new internal appeals procedure adapted in line with the internal dispute resolution procedure (IDRP) operated under Local Government Pension Scheme (LGPS). The injury allowance scheme is operated by employers rather than pension funds and runs independently from the LGPS although it does share some definitions and operational procedures. These regulations make it clear that granting of an award is discretionary.

Regulation 2: General interpretation

7.2 The 1996 injury allowance provisions applied to admission bodies (i.e. employees whose access to the LGPS is by an admission agreement). This instrument does not apply to admission bodies as they are not LGPS Scheme employers as defined in Schedule 2 to the LGPS (Administration) Regulations 2008 (“the Administration Regulations”)(S.I. 2008/239). Further, the 1996 provisions omitted to make clear that where an employer ceases to exist with no successor employer being identified, the financial obligations of the former employer could be legally assigned elsewhere. This provision corrects for this. Additionally, this provision updates some legal references to the Police Act 1996 and the Fire and Rescue Services Act 2004.

Regulations 3 and 4: Reduction in remuneration and Loss of employment through permanent incapacity

7.3 These provisions have been carried forward from the 1996 Regulations with some amendment. They set out the eligibility criteria for someone seeking an injury allowance either on a temporary (reduction in remuneration – regulation 3) or permanent basis (loss of employment through permanent incapacity – regulation 4)). Of particular importance in Regulation 3 is the new requirement on local government employers to make a deduction for national insurance contributions (NICs). This ensures compatibility with the other public service injury benefit schemes.

7.4 Further, the 1996 Regulations implied that an injury allowance could only be awarded where there was a direct causal link between the actions taken as part of carrying out a job and the development of an injury or illness. This is not the case and these provisions have now been clarified so that an injury allowance could be awarded where the development of either an injury or illness has come about through any work-related factors.

Regulation 5: Certification of injury or disease

7.5 Part 5 of the 1996 Regulations did not include a provision whereby a LGPS employer should obtain a certified opinion from an independent registered medical practitioner (IRMP) when determining a person’s eligibility for an injury allowance. This new regulation achieves the policy aim that aligns it more towards the LGPS ill health retirement regulations where ill health retirements have to be medically certified in the first instance. As a consequence an injury allowance medical certificate is currently being

prepared by the Local Government Employers Organisation for independent IRMPs to use with these Regulations. It will be published in 2012.

Regulation 6: Allowances for pensioners

7.6 This provision has been retained from the 1996 Regulations. It makes provision for pensioners who, prior to retirement suffered a reduction in remuneration as a result of an injury whilst carrying out his or her work and makes good the shortfall in their retirement pension. The only amendment to this carried forward provision is to update references to the LGPS (Benefits, Membership and Contributions) Regulations 2007 (S.I.2007/1166) and Administration Regulations.

Regulation 7: Death Benefits – (1996 Regulations - regulation 37 – Part 5)

7.7 This provision has been carried forward from the 1996 Regulations and has been expanded to accommodate death benefits for “nominated cohabiting partners” in addition to all the other types of survivor. This has become necessary in order that local government employers can comply with equalities legislation on this issue. Further, the provision also clarifies that there is a requirement on “nominated cohabiting partners” to complete a “signed declaration” that they meet certain conditions. The 1996 Regulations omitted to include a definition for the term “dependent” and this has now been addressed to include children under the age of 23 and other persons who qualify for death benefits where they meet the relevant eligibility criteria.

Regulation 8: Considerations in determining amount of allowances

7.8 This provision has been retained from the 1996 Regulations. It sets out the conditions which an employer must consider prior to determining the amount of an injury allowance award. This provision has been modified to permit LGPS employers when determining the amount of an allowance, to consider the degree of the injury sustained or severity of the disease contracted as assessed by an IRMP.

7.9 This modified provision better assists both IRMPs and employers. IRMPs indicated during the consultation process that they would prefer to assess an employee for an injury allowance award based on severity of the condition presented (so as to be consistent with the other public service injury benefit schemes) which in turn assists the employer in setting the most appropriate amount for an award.

Regulations 9, 10 and 11: First instance decisions, notification of first instance decisions and applications to reconsider a decision

7.10 These provisions overhaul the provision in the 1996 Regulations so that they achieve the policy aim of mirroring the internal appeals procedure in the LGPS. In 2004, the Government introduced new IDRPs arrangements for all pensions schemes where on review, a person other than the person who gave the first instance decision, can resolve disputes and these provisions now bring the injury allowance regulations into line with that procedure. It was not

considered appropriate to make this change to the 1996 Regulations at that time but it does not meet the Government's objective of devolving decisions to the appropriate local level.

Regulation 12: Notice of decision on reconsideration

7.11 This regulation provides for the appeal notification process and the matters which need to be contained within the decision notice. This is now consistent with the dispute resolution process in the LGPS.

Regulation 13: Rights of representation

7.12 This provision is made so that where a person pursuing an injury allowance appeal has died, that appeal may be continued on behalf of that person where a personal representative has been nominated. This now matches the process in the LGPS.

Regulation 14: Policy Statements

7.13 This new provision requires employers to publish a written policy statement (and to keep that statement under review) where they have decided to adopt a discretionary injury allowance scheme.

7.14 It has been known for some time that employees seeking an injury allowance are unclear as to whether their employer operates such a scheme and this new provision will now clarify the position.

Regulation 15: Finance

7.15 This regulation simply repeats regulation 46 of the 1996 Regulations.

Regulation 16: Revocation of Regulations, transitional provisions and savings

7.16 This provision revokes the 1996 Regulations except where transitional arrangements and savings apply.

7.17 The gratuities provisions contained in Part 6 are revoked as they no longer fit in with modern day working practices. Gratuities are in the gift of the employer and should only be considered and awarded at the precise point of the employee's departure. They are like a terminal bonus and they are not part of deferred pay like occupational pensions. It is Government policy that all public service employees should save for their retirement through regularly contributing towards a pension as opposed to relying on a payment (eg a gratuity) to which they have not contributed.

7.18 Part 5 will continue to apply to all appeal cases prior to the "coming into force" date and that the old Regulation 45 will apply to appeals for a transitional period of 6 months following the new regulations taking effect. The purpose of this is to ensure that employers have a suitable period of time in which to adjust to the new "localised" appeals procedure arrangement.

8. Consultation outcome

8.1 The summary of responses received to the consultation plus a list of who responded are available on the Heywood's website at: www.clg.heywood.co.uk .

8.2 Before making these Regulations the Secretary of State consulted external partners in writing, as listed at Annex A.

8.3 The consultation took place from 22 December 2010 to 31 March 2011.

8.4 A total of 16 responses were received to the consultation from either individuals or organisations who made more than one comment. In the main, external partners were generally supportive of all the proposals.

8.5 Six responses supported the extension of survivor benefits to include nominated cohabiting partners.

8.6 Four responses supported the introduction of National Insurance Contributions so as to be consistent with the other public service injury benefit schemes.

8.7 Six responses strongly supported the removal of the role of the Secretary of State in deciding appeals cases. Respondee further suggested that in order for an appeal to be decided "locally", it should not be an employee within the same organisation as the claimant. However DCLG disagrees as this would create an independent appeal process which is not the policy intention. Regulation 10(5) has however been amended to make it clear that the original decision maker should not make the decision on reconsideration of the case.

8.8 Six responses supported IRMPs certifying a person in the first instance for an injury allowance. However, members of the Association of Local Authority Medical Advisers suggested that their role would be improved if they could certify a person according to the severity of the condition presented. Regulation 8(2)(a) now clarifies this point. Additionally, respondees also suggested that a new injury benefit medical certificate be produced to accompany these Regulations so that all parties were clear about their respective responsibilities. DCLG is currently working with the Local Government Employers Organisation on this and a certificate will be published in 2012.

8.9 Three responses supported the removal of gratuities. However, one authority expressed concern with regard to cases of people working in local government for over 30 years with potential legal rights. Having been advised of a solution, there was no further follow-up response.

8.10 Subsequently, it has since been communicated to the National Association of Local Councils (NALC) – the umbrella body for Parish and

Town councils that authorities may still fulfil any extant contractual obligations covering gratuities with employees. Further, if Parish or Town councils want to provide guaranteed pensions for their employees, they can use either the LGPS, National Employment Savings Trust (NEST) or a stakeholder pension arrangement.

9. Guidance

9.1 There is no guidance associated with this instrument although an injury allowance medical certificate is currently being prepared by the Local Government Employers Organisation for IRMPs to use and will be published by them early in 2012.

10. Impact

10.1 The impact on the public sector is limited to local government employers. Localising the appeals procedure in these provisions should not impose any great burden on local government as a whole when carrying out this function (as the DCLG has only dealt with low numbers of appeals to the Secretary of State in recent times).

10.2 Requiring a reference to an IRMP in the Regulations, should not impose any extra burden on employers as this is a process they should already be following as good practice.

10.3 Further, these Regulations have no effect on the liability between the employer and employee where an insurance claim for injury may arise.

10.4 An Impact Assessment has not been prepared for this instrument as there no impact on business, charities or voluntary bodies is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small businesses as the Regulations deal specifically with the administration of a public service injury allowance scheme.

12. Monitoring & review

12.1 As part of its statutory responsibilities DCLG regularly attends and participates in high-level meetings associated with public sector pension schemes where questions about injury allowances are often raised. It is through this level of participation that operational problems and regulatory improvements are identified. It is not expected that these Regulations will need specific review after implementation. However, if there are changes in light of Government policy, then the Regulations will be reviewed according to circumstances at that time.

13. Contact

13.1 Nicola Rochester at the Department for Communities and Local Government, Tel: 0303 44 42179 or email: Nicola.rochester@communities.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

The consultation was addressed to:

The Chief Executive 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 PTA
Clerk, West Midlands PTA

Fire and Rescue Authorities in England and Wales
Police Authorities in England and Wales
Audit Commission
National Probation Service for England and Wales

Local Government Association (LGA)
Employers' Organisation
LGPC

ALACE
PPMA
SOLACE
CIPFA
ALAMA

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

NALC
Society of Local Council Clerks

Trades Union Congress	UCATT
UNISON	GMB
NAEIA	NAPO
AMICUS	TGWU
MOCOP Members	Equal Opportunities Commission