

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT)
REGULATIONS 2009

2009 No. 1025

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

2. Purpose of the instrument

2.1 This instrument paves the way for the introduction of arrangements as to how the future increases in the cost of the Local Government Pension Scheme (“the Scheme”) will be met.

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

3.1 Regulation 40 (“regulation 40”) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (S.I. 2007/1166) (the “Benefits Regulations”) places a duty on administering and employing authorities to have regard to guidance to be issued by the Secretary of State before 31st March 2009 as to the manner in which the costs of the Scheme will be met after 31st March 2010.

3.2 It is now not seen as the desirable route to follow (see paragraphs 7.1 to 7.9). In the period leading to this decision, delays occurred in making information available to interested parties about proposals for a national model fund, which inevitably lead to a delay in carrying out a consultation and finalising this statutory instrument. Accordingly it has proved necessary for the provisions of this instrument to apply retrospectively by virtue of the powers in section 12 of the Superannuation Act 1972 (c.11), and to have effect from 1st April 2009.

4. Legislative context

4.1 These Regulations introduce amendments to the new Local Government Pension Scheme which came into existence on 1st April 2008 and replaced the earlier arrangements covered by the Local Government Pension Scheme Regulations 1997 (S.I. 1997/1612). They amend the Benefits Regulations and the Local Government Pension Scheme (Administration) Regulations 2008(S.I. 2008/239) (the “Administration Regulations”), two of the three sets of Regulations which govern the 2008 Scheme. The third set of Regulations are the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (S.I. 2008/238), which deal with continuity between the earlier arrangements and the 2008 Scheme.

4.2 These Regulations are made independently of the Local Government Pension Scheme (Administration) (Amendment) Regulations 2009 (S.I. 2009/447) which are also effective from 1st April 2009. That instrument dealt specifically with regulations

providing and ensuring ongoing access to the Scheme for closed groups of members. In this instrument regulations deal with a separate policy imperative intended to maintain the Scheme's affordability and sustainability by introducing requirements for the establishment of national cost-sharing arrangements.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The instrument is subject to negative resolution procedure and does not amend primary legislation, so no statement is required.

7. Policy background

7.1 The Government's policy is to maintain stability of costs in the 2008 scheme and a fair and equitable balance in its long-term resourcing between members, employers and taxpayers. When announcing the start of the consultation exercise (carried out from 23 November 2006 to 28 February 2007) leading to the introduction of the detailed benefit package which would form the 2008 Scheme, the Minister for Communities and Local Government, in a written statement to the House on 23 November 2006, made specific reference to the need to establish an appropriate mechanism for sharing future cost pressures and to have such arrangements in place by March 2009. This undertaking was fulfilled initially by the inclusion of regulation 40.

7.2 When the Benefits Regulations were made the Minister within CLG responsible for the LGPS agreed to the establishment and constituent membership of a Policy Review Group, representing all Scheme interests, which would assist in meeting the obligation in the principal legislation (the Superannuation Act 1972 c.11) to consult with such interested parties as appear to be desirable. Discussion within this group throughout 2007 and early 2008, and wider consultations with interested parties in parallel with a data collecting exercise dealing with other Scheme issues, has convinced CLG that the requirement imposed by regulation 40 would not alone fully meet the objective of delivering a transparent cost sharing process. (Regulation 40 simply requires administering and employing authorities to have regard to guidance issued by the Secretary of State as to how the future costs of the Scheme will be met after 31st March 2010.) Thus regulation 2 of these Regulations removes this provision from the Benefits Regulations where it was not considered to be best placed, given that those Regulations are principally about the benefits payable under the Scheme, rather than its administration.

7.3 As a consequence the initial requirement to have regard to guidance has now been recast in regulation 36A of the Administration Regulations, and has been amplified in order to meet the CLG policy objective of achieving clear and transparent cost sharing arrangements within a defined timetable. It is inserted after regulation 36 (actuarial valuations and certificates) because its provisions govern a national valuation exercise which is predicated on the collection of data for individual fund valuations which is governed by regulation 36. Regulation 36A therefore reflects

the consensus of responses to the consultation exercise carried out from 19 February 2008 to 13 May 2008, of the need to establish a national fund, to be used as a model for establishing the overall costs of the Scheme, and to specify in regulations the requirements that will govern the data collection exercise which underpins the national model fund.

7.4 The Scheme, as it applies to England and Wales, comprises 89 separate and individually managed pension funds, each of which is the responsibility of a designated local administering authority. The purpose of these Regulations is therefore to enable the collection all of the individual fund data and for that data to be actuarially assessed on the basis of a single national model fund .This is achieved by virtue of regulation 3(a) of these Regulations which introduces a new regulation 36A to the Administration Regulations.

7.5 Regulation 36A(2) requires administering authorities to provide all their fund data to the Secretary of State by 31st August 2010, and triennially thereafter. Regulation 36A(3) requires the Government Actuary to provide by 31st October 2010, and triennially thereafter, an actuarial valuation based on the data received from the administering authorities in order to provide the Secretary of State with a valuation report and an overall cost certificate. Regulations 36A(4) and (5) specify what information the valuation report and costs certificate must contain.

7.6 Following receipt of the specified information, the Secretary of State will be in a position to produce guidance on the actuarial assumptions and methodology adopted in the model fund (regulation 36A(1)).

7.7 The timescales specified in this instrument (in new regulation 36A(2), (3) and (5)) will allow individual fund authorities and Scheme employers to prepare for the setting of new cost sharing arrangements when individual fund actuaries set new employer contribution rates at the next actuarial valuation as at 31 March 2010. The regulatory timetable imposes a transparent framework and discipline within which the specified parties must operate. It also recognises the statutory responsibilities of the Secretary of State for the Scheme.

7.8 The outputs of this national model fund will enable the Secretary of State to determine national benchmark and overall costs of the Scheme in terms of future accrual of liabilities and any impacts of unforeseen future experience on past service liabilities. The national costs will vary from those established at local level as the model will assume the model fund is fully funded, and statistical smoothing will occur when data is aggregated across all funds and all members. Administering authorities and employers will need to understand the relationship between these costs presented in guidance and their own local pension fund employer costs, planning for future variations as necessary.

7.9 Where this guidance leads to changes to the benefit package available, or the contribution rates applying under the Benefits Regulations to employees, the new regulation 38A, introduced by regulation 3(b) of these Regulations, will enable actuaries to amend employer contribution rates where appropriate in individual pension funds from the second year following the valuation – ie with effect from 1st April 2012.

8. Consultation outcome

8.1 The summary of responses and details of the responses to the consultation are published on the Workforce, Pay and Pensions Division (WPP) web-page at the Department's website:

www.communities.gov.uk/localgovernment/personnelandworkforce/localgovernmentpensions

8.2 The summary of responses and details of the responses to the earlier consultation in 2008, are published on the Workforce, Pay and Pensions Division (WPP) web page:

www.communities.gov.uk/localgovernment/personnelandworkforce/localgovernmentpensions

8.3 Before making these Regulations and in accordance with section 7(5) of the Superannuation Act 1972, the Secretary of State consulted the following stakeholders, with letters sent in first instance 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
NAEIAC NAPO
UNITE
Equal Opportunities Commission

8.4 The required statutory consultation on this instrument took place from 27th November 2008 to 23rd January 2009, a period of approximately eight weeks. Since there was already consensus, arising from the earlier 3 month consultation exercise (see paragraph 7.1), on the policy aim of using a national fund to determine the cost sharing process and mechanism, the draft proposed only a limited number of provisions which would impose specified obligations on LGPS fund authorities and employers.

8.5 Of the 49 responses received, 21 respondents consider that the Policy Review Group in its present form should carry forward the advisory process to assist the Secretary of State in issuing the guidance linked to the national valuation process. Five of the respondents mentioned the need for member participation. Eight respondents (all trades unions) sought the creation of a governing body with powers to make decisions on the Scheme's sustainability. The department believes this would override the existing obligation on the Secretary of State for stewardship and regulatory control of the Scheme. No other responses made any specific suggestions on the structure of the governing body.

8.6 The general consensus obtained from all respondents' comments was that cost-sharing arrangements need to be implemented as speedily as possible in order to help sustain the Scheme in its current format and maintain its affordability, viability and fairness to employers, employees and tax payers. Much of the comment on the proposals was concerned with how the Secretary of State will proceed to determine guidance and assumptions which are seen as part of an ongoing process of prudential Scheme stewardship. These matters are already the subject of on-going discussions with the Policy Review Group during 2009.

9. Guidance

9.1 There is no guidance associated with this instrument.

10. Impact

10.1 The purpose of these changes is to establish a robust, evidence based, national mechanism which will allow any new cost pressures on LGPS employers to be limited and for Scheme members to specifically assist in the Scheme's future viability, and so avoid costs being passed through to council tax payers. Separate, but broadly comparable, measures are being taken elsewhere within other public sector service pension arrangements.

10.2 A full Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.

10.3 A Regulatory Impact Assessment was prepared for the replacement of the Local Government Pension Scheme Regulations 1997 (as amended) with the Benefits Regulations, effective from 1st April 2008. This can be viewed on the Department's website:

www.communities.gov.uk/localgovernment/personnelandworkforce/localgovernmentpensions

11. Regulating small business

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

12. Monitoring & review

12.1 New Regulation 36A begins the process of passing data from the administering authorities to the Secretary of State to enable the Government Actuary's Department to assess the increased costs of the Scheme based on a national model fund. This is a triennial exercise and thus operates as a regular system of regulatory monitoring and review.

13. Contact

Divya Patel at the Department for Communities and Local Government Department
Tel: 020 7994 2539 or email: divya.patel@communities.gsi.gov.uk can answer any queries regarding the instrument.