

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

2009 No. 3150

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 These Regulations amend the following instruments:

The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006/2914 (“the Compensation Regulations”);

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007/1166 (“the Benefits Regulations”);

The Local Government Pension Scheme (Transitional Provisions) Regulations 2008/238 (“the Transitional Regulations”); and

The Local Government Pension Scheme (Administration) Regulations 2008/239 (“the Administration Regulations”).

2.2 These Regulations also make a new freestanding provision in respect of the London Pension Fund Authority.

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

3.1 The amendments contained in regulations 3 to 6, 8 to 10, 11 (only in relation to new regulation 12A of the Benefits Regulations), 15, 18 and 22 have retrospective effect from 1st April 2008. The amendment contained in regulation 23 has retrospective effect from 8th May 2009. Sections 12 and 24 of the Superannuation Act 1972 (c.11) enable regulations for the superannuation of persons employed in local government service to be framed so as to have effect as from a date earlier than the making of the regulations.

3.2 The reasons for the use of retrospective powers are explained in paragraph 7.

4. Legislative context

4.1 On 1st April 2008 the new Local Government Pension Scheme (“the 2008 Scheme”) was introduced and replaced the earlier arrangements constituted under the Local Government Pension Scheme Regulations 1997 (“the 1997 Scheme”)(S.I. 1997/1612). The 2008 Scheme is constituted by the Benefits Regulations and the Administration Regulations. The Transitional Regulations revoke most but not all of

the provisions of the 1997 Scheme and deal with continuity between the earlier arrangements and the 2008 Scheme.

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 amending instrument makes some reforms to the 2008 Scheme and is part of the ongoing programme of modernisation of the Local Government Pension Scheme (“LGPS”) to which CLG is committed. Many of the amendments are at the suggestion of our consultees (see Annex A).

Regulations 3 – 6 : Updating the Compensation Regulations

7.2 The Compensation Regulations provide local authorities with the power to compensate employees whose employment is terminated by reason of redundancy or in the efficient exercise of the employing authority’s functions. The current cross-references to LGPS Regulations within the Compensation Regulations are to those for the 1997 Scheme. The amendments accordingly update the Compensation Regulations so that, where appropriate, references to the 2008 Scheme are included, with effect from 1st April 2008.

Regulations 8 to 31 – Amendment of the Benefits Regulations and the Administration Regulations.

Regulation 8:

7.3 This amendment deletes a definition of the Administration Regulations that was erroneously inserted by the Local Government Pension Scheme (Miscellaneous) Regulations 2008/2425.

Regulation 9: The meaning of “pensionable pay”

7.4 Under the 1997 Scheme, the definition of “pay” excluded the supplement paid by the Environment Agency to certain individuals. The Regulations for the 2008 Scheme erroneously omitted any provision for such an exclusion and the amendment duly provides for its reinstatement with effect from 1st April 2008. A further exclusion, on payments by way of compensation in order to achieve equal pay, has been added, as suggested by consultees.

Regulation 10 : Final pay : reductions

7.5 Regulation 10 of the Benefits Regulations sets down the conditions under which a member may choose to have his “final pay” treated as the average of three recent consecutive years for the purpose of calculating his pension. The amendment widens these conditions so that they assist members who, for example, have been affected by pay being brought into line with other employees and the results of job evaluation exercises. The amendment is backdated to 1st April 2008 in order to assist with cases where the members concerned have already retired.

Regulation 11: Duty to increase total membership – enhanced protection

7.6 Regulation 11 inserts a new regulation 12A into the Benefits Regulations. Under the tax regime introduced by the Finance Act 2004 (c. 12), effective from April 2006, a member of the LGPS can apply for a form of protection of pension rights accrued prior to 2006. The protection could be applied for up to April 2009. This provision deals with cases under the 2008 Scheme (and hence the retrospection of this regulation to 1st April 2008) where the protection was agreed and where subsequently members have retired after giving up the protection, with their benefit calculation completed in line with guidance from GAD. The effect is cost neutral for a pension fund.

Regulations 11 and 20 : Conversion of credited periods into membership

7.7 Regulation 11 also inserts a new regulation 12B into the Benefits Regulations, introducing provisions which will facilitate improved accountancy by authorities, allowing them, in effect, to convert “compensatory added years” and other forms of compensation awarded in respect of a former employment, awarded under old compensation provisions which are no longer available, into pre-funded additional pension rights. There will be no change to pensioners’ income. Regulation 20 (which amends the Transitional Regulations) ensures that this process will not affect members’ ability to meet the “85 year rule” governing early retirement (set out in regulation 10 of, and Schedule 2 to the Transitional Regulations), which should be calculated on the basis of actual membership accrued through service rendered.

Regulations 13, 16, 26, 27 and 28 : Payments by the Environment Agency

7.8 These regulations facilitate improved accountancy with regard to certain payments by the Environment Agency: regulations 13 and 16 amend the Benefits Regulations, and regulations 26-28 amend the Administration Regulations. Regulations 13 and 27 enable the Agency in effect to convert annual compensation and “compensatory added years” awarded in respect of a former employment, into additional pension. There will be no effect on members’ overall income. The process should have no effect on members’ ability to meet the “85 year rule” governing early retirement (set out in regulation 10 and Schedule 2 to the Transitional Regulations), which should be calculated on the basis of actual membership accrued through service rendered. Regulation 16 facilitates improved mechanisms for the Agency to discharge its responsibilities for making Pension Increase payments. Regulation 28 permits the Agency to discharge its liabilities to Water Act Companies by making one-off capital payments.

Regulations 14, 24, 25 and 30 : Additional survivor benefits for nominated cohabiting partners

7.9 Survivor benefits for nominated cohabiting partners were first provided within the Local Government Pension Scheme by virtue of regulations 24 and 25 of the Benefits Regulations. However, regulation 3(4) of the Transitional Regulations specifies that only periods of membership after 5th April 1988 should be taken into account when calculating the survivor benefit. This date was chosen to be in line with previous improvements to the LGPS which allowed for survivor benefits to be paid to the surviving partner of a civil registered same sex partnership based only on membership accruing since April 1988.

7.10 Regulation 14 amends the Benefits Regulations, and regulations 24, 25 and 30 amend the Administration Regulations, to provide members with the choice to pay additional contributions so that their periods of membership before 6th April 1988 can be counted as well in the calculation of the benefit paid to their surviving nominated cohabiting partner. This enables such members to increase their partners' potential survivor benefit whilst offsetting the costs which would have to be met by pension funds.

7.11 Regulation 25 details the application process for members who wish to apply for the additional survivor benefit and the implications for a member of stopping their contributions so that benefit accrued is duly proportional to the amount of contribution actually paid.

7.12 Regulation 30 provides that rights enjoyed by virtue of having made such contributions may not be subject to the forfeiture provisions set down in Regulation 74 of the Administration Regulations as it would not be equitable to penalise those members who had paid for additional survivor benefit to a greater extent than other members may be penalised.

Regulation 15 : Children's pensions

7.13 The amendment permits the administering authority to pay children's pensions to third parties such as relatives or guardians, applying the funds for the child's benefit. This effectively restores the position that applied under the 1997 Regulations and is accordingly backdated to 1st April 2008.

Regulation 18 : Survivor benefits : civil partners

7.14 The purpose of this amendment is to place civil partners on a level footing with spouses with regard to survivor's benefit, so that all membership is taken into account, not just membership accrued from 6th April 1988 onward. It is backdated to 1st April 2008 which is the date the 2008 Scheme came into effect, and is the date when, in effect, widowers' survivor benefits fully matched the provision covering widow's pension based on their spouse's membership accrued prior to 6th April 1988.

Regulation 19 : Deferred members: limit on death grant

7.15 The current position is that the death grant for deferred members is set at a figure up to the retirement pension multiplied by five, although in practice in the majority of cases the maximum figure permitted is granted. In order to achieve consistency, under the amendment all cases will receive what was formerly the maximum figure.

Regulation 22 : New cross-reference

7.16 Regulation 2(3) of the Benefits Regulations (concerning “active members”) was amended by regulation 4 of the Local Government Pension Scheme (Amendment) Regulations 2008/1083 and substituted a new regulation 2 in the Benefits Regulations. Regulation 4(1)(b) of the Administration Regulations (concerning general eligibility for membership) refers to regulation 2(3) of the Benefits Regulations whereas it should refer to regulation 2(2). The amendment duly updates the cross reference in the Administration Regulations with effect from 1st April 2008 (which is the effective date of the amendment made by S.I. 2008/1083).

Regulation 23: Addition to persons who may join the Local Government Pension Scheme

7.17 This amendment extends access to the LGPS to the Chair of the Olympic Park Legacy Company (“OPLC”), and is applicable from 8th May 2009, which is the date that the OPLC was incorporated as a company limited by guarantee. This provides the chair with same right of access to the LGPS as already applies to employees of the OPLC.

Regulation 29 : Guaranteed minimum pensions (GMP)

7.18 The amendment deals with the postponement of GMP payments for the increasing number of members who continue working beyond normal pensionable age. Those who change their employment and leave local government may now elect for the payment of their GMP to be suitably postponed if they choose thus enabling them to enjoy actuarial increases and avoid unfair restrictions on access to tax-free lump sums.

Regulation 32 (freestanding provision): Transfer of funds

7.19 This regulation provides for the transfer, to the pension fund of the London Pension Fund Authority, of certain sums relating to London County Council and Greater London Council stocks which were transferred to the Authority from the London Residuary Body, and in respect of which the Authority has now discharged its liabilities. The provision will give the Authority legal authority to transfer the surplus money, which is currently held in its general administration fund. The external auditor will accordingly be able to approve the relevant item in the Authority’s accounts for the financial year when the transfer is made. The amount transferred will be used to offset part of the deficit in the pension fund.

8. Consultation outcome

8.1 The summary of responses and details of the responses to the consultation are available from CLG - philip.perry@communities.gsi.gov.uk - prior to website publication.

8.2 Before making these Regulations and in accordance with section 7(5) of the Superannuation Act 1972, the Secretary of State consulted the stakeholders in writing, as listed at Annex A.

8.3 The consultation took place from 28th November 2008 to 20th February 2009. (Regulation 32 was subject to a separate consultation with relevant stakeholders, between 15th April and 15th June 2009. No comments were received.)

8.4 31 responses were received. The three areas of the original draft consultation Regulations which attracted most comment were as follows:

8.5 16 respondents commented on a proposal to allow the value of money purchase schemes to be transferred into members' AVC arrangements, with 11 expressing their opposition. Given the level of opposition, the proposal, which may have had cost implications on individual pension funds, and provided rights to members joining the LGPS later in life not available to longer term members of the Scheme, was withdrawn.

8.6 15 commented on additional survivor benefit, with four commenting that the purchase of additional benefit should be more closely linked to length of service. Some argued that members with pre-6th April 1988 service should not have total freedom to purchase as much benefit as they wished, and accordingly the amount is now directly proportional to the length of relevant service (see regulation 14 – new regulation 14A(3) of the Benefits Regulations). As part of the consultation this option was also to apply to registered civil partners, but this has not been followed up in the light of a European Court Judgement [Tadao Maruko v VdB].

8.7 14 supported some broadening of the proposal regarding the circumstances in which members can opt out of using their final pay figure for their pension and as a result regulation 10 now deals with the situation of members whose pay has been in some way restricted.

9. Guidance

9.1 There is no guidance associated with this instrument.

10. Impact

10.1 A full Impact Assessment has not been prepared for this instrument as no impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is limited to LGPS employing and administering authorities.

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 As part of the statutory responsibility to regulate the LGPS, CLG monitors data returns from pension funds and via its Policy Review Group, maintains an ongoing dialogue with the Scheme's interested parties. It was through this level of contact that operational problems were identified with the original wording of the Regulations now being amended. We will continue this process but do not envisage that these amending Regulations will require a specific review after implementation but could be included as part of any review and revision to the Scheme should this prove necessary, particularly in the light of any changes in CLG or Government policy.

13. Contact

13.1 Philip Perry at the Department for Communities and Local Government Tel: 0303 44 42174 or email: philip.perry@communities.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

List of consultees

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

ALAMA CIPFA

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

NAEAC NAPO

AMICUS TGWU

Equal Opportunities Commission