

**EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (BENEFITS, MEMBERSHIP
AND CONTRIBUTIONS)(AMENDMENT) REGULATIONS 2011**

2011 No. 561

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 These Regulations amend the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007/1166 (“the Benefits Regulations”).

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

3.1 Following the Committee’s scrutiny of the Local Government Pension Scheme (Miscellaneous) Regulations 2010/2090 (“the Miscellaneous Regulations”), the amendment at regulation 3(a) of this instrument fulfils DCLG’s commitment in its Memorandum to the Committee (dated 2 November 2010) to correct the defective drafting as reported in the Committee’s 6th report of 2010.

4. Legislative context

4.1 On 1 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 1997/1612 (“the 1997 Scheme”). The 2008 Scheme is constituted by the Benefits Regulations and the Local Government Pension Scheme (Administration) Regulations 2008/239. The Local Government Pension Scheme (Transitional Provisions) Regulations 2008/238 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 In addition to the corrective amendment outlined at paragraph 4.1 above, the opportunity has been taken to make four other corrective amendments.

7.2 The ill-health provisions in regulation 20 allow for early release of retirement benefits where a member is incapable of carrying out their current employment and has a reduced likelihood of being capable of undertaking any gainful employment before their normal retirement age (age 65). There are three levels of benefits. Enhanced periods of membership can be awarded where an independent registered medical practitioner (“IRMP”) opines that the member is not going to work again before age 65, or is unlikely to be capable of undertaking any gainful employment within three years of leaving their employment. The third level benefits are payable where the IRMP opines that the member is likely to be able to return to work within three years of leaving their employment. Third tier benefits are those accrued up to the point of leaving employment and are payable for a maximum of three years subject to a review after they have been in payment for 18 months.

Regulation 3 - Benefits Regulation 20

7.3 Regulation 3(a) corrects the drafting error mentioned in paragraph 4.1 by substituting a new paragraph (4) which now re-inserts sub-paragraphs (a) and (b) that were erroneously omitted by regulation 19(c) of the Miscellaneous Regulations. This paragraph describes a member’s entitlement to benefits where the employing authority has determined that the member falls into the category of “third tier” ill-health.

7.4 Regulation 3(b) substitutes a reference to paragraph (8)(b) for a reference to paragraph (8) as a whole. The effect of this is to provide the opportunity of a review for a possible uplift to second tier not only to those individuals whose benefits have been stopped after three years, but to also include those in gainful employment and those assessed as capable of undertaking gainful employment at the 18 month review. The rationale behind creating the opportunity of an uplift is that it is accepted that, in some instances, a member’s condition could deteriorate.

7.5 The amendment in regulation 3(c) deals with the expression “qualified in occupational health medicine”. Sub-paragraphs (a) and (b) appeared in the Benefits Regulations as originally drafted and were erroneously omitted by regulation 19(k) of the Miscellaneous Regulations. This amendment therefore restores the full meaning of the expression as originally drafted and clarifies that registration means with the General Medical Council.

Regulation 4 – Benefits Regulation 24

7.6 This amendment clarifies the basis on which survivor benefit is calculated. As the calculation is based on whole time equivalent pay and actual membership, the reduction in pay on account of part time working is immaterial, but the reduction in membership for the same reason is of consequence. For this reason, it is necessary to ensure that any reduction in membership, which is attributable to reduction in hours arising through the member’s condition, is ignored.

Regulation 5 – Benefits Regulation 31

7.7 This is a simple consequential amendment: the expression “qualified in occupational health medicine” which originally appeared in regulation 31(2) was

amended by regulation 26(b) of the Miscellaneous Regulations and replaced with “IRMP”. Regulation 31(3) consequentially requires substitution of the expression “qualified in occupational health medicine” with “IRMP”.

Consolidation

7.8 Since the introduction of the 2008 Scheme, 10 amending instruments (including this one) have been made in respect of the LGPS constituting Regulations. The question of the consolidation of the Benefits Regulations and the Administration Regulations into one omnibus set of regulations (incorporating all the incremental amendments) can now realistically only be considered once Lord Hutton has reported on his review of public sector pensions, and DCLG Ministers have decided in the light of that report what reforms, if any, should be made to the Scheme.

7.9 The Local Government Pensions Committee publishes on its website informal consolidated amendments to the LGPS Regulations (Timeline Regulations (England and Wales)): <http://timeline.lge.gov.uk/regidx.html>

8. Consultation outcome

8.1 The summary of responses to the consultation are available on the website www.clg.heywood.co.uk.

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

8.3 The consultation took place from 24 December 2010 to 28 January 2011.

8.4 11 responses were received, which were very largely supportive of the proposals. It was brought to DCLG’s attention that a proposed amendment to regulation 23 of the Benefits Regulations (death grants: active members), which would have replaced the word “pay” with “membership”, was inappropriate. Death grant is calculated on the basis of the member’s actual pay, not whole time equivalent pay, and for this purpose it is necessary to ignore any pay reduction caused by reduction in hours due to a member’s condition that caused or contributed to the member’s death. 1 respondent suggested that registration with the General Medical Council should be inserted into regulation 20(14) of the Benefits Regulations, and the amendment has accordingly been made.

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. The ill health provisions contained in the regulations are cost neutral or could lead to some very minor efficiency savings through LGPS practitioners and occupational health doctors being able to apply the regulations more easily.

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, DCLG monitors data returns from pension funds and, via its policy review group and ill health monitoring 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 some of the Regulations now being amended. This process will continue but it is not envisaged that these amending Regulations will require a specific review after implementation. However, they 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 DCLG or Government policy.

13. Contact

13.1 Philip Perry at DCLG Tel: 0303 44 42174 or email: philip.perry@communities.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

List of business partners

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

NAEIAAC NAPO

AMICUS TGWU

Equal Opportunities Commission