

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT)
REGULATIONS 2010

2010 No. 528

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

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

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

3.1 None.

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, the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (2008/238)(the “Transitional 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. The Local Government Pension Scheme (“LGPS”) is administered through 89 separate funds in England and Wales.

4.2 This amending instrument is made in the context of two machinery of Government changes. Firstly, under the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), the dissolution of the Learning and Skills Council for England requires the transfer of over 700 of its staff primarily to local authorities, with about 10 staff transferring to London Councils Limited. The transfer is to take effect from 1 April 2010. Secondly, under the Offender Management Act 2007 (c.21), the merger of local probation boards to form probation trusts on or after 1st April 2010 requires the transfer of staff to the new probation trust and, in certain circumstances, their accrued pension entitlements will move from one LGPS fund to another.

4.3 Regulation 9 is not related to the two machinery of government changes but makes a minor but important correcting amendment to regulation 19 (early leavers: inefficiency and redundancy), to clarify that the date on which the circumstances listed in regulation 19(1) apply to a member, includes 31st March 2010.

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

Learning and Skills Council

7.1 The Apprenticeships, Skills, Children and Learning Act 2009, provides for the dissolution of the Learning and Skills Council. Under a staff transfer scheme made under Schedule 7 to that Act over 700 staff will transfer employment primarily to local authorities, with most English local authorities expected to receive one or more former Learning and Skills Council staff. Of these transferring staff, about 10 will transfer to London Councils Limited which is a body representative of local authorities in London, and a LGPS community admission body¹. The scheme providing for the transfer of designated employees of the Learning and Skills Council is to take effect on 1 April 2010 and will provide for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) to apply.

7.2 Under Fair Deal for Staff pensions², transferring staff are entitled to an occupational pension scheme which is certified by an actuary as being overall, materially, at least as good as the public sector pension scheme which they are leaving. On the date of transfer, staff will not be able to retain membership of the Principal Civil Service Pension Scheme to which they formerly belonged, as they will be eligible to join the LGPS.

7.3 These regulations fulfill the obligations of Fair Deal for Staff Pensions by retaining an age 60 retirement (and age 50 for the early release of certain retirement benefits) for those transferring employees who were members of, or were eligible to join, the 1972 and the 2002 Sections of the Principal Civil Service Pension Schemes³ ("PCSPS"). Some regulatory amendments to the LGPS are required in order to permit the Government Actuary's Department to certify broad comparability.

7.4 Fair Deal for Staff pensions also requires that transferring staff have the option to transfer their accrued pension rights to the new pension scheme and special terms will be given to retain the earnings link they benefited from in the former scheme. The regulations fulfill the obligations of Fair Deal by permitting the transfer of accrued PCSPS pension rights on 'bulk transfer terms' as agreed between the actuaries acting for the PCSPS and the LGPS respectively.

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¹ Regulation 5(1)(c) of the Administration Regulations.

² Fair Deal for Staff Pensions: procurement of bulk transfer arrangements and related issues: guidance note by HM Treasury, June 2004

³ <http://www.civilservice.gov.uk/my-civil-service/pensions/governance-and-rules/scheme-rules.aspx>

7.5 The Offender Management Act 2007, provides for the merger of one or more probation boards to form a probation trust. These mergers are to take effect on or after 1 April 2010. There are currently 42 probation boards and, over the next few years, one or more probation boards will merge to result in 10 probation trusts. The Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply when probation board staff transfer to a probation trust.

7.6 Staff of probation boards, who are members of the LGPS, will retain their membership if they join a probation trust. Under the LGPS regulations, if their employment with a probation trust is in an area different to their current LGPS administering authority area, it will be necessary to move their accrued pension entitlements to the Fund administering pensions for the probation trust.

7.7 Where membership is transferred between funds, the scheme rules provide that those assets and liabilities in relation to pensioner and deferred pensioner members remain with the current administering authority. For this machinery of government change, the regulations provide that all assets and liabilities in respect of active contributing members, pensioner and deferred pensioner members transfer to the administering authority responsible for the probation trust. This approach has been welcomed by those consulted and provides a clean break with the former administering authority, but cannot be achieved without a regulatory change.

Early leavers: inefficiency and redundancy

7.8 Under regulation 19 of the Benefits Regulations, in the circumstances specified in that regulation, members being made redundant or leaving on grounds of business efficiency are entitled to immediate payment of their retirement pension if they are aged at least 55. In the case of a person who is a member on 31st March 2008, and who is dismissed before 31st March 2010, Regulation 19 has the effect of substituting age 50 for age 55. The regulations clarify the intention that the date the age increase takes effect is actually 1 April 2010.

8. Consultation outcome

8.1 The summary of responses and details of the responses to the consultation are available from CLG – siobhan.prill@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 18 September 2009 to 18 December 2009 and was sent to over 600 LGPS and related interested parties.

Learning and Skills Council

8.4 29 responses were received. The 7 main areas of the original draft consultation Regulations which attracted most comment were as follows:

8.5 24 respondents commented on their concern that the proposal would incur additional administrative costs to deal with a small number of employees in each fund

having special terms. It would not, however, be possible to comply with Fair Deal for Staff Pensions without the regulatory provisions.

8.6. 9 respondents commented that it was their view that these transferring employees should remain in the PCSPS but this is not an option as they are eligible to join the LGPS at the date of transfer.

8.7 8 respondents commented that they wanted just one administering authority to deal with this group of transferring staff. This is not a viable long term option as staff become an employee of a local authority in a distinct geographical area.

8.8 8 respondents commented that alternative methods to calculate service transfers should be considered to deal with the age 65 retirement age in the LGPS and age 60 for transferring staff eligible for the 1972 and 2002 Sections of the PCSPS but this would not address the requirement that normal retirement age at which full unreduced benefits without employer consent and at which deferred benefits are payable, will be no greater than the current scheme.

8.9 One respondent identified that bulk transfers-in were not permitted in the LGPS which are a condition of Fair Deal for Staff Pensions. The regulations address this and provide for bulk transfers-in for this group of transferring employees.

8.10 5 respondents wanted an employer's undertaking rather than regulatory change. As every local authority will take one or more transferring employee, a regulatory standard approach is considered most sensible.

8.11 8 respondents identified that the proposed pay uplift to compensate for the increased employee contribution rate in the LGPS and required under Fair Deal, could not be considered to be non pensionable in the LGPS unless expressly provided for. The regulations contain this provision.

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8.12 22 responses were received. The 4 main areas of the original draft consultation Regulations which attracted most comment were as follows:

8.13 16 respondents commented that they were in favour, or broadly in favour, of the proposals.

8.14 6 respondents commented that the approach taken should be a feature of the scheme. While this is not a substantial number of responses seeking a wider regulatory change, CLG is considering a broader debate about the application of the regulations where there are no active contributing members and future pension liabilities are identified. A letter is being prepared for LGPS practitioners.

8.15 8 respondents considered that the measures should apply to the previous restructuring of probation boards but retrospective applications of the relevant regulation is not considered appropriate as assets and liabilities would have been correctly apportioned in accordance with the rules of the scheme as they applied at the time.

8.16 Several respondents commented that they wanted adequate information about transferring members which was accurate and timely. Steps have been, or are being taken, to communicate details to affected authorities.

8.17 On 24 December 2009, CLG consulted the usual LGPS stakeholders on the proposal to amend regulation 19 of the Benefits Regulations. Three stakeholders responded, all expressing the view that the proposed amendment should be implemented speedily to deal with those cases where redundancy is under current consideration.

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. We 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 as identified in 8.14 above, and particularly in the light of any changes in CLG or Government policy.

13. Contact

13.1 Siobhan Prill at the Department for Communities and Local Government Tel: 0303 44 42180 or email: Siobhan.prill@communities.gsi.gov.uk can answer any queries regarding the instrument.

Annex A List of consultees

Department for Children, Schools and Families
Ministry of Justice
National Offender Management Service
Government Actuary's Department

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 Pensions Authority
Tameside Metropolitan Borough Council
Wirral Metropolitan Borough Council
City of Bradford Metropolitan District Council
South Tyneside Metropolitan Borough Council
Wolverhampton City Council
London Pension Fund Authority
Environment Agency
Police Authorities in England and Wales
Fire and Rescue Authorities in England and Wales.
National Probation Service for England and Wales

Town Clerk, City of London Corporation
Clerk, South Yorkshire PTA
Clerk, West Midlands PTA

The Secretaries of:

Local Government Association
LGPC
Local Government Employers' organisation (LGE)
PPMA
SOLACE
ALACE
CIPFA
ALAMA
UCEA
NALC
SLCC
Society of County Treasurers
Society of District Council Treasurers
Society of Welsh Treasurers
Society of Metropolitan Treasurers
Society of London Treasurers
Association of Consulting Actuaries
Northern Ireland Public Service Alliance
Homes and Communities Agency

Trades Union Congress
UNISON
GMB/MPO
UCATT
Aspect
Unite
NAPO
Association of Educational Psychologists
CYWU
ACM

Audit Commission

NILGOSC

Confederation of British Industry
Business Services Association
Equality & Human Rights Commission

Other Government Departments:

DoE (NI)
SPPA
DEFRA