

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (MANAGEMENT AND
INVESTMENT OF FUNDS) (AMENDMENT) REGULATIONS 2013

2013 No. 410

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 To increase the proportion of their funds that local authority pension funds can invest in partnerships from a maximum of 15% of the fund to 30%.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (SI 2009/3903) (“the 2009 Regulations”) are made under section 7 of and Schedule 3 to the Superannuation Act 1972. They set out the arrangements which apply to the management and investment of funds arising in relation to a pension fund maintained under the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239).
 - 4.2 Schedule 1 to the 2009 Regulations contains a list of limits on investments and regulation 14(1) of those regulations restricts the making of investments of the types contained in that list. Paragraph 3 of the table restricts all contributions to partnerships to 5 %, increased to 15% if the administering authority complies with requirements set out in regulation 15 (which include taking proper advice before making an investment).
5. **Territorial Extent and Application**
 - 5.1 This instrument extends to England and Wales.
6. **European Convention on Human Rights**

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 a change to the 2009 Scheme Investment Regulations to correct expeditiously an identified problem.

7.2 The 2009 Regulations are designed to enable local fund managers to pursue effective investment strategies so that local authority pension funds can deliver the returns needed to pay Scheme member pensions as well as to protect local taxpayers and employers from risks associated with meeting long term pension liabilities.

7.3 Further, the 2009 Regulations set out prescribed limits on different and divergent investment products so that local authority pension funds can spread risks across a number of different types of investment. Currently, the absolute prescribed limit on investing in partnerships is set at 5% for a single partnership and overall no more than 15% of capital value in each of the 89 LGPS Funds in England and Wales, so as to enable these funds to take advantage of certain unregulated investment opportunities.

7.4 Last year, the Department for Communities and Local Government received representations from some of its pensions business partners who expressed concern that local authority pension funds have not been in a position to diversify their investments into vehicles established to take advantage of potential returns from investments in infrastructure.

7.5 In particular, it was suggested that the current absolute legal 15% limit on investing in partnerships was too low and would put some local authority pension funds at risk of exceeding this limit, thereby preventing them from pursuing infrastructure investment opportunities as well as helping the economy to grow.

7.6 In response to those representations the Department for Communities and Local Government carried out a consultation on possible changes to the Scheme Investment Regulations with two options for overcoming perceived barriers to investing in infrastructure. The two options included:-

- Option A: increasing the limit on investing in partnerships from 15% to 30%; and
- Option B: introducing a new separate investment category specifically relating to infrastructure investment, with a limit of 15%.

7.7 Following the consultation, analysis of the responses showed a general consensus of support for adopting Option A ie to increase the limit on investing in partnerships to 30% as it could be introduced quickly and avoided the complications surrounding Option B (introducing a new investment category) of how funds were expected to define infrastructure. By removing the perceived barrier (see paragraph 7.4 above) local authority pension funds, if they choose, have more scope to invest in partnerships, in particular limited partnerships which minimise risk in infrastructure opportunities.

7.8 As a consequence of this, Regulation 2 makes it clear that a local authority pension fund may now invest in partnerships up to a limit of 30%. The requirement to take proper advice and risk assessment if investing above the 5% individual limit stays and is an important element in managing such investment opportunities.

- Consolidation

7.9 The 2009 Investment Regulations were themselves a consolidation of predecessor regulations made in 1998 and subsequently amended on several occasions. This is the first amending instrument.

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

8. Consultation outcome

8.1 Section 7(5) of the Superannuation Act 1972 requires the Secretary of State to consult such associations of local authorities as appear to him to be concerned; any local authority with whom consultation appears to him to be desirable; and such representatives of other persons likely to be affected by the proposed regulations as appear to him to be appropriate. In fact, in addition to consulting those required by statute to be consulted, the Secretary of State consulted a wider list of business partners (listed in Annex A).

8.2 The consultation took place from 6 November 2012 to 18 December 2012. The Department consulted for 6 weeks considering this an appropriate length of time as the issue was already in the public domain and business partners were also fully aware of the issues at stake. A total of 87 responses were received.

8.3 The summary of responses to the consultation is available on the website – www.clg.heywood.co.uk .

8.4 The consultation put forward two clear options for change. These included:-

Option A – increase the limit on investments in partnerships from 15% of a local authority pension fund to 30%; and

Option B – create a new investment class for investment in infrastructure (including via limited liability partnerships), with an appropriate investment limit of 15% of an overall fund.

8.5 Analysis of the consultation responses showed that there was a general consensus that 51 respondees supported implementing Option A as it was seen as a reasonable and appropriate short term measure. Additionally, respondees welcomed the extra flexibility proposed.

8.6 Only 13 respondents supported implementing Option B. In overall terms, the general consensus was that Option B would not be feasible as it is hard to define the infrastructure class and would add another administrative burden.

8.7 The consultation also went onto ask a set of further 5 questions about the state of the LGPS Investment Regulations and how they impact on infrastructure investment more generally. The responses to those questions are, again, set out in the summary. However, in overall terms, respondents stated that they would welcome a comprehensive overhaul of the investment regulations which should reflect current financial markets so that a move towards a prudential risk framework ie removing the current absolute limits on different investment classes and vehicles – similar to private sector pension schemes should be considered.

8.8 It is DCLG's intention to consider this issue further in the context of changes to be introduced once the Public Sector Pensions Bill has been enacted.

9. Guidance

9.1 No guidance is required.

10. Impact

10.1 The impact on business, charities or voluntary bodies is only to the extent that local authority pension funds may have more scope to join with them in future in infrastructure projects subject to a full risk assessment and satisfying themselves there is no conflict of interests.

10.2 The impact on the public sector is limited to the same considerations as in 10.1.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As part of the statutory responsibility to regulate the Scheme, DCLG engages the Scheme's interested parties, including those involved with day to day oversight of fund management. It was through this process as well as being in receipt of correspondence from business partners, that the issue on limits on investments was identified with the limit now being amended.

12.2 Further, the consultation responses also showed widespread support for a more in-depth review of the Investment Regulations and it is DCLG's intention to look at these Regulations again, with a view to possibly bringing

the Scheme in line with private sector pension scheme practice once the Public Sector Pensions Bill has been enacted.

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 Welsh Assembly
The Chief Executives 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
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
NAPF
NALC