

**EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) (No. 2)
REGULATIONS 2008**

2008 No.2989

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The regulations amend the Local Government Pension Scheme (Administration) Regulations 2008 (*the administration regulations*) to make provisions to ensure pension continuity for staff transferring from the Housing Corporation to either the Homes and Communities Agency or the Regulator of Social Housing. Housing Corporation staff are eligible to be members of the Local Government Pension Scheme (LGPS).

2.2. The regulations disapply regulation 38 (2) of the administration regulations because the pension liabilities will transfer in appropriate proportions to either the Homes and Communities Agency or the Regulator of Social Housing as part of a transfer scheme under powers contained in the Housing and Regeneration Act 2008. The regulations also contain provisions to ensure the prudent recovery of the ongoing pension deficit and matters relating to LGPS admission agreements that the Westminster City Council Pension Fund can make with the Homes and Communities Agency and Regulator of Social Housing.

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

3.1 None

4. **Legislative Background**

4.1 Regulations dealing with membership of the LGPS and the admission of bodies other than local authorities are set out in the administration regulations. The Housing Corporation is a community admission body of the LGPS under regulation 5 (2) (d) of the administration regulations and they have an admission agreement with the Westminster City Council Pension Fund to manage pension administration for their employees.

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

Policy

7.1 The Housing and Regeneration Act 2008 includes provision for the creation of two new Non Departmental Public Bodies (NDPBs), the Homes and Communities Agency and the Regulator of Social Housing.

7.2 The Housing and Regeneration Act 2008 also provides for the dissolution of the Housing Corporation, and the constituent parts of English Partnerships, the Commission for New Towns and the Urban Regeneration Agency.

7.3 The Housing and Regeneration Act 2008 also provides that the functions and responsibilities of the Housing Corporation, English Partnerships, the Academy of Sustainable Communities and certain functions of the Department for Communities and Local Government will transfer, as appropriate, by orders made by the Secretary of State, to the new bodies. One order will include the transfer of pension liabilities of the Housing Corporation to either the Homes and Communities Agency or the Regulator of Social Housing in the appropriate proportion.

7.4 The Government's aim for those staff transferring from the bodies to be dissolved to the new NDPBs, is that the majority remain in the pension scheme to which they are currently members. These regulations deal only with staff transferring from the Housing Corporation.

Consultation

7.5 A consultation on the proposed changes to the administration regulations commenced on 8 August 2008 and ceased on 8 September 2008. The consultation included a draft statutory instrument and consultation letter which was sent to the key interested parties, the Housing Corporation and English Partnerships, and designated representatives of the proposed NDPBs, City of Westminster Pension Fund, LGPS pension managers, local government employer representatives, the actuaries' association, local authority treasurer associations, HR professionals, and local authority trades unions.

7.6 The short period of the consultation was in recognition that there was no impact on any LGPS stakeholders who were not directly affected by the machinery of government change. Communities and Local Government have had extensive discussions and meetings with representatives from Westminster City Council Pension Fund, the Housing Corporation and English Partnerships

over many months to establish an agreed way to manage the ongoing pension liabilities. Extensive meetings and discussions have also taken place between Communities and Local Government and designate representatives of the Homes and Communities Agency and the Regulator of Social Housing. The regulatory proposals in the consultation documents were formed as a result of these discussions and agreements.

Consultation responses

7.7. There was one substantive response from the City of Westminster Council Pension Fund and this response sought some further clarifications concerning the proposed draft regulations and the mechanics of the recovery of the pension deficit. The statutory instrument is slightly amended from the consultation draft to provide the clarification sought by Westminster City Council Pension Fund.

The provisions

7.8 The creation of the Homes and Communities Agency and the Regulator of Social Housing, and the winding up of the Housing Corporation, is a machinery of government change as a result of provisions contained in the Housing and Regeneration Act 2008.

7.8.1. The Housing Corporation and Commission for New Towns are bodies listed in the administration regulations regulation 5 (2) (d) and (e) respectively. Regulation 3 deletes these references, with effect from the date the two bodies are dissolved.

7.8.2. The functions of the Housing Corporation will essentially continue but will be undertaken by the two new NDPBs. Regulation 4 (b) inserts new paragraphs (3A) to (3G) into regulation 38 of the administration regulations. New paragraph (3A) provides that the Housing Corporation's pension deficit will not crystallise when the liabilities of the Housing Corporation relating to pensions of the current or former employees are transferred to the Homes and Communities Agency or Regulator of Social Housing. Regulation 38 (2) of the administration regulations is accordingly disapplied in these circumstances.

7.8.3. New paragraph (3B) provides that the Homes and Communities Agency and the Regulator of Social Housing are required to make arrangements with the Westminster City Council Pension Fund about the necessary employer contributions to secure funding of the pension liabilities, and new paragraph (3C) provides a timeframe for the recovery of the past service liabilities of no longer than of 15 years. New paragraph (3D) defines the meaning of past service liabilities.

7.8.4. New paragraph (3E) provides that each admission agreement, between Westminster City Council Pension Fund and either the Homes and Communities Agency or the Regulator of Social Housing, must contain a requirement that the Secretary of State must be notified without delay about

any future pension deficits that are apparent following a future actuarial valuation of the pension fund. This is to ensure ongoing good governance and the transparent and prudent management of future pension liabilities.

7.8.5. New paragraph (3F) deems current Housing Corporation employees, who are members of the LGPS and whose employment is transferred to the Homes and Communities Agency or the Regulator of Social Housing, as having made certain notifications to Westminster City Council which would otherwise be required under the LGPS regulations on a change of employer.

7.8.6. New paragraph (3G) contains definitions.

8. Impact

8.1 The impact on the public sector is limited to Housing Corporation staff eligible for the Local Government Pension Scheme and who transfer to either the Homes and Communities Agency or the Regulator of Social Housing, and staff who join the Regulator of Social Housing after vesting date. The effect is to preserve their entitlement to remain as members of the LGPS.

9. Contact

Lynda Jones, Department for Communities and Local Government, can answer any queries regarding the instrument. Contact details are: tel: 020 7944 6002, or e-mail Lynda.Jones@communities.gsi.gov.uk