EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) REGULATIONS 2018

2018 No. 493

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government (MHCLG) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To amend the Local Government Pension Scheme Regulations 2013 ("the 2013 Regulations") and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 ("the 2014 Regulations") adding clarity, and addressing necessary issues that were raised during the 2016 consultation, as good stewardship of the regulatory framework of the Scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Public Service Pensions Act 2013 ("the 2013 Act") enables the Secretary of State to make regulations creating schemes of pensions for, amongst others, local government workers.

4.2 In England and Wales, such a scheme is created by the 2013 Regulations, made exercising powers in the Superannuation Act 1972. Section 28 of the 2013 Act provides for them to take effect as scheme regulations under that Act.

4.3 The scheme created by the 2013 Regulations is a funded scheme administered by 89 administering authorities specified in Part 1 of Schedule 3 to those Regulations and include London boroughs.

4.4 It is arguable that the changes being made by regulations 5, 9, 20(c) and (f), 21(a) and 22 could be considered to be correcting provisions. The Ministry has agreed with the SI Registrar that the changes made by those provisions are not substantive and clearly do not form the main purpose of this instrument. On the grounds of proportionality, it was agreed that it would be disproportionate to apply the free issue procedure to these Regulations.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 This instrument applies in 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

What is being done and why

7.1 In May 2016 the Secretary of State for Communities and Local Government consulted on proposed regulation changes to the 2013 and 2014 Regulations to be made under the powers conferred by sections 1 and 3 of, and Schedule 3 to, the Public Services Pensions Act 2013.

7.2 The changes were proposed as part of a wider consultation and are areas where clarification has been sought, or a change in approach has been requested and is deemed necessary.

7.3 Paragraphs 7.4 to 7.26 explain how the provisions in the Regulations add clarity and how other issues improve the overall administration as part of good stewardship of the regulatory framework of the Scheme.

7.4 **Local Government Service**

Regulations 2 and 3 of the 2013 Regulations contain introductory provisions and information regarding eligibility for membership of the scheme. The amendments made by regulations 3 and 4 to these regulations align provisions in the 2013 Regulations with terminology used in the 2013 Act. It is clarified that members are defined as being in, or deemed to be in, local government service. It is confirmed that the scheme 'potentially relates' to employees of admission bodies.

7.5 **Publication of list of determinations**

Regulation 3 of the 2013 Regulations is amended by regulation 4(2) to delegate the function of a determination under section 25(5) of the 2013 Act to administering authorities. The requirement to publish and keep up to date a list of determinations under section 25(9) of the 2013 Act is also delegated to administering authorities.

7.6 **Temporary Reduction in Contributions**

Under Regulation 10 of the 2013 Regulations, a member may elect to pay contributions at half the rate specified in the 2013 regulations, and accrue earned pension at half the normal rate – known as "the 50:50 option".

The amendment made by regulation 5 makes it clear that a member's choice to take up the 50:50 option will be cancelled if **either** the member leaves the scheme and is automatically re-enrolled under auto-enrolment, **or** the member goes on to no pay as a result of sickness or injury, rather than both those conditions having to be met.

7.7 **Contributions during Absence from Work**

Regulation 11(4) of the 2013 Regulations specifies that a member remains an active member and pays contributions whilst absent from work on child related leave, reserve forces service leave, sick leave, due to a trade dispute, or leave with permission from their employer. The amendment made by regulation 6 deletes the words after paragraph (c) which state that pension will accrue on any pay during leave, as they are unnecessary (accrual is covered by Regulation 23 (4) and (5) of the 2013 Regulations).

7.8 **Assumed Pensionable Pay**

Regulation 21 of the 2013 Regulations specifies that the amount of ill-health pension or death grant payable is dependent on how much pay an active member received in the 12 weeks (or 3 months) prior to their illness or death. The amendment made by regulation 7 allows employers discretion to use a different pensionable pay figure that reflects the normal pay of the member over a longer period of time. In doing so, an employer must have regard to the pensionable pay received by the member in the previous 12 months. A new paragraph (5C) is also inserted which provides for the annual averaging of returning officers fees during the three years preceding the date the ill-health or death occurred resulting in death grants and ill-health pensions that more accurately reflect the member's pay.

7.9 **Retirement Benefits**

Regulation 30(7)(b) of the 2013 Regulations requires a member with both deferred and active pensions accounts to take benefits relating to both accounts where employment is terminated due to redundancy or business efficiency and the member is required to take retirement benefits because they are aged over 55. The amendment made by regulation 8(a) requires members to take benefits only from the active pension account, not both accounts, in these circumstances.

The amendment made by regulation 8(b) adds clarity by defining who an employee in local government service includes under regulation 2(1A), 3(1)(c) and goes on to identify that an employee who opts out of membership without leaving their employment does not count as having left "local government service". Consequently they are not able to draw benefits while still in their employment.

7.10 **Election for lump sum instead of pension**

Regulation 33 of the 2013 Regulations provides that a member can commute a proportion of their pension into lump sum. The amendment made by regulation 9 (when read as a whole) clarifies that, in calculating the total a member can commute, any lump sum taken from an Additional Voluntary Contribution under regulation 17(7)(a) of the 2013 Regulations should be included in this calculation. The tax consequences of taking a lump sum which exceeds the amount permitted by the relevant tax legislation mean that in practice members do not take a lump sum from an Additional Voluntary Contribution which would take their overall pension commencement lump sum over the limit specified in regulation 33 and this amendment changes the regulation to reflect that practical reality.

7.11 **Survivor Benefits**

Regulations 39(1)(a) and (2)(a) of the 2013 Regulations provide that tier 1 or 2 ill health pensions received by members are based on the earned pension that members would have received had they continued in work until normal pension age. The amendment made by regulation 10 to regulations 47(4)(a), 48(4)(a), 48(5)(a), 48(9)(a) and 48(10)(a) of the 2013 Regulations allows the pension that a surviving partner or child receives, to be based on the tier 1 or 2 pension the member received before death as opposed to the amount of earned pension the member had accrued before the award of the ill health pension.

7.12 **Limit on total amount of benefits**

Regulation 50 of the 2013 Regulations clarifies that the total value of a member's benefits cannot exceed their lifetime allowance, as calculated under the Finance Act 2004. The amendment made by regulation 11 (limit on total amount of benefits) adds individual protection to the list of lifetime allowance protections which a member may have.

7.13 **Exit Credits**

Regulation 64 of the 2013 Regulations provides for special circumstances where revised actuarial valuations and certificates must be obtained. The amendment made by regulation 13 allows for exit credits to be paid within three months to employers that no longer have active members in a pension fund (not previously covered in regulations). An exit credit is a payment payable to such an employer where the assets in the fund relating to that employer exceed their accrued liabilities.

7.14 **Employer's Further Payments**

Regulation 68(2) of the 2013 Regulations relates to circumstances where an Administering Authority can require an employer to make additional payments to funds in respect of extra charges on the fund resulting from immediate payments of retirement benefits. The amendment made by regulation 14 completes the list of circumstances to include employers' waiver of actuarial reduction on early retirement.

7.15 **Rights to Payment Out of the Pension Fund, and Inward Transfers of Pension Rights**

Regulation 96 of the 2013 Regulations relates to rights to payment out of a pension fund if it is a recognised transfer under the 2004 Finance Act. The amendment made by regulation 15 provides that where this is a Public Sector Transfer Club transfer the Administering Authority must comply with the Club Memorandum during both the transfer out and the transfer in of the accrued rights. Regulation 16 makes a consequential amendment to regulation 100 of the 2013 Regulations.

7.16 **Effect of Acceptance of a Transfer Value**

Regulation 101 of the 2013 Regulations requires authorities, where inward transfers of pension rights have been accepted, to credit an active member's account with earned pension. The amendment made by regulation 17 requires the amount to be calculated in accord with the Club Memorandum (if a Public Sector Transfer Club transfer) or in other cases the actuarial guidance.

7.17 **Definitions**

Schedule 1 to the 2013 Regulations contains definitions. The amendments to Schedule 1 made by regulation 20 introduce necessary definitions relating to the Public Sector Transfer Club and amend the definition of statutory pay to include statutory sick pay. The definition of partner is also no longer restricted to partners of active members.

The definition of local government service is updated to align with the 2013 Act (see paragraph 7.9). Consequential amendments are made to regulations 30, 51, 102, 103 of the 2013 Regulations and to regulation 7 of the 2014 Regulations.

7.18 **Scheme Employers**

Schedule 2 to the 2013 Regulations sets out who can be Scheme employers and makes provision relating to admission agreements between employers who are not listed within the Schedule and administering authorities. The amendment made by regulation 21(b)(i) removes both the requirement for administering authorities to make copies of admission agreements available for inspection at their offices and the requirement for administering authorities to inform the Secretary of State when they enter into an admission agreement. The amendment by regulation 21(b)(ii) confirms that administering authorities can agree admission agreements which have retrospective effect.

7.19 **Pension Funds**

Schedule 3 to the 2013 Regulations sets out who must maintain a fund for the Scheme and is thus an administering authority. The amendment made by regulation 22 removes unnecessary wording following the amendment to Part 3 of Schedule 2.

Amendments to the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014

7.20 **Membership before 1 April 2014**

Regulation 3 of the 2014 Regulations specifies membership and benefits of the Scheme prior to 1 April 2014. The amendment made by regulation 24(a) removes the need for an employer (or former employer) to give consent when a member aged between 55 and 60 chooses early payment of benefits under Regulations D(11)(2)(d) or (4) of the Local Government Pension Scheme Regulations 1995, Regulations 31(2) or 154(4) of the Local Government Pension Scheme Regulations 1997, or Regulations 30(2) or 30A (3) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007. These benefits will be actuarially reduced so there is no cost to the employer. Regulation 3 of the 2014 Regulations is also amended by regulation 24(b) to specify that the normal pension age for deferred benefits in respect of membership accrued before 1 October 2006 is age 65. Without that amendment, a member would be in a better position under the 2013 Regulations than they would have been had the relevant provisions of the Earlier Schemes remained in force.

7.21 **Transfers**

Regulation 4 of the 2014 Regulations relates to transitional protections. The 2013 Act sets out a framework for transitional protections to apply to those who are closest to retirement and therefore have had the least time to adapt. In the LGPS this protection takes the form of a “statutory underpin” whereby the member will receive benefits equivalent to the better of the career average benefits accrued and the final salary benefits that the member would have been entitled to had the structure of the scheme not changed.

Regulation 9 of the 2014 Regulations describes persons to whom it applies. The amendment made by regulation 26(b) establishes that people covered by the statutory underpin and who have any protected benefits accrued under another public service pension scheme, are treated as if the person had been an active member of the 2008 Scheme.

7.22 **Interfund Adjustments**

Regulation 10 of the 2014 Regulations provides for interfund adjustments. The amendment made by regulation 27 gives a member with deferred benefits accrued before 1 April 2014 and who became a member of the 2014 Scheme after 1 April 2014, 12 months (or such longer period as the employer permits), to elect to receive a transfer value payment in relation to the deferred benefits into their active pension account.

7.23 **Contributions**

Regulation 14(2) of the 2014 Regulations refers to rights to the return of contributions under the 2013 Scheme regulations. This includes contributions returned to members under regulation 18 of the 2013 Regulations and additional contributions made under earlier Schemes that have been aggregated into an active account. The amendment made by regulation 28 makes this clear.

7.24 **Additional Contributions**

Regulation 15 of the 2014 Regulations refers to Additional Voluntary Contributions. The amendment made by regulation 29 replicates the changes to Regulation 17 of the 2013 Regulations for benefits accrued by additional contributions made before 1 April 2014.

7.25 **Rule of 85**

Schedule 2 to the 2014 Regulations specifies the "85 year rule". Members whose age plus length of membership in the current and earlier schemes is equal to 85 years or more may receive unreduced benefits when taking early retirement benefits. The amendment made by regulation 30 ensures consistency between members (between the ages of 55 and 59) who take early retirement under the 2013 Regulations, as well as under the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Benefits, Membership and Contributions) 2007 Regulations. It provides that members between the ages of 55 and 59 who choose to take early pension under the 1997 and 2007 Regulations, may also benefit from the 'rule of 85' with their employer's consent.

7.26 **Transitional Provisions**

The amendment made by regulation 31 makes it clear that existing admission agreements are to be treated as if a determination under section 25(5) of the 2013 Act had been made in respect of them. Administering authorities are given 12 months from the date regulation 31 comes into force to publish a list of their current admissions agreements.

Consolidation

7.27 An up to date version of the 2013 Regulations as amended will be available on both the Government's Legislation and the Local Government Association's website. The amendments made by these Regulations are relatively trivial and it is not considered appropriate to consolidate the 2013 Regulations at this time.

8. Consultation outcome

8.1 The amending regulations were consulted on as part of a wider LGPS consultation. There were 65 responses to the overall consultation, from a wide range of stakeholders. More than half of these (35) were from Local Government, but there were a significant number of responses from pension lawyers and contractors, as well as from individuals and other groups (including two unions, one charity and one actuarial firm). The Government's response to the consultation may be accessed at: https://www.gov.uk/government/consultations/local-government-pension-scheme-regulations

8.2 After careful consideration of the responses the Department is implementing 21 of the amendments to regulations proposed in the consultation. It will be taking the proposals relating to "the Fair Deal in Local Government" forward separately.

9. Guidance

9.1 The Local Government Association, administering authorities, and the Local Government Pension Scheme Advisory Board publish guidance on the Local Government Pension Scheme from time to time. These documents will be updated as a result of the changes made by the instrument.

10. Impact

10.1 There is minimal impact on any business, charity or voluntary body as a result of these Regulations.

10.2 The impact on the public sector is minimal. There will be a saving in administrative expenses as a direct result of clarification and changes in approach which smooth the working of the Scheme.

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

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 The impact on small businesses is minimal. There will be a saving in administrative expenses as a direct result of clarification and changes in approach which smooth the working of the Scheme.

12. Monitoring and review

12.1 These Regulations will be monitored by the Department and reviewed on a regular basis as an integral part of good stewardship of the regulatory framework of the Scheme.

13. Contact

13.1 **Sheila Owen** at the Ministry of Housing, Communities and Local Government

Telephone: 0303 44 44452 or email: sheila.owen@communities.gsi.gov.uk, who can answer queries regarding the instrument.