

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (WEST MIDLANDS
INTEGRATED TRANSPORT AUTHORITY PENSION FUND AND WEST
MIDLANDS PENSION FUND MERGER) REGULATIONS 2019

2019 No. 1351

1. Introduction

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

2. Purpose of the instrument

- 2.1 To provide for the merger of the local government pension funds held by the West Midlands Combined Authority and Wolverhampton City Council.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 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.
6.2 In England and Wales, such a scheme is created by the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”). The 2013 Regulations were made exercising powers in the Superannuation Act 1972 but section 18 of the 2013 Act provides for them to take effect as scheme regulations.
6.3 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.

7. Policy background

What is being done and why?

- 7.1 Under paragraphs 1(z) and 1(n) to Schedule 3 of the 2013 Regulations respectively, the West Midlands Combined Authority and Wolverhampton City Council are designated as administering authorities and are required to maintain a pension fund for eligible Scheme members and to pay those members' benefits from that fund. Employees of the West Midlands Combined Authority are eligible to participate in the fund maintained by Wolverhampton City Council. Only two employers are eligible to participate in the fund maintained by the West Midlands Combined Authority, both by virtue of admission agreements. Admission agreements are formal agreements which bodies enter into with administering authorities to become scheme employers in the Local Government Pension Scheme.
- 7.2 The Government Actuary's Department (GAD) has a statutory responsibility under section 13 of the 2013 Act to undertake reviews of Local Government Pension Scheme fund valuations and a power to make recommendations if they identify issues. In their review of the 2016 Local Government Pension Scheme fund valuations they identified two issues with the fund maintained by the West Midlands Combined Authority, both relating to solvency. It is a fund closed to new members, with a diminishing number of active members paying contributions, and the majority of the fund liabilities are backed by a single private sector employer (West Midlands Travel Limited), with no public sector guarantor. GAD recommended that the West Midlands Combined Authority, as the administering authority, put a plan in place to address these issues.
- 7.3 These regulations are the result of a plan put forward to the Secretary of State for Housing, Communities and Local Government by West Midlands Combined Authority in May 2019. They provide for the merger of the two funds by making Wolverhampton City Council the administering authority for Scheme members admitted by virtue of the admission agreements that are currently in place with the West Midlands Combined Authority. The regulations achieve this by transferring the assets and liabilities of the fund maintained by West Midlands Combined Authority to the fund maintained by Wolverhampton City Council. The West Midlands Combined Authority will no longer be required to maintain a pension fund.
- 7.4 The benefits and rights of scheme members, whether active, deferred or pensioner, will continue to be as set out in the scheme regulations, and these regulations do not alter them.
- 7.5 Regulation 4 puts in place conditional ring-fencing provisions so that, other than for the West Midlands Combined Authority and its constituent bodies, there will be no increase in risk of unmet liabilities passing to the other employers participating in the Wolverhampton City Council fund from the creation of an admitted bodies fund. The risk of those liabilities passing to West Midlands Combined Authority is currently well managed and the West Midlands Combined Authority has committed to taking them on by making this proposal.
- 7.6 Regulations 2 to 4 will have effect from 1 April 2019. This date has been chosen so that the merger coincides with the beginning of an LGPS scheme year, the beginning of a new scheme valuation period and the setting of new employer contribution rates effective from April 2020. It also creates no disadvantage to any interested parties.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The amendments made by these Regulations are relatively minor and it is not considered appropriate to consolidate the 2013 Regulations at this time.

10. Consultation outcome

10.1 A consultation on the West Midlands merger proposal was carried out from 23 July to 7 September 2019¹. In all, two responses were received: one from the West Midlands Combined Authority and one from Wolverhampton City Council. Both supported the proposal with some suggestions for technical amendments.

10.2 After careful consideration of these responses to the consultation, the Government has decided to proceed with the merger. Two issues for our consideration were highlighted, both of which have been taken forward:

- It was noted that for accounting reasons a merger date of 1 April 2019 would be preferable to the date originally proposed, 31 March 2019. This has now been changed.
- It was observed that the draft direction accompanying the regulations did not explicitly provide for the closure of the admission agreement fund in the event of West Midlands Travel Ltd's assets and liabilities being subsumed into the main West Midlands Pension Fund. This has now been amended.

11. Guidance

11.1 No guidance is necessary to accompany these Regulations.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it relates to the maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Luke Hall MP has made the following statement:

“In accordance with its duties under s13 of the Public Services Pensions Act 2013, I look forward to seeing in their forthcoming review of local valuations the

¹ <https://www.gov.uk/government/consultations/proposed-merger-of-west-midlands-pension-funds>

Government Actuary's Department's assessment of how effectively this measure has addressed the risk and solvency issues that were identified in the 2016 report.”

15. Contact

- 15.1 Jeremy Hughes at the Ministry of Housing, Communities and Local Government, telephone: 0303 444 3131 or email: Jeremy.Hughes@communities.gov.uk, can answer any queries regarding the instrument.
- 15.2 Suzie Clarke, Deputy Director for Local Government Finance, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Luke Hall MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.