EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT) REGULATIONS 2020

2020 No. 179

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 that administering authorities have a discretion to determine the amount of exit credit which should be payable to an employer leaving the Local Government Pension Scheme (the LGPS).

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 and Wales.

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. These authorities are responsible for administering the scheme and maintaining a pension fund from which benefits are paid as they fall due. Some scheme employers (such as local authorities) participate in the scheme because they are one of a class of employer required to offer LGPS membership under the regulations, others participate under an "admission agreement" because they perform services for or have some connection with an employer required to offer LGPS.

7. Policy background

What is being done and why?

7.1 Regulation 64 of the 2013 Regulations was amended on 1 May 2018 to allow exit credits to be paid. Under Regulation 64, where a scheme employer ceases to have any active members of the LGPS (and is not planning to enrol anyone further in the scheme), an exit credit is due if their pension liabilities are calculated by the fund actuary to be less than the assets held in respect of the employer at the date of exit. That change was made to allow pensions risks to be shared more fairly between employers and administering authorities. Previously scheme employers were responsible for any estimated shortfall against their liabilities at the point of exit, but could not receive any surplus.

7.2 It has become apparent that the payment of exit credits in all circumstances may not be appropriate. For example, where a local authority has outsourced services to a service provider it will be a party to the admission agreement between the administering authority and the service provider. However, it is not uncommon for the local authority to enter into a side agreement with the service provider whereby the local authority assumes the pensions risk in exchange for a lower contract price from the service provider. Some such contracts were entered into before exit credits were available under the Regulations. In such cases, a local authority may have explicitly assumed responsibility for any deficit and the resulting exit payment arising at the end of the contract, while the responsibility for any surplus and the resulting exit credit is not similarly explicitly assigned and by default would be paid to the service provider.

7.3 Between 8 May and 31 July 2019, the government consulted on changes to the 2013 Regulations to provide that an LGPS administering authority must take into account a scheme employer's exposure to risk in calculating the value of an exit credit.

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 proposal was carried out from 8 May to 31 July 2019[1], with 116 respondents. Responses were received from administering authorities, other local authorities and scheme employers, actuaries and others. There was strong support for

[1] https://www.gov.uk/government/consultations/local-government-pension-scheme-changes-to-the-local-valuation-cycle-and-management-of-employer-risk?=7

the proposal from 96 of the respondents. Support with reservations was expressed by 18 further respondents. Of these, some expressed reservations with making the amendments retrospective. Many respondents, including those who supported the proposal, highlighted that there are a wide range of risk sharing arrangements and it would be difficult to determine the appropriate level of an exit credit if it were a requirement to consider this. Further, administering authorities might not necessarily be aware of or have access to the detail of side agreements made between local authorities and their service providers. Respondents also asked for clarity in how making this provision retrospective would affect payments already made or due to be made.

10.2 Because of the representations received, the government has amended the proposal consulted on so that an administering authority may determine, at its absolute discretion, the amount of any exit credit payment due, having regard to any relevant considerations.

10.3 In addition, the amended regulations make clear that in cases where an administering authority has not yet paid an exit credit, it should now exercise its discretion in determining the amount of exit credit that is due. Administering authorities should exercise that discretion within six months of the employer exiting the scheme, or within a longer time agreed between the administering authority and the exiting employer. Any payments which have been paid shall be treated as if the administering authority had exercised its discretion to pay that amount, that the administering authority may not seek to change the amount due or exercise its discretion retrospectively, and that any amount already paid as an exit credit would be an authorised payment for the purposes of the Finance Act 2004 under section 176 of that Act (payments by public service pension schemes).

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 section 13 of the Public Services Pensions Act 2013, I believe that this proposal provides a fair basis for the allocation of exit credits between pension funds and exiting scheme employers."

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.