

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (ADMINISTRATION)
(AMENDMENT) REGULATIONS 2008

2008 No. 3245

- 1.** This explanatory memorandum has been prepared by the Department for Communities and Local Government (“CLG”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of these Regulations is twofold;

(a) to provide that members of the Local Government Pension Scheme (“LGPS”) who transfer employment to new unitary local authorities following local government re-organisation on 1st April 2009, are not treated as if they were in a new employment and thus have their LGPS membership from their former local authority employment, treated as if it were deferred; and

(b) to identify as a consequence of local government re-organisation, the authorities responsible for administering the pension fund for the respective employing authorities.

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

3.1 None

4. Legislative Context

4.1 These Regulations contain amendments relating to the new Local Government Pension Scheme (“the 2008 Scheme”) which came into existence on 1st April 2008 and replaced the Local Government Pension Scheme 1997. The amendments are to Local Government Pension Scheme (Administration) Regulations 2008 which is one of the three new instruments that constitute the 2008 Scheme. The other relevant constituting instruments are the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (S.I. 2007/1166) (the “Benefits Regulations”) and the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (S.I. 2008/238), to which there have been amendments.

5. Territorial Extent and Application

5.1 Regulations 3 and 4 of this instrument apply to England and Wales, and regulations 5 to 7 apply to England.

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

7.1 Regulation 16 (6) of the Administration Regulations requires that when a member moves immediately from one employment to another and retains membership of the LGPS, they become a deferred member in respect of the first employment, despite never having ceased to be an active member of the scheme. Regulation 3 inserts a new Regulation 16 (7) whereby Regulation 16 (6) of the LGPS (Administration) Regulations 2008 does not apply to members whose employment is TUPE transferred, or is treated as if it were being TUPE transferred, to another employer participating in the Scheme. In these circumstances, the member's employment has no break and is treated as continuous and, therefore, no period of LGPS membership can be treated as deferred.

7.2 Regulation 3 is as a result of consultation responses which asked for the provisions relating to regulation 16 (6) of the LGPS (Administration) Regulations 2008, to go wider than this local government reorganisation and encompasses those LGPS members whose employment is TUPE transferred, or is treated as if it were being TUPE transferred, to another employer in the Scheme. This would overcome the current uncertainty as to whether or not regulation 16(6) applies to members affected by machinery of government changes. The effect would be that members would not be required to elect to aggregate membership when their employment was transferred, it would remove administrative complexity, and would prevent affected employees from retaining a separate benefit which they could then draw (at age 60 or over) even though still employed by the new employer.

7.3 The Local Government and Public Involvement in Health Act 2007 ("the 2007 Act") provides for the process of making structural and boundary changes to two-tier local government areas in England. The 2007 Act enables provision to be made by order, under section 7, for re-structuring an area in which there are two tiers of local government (a county council and district councils) into a single tier of local government (a county council or a district council). Section 1(2) of the 2007 Act provides, for the purposes of Chapter 1 (structural and boundary change), that there is 'a single tier of local government' for an area if 'there is a county council and no district councils for that area or there is a district council and no county council for that area'.

7.4 The 2007 Act also enables, under section 4, the Secretary of State to request advice from the Boundary Committee on structural and boundary matters relating to any proposal she has received. Sections 5 and 6 of the 2007 Act detail the powers and procedures of the Boundary Committee in responding to such a request.

7.5 The Boundary Committee is currently undertaking reviews of Norfolk, Suffolk and Devon, following the Secretary of State's request for advice from the Boundary Committee in February 2008. Should the Secretary of State, under section 7 of the 2007 Act, decide to implement any proposals put forward by the Boundary Committee, and should this proposal result in the abolition of an authority currently

responsible for the administration of a LGPS pension fund, the Regulations will also apply to those reorganisations.

7.6 As a result of proposals received from local authorities by way of the above process, seven Structural Change Orders, were made under Section 7 of the Act. These Orders provide for the creation of nine single tier unitary authorities in seven areas of England. The Orders were debated and approved by both Houses, and came into force between 26 February 2008 and 28th March 2008.

7.7 The Structural Change Orders were:

Cornwall (SI 2008/491)
County Durham (SI 2008/493)
Northumberland (SI 2008/494)
Shropshire (SI 2008/292)
Wiltshire (SI 2008/490)
Cheshire (SI 2008/634)
Bedfordshire (SI 2008/907)

7.8 These Orders create unitary authorities on county area boundaries in Cornwall, County Durham, Northumberland, Shropshire and Wiltshire. In these areas the existing county council will become a “continuing authority”, and will take on the functions and responsibilities of a district council on 1st April 2009. On this date, all the district, or “predecessor”, councils in these areas will be abolished. The exception will be in the Bedfordshire and Cheshire areas.

7.9 In Bedfordshire, the County Council, Mid Bedfordshire District Council and South Bedfordshire District Council will be abolished. Bedford Borough Council will continue as a unitary authority and a new unitary authority of Central Bedfordshire will be created. Luton Borough Council remains as a unitary authority.

7.10 In Cheshire, the county council and existing six district councils will be abolished, and replaced by two new unitary authorities, Cheshire West and Chester and Cheshire East. Halton Borough Council and Warrington Borough Council remain as unitary authorities.

7.11 The LGPS is administered through 89 separate funds and the area covered by each of these funds is broadly in line with existing county areas. In particular, Cheshire County Council administers the LGPS in the Cheshire County area, and Bedfordshire County Council for the Bedfordshire County area. When these county councils are abolished, it is necessary to establish the LGPS administering authority for the area. Regulations 6 and 7 establish that Cheshire West and Chester, and Bedford Borough Council will be the lead for their respective former county areas.

8. Consultation outcome

8.1 A consultation, on the proposed changes to the LGPS (Administration) Regulations) 2008, commenced on 19 August 2008 and ceased on 31 October 2008. The consultation included a draft statutory instrument and consultation letter which

was sent to the key interested parties: the Chief Executives of Bedfordshire County Council and Cheshire County Council; the Central Bedfordshire Joint Implementation Team (JIT) Leader, Bedford (JIT) Leader, Cheshire West and Chester (JIT) Leader, Cheshire East (JIT) Leader; the Chief Executives of Cornwall County Council, Durham County Council, Northumberland County Council, Shropshire County Council, Wiltshire County Council; District Councils affected by re-organisation, LGPS Pension Fund Managers, Local Government Employer representatives, local government treasurer associations, local government HR professionals, and local authority trades unions.

8.2 The slightly shorter period of consultation (11 weeks) was in recognition of the fact that the proposed regulatory changes related only to those local authorities directly affected by the current local government reorganisation.

8.3 There were 8 consultation responses and there was no opposition to any of the regulatory amendments consulted upon. Consultee respondents supported Bedford Borough Council as the Administering Authority for the former Bedfordshire area, and Chester West and Chester for the former Cheshire area.

8.4 Consultation responses supported the provision that would disapply regulation 16 (6) of the administration regulations as proposed, and there was no opposition to extend the disapplication wider than this local government reorganisation for which opinion had been sought during the consultation. The wider application of this provision is firmly supported by the Local Government Employer's Organisation.

9. Guidance

9.1 There is no guidance associated with this instrument.

10. Impact

10.1 The impact on the public sector is limited to local authority employees eligible for the LGPS and who transfer to the new unitary authorities as a result of the current local government reorganisation.

10.2 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.3 There will be no additional impact on the public sector above that already identified in the Impact Assessments¹ accompanying the seven structural change orders providing for the creation of the nine new single tier councils, which were based on the figures provided by the local authorities in their proposals.

11. Regulating small business

11.1 The legislation does not apply to small business as the Regulations deal specifically with the administration of a public service pension scheme.

¹ The Impact Assessment for the seven Structural Change Orders can be seen at: <http://www.communities.gov.uk/documents/localgovernment/doc/713840.doc>.

12. Monitoring and review

12.1 The Regulations do not require a review after implementation. The LGPS Regulations for the 2008 Scheme set out provisions for the prudent management of the LGPS funds and the new administering authorities will be subject to those Regulations.

13. Contact

11.1 Nicola Rochester, Department for Communities and Local Government, can answer any queries regarding the instrument. Contact details are: tel: 020 7944 6016, or email: Nicola.rochester@communities.gsi.gov.uk .