

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

2008 No. 1083

1. This explanatory memorandum has been prepared by 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 complete the ill health provision for the Local Government Pension Scheme (LGPS) from 1 April 2008 by providing a reviewable third tier of ill health retirement benefit for a Scheme member who leaves employment because they are assessed by an independent occupational health practitioner as being permanently incapable of their current job but medical evidence indicates they are capable of obtaining alternative employment within three years of their leaving.

2.2 The regulations also amend the existing Regulations 20 and 31 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (*the benefit regulations*) to provide clarity to the intention of these two Regulations; and clarify certain definitions concerning: contributions payable by active members, the effect of changes in working pattern on the calculation of final pay, refinements to the definition of eligible child, and the use of GAD guidance in certain circumstances, and other technical measures.

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

3.1 None

4. Legislative Background

4.1 The *benefit regulations* provide a 100% enhancement to accrued retirement benefits for those employees who leave because they are permanently incapable of their local authority employment and are not likely to work in any other employment before normal retirement age (NRA) (1st tier); and a 25% enhancement for those permanently incapable of their current employment but who are likely to become capable of work at some stage before NRA (2nd tier).

4.2 This instrument provides the, final, 3rd tier provision for that group of local government employees who are judged medically incapable of their local government employment but who are capable of obtaining other gainful employment within a reasonable period.

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

7.1 These regulations complete the ill health retirement benefits which form part of the replacement of the Local Government Pension Scheme Regulations 1997 (as amended) with the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 for England and Wales, effective from April 1 2008.

7.2. They provide accrued retirement benefits which can be reviewed and stopped in certain circumstances.

7.3. The proposal for the 3rd tier was initially being considered as a payment outside the Local Government Pension Scheme Regulations as outlined in the Department's letter dated 4 April 2007 which can be viewed at <http://www.xoq83.dial.pipex.com/electrionally%20signed%20Benefits%20Membership%20and%20Cons%20letter%20%20.htm>. This was because HMRC rules, at the time *the benefit regulations* were made, limited the capacity to suspend a pension. Subsequent changes in HMRC rules, introduced by the Finance Act 2007, permit suspension of retirement benefits in a pension scheme. As the 3rd tier ill health benefit is for a LGPS member only, the 3rd tier can be, and is, included in the *benefit regulations*.

7.5. Stakeholders, including representatives of employers, of trade unions, and other interested parties, were consulted on the proposal by means of a consultation letter issued by Communities and Local Government on 21 November 2007 and the consultation period ended on 12 January 2008. An analysis of responses will shortly become available at www.xoq83.dial.pipex.com. Extensive stakeholder discussions with a similarly wide range of interested parties had been held prior to the issue of the consultation letter.

7.6. This Instrument also includes several technical measures to amend the *benefits regulations* to take into account representations for change made by administrators of the LGPS since the *benefits regulations* were laid in April 2007.

8. Impact

8.1. A Regulatory Impact Assessment was prepared for the replacement of the Local Government Pension Scheme Regulations 1997 (as amended) with the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (*the benefit regulations*) for England and Wales, effective from April 1 2008. This can be viewed at <http://www.xoq83.dial.pipex.com/Final%20RIA%20030407%20cleanA.htm>.

8.2. The impact on the public sector is limited to staff eligible for the Local Government Pension Scheme and their employers.

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