

2016 No. 946

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

**The Local Government Pension Scheme (Management and
Investment of Funds) Regulations 2016**

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| <i>Made</i> - - - - | <i>21st September 2016</i> |
| <i>Laid before Parliament</i> | <i>23rd September 2016</i> |
| <i>Coming into force</i> - - | <i>1st November 2016</i> |

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 1(1) and 3(1) to (4) of, and Schedule 3 to, the Public Service Pensions Act 2013(a).

In accordance with section 21(1) of that Act, the Secretary of State has consulted such persons and the representatives of such persons as appeared to the Secretary of State to be likely to be affected by these Regulations.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016.

(2) These Regulations come into force on 1st November 2016.

(3) These Regulations extend to England and Wales.

Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000(b);

“the 2013 Regulations” means the Local Government Pension Scheme Regulations 2013(c);

“the Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014(d);

“authority” means an administering authority listed in Part 1 of Schedule 3 to the 2013 Regulations;

“fund money” means money that is or should be in a pension fund maintained by an authority;

(a) 2013 c. 25; see section 2 of and Schedule 2 to that Act as to how the power is exercisable by the Secretary of State.

(b) 2000 c. 8.

(c) S.I. 2013/2356.

(d) S.I. 2014/525.

“proper advice” means the advice of a person whom the authority reasonably considers to be qualified by their ability in and practical experience of financial matters;

“the Scheme” means the scheme established by the 2013 Regulations.

(2) Any restrictions imposed by these Regulations apply to authorities which have the power within section 1 of the Localism Act 2011(a) (local authority’s general power of competence) or section 5A(1) of the Fire and Rescue Services Act 2004(b) in the exercise of those powers.

(3) Any authority which does not have the powers mentioned in paragraph (2) has, by virtue of these Regulations the power to do anything authorised or required by these Regulations.

Investment

3.—(1) In these Regulations “investment” includes—

- (a) a contract entered into in the course of dealing in financial futures, traded options or derivatives;
- (b) a contribution to a limited partnership in an unquoted securities investment;
- (c) a contract of insurance if it is a contract of a relevant class, and is entered into with a person within paragraph (2) for whom entering into the contract constitutes the carrying on of a regulated activity within the meaning of section 22 of the 2000 Act(c).

(2) The persons within this paragraph are—

- (a) a person who has permission under Part 4A of the 2000 Act (permission to carry on regulated activities)(d) to effect or carry out contracts of insurance of a relevant class;
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the 2000 Act (EEA passport rights), which has permission under paragraph 15 of that Schedule(e) to effect or carry out contracts of insurance of a relevant class; and
- (c) a person who does not fall within sub-paragraph (a) or (b) whose head office is in an EEA state other than the United Kingdom, and who is permitted by the law of that state to effect or carry out contracts of insurance of a relevant class.

(3) A contract of insurance is of a relevant class for the purposes of paragraphs (1)(c) and (2) if it is—

- (a) a contract of insurance on human life or a contract to pay an annuity on human life where the benefits are wholly or partly to be determined by reference to the value of, or income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or an index of, the value of property of any description (whether or not so specified); or
- (b) a contract to manage the investments of pension funds, whether or not combined with a contract of insurance covering either conservation of capital or payment of minimum interest.

(4) For the purposes of this regulation—

“limited partnership” has the meaning given in the Limited Partnerships Act 1907(f);

“recognised stock exchange” has the same meaning as in section 1005 of the Income Tax Act 2007(g);

“traded option” means an option quoted on a recognised stock exchange; and

(a) 2011 c. 20.

(b) 2004 c. 21; section 5A was inserted by section 9(1) of the Localism Act 2011.

(c) Section 22 was amended by section 7(1) of the Financial Services Act 2012 (c. 21).

(d) Part 4A of the 2000 Act was inserted by section 11(2) of the Financial Services Act 2012.

(e) Paragraph 15 was amended by S.I. 2003/2066, 2007/3253, 2012/1906, 2013/1881 and 2015/575.

(f) 1907 c. 24.

(g) 2007 c. 3; section 1005 was substituted by the Finance Act 2007 (c. 11) and amended by the Taxation (International and Other Provisions) Act 2010 (c. 8).

“unquoted securities investment partnership” means a partnership for investing in securities which are not quoted on a recognised stock exchange when the partnership buys them.

Management of a pension fund

4.—(1) An authority must credit to its pension fund(a), in addition to any sum otherwise required to be credited by virtue of the 2013 Regulations or the Transitional Regulations—

- (a) the amounts payable by it or payable to it under regulations 15(3)(b), 67 and 68 of the 2013 Regulations (employer’s contributions and further payments);
- (b) all amounts received under regulation 69(1)(a) of the 2013 Regulations (member contributions);
- (c) all income arising from investment of the fund; and
- (d) all capital money deriving from such investment.

(2) In the case of an authority which maintains more than one pension fund, as respects sums which relate to specific members, the references in this regulation to the authority’s pension fund is to the fund which is the appropriate fund(b) for the member in question in accordance with the 2013 Regulations.

(3) Interest under regulation 71 of the 2013 Regulations (interest on late payments by Scheme employers) must be credited to the pension fund to which the overdue payment is due.

(4) An authority must pay any benefits to which any person is entitled by virtue of the 2013 Regulations or the Transitional Regulations from its pension fund.

(5) Any costs, charges and expenses incurred administering a pension fund may be paid from it except for charges prescribed by regulations made under sections 23, 24 or 41 of the Welfare Reform and Pensions Act 1999(c) (charges in relation to pension sharing costs).

Restriction on power to borrow

5.—(1) Except as provided in this regulation, an authority must not borrow money where the borrowing is liable to be repaid out of its pension fund.

(2) Subject to paragraph (3), an authority may borrow by way of temporary loan or overdraft which is liable to be repaid out of its pension fund, any sums which it may require for the purpose of—

- (a) paying benefits due under the Scheme; or
- (b) to meet investment commitments arising from the implementation of a decision by it to change the balance between different types of investment.

(3) An authority may only borrow money under paragraph (2) if, at the time of the borrowing, the authority reasonably believes that the sum borrowed and interest charged in respect of that sum can be repaid out of its pension fund within 90 days of the borrowing.

Separate bank account

6.—(1) An authority must hold in a separate account kept by it with a deposit-taker all fund money.

(2) “Deposit-taker” for the purposes of paragraph (1) means—

- (a) a person who has permission under Part 4A of the 2000 Act (permission to carry on regulated activities) to carry on the activities specified by article 5 of the Financial

(a) An administering authority is required to maintain a pension fund by regulation 53(1) of, and paragraph 1 of Schedule 3 to the 2013 Regulations.

(b) See regulation 53(2) of and Part 2 of Schedule 3 to the 2013 Regulations for provisions relating to an administering authority becoming the “appropriate administering authority” in relation to a person.

(c) 1999 c. 30; see S.I. 2000/1047 and S.I. 2000/1049.

- Services and Markets Act 2000 (Regulated Activities) Order 2001 (accepting deposits)(a);
- (b) an EEA firm of the kind mentioned in paragraph 5(b)(b) of Schedule 3 to the 2000 Act (EEA passport rights) which has permission under paragraph 15 of that Schedule(c) to accept deposits;
- (c) the Bank of England or the central bank of an EEA state other than the United Kingdom; or
- (d) the National Savings Bank.

(3) An authority must secure that the deposit-taker may not exercise a right of set-off in relation to the account referred to in paragraph (1) in respect of any other account held by the authority or any party connected to the authority.

Investment strategy statement

7.—(1) An authority must, after taking proper advice, formulate an investment strategy which must be in accordance with guidance issued from time to time by the Secretary of State.

(2) The authority's investment strategy must include—

- (a) a requirement to invest fund money in a wide variety of investments;
- (b) the authority's assessment of the suitability of particular investments and types of investments;
- (c) the authority's approach to risk, including the ways in which risks are to be assessed and managed;
- (d) the authority's approach to pooling investments, including the use of collective investment vehicles and shared services;
- (e) the authority's policy on how social, environmental and corporate governance considerations are taken into account in the selection, non-selection, retention and realisation of investments; and
- (f) the authority's policy on the exercise of the rights (including voting rights) attaching to investments.

(3) The authority's investment strategy must set out the maximum percentage of the total value of all investments of fund money that it will invest in particular investments or classes of investment.

(4) The authority's investment strategy may not permit more than 5% of the total value of all investments of fund money to be invested in entities which are connected with that authority within the meaning of section 212 of the Local Government and Public Involvement in Health Act 2007(d).

(5) The authority must consult such persons as it considers appropriate as to the proposed contents of its investment strategy.

(6) The authority must publish a statement of its investment strategy formulated under paragraph (1) and the first such statement must be published no later than 1st April 2017.

(7) The authority must review and if necessary revise its investment strategy from time to time, and at least every 3 years, and publish a statement of any revisions.

(8) The authority must invest, in accordance with its investment strategy, any fund money that is not needed immediately to make payments from the fund.

(a) S.I. 2001/544; article 5 was amended by S.I. 2002/682.

(b) Sub-paragraph (b) of paragraph (5) was substituted by S.I. 2006/3211 and then further substituted by S.I. 2013/3115.

(c) Paragraph 15 has been amended by S.I. 2003/2066, S.I. 2007/3253, 2012/1906, 2013/1881 and 2015/575.

(d) 2007 c. 28; section 212 was amended by the Police Reform and Social Responsibility Act 2011 (c. 13) and there are prospective amendments made by the Local Audit and Accountability Act 2014 (c. 2).

Directions by the Secretary of State

8.—(1) This regulation applies in relation to an authority's investment functions under these Regulations and the 2013 Regulations if the Secretary of State is satisfied that the authority is failing to act in accordance with guidance issued under regulation 7(1).

(2) Where this regulation applies in relation to an authority the Secretary of State may make a direction requiring all or any of the following—

- (a) that the authority make such changes to its investment strategy under regulation 7 as the Secretary of State considers appropriate, within such period of time as is specified in the direction;
- (b) that the authority invest such assets or descriptions of assets as are specified in the direction in such manner as is specified in the direction;
- (c) that the investment functions of the authority under these Regulations and under the 2013 Regulations be exercised by the Secretary of State or a person nominated by the Secretary of State for a period specified in the direction or for so long as the Secretary of State considers appropriate;
- (d) that the authority comply with any instructions of the Secretary of State or the Secretary of State's nominee in relation to the exercise of its investment functions under these Regulations and the 2013 Regulations and provide such assistance as the Secretary of State or the Secretary of State's nominee may require for the purpose of exercising those functions.

(3) Before making a decision whether to issue a direction under this regulation, and as to the contents of any direction, the Secretary of State must consult the authority concerned.

(4) In reaching a decision whether to issue a direction under this regulation, and as to the contents of any direction, the Secretary of State must have regard to such evidence of the manner in which the authority is discharging or proposes to discharge its investment functions as is reasonably available including—

- (a) any report from an actuary appointed under section 13(4) of the Public Service Pensions Act 2013 (employer contributions in funded schemes) or by the authority under regulation 62 of the 2013 Regulations (actuarial valuations of pension funds);
- (b) any report from the local pension board appointed by the authority or from the Local Government Pension Scheme Advisory Board^(a);
- (c) any representations made by the authority in response to the consultation under paragraph (3);
- (d) any other evidence that the Secretary of State regards as relevant to whether the authority has been complying with these Regulations or acting in accordance with guidance issued under regulation 7(1).

(5) If the Secretary of State is of the opinion that additional information is required to enable a decision to be taken whether to issue a direction under this regulation, or as to what any direction should contain, the Secretary of State may carry out such inquiries as the Secretary of State considers appropriate to obtain that information.

(6) An authority must comply with any request from the Secretary of State intended to facilitate the obtaining of information under paragraph (5).

Investment managers

9.—(1) Instead of managing and investing fund money itself, an authority may appoint one or more investment managers to manage and invest fund money, or any part of such money, on its behalf.

(a) The Local Government Pension Scheme Advisory Board is established by regulation 110 of the 2013 Regulations (which was inserted by S.I. 2015/57).

(2) But the authority may only appoint an investment manager if the authority complies with paragraphs (3) and (4).

(3) The authority must reasonably believe that the investment manager's ability in and practical experience of financial matters make that investment manager suitably qualified to make investment decisions for it.

(4) The authority must take proper advice in relation to the appointment and the terms on which the appointment is made.

Investments under section 11(1) of the Trustee Investments Act 1961

10. An authority to which section 11 of the Trustee Investments Act 1961(a) applies may invest, without any restriction as to quantity, in any investment made in accordance with a scheme under section 11(1) of that Act (which enables the Treasury to approve schemes for local authorities to invest in collectively).

Consequential amendments

11.—(1) The 2013 Regulations are amended as follows.

(2) For regulation 57(1)(i) (pension fund annual report) substitute—

“(i) the current version of the investment strategy under regulation 7 (investment strategy statement) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016;”.

(3) For regulation 58(4)(b) (funding strategy statement) substitute—

“(b) the current version of the investment strategy under regulation 7 (investment strategy statement) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016.”.

(4) For regulation 69(2)(b) (payment by Scheme employers to administering authorities) substitute—

“(b) paragraph (1)(c) does not apply where the cost of the administration of the fund is paid out of the fund under regulation 4(5) (management of a pension fund) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016.”.

Revocations and transitional provision

12.—(1) The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009(b) and the Local Government Pension Scheme (Management and Investment of Funds) (Amendment) Regulations 2013(c) are revoked.

(2) Regulations 11 (investment policy and investment of pension fund money), 12 (statement of investment principles), 14 (restrictions on investments), 15 (requirements for increased limits) of and Schedule 1 (table of limits on investments) to the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 continue to have effect in relation to an authority until the date when that authority first publishes its investment strategy statement under regulation 7.

(3) For the period starting on 1st November 2016 and ending on whichever is the earlier of the date the authority publishes its investment strategy statement under regulation 7, or 31st March 2017, regulation 7 applies to an authority only to the extent necessary to enable that authority to formulate and publish its investment strategy statement.

(a) 1961 c. 62; section 11(1) was amended by the London Government Act 1963 (c. 4) and the Local Government Act 1985 (c. 51).

(b) S.I. 2009/3093.

(c) S.I. 2013/410.

We consent to the making of these Regulations

David Evennett

Guto Bebb

Two of the Lords Commissioners of Her Majesty's Treasury

Signed by authority of the Secretary of State for Communities and Local Government

Marcus Jones

Parliamentary Under Secretary of State

21st September 2016

Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the management and investment of pension funds held by administering authorities required to maintain such funds by the Local Government Pension Scheme Regulations 2013.

Regulations 2 and 3 respectively contain definitions and make provision that the restrictions imposed by the regulations bind authorities which have the “power of general competence” in the exercise of that power.

Regulations 4, 5 and 6 respectively set out which payments must be made into and out of the pension fund, restrict powers of borrowing and require fund money to be in a separate account.

Regulations 7 and 8 respectively require authorities to publish an investment strategy in accordance with guidance issued by the Secretary of State and enable the Secretary of State to issue a direction to any authority which fails to comply with its statutory obligations as regards its pension fund or which fails to act in accordance with the guidance.

Regulations 9 and 10 respectively allow for the appointment of investment managers and investment in Treasury approved schemes.

Regulations 11 and 12 respectively make consequential amendments relating to the investment strategy published under regulation 7 and transitional provisions.

No impact assessment has been produced because it has no impact on business, charities or voluntary bodies and minimal impact on the public sector.

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