

**2008 No. 2425**

**PENSIONS, ENGLAND AND WALES**

**The Local Government Pension Scheme (Miscellaneous)  
Regulations 2008**

<i>Made</i>	- - - -	<i>9th September 2008</i>
<i>Laid before Parliament</i>		<i>17th September 2008</i>
<i>Coming into force</i>	- -	<i>17th October 2008</i>

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(a).

In accordance with section 7(5) of that Act, the Secretary of State has consulted (a) such associations of local authorities as appeared to the Secretary of State to be concerned; (b) the local authorities with whom consultation appeared to the Secretary of State to be desirable; and (c) such representatives of other persons likely to be affected by the Regulations as appeared to the Secretary of State to be appropriate.

The Secretary of State makes the following Regulations:

**Citation, application and commencement**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Miscellaneous) Regulations 2008.

(2) These Regulations apply in relation to England and Wales(b).

(3) These Regulations shall come into force on 17th October 2008, but—

- (a) regulation 8, and so much of regulation 2 as relates to that regulation, shall have effect from 1st April 2004,
- (b) regulations 4 and 5, and so much of regulation 2 as relates to those regulations, shall have effect from 6th April 2006,
- (c) regulation 9, and so much of regulation 2 as relates to that regulation, shall have effect from 1st October 2006,
- (d) regulations 3, 7 and 10, and so much of regulation 2 as relates to those regulations, shall have effect from 1st April 2007,
- (e) regulation 6, and so much of regulation 2 as relates to that regulation, shall have effect from 6th April 2007, and

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(a) 1972 c.11.

(b) The Secretary of State's functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (1998 c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(f) regulations 11 to 22 shall have effect from 1st April 2008.

### **Amendment of the 1997 Regulations**

2. The Local Government Pension Scheme Regulations 1997(a) are amended in accordance with regulations 3 to 10.

### **Optional contributions during absences**

3. In regulation 18 (optional contributions during absences)(b), after paragraph (2), insert—

“(2A) But in calculating the pay on which the contributions are made, any amount the person receives on account of a day’s work carried out under regulation 12A of the Maternity and Parental Leave etc. Regulations 1999(c) or regulation 21A of the Paternity and Adoption Leave Regulations 2002(d) that exceeds any maternity, paternity or parental leave pay due for that day, shall be disregarded.”.

### **Death grants**

4. In regulation 38 (death grants)(e), for paragraph (6) substitute—

“(6) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member’s death grant before the expiry of two years—

(a) beginning with his death or

(b) beginning with the date on which the administering authority could reasonably be expected to have become aware of the member’s death,

they must pay an amount equal to the shortfall to the member’s personal representatives.”.

### **Meaning of “eligible child”**

5. For regulation 44 of the 1997 Regulations (meaning of eligible child)(f), substitute—

“44.—(1) Subject to paragraph (3), the child of a deceased member is an eligible child if he is wholly or mainly dependent on the member, and is less than 18 years of age, at the date of the member’s death.

(2) But a child who is born on or after the first anniversary of the date of the member’s death is not an eligible child.

(3) A dependent child who has reached the age of 18 but has not reached the age of 23 and is in full-time education or undertaking vocational training at the date of the member’s death is an eligible child.

(4) An appropriate administering authority may treat a dependent child as an eligible child after he reaches the age of 18 and until he reaches the age of 23 if he commences full time education or vocational training after the date of the member’s death.

(5) In the case of a dependent child falling within paragraph (4), an appropriate administering authority may —

(a) treat education or training as continuous despite a break; and

(b) suspend payment of any entitlement to benefits under regulation 45, 46 and 47 of the 1997 Regulations during a break in education or training.

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(a) S.I. 1997/1612; various regulations were revoked by S.I. 2008/238.

(b) Regulation 18 was amended by S.I. 2001/1481, regulations 2 and 6 and by S.I. 2003/2249, regulation 2 and the Schedule.

(c) S.I. 1999/3312; regulation 12A was inserted by S.I. 2006/2014, regulations 3 and 9.

(d) S.I. 2002/2788; regulation 21A was inserted by S.I. 2006/2014, regulation 4.

(e) Regulation 38 was amended by S.I. 1998/1238, regulation 16 and by S.I. 2007/1488, regulations 2 and 10.

(f) Regulation 44 was amended by S.I. 2001/770, regulations 2 and 10, and by S.I. 2006/966, regulations 2 and 20.

(6) An appropriate administering authority may treat a dependent child who is disabled within the meaning of the Disability Discrimination Act 1995(a) as an eligible child.”.

#### **Commutation: small pensions**

6. In regulation 49 of the 1997 Regulations (commutation: small pensions)(b), after paragraph (1), insert—

“(1A) Any payment under paragraph (1) must be calculated in accordance with guidance issued by the Government Actuary.”.

#### **Power of employing authority to increase total membership**

7. In regulation 52 of the 1997 Regulations (power of employing authority to increase total membership)(c), after paragraph (1), insert—

“(1A) Where a member leaves his employment by reason of redundancy, a resolution under paragraph (1) may be passed at any time in the period of six months beginning with the date on which the member leaves his employment, but shall be deemed to take effect on the final day of employment, and

“redundancy” includes leaving employment in the interests of efficiency, or because the member held a joint appointment which has been terminated because the other holder has left it.”.

#### **Rights to return of contributions**

8. In regulation 87 of the 1997 Regulations (rights to return of contributions)(d), after paragraph (2A), insert—

“(2B) If a member dies before repayment of the contributions have been made, these shall be treated as a lump sum death benefit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004.”.

#### **Amendment of regulations 122A, 151 and 153**

9.—(1) In regulation 122A(1)(e), for “regulation 122(6C)” substitute “regulation 122(6D)”.

(2) In regulation 151(b)(f), omit “and regulation 153(1)”.

(3) In regulation 153(1)(g), for “from the valuation date” substitute “from the day on which the pension sharing order takes effect”.

#### **Occupational pension schemes**

10. In Schedule 1 (interpretation), for the definition of “Occupational pension scheme”, substitute—

““Occupational pension scheme” means—

(a) an occupational pension scheme within the meaning of section 1 of the Pensions Schemes Act 1993 other than—

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(a) 1995.c.50.

(b) Regulation 49 was amended by S.I. 2007/1488, regulation 11.

(c) Regulation 52 was amended by S.I. 2004/573, regulations 2 and 18.

(d) Regulation 87 was amended by S.I. 1998/1238, regulation 24(c) and S.I. 2004/573, regulations 2 and 25.

(e) Regulation 122A was inserted by S.I. 1997/1613, regulation 27 and Schedule 3 and amended by S.I. 2006/966, regulation 42.

(f) Regulation 151 was inserted by S.I. 2000/3025, regulation 3 and the Schedule.

(g) Regulation 153 was inserted by S.I. 2000/3025, regulation 3 and the Schedule.

- (i) a retirement benefits scheme (as defined in section 611 of the Taxes Act) which is not of a description mentioned in section 596(1)(a), (b) or (c) of that Act,
  - (ii) an additional voluntary contributions scheme,
  - (iii) an appropriate policy,
  - (iv) a personal pension scheme, or
  - (v) a self employed pension arrangement; and
- (b) a European pensions institution as defined in section 293(8) of the Pensions Schemes Act 2004(a);”.

### **Amendment of the Local Government (Management and Investment of Funds) Regulations 1998**

11. The Local Government (Management and Investment of Funds) Regulations 1998(b) are amended in accordance with regulations 12 to 14.

12. In regulation 2 (general definitions)—

- (a) for the definition of “the 1997 Regulations”, substitute—
 

““the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008(c);”;
- (b) in the definition of “administering authority”, for “the 1997 Regulations” substitute—
 

“the Administration Regulations;”;
- (c) after the definition of “administering authority”, insert—
 

““the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(d);”and;
- (d) for the definition of “Transitional Regulations” substitute —
 

““Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions) Regulations 2008(e);”.

13. In regulation 5 (management of pension fund)—

- (a) in paragraph (2), for the words from the beginning to the end of sub-paragraph (b), substitute—
 

“They must pay or credit to their pension fund, in addition to any other sum the Benefits Regulations, the Transitional Regulations or the Administration Regulations specify must be paid or credited to the fund—

  - (a) the amounts payable by them or paid to them for the credit of the fund by any other authority under regulations 39 to 41 of the Administration Regulations,
  - (b) all members’ contributions including those made by virtue of the Transitional Regulations, except contributions payable under regulation 25 of the Administration Regulations (additional voluntary contributions and shared cost additional voluntary contributions);”;
- (b) for paragraph (2)(e), substitute—
 

“(e) all additional payments received by the authority under the Benefits Regulations, the Transitional Regulations or the Administration Regulations.”;
- (c) in paragraph (3), for “Schedule 5 to the 1997 Regulations” substitute “Schedule 4 to the Administration Regulations.”;

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(a) 2004 c. 35.

(b) S.I. 1998/1831, to which there are amendments not relevant to these Regulations.

(c) S.I. 2008/239.

(d) S.I. 2007/1166.

(e) S.I. 2008/238.

- (d) in paragraph (4), for “regulation 82(1) of the 1997 Regulations” substitute “regulation 44(1) of the Administration Regulations”; and
- (e) omit paragraph (5).

14. In Schedule 2 (consequential amendments), omit paragraph 3.

**Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007**

15. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(a) are amended in accordance with regulations 16 to 20.

16. In regulation 1 (citation, commencement, interpretation and application)—

- (a) after the definition of “the 1997 Scheme”, insert—

““the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008(b);”
- (b) after the definition of “appropriate fund”, insert—

““deferred member” has the same meaning as in Schedule 1 to the Administration Regulations:” and
- (c) after the definition of “part-time employee”, insert—

““pensioner member” has the same meaning as in Schedule 1 to the Administration Regulations:”.

17. In regulation 12 (power of employing authority to increase total membership of active members), after paragraph (2) add—

“(3) If the member leaves his employment for a reason other than redundancy, a resolution under paragraph (1) may only be passed before the relevant date.

(4) If the reason for the member leaving his employment is redundancy, a resolution under paragraph (1) may be passed at any time in the period of six months beginning with the relevant date but shall be deemed to take effect on the relevant date.

(5) The relevant date is the date on which the member leaves his employment.

(6) “Redundancy” includes leaving employment in the interests of efficiency, or because the member held a joint appointment which has been terminated because the other holder has left it.”.

18. In regulation 23 (death grants: active members), for paragraph (5) substitute—

“(5) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member’s death grant before the expiry of two years—

- (a) beginning with his death or
- (b) beginning with the date on which the administering authority could reasonably be expected to have become aware of the member’s death,

they must pay an amount equal to the shortfall to the member’s personal representatives.”.

19. In regulation 29 (calculation on leaving early)(c), in paragraph (4) for “regulation 6(2)” substitute “regulation 6”;

20. In regulation 32 (death grants: deferred members), for paragraph (4) substitute—

“(4) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member’s death grant before the expiry of two years—

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(a) S.I. 2007/1166 which was amended by S.I. 2008/1083.  
(b) S.I. 2008/239.  
(c) Regulation 29 was amended by S.I. 2008/1083, regulation 16.

- (a) beginning with his death: or
  - (b) beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death,
- they must pay an amount equal to the shortfall to the member's personal representatives.”.

### **Amendment of the Local Government Pension Scheme (Transitional Provisions) Regulations 2008**

**21.** The Local Government Pension Scheme (Transitional Provisions) Regulations 2008(a) are amended, in Schedule 1, by the insertion at the appropriate place in the list of provisions of the Local Government Pension Scheme Regulations 1997 which are saved from revocation, of—

“Regulation 18 for the purpose of enabling an administering authority to make after 31st March 2008 a calculation in accordance with paragraph (2A);”;

“Regulation 38 for the purpose of enabling an administering authority to make after 31st March 2008 a payment required by paragraph (6);”;

“Regulation 44 for the purpose of enabling an administering authority to make after 31st March 2008 a determination whether a child of a deceased member is an “eligible child” within the meaning of regulation 44;”;

“Regulation 52 for the purpose of enabling an employing authority to pass after 31st March 2008 a resolution under paragraph (1A);”;

“Regulation 130C(b);”.

### **Amendment of the Local Government Pension Scheme (Administration) Regulations 2008**

**22.** The Local Government Pension Scheme (Administration) Regulations 2008(c) are amended—

- (a) In regulation 31 (pension funds: governance compliance statement), by the insertion of—
  - “(1A) An administering authority that has not published the first such statement as prescribed by regulation 73A(2), must do so on or before 1st November 2008.”
- (b) in regulation 83 (inward transfer of pension rights), by the substitution for paragraphs (2) and (3) of—
  - “(2) Relevant pension rights are—
    - (a) accrued rights under a registered scheme other than rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit; and
    - (b) accrued rights under a European pensions institution as defined in section 293(8) of the Pensions Schemes Act 2004(d).
  - (3) Accrued rights under a registered scheme include rights to preserved benefits and rights appropriately secured under section 19 of the 1993 Act.”; and
- (c) in Schedule 1, after the definition of “The commencement date”, by the insertion of—
  - ““The contribution rate” shall mean the appropriate contribution rate for the member as provided in regulation 3 of the Benefits Regulations;”.

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(a) S.I. 2008/238 which was amended by S.I. 2008/1083.  
 (b) Regulation 130C was inserted by S.I. 2001/770, regulations 2 and 20.  
 (c) S.I. 2008/239 which was amended by S.I. 2008/1083.  
 (d) 2004. C. 35.

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

*John Healey*  
Minister of State

9th September 2008

Department for Communities and Local Government

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations apply in relation to England and Wales and contain amendments relevant to the Local Government Pension Scheme 1997 (“the 1997 Scheme”) and to the new Local Government Pension Scheme (“the 2008 Scheme”) which came into existence on 1st April 2008 and replaced the 1997 Scheme.

Regulations 2 to 10 make retrospective provision in relation to the operation of the 1997 Scheme. By virtue of regulation 1(3)(a) to (e), regulation 8 has effect from 1st April 2004, regulations 4 and 5 from 6th April 2006, regulation 9 from 1st October 2006, regulations 3, 7 and 10 from 1st April 2007 and regulation 6 from 6th April 2007. Regulation 2 has effect for the purposes of making the amendments specified in regulations 3 to 10 on the date from which each of those regulations has effect.

Section 12 of the Superannuation Act 1972 provides that regulations made under section 7 of that Act may have retrospective effect.

Regulation 3 provides that any pay received in respect of days worked during maternity, paternity adoption and parental leave is disregarded for the purposes of calculating contribution rates for voluntary contributions.

Regulation 4 requires the making to a member’s personal representatives of a payment equalling the shortfall of death grant due to a member if the death grant has not been paid within two years of the member’s death or the date on which the administering authority could reasonably be expected to have become aware of the member’s death.

Regulation 5 modifies the definition of “eligible child”.

Regulation 6 provides that commutation lump sums in respect of small pensions are to be calculated in accordance with guidance issued by the Government Actuary.

Regulation 7 enables an employing authority to pass a resolution to increase total membership up to six months after a member leaves his employment on the grounds of redundancy. Redundancy includes leaving employment on efficiency grounds or where a joint appointment is terminated because the other holder of the joint appointment has left.

Regulation 8 provides for the contribution of members with short service to be treated as a lump sum death benefit if their contributions have not been repaid before they die.

Regulation 9 makes minor amendments to extant provisions in the Local Government Pension Scheme Regulations 1997 (“the 1997 Regulations”) concerning credited periods for transferring members with mis-sold pension rights and the calculation of pension credits.

Regulation 10 extends the definition of occupational pension scheme.

Regulations 11 to 22 amend the Local Government (Management and Investment of Funds) Regulations 1998 (“the Investment Regulations”); the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (“the Benefits Regulations”); the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (“the Transitional

Regulations”) and the Local Government Pension Scheme (Administration) Regulations 2008 (“the Administration Regulations”). By virtue of section 12 of the Superannuation Act 1972 and regulation 1(3)(f), the amendments have retrospective effect from 1st April 2008.

Regulation 11 introduces the amendments set out in regulations 12 to 14.

Regulation 12 updates certain definitions contained in regulation 2 of the Investment Regulations as a consequence of the coming into operation of the 2008 Scheme.

Regulations 13 and 14 make minor and technical consequential amendments in order to align regulation 5 of, and Schedule 2 to, the Investment Regulations with the 2008 Scheme.

Regulation 15 introduces the amendments set out in regulations 16 to 20.

Regulation 16 inserts some additional definitions into the Benefits Regulations.

Regulation 17 amends regulation 12 of the Benefits Regulations so that the resolution to increase total membership is made before the member leaves his employment, or up to six months after the member leaves his employment where he leaves on the grounds of redundancy.

Regulation 18 substitutes paragraph (5) in regulation 23 of the Benefits Regulations (death grants: active members) to provide for death grant to be payable before the expiry of two years beginning with the date upon which the administering authority became aware of the member’s death.

Regulation 19 makes a minor amendment to regulation 29 of the Benefits Regulations (calculation on leaving early).

Regulation 20 substitutes paragraph (4) in regulation 32 of the Benefits Regulations (death grants: deferred members) to make the same provision in the case of deferred members as regulation 18 of these Regulations does in the case of active members.

Regulation 21 contains amendments to the Transitional Regulations. The effect is to save, for the stated purposes: regulation 18 (optional contribution during absences), regulation 38 (death grants), regulation 44 (meaning of eligible child) and regulation 52 (power of employing authority to increase total membership) of the 1997 Regulations. Regulation 130C (employees in the Rent Service Agency) of the 1997 Regulations is saved generally.

Regulation 22 contains amendments to the Administration Regulations: in regulation 31 so as to extend the time given in the 1997 Regulations for publication of the first governance compliance statement; in regulation 83 so as to enable the transfer into the 2008 Scheme of rights accrued under a European pension scheme, and in Schedule 1 by the insertion of an additional definition.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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