

2010 No. 2090

PENSIONS, ENGLAND AND WALES

**The Local Government Pension Scheme (Miscellaneous)
Regulations 2010**

<i>Made</i>	- - - -	<i>18th August 2010</i>
<i>Laid before Parliament</i>		<i>25th August 2010</i>
<i>Coming into force</i>	- -	<i>30th September 2010</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, extent and commencement

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Miscellaneous) Regulations 2010.

(2) These Regulations extend to England and Wales(b).

(3) These Regulations shall come into force on 30th September 2010, but—

- (a) regulations 7, 9 and 10, 12 to 14(a), 16 to 18, 24, 31, 34 to 36 and 50 shall have effect from 1st April 2008;
- (b) regulations 25, 27 and 48 shall have effect from 1st October 2008;
- (c) regulation 41 shall have effect from 1st April 2009;
- (d) regulations 3 and 4 shall have effect from 6th April 2009,
- (e) and regulation 49 shall have effect from 31st December 2009.

(a) 1972 c. 11.; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

(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 (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).

Amendment of the Local Government Pension Scheme Regulations 1997

2. The Local Government Pension Scheme Regulations 1997(a) are amended in accordance with regulations 3 and 4.

3. In regulation 154 (payment of benefits)(b)—

(a) in paragraph (1), for “A pension credit member” substitute “Subject to paragraph (4), a pension credit member”; and

(b) after paragraph (3), add—

“(4) A pension credit member may elect in writing to the appropriate administering authority for benefits payable under paragraph (1) to be paid at or after age 60 (but before normal benefit age), and such benefits must be reduced by the amounts as are shown to be appropriate in guidance issued by the Secretary of State.”.

4. In regulation 155 (death grants)(c), in paragraph (2) for “his normal benefit age” substitute “retirement benefits come into payment,”.

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

5. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(d) are amended in accordance with regulations 6 to 31.

6. In regulation 1 (citation, commencement, interpretation and application)(e), in paragraph (4)—

(a) after the definition of “financial year”, insert—

““IRMP” has the same meaning as given to that expression by regulation 20(14);

“local government employment” means employment by virtue of which the person employed is or has been a member;”;

(b) for the definition of “the Scheme”, substitute—

““the Scheme” means the Local Government Pension Scheme 2008 constituted by these Regulations, the Local Government Pension Scheme (Transitional Provisions) Regulations 2008(f) and the Administration Regulations;”.

7. In regulation 2 (active members)(g), in paragraph (2) for “he continues to be” substitute “that person is”, and in paragraph (3) for “he” substitute “that person”.

8. In regulation 3 (contributions payable by active members)(h)—

(a) in paragraph (3) for “On 1st April 2009, and each subsequent anniversary”, substitute “On the first day of the pay period in which 1st April 2009 falls, and on the first day of the pay period in which each subsequent 1st April falls”;

(b) for paragraph (3A) substitute—

“(3A) In paragraph (3), “the appropriate increase” means the amount by which the figures would be increased with effect from the first Monday falling on or after 6th April of the relevant year if they were pensions beginning on 1st April 2008 to which the Pensions (Increase) Act 1971 applied.”;

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

(b) Regulation 154 was inserted by S.I. 2000/3025 and saved from revocation by S.I. 2008/238.

(c) Regulation 155 was inserted by S.I. 2000/3025, and by virtue of regulation 14(2) of S.I. 2008/238, regulation 155(2) shall be construed as including a reference to rights accruing under the Local Government Pension Scheme 2008, as well as under the Local Government Pension Scheme 1997.

(d) S.I. 2007/1166, amended by S.I. 2008/1083, S.I. 2008/2425, S.I. 2009/3150 and S.I. 2010/528.

(e) Regulation 1 was amended by S.I. 2008/1083, S.I. 2008/2425 and S.I. 2009/3150.

(f) S.I. 2008/238.

(g) Regulation 2 was substituted by S.I. 2008/1083.

(h) Regulation 3 was amended by S.I. 2008/1083.

- (c) in paragraph (9) for “after”, substitute “on and after”; and
 - (d) omit paragraph (11).
- 9.** In regulation 4 (meaning of “pensionable pay”)(a), for paragraph (2)(g) substitute—
- “(2)(g) any award of compensation (excluding any sum representing arrears of pay) for the purposes of achieving equal pay in relation to other employees.”.
- 10.** In regulation 7 (calculation of length of periods of membership)(b), in paragraph (3) for “Membership”, substitute “Except for the purposes of regulation 5(1)(a), membership”.
- 11.** For regulation 11 (final pay: fees), substitute—
- “**11.**—(1) Subject to paragraph (2), where a variable-time employee’s pensionable pay for the purposes of regulation 8(1) consists of or includes fees, his or her final pay is calculated as the sum of —
- (a) the average of all such fees for the three consecutive years (or the employee’s total period of membership if less) ending with the final pay period; and
 - (b) any sums falling within regulation 4(1), other than fees, for the final pay period.
- (2) But a member’s employer may consent to the member having his or her final pay calculated by the substitution for paragraph (1)(a) of the average of all such fees for any three consecutive years ending on the 31st March within the period of ten years ending with the last day he or she was an active member.”.
- 12.** In regulation 13 (power of employing authority to award additional pension)(c), in paragraph (1) for “a member” substitute “an active member”.
- 13.** In regulation 14 (election in respect of additional pension), in paragraph (1) for “A member”, substitute “An active member”.
- 14.** In regulation 14A (election to pay additional contributions: survivor benefits)(d)—
- (a) in each place where it occurs—
 - (i) for “a member”, substitute “an active member”; and
 - (ii) for “the member”, substitute “the active member”; and
 - (b) omit paragraph (6).
- 15.** In regulation 15 (elections to pay AVCs), in paragraph (1) for “A member”, substitute “Subject to regulation 26 (use of accumulated value of AVCs and SCAVCs) of the Administration Regulations, a member”.
- 16.** In regulation 16 (retirement benefits)(e)—
- (a) in paragraph (1)—
 - (i) for “A member”, substitute “Subject to paragraph (3), a member”; and
 - (ii) for “local government pension scheme employment”, substitute “local government employment”; and
 - (b) after paragraph (2), add—

“(3) Where a member chooses to defer immediate payment of retirement pension under regulation 50 (commencement of pensions) of the Administration Regulations, the member’s pension rights shall be enhanced in accordance with guidance issued by the Secretary of State.”.

(a) Regulation 4 was amended by S.I. 2009/3150 and S.I. 2010/528.
 (b) Regulation 7 was amended by S.I. 2008/1083.
 (c) Regulation 13 was amended by S.I. 2009/3150.
 (d) Regulation 14A was inserted by S.I. 2009/3150.
 (e) Regulation 16 was amended by S.I. 2010/528.

17. In regulation 17 (retirement after the normal retirement date), in paragraph (1) after “remains in employment” insert “or who joins the Scheme”.

18. In regulation 18 (flexible retirement)(a)—

(a) after paragraph (3), insert—

“(3A) If the payment of benefits referred to in paragraph (1) takes effect after the member’s 65th birthday, the benefits payable shall be enhanced in accordance with guidance issued by the Secretary of State.”; and

(b) in paragraph (5), after “17,” insert “18.”.

19. In regulation 20 (early leavers: ill-health)(b)—

(a) in paragraphs (1)(b) and (2), for “obtaining” substitute “being capable of undertaking”;

(b) in paragraph (3)—

(i) for “cannot obtain gainful employment” substitute “is not capable of undertaking gainful employment”; and

(ii) for “able to obtain” substitute “capable of undertaking”;

(c) for paragraph (4) substitute—

“(4) If the authority determine that it is likely that he will be capable of undertaking gainful employment within three years of leaving his employment, or normal retirement age if earlier, his benefits—”;

(d) in paragraph (5)—

(i) after “medicine” insert “(“IRMP”); and

(ii) for “obtaining” substitute “being capable of undertaking”;

(e) in paragraph (7)—

(i) for sub-paragraph (a) substitute—

“(a) Subject to sub-paragraph (c), once benefits under paragraph (4) have been in payment to a person for 18 months, the authority shall make inquiries as to his current employment.”; and

(ii) after sub-paragraph (b), insert—

“(c) Sub-paragraph (a) does not apply where a person reaches normal retirement age.”;

(f) in paragraph (8)—

(i) in sub-paragraph (a)(ii), for “obtaining” substitute “undertaking”;

(ii) in sub-paragraph (b), for “The authority” substitute “Subject to sub-paragraph (bb), the authority”; and

(iii) after sub-paragraph (b), insert—

“(bb) Paragraph (b) does not apply where a person reaches the age of 65.”;

(g) after paragraph (11)(a), insert—

“(aa) A subsequent determination under paragraph (3) must be made within three years of the date that payment of benefits is discontinued under paragraph (8)(b), or before the member reaches the age of 65 if earlier.”;

(h) after paragraph (11), insert—

“(11A) Where an authority makes a determination of benefits under paragraph (2) or (3) (“the subsequent determination”) in the case of a person—

(a) for whom a retirement pension had already been determined under paragraph (2) or (3) (“the initial determination”), and

(a) Regulation 18 was amended by S.I. 2008/1083.

(b) Regulation 20 was substituted by S.I. 2008/1083.

- (b) who subsequently became an active member of the Scheme, his earlier period of active membership (calculated under the initial determination) shall not when aggregated with his later period of active membership (calculated under the subsequent determination), exceed the total membership he would have had, were the initial determination to have been made under paragraph (2).”;
- (i) in paragraph (12)(b), for “the member is wholly or partly in part-time service as a result of the condition” substitute “ the member is in part-time service wholly or partly as a result of the condition”; and
- (j) for paragraph (13), substitute—
 - “(13) But in the case of a person who is an active member before 1st April 2008 and who—
 - (a) has reached the age of 45 before that date;
 - (b) has had continuous membership; and
 - (c) has not received any benefits in respect of that membership, his benefits are increased by adding the period that would have been added had regulation 28 of the 1997 Regulations applied if such period is greater than the period to be added under paragraph (2)(b) or (3)(b).”.
- (k) in paragraph (14), for the definition of “qualified in occupational health medicine” substitute—
 - “an independent registered medical practitioner qualified in occupational health medicine (“IRMP”).”.

20. In regulation 23 (death grants: active members)(a)—

- (a) in paragraph (4) for “But in calculating death grant” substitute “But, subject to paragraph (4A), in calculating the death grant”; and
- (b) after paragraph (4) insert—
 - “(4A) Where, in the opinion of an IRMP the member was, at the date of death, in part-time service wholly or partly as a result of the condition that caused or contributed to the member’s death, no account shall be taken of any reduction in pay due to such reduction in service as is attributable to that condition.”.

21. In regulation 24 (survivor benefits: active members)—

- (a) in paragraph (1), after “a pension” add “, which shall come into payment on the day following death”; and
- (b) for paragraph (2), substitute—
 - “(2) (a) Subject to the provisions listed in sub-paragraph (b) and to paragraph (2A), the pension is calculated by multiplying the member’s total membership, augmented as if regulation 20(2) applied, by his or her final pay and divided by 160;
 - (b) The provisions mentioned in sub-paragraph (a) are—
 - (i) regulations 14, 14A and 15;
 - (ii) regulations 20(4)(a) and 20A of the 1997 Regulations**(b)**; and
 - (iii) regulations 23 to 26 of the Administration Regulations.
 - (2A) Where, in the opinion of an IRMP the member was at the date of death, in part-time service wholly or partly as a result of the condition that caused or contributed to the member’s death, no account shall be taken of any reduction in pay due to such reduction in service as is attributable to that condition.”.

(a) Regulation 23 was amended by S.I. 2008/2425.

(b) Regulation 20(4)(a) and 20A of S.I. 1997/1612 were saved from revocation by regulation 2 of, and Schedule 1 to S.I. 2008/238.

22. In regulation 27 (children’s pensions)(a), for paragraph (2) substitute “The pension is payable on the day following death.”.

23. In regulation 29 (calculation on leaving early)(b), in paragraph (5) omit “, or any part of it,”.

24. In regulation 30 (choice of early payment of pension)(c)after paragraph (6), add—

“(7) Paragraph (6) only applies to a member whose employment has been continuous with the same employing authority throughout that period.

(8) For the purposes of paragraph (7), the employment of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006(d) apply shall be treated as being continuous employment with the transferee employer.”.

25. After regulation 30, insert—

“Choice of payment of pension: pensioner member with deferred benefits

30A.—(1) Where a member who is treated as a pensioner member with deferred benefits under regulation 20(9) (“a regulation 20(9) member”), has reached the Scheme’s normal retirement age, he or she is entitled to immediate payment of his or her retirement pension without reduction.

(2) Subject to paragraphs (3) and (4), a regulation 20(9) member may upon reaching the age of 55, choose to receive payment of his or her retirement pension immediately.

(3) A choice made by a member aged less than 60 is ineffective without the consent of the member’s former employing authority.

(4) Subject to paragraph (5), the member’s pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary.

(5) The member’s former employing authority may determine on compassionate grounds that the member’s retirement pension should not be reduced under paragraph (4).”.

26. In regulation 31 (early payment of pension: ill-health)(e)—

(a) in paragraph (1), omit “immediately”; and

(b) for paragraph (2), substitute—

“(2) Before determining whether to agree to a request under paragraph (1), an employing authority must obtain a certificate from an IRMP as to whether in the IRMP’s opinion the member is suffering from a condition that renders the member permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition the member has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal retirement age, or for at least three years, whichever is the sooner. ”.

27. In regulation 32 (death grants: deferred members)(f)—

(a) for paragraph (1) substitute—

“(1) If —

(a) a deferred member, or

(b) a pensioner member with deferred benefits under regulation 20(9) dies,

a death grant is payable.”; and

(a) Regulation 27 was amended by S.I. 2009/3150.

(b) Regulation 29 was substituted by S.I. 2008/1083.

(c) Regulation 30 was amended by S.I. 2008/1083.

(d) S.I. 2006/246, to which there are amendments not relevant to these Regulations.

(e) Regulation 31 was substituted by S.I. 2008/1083.

(f) Regulation 32 was amended by S.I. 2008/2425.

(b) for paragraph (3), substitute—

“(3) The death grant is—

- (a) in the case of a deferred member, the member’s retirement pension multiplied by 5; or
- (b) in the case of a pensioner member with deferred benefits, the member’s retirement pension multiplied by 5, but the amount so calculated is reduced by the amount of any benefits paid to the member under regulation 20(4).”.

28. In regulation 33 (survivor benefits: deferred members)(a), in paragraph (1) after “a pension” insert “, which shall come into payment on the day following death”.

29. In regulation 35 (death grants: pensioner members)(b)—

(a) for paragraph (3), substitute—

“(3) (a) The death grant is the member’s pension in payment multiplied by 10, ignoring any reduction where abatement has been applied under regulation 71 (application of abatement policy to individual cases) of the Administration Regulations; but

- (b) the amount so calculated is reduced by the amounts of any retirement pension paid to the member, or that would have been paid had the member’s pension not at any time been abated under regulation 71.”; and

(b) after paragraph (3), add—

“(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—

- (a) beginning with the member’s 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.”.

30. In regulation 36 (survivor benefits: pensioners)(c), in paragraph (1) after “a pension” insert “, which shall come into payment on the day following death”.

31. In regulation 38 (pension increases under the Pensions (Increase) Acts)(d)—

(a) after paragraph (1), insert—

“(1A) But Schedule 3 to the 1971 Act only has effect in relation to any such increase where—

- (a) the last employing authority is not a body required by regulation 39 (employer’s contributions) of the Administration Regulations to contribute to that fund, nor a Water Act Company; or
- (b) the last employing authority is such a body or Company and the increase was payable before 1st April 1990.

(1B) In a case where the last employing authority ceases after 31st March 1990 to be such a body, Schedule 3 to the 1971 Act has effect only so far as the cost of the increase has not, in the opinion of an actuary appointed by the administering authority of the fund, already been provided for by contributions under regulation 39 of the Administration Regulations.

(1C) The amounts due under Schedule 3 to the 1971 Act must be paid on or before such dates, falling at intervals of not more than 12 months, as the appropriate administering authority may determine.”;

(a) Regulation 33 was amended by S.I. 2008/1083.
(b) Regulation 35 was amended by S.I. 2008/1083.
(c) Regulation 36 was amended by S.I. 2008/1083.
(d) Regulation 38 was substituted by S.I. 2009/3150.

- (b) in paragraph (6), after “any amounts paid to them under paragraph (2)” insert “or Schedule 3 to the 1971 Act”;
- (c) in paragraph (7), for “paragraph 1(2) of Schedule 3 to the 1971 Act” substitute “paragraph 1(2) of Schedule 3 to the 1971 Act, except that if the pension became payable by reason of service with a relevant body, it means that body”; and
- (d) after paragraph (7), insert—
 - “(7A) Relevant bodies are—
 - (a) an admission body which has made an admission agreement;
 - (b) a body employing persons deemed to be in employment under—
 - (i) regulation 129 (miscellaneous transport employees),
 - (ii) regulation 130 (miscellaneous airport employees), or
 - (iii) regulation 130C (employees in the Rent Service Agency) of the 1997 Regulations; or
 - (c) a company under the control of a Scheme employer listed in Schedule 2 to the Administration Regulations.”.

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

32. The Local Government Pension Scheme (Transitional Provisions) Regulations 2008(a) are amended in accordance with regulations 33 to 37.

33. In regulation 1 (citation, commencement, interpretation and application), in paragraph (4) for the definition of “the Scheme”, substitute—

““the Scheme” means the Local Government Pension Scheme 2008 constituted by these Regulations, the Benefits Regulations and the Administration Regulations.”.

34. In regulation 3 (membership accrued before 1st April 2008: active members)(b), in paragraph (2)(b), for “16, 17, 19 and 20 of the Benefits Regulations” substitute “16, 17, 19, 20 and 31 of the Benefits Regulations”.

35. In regulation 10 (the 85 year rule), in paragraph (1)(b) for “the appropriate administering authority”, substitute “the employing authority”.

36. After regulation 14 (pension sharing) insert—

“Civil servants transferred to the Environment Agency

15.—(1) This regulation applies to a person to whom regulation 22 (civil servants transferred to the Environment Agency) of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997(c) applied, notwithstanding the revocation of those Regulations.

(2) Subject to paragraphs (3) and (7), these Regulations, the Benefits Regulations and Administration Regulations apply to a person to whom this regulation applies and who is an active member before 1st April 2008 and who has been since then in the continuous employment of the Environment Agency.

(3) The Benefits Regulations and Administration Regulations apply subject to the modifications set out in paragraphs (4) to (6).

(4) Sub-paragraphs (a) and (b) list the regulations in which references to normal retirement age shall be construed as age 60—

(a) S.I. 2008/238, amended by S.I. 2008/1083, S.I. 2008/2425 and S.I. 2009/3150.
 (b) Regulation 3 was amended by S.I. 2009/3150.
 (c) S.I. 1997/1613.

- (a) in the Benefits Regulations, regulation 29 (calculation on leaving early) except for paragraph (5) of that regulation and regulation 30A (choice of payment of pension: pensioner member with deferred benefits); and
 - (b) in the Administration Regulations, regulation 19(7) (contributions during reserve forces service leave), regulation 68(3) (annual benefit statements) and regulation 84(4) (right to count credited period).
- (5) Sub-paragraphs (a) and (b) list the regulations where references to 65th birthday shall be construed as references to 60th birthday—
- (a) in the Benefits Regulations, regulation 18(2) (flexible retirement); and
 - (b) in the Administration Regulations, regulation 50(2) (commencement of pensions).
- (6) In the Benefits Regulations, in regulation 30 (choice of early payment of pension) and in regulation 30A (choice of payment of pension: pensioner member with deferred benefits)—
- (a) references to 55 shall be construed as references to 50; and
 - (b) in each of those regulations, in paragraph (4), after “Actuary” insert “as respects members to whom regulation 15 of the Local Government Pension Scheme (Transitional Provisions) Regulations 2008(a) applies”.
- (7) Regulation 10 of, and Schedule 2 to, these Regulations shall not apply.”.

37. In Schedule 1 (regulations revoked)(b), for “regulation 108(A)”, substitute “regulation 108A”.

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

38. The Local Government Pension Scheme (Administration) Regulations 2008(c) are amended in accordance with regulations 39 to 56.

39. In regulation 7 (admission agreements – further provisions), omit paragraph (5).

40. In regulation 8 (eligibility for membership of employees of other bodies not listed in Schedule 2)(d)—

- (a) in paragraph (1)(b), after “local authority”, omit “or”;
- (b) in paragraph (1)(c), for “Education Act 1996,” substitute “Education Act 1996; or”;
- (c) after paragraph (1)(c) insert—
 - “(d) a federated school (within the meaning of the Education Act 2002(e)),”.

41. In regulation 10 (supplementary provisions for certain members), in paragraph (1)(b) for “the Secretary of State” substitute “the Commissioners for Her Majesty’s Revenue and Customs(f)”.

42. In regulation 13 (joining the scheme)(g), for paragraph (5) substitute—

“(5) A person referred to in paragraph (3) who is employed by a body listed in Part 1 of Schedule 2 may be an active member from the date that the employment began provided that the person—

(a) S.I. 2008/238.
 (b) Schedule 1 was amended by S.I. 2008/1083 and S.I. 2008/2425.
 (c) S.I. 2008/239, amended by S.I. 2008/1083, S.I. 2008/2425, S.I. 2008/2989, S.I. 2008/3245, S.I. 2009/1025, S.I. 2009/3150 and S.I. 2010/528
 (d) Regulation 8 was amended by S.I. 2010/1172, Schedule 3.
 (e) 2002 c. 32; for the definition of “federated school”, see section 24(2).
 (f) The functions of the Secretary of State under section 63 of the Rent Act 1977 (c. 42) were transferred to the Commissioners for Her Majesty’s Revenue and Customs by S.I. 2008/3134, art 3.
 (g) Regulation 13 was amended by S.I. 2009/3150.

- (a) applies to the body to pay contributions in respect of that earlier period at the appropriate contribution rate as provided in regulation 3 of the Benefits Regulations; and
- (b) does so within 3 months of becoming eligible to join the Scheme, or such longer period as the employer may allow.”.

43. In regulation 16 (re-employed and rejoining deferred members)(a)—

- (a) for paragraph (3) substitute—

“(3) Before the expiry of the period mentioned in paragraph (4)(b) or the expiry of the date mentioned in paragraph (4)(bb), a member may choose to aggregate any period of former membership.”; and

- (b) in paragraph (4), after sub-paragraph (b) insert—

“(bb) where sub-paragraph (b) does not apply, on or before 1st October 2011;”.

44. In regulation 17 (concurrent employments), for paragraph (1) substitute—

“(1) Where a person ceases to be an active member in one employment (“the first employment”)—

- (a) in respect of which the person has at least three months’ total membership; or
- (b) in respect of which the person has an entitlement to benefits under regulation 5 (benefits) of the Benefits Regulations; and

continues as an active member in another employment which was held concurrently with the first employment, the person may elect to have the former membership in respect of the first employment aggregated with membership in that other employment.”.

45. In regulation 26 (use of accumulated value of AVCs and SCAVCs)—

- (a) in paragraph (1)(a)(ii), for “19, 30 or 31” substitute “19 or 30”;
- (b) in paragraph (2), after “paragraph (1)(a)(i)” insert “or (b)”;
- (c) for paragraph (3), substitute—

“(3) The permissible ways are—

- (a) to subscribe to a registered pension scheme (other than the Scheme) but only if making a transfer under Part 9;
- (b) to subscribe to the AVC or SCAVC scheme established by the person’s new administering authority where regulation 86(1) or (2) applies; or
- (c) to purchase an appropriate policy from one or more insurance companies (within the meaning of section 275 of the Finance Act 2004).”;

- (d) omit paragraph (7); and

- (e) in paragraph (8), omit “or with paragraph (7)(b)”.

46. In regulation 36A (future costs)(b), after paragraph (4) insert—

“(4A) The assumptions used in making the valuation under paragraph (4) shall be determined by the Secretary of State after consultation with the Government Actuary and such other persons with whom consultation appears to the Secretary of State to be desirable.”.

47. In regulation 47 (exclusion of rights to return of contributions)—

- (a) in paragraph (1)(b), at the end omit “or”;
- (b) in paragraph (c), for “applies” substitute “applies; or”; and
- (c) after paragraph (c), insert—

(a) Regulation 16 was amended by S.I. 2008/3245.
 (b) Regulation 36A was inserted by S.I. 2009/1025.

“(d) the person continues as an active member in another employment held concurrently with the employment in which that person has ceased to be an active member.”.

48. In regulation 50 (commencement of pensions) after paragraph (3), insert—

“(3A) The first period for which any retirement pension under regulation 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations is payable begins with the day on which the member chooses under paragraph (2) of that regulation.”.

49. In regulation 50A (guaranteed minimum pensions)(a)—

- (a) in paragraph (2), for “unless paragraph (3) (4), or (5) applies” substitute “unless paragraph (3) or (4) applies”; and
- (b) in paragraph (6), for “Where paragraph (3)” substitute “Subject to regulation 17 (retirement after the normal retirement date) of the Benefits Regulations, where paragraph (3)”.

50. In regulation 51 (interest on late payment of certain benefits), in paragraph (3)(b), for “the Transitional Regulations or regulation 21” substitute “the Transitional Regulations, the Earlier Regulations or regulation 21”.

51. After regulation 52 (payments due in respect of deceased persons), insert—

“Payments for persons incapable of managing their affairs

52A.—(1) If it appears to the appropriate administering authority that a person other than an eligible child is entitled to payment of benefits under the Scheme but is, by reason of mental disorder or otherwise, incapable of managing his or her affairs—

- (a) the authority may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the authority may determine, to be applied for the benefit of the person entitled as the authority may direct; and
- (b) in so far as the authority does not pay the benefits in that manner, the authority may apply them in such manner as the authority may determine, for the benefit of the person entitled or his or her beneficiaries.

(2) In this regulation, “eligible child” shall be construed in accordance with regulation 26 (meaning of eligible child) of the Benefits Regulations.”.

52. In regulation 56 (first instance determinations: ill-health)(b)—

- (a) in paragraph (1), for “An independent registered medical practitioner” substitute “Subject to paragraph (1A), an independent registered medical practitioner (“IRMP”)”; and
- (b) after paragraph (1), insert—

“(1A) Paragraph (1)(a) does not apply where a further certificate is requested for the purposes of regulation 20(7) of the Benefits Regulations.”; and

- (c) for paragraph (3), substitute—

“(3) The employing authority and the IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation, and—

- (a) in the case of the employing authority, when making a determination under regulation 20 of the Benefits Regulations; or
- (b) in the case of the IRMP, when expressing an opinion as to the matters set out in regulation 20(5) and regulation 31(2) (early payment of pension: ill health) of those Regulations.”.

(a) Regulation 50A was inserted by S.I. 2009/3150.

(b) Regulation 56 was amended by S.I. 2008/1083.

53. In regulation 58 (applications to resolve disagreements), in paragraph (9), for “regulation 63(1)” substitute “regulation 63(2)”.

54. For regulation 87 (changes of fund and variable time employees), substitute—

“Changes of fund and variable-time employees

87.—(1) An inter-fund transfer under regulation 86(2) in respect of a member who is a variable-time employee prior to the transfer and who remains a variable-time employee after the transfer shall be on the basis that the member’s period of membership transfers on a day for day basis.

(2) An inter-fund transfer under regulation 86(2) in respect of a member who is a variable-time employee prior to the transfer and who becomes a whole-time or part-time employee after the transfer shall be on the basis that the member’s period of membership transfers on a pro-rata basis using the formula—

$$\text{period of membership} \times \frac{\text{annual rate of pay in the variable - time employment}}{\text{annual rate of pay in the employment post transfer}} \\ = \text{period of membership credited in the post transfer employment. ”}$$

55. In Schedule 2 (Scheme Employers), in Part 1—

(a) for paragraph 21, substitute—

“21. A proprietor of an Academy within the meaning of section 579 (general interpretation) of the Education Act 1996(a), who has entered into Academy arrangements within the meaning of section 1 (Academy arrangements) of the Academies Act 2010(b).”.

(b) after paragraph 25, add—

“26. The Greater London Authority.”.

56. In Schedule 4 (Appropriate Funds)(c), in Part 1—

(a) in paragraph 2, for “paragraph 3 of Part 2 of the Table in Schedule 5 to the 1997 Regulations”, substitute “paragraph 3 of the Table in Part 2 of Schedule 5 to the 1997 Regulations”; and

(b) after the Table, in notes (1), (2) and (3), in each place where it occurs, omit the word “active”.

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

18th August 2010

Robert Neill
Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England and Wales, amend four statutory instruments namely:

The Local Government Pension Scheme Regulations 1997 (“the 1997 Regulations”);

(a) 1996 c. 56; section 579 was amended by section 14 and Schedule 2 to the Academies Act 2010.

(b) 2010 c. 32.; section 15 makes transitional provisions in relation to an Academy agreement under section 482 of the Education Act 1996.

(c) Schedule 4 was amended by S.I. 2008/3245.

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”).

Section 12 of the Superannuation Act 1972 (“the 1972 Act”) provides that regulations made under section 7 may have effect from a date earlier than the making of the regulations.

The amendments contained in regulations 7, 9 and 10, 12 to 14(a), 16 to 18, 24, 31, 34 to 36 and 50 have effect from 1st April 2008. The amendments contained in regulations 25, 27 and 48 have effect from 1st October 2008. The amendment contained in regulation 41 has effect from 1st April 2009. The amendments contained in regulations 3 and 4 have effect from 6th April 2009 and the amendment contained in regulation 49 has effect from 31st December 2009. The remainder of the regulations have effect from 30th September 2010.

Regulation 2 introduces the amendments set out in regulations 3 and 4 relating to the 1997 Regulations.

Regulation 3 amends regulation 154 (payment of benefits) to enable pension credit members to elect to receive their benefits from the age of 60, with an appropriate actuarial reduction.

Regulation 4 amends regulation 155 (death grants) and is consequential on the amendment to regulation 154 which affects the calculation of death grant.

Regulation 5 introduces the amendments set out in regulations 6 to 31 relating to the Benefits Regulations.

Regulation 6 amends regulation 1 of the Benefits Regulations (which provides for the definition of certain terms) to provide a definition for the expression “IRMP”, and for the term “the Scheme” to include a reference to the Transitional Regulations and the Administration Regulations. The amendment also introduces a definition for the expression “local government employment”.

Regulation 7 amends regulation 2 (active members) to clarify eligibility for membership of the Local Government Pension Scheme 2008 in respect of members of the Local Government Pension Scheme 1997.

Regulation 8 amends regulation 3 (contributions payable by active members) to provide for a number of technical changes including the methodology used to increase contribution rates and the final date upon which a member may make contributions. The amendment also removes a provision which enables administering authorities to decide the intervals at which contributions may be made.

Regulation 9 amends regulation 4 (meaning of “pensionable pay”) to clarify that arrears of pay are not to be treated as compensation for the purpose of determining pensionable pay.

Regulation 10 amends regulation 7 (calculation of length of periods of membership) to clarify that part-time membership is calculated on the basis of a calendar month period for the purpose of determining whether a member has accrued at least three months membership.

Regulation 11 amends regulation 11 (final pay: fees) to clarify how a variable-time employee’s fees are to be calculated for the purpose of determining final pay.

Regulation 12 amends regulation 13 (power of employing authority to award additional pension), regulation 13 amends regulation 14 (election in respect of additional pension), and regulation 14 amends regulation 14A (election to pay additional contributions: survivor benefits). These amendments clarify that only active members may purchase or be awarded additional pension.

Regulation 15 amends regulation 15 (elections to pay AVCs) to insert a cross-reference to related provisions in the Administration Regulations.

Regulation 16 amends regulation 16 (retirement benefits), firstly to provide that the term “local government employment” is used consistently throughout the Regulations, and secondly to provide that where a member defers receipt of his or her pension beyond the age of 65, the member is entitled to an actuarially enhanced pension when it finally comes into payment.

Regulation 17 amends regulation 17 (retirement after normal retirement date), and regulation 18 amends regulation 18 (flexible retirement). These amendments entitle a member who joins after the age of 65 or who takes flexible retirement beyond that age, to an actuarially enhanced pension.

Regulation 19 amends regulation 20 (early leavers: ill-health) by replacing the term “obtaining” with “undertaking”; by inserting a new paragraph (11)(aa) which introduces a time limit; by inserting a new paragraph (11A) which places a limit on the overall amount of benefits payable; and by substituting paragraph (13).

Regulation 20 amends regulation 23 (death grant: active members) and regulation 21 amends regulation 24 (survivor benefits: active members). The amendments in both regulations provide that in the case of a member in part-time employment, the calculation of death grant or survivor benefits takes no account of any reduction in the member’s pay caused as a result of the condition that led to or contributed to the member’s death.

Regulation 22 amends regulation 27 (children’s pensions) to provide for the day on which the pension is payable. Similar amendments are made in regulation 28 which amends regulation 33 (survivor benefits: deferred members), and regulation 30 which amends regulation 36 (survivor benefits: pensioners).

Regulation 23 makes a minor omission in regulation 29 (calculation on leaving early).

Regulation 24 amends regulation 30 (choice of early payment of pension) by adding two new paragraphs to enable members who had continuity of service as at 1 April 2008 to be eligible to apply for retirement at the age of 50.

Regulation 25 introduces new regulation 30A (choice of payment of pension: pensioner member with deferred benefits). This regulation provides that a pensioner member with deferred benefits is eligible to receive his or her retirement pension at age 65, or with the permission of the member’s former employer, to receive an actuarially reduced pension at age 55.

Regulation 26 amends regulation 31 (early payment of pension: ill-health) so that it is consistent with regulation 20(5) (early leavers: ill-health).

Regulation 27 amends regulation 32 (death grants: deferred members) consequential on the introduction of new regulation 30A (choice of payment of pension: pensioner member with deferred benefits).

Regulation 29 amends regulation 35 (death grants: pensioner members) to provide that any abatement of pension is not taken into account when calculating death grant.

Regulation 31 amends regulation 38 (pension increases under the Pensions (Increase) Acts) by inserting provisions to enable administering authorities to seek payment of employer contributions arising from pensions increase costs.

Regulation 32 introduces the amendments set out in regulations 33 to 37 relating to the Transitional Regulations.

Regulation 33 amends regulation 1 of the Transitional Regulations (citation, commencement, interpretation and application), regulation 34 amends regulation 3 (membership accrued before 1st April 2008: active members), regulation 35 amends regulation 10 (the 85 year rule), and regulation 37 amends Schedule 1 (regulations revoked). These are minor corrective amendments.

Regulation 36 introduces new regulation 15 (civil servants transferred to the Environment Agency) which restores retirement age transitional provisions for this particular group of members.

Regulation 38 introduces the amendments set out in regulations 39 to 56 relating to the Administration Regulations.

Regulation 39 amends regulation 7 of the Administration Regulations (admission agreements-further provisions) by removing a power of the Secretary of State to determine questions arising in respect of admission agreements.

Regulation 40 amends regulation 8 (eligibility for membership of employees of other bodies not listed in Schedule 2) by adding the governing body of a federated school to the list of specified bodies.

Regulation 41 amends regulation 10 (supplementary provisions for certain members). This is an updating amendment to reflect a machinery of Government change affecting the appointment of rent officers.

Regulation 42 amends regulation 13 (joining the Scheme) to clarify the procedure to be followed in the case of a person joining the Scheme on a date after his or her employment first began.

Regulation 43 amends regulation 16 (re-employed and rejoining deferred members) to provide time limited options to enable rejoining and existing members to aggregate former periods of employment.

Regulation 44 amends regulation 17 (concurrent employments) to enable members subject to certain conditions, to aggregate periods of membership in concurrent employments.

Regulation 45 amends regulation 26 (use of accumulated value of AVCs and SAVCs) by specifying an additional way in which a member is permitted to use the accumulated value of his or her additional voluntary contributions.

Regulation 47 amends regulation 47 (exclusion of rights to return of contributions) by adding a further exclusion.

Regulation 48 amends regulation 50 (commencement of pensions) to provide for the commencement of a pension in the case of a pensioner member with deferred benefits who is entitled to receive his or her pension under regulation 30A of the Benefits Regulations.

Regulation 49 amending regulation 50A (guaranteed minimum pensions) and regulation 50 amending regulation 51 (interest on late payment of certain benefits) are minor technical and corrective amendments.

Regulation 51 inserts new regulation 52A (payments for persons incapable of managing their affairs), to enable an administering authority to determine how and to whom benefits may be paid for the benefit of the person entitled.

Regulation 52 amends regulation 56 (first instance determinations: ill-health) to enable an independent registered medical practitioner (“IRMP”) who has previously been involved in an ill-health retirement case to advise on the same case if a request is made to issue a certificate under regulation 20(7) of the Benefits Regulations. The amendment also clarifies that an IRMP is required to have regard to guidance issued by the Secretary of State when exercising the IRMP’s functions under regulation 20(5) or 31(2) of the Benefits Regulations.

Regulation 53 makes a minor corrective amendment to regulation 58 (applications to resolve disagreements).

Regulation 54 amends regulation 87 (changes of fund and variable-time employees) by replacing it with a new provision which includes a formula for calculating membership in the case of a member who transfers from variable-time employment to whole-time employment.

Regulation 55 amending Schedule 2 (Scheme Employers) updates the statutory references to Academies as a result of the coming into force of the Academies Act 2010. The Greater London Authority is also added to the list of employers in Part 1 of that Schedule.

Regulation 56 makes minor amendments to Schedule 4 (Appropriate Funds).

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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