

2010 No. 410

LOCAL GOVERNMENT

**Local Government Pension Scheme (Amendment No. 2)
Regulations (Northern Ireland) 2010**

Made - - - - *8th December 2010*

Coming into operation - *17th January 2011*

The Department of the Environment makes these Regulations in exercise of the powers conferred by Articles 9 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972(a) and now vested in it(b).

In accordance with Article 9 of that Order the Department has consulted with the Northern Ireland Local Government Association, the Northern Ireland Local Government Officers' Superannuation Committee and such representatives of other persons likely to be affected by the Regulations as appeared to it to be appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2010 and shall come into operation on 17th January 2011 except as provided for in paragraphs (2) to (6).

(2) Regulations 2 to 5, 7 and 8 shall have effect from 1st April 2006.

(3) Regulation 6 shall have effect from 1st August 2007.

(4) Regulations 9 to 14, 16 to 24, 26, 31, 33 to 40, 42, 44(a), 44(c), 44(d) and 45 to 49 shall have effect from 1st April 2009.

(5) Regulation 43 shall have effect from 6th April 2009.

(6) Regulations 15, 25, 27 to 30, 32, 41 and 44(b) shall have effect from 31st December 2009.

Amendment of the Local Government Pension Scheme Regulations (Northern Ireland) 2002

2. Regulations 3 to 8 have effect in relation the Local Government Pension Scheme Regulations (Northern Ireland) 2002(c) to the extent that those Regulations continue in force by virtue of the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009(d).

3. In regulation 4B (requirements for admission agreements) after paragraph (8) insert—

(a) S.I. 1972/1073 (N.I. 10); Art. 9 was amended by Art. 34 S.I. 2005/1968 (N.I. 18); Art. 14 was amended by Art. 12 S.I. 1990/1509 (N.I. 13).

(b) S.R. & O (N.I.) 1973 No. 504 Article 7(1); S.I. 1976/424 (N.I. 6).

(c) S.R. 2002 No. 352; relevant amending regulations are S.R. 2005 No. 206, S.R. 2005 No. 274, S.R. 2007 No. 152 and S.R. 2009 No. 34.

(d) S.R. 2009 No. 34.

“(9) A body designated under the provisions of the Local Government (Superannuation) Act (Northern Ireland) 1950(a) shall be deemed to have an admission agreement under regulation 4 (employees of community admission bodies) for as long as that body continues to employ active members of the Scheme.”.

4. In regulation 77 (actuarial valuations and certificates)—

(a) in paragraph (3) for sub-paragraphs (a) and (b) substitute—

- “(a) the common rate of employer’s contribution;
- (b) any individual adjustment; and
- (c) the total contribution rate payable;”;

(b) for paragraph (6) substitute—

“(6) An individual adjustment is—

- (a) any percentage or amount by which, in the actuary’s opinion contributions at the common rate should in the case of—
 - (i) a particular contributing body;
 - (ii) a particular guarantor; or
 - (iii) both employing authority and inheriting body if agreed under regulation 78A (apportionment of liabilities),

be increased or reduced by reason of any circumstances peculiar to that contributing body, guarantor or both of them; and

- (b) any other amount (whether or not expressed as a percentage of the pay of their employees who are active members) which, in the actuary’s opinion,
 - (i) a contributing body;
 - (ii) guarantor; or
 - (iii) both employing authority and inheriting body if agreed under regulation 78A,

should pay, by reason of any circumstances peculiar to that contributing body, guarantor or employing authority and inheriting body under regulation 78A or by reason of any liabilities in the Scheme for which responsibility rests with the contributing body, guarantor or both of them.”; and

(c) in paragraph (7) for sub-paragraphs (a) and (b) substitute—

- “(a) the number of members who will become entitled to payment of pensions under the provisions of the Scheme;
- (b) the amount of liabilities arising in respect of such members; and
- (c) such other information that the actuary considers relevant.”.

5. In regulation 78 (special circumstances where revised actuarial valuations and certificates must be obtained)—

(a) for paragraphs (1) to (4) substitute—

“**78.**—(1) Where a contributing body ceases to employ active members or an admission agreement otherwise ceases to have effect, then unless approval is given under paragraph (6) the Committee must obtain—

- (a) an actuarial valuation on an appropriate basis determined by the fund’s actuary as agreed with the Committee as at the date on which the contributing body ceases to employ active members or its admission agreement otherwise ceases to have effect, of the liabilities of the fund in respect of that contributing body (“the outgoing contributing body”);

(a) 1950 c. 10.

- (b) a revision of any rates and adjustments certificate provided under regulation 77(3), showing the contributions due from or surplus due to the outgoing contributing body;
- (c) such revised contributions due to the fund or surplus due to the outgoing contributing body from the fund will be paid as a lump sum within 1 month of the date of the rates and adjustments certificate or such longer period as the Committee and the outgoing contributing body agree; and
- (d) the liabilities under sub-paragraph (a) include, but are not limited to, liabilities in respect of current and former employees of the outgoing contributing body, liabilities which the outgoing contributing body has accepted, and liabilities which the outgoing contributing body has become responsible for by the operation of a scheme of reorganisation which has been created and approved in accordance with legislation, by the operation of law, because of the provisions of any legislation, or by an order of the Court.

(2) Where, for any reason, it is not possible to obtain the revised contributions from the outgoing contributing body or from an insurer or any person providing an indemnity or bond on behalf of that body, the Committee may obtain a further revision of any rates and adjustments certificate for the fund, showing—

- (a) in the case where that outgoing contributing body is a transferee admission body within regulation 5(2)(a) or 5(2)(b) (employees of transferee admission bodies), the revised contributions due from the employing authority, or as the case may be, guarantor in relation to that outgoing contributing body; and
- (b) in any other case, the revised contributions due from each employing authority which contributes to the fund.

(3) The Committee may obtain from the fund actuary a certificate specifying the percentage or amount by which, in the fund actuary's opinion, that contributing body's—

- (a) contribution at the common rate of employer's contribution should be adjusted; or
- (b) any prior individual adjustment should be increased or decreased,

with a view to providing that the value of the assets of the fund in respect of the liabilities of that contributing body is neither materially more or materially less than the anticipated share of the liabilities of the fund in respect of that contributing body at the date it ceases to employ active members or its admission agreement ceases to have effect ("the calculation date").

(3A) The Committee may determine a nominated calculation date, where it reasonably believes that a contributing body is to cease to employ active members in the near future but the actual calculation date is not known and such date will be the calculation date in substitution for the actual date on which the contributing body ceases to employ active members or its admission agreement otherwise ceases to have effect.

(3B) Where paragraph (3A) applies, the Committee—

- (a) will assess on or as soon as practicable after the date on which the contributing body actually ceases to employ active members or its admission agreement otherwise ceases to have effect whether it should obtain a further revision of the rates and adjustments certificate under paragraph (1)(a) as at that date; and
- (b) may subsequently ask the fund actuary to revise or withdraw and reissue the rates and adjustments certificate if it considers it is reasonable to do so.

(3C) Where a revised rates and adjustments certificate is obtained under paragraph (3B)(a), it will take account of any contributions already received from the contributing body further to the rates and adjustments certificate obtained under paragraph (3A).

(4) Paragraph (5) applies where—

- (a) the Committee agrees with an employing authority that the employing authority will pay increased contributions under regulation 54(6) (power of employing authority to increase total membership);

- (b) it appears to the Committee that the amount of liabilities arising or likely to arise in respect of members in employment with an employing authority differs from the amount specified in, or likely as a result of, the assumptions stated for that employing authority in the actuary’s report by virtue of regulation 77(1); or
 - (c) an admission body has previously ceased to employ any active members and no actuarial valuation or rates and adjustments certificate has been obtained by the Committee in accordance with paragraph (6) but where that admission agreement still allows it to employ active members and it once again starts to employ active members.”;
- (b) in paragraph (5) for “employing authority” substitute “contributing body”; and
- (c) for paragraph (6) substitute—

“(6) Where a contributing body ceases to employ any active members of the Scheme the Committee may, with the approval of the Department, defer obtaining an actuarial valuation and a revision of the rates and adjustments certificate and determine the date as at which the actuarial valuation and a revision of the rates and adjustments certificate will be obtained and the dates from which it will be effective and at which it will be reviewed.

(7) During any period of deferral under paragraph (6) the contributing body will continue to pay contributions under regulation 79 (employer’s contributions) in respect of the liabilities of the fund which are attributable to it.

(8) The Committee may, with the approval of the Department, if it thinks necessary to protect the solvency of the fund or prevent liabilities in relation to one contributing body falling onto other contributing bodies, require active members employed by a particular contributing body to cease future accrual with effect from a date specified by the Committee so that the contributing body no longer employs active members.”.

6. After regulation 78, insert—

“Apportionment of liabilities

78A.—(1) In the event of a relevant transfer the Committee, the employing authority and the inheriting body, may agree with effect from a specific date, that some or all of the liabilities of the employing authority shall transfer to and be attributable to the inheriting body (“the apportionment agreement”).

(2) The apportionment agreement under paragraph (1) must specify—

- (a) its effective date;
- (b) on the advice of an actuary, the specific amount of the liabilities attributable to the contributing body which will transfer;
- (c) the manner and time in which those liabilities will be discharged; and
- (d) any other conditions to protect the solvency of the fund that the Committee considers necessary.

(3) The Committee, after seeking advice from an actuary—

- (a) may vary the rates and adjustments certificate currently in place in respect of the contributing body; and
- (b) where a rates and adjustments certificate is not currently in place in respect of the inheriting body, may produce a rates and adjustments certificate,

to reflect the transfer of liabilities when realised under paragraph (1).

(4) The transfer of liabilities in accordance with any apportionment agreement under paragraph (1) shall be reflected in—

- (a) the calculation of the individual adjustment in respect of the employing authority and, as the case may be, any inheriting body under regulation 77(6); and

(b) any calculation in respect of the employing authority and, as the case may be, any inheriting body under regulation 78.

(5) Where a guarantor has agreed to accept liabilities under paragraph (1) the apportionment agreement must state the manner and time in which the guarantor will discharge those liabilities.

(6) Any agreement entered into prior to the introduction of this regulation shall be treated as an agreement under this regulation.

(7) Any question which may arise between the parties to an apportionment agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Department for determination.”.

7. In regulation 79 (employer’s contributions)—

(a) in the heading for “Employer’s” substitute “Contributing body’s”;

(b) in paragraph (1)—

(i) for “An employing authority” substitute “A contributing body”; and

(ii) for “authority” substitute “contributing body”;

(c) in paragraph (2) for “an employing authority” substitute “a contributing body”;

(d) in paragraph (3) for sub-paragraph (a) substitute—

“(a) where the contributing body employs active members of the Scheme be paid at the end of the intervals determined under regulation 81 (payments by employing authorities to the Committee) and where the contributing body does not employ active members of the Scheme, be paid at intervals of not greater than 12 months as the Committee may determine; and”;

(e) for paragraph (4) substitute—

“(4) A contributing body’s contribution for any year is the sum of—

(a) the common percentage of the pay on which contributions have during that year been paid to the fund or admission agreement fund under Part 2 by employees who are active members other than contributions under regulation 17(3) (which may be a nil amount); and

(b) any individual adjustment specified for that contributing body for that year or as the case may be, guarantor in the rates and adjustments certificate (which may be positive or negative and which may be expressed as an adjustment to the common percentage rate or a separate absolute amount).”.

8. In Schedule 1 (interpretation)—

(a) at the appropriate place insert—

““contributing body” means an employing authority, an admission body or a body which is responsible for liabilities under the Scheme, whether pursuant to legislation, pursuant to an agreement with the Committee or pursuant to a statutory transfer or by any other means whatsoever;

“guarantor” means a body or person which is acceptable to the Committee and is not an admission body or an employing authority, which has agreed to accept responsibility for some or all of the liabilities of the Scheme attributable to an outgoing contributing body;

“inheriting body” means—

(a) an admission body which continues to employ active members or whose admission agreement otherwise remains in effect;

(b) an employing authority which employs active members at the date on which the outgoing admission body withdraws from the Scheme; or

(c) any other body,

which has agreed to accept responsibility for some or all of the liabilities of the outgoing contributing body towards the Scheme;

“liabilities” means, where it occurs in regulations 77 (actuarial valuations and certificates), 78 (special circumstances where revised actuarial valuations and certificates must be obtained), 78A (apportionment of liabilities) and 123 (calculation of a amount of transfer payment under regulation 122), the liabilities attributable to any employing authority or admission body by virtue of its participation in the Scheme whether it employs active members or not and these include not only liabilities which are directly attributable to its current or former employees but also any liabilities for which the employing authority or admission body is otherwise responsible;”.

Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009

9. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009^(a) shall be amended in accordance with regulations 10 to 20.

10. In regulation 2(1) (active members) after “regulation 1(2)” insert “and regulation 3(1) of the Administration Regulations”.

11. In regulation 4(2) (meaning of “pensionable pay”) for sub-paragraphs (e) and (f), substitute—

- “(e) any payment as an inducement not to terminate his employment;
- (f) any payment to buy out an existing term of condition of employment; or
- (g) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such a provision.”.

12. In regulation 8(1) (final pay: general) for “relation to that employment” substitute “local government employment”.

13. In regulation 11 (final pay: fluctuating emoluments)—

- (a) in paragraphs (1), (1)(a) and (2) after “fluctuating emoluments” insert “on which the appropriate contribution rate has been paid”;
- (b) in paragraph (1)(b) after “any sums” insert “on which the appropriate contribution rate has been paid”; and
- (c) after paragraph (2) insert—

“(3) But if he was only entitled to receive fluctuating emoluments during part of the period mentioned in paragraph (1)(a), that part is substituted for the period referred to in that paragraph.”.

14. After regulation 12 (power of employing authority to increase total membership of members), insert—

“Duty of employing authority to increase total membership: enhanced protection

12A.—(1) Where an active member intends to rely on paragraph 12 of Schedule 36 to the Finance Act 2004^(b) (lifetime allowance “enhanced protection”) and—

- (a) gives notice of his intention to rely on that paragraph in accordance with regulation 4 of the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006^(c); and

(a) S.R. 2009 No. 32 to which there are amendments not relevant to these Regulations.
(b) 2004 c.12.
(c) S.I. 2006/131.

- (b) subsequently becomes subject to a reduction in accrued membership calculated in accordance with guidance issued by the Government Actuary, but the enhanced protection is not taken into account in the calculation of the member's benefits under regulation 22 (limit on total amount of benefits),

the employing authority shall grant an additional period of membership equal to the reduction resulting from the calculation.

(2) "Enhanced protection" is to be construed in accordance with Schedule 36 to the Finance Act 2004."

15. After regulation 14 (election to pay additional regular contributions (ARCs), insert—

"Election to pay additional contributions: survivor benefits

14A.—(1) An active member may elect to pay additional contributions in respect of any period of membership occurring prior to 5th April 1988, in order to be credited with additional survivor benefits in respect of a surviving nominated cohabiting partner (within the meaning of regulation 25).

(2) An election to pay additional survivor benefits contributions ("ASBCs") under paragraph (1), must be made within 12 months of the date of a nomination made under regulation 25 or such longer period as the Committee may allow.

(3) ASBCs may be paid—

- (a) in respect of the whole of any period of membership occurring before 6th April 1988 (whether or not that period constitutes a period of complete years of membership); or
- (b) in respect of complete years of membership only.

(4) The amount of ASBCs to be paid under paragraph (1) shall be calculated in accordance with actuarial guidance published by the Government Actuary.

(5) If an active member elects to pay ASBCs under paragraph (1), a surviving nominated cohabiting partner's entitlement to a pension by virtue of regulation 24, 33 or 36 as the case may be, will be based on the period of membership occurring after 5th April 1988 plus, subject to regulation 20B (discontinuance of ASBCs) of the Administration Regulations, any period of membership occurring before that date in respect of which the active member chooses to pay ASBCs."

16. In regulation 20(6) (early leavers: ill-health) for "paragraph (5)" substitute "paragraph (4)".

17. After regulation 27(4) (children's pensions) insert—

"(5) The Committee may pay the whole or part of a children's pension to a person other than the eligible child, to be applied for the benefit of such one or more eligible children as the Committee may direct."

18. In regulation 30(1) (choice of early payment of pension) "or otherwise ceases to be a member" is deleted.

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

- (a) in paragraph (1) after "whatever his age" insert ", provided he has total membership of at least one year"; and
- (b) in paragraph (2) for "that condition is likely to prevent the member from" substitute "he has a reduced likelihood of".

20. In regulation 40 (guidance on future costs) delete ", before 31st March 2010,".

Amendment of the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009

21. The Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009(a) shall be amended in accordance with regulations 22 to 44.

22. In regulation 3(1) (general eligibility for membership) for sub-paragraphs (a) and (b) substitute—

- “(a) this regulation, or any of regulations 4 (employees of community admission bodies) to 6 (admission agreements – further provisions), enables him to be one;
- (b) he is employed under a contract of employment of a duration of 3 months or more;
or
- (c) regulation 2(2) (active members) of the Benefits Regulations applies to him,”

23. In regulation 5(5)(b) (employees of transferee admission bodies) after “an indemnity” insert “or”.

24. In regulation 6 (admission agreements – further provisions) after paragraph (6) insert—

“(7) A body designated under the provisions of the Local Government (Superannuation) Act (Northern Ireland) 1950(b) shall be deemed to have an admission agreement under regulation 4 (employees of community admission bodies) for so long as that body continues to employ active members of the Scheme.”.

25. For regulation 9(6) (joining the scheme) substitute—

“(6) In paragraphs (2), (4), regulation 10(5), regulation 19(7) (payment of additional regular contributions) and regulation 20A(7) (payment of additional contributions: survivor benefits (ASBCs)), a payment period is a period of service to which the employee’s wages or salary payment relate.”.

26. In regulation 11(5) (periods of membership) for “regulation 6(1)(a)” substitute “regulation 6(a)”.

27. In regulation 14(8) (contributions during child-related leave) after “(payment of additional regular contributions)” insert “or 20A (payment of additional contributions: survivor benefits (ASBCs)) of these Regulations”.

28. In regulation 15(4) (contributions during reserve forces service leave) after “regulation 19” insert “or 20A (payment of additional contributions: survivor benefits (ASBCs)) of these Regulations”.

29. In regulation 16(5)(b) (contributions during trade dispute absence) after “(payment of additional regular contributions)” insert “or 20A (payment of additional contributions: survivor benefits (ASBCs))”.

30. In regulation 17 (contributions during absences with permission)—

- (a) in paragraph (2)(b) after “(payment of additional regular contributions)” insert “or 20A (payment of additional contributions: survivor benefits (ASBCs))”; and
- (b) in paragraph (5)(b) after “regulation 19” insert “or 20A”.

31. In regulation 20(2)(a) (discontinuance of ARCs) for “his employing authority” substitute “the Committee”.

32. After regulation 20 (discontinuance of ARCs) insert—

(a) S.R. 2009 No. 33.
(b) 1950 c. 10.

“Payment of additional contributions: survivor benefits (ASBCs)

20A.—(1) A member who wishes to pay additional contributions under regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations must make a request to do so, in writing, to the Committee.

(2) A copy of the request must be sent to the member’s employing authority (if different) and must state the length of period (“the ASB payment period”) over which the member wishes to pay additional survivor benefits contributions (“ASBCs”).

(3) Before agreeing to the request the Committee may pass a resolution requiring the member—

- (a) to satisfy it that the member is in reasonable health; and
- (b) to produce to it a report, by an independent registered medical practitioner approved by the Committee, of the results of a medical examination (obtained at the member’s own expense),

and if the Committee is not satisfied, it may refuse the member’s request.

(4) The ASB payment period must end before the member’s normal retirement age.

(5) The member may only pay ASBCs if the Committee notifies the member in writing that it agrees to the request.

(6) The Government Actuary shall from time to time determine the amount of ASBCs required for any given amount of increased pension and may determine different amounts of ASBCs—

- (a) for—
 - (i) persons of different ages; or
 - (ii) men or women; or
- (b) by reference to the length of different payment periods.

(7) Where the Committee agrees to the member’s request—

- (a) it must notify the member and the member’s employing authority (if different) of the amount of ASBCs payable in accordance with the Government Actuary’s determination, expressed as—
 - (i) an amount in pounds sterling; or
 - (ii) a percentage of pensionable pay; and
- (b) the member must pay those ASBCs from the next payment period (as defined in regulation 9(6)) following the date of the Committee’s notification under paragraph (5).

(8) The Government Actuary may from time to time redetermine any amount determined under paragraph (6) and if he does so, the member must pay the redetermined ASBCs from 1st April next following the redetermination.

(9) If the member pays (or is treated under regulation 20B as having paid) ASBCs for the whole of the ASB payment period, the member must be credited with the additional survivor benefits of the amount that those ASBCs purchase.

Discontinuance of ASBCs

20B.—(1) A member—

- (a) may stop paying ASBCs before the end of the ASB payment period if the member notifies the Committee and the employing authority (if different) in writing; and
- (b) must stop doing so if he ceases to be an active member.

(2) If a member stops paying ASBCs before the end of the ASB payment period—

- (a) on leaving their employment on grounds of ill-health where the Committee makes a determination under regulation 20(2) or (3) of the Benefits Regulations; or

(b) on the member's death,

the member is to be treated as having paid ASBCs up to the end of that period.

(3) If a member stops paying ASBCs and paragraph (2) does not apply, the member must be credited with additional survivor benefits of an amount determined by the Government Actuary, having regard to the ASBCs that were paid before the member stopped paying them.”.

33. In regulation 31 (actuarial valuations and certificates)—

(a) in paragraph (4) after “rates and adjustments” insert “certificate”;

(b) for paragraph (5) substitute—

“(5) The common rate of employer's contribution is the amount, if any, which in the actuary's opinion, should be paid to the fund by all contributing bodies whose employees contribute to it and any other contributing body liable to contribute to the fund under regulation 33(7) (special circumstances where revised actuarial valuations and certificates must be obtained), so as to secure the fund's solvency, expressed as a percentage of the pay of their employees who are active members.”;

(c) for paragraph (7) substitute—

“(7) An individual adjustment is—

(a) any percentage or amount by which, in the actuary's opinion contributions at the common rate of employer's contribution should in the case of—

(i) a particular contributing body;

(ii) a particular guarantor; or

(iii) both employing authority and inheriting body if agreed under regulation 33A (apportionment),

be increased or reduced by reason of any circumstances peculiar to that contributing body, guarantor or both of them; and

(b) any other amount (whether or not expressed as a percentage of the pay of their employees who are active members) which, in the actuary's opinion,

(i) a contributing body;

(ii) guarantor; or

(iii) both employing authority and inheriting body if agreed under regulation 33A,

should pay, by reason of any circumstances peculiar to that contributing body, guarantor, or employing authority and inheriting body or by reason of any liabilities in the Scheme for which responsibility rests with the contributing body, guarantor, or employing authority and inheriting body.”; and

(d) in paragraph 8 for sub-paragraphs (a) and (b) substitute—

“(a) the number of members who will become entitled to payment of pensions under the provisions of the Scheme;

(b) the amount of liabilities arising in respect of such members; and

(c) such other information that the actuary considers relevant.”.

34. For regulation 32(1) (supply copies of valuations, certificates, etc.) substitute—

“**32.**—(1) The Committee must send copies of any valuation, report, certificate or revised certificate obtained under—

(a) regulation 31 (actuarial valuations and certificates) to—

(i) the Department;

(ii) each contributing body with employees who contribute to the fund in question; and

- (iii) any other contributing body, guarantor or inheriting body which is or may become liable to make payments to that fund; or
- (b) regulation 33 (special circumstances where revised actuarial valuations and certificates may be obtained) to—
 - (i) the Department; and
 - (ii) the contributing body, guarantor or inheriting body for which the Committee has commissioned the valuation, report, certificate or revised certificate.”.

35. In regulation 33 (special circumstances where revised actuarial valuations and certificates must be obtained)—

(a) for paragraph (2) substitute—

“(2) Where a contributing body ceases to employ active members or an admission agreement otherwise ceases to have effect, then unless agreed under paragraph (7) the Committee must obtain—

- (a) an actuarial valuation on an appropriate basis determined by the fund’s actuary as agreed with the Committee as at the date on which the contributing body ceases to employ active members or (if applicable) its admission agreement otherwise ceases to have effect, of the liabilities of the fund in respect of that contributing body (“the outgoing contributing body”);
- (b) a revision of any rates and adjustments certificate provided under regulation 31(4), showing the contributions due from or surplus due to the outgoing contributing body;
- (c) such revised contributions due to the fund or surplus due to the outgoing contributing body from the fund will be paid as a lump sum within 1 month of the date of the rates and adjustments certificate or such longer period as the Committee and the outgoing contributing body agree; and
- (d) the liabilities under sub-paragraph (a), include but are not limited to, liabilities in respect of current and former employees of the outgoing contributing body, liabilities which the outgoing contributing body has accepted, and liabilities which the outgoing contributing body has become responsible for by the operation of a scheme of reorganisation which has been created and approved in accordance with legislation, by the operation of law, because of the provisions of any legislation, or by an order of the Court.”;

(b) in paragraph (3)—

- (i) for “outgoing admission body” substitute “outgoing contributing body”;
- (ii) for sub-paragraph (a) substitute—

“(a) in the case where that outgoing contributing body is a transferee admission body within regulation 5(2)(a) or 5(2)(b) (employees of transferee admission bodies), the revised contributions due from the employing authority, or as the case may be, guarantor in relation to that outgoing contributing body; and”;

(c) for paragraphs (4) and (5) substitute—

“(4) The Committee may obtain from the fund actuary a certificate specifying the percentage or amount by which, in the fund actuary’s opinion, that contributing body’s—

- (a) contribution at the common rate of employer’s contribution should be adjusted; or
- (b) any prior individual adjustment should be increased or decreased,

with a view to providing that the value of the assets of the fund in respect of the liabilities of that contributing body is neither materially more nor materially less than the anticipated share of the liabilities of the fund in respect of that contributing body at the date it ceases to employ active members or its admission agreement ceases to have effect (“the calculation date”).

(4A) The Committee may determine a nominated calculation date, where it reasonably believes that a contributing body is to cease to employ active members in the near future but the actual calculation date is not known, and such date will be the calculation date in substitution for the actual date on which the contributing body ceases to employ active members or its admission agreement otherwise ceases to have effect.

(4B) Where paragraph (4A) applies, the Committee—

- (a) will assess on or as soon as practicable after the date on which the contributing body actually ceases to employ active members or its admission agreement otherwise ceases to have effect whether it should obtain a further revision of the rates and adjustments certificate under regulation 33(2)(b) as at that date; and
- (b) may subsequently ask the fund actuary to revise or withdraw and reissue the rates and adjustments certificate if it considers it is reasonable to do so.

(4C) Where a revised rates and adjustments certificate is obtained under paragraph (4B)(a), it will take account of any contributions already received from the contributing body further to the rates and adjustments certificate obtained under paragraph (4A).

(5) Paragraph (6) applies where—

- (a) the Committee agrees with an employing authority that the employing authority will pay increased contributions under regulation 35(4) (employer's payment following decision to increase membership or award additional pension);
- (b) it appears to the Committee that the amount of liabilities arising or likely to arise in respect of members in employment with an employing authority differs from the amount specified in, or likely as a result of, the assumptions stated for that employing authority in the actuary's report by virtue of regulation 31(1); or
- (c) an admission body has previously ceased to employ any active members and no actuarial valuation or rates and adjustments certificate has been obtained by the Committee in accordance with paragraph (7) but where that admission agreement still allows it to employ active members and it once again starts to employ active members.”;

(d) in paragraph (6) for “employing authority” substitute “contributing body”; and

(e) after paragraph (6) insert—

“(7) Where a contributing body ceases to employ any active members of the Scheme the Committee may, with the approval of the Department, defer obtaining an actuarial valuation and a revision of the rates and adjustments certificate and determine the date as at which the actuarial valuation and a revision of the rates and adjustments certificate will be obtained and the dates from which it will be effective and at which it will be reviewed.

(8) During any period of deferral under paragraph (7) the contributing body will continue to pay contributions under regulation 34 in respect of the liabilities of the fund which are attributable to it.

(9) The Committee may, with the approval of the Department, if it thinks necessary to protect the solvency of the fund or prevent liabilities in relation to one contributing body falling onto other contributing bodies, require active members employed by a particular contributing body to cease future accrual with effect from a date specified by the Committee so that the contributing body no longer employs active members.”.

36. After regulation 33, insert—

“Apportionment of liabilities

33A.—(1) In the event of a relevant transfer the Committee, the employing authority and the inheriting body, may agree with effect from a specific date, that some or all of the liabilities of the employing authority shall, transfer to and be attributable to the inheriting body(“the apportionment agreement”).

(2) The apportionment agreement under paragraph (1) must specify—

- (a) its effective date;
- (b) on the advice of an actuary, the specific amount of the liabilities attributable to the contributing body which will transfer;
- (c) the manner and time in which those liabilities will be discharged; and
- (d) any other conditions to protect the solvency of the fund that the Committee considers necessary.

(3) The Committee, after seeking advice from an actuary—

- (a) may vary the rates and adjustments certificate currently in place in respect of the contributing body; and
- (b) where a rates and adjustments certificate is not currently in place in respect of the inheriting body, may produce a rates and adjustments certificate,

to reflect the transfer of liabilities when realised under paragraph (1).

(4) The transfer of liabilities in accordance with any apportionment agreement under paragraph (1) shall be reflected in—

- (a) the calculation of the individual adjustment in respect of the employing authority and, as the case may be, any inheriting body under regulation 31(7); and
- (b) any calculation in respect of the employing authority and, as the case may be, any inheriting body under regulation 33.

(5) Where a guarantor has agreed to accept liabilities under paragraph (1) the apportionment agreement must state the manner and time in which the guarantor will discharge those liabilities.

(6) Any agreement entered into prior to the introduction of this regulation shall be treated as an agreement under this regulation.

(7) Any question which may arise between the parties to an apportionment agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Department for determination.”.

37. In regulation 34 (employer’s contributions)—

- (a) in the heading for “Employer’s” substitute “Contributing body’s”;
- (b) in paragraph (1)—
 - (i) for “An employing authority” substitute “A contributing body”; and
 - (ii) for “employing authority” substitute “contributing body”;
- (c) in paragraph (2) for “an employing authority” substitute “a contributing body”;
- (d) in paragraph (3) for sub-paragraph (a) substitute—
 - “(a) where the contributing body employs active members of the Scheme, be paid at the end of the intervals determined under regulation 37 (payments by employing authorities to the Committee) and where the contributing body does not employ active members of the Scheme, be paid at intervals of not greater than 12 months as the Committee may determine; and”;
- (e) for paragraph (4) substitute—
 - “(4) A contributing body’s contribution for any year is the sum of—
 - (a) the common percentage of the pay on which contributions have during that year been paid to the fund or admission agreement fund under regulation 14 (contributions during child-related leave), 15 (contributions during reserve forces service leave) or 17 (contributions during absences with permission) of these Regulations or regulation 3 (contributions payable by active members) of the Benefits Regulations by employees who are active members (which may be a nil amount); and

- (b) any individual adjustment specified for that contributing body for that year or as the case may be, guarantor in the rates and adjustments certificate (which may be positive or negative and which may be expressed as an adjustment to the common percentage rate or a separate absolute amount).”.

38. In regulation 35(4) (employer’s payment following resolution to increase total membership or award additional pension) for “(employer’s contributions)” substitute “(contributing body’s contributions)”.

39. In regulation 42(1) for sub-paragraphs (b) and (c) (exclusion of rights to return of contributions) substitute—

- “(b) he left his employment because of—
 - (i) an offence of a fraudulent character; or
 - (ii) grave misconduct,
in connection with his employment;
- (c) regulation 75(2) (rights to payment out of the fund) applies; or
- (d) he continues in a concurrent employment in which he is an active member.”.

40. After regulation 45 (commencement of pensions) insert—

“Guaranteed minimum pensions

45A.—(1) Where a member’s local government employment is contracted-out employment and he has a guaranteed minimum, the member is entitled from the date he attains pension age to payment of a pension at a weekly rate equal to not less than that guaranteed minimum.

(2) But if the member attains pensionable age while in local government employment, the member is not so entitled until he leaves that employment unless paragraph (3) or (4) applies.

(3) If the member—

- (a) continues in local government employment for a further period of 5 years after attaining pensionable age; and
- (b) does not then leave that employment,

the member is entitled from the end of the period mentioned in sub-paragraph (a) to payment of so much of his retirement pension as equals that guaranteed minimum.

(4) If the member attains pensionable age while in local government employment but subsequently changes employment to employment which is not local government employment the member is entitled.

(5) If the member changes employment to employment which is not local government employment and the member attains pensionable age while in that employment, the member is entitled.

(6) Subject to regulation 17 (retirement after normal retirement age) of the Benefits Regulations, where paragraph (3), (4) or (5) applies the member may consent to a postponement of entitlement for any period during which the member remains in employment beyond pensionable age.

(7) For the purposes of this regulation, a person has a guaranteed minimum if they have such a minimum under section 10 (earner’s guaranteed minimum) of the 1993 Act^(a) in relation to benefits under these Regulations or the Benefits Regulations and references to entitlement are to entitlement to payment of a pension in accordance with paragraph (1).

(8) In this regulation—

(a) 1993 c. 49.

- (a) “contract-out employment” shall be construed in accordance with section 4 of the 1993 Act; and
- (b) “pensionable age” shall be construed in accordance with section 176 of that Act.

Survivor benefits: guaranteed minimum pension

45B.—(1) Where the guaranteed minimum pension rule applies, the pension to which a person is entitled under regulations 24 (survivor benefits: active members), 33 (survivor benefits: deferred members) and 36 (survivor benefits: pensioner members) of the Benefits Regulations must be no less than the surviving spouse’s, nominated cohabiting partner’s or civil partner’s guaranteed minimum.

(2) The guaranteed minimum pension rule applies if—

- (a) the employment in which the deceased was a member was contracted-out employment; and
- (b) he had a guaranteed minimum in relation to benefits under these Regulations.

(3) Paragraph (1) overrides any contrary provision in the Benefits Regulations or these Regulations except—

- (a) regulation 39 (commutation of small pensions) of the Benefits Regulations;
- (b) regulation 68 (forfeiture of pension rights after conviction of employment related offences) of these Regulations; and
- (c) regulation 69 (interim payments directions) of these Regulations.”.

41. For regulation 70(3) (recovery or retention where a former member has misconduct obligation) substitute—

“(3) The rights specified in paragraph (2)(b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of ARCs, ASBCs, AVCs or SCAVCs.”.

42. After regulation 71 (protection of guaranteed minimum pension rights), insert—

“Revaluation of guaranteed minimum

71A.—(1) Where the guaranteed minimum of a person who has ceased to be an active member is appropriately secured, his earnings factors for the purposes of section 10(2) of the 1993 Act must be determined—

- (a) by reference to the last order under Article 23 of the Social Security Pensions (Northern Ireland) Order 1975(a) or section 130 of the Social Security Administration (Northern Ireland) Act 1992(b) (revaluation orders) to come into force before the end of the tax year in which he ceased to be an active member; and
- (b) without reference to the last such order to come into force before the end of the final relevant year.

(2) For such a person the weekly equivalent mentioned in section 10(2) of the 1993 Act is to be increased—

- (a) by at least the prescribed percentage for each relevant year after the end of the tax year in which he ceased to be an active member; and
- (b) in accordance with such additional requirements as may be prescribed for the purposes of section 12(3) of the 1993 Act.

(3) In this regulation—

(a) S.I. 1975/1503 (N.I. 15) Article 23 was repealed by the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9).
 (b) 1992 c. 8.

“appropriately secured” has the meaning given in section 15(3) of the 1993 Act;
“final relevant year” has the meaning given in section 12(5) of that Act;
“relevant year” has the meaning given in section 10(8) of that Act; and
“prescribed percentage” has the meaning given in regulation 62 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(a).”

43. In regulation 91 (payment of benefits)—

- (a) in paragraph (1), for “A pension credit member” substitute “Subject to paragraph (4), a pension credit member”; and
- (b) after paragraph (3) insert—

“(4) A pension credit member may apply in writing to the Committee for the benefits payable under paragraph (1) to be paid at or after age 60 (but before normal benefit age), and such benefits shall be reduced by the amounts as are shown to be appropriate in guidance issued by the Government Actuary.

(5) Where paragraph (4) applies the benefits shall be payable from the date the Committee receives the application.”

44. In Schedule 1 (interpretation)—

- (a) in the definition of “the 1993 Act” for “Act (Northern Ireland)” substitute “(Northern Ireland) Act”;
- (b) after the definition of “ARCs” insert—
““ASBCs” means additional survivor benefits contributions as referred to in regulation 20A;”;
- (c) at the appropriate place insert—

““contributing body” means an employing authority, an admission body or a body which is responsible for liabilities under the Scheme, whether pursuant to legislation, pursuant to an agreement with the Committee or pursuant to a statutory transfer or by any other means whatsoever;

“guarantor” means a body or person which is acceptable to the Committee and is not an admission body or an employing authority, which has agreed to accept responsibility for some or all of the liabilities of the Scheme attributable to an outgoing contributing body;

“inheriting body” means—

- (a) an admission body which continues to employ active members or whose admission agreement otherwise remains in effect;
- (b) an employing authority which employs active members at the date on which the outgoing admission body withdraws from the Scheme; or
- (c) any other body,

which has agreed to accept responsibility for some or all of the liabilities of the outgoing contributing body towards the Scheme;

“liabilities” means, where it occurs in regulations 28 (admission agreement funds), 31 (actuarial valuations and certificates), 33 (special circumstances where revised actuarial valuations and certificates must be obtained), 33A (apportionment of pension liabilities) and 78 (calculation of amount of transfer payment under regulation 77), the liabilities attributable to any employing authority or admission body by virtue of its participation in the Scheme whether it employs active members or not and these include not only liabilities which are directly attributable to its current or former employees but also any liabilities for which the employing authority or admission body is otherwise responsible;”;

(a) S.R. 1996 No. 493.

(d) in the definition of “variable-time employee” at the end of sub-paragraph (a) for “worked); and” substitute “worked); or”.

Amendment of the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009

45. The Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009(**a**) shall be amended in accordance with regulations 46 to 49.

46. In regulation 1(2) (citation, commencement, interpretation and retrospectioin) for “come into operation as follows” substitute “have effect from”.

47. In regulation 3 (membership accrued before 1st April 2009: active members)—

(a) in paragraph (2)(b) for “and 20 (early leavers: ill-health)” substitute “, 20 (early leavers: ill-health) and 31 (early payment of pension: ill-health)”; and

(b) in paragraph (4) delete “or civil partners”.

48. In regulation 7 (deferred members: limit on death grant) for “not exceed” substitute “be a sum equal to”.

49. In Schedule 1 (regulations revoked) for “Regulation 84 (discontinuance of additional voluntary contributions)” substitute “Regulation 84 (discontinuance of additional contributions)”.

Sealed with the Official Seal of the Department of the Environment on 8th December 2010.



Wesley Shannon
A senior officer of the Department of the Environment

(a) S.R. 2009 No. 34.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain amendments relating to the Local Government Pension Scheme which until 1st April 2009 was governed by the Local Government Pension Scheme Regulations (Northern Ireland) 2002 as amended (the 2002 Regulations). These Regulations also contain amendments to the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (NI) 2009 (the Benefits Regulations), the Local Government Pension Scheme (Administration) Regulations (NI) 2009 (the Administration Regulations) and the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (NI) 2009 (the Transitional Regulations) which came into operation on 1st April 2009.

Article 14 of the Superannuation (Northern Ireland) Order 1972 confers express powers to make regulations retrospective in effect. These Regulations are retrospective.

Regulations 2 introduces the amendments set out in regulations 3 to 8 relating to the 2002 Regulations to the extent that those Regulations continue to operate by virtue of the Transitional Regulations.

Regulation 3 inserts a new paragraph into regulation 4B to clarify scheme membership by admission bodies includes a body designated under the Local Government (Superannuation) Act (Northern Ireland) 1950.

Regulations 4 to 8 make amendments to regulations 77 to 79 and Schedule 1 to the 2002 Regulations to clarify the arrangements for employer's pension liabilities. Regulation 6 introduces a new regulation which allows apportionment of pension liabilities between the relevant parties, by agreement, when an employer leaves the Scheme, or merges with another employer while remaining within the Scheme.

Regulation 9 introduces the amendments set out in regulations 10 to 20 relating to the Benefits Regulations.

Regulation 10 inserts a cross reference to the Administration Regulations into regulation 2 (active members) and clarifies the minimum length of employment required for a person to become eligible for scheme membership.

Regulation 11 amends regulation 4 (meaning of "pensionable pay") to clarify that pensionable pay, as was the case in the 2002 Regulations, does not include any amount treated as the money value to an employee of the provision of a motor vehicle or any other amount paid in lieu of such provision.

Regulation 12 clarifies regulation 8 (final pay: general) of the Benefits Regulations by making it clearer that a member's final pay must be his pensionable pay in local government employment.

Regulation 13 clarifies regulation 11 (final pay: fluctuating emoluments), to make it clear that contributions at the appropriate contribution rate must be paid on any fluctuating emoluments received by the member in order for those amounts to be included in the member's final pay. Also an additional paragraph has been inserted which sets out how a member's final pay is calculated where he has been in receipt of fluctuating emoluments for less than 3 years.

Regulation 14 inserts a new regulation 12A which provides for additional periods of membership to be awarded to members who have had their period of membership reduced in consequence of applying for enhanced protection under the Finance Act 2004.

Regulation 15 inserts a new regulation 14A which enables certain members to make additional survivor benefit contributions (ASBCs) to provide a pension for a surviving cohabiting partner.

Regulations 16, 18, 20, 23, 26, 31, 38, 46 and 49 make minor technical amendments.

Regulation 17 amends regulation 27 (children's pensions) to enable the payment of a children's pension to a surviving parent or legal guardian to be applied for the benefit of the eligible child or children.

Regulation 19 makes minor amendments to clarify the circumstances under which deferred members may become eligible for the early payment of an ill-health pension.

Regulation 21 introduces the amendments set out in regulations 22 to 44 relating to the Administration Regulations.

Regulation 22 clarifies eligibility for scheme membership by employees.

Regulation 24 inserts a new paragraph into regulation 4B to clarify scheme membership by admission bodies includes a body designated under the Local Government (Superannuation) Act (Northern Ireland) 1950.

Regulations 25, 27 to 30 and 41 make consequential amendments relevant to the introduction of additional survivor benefits contributions.

Regulation 32 inserts new regulation 20A (payment of additional contributions: survivor benefits (ASBCs)) and new regulation 20B (discontinuance of ASBCs). These new regulations set out the process for making, ending and calculating additional contributions to provide a pension for a surviving cohabiting partner.

Regulations 33 to 37 make amendments to regulations 31 to 34 of the Administration Regulations to clarify the arrangements for employer's pension liabilities. Regulation 36 introduces a new regulation which allows apportionment of pension liabilities between the relevant parties, by agreement, when an employer leaves the Scheme, merges with another employer while remaining within the Scheme.

Regulation 39 makes an amendment to add a further exclusion to eligibility for a refund of contributions. Members will no longer be permitted to receive a refund where they cease one concurrent employment and remain in active membership in another local government employment.

Regulation 40 inserts regulation 45A (guaranteed minimum pensions) and 45B (survivor benefits: guaranteed minimum pension) which regulates the calculation of a guaranteed minimum pension is paid in respect of both members and survivor's benefits. Regulation 42 inserts regulation 71A (reevaluation of guaranteed minimum).

Regulation 43 amends regulation 91 (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 44 inserts new definitions into Schedule 1.

Regulation 45 introduces the amendments set out in regulations 46 to 49 relating to the Transitional Regulations.

Regulation 47(a) adds Regulation 31 (early payment of pension ill-health) to the list of benefits accrued under the 2002 Regulations which should come into payment at the same time as benefits accrued under the current Regulations. Regulation 47(b) enables periods of membership accrued before 6th April 1988 to be taken into account for the purposes of a surviving civil partner's entitlement to a pension under regulations 24, 33 or 36 of the Benefits Regulations.

Regulation 48 clarifies the amount of death grant payable to deferred members.

A full impact assessment has not been produced for these Regulations because no impact on the private or voluntary sectors is foreseen.