

**2009 No. 32**

**LOCAL GOVERNMENT**

**Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009**

*Made* - - - - - *25th February 2009*

*Coming into operation* - - - - - *1st April 2009*

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The Department of the Environment makes these Regulations in exercise of the powers conferred by Article 9 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, commencement and interpretation**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 and shall come into operation on 1st April 2009.

(2) In these Regulations—

“the 2002 Regulations” means the Local Government Pension Scheme Regulations (Northern Ireland) 2002(c);

“the 2002 Scheme” means the occupational pension scheme constituted by the 2002 Regulations, the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002(d) and the Local Government Pension Scheme Regulations (Northern Ireland) 2000(e) (so far as they continue to operate);

“active member” has the same meaning as in Article 121(1) of the Pension (Northern Ireland) Order 1995(f);

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009(g);

“admission agreement fund” means a pension fund established under regulation 28 (admission agreement funds) of the Administration Regulations;

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(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 as amended by S.R. 2002 No. 353, S.R. 2004 No. 139, S.R. 2005 No. 206, S.R. 2005 No. 274, S.R. 2006 No. 6, S.R. 2006 No. 112, S.R. 2007 No. 152, S.R. 2007 No. 448 and S.R. 2007 No. 479.

(d) S.R. 2002 No. 353; as amended by S.R. 2006 No. 6.

(e) S.R. 2000 No. 177; as amended S.R. 2001 No. 61, S.R. 2001 No. 63, S.R. 2001 No. 64, S.R. 2002 No. 115 and S.R. 2002 No. 353.

(f) S.I. 1995/3213 (N.I. 22).

(g) S.R. 2009 No. 33.

“the Committee” means the Northern Ireland Local Government Officers’ Superannuation Committee established under section 1 of the Local Government (Superannuation) Act (Northern Ireland) 1950(a);

“contractual hours”—

- (a) in relation to an employee (other than an employee with non-cyclical fluctuating hours), means the number of hours specified in his contract of employment as his contractual hours for the purposes of the Scheme; and
- (b) in relation to an employee with non-cyclical fluctuating hours, means the number of hours calculated as his contractual hours for the purposes of the Scheme in accordance with the provisions of his contract of employment;

“contract of employment” includes terms of office;

“contribution rate” means the appropriate contribution rate for a member as provided for in regulation 3 (contributions payable by active members);

“deferred member” has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995, except where he has exercised his right to aggregate membership in accordance with regulation 12 (re-employed and rejoining deferred members) of the Administration Regulations;

“the Department” means the Department of the Environment;

“eligible child” has the meaning given by regulation 26 (meaning of “eligible child”);

“employee” includes a whole-time, part-time or variable time employee;

“employing authority” means a body employing an employee who is eligible to be a member or is a local authority as defined in Article 2 of the Superannuation (Northern Ireland) Order of 1972(b) (but see regulation 6(6) (admission agreements – further provisions) of the Administration Regulations);

“employment” includes office;

“final pay” shall be construed in accordance with regulation 8 (final pay: general);

“financial year” means the year ending 31st March;

“fluctuating emoluments” are any part of an employee’s earnings which are not paid on a fixed basis and are additional to the basic wage or salary;

“the fund” means the superannuation fund established under the Local Government (Superannuation) Regulations (Northern Ireland) 1950(c);

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

“member” has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995 but, except in regulation 64 (annual benefit statements) and in Part 11 (pension sharing) of the Administration Regulations, shall not include a pension credit member;

“nominated cohabiting partner” has the meaning given by regulation 25 (meaning of “nominated cohabiting partner”);

“non-cyclical fluctuating hours” means hours which the employing authority are entitled to require the employee to work in a contractual week in any case where those hours vary in a way which is not cyclical;

“normal retirement age” is 65;

“occupational pension scheme” has the meaning given by section 150(5) of the Finance Act 2004(d);

“part-time employee” means an employee whose contract of employment provides—

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(a) 1950 c. 10 (N.I.)

(b) As extended by the Housing (Northern Ireland) Order 1981 (S.I. 1981/156, Part 2, Article 5(3)).

(c) S.R. & O. (N.I.) 1950 No. 103 (p. 423).

(d) 2004 c. 12.

(a) that he is such an employee for the Scheme, or

(b) who is neither a whole-time employee nor a variable-time employee;

“pension credit” means a credit under Article 26(1)(b)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or section 29(1)(b)(b) of the Welfare Reform and Pensions Act 1999;

“pension credit benefits” means benefits payable under the Scheme to or in respect of a pension credit member by virtue of rights under the Scheme attributable to a pension credit;

“pension credit member” means a person who has pension credit rights or benefits under the Scheme;

“pension credit rights” means rights to future benefits under the Scheme which are attributable to a pension credit;

“pension debit” means a debit under Article 26(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(a) of the Welfare Reform and Pensions Act 1999;

“pensionable pay” has the same meaning given in regulation 4 (meaning of “pensionable pay”);

“pensioner member” has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995;

“relevant reserve forces service” means service (other than service for the purposes of training only or service for a period in respect of which a cancelling notice has been served)—

(a) in pursuance of any notice or directions given under any enactment which provides for the calling out on permanent service, or the calling into actual service, or the embodiment of, any reserve or auxiliary force, or members of such a force, or the recall of service pensioners;

(b) in pursuance of any obligation or undertaking to serve when called upon as a commissioned officer; or

(c) rendered by virtue of section 28 or 65 of the Reserve Forces Act 1996(c),

and paragraph (b) applies whether or not the obligation or undertaking is legally enforceable, but not in the case of an obligation or undertaking to accept a permanent commission or a commission for a fixed term or to serve for the purposes of periodical training;

“reserve forces pay”, in relation to any person, is the total of—

(a) his pay for performing relevant reserve forces service (including marriage, family and similar allowances); and

(b) any payments under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) (Northern Ireland) Order 1953(d);

“reserve forces service leave”, in relation to a person, means being away from work—

(a) after—

(i) he has left the employment in which he is an active member; or

(ii) he has been granted leave of absence from such an employment, in order to perform reserve forces service;

(b) without having agreed to receive a return of contributions under regulation 41 (rights to return of contributions) of the Administration Regulations; and

(c) without having elected that the absence is not to count as such by giving notice in writing to the Committee not later than 12 months after the end of the period of reserve forces

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(a) S.I.1999/3147 (N.I. 11).

(b) 1999 c. 30.

(c) 1996 c. 14.

(d) S.I. 1953/197.

service to which the notice relates (or within such longer period as the Committee may allow);

“the Scheme” means the occupational pension scheme constituted by these Regulations, the Administration Regulations, the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009<sup>(a)</sup> and the 2002 Regulations (so far as they continue to operate);

“service” means service or employment with an employing authority and service rendered by an employee of an employing authority whose services are placed at the disposal of a Minister of the Crown or a Government department in pursuance of any enactment is to be treated as service with an employing authority;

“total membership” means the aggregate of periods of membership which count as such under regulation 6 (periods of membership);

“variable-time employee” means an employee whose contract of employment provides that he is such an employee for the Scheme and—

- (a) whose pay is calculated by reference to his duties (rather than necessarily by reference to the number of hours he has worked), or
- (b) whose duties only have to be performed on an occasional basis; and

“whole-time employee” means an employee whose contract of employment provides—

- (a) that he is such an employee for the Scheme, or
- (b) that his contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis.

### Active members

2.—(1) Subject to paragraphs (2) and (3), the term “active member” in relation to the Scheme is to be construed in accordance with regulation 1(2).

(2) An active member of the 2002 Scheme is an active member of the Scheme for as long as he continues to be in employment which makes him eligible to be such in accordance with Part 2 of the Administration Regulations.

(3) But a person is not an active member unless he is employed under a contract of employment of more than 3 months’ duration.

### Contributions payable by active members

3.—(1) Subject to paragraph (9), each active member shall make contributions to the Scheme at the contribution rate from his pensionable pay in each employment in which he is an active member.

(2) Subject to paragraph (4), the contribution rate to be applied to a person who becomes an active member is determined by his employing authority at the commencement of his membership on the basis of his pensionable pay in accordance with the following table.

<i>Band</i>	<i>Range</i>	<i>Contribution rates</i>
1	£0-£12,600	5.5%
2	£12,601-£14,700	5.8%
3	£14,701-£18,900	5.9%
4	£18,901-£31,500	6.5%
5	£31,501-£42,000	6.8%
6	£42,001-£78,700	7.2%
7	More than £78,700	7.5%

(3) The figures in the second column of the table in paragraph (2) (“Range”) are—

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

- (a) increased as if they were pensions to which the Pensions (Increase) Act (Northern Ireland) 1971<sup>(a)</sup> applied and rounded down to the nearest £100; and
- (b) treated, for the purposes of sub-paragraph (a), as if they were pensions beginning on 1st April 2010.

(4) Where there has been a permanent material change to the terms and conditions of a member's employment which affect his pensionable pay in the course of a financial year, his employing authority—

- (a) may determine that the contribution rate to be applied in his case is not calculated in accordance with paragraph (2); and
- (b) shall inform the member of the contribution rate applicable to him, and the date from which it is to be applied.

(5) Where an active member is a part-time employee, his contributions shall be calculated by multiplying the contributions he would have paid had he been a whole-time employee (calculated in accordance with paragraph (2)) by the proportion that the number of his weekly hours bears to the number of weekly hours that he would have worked had he been a whole-time employee.

(6) But a whole-time term-time worker is not a part-time employee for the purposes of this regulation.

(7) In this regulation, “term-time worker” means a person whose contract of employment provides for a regular pattern of periods of work and periods of no work so as to result in a recognisable cycle of work consisting of 1 year (but is not limited to persons working in educational establishments).

(8) The amount of an employee's pensionable pay for the purposes of this regulation is calculated in accordance with regulation 4 (meaning of “pensionable pay”).

(9) In any event, an active member does not make any contributions after the day before his 75th birthday.

(10) A person who is an active member in more than one employment must make contributions for each of those employments at the rate applicable to the sum of his pensionable pay in each such employment.

(11) The Committee may decide the intervals at which the contributions are made.

(12) For this regulation any reduction in pensionable pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work shall be disregarded.

**Meaning of “pensionable pay”**

4.—(1) An employee's pensionable pay is the total of—

- (a) all the salary, wages, fluctuating emoluments and other payments paid to him for his own use in respect of his employment; and
- (b) any other payment or benefit specified in his contract of employment as being a pensionable emolument.

(2) But an employee's pensionable pay does not include—

- (a) payments for non-contractual overtime;
- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate his contract of employment;
- (e) any payment as an inducement not to terminate his employment; or
- (f) any payment to buy out an existing term or condition of employment.

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(a) 1971 c. 35.

(3) The pensionable pay of a part-time employee for any period is the pensionable pay he would have received if during that period he had worked the contractual hours.

(4) No sum may be taken into account in calculating pay unless income tax liability has been determined on it.

## **Benefits**

5.—(1) Membership of the Scheme only entitles the member to benefits if—

- (a) his total membership is at least 3 months; or
- (b) a transfer value is credited to him.

(2) But paragraph (1) does not apply to benefits in respect of a member under regulation 23 (death grants: active members), 24 (survivor benefits: active members) or 28 (children's pensions: active members).

(3) Subject to paragraph (4), a member who has satisfied one of the conditions in paragraph (1) need not satisfy either of them again if he ceases to be an active member and subsequently becomes such a member again before drawing benefits under regulation 16 (normal retirement), 17 (retirement after normal retirement age), 19 (early leavers: business efficiency and redundancy), 20 (early leavers: ill-health), 30 (choice of early payment of pension) or 31 (early payment of pension: ill-health).

(4) Paragraph (3) does not apply to a member in respect of whom a transfer payment has been made under regulations 75 (rights to payment out of the fund) to 78 (calculation of amount of transfer payment under regulation 77) of the Administration Regulations.

## **Periods of membership**

6. These are the periods that count as periods of membership (and which may accordingly be aggregated under regulation 12 (re-employed and rejoining deferred members) or, as the case may be, 13 (concurrent employments) of the Administration Regulations)—

- (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 3 (contributions payable by active members);
- (b) any period added under regulation 12 (power of employing authority to increase total membership of members) or 20 (early leavers: ill-health); and
- (c) any period added following a transfer in of pension rights under regulations 79 (inward transfers of pension rights) to 81 (community scheme transferees) of the Administration Regulations<sup>(a)</sup>.

## **Calculation of length of periods of membership**

7.—(1) In calculating the length of a period of membership, fractions of years of membership count.

(2) The numerator of such fractions is the number of complete days of membership and the denominator is 365.

(3) Membership in part-time service is counted as the appropriate fraction of the duration of membership.

(4) The numerator of that fraction is the number of contractual hours during the part-time service and its denominator is the number of contractual hours of that employment if it were on a whole-time basis.

(5) The amount of any annual pension payable to a member as a result of his membership is his total period of membership multiplied by his final pay and divided by 60.

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(a) See also regulation 81(1) of the Administration Regulations.

### **Final pay: general**

8.—(1) Subject to regulations 9 (final pay: reserve forces, maternity leave, etc.) to 11 (final pay: fluctuating emoluments), a member's final pay for an employment is his pensionable pay for as much of the final pay period as he is entitled to count as active membership in relation to that employment.

(2) A member's final pay period is—

- (a) the year ending with the day on which he stops being an active member; or
- (b) either of the 2 immediately preceding years ending with a day that is the anniversary of the last day he was an active member, if this results in a higher figure.

(3) In the case of part-time employment, the final pay is the pensionable pay that would have been paid for a single comparable whole-time employment.

(4) Any reduction or suspension of a member's pay during the final pay period because of his absence from work owing to illness or injury must be disregarded.

### **Final pay: reserve forces, maternity leave, etc.**

9.—(1) If a member's final pay period includes reserve forces service leave, his final pay is—

- (a) in a case where he has paid contributions in respect of it, the amount it would have been if his reserve forces pay were pay received in his former local government employment; or
- (b) otherwise, the amount it would have been if he had continued to be employed in his former employment during the period of that leave.

(2) A member's final pay for any period of maternity, paternity or adoption absence during the final pay period in respect of which he pays or is treated as paying contributions is the pay he would have received had he not been absent.

(3) If a member is absent from work for any other reason during his final pay period, he is only to be treated as having received the pensionable pay he would otherwise have received if he has continued to pay contributions in respect of it for the period he is absent.

(4) If a member is only entitled to count part of the year specified in regulation 8(2) (final pay: general) as a period of active membership in relation to the employment which he ceases to hold, his final pay is his pensionable pay during that part multiplied by 365 and divided by the number of days in that part.

### **Final pay: reductions**

10.—(1) Subject to paragraph (2), where a member's pensionable pay in a continuous period of employment is reduced or restricted because he chooses to continue to be employed by the same employing authority at a lower grade or with less responsibility, he may choose to have his final pay calculated as mentioned in paragraph (3).

(2) Paragraph (1) does not apply if the member's employment at the lower grade or with less responsibility—

- (a) commences before the beginning of the period of 10 years ending with his last day as an active member; or
- (b) immediately follows a period in which he occupies a post on a temporary basis.

(3) The calculation is the average of the member's annual pensionable pay in any 3 consecutive years of his choice ending with 31 March within the period of 10 years ending with the last day he was an active member.

(4) Paragraph (1) applies to a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006<sup>(a)</sup> apply as if the transferor employer were the same employer as the transferee employer.

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(a) S.I. 2006/246.

### **Final pay: fluctuating emoluments**

**11.—**(1) Subject to paragraph (2), where a member's pensionable pay for the purposes of regulation 8(1) (final pay: general) consists of or includes fluctuating emoluments, his final pay is calculated as the sum of—

- (a) the average of all such fluctuating emoluments for the 3 consecutive years ending with the final pay period; and
- (b) any sums falling within regulation 4(1) (meaning of “pensionable pay”), other than fluctuating emoluments, for the final pay period.

(2) But a member's employer may consent to him having his final pay calculated as the average of all such fluctuating emoluments for any 3 consecutive years ending 31st March within the period of 10 years ending with the last day he was an active member.

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

**12.—**(1) An employing authority may resolve to increase the total membership of a member.

(2) A member's total additional membership under this regulation (including additional membership in respect of different employments) must not exceed 10 years.

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

(4) If the reason for the member leaving his employment is redundancy, a resolution under paragraph (1) may be passed at any time in the period of 6 months beginning with the relevant date but shall be deemed to take effect from the relevant date.

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

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

### **Power of employing authority to award additional pension**

**13.—**(1) An employing authority may resolve to award a member additional pension of not more than £5,000 a year payable from the same date as his pension payable under any other provision.

(2) Additional pension may be paid in addition to any increase of total membership resolved to be made under regulation 12 (power of employing authority to increase total membership of members).

### **Election to pay additional regular contributions (ARCs)**

**14.—**(1) An active member may choose to pay additional regular contributions (“ARCs”) in order to be credited with additional pension, in respect of him alone or in respect of him and any survivor, of £250 a year or multiples thereof to a maximum of £5,000.

(2) If he chooses to take the additional pension referred to in paragraph (1) earlier or later than his normal retirement age, it is reduced or, as the case may be, increased.

(3) The amount of additional regular contributions to be paid under paragraph (1), and the reduction or increase referred to in paragraph (2), is calculated in accordance with guidance issued by the Government Actuary.

### **Elections to pay additional voluntary contributions (AVCs)**

**15.—**(1) A member who has entered into an arrangement to pay additional voluntary contributions (“AVCs”) or to contribute to a shared cost AVC in addition to any contributions he may pay is entitled to additional benefits in accordance with one of the permissible ways specified in regulation 22(3) (use of accumulated value of AVCs and SCAVCs) of the Administration Regulations.

(2) Where a member chooses to take some or all of the benefits referred to in paragraph (1) in the form of a lump sum, that sum forms part of the total amount referred to in regulation 21(2) (election for lump sum in lieu of pension).

(3) In this regulation, “a shared cost AVC” means an arrangement established and maintained by an employing authority for the purpose of enabling contributions to be paid by and for active members.

### **Normal retirement**

**16.—**(1) A member who has attained the Scheme’s normal retirement age and ceases to be employed in local government employment is entitled to immediate payment of retirement pension without reduction.

(2) The normal retirement age of the Scheme is 65.

### **Retirement after normal retirement age**

**17.—**(1) A member who remains in local government employment after his 65th birthday is entitled to a pension when he retires from service.

(2) His pension rights accrued at that date, and any rights accruing between that date and the date of his retirement or the day before his 75th birthday, whichever is earlier, shall be enhanced in accordance with guidance issued by the Government Actuary.

(3) The pension is payable immediately on retirement.

(4) But it must begin to be paid not later than the day before the member’s 75th birthday even if he is not retired.

### **Flexible retirement**

**18.—**(1) A member who has attained the age of 55 and who, with his employing authority’s consent, reduces the hours he works, or the grade in which he is employed, may make a request in writing to the Committee to receive all or part of his benefits, and such benefits may, with his employing authority’s consent, be paid to him notwithstanding that he has not retired from that employment.

(2) If the payment of benefits referred to in paragraph (1) takes effect before the member’s 65th birthday, the benefits payable are reduced in accordance with guidance issued by the Government Actuary.

(3) But the employing authority may agree to waive, in whole or in part, any reduction as is referred to in paragraph (2).

(4) Subject to paragraph (5), in the case of a person who is a member on 31st March 2009, and who makes a request before 31st March 2010, paragraph (1) applies as if “the age of 50” were substituted for “the age of 55”.

(5) Paragraph (4) only applies to a member whose employment has been continuous with that same employing authority throughout that period.

(6) For the purposes of paragraph (5), the employment of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply shall be treated as being continuous employment with the transferee employer.

(7) The value of any benefits paid to a member under paragraph (1) shall be taken into account in any subsequent calculation of his benefits under regulation 16 (normal retirement), 17 (retirement after normal retirement age), 19 (early leavers: business efficiency and redundancy), 20 (early leavers: ill-health), 30 (choice of early payment of pension) or 31 (early payment of pension: ill-health) in accordance with guidance issued by the Government Actuary.

### **Early leavers: business efficiency and redundancy**

**19.—**(1) Where—

- (a) a member is dismissed by reason of redundancy; or
- (b) his employing authority has decided that, on the grounds of business efficiency, it is in the employing authority's interest that he should leave their employment; and
- (c) in either case, the member has attained the age of 55,

he is entitled to the immediate payment of retirement pension without reduction.

(2) In the case of a person who is a member on 31st March 2009, and to whom paragraph (1) applies before 31st March 2010, that paragraph applies as if "the age of 50" were substituted for "the age of 55".

### **Early leavers: ill-health**

**20.**—(1) Where a member, who has total membership of at least one year, leaves a local government employment on the grounds that—

- (a) his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of that employment; and
- (b) he has a reduced likelihood of obtaining gainful employment (whether in local government or otherwise) before his normal retirement age,

the Committee may, at the request of the employing authority, determine that his retirement pension comes into payment before his normal retirement age in accordance with this regulation in the circumstances set out in paragraph (2), or (3), as the case may be.

(2) If the Committee determine that there is no reasonable prospect of his obtaining any gainful employment because of his ill-health before his normal retirement age, his benefits are increased—

- (a) as if the date on which he leaves his employment were his normal retirement age; and
- (b) by adding to his total membership at that date the whole of the period between that date and the date on which he would have retired at normal retirement age.

(3) If the Committee determine that he has a reasonable prospect of obtaining any gainful employment before his normal retirement age, his benefits are increased—

- (a) as if the date on which he leaves his employment were his normal retirement age; and
- (b) by adding to his total membership at that date 25% of the period between that date and the date on which he would have retired at normal retirement age.

(4) Where the Committee, at the request of the employing authority, is considering whether a person who has ceased to hold a local government employment is entitled to benefit under this regulation, it shall refer for decision to an independent registered medical practitioner qualified in occupational health medicine, appointed by the Committee, as to whether in his opinion, expressed as a certificate, the member is suffering from a condition that renders him 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 he—

- (a) has no reasonable prospect of obtaining any gainful employment before his normal retirement age; or
- (b) has a reasonable prospect of obtaining any gainful employment before his normal retirement age.

(5) Subject to paragraphs (6) and (7), in the case of a member in part-time employment, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is calculated in accordance with regulation 7(3) as if he had remained in such part-time employment until his normal retirement age.

(6) Where the certificate obtained under paragraph (5) states that, in the medical practitioner's opinion, the member is wholly or temporarily in part-time employment as a result of the condition that has caused him to be incapable of discharging efficiently the duties of the relevant local government employment, no account shall be taken of such reduction in his employment as is attributable to that condition.

(7) But if, in the case of a person who is a member before 1st April 2009 and who has attained the age of 45 before that date, the period to be added under paragraph (2)(b) or (3)(b) is less than the period that would have been added had regulation 30 (amounts of ill-health pension and grant) of the 2002 Regulations applied, then his benefits are increased by adding the latter period.

(8) The Committee and the independent registered medical practitioner must have regard to guidance given by the Department when carrying out their function under this regulation, when making an ill-health determination.

(9) In this regulation—

“gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months;

“permanently incapable” means that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday; and

“qualified in occupational health medicine” means—

(a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, “competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003(a); or

(b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

### **Election for lump sum in lieu of pension**

**21.**—(1) A member in respect of whom a benefit crystallisation event within the meaning of Chapter 5 of Part IV of the Finance Act 2004(b) occurs on or after 1st April 2009 may choose in writing to the Committee before any benefits become payable to commute his pension, or part thereof, at a rate £12 for every £1 of annual pension entitlement surrendered.

(2) But the total amount of the member’s commuted sum, including any sum received as benefits provided in the form of a lump sum in accordance with regulation 15 (elections to pay additional voluntary contributions (AVCs)) shall not exceed 25% of the capital value of his accrued rights.

(3) A member’s accrued rights include rights accrued in respect of any payments made by or for him in accordance with the 2002 Regulations.

(4) The capital value of a member’s accrued rights shall be calculated in accordance with guidance issued by the Government Actuary.

(5) And for the purposes of paragraph (1), a member’s pension is his pension after any reduction pursuant to regulation 18 (flexible retirement) or 30 (choice of early payment of pension).

### **Limit on total amount of benefits**

**22.**—(1) A member and any dependant of his shall not be entitled to receive benefits the capital value of which exceeds his lifetime allowance increased, where applicable, by his primary protection or his enhanced protection except in accordance with guidance issued by the Government Actuary.

(2) In this regulation, “lifetime allowance”, “primary protection” and “enhanced protection” are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004.

(3) Any calculation of the capital value of a member’s benefits is to be carried out in accordance with guidance issued by the Government Actuary.

(4) The Committee is responsible for deducting from any payment of benefits under the Scheme any tax to which it may become chargeable under the Finance Act 2004.

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(a) S.I. 2003/1250 as amended by S.I. 2004/1947.

(b) 2004 c. 12.

### **Death grants: active members**

23.—(1) If an active member dies, a death grant is payable.

(2) The Committee at its absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the Committee to have been his relative or dependant at any time.

(3) The death grant is his final pay multiplied by 3.

(4) But in calculating death grant in respect of a part-time employee, actual pensionable pay in part-time employment is to be used.

(5) If the Committee has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of 2 years—

(a) beginning with his death; or

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

it must pay an amount equal to the shortfall to the member's personal representatives.

### **Survivor benefits: active members**

24.—(1) If a member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension payable from the day following the date of death.

(2) The pension is calculated by multiplying his total membership, augmented as if regulation 20(2) (early leavers: ill-health) applied, by his final pay and divided by 160.

(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

### **Meaning of “nominated cohabiting partner”**

25.—(1) “Nominated cohabiting partner” means a person nominated by a member in accordance with the terms of this regulation.

(2) A member (A) may nominate another person (B) to receive benefits under the Scheme by giving the Committee a declaration signed by both A and B that the condition in paragraph (3) has been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(3) The condition is that—

(a) A is able to marry, or form a civil partnership with, B;

(b) A and B are living together as if they were husband and wife or as if they were civil partners;

(c) neither A nor B is living with a third person as if they were husband and wife or as if they were civil partners; and

(d) either B is financially dependent on A or A and B are financially interdependent.

(4) But a nomination has no effect if the condition in paragraph (3) has not been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(5) A nomination ceases to have effect if—

(a) either A or B gives written notice of revocation to the Committee;

(b) A makes a subsequent nomination under this regulation;

(c) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or as if they were civil partners; or

(d) B dies.

(6) B is A's surviving nominated partner if—

(a) the nomination has effect at the date of A's death; and

(b) B satisfies the Committee that the condition in paragraph (3) was satisfied for a continuous period of at least 2 years immediately prior to A's death.

(7) For the purposes of this regulation, 2 people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.

(8) In this regulation, "member" means an active member or a former active member who has become a deferred or pensioner member in accordance with these Regulations or the Administration Regulations.

### **Meaning of "eligible child"**

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

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

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

(4) The Committee may treat a dependant child who commences full time education or vocational training after the date of the member's death as an eligible child after he reaches the age of 18 and until he reaches the age of 23.

(5) In the case a dependant child falling within paragraph (4), the Committee may—

- (a) treat education or training as continuous despite a break; or
- (b) suspend payment of any entitlement to benefits under regulation 28 (children's pensions: active members), 34 (children's pensions: deferred members) or 37 (children's pensions: pensioner members) during such a break.

(6) The Committee may treat a dependant child who is disabled within the meaning of the Disability Discrimination Act 1995(a) as an eligible child.

### **Children's pensions**

**27.—**(1) If a member dies leaving one or more eligible children, they are entitled to a children's pension.

(2) The pension is payable from the day following the date of death.

(3) A child ceases to be entitled to a pension when he ceases to be an eligible child within regulation 26 (meaning of "eligible child").

(4) The amount of that pension is calculated in accordance with regulation 28 (children's pensions: active members), 34 (children's pensions: deferred members) or 37 (children's pensions: pensioner members), as the case may be.

### **Children's pensions: active members**

**28.—**(1) The amount of the pension of an eligible child of a deceased active member is calculated as follows.

(2) If a survivor benefit is payable under regulation 24 (survivor benefits: active members)—

- (a) where there is only one such child, the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) (early leavers: ill-health) applied, by his final pay, and dividing by 320; and
- (b) where there is more than one such child—

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(a) 1995 c. 50.

- (i) the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by his final pay, and dividing by 160; and
  - (ii) those children are jointly entitled in equal shares.
- (3) If no survivor benefit is payable under regulation 24—
  - (a) where there is only one such child, the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by his final pay, and dividing by 240; and
  - (b) where there is more than one such child—
    - (i) the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by his final pay, and dividing by 120; and
    - (ii) those children are jointly entitled in equal shares.

### **Calculation on leaving early**

**29.**—(1) This regulation applies in the case of a member who leaves his employment and is not entitled to immediate payment of retirement pension under any of regulations 16 (normal retirement) to 20 (early leavers: ill-health).

(2) His entitlement to benefits that would, apart from any other provision, become payable on his attaining normal retirement age, is calculated in accordance with regulation 7 (calculation of length of periods of membership) as at the date of his leaving such employment.

(3) Subject to regulations 30 (choice of early payment of pension) and 31 (early payment of pension: ill-health), his retirement pension becomes payable on attaining normal retirement age.

(4) But that entitlement is extinguished if an aggregation takes place under regulation 6 (periods of membership) or if a transfer out takes place under regulations 74 to 76 (transfers out) of the Administration Regulations.

(5) Where a member chooses not to receive payment of his retirement pension, or any part of it, immediately on attaining normal retirement age, his entitlement is enhanced in accordance with guidance issued by the Government Actuary.

### **Choice of early payment of pension**

**30.**—(1) If a member leaves a local government employment or otherwise ceases to be a member before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he has attained the age of 55 he may choose to receive payment of them immediately.

(2) A choice made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority.

(3) If the member so chooses, he is entitled to a pension payable immediately calculated in accordance with regulation 29 (calculation on leaving early).

(4) His pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary.

(5) A member's employing authority or former employing authority may determine on compassionate grounds that his retirement pension should not be reduced under paragraph (4).

(6) In the case of a person who is an active member on 31st March 2009, and who makes an election before 1st April 2010, paragraph (1) applies as if "the age of 50" were substituted for "the age of 55".

### **Early payment of pension: ill-health**

**31.**—(1) Subject to paragraph (2), if a member who has left his employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or

infirmity of mind or body he may make a written request to the Committee to receive payment of the retirement benefits immediately, whatever his age.

(2) Before determining whether to agree to a request under paragraph (1), the Committee must obtain a certificate from the independent registered medical practitioner, appointed under regulation 20(4), as to whether in his opinion the member is 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 that condition is likely to prevent the member from obtaining gainful employment (whether in local government or otherwise) before reaching his normal retirement age.

(3) In this regulation, “gainful employment” and “permanently incapable” have the same meaning as in regulation 20 (early leavers: ill-health).

#### **Death grants: deferred members**

32.—(1) If a deferred member dies, a death grant is payable.

(2) The Committee at its absolute discretion may make payments in respect of the death grant to or for the benefit of the member’s nominee or personal representatives, or any person appearing to the Committee to have been his relative or dependant at any time.

(3) The death grant is his retirement pension multiplied by 5.

(4) If the Committee has not made payments under paragraph (1) equalling in aggregate the member’s death grant before the expiry of 2 years—

(a) beginning with his death; or

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

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

#### **Survivor benefits: deferred members**

33.—(1) If a deferred member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension payable from the day following the date of death.

(2) The pension is calculated by multiplying his total membership by his final pay and dividing by 160.

(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

#### **Children’s pensions: deferred members**

34.—(1) The amount of the pension of an eligible child of a deceased deferred member is calculated as follows.

(2) If a survivor benefit is payable under regulation 33 (survivor benefits: deferred members)—

(a) where there is only one such child, the pension is calculated by multiplying the member’s total membership, calculated in accordance with regulation 29 (calculation on leaving early), by his final pay, and dividing by 320; and

(b) where there is more than one such child—

(i) the pension is calculated by multiplying the member’s total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 160; and

(ii) those children are jointly entitled in equal shares.

(3) If no survivor benefit is payable under regulation 33—

(a) where there is only one such child, the pension is calculated by multiplying the member’s total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 240; and

- (b) where there is more than one such child—
  - (i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 120; and
  - (ii) those children are jointly entitled in equal shares.

**Death grants: pensioner members**

35.—(1) If a pensioner member dies before his 75th birthday, a death grant is payable.

(2) The Committee at its absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the Committee to have been his relative or dependant at any time.

(3) The death grant is his pension in payment multiplied by 10, but the amount so calculated is reduced by the amounts of any retirement pension paid to him and ignoring any reduction due to abatement under regulation 66 (statements of policy concerning abatement of retirement pensions in new employment) of the Administration Regulations.

(4) If the Committee has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of 2 years—

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

it must pay an amount equal to the shortfall to the member's personal representatives.

**Survivor benefits: pensioner members**

36.—(1) If a pensioner member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension payable from the day following the date of death.

(2) The pension is calculated by multiplying his total membership by his final pay and dividing by 160.

(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

**Children's pensions: pensioner members**

37.—(1) The amount of the pension of an eligible child of a deceased pensioner member is calculated as follows.

(2) If a survivor benefit is payable under regulation 36 (survivor benefits: pensioner members)—

- (a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating his benefits, by his final pay, and dividing by 320; and
- (b) where there is more than one such child—
  - (i) the pension is calculated by multiplying the member's total membership used in calculating his benefits, by his final pay, and dividing by 160; and
  - (ii) those children are jointly entitled in equal shares.

(3) If no survivor benefit is payable under regulation 36—

- (a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating his benefits, by his final pay, and dividing by 240; and
- (b) where there is more than one such child—
  - (i) the pension is calculated by multiplying the member's total membership used in calculating his benefits, by his final pay, and dividing by 120; and

- (ii) those children are jointly entitled in equal shares.

### **Pension increases under the Pensions (Increase) Acts**

**38.** Where a pension to which the Pensions (Increase) (Northern Ireland) Act 1971(a) applies is payable out of the fund or, as the case may be, an admission agreement fund established under regulation 28 (admission agreement funds) of the Administration Regulations, any increase under that Act or the Pensions (Increase) (Northern Ireland) Order 1974(b) must be paid from the fund or, as the case may be, an admission agreement fund.

### **Commutation: small pensions**

**39.—(1)** A lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004(c), or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act, may be paid in accordance with the rules relating to the payment of such benefits under that Act.

(2) Any payment under paragraph (1) is calculated in accordance with guidance issued by the Government Actuary.

(3) The benefits referred to in paragraph (1) do not include any survivor benefit that is being paid to the member.

### **Guidance on future costs**

**40.** The Committee and employing authorities shall have regard to guidance to be issued by the Department, before 31st March 2010, as to the manner in which the costs of the Scheme will be met after 31st March 2011.

### **Pension debits**

**41.** The Committee shall have regard to guidance issued by the Government Actuary as to reduction of benefits payable under these Regulations in consequence of a pension debit created under Article 26(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(d) or under section 29(1)(a) of the Welfare Reform and Pensions Act 1999(e).

### **No double entitlement**

**42.—(1)** Where (apart from this regulation) any member would be entitled to a pension or retirement grant under 2 or more regulations by reason of the same period of membership—

- (a) he shall be entitled to benefits under only one regulation;
- (b) he may choose under which provision he is to be paid those benefits; and
- (c) if he does not choose, the Committee may notify him in writing of the provision.

(2) A member's choice must be in writing, given to the Committee before the expiry of 3 months beginning with the day on which he becomes entitled to choose under which provision his pension or retirement grant is to be paid.

(3) Paragraph (1) does not affect the member's rights under the Pension Schemes Act (Northern Ireland) 1993(f).

(4) This regulation also applies to any survivor benefits payable under regulation 24 (survivor benefits: active members), 27 (children's pensions), 33 (survivor benefits: deferred members), 34

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(a) 1971 c. 35.  
(b) S.I. 1974/1267 (N.I. 2).  
(c) 2004 c. 12.  
(d) S.I. 1999/3147 (N.I. 11).  
(e) 1999 c. 30.  
(f) 1993 c. 49.

(children's pensions: deferred members), 36 (survivor benefits: pensioner members) or 37 (children's pensions: pensioner members).

Sealed with the Official Seal of the Department of the Environment on 25th February 2009.



*I Maye*  
A senior officer of the Department of the Environment

## EXPLANATORY NOTE

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

These Regulations set out provisions relating to benefits, membership and contributions in the new Local Government Pension Scheme (“the Scheme”) which will come into operation on 1st April 2009 and replace the Local Government Pension Scheme 2002 (“the 2002 Scheme”).

Regulation 1 contains the name of these Regulations, the operational date and definitions of terms used throughout these Regulations.

Regulation 2 sets out who is a member of the Scheme: broadly speaking, this is anyone who is, or could have been had it continued in existence, a member of the 2002 Scheme.

Regulation 3 contains a table of rates of contributions on pensionable pay, and makes provisions for part-time and term-time workers.

Regulation 4 defines pensionable pay.

Regulation 5 provides for a minimum membership of 3 months for entitlement to benefits in most cases.

Regulations 6 and 7 define how the length of membership is calculated.

Regulations 8 to 11 provide for the calculation of final pay.

Regulations 12 and 13 respectively provide power for employing authorities to increase membership and award additional pension.

Regulations 14 and 15 respectively provide for additional regular contributions (ARCs) and for additional voluntary contributions (AVCs).

Regulation 16 provides for the normal retirement age (65), regulation 17 for retirement after this age and regulation 18 for flexible retirement.

Regulation 19 makes provision relating to business efficiency and redundancy.

Regulation 20 makes provision relating to ill-health retirement.

Regulation 21 provides for commutation of pension and regulation 22 places a limit on the total amount of benefits.

Regulations 23, 24 and 28 (active members), 32, 33 and 34 (deferred members) and 35, 36 and 37 (pensioner members) provide for death grants, survivor benefits and children’s pension for the respective classes of member. Regulation 25 contains a definition of “nominated cohabiting partner” and regulation 26 of “eligible child” for these purposes. Regulation 27 makes further provision about children’s pensions.

Regulations 29 to 31 make provision relating to early payment of pension.

Regulation 38 provides for the payment of increases under the Pensions (Increase) Act 1971, regulation 39 for commutation of small pensions and regulation 40 requires the Northern Ireland Local Government Officers’ Superannuation Committee and employing authorities to have regard to guidance issued by the Department of the Environment about the future costs of the Scheme.

Regulation 41 deals with pension debits.

Regulation 42 prevents double entitlement.

A regulatory impact assessment was published alongside the Local Government Pension Scheme (Benefits, Contributions and Membership) Regulations 2007 (SI 2007/1166) which assesses the cost implications on employers within the Local Government Pension Scheme who are businesses, charities and voluntary organisations in England and Wales. The regulatory impact assessment can

be viewed at [www.communities.gov.uk/lgps](http://www.communities.gov.uk/lgps). A separate regulatory impact assessment has not been produced for these Regulations.

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**2009 No. 32**

**LOCAL GOVERNMENT**

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