



Department for
Communities and
Local Government

Local Government Pension Scheme 2014 and 2008 Scheme amending Regulations

Consultation

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March 2013

ISBN: 978-1-4098-3807-4

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The Consultation Process and How to Respond

Scope of the consultation

Topic of this consultation	Local Government Pension Scheme Regulations 2008 and 2013 and Scheme description.
Scope of this consultation	<p>This consultation seeks responses from interested parties, on draft regulations for the current 2008 Local Government Pension Scheme and the new Scheme to come into force in April 2014. The consultation is in three parts :-</p> <p>a) a set of more detailed draft regulations further to the earlier exercise commenced on 21 December covering the core elements of the new scheme, in particular, the provisions relating to membership, contributions and benefits, A copy of December's consultation can be found at: https://www.gov.uk/government/consultations/local-government-pension-scheme-2014-draft-regulations-on-membership-contributions-and-benefits,</p> <p>b) draft transitional provisions and savings regulations, and</p> <p>c) draft miscellaneous amendment regulations amending the Local Government Pension Scheme Regulations 2008.</p>
Geographical scope	England and Wales.
Impact Assessment	To follow.

Basic Information

To	This consultation is aimed at all Local Government Pension Scheme interested parties.
Body responsible for the consultation	The Secretary of State for Communities and Local Government is responsible for policy and the consultation exercise.
Duration	5 weeks (LGPS Regulations 2013), 8 weeks (Transitional Provisions Regulations 2013) and 8 weeks (Miscellaneous Amendments). As timing allows, account will be taken of representations made after the close of the consultation.

<p>Compliance with the consultation principles guidance</p>	<p>This consultation complies with the consultation principles guidance. We are seeking views from the following parties with an interest in the Local Government Pension Scheme:</p> <p>The Welsh Assembly</p> <p>The Chief Executives of:</p> <ul style="list-style-type: none"> County Councils (England) District Councils (England) Metropolitan Borough Councils (England) Unitary Councils (England) County and County Borough Councils in Wales London Borough Councils South Yorkshire Pension Authority Tameside Metropolitan Borough Council Wirral Metropolitan Borough Council Bradford Metropolitan City Council South Tyneside Metropolitan Borough Council Wolverhampton Metropolitan Borough Council London Pension Fund Authority Environment Agency <p>Town Clerk, City of London Corporation</p> <p>Clerk, South Yorkshire Passenger Transport Authority</p> <p>Clerk, West Midlands Passenger Transport Authority</p> <p>Fire and Rescue Authorities in England and Wales</p> <p>Police Authorities in England and Wales</p> <p>National Probation Service for England and Wales</p> <p>Local Government Association (LGA)</p> <p>Employers' Organisation</p> <p>Local Government Pensions Committee</p> <p>Association of Local Authority Chief Executives</p> <p>Public Sector People Managers' Association</p> <p>Society of Local Authority Chief Executives</p> <p>Chartered Institute of Public Finance and Accountancy</p> <p>Association of Local Authority Medical Advisors</p> <p>Association of Colleges</p> <p>Association of Consulting Actuaries</p> <p>Association of District Treasurers</p> <p>Society of County Treasurers</p> <p>Society of Welsh Treasurers</p> <p>Society of Metropolitan Treasurers</p> <p>Society of London Treasurers</p> <p>Association of Educational Psychologists</p> <p>National Association of Pension Funds</p> <p>National Association of Local Councils</p>
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	<p>Society of Local Council Clerks</p> <p>Trades Union Congress GMB UCATT UNISON Unite</p> <p>National Association of Educational Inspectors, Advisers and Consultants NAPO</p> <p>MOCOP Members Equality and Human Rights Commission</p> <p>Homes and Communities Agency London Legacy Development Corporation Independent Housing Ombudsman Ltd</p>
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Background

Getting to this stage	<p>The Government commissioned Lord Hutton to chair the Independent Public Service Pensions Commission to review public service pensions and to make recommendations on how they can be made sustainable and affordable in the long term, and fair to both public sector workers and the taxpayer. Lord Hutton's final report was published on 10 March 2011. In that report he made clear that change is needed to "make public service pension schemes simpler and more transparent, fairer to those on low and moderate earnings".</p>
Previous engagement	<p>The Government and the Trades Union Congress held a series of meetings to discuss public service pension reform. One outcome of these discussions was that there should be scheme level discussions alongside the central process to ensure a fuller understanding of the implications of reform for each individual scheme. These scheme level discussions culminated in the Government agreeing that the Local Government Association and local government trades unions should come forward with a set of high level principles for the reformed Scheme.</p> <p>Following this the Local Government Association and local government trades unions consulted their respective memberships and other Scheme interested parties on detailed proposals for the design of a reformed Scheme based on the set of previously agreed principles. These informal consultations received overwhelming support which allowed the Department to take forward the proposed Scheme design as the basis for this statutory consultation exercise.</p>

	<p>On 21 December 2012, the Department issued for statutory consultation a set of draft regulations covering the core elements of the new Scheme, in particular, the provisions relating to membership, contributions and benefits. About 130 responses were received by the closing date of 8 February 2013. These responses, and any received later, have been taken into account in this latest consultation exercise. The Local Government Association and local government trades unions have been fully involved in the consideration and preparation of the draft 2013 Regulations and draft Transitional Provisions and Savings Regulations 2013.</p>
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How to respond

1. You should respond to this consultation by **3 May 2013** for the LGPS Regulations 2013 and **24 May 2013** for the Transitional Provisions and Miscellaneous Amendments.
2. You can respond by email to Philip.perry@communities.gsi.gov.uk - except in the case of responses to the Miscellaneous Amendments Regulations which should be sent to Nicola.Rochester@communities.gsi.gov.uk.

When responding, it would be helpful to submit separate comments on the three sets of draft regulations, ensuring you have the words “LGPS Regulations 2013”, “Transitional Provisions” or “Miscellaneous Amendments Regulations” in the email subject line.

Alternately you can write to:

LGPS Regulations
Department for Communities and Local Government
Zone 5/G6 Eland House
Bressenden Place
LONDON SW1E 5DU

3. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please give a summary of the people and organisations it represents and, where relevant, who else you have consulted in reaching your conclusions.

Additional copies

4. This consultation paper is available on the Department for Communities and Local Government website at: <https://www.gov.uk/government/organisations/department-for-communities-and-local-government>.

Confidentiality and data protection

6. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes

(these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

7. If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the department.

8. DCLG will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Help with queries

10. Questions about the policy issues raised in the document can be sent to the address given at paragraph 2 above.

11. A copy of the Consultation Principles Guidance is at <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>. Are you satisfied that this consultation has followed these principles? If not or you have any other observations about how we can improve the process please email: consultationcoordinator@communities.gsi.gov.uk

or write to:

DCLG Consultation Co-ordinator, Zone 8/J6, Eland House, Bressenden Place
London SW1E 5DU.

Chapter 1 - Introduction

- 1.1 This document commences a second period of statutory consultation on the new Local Government Pension Scheme (“LGPS”) which will come into effect from 1 April 2014 and also on draft transitional provisions regulations. Miscellaneous amendments to the current 2008 Scheme are also included. Your comments are invited on the three sets of draft regulations at **Annex A, C and D**, and also on the policy questions included at **Annex B**.
- 1.2 **The closing date for responses is 3 May (Annex A and B) and 24 May (Annex C and D).**

Part A: Draft Local Government Pension Scheme Regulations 2013

- 1.3 This second period of consultation on the LGPS Regulations 2013 represents another key step in the process of reform that began with the commitment given in the Coalition Government’s programme to review the long term affordability and sustainability of public service pension schemes. The Department’s earlier consultation letter of 21 December included a detailed summary of the background to the reform process.
- 1.4 Paragraphs 1.10 to 1.13 of the previous consultation paper issued on 21 December explained that the Department would need to come forward with a second set of draft regulations early in 2013. Over the period of the December consultation, a series of meetings were held with the LGA, local government trades unions and other scheme interested parties to help identify any further core elements of the new scheme that were not included in December’s consultation. Consideration was also given to provisions in the December consultation that needed further attention or policy decisions.
- 1.5 The set of draft regulations attached at **Annex A** represents the next key stage in the development of the new Scheme’s regulations. At this stage, the focus remains on the core elements of the new scheme relating to membership, contributions and benefits which need to be on the statute book to give fund actuaries, payroll and IT providers and other practitioners as much notice as possible about the new scheme. The revisions to the main Regulations are largely as a result of representations we have received from consultees following the first consultation and those made by an advisory group comprising members of the LGA/Trade Unions project Team and Board whose help and support throughout this challenging exercise has been invaluable.
- 1.6 The provisions on which responses are now invited are described in more detail at **Chapter 2**. In particular, it would be helpful if consultees could comment specifically on the definitions given in Schedule 1, either in terms of what has been drafted or what should also be included.

- 1.7 Although every effort has been made to make this second set of draft regulations as complete as possible, it has not been possible to reach an agreed position on every key policy issue. Your comments are also invited on **Annex B** which summarises the policy areas which have been omitted from the draft regulations or where further consideration is necessary.
- 1.8 It may not be possible to take on board comments on these outstanding policy issues in time for the LGPS Regulations 2013 that we must aim to make in time for fund actuaries to take the new regulations into account at the 2013 valuation. But there will be opportunities later in the year, either as part of the draft regulations on governance and administration (see para 1.9 of December's consultation letter) or as amending regulations to the 2013 Regulations.
- 1.9 In view of the target to make and lay these regulations in the Spring, Ministers have decided on a consultation period of 5 weeks. Ministers consider this period to be appropriate given the extensive consultation already carried out and the desirability of getting the regulations containing the key elements of the new Scheme early enough for those affected to be able to take account of them.
- 1.10 Your comments should therefore be sent by 3 May. (see the section on "**How to Respond**").

Part B - Draft Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013

- 1.11 See Chapter 2, Part B.

Part C - Draft Local Government Pension Scheme (Miscellaneous Amendments) Regulations 2013

- 1.12 These provisions make amendments to the LGPS Benefits and Administration Regulations as part of the ongoing stewardship of the 2008 Local Government Pension Scheme Regulations.
- 1.13 In particular, draft Regulation 5 makes provision to permit the Housing Ombudsman, as a Corporation Sole, and the Chair or Deputy Chair of the London Legacy Development Corporation, to be eligible for membership.
- 1.14 Draft Regulation 6 clarifies the provisions relating to membership of the Scheme following the introduction of the employer duties for automatic enrolment and re-enrolment. In particular, affected eligible members with a contract of less than three months will have no barrier to automatic entry to the scheme.
- 1.15 Draft Regulation 7 recasts Administration Regulation 38 to make it clear that all employers in the LGPS are subject to this Regulation. It sets out the action to be taken when an employer ceases to participate in the LGPS or, in the opinion of the administering authority, participation is likely to cease at some point, so that any unmet liabilities are addressed at that point.

- 1.16 The effect of draft Regulation 7 is to also revoke the provisions in Administration Regulation 38 (3A) to (3G) relating to the liabilities of the former Housing Corporation. These provisions are no longer required following the restructuring of the Homes and Communities Agency and the closure of the Tenant Services Authority. Separately, steps have been taken for the Homes and Communities Agency to manage the ongoing liabilities of both former organisations.
- 1.17 Unless revoking existing provisions, these provisions would be carried forward into the Local Government Pension Scheme Regulations that are to take effect from 1 April 2014.

Part D - Related proposals

Councillors' pensions

- 1.18 On 19 December 2012, the Local Government Minister, Brandon Lewis, made a Written Ministerial Statement to the House, setting out Government proposals to limit access by councillors to the LGPS in England from 2014. It remains our intention to issue a separate consultation paper shortly on this issue which will set out a number of options on access. **It is not necessary therefore to respond to this consultation on the subject of councillors' pensions.**

Fair Deal

- 1.19 The Government is considering how best to implement the principles of new Fair Deal for local government and the LGPS. This work is underway, and further detail will be provided in due course. This will include what might be needed in respect of the Best Value Pensions Direction.

Cost control

- 1.20 Following constructive and helpful discussions with the LGA and local government trades unions on proposals to manage future cost risks, a paper has been agreed as the basis for future discussions on the detail of the new arrangement. Those discussions are continuing but we are doing every thing possible to secure a speedy and acceptable solution. The set of draft governance and administration regulations referred to earlier in this paper will include provisions to take forward this arrangement. Comments will be invited at that stage.

Governance

- 1.21 Ministers are fully committed to the establishment of a Scheme Advisory Board for the LGPS which, amongst other things, will allow for effective management of the cost of Scheme future accruals by employers, trades unions and other scheme interests within the agreed cost control arrangements (see preceding paragraph). Discussions about the precise role, composition and scope of the proposed Board must await enactment of the Public Service Pensions Bill, and our intention remains to issue further details, followed by a consultation on draft regulations, at the

earliest opportunity thereafter. This consultation will also demonstrate how the LGPS will deliver on the governance proposals set out in the Hutton Commission's report.

Chapter 2 - Proposals for consultation

The Local Government Pension Scheme Regulations 2013 and Local Government Pension Scheme (Transitional Provisions and Savings) Regulations are being made under the Superannuation Act 1972. DCLG does not rule out future modification necessitated by the enactment of the current Public service Pensions Bill. This summary compares the current draft with the one on which the Department consulted on 21 December 2012.

Part A: Local Government Pension Scheme Regulations 2013

a) Membership, contributions and benefits

Preliminary Provisions

Regulations 1 and 2 are unchanged.

Membership

Regulation 3 has been modified since the consultation draft. Paragraphs 3(3) and 3(4) have been altered to satisfy the requirements of the Pensions Regulator, so that individuals with contracts of less than three months become subject to the system of auto-enrolment. There is a new 3(8) detailing periods which do not count as qualifying service.

Regulation 4 has the additional phrase “In an employment” in paragraph (1). This phrase has been added to a number of regulations to signify that each employment / membership is for most purposes treated separately.

Regulation 5 has been modified. In particular paragraph (5) makes it clear that those individuals who cease membership before having been a member for three months should be treated as never having been an active member. Their contributions would be returned.

Regulation 6 includes minor modifications for the sake of clarification.

Regulation 7 is unchanged except for an addition making it clear that an individual could be in the same, as well as different, categories of membership in respect of different employments.

Regulation 8 includes a minor alteration to the definition of “pension credit member”.

Contributions

Regulation 9 includes a new “Band” column in the contribution table, for ease of reference. The types of absence to be disregarded for the purposes of band-setting are now specified.

Regulation 10 includes a number of modifications, the most important of which is that the use of “assumed pensionable pay” need not mean that an individual has to cease paying 50% contributions.

Regulations 11 and 12 have been subjected to minor re-wording for the sake of clarity, and, as requested by respondents to the consultation, now deal with contributions which are made following a members’ decision to do so.

Regulation 13 on reserve forces service leave has a new paragraph (2) to explain the member’s contribution levels.

Regulation 14 is unchanged.

Regulation 15 details a member’s obligations to make contributions during absences with the employer’s permission. New wording has been added to deal with the first 30 days of absence.

Regulation 16’s provisions on additional regular contributions have been clarified. In particular, it is now made clear that the maximum sum, £5,000, to be credited to an individual’s pension account is an aggregate amount, not an annual amount.

Regulation 17 on Additional Voluntary Contributions (AVCs) has been augmented to give further necessary detail. In particular, it is set down that it should be specified what proportion of the contributions should be used to provide life assurance payable on death in service.

Regulation 18 has been modified to improve clarity. In paragraph (1) the reference to paragraph 3(5) has been replaced by one to 3(6), dealing with an error highlighted by a number of consultation respondents.

Regulation 19, on the right to return of contributions, has a new reference to ceasing active membership which replaces the original reference to leaving an employment.

Regulation 20 lists exclusions to the definition of pensionable pay. There is now one additional exclusion in paragraph (f), which concerns payments related to the provision of a motor vehicle.

Regulation 21 deals with the concept of assumed pensionable pay (APP). A number of important modifications have been made:

- “child-related leave” is redefined
- as requested, “absence with permission” is included
- it is made clear that certain lump sums are excluded
- it is made clear that assumed pensionable pay is re-valued annually. (but see

Regulation 39(9) below)

The former Regulation 21 (3) has been removed and the need for an IRMP opinion where there has been a reduction in pay as a result of an ill health condition and that reduction is ignored, is now found at 36 (1) (c) which firmly links the need for IRMP certification with the ill health retirement assessment process.

Pension accounts

This section of the Regulations details the new system of pension accounts which will ensure that each member accumulates pension by means of the Career Average Revalued Earnings System.

Regulation 22 sets down the different types of pension account. An additional category is added to the consultation draft, a deferred refund account for individuals who have contributed to the Scheme for between three months and two years. This account does not in itself give a right to Scheme benefits, but it can be retained as a starting point for future accrual in the Scheme or transfer elsewhere.

Regulation 23 has been the subject of modification. It has been made clear that contributions relate to the year in which they are paid to the Fund concerned, rather than to the year in which the salary was earned. There are further modifications relating to taxation and the methodology for dealing with the final part-year of active membership.

Regulation 24 is modified to set down further provision for deferred refund accounts. Options for the future of such accounts are set down in paragraph (12).

Regulation 25 deals with retirement pension accounts. The new draft stipulates that due account should be taken of the effect of additional pension and pension sharing orders.

Regulation 26 has been rearranged for clarity. It is made clear that retirement pension accounts must take due account of pension adjustment.

Regulation 27 continues the facility for members to take flexible retirement. There is additional wording to ensure that due account is taken of additional pension and pension adjustment.

Regulation 28 - this provision requires a retirement pension account to be closed when Tier 3 benefits stop and a deferred pensioner account to be opened showing the amount of accrued pension transferred from the retirement pension account.

Regulation 29 has in two respects been corrected from the original draft. The mis-leading reference to capital value has been dropped and it is no longer stipulated that only active members could be subject to pension sharing orders. Both of these alterations result from consultation responses.

Benefits

Regulation 30 setting the parameters within which retirement benefits can be taken, has been modified slightly for clarity. In particular, it is now stipulated, in paragraph (4), that individuals taking flexible retirement can take all of the benefits they have accrued under the 2014 Scheme.

Regulation 31 has been modified and now sets down the process by which additional pension should be credited to a particular account.

Regulation 32 has been expanded to set down the timescale under which a member must give notice to indicate a wish to take flexible retirement.

Regulation 33, continuing the facility for members to receive a lump sum in lieu of part of their pension, has been suitably modified to improve clarity. It is now made clear, in paragraph (4), that the commutation option is not open to pension credit members or to deferred pensioner members.

Regulation 34 has been expanded very slightly to make it clear that, if trivial commutation takes place, no survivor benefit is available in respect of the member concerned.

Ill-health retirement

Responses to the December 2012 consultation have been taken into account in Regulations 35 - 39:

Regulation 35 has been updated to clarify, but not change, the criteria under which retirement benefits can be released on ill health grounds. In particular, it had been noted that 35 (4) and 35 (5) were broadly the same and so they have been revised to make it clear that 35 (4) deals with the 2nd part of the eligibility criteria and 35 (5) deal with Tier 1 benefits. Regulation 35 (6) has been further clarified and 35 (7) now reads 'before normal retirement age if earlier'.

Regulation 36 this sets out the role of the Independent Registered Medical Practitioner and remains broadly as in the earlier consultation draft but 36 (1) (b) has been revised, and 36 (1) (c) includes the requirement for certification by an IRMP regarding reduced working hours and pay as a result of an ill health condition.

Regulation 36(4) requires employing authorities and the IRMP to have regard to guidance given by the Secretary of State. The guidance explains terms such as 'reduced likelihood' and the guidance will be updated to take into account the changes made as a result of both the LGPS (Miscellaneous) Regulations 2012 and the LGPS 2013 Regulations. Practitioners can advise if there should be other ill health related definitions in Schedule 1.

Regulation 37 changes from the December 2012 draft are:

'Employing' has been included before 'authority' at 37 (4), (5), (6), (7) and (10).

Regulation 37(4) – the provision better explains how an employer determines whether employment is gainful employment if the Tier 3 member has returned to work.

Regulation 37(7) – is revised to better explain what decisions can be taken at the review.

Regulation 37(10) – clarifies the test to be applied for an uplift to Tier 2 benefits.

Regulation 38 the criteria for release of benefits at 38 (3) is now the same test for both a deferred and deferred pensioner member. There is no change to the amount of benefits payable.

Regulation 39 in light of recent discussions and replies from practitioners, this regulation sets out in a clearer way how the enhancements should be calculated. Also, 39 (6), (7) and (8) deal with the restriction on any enhancements in subsequent ill health retirement (this is currently provided for in Benefits Regulation 20 (11A)).

Regulation 39(9) provides for the reduction in pensionable pay to be ignored where the reduction was linked to ill health or infirmity of mind or body and an IRMP certifies to this effect.

Survivor benefits

Regulations 40, 43 and 46 provide the power for administering authorities to pay death grants to individuals affected by the death of an LGPS member. The Regulations now make due allowance in cases where it was not possible for the administering authority to be aware of the member's death at the time. Regulation 40 has also been altered to make it clear that no account should be taken of certain pay reductions in calculating the death grant.

Regulations 41, 42, 44, 45, 47 and 48 provide the power for administering authorities to pay survivor benefit to partners and / or to qualifying children following the death of an LGPS member. These Regulations have been modified compared to the original draft, in order to make clearer the various methods of calculation in each type of case.

b) Administration

Regulation 49 obliges administering authorities to pay interest on payments due in respect of members. There is one alteration compared to the original draft, making it clear that the interest provisions do not apply to payments arising from Additional Voluntary Contributions.

Regulations 50 - 54 are unchanged from the original draft.

Regulation 55 is unchanged from the original draft, except that paragraph 55(4) becomes new **Regulation 56**.

c) Schedule 1

Definitions are now provided for the list of phrases set down in the original draft.

d) Schedule 2, Part 1

Following representations received from the Department for Education and from two local authorities, the definition of "academy" at paragraph 20 has been modified.

e) Schedule 2, Part 2

This Part is unchanged from the original draft.

f) Schedule 2, Part 3

Paragraphs 1 and 7 are modified to improve clarity.

Paragraph 4 - In the case of an admission body falling within the description in paragraph 1(b), where at the date of the admission agreement the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, the Scheme employer paying contributions (or, if more than one pays contributions, all of them) must guarantee the liability of the body to pay all amounts due from it under these Regulations.

Can consultees state if this provision is still required?

Paragraph 6 is refined in light of comments.

Paragraph 13 mirrors current Administration Regulation 6(10) and (11) are re-introduced in light of comments.

g) Schedule 2, Part 4

This Part is unchanged from the original draft.

Part B: Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013

Regulation 1 sets out the commencement, interpretation and application of the regulations. In particular, it defines references to “earlier regulations”.

Regulation 2 revokes the regulations set out in Schedule 1 except where they are otherwise saved in these regulations. Regulation 2(2) provides that no person can become a member of the 2014 Scheme after 31 March 2014 and that no benefits in the existing Scheme can be accrued after that date.

Regulation 3 provides for continuity of membership from the existing scheme to the 2014 Scheme on 1 April 2014. Benefits arising from pre-2014 Schemes are payable at the same time as benefits from the 2014 Scheme, but are subject to actuarial reduction according to the set of Regulations concerned. Benefits accrued, or resulting from an additional award, in respect of pre-1 April 2014 service are granted in respect of the 2008 Scheme even if they are delayed until after 31 March 2014.

Regulation 4 gives effect to the Government’s policy of ensuring that all scheme members within ten years of their normal retirement age on 1 April 2012 should see no decrease in the amount of pension they receive at their current normal retirement age. It is important to note that under regulation 4(1)(b), the statutory underpin calculation applies when benefits under the 2014 Scheme are paid on a member’s normal retirement age even where entitlement to that benefit arises after normal retirement age.

The statutory underpin compares “assumed benefits” with the “underpin amount”, calculated under regulations 4(5) and (6) respectively. By virtue of regulation 4(4), any excess of assumed benefits over the underpin amount, is paid as an increase to the benefit payable under the 2014 scheme.

Regulation 5 provides for the continuity of active membership and aggregation of entitlement to benefits into the 2014 Scheme for active members of the 2008 Scheme immediately before 1 April 2014. Regulation 5(2) provides an exception to this general rule by allowing eligible members who were not active members in the 2008 Scheme immediately before 1 April 2014 to become active members in the 2014 Scheme, but only if the 1 April 2014 is the automatic enrolment date for that member.

Regulation 6 maintains admission agreements entered into before 1 April 2014.

Regulation 7 provides that any period as an active member in the 1997 and 2008 Schemes, counts as qualifying service in the 2014 Scheme.

Regulation 8 preserves the protection on pensionable pay afforded to supplements paid by the Environment Agency or the Natural Resources Body for Wales or to an employee whose employment was transferred on 1 April 2010 from the Learning and Skills Council to a local authority. Regulation 8(2) maintains the protection afforded by Regulation 13(8) of the 1997 Regulations in respect of the provision of a motor vehicle.

Regulation 9 provides that transfers out of the Scheme on or after 1 April 2014 shall include all membership accrued under the employment concerned, irrespective of the set of Regulations under which it is accrued. Transfers into the LGPS shall be dealt with according to the date that the member applied for the transfer.

Regulation 10 deals with cases of continuous members who leave and rejoin after 1 April 2014, where the new employment is part of a different fund to the one they contributed in earlier periods of membership, and sets out different approaches where the periods between leaving and rejoining, including membership of another public service scheme, is less or more than 5 years. Where break is less than 5 years membership will be treated as continuous so that final salary on subsequent leaving is used for calculation of pension relating to pre 2014 membership. If break is more than 5 years AND members chooses to aggregate any transfer of earlier period will produce a pension value in the 2014 scheme, ie final salary will not be used in calculating benefits accrued pre 2014.

Regulation 11(1) sets out the circumstances when benefits drawn under the 2014 Scheme must be aggregated with benefits accrued in the 1997 and 2008 Schemes at the same time. Regulation 11(2) deals with the case of a member who has exercised the option to take flexible retirement under Regulation 30(4) of the 2013 Regulations. Members taking flexible retirement must take all the benefits they have accrued under the 1997 Scheme but have a choice as regards how they take benefits accrued under the 2008 and 2014 Schemes.

Regulation 12(1) provides for the age 45 protection currently provided for in Benefits Regulations 20 (13) by requiring that the comparison calculations needed from 1 April 2014, are those for Tier 1 and Tier 2, as appropriate, in the 2013 regulations compared with those the member would have received had regulation 28 of the 1997 Regulations

applied but adjusted to include membership accrued under the 2008 Scheme and the 2014 Scheme.

Regulations 12(2), (3) and (4) deem the equivalent of the different ill health tier benefits paid under the 2008 Regulations to be the same ill health tier benefits for the purposes of the 2013 Regulations.

Regulation 12 (5) deals with the situation whereby some ill health assessments may cover the pre and post 2014 implementation date and allows the certificate from the IRMP to remain valid.

Regulation 13 provides that any election made by a member to commute their pension under Regulation 33 of the 2013 Regulations can include any benefits aggregated from the 1997 and 2008 Regulations.

Regulation 14 ensures that under the circumstances prescribed, the payment of contributions is made according to the regulations pertaining to the period in question. Regulation 14(2) provides that contributions paid in respect of earlier periods of membership aggregated with membership under the 2014 Scheme can also be refunded.

Regulation 15 applies to members who had, by 31 March 2014, taken out contracts for Additional Regular Contributions (ARCs), Additional Survivor Benefit (ASB) or added years. Such arrangements end on 31 March 2014. The members concerned will be entitled to enter into new contracts under the main 2013 Regulations, using the actuarial assumptions which would have been in force when the original contract commenced. Pre- 1 April 2014 AVC contracts continue as if the 2008 Regulations were still in force.

Regulation 16 maintains the power of an administering authority to adjust a member's benefits accrued under the 1997 or 2008 Schemes in cases where it has been given a notice of joint and several liability under section 237B of the Finance Act 2004 by the member.

Regulation 17 stipulates which sets of Regulations should be used for the calculation of survivor benefits and death grant. For survivor benefit, any pre- 1 April 2014 membership should be dealt with under the 2008 regulations. As far as death grant is concerned, if an individual joins the 2014 Scheme as an active member, those Regulations should be used to calculate the grant in respect of all membership. In all other cases, for death grant, the 2008 Regulations should be used in respect of all membership.

Regulation 18 provides that Regulation 49 of the 2013 Regulations (payment of interest on late payment of certain benefits) applies also to a payment under the 1997 or 2008 Schemes when membership has been aggregated.

Regulation 19 commences **Schedule 2** which makes transitional provisions relating to the rule of 85.

Regulation 20 ensures that the appropriate fund for members of the 1997 or 2008 Schemes continues to be the same appropriate fund under the 2014 Scheme.

Regulation 21 provides that Regulation 110 of the 1997 Regulations will continue to apply to a person who was a member of the 1995 Scheme immediately before 1st April 1998.

Regulation 22(1) provides that the valuation of benefits for the purposes of the 2014 Scheme under a Pensions Sharing Order will also take into account the benefits accrued by the member in the 1997 and 2008 Schemes.

Regulation 23 preserves the provisions in earlier regulations in respect of councillor members but it is important to note that a separate consultation on the status of the councillor members is to follow shortly. The retention of these powers in the draft regulations should not therefore be taken as indicating any particular outcome at this stage.

Regulation 24 Although it has not been possible for some time under scheme regulations to re-instate former members of the Scheme who were mis-sold personal pensions, regulations 108A(5) and 122A of the 1997 Regulations have been preserved to continue to require administering authorities to give prescribed persons the information they need regarding the amount of restitution payment applicable in any particular case. This information is necessary to enable prescribed persons to assess compensation amounts and has no bearing on restitution payments paid to the Scheme on re-instatement.

Regulation 25 provides that unless a member's pay is "protected final pensionable pay", that member's final pensionable pay is calculated according to the regulations under which contributions relating to that period were paid. Regulation 25(2) sets out the conditions which need to be satisfied if the member is to benefit from "protected final pensionable pay".

Schedule 1 lists the regulations that are to be revoked.

Schedule 2 sets out the transitional protections relating to the rule of 85, in effect, continuing its provisions as if the current regulatory framework were to be retained on 1 April 2014. Paragraph 4(2) makes it clear that certain members are required to aggregate periods of membership in order for those periods to count towards achieving the 85 year rule and paragraph 7(1) continues in force the process for the phasing out of the rule between 2016 and 2020.

C: Local Government Pension Scheme (Miscellaneous Amendments) Regulations 2013

A full description of these proposed changes to the 2008 Scheme is given in the Explanatory Notes section at the end of the draft regulations (**see Annex D**).

2013 No.

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme Regulations 2013

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

These Regulations are made in exercise of the powers conferred by sections 7, 12 and 24 of, and Schedule 3 to the Superannuation Act 1972⁽¹⁾.

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

The Secretary of State makes the following Regulations:

PART 1

Membership, contributions and benefits

Preliminary Provisions

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme Regulations 2013 and come into force on 1st April 2014.

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

(3) These Regulations apply in relation to the Isles of Scilly as if they were a district of the county of Cornwall and the council of the Isles of Scilly were the council of that district.

(1) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7); section 24 has amendments not relevant to this instrument.
(2) The Secretary of State's functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

Introductory

2.—(1) These Regulations establish a scheme for the payment of pensions and other benefits to or in respect of persons working in local government service, referred to in these Regulations as “the Scheme”.

(2) The scheme manager responsible for the local administration of pensions and other benefits payable under these Regulations is referred to in these Regulations as the “administering authority”.

(3) Each administering authority shall establish a pensions board responsible for assisting it in relation to securing compliance with –

- (a) these Regulations;
- (b) any other legislation relating to the governance and administration of this Scheme; and
- (c) requirements imposed by the Pensions Regulator in relation to this Scheme.

(4) Schedule 1 (interpretation) contains definitions of expressions used in these Regulations which apply for their interpretation unless the context indicates that they have a different meaning.

Membership

Active membership

3.—(1) Subject to regulation 4, a person is eligible to be an active member of the Scheme in an employment—

- (a) if employed by a body listed in Part 1 of Schedule 2 (membership);
- (b) if employed by a body listed in Part 2 of Schedule 2 and is designated, or belongs to a class of employees that is designated by the body as being eligible for membership of the Scheme;
- (c) if employed by an admission body within the meaning of paragraph 1 of Part 3 of Schedule 2 and is designated, or belongs to a class of employees that is designated by the body under the terms of an admission agreement, as being eligible for membership of the Scheme; or
- (d) if specified in the first column of the table in Part 4 of Schedule 2.

(2) In the case of a person eligible for membership by virtue of paragraph 1(d), the person specified in the second column corresponding to that member is deemed to be that member’s employing authority for the purposes of these Regulations.

(3) Subject to paragraph (4), a person eligible to be an active member of the Scheme in an employment becomes an active member on the day that person’s employment begins or (if later) the day the person becomes eligible for membership.

(4) A person who would, apart from this paragraph, be an active member of the Scheme by virtue of paragraph (3) who is employed under a contract of employment of less than 3 months does not become a member on the day specified in paragraph (3) but becomes an active member—

- (a) on the member’s automatic enrolment date, or
- (b) if the person applies to become a member.

(5) Where an administering authority enters into an admission agreement with an admission body—

- (a) the admission agreement must comply with the requirements specified in paragraphs 3 to 12 of Part 3 of Schedule 2; and
- (b) these Regulations apply to the admission body and to employment with the admission body in the same way as if the admission body were a Scheme employer listed in Part 2 of Schedule 2.

(6) A person who is eligible to be an active member of the Scheme in an employment, but who is not an active member of the Scheme in that employment—

- (a) may apply in writing to the person's employing authority to join the Scheme, and becomes an active member of the Scheme in that employment on the first day of the payment period following the application; but in any event,
- (b) becomes an active member of the Scheme in an employment on the automatic enrolment date or automatic -re-enrolment date relating to that employment.

(7) Subject to paragraph (8) and regulation 5(5) (person whose membership is less than three months treated as never having been a member), an active member has qualifying service for a period of two years if—

- (a) that member has spent two years as an active member of the Scheme;
- (b) a transfer value payment has been received in respect of rights accrued in a different occupational pension scheme or under a European Pensions Institution and the length of service in respect of which that person accrued benefits in that scheme was two or more years;
- (c) the aggregate of the period the person has spent as an active member of the Scheme and of a different occupational pension scheme or European Pensions Institution in respect of which a transfer value payment has been accepted, is two years;
- (d) a transfer value payment has been received in respect of rights accrued in a scheme or arrangement that does not permit a refund of contributions to the member;
- (e) the member has paid National Insurance contributions whilst an active member of the Scheme and ceases active membership after the end of the tax year preceding that in which the member attains normal pension age (meaning that a contributions equivalent premium cannot be paid under section 55 of the Pension Schemes Act 1993⁽³⁾);
- (f) the member already holds a deferred benefit or is in receipt of a pension (other than a survivor's pension or credit member's pension) under these Regulations; or
- (g) a transfer value payment has been made to a qualifying recognised overseas pension scheme
- (h) the member ceases active membership on or after age 75.

(8) The following periods do not count as periods of qualifying service for the purposes of these regulations—

- (a) any period for which contributions have been returned to the member;
- (b) any period of membership derived from a non-contributory pension scheme or arrangement from which a transfer payment has been received and which is attached to the membership in respect of which contributions have been returned under regulation 18.
- (c) any period in respect of which rights have been transferred to another registered pension scheme other than a qualifying recognised overseas pension scheme;
- (d) any period in respect of which the member has been deprived of benefits under these Regulations for misconduct.

Restriction on eligibility for active membership

4.—(1) Subject to paragraph (2) the following are not entitled to be active members of the Scheme in an employment—

- (a) a person entitled to membership of another public service pension scheme in relation to that employment;
- (b) a person aged 75 or over;
- (c) an employee of an admission body who is a member of another occupational pension scheme in relation to that employment.

(2) Paragraph (1)(a) does not apply to a person who is entitled to be a member of the National Health Pension Scheme ("the NHS Scheme") for England and Wales if—

(3) 1993 c. 48. Section 55 has been amended but the amendments are not relevant to this instrument.

- (a) the person's entitlement to be a member of the NHS Scheme is by reason of employment by—
 - (i) a Care Trust designated under section 77 of the National Health Service Act 2006⁽⁴⁾,
 - (ii) an NHS Scheme employing authority as a result of a prescribed arrangement under section 75 of that Act, or section 33 of the National Health Service (Wales) Act 2006⁽⁵⁾, or
 - (iii) the Care Quality Commission as a result of a transfer of employment from the Commission for Social Care Inspection, in connection with its dissolution under Part 1 of the Health and Social Care Act 2008⁽⁶⁾;
- (b) the person is designated, or belongs to a class of employees that is designated as eligible for membership of the Scheme in an admission agreement made between an administering authority and one of the bodies specified in sub-paragraph (a)(i) to (iii);
- (c) the person was an active member of the Scheme immediately before becoming employed by one of those bodies; and
- (d) the person is not an active member of the NHS Scheme in relation to that employment.

Ending active membership

5.—(1) A person ceases to be an active member in an employment if that person ceases to be eligible for membership of the Scheme through that employment and membership in that employment ceases from the date that eligibility ceases.

(2) A person ceases to be an active member in an employment from the date specified in a written notice given by that person to that person's employing authority that the person wishes to leave the Scheme.

(3) But an active member who gives notice under paragraph (2) specifying a date earlier than the date the notice is given ceases to be an active member in that employment at the end of the payment period during which the notice is given.

(4) A person ceases to be an active member when that person attains the age of 75.

(5) A person who ceases to be an active member before being an active member of the Scheme for three months is to be treated as not having been an active member except for the purposes of regulation 19(1) (exclusion of right to refund of contributions when restarting active membership).

Deferred and deferred pensioner members

6.—(1) A person is a deferred member of the Scheme in relation to an employment if—

- (a) the person has qualifying service for a period of at least 2 years in that employment;
- (b) the person is no longer an active member of the Scheme in relation to that employment;
- (c) the person has not started to receive any pension under the Scheme in relation to that employment; and
- (d) the person has not reached the age of 75.

(2) A person may be a deferred member of the Scheme in relation to one period of membership notwithstanding the fact that the same person is a member in the same or a different category in relation to a different period of membership.

(3) A person who was in receipt of Tier 3 benefits is a deferred pensioner member of the Scheme whilst those benefits are discontinued under regulation 37(3) or (6)(c).

⁽⁴⁾ 2006 c. 41. Section 77 has been amended by the Health and Social Care Act 2012 (c. 7).

⁽⁵⁾ 2006 c. 42.

⁽⁶⁾ 2008 c. 14.

(4) A person may be a deferred pensioner member of the Scheme in relation to one period of membership notwithstanding the fact that the same person is a member in the same or a different category in relation to a different period of membership.

Pensioner members

7.—(1) A person is a pensioner member of the Scheme if that person was an active member of the Scheme and is in receipt of a benefit from the Scheme relating to that membership.

(2) A person may be a pensioner member in relation to one period of membership notwithstanding the fact that the same person is a member in the same or a different category in relation to a different period of membership.

Pension credit and survivor members

8.—(1) A person is a pension credit member of the Scheme if that person has been given a pension credit in the Scheme as a consequence of a pension debit created under section 29 of the Welfare Reform and Pension Act 1999⁽⁷⁾ in relation to a member of the Scheme.

(2) A person is a survivor member of the Scheme if that person is entitled to a benefit under regulations 41,42,44,45,47 or 48 (survivor pensions).

Contributions

Contributions

9.—(1) Subject to Regulations 10 and 14, an active member shall pay contributions to the Scheme in respect of an employment at the contribution rate applicable to the annual pensionable pay that member is receiving in the pay period in which April 1st falls for that employment (or in the case of an active member whose membership commences after 1st April in any year, on the annual pensionable pay the member receives at the commencement of that membership).

(2) The contribution rate applicable to an employment is as specified in the following table, with the contribution rate specified in the third column applicable to the band of pensionable pay specified in the second column into which the active member's annual pensionable pay, rounded down to the nearest whole pound, falls:

<i>Band</i>	<i>Pensionable pay range for an employment</i>	<i>Contribution rate for that employment</i>
1	Up to £13,500	5.5%
2	£13,501 to £21,000	5.8%
3	£21,001 to £34,000	6.5%
4	£34,001 to £43,000	6.8%
5	£43,001 to £60,000	8.5%
6	£60,001 to £85,000	9.9%
7	£85,001 to £100,000	10.5%
8	£100,001 to £150,000	11.4%
9	£150,001 or more	12.5%

(3) Where there is a change in employment, or a material change which affects the member's pensionable pay in the course of a financial year, the employing authority may determine that a contribution rate from a different band should be applied and the authority shall inform the member of the contribution rate applicable and the date from which it is to be applied.

(4) On the first day of the pay period in which 1st April 2015 falls, and on the first day of the pay period in which each subsequent 1st April falls, the figures in the second column of the table

(7) 1999 c. 30.

in paragraph (2) are increased by applying the appropriate increase, rounding the result down to the nearest £100 and adding £1 to the first figure in each band apart from band 1.

(5) In paragraph (4) “the appropriate increase” means the amount (where it is greater than zero) by which the figures would be increased with effect from the first Monday falling on or after 6th April of the relevant year if they were pensions beginning on 1st April 2014 to which the Pensions (Increase) Act 1971⁽⁸⁾ applied.

(6) For this regulation and regulation 10 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 for the purposes of identifying which is the applicable contribution rate, as shall any reduction in pensionable pay whilst on child-related leave, leave of absence with permission, sick leave or leave due to injury, reserve forces service leave or absence due to a trade dispute.

Temporary reduction in contributions

10.—(1) A person may elect to pay reduced contributions in an employment for a period by giving written notice to the member’s employing authority that the member wishes to do so.

(2) Where a notice is given under paragraph (1), from the next payment period following the giving of the notice, the contribution rate payable on the member’s pensionable pay in relation to that employment is 50% of what would otherwise be payable under regulation 9 or, where appropriate, regulation 14.

(3) An active member may cancel the election under paragraph (1) at any time by giving written notice to the member’s employing authority to this effect.

(4) Where a notice is given under paragraph (3) from the next payment period following the giving of the notice, the contribution rate payable on the member’s pensionable pay in relation to that employment is as provided by regulation 9.

(5) An active member’s election under paragraph (1) is cancelled on the member’s automatic enrolment date or automatic re-enrolment date and the contribution rate payable on the member’s pensionable pay in relation to that employment is as provided by regulation 9 from that date.

(6) A member may make a further election under paragraph (1) at any time when the member is liable to make contributions as is provided by regulation 9.

(7) The employing authority of any member who elects to pay reduced contributions under paragraph (1) shall give the member information about the effect on that member’s likely benefits consequent to that election.

Contributions during absence from work

11.—(1) An active member must pay contributions under regulations 9 or 10 during an absence from work on child-related leave in accordance with regulation 12(1) if that applies and may pay contributions if regulation 12(3) applies.

(2) An active member must pay contributions under regulations 9 or 10 during an absence on reserve forces service leave in accordance with regulation 13.

(3) An active member absent from work because of a trade dispute may pay contributions under regulations 9 or 10 in respect of that period of absence in accordance with regulation 14.

(4) An active member absent from work with permission (otherwise than because of illness or injury, child-related leave or reserve forces service leave) must pay contributions under regulations 9 or 10 in respect of that absence in accordance with regulation 15(1) if that applies, and may pay contributions in accordance with regulation 15(2) if that applies.

(5) A person remains an active member of the Scheme during any absence from work of the description mentioned in paragraphs (1) to (4) and continues to accrue earned pension in

⁽⁸⁾ 1971 c. 56.

accordance with regulation 23(4) or (5) if that person is required to pay contributions or, if entitled to pay contributions, elects to pay them.

(6) A person ceases to accrue any further earned pension in the Scheme during any absence from work of the description mentioned in paragraphs (1) to (4) if that person is entitled (but not required) to pay contributions but does not do so, but that person does not become a deferred member of the Scheme.

(7) An application to make contributions relating to an absence from work, where permitted under these Regulations, must be made in writing to the member's employing authority before the expiry of a period of 30 days, or such longer period as the authority may allow, beginning with the day—

- (a) on which the member returns to work after the absence; or
- (b) on which the member's employment ceases, if the member ceases to be employed without returning to work.

Contributions during child-related leave

12.—(1) An active member on child-related leave must pay contributions in accordance with regulations 9 or 10 on any pay received, including statutory pay but that pay does not include any amount that reduces the member's actual pay on account of possible entitlement to statutory pay.

(2) If an active member is on ordinary maternity leave, paternity leave or ordinary adoption leave and is not entitled to receive pay (including statutory pay) for any period, that member is treated for the purposes of these Regulations as if that member had paid contributions for that unpaid period under paragraph (1).

(3) If an active member is on child-related leave other than the leave mentioned in paragraph (2) and is not entitled to receive pay (including statutory pay) for any period, that member may make contributions during that unpaid period in accordance with regulations 9 or 10 as if that member were receiving adjusted pay as defined in paragraph (4).

(4) Adjusted pay is the pay the member was entitled to receive immediately before the unpaid period began (including statutory pay) but—

- (a) not including any amount that reduces actual pay on account of the person's possible entitlement to statutory pay, and
- (b) disregarding any amount the member receives on account of a day's work carried out under regulation 12A of the Maternity and Parental Leave etc Regulations 1999⁽⁹⁾ or regulation 21A of the Paternity and Adoption Leave Regulations 2002⁽¹⁰⁾ that exceeds any maternity, paternity or parental leave pay due for that day.

Contributions during reserve forces service leave

13.—(1) An active member on reserve forces service leave must pay contributions in accordance with regulations 9 or 10 if (and only if) the reserve forces pay during that period equals or exceeds the pay the member would have received if the former employment had continued.

(2) The contributions under paragraph (1) are on the pay the member would have received if the former employment had continued.

(3) If an active member on reserve forces service leave is not required to pay contributions under paragraph (1), that member is treated for the purposes of these Regulations as if that member had paid contributions under paragraph (1).

⁽⁹⁾ S.I. 1999/3312; regulation 12A was inserted by S.I. 2006/2014.

⁽¹⁰⁾ S.I. 2002/2788; regulation 21A was inserted by S.I. 2006/2014.

Contributions during trade dispute absence

14.—(1) An active member away from work because of a trade dispute may make a contribution in accordance with regulations 9 or 10 in respect of the absence at the rate of 16% of the pay lost during that absence.

(2) A member's lost pay is the difference between the actual pay (if any) received and the pay that member would have received but for the absence, disregarding any guarantee payments under Part 3 of the Employment Rights Act 1996⁽¹¹⁾.

Contributions during absences with permission

15.—(1) An active member away from employment with permission (otherwise than because of illness or injury, child-related leave or reserve forces leave) for a continuous period of less than 31 days, or on jury service for any period, who receives reduced pay or no pay must make payments in accordance with regulations 9 or 10 on the pay that member would have received during that period but for the absence.

(2) An active member away from employment with permission (otherwise than because of illness or injury, child-related leave, reserve forces leave or jury service) for a continuous period of more than 30 days, who receives reduced pay or no pay,

- (i) must make contributions during the first 30 days, and
- (ii) may make contributions for the remainder of the absence,

in accordance with regulations 9 or 10 on the pay that member would have received but for the absence, up to a maximum of 36 months (including the first 30 days).

Additional regular contributions

16.—(1) An active member who is paying contributions under regulation 9 may enter into arrangements to pay member-only additional regular contributions ("MARC") or member and survivor additional regular contributions ("MASARC") in accordance with this regulation.

(2) The arrangements mentioned in paragraph (1)—

- (a) must, when entered into, be for a complete year or number of years with a minimum period of one year;
- (b) must specify the amount of extra contribution to be paid each scheme year;
- (c) must, where the member has more than one active member pension account, specify which account the MARC or MASARC it to be attached to,
- (d) if they are in respect of MARCs, must specify the amount of additional member-only pension to be credited to the active member's pension account at the end of the scheme year;
- (e) if they are in respect of MASARCs, must specify the amount of additional member and survivor pension to be credited to the active member's pension account at the end of the scheme year; and
- (f) may be funded in whole or in part by the member's employing authority.

(3) The amount of additional annual pension that is to be credited to the active member's pension accounts pursuant to arrangements under this regulation shall not exceed £5,000 in aggregate.

(4) The amount of the contributions to be paid in respect of arrangements under paragraph (1) is to be determined in accordance with actuarial guidance issued by the Secretary of State based on—

- (a) the age of the member at the time the arrangements commence,
- (b) the gender of the member, and

⁽¹¹⁾ 1996 c. 18.

(c) whether the arrangements are in respect of MARCs or MASARCs.

(5) Actuarial guidance issued by the Secretary of State under paragraph (4) may be revised at any time and if so, from the 1st April following any such revision, contributions based on the revised actuarial guidance are payable.

(6) An application by an active member to make arrangements under paragraph (1) shall—

- (a) be made in writing to the member's appropriate administering authority, and a copy sent to the member's employing authority if that member is not employed by the administering authority,
- (b) state the length of the period, in whole years ending before the member's normal pension age, over which the member wishes to pay additional contributions,
- (c) state whether the member wishes to make arrangements in respect of MARCs or MASARCs.

(7) An administering authority may require an active member to produce a report by a registered medical practitioner of the results of a medical examination, undertaken at the member's own expense, and may refuse an application to make arrangements under paragraph (1) if that authority is not satisfied that the member is in reasonably good health.

(8) Arrangements made under paragraph (1) continue until any of the following occurs—

- (a) the period entered into has expired,
- (b) they are terminated by the member giving one month's written notice to the administering authority,
- (c) the member begins to pay reduced contributions under regulation 10,
- (d) the member ceases to be an active member of the Scheme, or
- (e) the member dies.

(9) If arrangements entered into under paragraph (1) terminate for any reason and new arrangements are entered into under that paragraph, the amount of contributions payable is determined under paragraph (4) in accordance with the age of the member at the date the new arrangements are entered into and the actuarial guidance issued by the Secretary of State in force at that date.

(10) If additional contributions are paid in accordance with arrangements made under paragraph (1), and are not refunded under regulation 18, that member's active member's pension account must be credited with the amount specified in those arrangements as additional member-only pension or member and survivor pension, as the case may be, at the end of the scheme year in which the contributions are paid, or at the date the arrangements terminate, if earlier.

(11) If a member who is paying MARCs or MASARCs is granted Tier 1 or Tier 2 benefits or dies before the end of the period of arrangements made under paragraph (1), that member is to be treated as having paid the contributions required from the date the member dies, or is granted Tier 1 or Tier 2 benefits up to the end of the period of the arrangements and the additional pension bought by those contributions is to be included in the active member's pension account for the year of leaving, or as the case may be, death.

(12) If a member fails to pay all the additional contributions due under arrangements made under paragraph (1), and paragraph (11) does not apply to that member, the member's active member pension account must be credited with additional member-only pension or member and survivor pension, as the case may be, of an amount determined by the appropriate administering authority having regard to the amount of contributions the member paid and after taking actuarial advice.

Additional voluntary contributions

17.—(1) An active member may enter into arrangements to pay additional voluntary contributions ("AVCs") or to contribute to shared cost additional voluntary contribution arrangements ("SCAVCs") in respect of an employment.

(2) The arrangements mentioned in paragraph (1) must be a scheme established under a contract between the appropriate administering authority and a body approved for the purposes under the Finance Act 2004(12), registered in accordance with that Act and administered in accordance with the Pensions Act 2004(13).

(3) To enter into arrangements under paragraph (1) an active member or the AVC provider authorised by the member to act on the member's behalf must specify in a written notice given both to the appropriate administering authority and the member's employing authority, if the member is not employed by the administering authority—

- (a) the percentage of pensionable pay or the amount that the member wishes to contribute from pensionable pay in respect of an employment in each pay period; and
- (b) whether any of the contributions are to be used to provide life assurance benefits payable upon death in service as an active member and, if so, the proportion or amount to be so used.

(4) A member may vary the amount specified in, or cease contributing to, arrangements by service of a further written notice given to the member's employing authority by the member or by the AVC provider authorised by the member to act on the member's behalf.

(5) The amount that an active member may, in a pay period, contribute to arrangements under this regulation in respect of an employment may not exceed 50% of the member's pensionable pay in that pay period in respect of that employment.

(6) If a member draws immediate benefits under regulations 25, 26 or 27 that member must notify the appropriate administering authority that the accumulated value under arrangements made under this regulation—

- (a) is to be used to purchase an annuity from one or more insurance companies (within the meaning of section 275 of the Finance Act 2004(14)), or
- (b) except where sub-paragraph (i) applies, and subject to paragraph 7, is to be taken in full or in part by the member as a lump sum, and where only part is taken as a lump sum, the member must specify the amount to be so taken, or
- (c) to the extent that the accumulated value has not been taken as a lump sum, to purchase additional pension under the Scheme, the amount of which is to be determined by the administering authority in accordance with actuarial guidance issued by the Secretary of State.

(7) Where a member chooses to take some or all of the benefits referred to in paragraph 6 in the form of a lump sum, that sum forms part of the total amount referred to in regulation 33(2).

Rights to return of contributions

18.—(1) If a member's qualifying service in the Scheme determined under regulation 3(7) is for less than 2 years, that person is entitled, when that active membership ceases, to be repaid by the administering authority—

- (a) any contributions paid by the member under or in accordance with regulations 9 or 10 in relation to that active membership;
- (b) any additional contributions paid by the member under regulation 16 in relation to that active membership;
- (c) any AVC or SCAVCs paid by the member, or SCAVCs paid by the employer under a salary sacrifice scheme, under regulation 17 in relation to that active membership (other than such contributions paid for life assurance cover); and
- (d) any member contributions included in a transfer payment received from a registered pension scheme or from a pension scheme or arrangement of a European pensions institution (within the meaning of section 293(8) of the Pensions Act 2004.

(12) 2004 c. 12.

(13) 2004 c. 35.

(14) 2004 c. 12.

(2) A person entitled to repayment under paragraph (1)(a) (b) or (d) is also entitled to interest on the sum due if repayment is not made before the expiry of one year beginning with the date active membership ceased.

(3) Interest due under paragraph (2) is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.

(4) An administering authority shall refund contributions to a person entitled under paragraph (1) when the person requests payment, or on the expiry of a period of one year beginning with the date the person's active membership ceased if no request is made before then.

(5) The administering authority may deduct any tax due under the Finance Act 2004 or certified amount due under section 61 of the Pension Schemes Act 1993⁽¹⁵⁾ on any repayment under paragraph (1) and where any such deduction is made shall secure that the money withheld is used to discharge the tax liability or is included in the contributions equivalent premium liability due under section 55 of the Pensions Schemes Act 1993⁽¹⁶⁾.

(6) This regulation is subject to regulation 19.

Exclusion of rights to return of contributions

19.—(1) A person is not entitled to a return of contributions under regulation 18 if that person—

- (a) becomes an active member of the Scheme again within one month and one day of ceasing active membership in an employment, or before receiving the return of contributions, whichever is the later;
- (b) left the employment because of —
 - (i) an offence of a fraudulent character, or
 - (ii) grave misconductin connection with the employment;
- (c) benefits from a transfer payment to another registered pension scheme or to a qualifying recognised overseas pension scheme (within the meaning of section 169(2) of the Finance Act 2004);
- (d) continues as an active member in another employment held concurrently from the employment in which that person has ceased to be an active member; or
- (e) has had benefits in the relevant account forfeited.

(2) Where paragraph (1)(b) applies the employing authority may direct payment out of the appropriate fund of a sum equal to all or part of the member's contributions to the member, the member's spouse, civil partner, nominated cohabiting partner or any of the member's dependents.

Meaning of pensionable pay

20.—(1) Subject to regulation 21, an employee's pensionable pay is the total of—

- (a) all the salary, wages, fees and other payments paid to the employee, and
- (b) any benefit specified in the employee's contract of employment as being a pensionable emolument.

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

- (a) any sum which has not had income tax liability determined on it;
- (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 a contract of employment;

⁽¹⁵⁾ 1993 c. 48; section 61 was amended by the Pensions Act 1995, the Child Support, Pensions and Social Security Act 2000 and the Pensions Act 2004.

⁽¹⁶⁾ 1993 c. 48; there are amendments to section 55 which are not relevant to this instrument.

- (e) any payment as an inducement not to terminate employment before the payment is made;
- (f) 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 provision;
- (g) any payment in consideration of loss of future pensionable payments or benefits;
- (h) any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees;
- (i) any pay received during any time when the member is not entitled to accrue earned pension under regulation 11(6);
- (j) returning officer, or acting returning officer fees other than fees paid in respect of—
 - (i) local government elections,
 - (ii) elections for the National Assembly for Wales,
 - (iii) Parliamentary elections, or
 - (iv) European Parliamentary elections.

Assumed pensionable pay

21.—(1) In the circumstances specified in paragraph (2) the pensionable pay that an active member is treated as receiving for the purposes of these Regulations (including this regulation), other than regulations 9 to 15, is that member’s assumed pensionable pay calculated in accordance with paragraphs (5) and (6).

(2) The circumstances are that the member—

- (a) is on leave due to sickness or injury and is on reduced contractual pay or no pay;
- (b) is working reduced hours as a consequence of ill-health or infirmity of mind or body and has reduced pay as a consequence of that reduction in working hours;
- (c) is on relevant child-related leave;
- (d) is absent on reserve forces service leave and has paid contributions if required to do so by regulation 13(1);
- (e) is absent because of a trade dispute and has paid contributions as specified in regulation 14(1);
- (f) is absent with permission, within the meaning of regulation 15 and has paid contributions as specified in that regulation.

(3) Relevant child-related leave for the purposes of paragraph 2(c) means any period during which the member is exercising the right to take child-related leave within the meaning of regulation 12, other than child-related leave of the type mentioned in regulation 12(3) for which the member has not made an election to pay contributions under regulations 9 or 10.

(4) Paragraph (2)(d) does not apply in respect of any period of service which qualifies the member for benefits under any other occupational pension scheme in respect of that service.

(5) Assumed pensionable pay for an employment for a scheme year is the higher of—

- (a) the pensionable pay the member received in the previous scheme year, grossed up to an annual figure if the member received pensionable pay for only part of that year, excluding any irregular lump sum; or
- (b) the pensionable pay the member received relating to the 12 weeks preceding the date on which the circumstance specified in paragraph (2) began which mean that the member is treated as receiving assumed pensionable pay, less any irregular lump sum received, with the resulting sum being grossed up to an annual figure, to which any other lump sum payment received should be added.

(6) For the purposes of paragraph (5) an “irregular lump sum” is a payment for which the member’s employer determines there is no expectation that such a payment would be paid on a regular basis.

(7) The assumed pensionable pay that a member is treated as receiving is adjusted by the revaluation adjustment on the last day of the scheme year which commences after the first date on which the member is treated as receiving assumed pensionable pay.

Pension accounts

Establishment of pension accounts

22.—(1) An administering authority must open and maintain one or more pension accounts for each member of the Scheme.

(2) A separate pension account must be opened in relation to each employment where a member is or was employed in two or more Scheme employments.

(3) A pension account—

- (a) must contain such matters as are required by these Regulations;
- (b) must identify which one of the following categories of pension account it is—
 - (i) an active member's pension account;
 - (ii) a deferred member's pension account;
 - (iii) a deferred refund account;
 - (iv) a retirement pension account;
 - (v) a flexible retirement pension account;
 - (vi) a deferred pensioner member's account;
 - (vii) a pension credit account; or
 - (viii) a survivor member's account,but, subject to that,

(c) may be kept in any form that the administering authority considers appropriate.

(4) An administering authority must close a pension account if—

- (a) a transfer value payment is made in respect of the member if the effect of the transfer is that the member is no longer entitled to any benefits from the account;
- (b) a refund of contributions is paid under regulation 18;
- (c) the benefits in the account are forfeited;
- (d) the member dies;
- (e) the last survivor entitled to a benefit from a survivor member's account ceases to be entitled to a benefit from the account (by reason of death or upon ceasing to be an eligible child); or
- (f) the benefits in the account are aggregated with a different account.

Active member pension accounts

23.—(1) At the beginning of each scheme year, an active member's pension account in relation to an employment must specify the opening balance for that year.

(2) At the end of each scheme year—

- (a) the balance mentioned in paragraph (1) must be adjusted by the revaluation adjustment applicable to that scheme year;
- (b) the amount of earned pension, if any, for the scheme year must be added to the balance mentioned in sub-paragraph (a);
- (c) the amount of any additional member pension acquired during the scheme year pursuant to arrangements made under regulation 16(1) must be added to the balance mentioned in sub-paragraph (b); and

- (d) the sum resulting from any pension account adjustment must be added, or subtracted, as appropriate, to the balance mentioned in sub-paragraph (c).
- (3) The balance calculated under paragraph (2) becomes the new opening balance for the following scheme year.
- (4) Except where regulation 10 (temporary reduction in contributions) applies, the amount of earned pension for a scheme year is 1/49th of the member's pensionable pay received in that year (irrespective of whether it relates to work carried out in that year).
- (5) Where regulation 10 (temporary reduction in contributions) applies, the amount of earned pension is 1/98th of the member's pensionable pay received while that regulation applies (irrespective of whether it relates to work carried out during that period).
- (6) Other than to correct an error in a pension account, a pension account adjustment can only arise as a consequence of—
 - (a) an award of additional pension under regulation 31;
 - (b) a transfer value payment being made or received;
 - (c) a pension debit being made;
 - (d) a Scheme pays election;
 - (e) a transfer into the member's account from a different account upon aggregation of those accounts.
- (7) If an active member's pension account is closed before the end of a scheme year any pension account adjustment applicable to the account must be made immediately before the date the account is closed.
- (8) Where the joint liability amount specified in a notice given under paragraph (6)(d) is met by the pension fund, the appropriate administering authority shall reduce the balance in the member's account to reflect the reduction in the value of the member's rights, calculated in accordance with actuarial guidance issued by the Secretary of State.

Deferred member's pension account and deferred refund account

- 24.—**(1) If a member ceases to be an active member and becomes a deferred member in relation to an employment—
- (a) the active member's pension account must be closed; and
 - (b) a deferred member's pension account must be opened.
- (2) The deferred member's pension account must specify the opening balance in that account.
- (3) On the day the account is opened, the opening balance is the amount of pension the member has accrued.
- (4) The amount of pension a member has accrued is—
- (a) the opening balance for the member's last active scheme year; plus
 - (b) the amount of earned pension, if any, from the first day of the member's last active scheme year until the last day of active membership; plus
 - (c) any additional pension acquired during that period pursuant to arrangements made under regulation 16(1); plus, or minus, as the case may be,
 - (d) any pension account adjustment applicable during that period.
- (5) Except where regulation 10 (temporary reduction in contributions) applied, the amount of earned pension for the period mentioned in paragraph (4)(b) is 1/49th of the pensionable pay received during that period (irrespective of whether it relates to work carried out in that period).
- (6) Where regulation 10 (temporary reduction in contributions) applied to any of the period mentioned in paragraph (4)(b), the amount of earned pension is 1/98th of the member's pensionable pay received while that regulation applied (irrespective of whether it relates to work carried out in that period).

(7) The balance in the member's account is increased by the index rate adjustment on the last day of each scheme year.

(8) The balance calculated under paragraph (8) is the opening balance for the following scheme year.

(9) If a deferred member's account is closed before the end of a scheme year, any pension account adjustment applicable to the account must be made immediately before the date the account is closed.

(10) Other than to correct an error in a deferred member's pension account, the only pension account adjustment that can arise under this regulation is an adjustment as a consequence of a matter specified in regulation 23(6).

(11) If a member ceases to be an active member without becoming entitled to any benefits—

(a) the active member's pension account must be closed; and

(b) a deferred refund account must be opened.

(12) The deferred refund account must specify the balance in that account which remains until that balance—

(a) is refunded to the member under regulation 18;

(b) is transferred to a different registered pension scheme or qualifying recognised overseas pensions scheme; or

(c) is aggregated with a different pension account,

at which point the deferred refund account must be closed.

Retirement pension accounts : active members

25.—(1) When an active member becomes entitled to immediate payment of a full retirement pension in relation to an employment—

(a) the active member's pension account must be closed; and

(b) a retirement pension account must be opened.

(2) The retirement pension account must specify—

(a) the amount of accrued pension;

(b) the amount of any additional pension purchased under regulation 17(6)(c);

(c) the early payment reduction, or deferred payment enhancement (if any) and the amount of pension to which that reduction or enhancement is to be applied;

(d) the commutation amount (if any);

(e) the amount of any pension adjustment;

(f) the amount of pension payable from time to time and the date from which it is to be paid.

(3) Subject to paragraph (4), the amount of accrued pension for the purposes of paragraph (2)(a) is the amount that would have been specified under regulation 24(4) if a deferred member's pension account had been opened for that member.

(4) The commutation amount for the purposes of paragraph (2)(c) is the amount the member has given up in return for a lump sum in accordance with regulation 33 and the amount of accrued pension specified in paragraph (2)(a) is reduced accordingly.

(5) The amount of a pension adjustment for the purposes of paragraph (2)(e) is the aggregate of the amounts calculated in accordance with actuarial guidance issued by the Secretary of State to account for any tax to which the administering authority may become chargeable under the Finance Act 2004 in accordance with regulation 56 or as a result of a pension sharing order.

(6) For the purposes of this regulation a full retirement pension means a retirement pension other than a pension payable under regulation 30(4) (flexible retirement pensions).

Retirement pension accounts : deferred, deferred pensioner and credit members

26.—(1) When a deferred member becomes entitled to immediate payment of a retirement pension—

- (a) the deferred member's pension account must be closed; and
- (b) a retirement pension account must be opened.

(2) The retirement pension account must specify—

- (a) the amount of accrued pension;
- (b) the early payment reduction, or deferred payment enhancement (if any);
- (c) the commutation amount (if any);
- (d) the amount of any pension adjustment;
- (e) the amount of pension payable from time to time and the date from which it is to be paid.

(3) Subject to paragraph (4), the amount of accrued pension for the purposes of paragraph (2)(a) is the amount specified in that member's deferred member's pension account immediately before it was closed.

(4) The commutation amount for the purposes of paragraph (2)(c) is the amount the member has elected to receive as a lump sum in accordance with regulation 33 and the amount of accrued pension specified in paragraph (2)(a) is reduced accordingly.

(5) This regulation applies in relation to deferred pensioner members who become entitled to immediate payment of a retirement pension as it applies to deferred members with the modification that all references to deferred members are to be read as references to deferred pensioner members.

(6) This regulation applies in relation to credit members who become entitled to immediate payment of a retirement pension as it applies to deferred members with the following modifications—

- (a) all references to deferred members are to be read as references to credit members; and
- (b) the reference to accrued pension in paragraph (2)(a) is to be read as a reference to the amount of pension credit in the credit member's account.

Flexible retirement pension accounts

27.—(1) When an active member is entitled to immediate payment of a retirement pension under regulation 30(4) (flexible retirement pensions) in relation to an employment—

- (a) a flexible retirement pension account must be opened; and
- (b) the balance in the active member's pension account must be reduced by the amount of accrued pension transferred into the member's flexible retirement account.

(2) The flexible retirement pension account must specify—

- (a) the amount of accrued pension transferred from the active member's pension account;
- (b) the amount of additional pension purchased under regulation 17(6)(c) transferred from the active member's pension account;
- (c) the early payment reduction, or deferred payment enhancement (if any) and the amount of pension to which that reduction or enhancement is to be applied;
- (d) the commutation amount (if any);
- (e) the amount of any pension adjustment;
- (f) the amount of pension payable and the date from which it is to be paid.

(3) The commutation amount for the purposes of paragraph (2)(c) is the amount the member has given up in return for a lump sum in accordance with regulation 33 and the amount of accrued pension specified in paragraph (2)(a) is reduced accordingly.

(4) The amount of a pension adjustment for the purposes of paragraph (2)(e) is the aggregate of the amounts calculated in accordance with actuarial guidance issued by the Secretary of State to account for any tax to which the administering authority may become chargeable under the Finance Act 2004 in accordance with regulation 56 or as a result of a pension sharing order.

Deferred pensioner member accounts

28.—(1) When a pensioner member who has been in receipt of Tier 3 benefits has those benefits discontinued under regulation 37(3) or (6)(c)—

- (a) the member's retirement pension account must be closed, and
- (b) a deferred pensioner member account must be opened.

(2) The deferred pensioner member account must specify the amount of accrued pension transferred from the member's retirement pension account.

Pension credit accounts

29.—(1) When a person becomes a beneficiary of a pension sharing order, a pension credit member account must be opened.

(2) The pension credit account at the date it is opened must be credited from the member's pension account that is to be debited with an amount in compliance with the pension sharing order and calculated in accordance with actuarial guidance issued by the Secretary of State.

Benefits

Retirement benefits

30.—(1) A member who attains normal pension age in an employment, and is not an employee in local government service in relation to that employment, is entitled to immediate payment of a retirement pension without reduction.

(2) A member who chooses to defer payment of a retirement pension to a date after that member's normal pension age in an employment is entitled to immediate payment of a retirement pension from any date after the member ceases to be an employee in local government service in relation to that employment, up to the date when that member attains the age of 75, enhanced by the amounts shown as appropriate in actuarial guidance issued by the Secretary of State.

(3) A member who has not attained normal pension age but who has attained the age of 55 or over, may choose to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.

(4) An active member who has attained the age of 55 or over who reduces working hours or grade of employment may, with the employing authority's consent, choose to receive immediate payment of all or part of the retirement pension to which that member would be entitled if that member were not an employee in local government service on the date the request is made, adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.

(5) Where an active member who has attained the age of 55 or over is dismissed from an employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency, that member is entitled to, and must draw immediate payment of —

- (a) retirement pension relating to that employment payable under regulation 16, adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State; and
- (b) any other retirement pension relating to that employment payable under these Regulations, without reduction.

(6) An employing authority, former employing authority or, where any such authority has ceased to be a Scheme employer, the appropriate administering authority, may agree to waive in whole or in part any reduction that would, apart from this paragraph, be required by paragraphs (3) to (5).

(7) In this regulation the expression “member” means a member with qualifying service for a period of two years.

Award of additional pension

31.—(1) An employing authority may resolve to award—

- (a) an active member, or
- (b) a member who was an active member who was dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

additional annual pension of, in total (including any additional pension purchased by the employing authority under regulation 16), not more than £5,000 payable from the same date as any pension payable under other provisions of these Regulations from the pension account to which the additional pension is attached, provided that, in the case of a member falling within subparagraph (b), the resolution to award additional pension is made within 6 months of the date the member’s employment ended.

(2) An award of additional pension under—

- (a) paragraph (1)(a) is to be credited to the relevant active member pension account in the scheme year in which the resolution to award the additional pension is made; and
- (b) paragraph (1)(b) is to be treated as credited to the relevant active member pension account on the day before the date of termination of employment.

(3) The restrictions specified in paragraph (1) apply to employing authorities which have power under section 1 of the Localism Act 2011⁽¹⁷⁾ (local authority’s general power of competence) or section 5A(1) of the Fire and Rescue Services Act 2004⁽¹⁸⁾ (powers of fire and rescue authorities) in the exercise of those powers.

(4) An employing authority making an award under this regulation must pay a sum into the appropriate fund to meet the cost of the additional pension, in accordance with actuarial guidance issued by the Secretary of State.

Commencement of pensions

32.—(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable, begins with the day after the date on which the employment ends.

(2) In the case of a member who leaves local government service and is not entitled to immediate payment of retirement pension, the first period for which payment begins is the member’s normal pension age unless that member gives written notice to the administering authority to defer payment (but any such deferral shall not extend beyond the day before the member’s 75th birthday).

(3) Where a member elects under regulation 30(2) or (3) to have a pension paid from a date other than normal retirement age, the first period for which retirement pension is payable begins on the date the member specifies in a written notice to the appropriate administering authority.

(4) When a member elects under regulation 30(4) to receive immediate payment of all or part of that member’s benefits, if the member’s employing authority consents to the payment, the first period for which retirement pension is payable begins on the date following the reduction in hours or grade specified in a written notice to the appropriate administering authority.

⁽¹⁷⁾ 2011 c. 20.

⁽¹⁸⁾ 2004 c. 21; section 5A was inserted by section 9 of the Localism Act 2011.

(5) A notice given under paragraph (3) must be given not less than three months before the beginning of the period specified and a notice given under paragraph (4) must be given within one month of the reduction in hours or grade.

(6) A member may give a further notice under paragraph (3) altering the date specified in an earlier notice, but any such further notice must be given not less than three months before the beginning of the period specified in the further notice.

(7) An administering authority may agree to extend the time limits specified in paragraphs (5) and (6).

(8) Where a member is entitled to early payment of pension due to ill-health under regulation 35 the first period for which retirement pension is payable is the day after the date on which the member's employment is terminated.

(9) Where a member is entitled to early payment of pension due to ill-health under regulation 38, the first period for which retirement pension is payable begins on the date the member became permanently incapable as determined under that regulation.

Election for lump sum instead of pension

33.—(1) Subject to paragraph (4), a member entitled to a retirement pension under the Scheme may by written notice given to the appropriate administering authority before any benefits in relation to the benefit crystallisation event become payable, commute the retirement pension payable, or part thereof, at a rate of £12 for every £1 of annual pension commuted.

(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 referred to in regulation 17(6)(b), shall not exceed 25% of the capital value of the member's accrued rights under all local government pension provision in relation to that benefit crystallisation event.

(3) The capital value of a member's accrued rights shall be calculated in accordance with actuarial guidance issued by the Secretary of State.

(4) Paragraph (1) does not apply to—

- (a) a credit member where the debit member has made an election under this regulation before the valuation date used when implementing the Pension Sharing Order; or
- (b) a deferred pensioner member.

Commutation and small pensions

34.—(1) Any authorised payments within the meaning of section 164 (authorised member payments) of the Finance Act 2004(**19**) listed in sub-paragraphs (a) to (c) may be paid in accordance with the rules relating to the payment of such benefits under that Act or relevant regulations under that Act—

- (a) a lump sum which is a trivial commutation lump sum within the meaning of section 166 (lump sum rule) of that Act;
- (b) a trivial commutation lump sum death benefit within the meaning of section 168 (lump sum death benefit rule) of that Act; or
- (c) a commutation payment under regulations 6 (payment after relevant accretion), 11 (de minimis rule for pension schemes) or 12 (payments by larger pension schemes) of the Registered Pension Schemes (Authorised Payments) Regulations 2009(**20**).

(2) Any payment under paragraph (1) shall be calculated in accordance with actuarial guidance issued by the Secretary of State.

(19) 2004 c. 12; section 164 was amended by the Finance Act 2006 (c. 25), the Finance Act 2008 (c. 9), the Finance Act 2009 (c. 10) and the Finance Act 2011 (c.11).

(20) S.I. 2009/1171; regulations 11 and 12 were amended by S.I. 2011/1751.

(3) If a member receives a payment under this regulation, any pension account relating to that payment must be closed and the member is entitled to no further benefits in relation to that account and no survivor benefits are subsequently payable upon the death of the member.

Ill-health retirement

Early payment of retirement pension on ill-health grounds: active members

35.—(1) An active member who has qualifying service for a period of two years and whose employment is terminated by an employing authority on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must draw, early payment of a retirement pension if that member satisfies the conditions in paragraphs (3) and (4) of this regulation.

(2) The amount of the retirement pension that a member who satisfies the conditions mentioned in paragraph (1) receives is determined by which of the benefit tiers specified in paragraphs (5) to (7) that member qualifies for, calculated in accordance with regulation 39.

(3) The first condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

(4) The second condition is that the member, as a result of ill-health or infirmity of mind or body, has some reduced likelihood of undertaking gainful employment before normal pension age.

(5) A member is entitled to Tier 1 benefits if that member has a reduced likelihood of being capable of undertaking any gainful employment before normal pension age.

(6) A member is entitled to Tier 2 benefits if that member—

- (a) is not entitled to Tier 1 benefits;
- (b) has a reduced likelihood of being capable of undertaking any gainful employment within three years of leaving the employment; but
- (c) is likely to be able to undertake gainful employment before reaching normal pension age.

(7) Subject to regulation 37, if the member is likely to be capable of undertaking gainful employment within three years of leaving the employment, or before normal pension age if earlier, that member is entitled to Tier 3 benefits for so long as the member is not in gainful employment, up to a maximum of three years from the date the member left the employment.

Role of the IRMP

36.—(1) A decision as to whether a member is entitled under regulation 35 to early payment of retirement pension on grounds of ill-health or infirmity of mind or body, and if so which tier of benefits the member qualifies for, shall be made by the member's employing authority after that authority has obtained a certificate from an IRMP as to—

- (a) whether the member satisfies the conditions in regulation 35(3) and (4); and if so,
- (b) how long the member will have a reduced likelihood of undertaking any gainful employment; and
- (c) where a member has been working reduced hours and had reduced pay as a consequence of the reduction in working hours, whether that member was in part time service wholly or partly as a consequence of ill-health or infirmity of mind or body.

(2) An IRMP from whom a certificate is obtained under paragraph (1) must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested.

(3) If the employing authority is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of IRMP.

(4) The employing authority and IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation and regulations 37 and 38.

Special provision in respect of members receiving Tier 3 benefits

37.—(1) A member in receipt of Tier 3 benefits who attains normal pension age continues to be entitled to receive retirement pension and ceases to be regarded as being in receipt of Tier 3 benefits from that date, and nothing in the remainder of this regulation applies to such a person.

(2) A member who receives Tier 3 benefits shall inform the former employing authority upon starting any employment while those benefits are in payment and shall answer any reasonable inquiries made by the authority about employment status including as to pay and hours worked.

(3) Payment of Tier 3 benefits shall cease if a member starts an employment which the employing authority determines to be gainful employment, or fails to answer inquiries made by the authority under paragraph (2), and the authority may recover any payment made in respect of any period before discontinuance during which the member was in an employment it has determined to be gainful employment.

(4) An employing authority may determine that an employee has started gainful employment for the purposes of paragraph (3) if it forms the reasonable view that the employment is likely to endure for at least 12 months and it is immaterial whether the employment does in fact endure for 12 months.

(5) An employing authority must review payment of Tier 3 benefits after they have been in payment for 18 months.

(6) An employing authority carrying out a review under paragraph (5) must make a decision under paragraph (7) about the member's entitlement after obtaining a further certificate from an IRMP as to whether, and if so when, the member will be likely to be capable of undertaking gainful employment.

(7) The decisions available to an employing authority reviewing payment of Tier 3 benefits to a member under paragraph (5) are as follows:

- (a) to continue payment of Tier 3 benefits for any period up to the maximum permitted by regulation 35(7);
- (b) to award Tier 2 benefits to the member from the date of the review decision if the authority is satisfied that the member—
 - (i) is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either
 - (ii) has a reduced likelihood of being capable of undertaking any gainful employment before normal pension age, or
 - (iii) has a reduced likelihood of being capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age; or
- (c) to cease payment of benefits to the member.

(8) A member whose Tier 3 benefits are discontinued under paragraph (3) or (7)(c) is a deferred pensioner member from the date benefits are discontinued and shall not be entitled to any Tier 3 benefits in the future.

(9) An employing authority which determines that it is appropriate to discontinue payment of Tier 3 benefits for any reason shall notify the appropriate administering authority of the determination.

(10) An employing authority may, following a request from a member in receipt of Tier 3 benefits or within 3 years after payment of Tier 3 benefits to a member are discontinued, make a determination to award Tier 2 benefits to that member from the date of the determination, if the authority is satisfied after obtaining a further certificate from an IRMP, that the member—

- (i) is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either
- (ii) has a reduced likelihood of being capable of undertaking any gainful employment before normal pension age, or

- (iii) has a reduced likelihood of being capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age.

(11) The IRMP who provides a further certificate under paragraphs (6) or (10) may be the same IRMP who provided the first certificate under regulation 36(1).

Early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members

38.—(1) A deferred member who, because of ill-health or infirmity of mind or body—

- (a) becomes permanently incapable of discharging efficiently the duties of the employment that member was engaged in at the date the member became a deferred member, and
- (b) has a reduced likelihood of being capable of undertaking any gainful employment before normal pension age, or for at least three years, whichever is the sooner,

may ask to receive payment of a retirement pension whatever the member's age.

(2) A request under paragraph (1) must be made in writing to the deferred member's former employing authority or appropriate administering authority where the member's former employing authority has ceased to be a Scheme employer.

(3) Before determining whether or not to agree to a request under paragraph (1), the deferred member's former employing authority, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member is suffering from a condition that renders the member—

- (i) permanently incapable of discharging efficiently the duties of the employment the member was engaged in because of ill-health or infirmity of mind or body, and if so,
- (ii) whether as a result of that condition the member has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal pension age, or for at least three years, whichever is the sooner.

(4) A deferred pensioner member who, because of ill-health or infirmity of mind or body, has a reduced likelihood of undertaking any gainful employment before normal pension age, may ask to receive payment of a retirement pension, whatever the member's age.

(5) A request under paragraph (4) must be made to the deferred pensioner member's former employing authority, or appropriate administering authority where the member's former employing authority has ceased to be a Scheme employer.

(6) Before determining whether to agree to a request under paragraph (4), the deferred pensioner member's former employing authority, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member has, as a result of ill-health or infirmity of mind or body, a reduced likelihood of being capable of undertaking any gainful employment before normal pension age.

(7) If the employing authority is not the deferred or deferred pensioner member's appropriate administering authority, it must obtain that authority's consent to the appointment of an IRMP under this regulation.

(8) An IRMP appointed under paragraph (6) of this regulation may be the same IRMP who provided the first certificate under regulation 36(1).

Calculation of ill-health pension amounts

39.—(1) Subject to paragraphs (6) to (8), Tier 1 benefits are calculated by adjusting the active member's pension account in accordance with paragraph (2).

(2) (a) An amount is added to the opening balance in the account for the year in which the member's employment was terminated, equivalent to the amount of earned pension the member would have accrued between the day following the date of termination and normal pension age, if that member had been treated as receiving assumed pensionable pay for each year and fraction of a year in that period.

- (b) Retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated.
- (3) (a) Subject to paragraphs (6) to (8), Tier 2 benefits are calculated by adjusting the active member's pension account for the year in which the member's employment was terminated, by adding one quarter of the sum calculated in accordance with paragraph (2)(a).
- (b) Retirement pension is payable to the member as if the member had reached normal pension age on the date the member's employment was terminated.
- (4) Tier 3 benefits are the retirement pension that would be payable to the member if that member had reached normal pension age on the date the active member's employment was terminated.
- (5) Benefits payable under regulation 38 are the retirement pension that would be payable to the member if that member had reached normal pension age on the date from which benefits are awarded.
- (6) Where a member entitled to Tier 1 benefits subsequently becomes an active member of the Scheme, no addition is to be made under paragraph (2)(a) or (3)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership.
- (7) Where a member entitled to Tier 2 benefits ("the initial ill-health retirement") subsequently becomes an active member of the Scheme, the addition made under paragraph (2)(a) or (3)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership is modified in accordance with paragraph (8).
- (8) The number of years for which a member to whom paragraph (7) applies is treated as having received assumed pensionable pay for the purposes of paragraph (2)(a) or (3)(a) shall not exceed—
- (a) the number of years at the date of the initial ill health retirement up to the member's normal pension age at that time, less
- (b) a quarter of the number of years calculated in accordance with sub-paragraph (a), less
- (c) the number of years during which the member has been an active member of the Scheme after the initial ill-health retirement.
- (9) For the purposes of this regulation—
- (a) in calculating assumed pensionable pay in accordance with regulation 21(5), account is only taken of any reduction in the pensionable pay the member received as a consequence of the circumstances specified in regulation 21(2)(b) if an IRMP has certified that the member was in part-time service wholly or partly as a consequence of ill-health or infirmity of mind or body; and
- (b) no adjustment is to be made to any sum by virtue of regulation 21(7).

Survivor benefits

Death grants: active members

- 40.**—(1) If an active member dies before attaining the age of 75, an administering authority shall pay a death grant.
- (2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.
- (3) The death grant is three times the member's annual assumed pensionable pay calculated in accordance with regulation 21(5) as at the date of the member's death.
- (4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

Survivor benefits: partners of active members

41.—(1) If an active member dies leaving a surviving spouse, civil partner or nominated cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The relevant administering authority shall close the active member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the amounts in sub-paragraphs (a) and (b)—

- (a) the pension that the member would have been entitled to draw if—
 - (i) the member had been entitled to draw a pension on the date of the member's death,
 - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election,
 - (iii) the pension excluded any member-only additional pension purchased under regulation 16 and any additional pension awarded under regulation 31,
 - (iv) the pension included 37.5% of any member and survivor additional pension purchased under regulation 16,
 - (v) the member's earned pension had accrued at a rate of 1/160th of pensionable pay, and
 - (vi) any transferred in benefit had accrued at a rate of 49/160ths;
- (b) a sum equivalent to 1/160th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(5) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(5) The balance in the survivor member's pension account is increased by the index rate adjustment on the last day of each scheme year.

(6) The sum calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following scheme year.

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

Survivor benefits : children of active members

42.—(1) If an active member dies leaving one or more eligible children, they are entitled to a children's pension which shall come into payment on the day following the member's death.

(2) If a pension is payable to a partner of an active member under regulation 41(1), the relevant administering authority shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(3) The opening balance of a survivor member's pension account opened under paragraph (2) is the amount of pension payable to the eligible child or children calculated in accordance with paragraph (4) or (5), but if the pension payable under regulation 41(1) ceases to be paid, the pension payable to the eligible child or children is recalculated in accordance with paragraph (9) or (10).

(4) The amount of pension payable under paragraph (3) where there is only one such child is calculated by adding together the amounts in sub-paragraphs (a) and (b),

- (a) the pension that the member would have been entitled to draw if—
 - (i) the member had been entitled to draw a pension on the date of the member's death,

- (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election,
 - (iii) the pension excluded any member-only additional pension purchased under regulation 16 and any additional pension awarded under regulation 31
 - (iv) the pension included 18.75% of any member and survivor pension purchased under regulation 16,
 - (v) the member's earned pension had accrued at a rate of 1/320th of pensionable pay and,
 - (vi) any transferred in benefit had accrued at a rate of 49/320ths;
- (b) a sum equivalent to 1/320th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(5) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(5) The amount of pension payable under paragraph (3) where there is more than one such child, is calculated by adding together the amounts in sub-paragraphs (a) and (b), and is payable to those children in equal shares—

- (a) the pension that the member would have been entitled to draw if—
 - (i) the member had been able to draw a pension on the date of the member's death,
 - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial reduction relating either to the age at which it was drawn or following a Scheme pays election,
 - (iii) the pension excluded any member-only additional pension purchased under regulation 16 and any additional pension awarded under regulation 31,
 - (iv) the pension included 37.5% of any additional member and survivor pension purchased under regulation 16,
 - (v) the member's earned pension had accrued at a rate of 1/160th of pensionable pay and,
 - (vi) any transferred in benefit had accrued at a rate of 49/160ths;
- (b) a sum equivalent to 1/160th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(5) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(6) At the point at which the number of eligible children is reduced to one, if a pension is still payable to a surviving partner under regulation 41(1), the pension payable to that eligible child is recalculated in accordance with paragraph (4).

(7) If, on the day following the member's death, no pension is payable to a partner of an active member under regulation 41(1), the relevant administering authority shall close the active member's pension account and shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(8) The opening balance of a survivor member's pension account opened under paragraph (7) is the amount of pension payable to the eligible child or children, calculated in accordance with paragraph (9) or (10).

(9) The amount of pension payable under paragraph (8) where there is only one such child is calculated by adding together the amounts in paragraphs (a) and (b),

- (a) the pension that the member would have been entitled to draw if—
 - (i) the member had been entitled to draw a pension on the day the member died,

- (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election,
 - (iii) the pension excluded any member-only additional pension purchased under regulation 16 and any additional pension awarded under regulation 31,
 - (iv) the pension included 25% of any additional member and survivor pension purchased under regulation 16,
 - (v) the member's earned pension had accrued at a rate of 1/240th of pensionable pay and
 - (vi) any transferred in benefit had accrued at a rate of 49/240ths;
- (b) a sum equivalent to 1/240th of the member's annual assumed pensionable pay, calculated in accordance with regulation 21(5) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(10) The amount of pension payable under paragraph (7) where there is more than one such child, is calculated by adding together the amounts in paragraphs (a) and (b), and is payable to those children in equal shares—

- (a) the pension that the member would have been entitled to draw if—
 - (i) the member had been entitled to draw a pension on the date the member died,
 - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election,
 - (iii) the pension excluded any member-only additional pension purchased under regulation 16 and any additional member pension awarded under regulation 31,
 - (iv) the pension included 50% of any additional member and survivor pension purchased under regulation 16,
 - (v) the member's earned pension had accrued at a rate of 1/120th of pensionable pay and
 - (vi) any transferred in benefit had accrued at a rate of 49/120ths;
- (b) a sum equivalent to 1/120th of the member's annual assumed pensionable pay, calculated in accordance with regulation 21(5) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(11) At the point at which the number of eligible children is reduced to one, the pension payable to that child is recalculated in accordance with paragraph (9).

(12) The balance in the survivor member's pension account is increased by the index rate adjustment on the last day of each scheme year.

(13) The sum calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following scheme year.

Death grants: deferred members

43.—(1) If a deferred member dies an administering authority shall pay a death grant.

(2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(3) The death grant is the amount the member would have been entitled to receive as retirement pension annually if—

- (a) the member had been able to draw a pension on the day the member died, and

- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn,

multiplied by 5.

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the member's death or, where the authority did not know about the member's death before the expiry of that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

(5) This regulation applies to deferred pensioner members as it applies to deferred members except that the amount of death grant calculated under paragraph (3) is reduced by the amount of pension already paid to the member under regulation 35(7) and any lump sum paid under regulation 33.

Survivor benefits: partners of deferred members

44.—(1) If a deferred member dies leaving a surviving spouse, civil partner or nominated cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The relevant administering authority shall close the deferred member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been able to draw a pension on the date the member died,
- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election,
- (c) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31,
- (d) the pension included 37.5% of any additional member and survivor pension purchased under regulation 16,
- (e) the member's earned pension had accrued at a rate of 1/160th of pensionable pay, and
- (f) any transferred in benefit had accrued at a rate of 49/160ths.

(5) The balance in the survivor member's pension account is increased by the index rate adjustment on the last day of each scheme year.

(6) The sum calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following scheme year.

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

(8) This regulation applies to deferred pensioner members as it applies to deferred members.

Survivor benefits: children of deferred members

45.—(1) If a deferred member dies leaving one or more eligible children, they are entitled to a children's pension which shall come into payment on the day following the member's death.

(2) If a pension is payable to a partner of a deferred member under regulation 44(1), the relevant administering authority shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(3) The opening balance of a survivor member's pension account opened under paragraph (2) is the amount of pension payable to the eligible child or children calculated in accordance with paragraph (4) or (5) but if the pension payable under regulation 44(1) ceases to be paid, the pension payable to the eligible child or children is recalculated in accordance with paragraph (8) or (9).

(4) The amount of pension payable under paragraph (3) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been entitled to draw a pension on the date the member died,
- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial reduction relating either to the age at which it was drawn or following a Scheme pays election,
- (c) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31,
- (d) the pension included 18.75% of any additional member and survivor pension purchased under regulation 16,
- (e) the member's earned pension had accrued at a rate of 1/320th of pensionable pay, and
- (f) any transferred in benefit had accrued at a rate of 49/320ths.

(5) The amount of pension payable under paragraph (3) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been entitled to draw a pension on the date the member died,
- (b) the pension the member would have been able to draw on the date the member died had not been subject to any restriction on the age at which it could be drawn, or actuarial reduction relating either to the age at which it was drawn or following a Scheme pays election,
- (c) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31,
- (d) the pension included 37.5% of any additional member and survivor pension purchased under regulation 16,
- (e) the member's earned pension had accrued at a rate of 1/160th of pensionable pay and,
- (f) any transferred in benefit had accrued at a rate of 49/160ths.

(6) At the point at which the number of eligible children is reduced to one, if a pension is still payable to a surviving partner under regulation 44(1), the pension payable to that eligible child is recalculated in accordance with paragraph (4).

(7) If, on the day following the member's death, no pension is payable to a partner of a deferred member under regulation 44(1), the relevant administering authority shall close the deferred member's pension account and shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(8) The opening balance of a survivor member's pension account opened under paragraph (7) is the amount of pension payable to the eligible child or children, calculated in accordance with paragraph (9) or (10).

(9) The amount of pension payable under paragraph (7) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been entitled to draw a pension on the date the member died,
- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial reduction relating either to the age at which it was drawn or following a Scheme pays election,
- (c) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31,

- (d) the pension included 25% of any additional member and survivor pension purchased under regulation 16,
- (e) the member's earned pension had accrued at a rate of 1/240th of pensionable pay, and,
- (f) any transferred in benefit had accrued at a rate of 49/240ths.

(10) The amount of pension payable under paragraph (7) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been entitled to draw a pension on the date the member died,
- (b) the pension the member would have been able to draw on the date the member died had not been subject to any restriction on the age at which it could be drawn, or actuarial reduction relating either to the age at which it was drawn or following a Scheme pays election,
- (c) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31,
- (d) the pension included 50% of any additional member and survivor pension purchased under regulation 16,
- (e) the member's earned pension had accrued at a rate of 1/120th of pensionable pay, and,
- (f) any transferred in benefit had accrued at a rate of 49/120ths.

(11) At the point at which the number of eligible children is reduced to one, the pension payable to that child is recalculated in accordance with paragraph (9).

(12) The balance in the survivor member's pension account is increased by the index rate adjustment on the last day of each scheme year.

(13) The sum calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following scheme year.

(14) This regulation applies to deferred pensioner members as it applies to deferred members.

Death grants : pensioner members

46.—(1) If a pensioner member dies before attaining the age of 75 an administering authority shall pay a death grant.

(2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(3) The death grant is 10 times the annual amount the member was receiving as retirement pension at the date of death, ignoring any abatement applied because the member had entered any new employment, but the amount so calculated is reduced by the amounts of any retirement pension paid to the member, or that would have been paid had the member's pension not at any time been abated because of entry of the member into new employment.

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the member's death or, where the authority did not know about the member's death before the expiry of that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

Survivor benefits : partners of pensioner members

47.—(1) If a pensioner member dies leaving a surviving spouse, civil partner or nominated cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The relevant administering authority shall close the pensioner member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension had accrued at a rate of 1/160th of pensionable pay,
- (b) the pension had not been subject to any actuarial adjustment relating either to the age at which it was drawn or following a Scheme pays election, and
- (c) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31, and
- (d) the pension included 37.5% of any additional member and survivor pension purchased under regulation 16 (and for these purposes, any actuarial adjustment to that pension or reduction due to any commutation, is ignored).

(5) The balance of the survivor member's pension account is increased by the index rate adjustment on the last day of each scheme year.

(6) The sum calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following scheme year.

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

Survivor benefits: children of pensioner members

48.—(1) If a pensioner member dies leaving one or more eligible children, they are entitled to a children's pension which shall come into payment on the day following death.

(2) If a pension is payable to a partner of a pensioner member under regulation 47(1), the relevant administering authority shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(3) The opening balance of a survivor member's pension account opened under paragraph (2) is the amount of pension payable to the eligible child or children calculated in accordance with paragraph (4) or (5) but if the pension payable under regulation 47(1) ceases to be paid, the pension payable to the eligible child or children is recalculated in accordance with paragraph (8) or (9).

(4) The amount of pension payable under paragraph (3) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension, had accrued at a rate of 1/320th of pensionable pay,
- (b) any transferred in benefit had accrued at a rate of 49/320ths,
- (c) the member's pension had not been subject to any actuarial adjustment relating either to the age at which it was drawn or following a Scheme pays election, and
- (d) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31, and
- (e) the pension included 18.75% of any additional member and survivor pension purchased under regulation 16 (and for these purposes, any actuarial adjustment to that pension or reduction due to any commutation, is ignored).

(5) The amount of pension payable under paragraph (3) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension, had accrued at a rate of 1/160th of pensionable pay,
- (b) any transferred in benefit had accrued at a rate of 49/160ths,
- (c) the member's pension had not been subject to any actuarial adjustment relating either to the age at which it was drawn or following a Scheme pays election, and

- (d) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31, and
- (e) the pension included 37.5% of any additional member and survivor pension purchased under regulation 16 (and for these purposes, any actuarial adjustment to that pension or reduction due to any commutation, is ignored).

(6) At the point at which the number of eligible children is reduced to one, if a pension is still payable to a surviving partner under regulation 47(1), the pension payable to that eligible child is recalculated in accordance with paragraph (4).

(7) If, on the day following the member's death, no pension is payable to a partner of a deferred member under regulation 47(1), the relevant administering authority shall close the pensioner member's pension account and shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(8) The opening balance of a survivor member's pension account opened under paragraph (7) is the amount of pension payable to the eligible child or children, calculated in accordance with paragraph (9) or (10).

(9) The amount of pension payable under paragraph (6) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension had accrued at a rate of 1/240th of pensionable pay,
- (b) any transferred in benefit had accrued at a rate of 49/240ths,
- (c) the member's pension had not been subject to any actuarial adjustment relating either to the age at which it was drawn or following a Scheme pays election, and
- (d) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31, and
- (e) the pension included 25% of any additional member and survivor pension purchased under regulation 16 (and for these purposes, any actuarial adjustment to that pension or reduction due to any commutation, is ignored).

(10) The amount of pension payable under paragraph (6) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member's earned pension had accrued at a rate of 1/120th of pensionable pay,
- (b) any transferred in benefit had accrued at a rate of 49/120ths
- (c) the member's pension had not been subject to any actuarial adjustment relating either to the age at which it was drawn or following a Scheme pays election, and
- (d) the pension excluded any additional member-only pension purchased under regulation 16 and any additional pension awarded under regulation 31, and
- (e) the pension included 50% of any additional member and survivor pension purchased under regulation 16 (and for these purposes, any actuarial adjustment to that pension or reduction due to any commutation, is ignored).

(11) At the point at which the number of eligible children is reduced to one, the pension payable to that child is recalculated in accordance with paragraph (9).

(12) The balance in the survivor member's pension account is increased by the index rate adjustment on the last day of each scheme year.

(13) The sum calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following scheme year.

PART 2

Administration

Interest on late payment of certain benefits

49.—(1) Where all or part of a pension or lump sum payment due under these regulations (other than a payment due under regulation 17) is not paid within the relevant period after the due date, an administering authority must pay interest on the unpaid amount to the person to whom it is payable.

(2) The relevant period is—

- (a) in the case of a survivor pension, the period ending one month after the date on which the administering authority receives notification of the member's death;
- (b) in the case of any other pension, one year;
- (c) otherwise, one month.

(3) The due date is—

- (a) in the case of a pension, the date on which it becomes payable;
- (b) in the case of a lump sum under regulation 33 the benefit crystallisation event date;
- (c) in the case of a death grant, the date on which the member dies or, where notification of death is received more than two years after the date of death, the date of notification;
- (d) in the case of a lump sum under regulation 34 the date of the commutation election or, if later, the nominated date within the meaning of paragraph 7(3) of Part 1 of Schedule 29 to the Finance Act 2004⁽²¹⁾.

(4) Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.

Payments due in respect of deceased persons

50.—(1) Paragraph (2) applies if, when a person dies, the total amount due to that person's personal representatives under the Scheme (including anything due at that person's death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965⁽²²⁾ and applying in relation to that person's death.

(2) An administering authority may pay the whole or part of the amount due from its pension fund to—

- (a) a person's personal representatives, or
- (b) any person or persons appearing to the authority to be beneficially entitled to the estate,

without the production of probate or letters of administration of the person's estate.

(3) Such a payment discharges that authority from accounting for the amount paid.

Payments for persons incapable of managing their affairs

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

- (a) the authority may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the authority may determine, to be applied for the benefit of the person entitled; and

⁽²¹⁾ 2004 c. 12.

⁽²²⁾ 1965 c. 32; there are amendments to section 6 which are not relevant to this instrument.

- (b) in so far as the authority does not pay the benefits in that manner, the authority may apply them in such manner as the authority may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

Non-assignability

52.—(1) Every benefit to which a person is entitled under the Scheme is payable to or in trust for that person.

(2) No such benefit is assignable or chargeable with that person's, or any other person's, debts or other liabilities.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with an income payments order under section 310 or 310A of the Insolvency Act 1986⁽²³⁾.

Pension debits

53.—(1) Administering authorities shall have regard to actuarial guidance issued by the Secretary of State as to reduction of benefits payable under these Regulations in consequence of a pension debit created under section 29 of the Welfare Reform and Pension Act 1999⁽²⁴⁾.

(2) An administering authority shall make such adjustments to a member's pension accounts as are required to give effect to a pension debit.

No double entitlement

54.—(1) Where apart from this regulation any member would be entitled to a pension or lump sum under two or more regulations by reason of the same period of membership—

- (a) that member shall be entitled to benefits under only one regulation;
- (b) the member may choose under which provision benefits are to be paid; and
- (c) if the member does not choose, the administering authority shall notify the member in writing of the provision under which benefits are to be paid.

(2) A member's choice must be by notice in writing given to the administering authority before the expiry of three months beginning with the day on which the member becomes entitled to choose under which provision the pension or lump sum is to be paid.

(3) Paragraph (1) does not affect the member's rights under the Pension Schemes Act 1993⁽²⁵⁾.

Limit on total amount of benefits

55.—(1) No person is entitled under any provision of these Regulations to receive benefits the capital value of which exceed that person's lifetime allowance, except in accordance with actuarial guidance issued by the Secretary of State and any benefits to which a person is entitled are capped accordingly.

(2) In this regulation "lifetime allowance" is to be construed in accordance with section 218 of and Schedule 36 to the Finance Act 2004⁽²⁶⁾ and, where applicable, is to include primary protection, enhanced protection or fixed protection within the meaning of those provisions.

(3) The capital value of a person's benefits shall be calculated in accordance with actuarial guidance issued by the Secretary of State.

⁽²³⁾ 1986 c. 45; there are amendments to section 310 which are not relevant to this instrument. Section 310A was inserted by the Enterprise Act 2002 (c. 40).

⁽²⁴⁾ 1999 c. 30.

⁽²⁵⁾ 1993 c. 48.

⁽²⁶⁾ 2004 c. 12; section 218 was amended by the Finance Act 2011 (c.11). There are numerous amendments to Schedule 36 which are not relevant to these regulations.

Tax

56. The appropriate administering authority is responsible for deducting from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.

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

Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULES

SCHEDULE 1

Regulation 2

Interpretation

“active member” means a person who is in an employment, and—

- (a) paying contributions to the Scheme,
- (b) treated as paying contributions to the Scheme, or
- (c) absent from that employment for one of the reasons mentioned in regulation 11 and entitled to pay contributions to the Scheme;

“actuarial guidance issued by the Secretary of State” means guidance identified by the Secretary of State as such which has been produced after consultation with the Government Actuary’s Department;

“additional maternity or adoption leave” means leave under section 73 or 75B of the Employment Rights Act 1996(27);

“additional paternity leave” means leave under the Additional Paternity Leave Regulations 2010(28);

“additional pension” means pension under these Regulations other than earned pension;

“additional voluntary contributions” means payments made under regulation 17;

“administering authority” has the meaning given by regulation 2;

“admission agreement” means an agreement between an administering authority and an admission body that named individuals, or all or any specified class of the admission body’s employees, may be members of the Scheme;

“admission body” has the meaning given in paragraph 1 of Part 3 of Schedule 2;

“amount of accrued pension” means the earned pension in a member’s pension account adjusted to take account of any revaluation adjustment applicable;

“amount of pension payable” means the earned and additional pension in a member’s pension account adjusted to take account of any revaluation adjustment, indexation adjustment, commutation amount or pension account adjustment applicable;

“annual allowance charge” has the meaning given to that expression by section 227 of the Finance Act 2004(29);

“assumed pensionable pay” has the meaning given by regulation 21;

(27) 1996 c. 18; section 73 was substituted by the Employment Relations Act 1999; section 75B was inserted by the Employment Act 2002.

(28) S.I. 2010/1055

(29) 2004 c. 12; section 227 has been amended by the Finance Act 2009 and the Finance Act 2011.

“automatic enrolment date” means the automatic enrolment date within the meaning of section 3 of the Pensions Act 2008**(30)**;

“automatic re-enrolment date” means the automatic re-enrolment date chosen by a member’s employer in accordance with section 5 of the Pensions Act 2008**(31)** and regulation 12 of the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010**(32)** for those of its eligible jobholders who are not active member’s of the Scheme (or the date the employer would have chosen if the employer does not have any such employees);

“base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

“benefit crystallisation event” has the meaning given by section 7 of the Finance Act 2004;

“child-related leave” means—

- (a) ordinary adoption leave under section 75A of the Employment Rights Act 1996**(33)**;
- (b) ordinary maternity leave under section 71 of that Act;
- (c) additional maternity or adoption leave under section 73 or 75B of that Act**(34)**;
- (d) paternity leave under regulations 4 or 8 of the Paternity and Adoption Leave Regulations 2002; or
- (e) additional paternity leave under the Additional Paternity Leave Regulations 2010.

“children’s pension” means a pension payable to an eligible child in accordance with regulation 42, 45 or 48;

“commutation amount” means the amount a member has elected to give up in return for a lump sum in accordance with regulation 33;

“deferred member” has the meaning given by regulation 6;

“deferred payment enhancement” means the amount by which a member’s entitlement is increased pursuant to regulation 30(2);

“deferred pensioner member” has the meaning given by regulation 6;

“dependent” in relation to a person means that in the opinion of the administering authority, at the date of the member’s death—

- (a) the person was financially dependent on the member
- (b) the person’s financial relationship with the member was one of mutual dependence, or
- (c) the person was dependent on the member because of physical or mental impairment;

“early payment reduction” means the amount by which a member’s entitlement is reduced pursuant to regulation 30(3) or (4);

“earned pension” means pension accrued from the member’s pensionable pay pursuant to regulation 23(4) or (5) or as otherwise provided in these Regulations.

“eligible child”, in relation to a deceased member, means—

- (a) a natural or adopted child of a member who meets any of conditions A to C; or
- (b) any person who—
 - (i) meets any of those conditions; and
 - (ii) was dependent on the member at the date of death.

Condition A is that the person is aged under 18.

(30) 2008 c. 30; section 3 was substituted by the Pensions Act 2011 and there have been further amendments which are not relevant to this instrument.

(31) Section 5 was substituted by the Pensions Act 2011 and there have been further amendments which are not relevant to this instrument.

(32) S.I. 2010/772.

(33) 1996 c. 18; section 75A was inserted by the Employment Act 2002.

(34) Section 73 was substituted by the Employment Relations Act 1999 and was amended by the Employment Act 2002 and the Work and Families Act 2006; section 75B was inserted by the Employment Act 2002.

Condition B is that the person is in full-time education or vocational training and has not reached the age of 23 (but an administering authority may continue to treat a person as fulfilling Condition B notwithstanding any break in a course of education or vocational training, although the person does not fulfil Condition B during such a break).

Condition C is that the person is unable to engage in gainful employment because of physical or mental impairment and either—

- (i) has not reached the age of 23; or
- (ii) the impairment is in the opinion of an IRMP likely to be permanent and the person was dependent on the member at the date of the member's death because of that physical or mental impairment.

“employing authority's consent” includes the consent of the appropriate administering authority in circumstances where the member's employer or former employer is no longer a Scheme employer;

“European Pensions Institution” has the same meaning as in section 293(8) of the Pensions Act 2004**(35)**

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

“index rate adjustment” means the percentage increase that would apply if the balance in the member's account were a pension in payment eligible for increase under the Pensions (Increase) Act 1971**(36)**;

“IRMP” means an independent registered medical practitioner who is registered with the General Medical Council and—

- (a) holds a diploma in occupational health 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 section 55(1) of the Medical Act 1983**(37)**; or
- (b) is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA state;

“joint liability amount” has the meaning given to that expression by section 237B(3) of the Finance Act 2004**(38)**;

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

“membership” is to be construed in accordance with section 124(1) of the Pensions Act 1995**(39)**

“normal pension age” means the pensionable age of a person as specified from time to time in Schedule 4 to the Pensions Act 1995**(40)**, or if higher, age 65.

“nominated co-habiting partner” means a person who fulfils the following conditions—

- (a) the person (P) has fulfilled the condition in paragraph (d) for a continuous period of at least 2 years on the date the member (M) died, and
- (b) P has been nominated by a member in a declaration given to the administering authority signed both by the M and P [unless the administering authority has dispensed with the requirement for the form to be signed by both M and P], and
- (c) neither M nor P has given any notice to the administering authority revoking the nomination given under paragraph (b),
- (d) the condition is that—

(35) 2004. c. 35; section 293(8) was amended by S.I. 2007/3014.

(36) 1971 c. 56.

(37) 1983 c. 54; the definition of “competent authority” was inserted by S.I. 2007/3101.

(38) 2004 c.12; section 237B was inserted by the Finance Act 2011.

(39) 1995 c. 26.

(40) 1995 c. 26.

- (i) M is able to marry, or form a civil partnership with P,
 - (ii) M and P are living together as if they were husband and wife or as if they were civil partners,
 - (iii) neither M nor P is living with a third person as if they were husband and wife or as if they were civil partners, and
 - (iv) either P is financially dependent on M, or M and P are financially interdependent;
- “occupational pension scheme” has the meaning given by section 1 of the Pensions Schemes Act 1993(41);
- “ordinary adoption leave” means leave under section 75A of the Employment Rights Act 1996(42);
- “ordinary maternity leave” means leave under section 71 of the Employment Rights Act 1996;
- “payment period” means a period of service to which an employee’s wages or salary payments relate;
- “paternity leave” means leave under regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(43);
- “pensionable pay” has the meaning given by regulation 20 but if the circumstances specified in regulation 21(2) apply, references in these Regulations to a member’s pensionable pay are references to that member’s assumed pensionable pay;
- “pension debit” means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999(44);
- “pension credit” means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;
- “pension credit member” has the meaning given by regulation 8(1);
- “pensioner member” has the meaning given by regulation (7)(1);
- “pensions board” means a board or committee established by an administering authority to discharge functions under regulation 2(3);
- “pension sharing order” means any provision or order specified in section 28 of the Welfare Reform and Pensions Act 1999;
- “permanently incapable” means that the member will, more likely than not, be incapable until at the earliest, the member’s normal pension age;
- “public service pension scheme” has the same meaning as in section 1 of the Pensions Scheme Act 1993(45);
- “qualifying recognised overseas pension scheme” has the same meaning as in section 169(2) of the Finance Act 2004(46);
- “qualifying service for a period of two years” has the meaning given in regulation 3(7);
- “reference banks” means the seven largest persons for the time being who—
- (a) have permission under Part 4 of the Financial Services and Markets Act 2000(47) to accept deposits;
 - (b) are incorporated in the United Kingdom and carry on there a regulated activity of accepting deposits; and
 - (c) quote a base rate in sterling,

(41) 1993 c. 48; the definition of “occupational pension scheme” was substituted by the Pensions Act 2004 and was amended by S.I. 2007/3014.

(42) 1996 c. 18; section 75A was inserted by the Employment Act 2002 and was amended by the Work and Families Act 2006.

(43) S.I. 2002/2788.

(44) 1999 c. 30.

(45) 1993 c. 48; section 1 has amendments which are not relevant to this instrument.

(46) 2004 c. 12.

(47) 2000 c. 8.

and for the purposes of this definition, the size of the person at any time is to be determined by reference to the gross assets denominated in sterling of that person, together with any subsidiary (as defined in section 1159 of the Companies Act 2006**(48)**), as shown in the audited end-of-year accounts last published before that time;

“registered pension scheme” has the same meaning as in section 150(2) of the Finance Act 2004**(49)**

“reserve forces service leave” means absence from duty because of being called out or recalled for permanent service in Her Majesty’s armed forces pursuant to a call-out notice served, or a call-out or recall order made, under the Reserve Forces Act 1996**(50)**;

“revaluation adjustment” means the consumer prices index of annual inflation published by the Office of National Statistics for the September preceding the end of a scheme year which is to be applied to the sum in a pension account at the end of that scheme year;

“the Scheme” means the scheme established by these regulations;

“scheme employment” means an employment by virtue of which a person is entitled to be a member of this Scheme;

“scheme year” means a period of one year beginning with 1st April and ending with 31st March;

“scheme manager” has the meaning given by regulation 2(2);

“Scheme pays election” means a member giving the administering authority notice of joint and several liability under section 237B of the Finance Act 2004**(51)** in respect of the member’s annual allowance charge;

“shared cost additional voluntary contribution arrangements” means arrangements established under regulation 17 to which both the employing authority and the active member contribute;

“statutory pay” means any statutory maternity, paternity or adoption pay payable under the Social Security Contributions and Benefits Act 1992**(52)**;

“survivor member” means a person entitled to a survivor pension or a children’s pension;

“survivor pension” means a pension payable under regulations 41, 42, 44, 45, 47 or 48;

“Tier 1 benefits” has the meaning given by regulation 35(5) calculated in accordance with regulation 39;

“Tier 2 benefits” has the meaning given by regulation 35(6) calculated in accordance with regulation 39;

“Tier 3 benefits” has the meaning given by regulation 35(7) calculated in accordance with regulation 39;

“trade dispute” has the meaning given in section 218 of the Trade Union and Labour Relations (Consolidation) Act 1992**(53)**;

“transferred benefit” means a benefit in a member’s pension account deriving from a transfer value payment;

“transfer value payment” means a payment made from the Scheme to another registered pension scheme or qualifying recognised overseas pension scheme, or a payment received by the Scheme from a registered pension scheme or from a European Pensions Institution.

(48) 2006 c. 46.

(49) 2004 c. 12.

(50) 1996 c. 14.

(51) 2004 c. 12. Section 237B was inserted by the Finance Act 2011.

(52) 1992 c. 4.

(53) 1992 c.52.

SCHEDULE 2

Regulation 3

Scheme employers

PART 1

1. In England, a county council, a district council, a London borough council, the Greater London Authority or the Common Council of the City of London.

2. In Wales, a county council or a county borough council.

3. A joint board, body or committee appointed under any Act or statutory order or statutory scheme, of which all the constituent authorities are councils of a description in paragraph 1 or 2 or a combination of such councils.

4. A Mayoral development corporation within the meaning of section 198 of the Localism Act 2011(**54**).

5. A fire and rescue authority within the meaning of the Fire and Rescue Services Act 2004(**55**).

6. A police and crime commissioner.

7. A chief constable within the meaning of section 2 of the Police Reform and Social Responsibility Act 2011(**56**).

8. The Commission for Local Administration in England.

9. A probation trust established under section 5 of the Offender Management Act 2007(**57**) or a National Probation Service local board.

10. The Chichester Harbour Conservancy.

11. The Lee Valley Regional Park Authority.

12. An integrated transport authority within the meaning of the Local Transport Act 2008(**58**).

13. The Broads Authority.

14. A further education corporation, a sixth form college corporation or a higher education corporation within the meaning of section 90 of the Further and Higher Education Act 1992(**59**).

15. The London Pensions Fund Authority.

16. The South Yorkshire Pensions Authority.

17. The Environment Agency.

18. A National Park Authority established under Part 3 of the Environment Act 1995(**60**).

19. An Education Action Forum within the meaning of section 11 of the School Standards and Framework Act 1998(**61**).

20. A proprietor of an Academy within the meaning of section 579 (general interpretation) of the Education Act 1996 who has entered into Academy arrangements within the meaning of section 1 (academy arrangements) of the Academies Act 2010(**62**).

(54) 2011 c.20.

(55) 2004 c. 21.

(56) 2011 c.13.

(57) 2007 c. 21.

(58) 2008 c. 26.

(59) 1992 c. 13. Relevant amendments to section 90 were made by the Education Act 2011 (c. 21) and the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22).

(60) 1995 c. 25.

(61) 1998 c. 31.

21. A body set up by a local housing authority as a housing management company to exercise management functions of the authority under an agreement approved by the appropriate minister under section 27 of the Housing Act 1985(**63**).

22. The Valuation Tribunal Service established under section 105 of the Local Government Act 2003(**64**) and the Valuation Tribunal for Wales established under regulation 4 of the Valuation Tribunal for Wales Regulations 2010(**65**).

23. A conservation board established under section 86 of the Countryside and Rights of Way Act 2000(**66**).

PART 2

1. The Board of Governors of the Museum of London.

2. A body (other than a body listed in Part 1 of this Schedule) which is—

(a) a precepting authority within the meaning of section 69 of the Local Government Finance Act 1992(**67**) (interpretation),

(b) a levying body within the meaning of section 74 of the Local Government Finance Act 1988(**68**) (levies), or

(c) a body to which section 75 of that Act (special levies) applies.

3. A passenger transport executive.

4. An institution designated by an order under section 129 of the Education Reform Act 1988(**69**).

5. An entity connected with a local authority listed in paragraphs 1 to 5 of Part 1 of this Schedule where “connected with” has the same meaning as in section 212(6) of the Local Government and Public Involvement in Health Act 2007(**70**).

6. A company under the control of a body listed in paragraphs 6 to 23 of Part 1 of this Schedule where “under the control” has the same meaning as in section 68 or, as the case may be, 73 of the Local Government and Housing Act 1989(**71**) (except that any direction given by the Secretary of State must be disregarded, and any references to a local authority treated as references to such a body).

7. The Public Services Ombudsman for Wales.

8. The Serious Organised Crime Agency.

9. Transport for London.

10. The London Transport Users’ Committee.

11. The Cultural Strategy Group for London.

12. The Children and Family Court Advisory and Support Service.

13. An urban development corporation.

(62) 2010 c. 32. Section 1 has been amended by the Education Act 2011 (c. 21).

(63) 1985 c. 68. Section 27 was substituted by SI 2003/940 and was subsequently amended by SI 2010/844. For the definition of “appropriate minister” see section 27(18).

(64) 2003 c. 26. Section 27 was amended by the Local Government and Public Involvement in Health Act 2007 (c.28).

(65) SI 2010/713 (W 69)

(66) 2000 (c. 37). There are amendments to section 86 which are not relevant.

(67) 1992 c.14.

(68) 1988 c. 41.

(69) 1988 c. 40. Section 129 has been amended by the Further and Higher Education Act 1992 (c. 13); S.I. 2009/1941; and the Education Act 2011 (c. 21).

(70) 2007 c. 28. Section 212 was amended by the Police Reform and Social Responsibility Act 2011

(71) 1989 c. 42.

PART 3

1. The following bodies are admission bodies with whom an administering authority may make an admission agreement—

- (a) a body which provides a public service in the United Kingdom which operates otherwise than for the purposes of gain and has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise);
- (b) a body, to the funds of which a Scheme employer contributes;
- (c) a body representative of—
 - (i) any Scheme employers;
 - (ii) local authorities and officers of local authorities; or
 - (iii) officers of local authorities where it is formed for the purpose of consultation on the common interests of local authorities and the discussion of matters relating to local government;
- (d) a body that is providing or will provide a service or assets in connection with the exercise of a function of a Scheme employer as a result of—
 - (i) the transfer of the service or assets by means of a contract or other arrangement,
 - (ii) a direction made under section 15 of the Local Government Act 1999⁽⁷²⁾ (Secretary of State's powers),
 - (iii) directions made under section 497A of the Education Act 1996⁽⁷³⁾;
- (e) a body which provides a public service in the United Kingdom and is approved by the Secretary of State for the purpose of admission to the Scheme.

2. An approval under paragraph 1(e) may be subject to such conditions as the Secretary of State thinks fit and the Secretary of State may withdraw an approval at any time if such conditions are not met.

3. The Scheme employer, if it is not also the administering authority, must be a party to the admission agreement with a body falling within the description in paragraph 1(d).

4. In the case of an admission body falling within the description in paragraph 1(b), where at the date of the admission agreement the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, the Scheme employer paying contributions (or, if more than one pays contributions, all of them) must guarantee the liability of the body to pay all amounts due from it under these Regulations.

5. If the admission body is exercising the functions of the Scheme employer in connection with more than one contract or other arrangement under paragraph 1(d)(i), the administering authority and the admission body shall enter into a separate admission agreement in respect of each contract or arrangement.

6. An admission agreement must require the admission body to carry out, to the satisfaction of the administering authority, and to the satisfaction of the Scheme employer in the case of a body falling within paragraph 1(d)(i), an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up, or liquidation of the admission body.

7. Notwithstanding paragraph 6, and subject to paragraph 8, the admission agreement must further provide that where the level of risk identified by the assessment is such as to require it, the

⁽⁷²⁾ 1999 c. 27; section 15 has been amended by the Local Government and Public Involvement in Health Act 2007 (c. 28) and the Local Government (Wales) Measure 2009.

⁽⁷³⁾ 1996 c. 56. Section 497A was inserted by the School Standards and Framework Act 1998 (c. 31) and has been amended by S.I. 2010/1158; the Education Act 2002 (c. 32); and the Apprenticeship, Skills, Children and Learning Act 2009 (c. 22).

admission body shall enter into an indemnity or bond in a form approved by the administering authority with—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000⁽⁷⁴⁾ to accept deposits or to effect and carry out contracts of general insurance;
- (b) a firm in an EEA state of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act⁽⁷⁵⁾, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule)⁽⁷⁶⁾ to accept deposits or to effect and carry out contracts of general insurance; or
- (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.

8. Where, for any reason, it is not desirable for an admission body to enter into an indemnity or bond, the admission agreement must provide that the admission body secures a guarantee in a form satisfactory to the administering authority from—

- (a) a person who funds the admission body in whole or in part;
- (b) in the case of an admission body falling within the description in paragraph 1(d), the Scheme employer referred to in that paragraph;
- (c) a person who—
 - (i) owns, or
 - (ii) controls the exercise of the functions of, the admission body; or
- (d) the Secretary of State in the case of an admission body—
 - (i) which is established by or under any enactment, and
 - (ii) where that enactment enables the Secretary of State to make financial provision for that admission body.

9. An admission agreement must include—

- (a) provision for it to terminate if the admission body ceases to be such a body;
- (b) a requirement that the admission body notify the administering authority of any matter which may affect its participation in the Scheme;
- (c) a requirement that the admission body notify the administering authority of any actual or proposed change in its status, including a take-over, reconstruction or amalgamation, insolvency, winding up, receivership or liquidation and a material change to the body's business or constitution;
- (d) a right for the administering authority to terminate the agreement in the event of—
 - (i) the insolvency, winding up or liquidation of the admission body,
 - (ii) a material breach by the admission body of any of its obligations under the admission agreement or these Regulations which has not been remedied within a reasonable time,
 - (iii) a failure by the admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the administering authority requiring it to do so.

10. An admission agreement must include a requirement that the admission body will not do anything to prejudice the status of the Scheme as a registered scheme.

11. When an administering authority makes an admission agreement it must make a copy of the agreement available for public inspection at its offices and must promptly inform the Secretary of State of—

⁽⁷⁴⁾ 2000 c.8.

⁽⁷⁵⁾ Paragraph 5(b) of Schedule 3 was amended by S.I. 2006/3221, and paragraph 5(d) of that Schedule was amended by S.I. 2004/3379.

⁽⁷⁶⁾ There are amendments to paragraphs 12 and 15 of the Schedule which are not relevant to these Regulations.

- (a) the date the agreement takes effect;
- (b) the admission body's name; and
- (c) the name of any Scheme employer that is party to the agreement.

12. Where an admission body is such a body by virtue of paragraph 1(d), an admission agreement must include—

- (a) a requirement that only employees of the body who are employed in connection with the provision of the service or assets referred to in that sub-paragraph may be members of the Scheme;
- (b) details of the contract, other arrangement or direction by which the body met the requirements of that sub-paragraph;
- (c) a provision whereby the Scheme employer referred to in that sub-paragraph may set off against any payments due to the body, an amount equal to any overdue employer and employee contributions and other payments (including interest) due from the body under these Regulations;
- (d) a provision requiring the admission body to keep under assessment the level of risk arising as a result of the matters mentioned in paragraph 6;
- (e) a provision requiring copies of notifications due to the administering authority under paragraph 9(b) or (c) to be given to the Scheme employer referred to in that sub-paragraph; and
- (f) a provision requiring the Scheme employer referred to in that sub-paragraph to make a copy of the admission agreement available for public inspection at its offices.

13. Where an admission body of the description in paragraph 1(d) undertakes to meet the requirements of these Regulations, the appropriate administering authority must admit to the Scheme the eligible employees of that body.

PART 4

<i>Column 1: Person eligible for membership</i>	<i>Column 2: Body deemed to be Scheme employer</i>
Employee of the governing body of a voluntary school where a local authority has, with the consent of the governing body, designated that employee or a class of employees to which that person belongs as being eligible for membership	The local authority referred to in column 1
Employee of the governing body of a foundation school or foundation special school where a local authority has, with the consent of the governing body, designated that employee or a class of employees to which that person belongs as being eligible for membership	The local authority referred to in column 1
Employee of the governing body of a technical institute or other similar institution which is for the time being assisted by a local authority under the Education Act 1996 ⁽⁷⁷⁾ where a local authority has, with the consent of the governing body, designated that employee or a class of employees to which that person belongs as being eligible for membership	The local authority referred to in column 1

⁽⁷⁷⁾ 1996 c. 56.

Employee of the governing body of a federated school where a local authority has, with the consent of the governing body, designated that employee or a class of employees to which that person belongs as being eligible for membership	The local authority referred to in column 1
A person who was an active member of the 2008 Local Government Pension Scheme by virtue of regulation 8A of the Local Government Pension Scheme (Administration) Regulations 2008 ⁽⁷⁸⁾ and who continues in the employment of the Commissioners for Her Majesty's Revenue and Customs.	The London Pension Fund Authority
A coroner	The authority which appointed the coroner
The Mayor of London	The Greater London Authority
A member of the London Assembly	The Greater London Authority
A police and crime commissioner	That police and crime commissioner
A Local Commissioner within the meaning of Part 3 of the Local Government Act 1974 ⁽⁷⁹⁾	The Commission for Local Administration in England
A member of a passenger transport executive or a director of a subsidiary of a passenger transport executive, where the integrated transport authority for which the executive exercises its functions consents to the designation of that member or director as being eligible for membership	The passenger transport executive

⁽⁷⁸⁾ SI 2008/239. Regulation 8A was inserted by SI 2009/447.
⁽⁷⁹⁾ 1974 c. 7.

Annex B - Outstanding policy issues

The issues discussed below and on which comments are invited, may apply to either the draft LGPS Regulations 2013 at Annex A or draft LGPS (Transitional Provisions and Savings) Regulations 2013 at Annex C.

Part A – Draft Local Government Pension Scheme Regulations 2013

1: Aggregation

The regulations on aggregation will be drafted when the policy is settled. Ministers' current view is that aggregations should only be permitted in the two situations set out below:-

- A deferred account may be aggregated with an active account within 12 months of rejoining the Scheme, or such longer period as the employing authority may allow. This applies to optants out who rejoin the LGPS in the same way as to a leaver who rejoins the LGPS
- A deferred refund account can be aggregated with an active account.

Consultees are asked to inform us if there are any other situations when aggregation ought to be permitted, or if there are any situations which would fall within the descriptions above, where aggregation ought not to be permitted.

2: Assumed Pensionable Pay (APP)

Draft Regulation 21 makes provision for APP but views are sought as to whether any refinements need to be made to that draft to take account of the way APP could work as set out below:-

- Removing the requirement to compare the last 12 weeks with the previous scheme year
- Only comparing if in the previous scheme year the member was in the same post on the same hours
- Changing the calculation of APP to contractual pay at the date of the event adjusted by the average non-contractual overtime over either the last 12 weeks or the previous scheme year
- Requiring the employer to calculate the APP based on guidance issued by the Secretary of State.

Views are also invited on whether APP or certificates of protection would be the better way of proceeding. (See **section 8** below for details about how Certificates of Protection could apply in the 2014 Scheme.)

3: Periods of reduced or unpaid absence

Views are invited on whether it is appropriate to deal with absences listed below using APP, or if there would be advantage in taking these types of absences out of APP (and removing the obligation or power to pay continuing contributions under Regulations 9 or 10) and permitting members instead to buy ARCs to make up for any deficit.

- Leave without pay with employers consent
- Strike
- Child related leave
- Leave due to sickness
- Leave for reserve forces service.

The principles we are proposing for these circumstances are:

- The member and employer pay contributions based on the pensionable pay received
- Loss of pension due to absence may be rectified using a regular or lump sum purchase of Additional Pension
- For absence with employer consent and some elements of child related absence the cost of the Additional Pension may be shared by the employer
- For elements of child and sickness related absence Assumed Pensionable Pay (APP) is used to calculate benefits if greater than pensionable pay.

Views are also invited on whether there any different considerations as regards reserve forces leave absence?

Ministers would welcome feedback on whether there are any disadvantages to going down the ARC route. For example, there could be issues with identifying whether a member is an active member during the period of absence covered by an ARC (because ARCs are not related to any specific period of time), which, for example, could have implications for identifying whether members had fulfilled the 2 year minimum membership period and knock-on effects on the application of the rule of 85.

4: Revaluation

Regulation 23 deals with revaluation and the term is defined in Schedule 1 to mean uprating by CPI. However, Ministers are of the view that the LGPS should fall into line with provisions on revaluation in the Public Service Pensions Bill when the powers in that legislation are available. In the meantime, views are invited on whether the calculation of revaluation for the first and last year of service should be as follows, or on any other basis:-

- For the first year of service the revaluation shall be proportioned in accordance with the period of service in that year
- In the year of leaving service the revaluation shall be a notional amount calculated as the difference between a full year's Pensions Increase and the

actual Pensions Increase using the pensions increase date. This calculation is to be performed the April following leaving.

5: NPA/SPA link

The draft LGPS Regulations 2013 at Annex A includes a link between a member's normal pension age ("NPA") and their state pension age ("SPA") which applies equally to the NPA of both active and deferred pensioner members.

Clause 10 of the Public Service Pensions Bill provides that changes in SPA will apply to all accrued benefits which, in practical terms, means that deferred pensioner members will no longer enjoy a fixed point at which their deferred pension could be brought into payment without any actuarial reduction. It is possible that the relevant provisions may have to be amended. It is Ministers' firm intention to follow the powers under the Public Service Pensions Bill to ensure that this essential element of the reformed scheme is put in place. This will ensure that the agreement reached between trades unions, employers and the government that all a person's benefits should be based on a NPA linked to their SPA will be achieved. Views are invited on whether the definition in Schedule 1, which has been drafted to achieve this effect, achieves the desired outcome or if amendments might need to be made to it once the Public Service Pensions Bill become available.

6: Survivor Pensions

The intention of the draft regulations is to cover every event which can have differential effects on the amount of pension a member would receive in his or her own right, and ensuring that the correct impact on any survivor pension is carried through. Can consultees please identify anything which is missing or where the provision as drafted does not lead to the correct result?

7: Employer Contributions

Provision for the payment of employers' contributions and associated matters relating to the valuation process will be dealt later in the draft Governance and Administration Regulations 2013, but for the purposes of these draft regulations, consultees are invited to identify any specific provisions where scheme employers would be required to make a specific payment resulting from provisions within the draft regulations, over and above the normal rate of contribution.

8: Certificates of Protection

Views are invited on whether the 2013 Regulations should provide for Certificates of Protection (COP) or whether there are any drawbacks in doing so. Possible areas where they may be used, as alternatives to relying on APP provisions, are as follows:-

- A COP could provide for the recalculation of the pensionable pay used in the pension built up since the issue of the COP should the member retire whilst the certificate is active

- COP's could be issued where members have a material reduction in contractual pay imposed by the employer. These certificates could be active for 10 years
- COPs should be issued where the member suffers a reduction in hours due to certified ill health. The COP will be active for the period specified by the IRMP
- In the case of COPs issued on health grounds, should the retirement also be on health grounds for the certificate to have any validity?

9: Interest

Where the draft regulations refer to the payment of interest, we have adopted rates used in earlier Scheme regulations of base rate plus 1%. Comments are invited on whether the proposed rate remains appropriate for the new Scheme.

10: Pension Account adjustments

The draft regulations make specific references to circumstances where adjustments should be made to the various pension accounts. Your comments are invited on the suggestion that a generic power to adjust in other, non-specified, circumstances, when it is considered reasonable to do so, might be helpful.

In particular, comments are invited on whether a provision should be introduced dealing with the mechanics of retrospectively opening a pension account (of a tier 3 ill health retiree) and amending it to take account of the tier uplift.

11: AVCs

The AVC provisions in the draft regulations at Annex B are significantly different from those on which we consulted on in December. This follows an initial meeting with one of the main AVC providers in the LGPS. Further refinements were discussed at a second meeting but it has not been possible in the time available to reflect any proposed changes in this consultation. A number of the proposed changes are either technical or clarificatory including:-

- Whether "arrangement" would be a better way of describing the relationship between an administering authority and their AVC provider rather than "contract". It is also possible that the use of the word "scheme" could be taken by HMRC to indicate that the AVC arrangement was a separate scheme within the main scheme and thus only allowing 25% of the AVC pot to be taken as tax free cash. To avoid both issues, comments are invited on whether it would be more appropriate to replace the opening lines of draft regulation 17(2) to read "The arrangements mentioned in paragraph (1) must be established under an arrangement..."
- Whether draft regulation 18(1)(c) (Rights to return of contributions), should be amended to commence with the words "The realisable value of", and
- Whether AVC's transferred from the LGPS in Scotland or Northern Ireland should be transferred into the AVC pot, or transferred into the member's active account.

There are also several policy changes that have been proposed on which consultees views are invited. It is proposed that:

- the new AVC provisions should ensure as far as possible that the link between AVC pots and main scheme benefits should be strengthened to minimise the administrative burden of managing orphan AVC pots;
- where a member is paying AVCs for life assurance and pensionable pay in a pay period (net of any deductions made by the employing authority) that is less than the additional voluntary contribution due, the member may pay the contribution due by way of a payment direct to the AVC provider or to the employing authority for onward transmission to that provider in order to ensure that the life assurance cover continues;
- the 50% limit on AVC contributions is removed as it is difficult to see how such a limit would operate in the 2014 Scheme, given that many AVC payments are currently expressed as a flat sum (rather than a percentage) and pensionable pay may vary from pay period to pay period (due to excess hours and overtime being pensionable);
- In the event of the death of the member with an AVC contract, the 2013 regulations should make it clear that the appropriate administering authority shall, at its absolute discretion, decide that any life assurance sum due, and the realisable value in any AVC arrangement, should be paid to, or for the benefit of, the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member. This means the sum would be payable in the same way as the main LGPS death grant i.e. it would be for the administering authority to determine, at their discretion, to whom the sum should be payable. The administering authority could choose to instruct the AVC provider to pay the sum to whomever the administering authority has decided it should be paid to or ask for it to be paid to the administering authority so they can then pay it to the relevant beneficiary. This approach would leave it open for each administering authority to organise the matter as they see fit, having regard to the processes and procedures of their AVC provider.

12: Pensions Increase

The draft at Annex A includes no corresponding provision of Regulation 38 of the LGPS (Benefits, Membership and Contributions) Regulations 2008 regarding the payment of pension increase under the Pensions (Increase) Acts. It has been suggested that the Acts themselves give the necessary authority for pension increases to be paid and that provision need not be repeated in the new scheme regulations. There are also technical provisions in Regulation 38 regarding the position of Water Act companies. Comments are therefore invited on what needs to be carried forward into the new Scheme regulations.

13: Schedule 1 definitions

The terms that were listed at Schedule 1 of the draft regulations issued for consultation in December are now populated with definitions. Consultees are asked to pay particular attention to the changes and additions that have been made when responding to the consultation. In particular, consultees are invited to comment on

the question raised in part 2 of Chapter 2 in relation to draft Regulation 36(4) about the terms used in the ill-health retirement provisions.

Consultees are also invited to notify the Department of any additional definitions that they consider may be either necessary or helpful to the effective management and administration of the new scheme. In particular, views are invited on whether in the main body of the regulations, the correct terms are used to describe the pension being referred to, for example, in Regulation 33 about commutation, the term “retirement pension” is used without being defined in Schedule 1. Are consultees satisfied that where a term is used to describe the benefits that each category of member might receive, or what they can do with them, that the correct term is used. Would there also be merit in defining such terms as “retirement pension” or “survivor pension” and, if so, what should those definitions be?

Part B – Draft Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013

14: Councillors’ Pensions

For the purposes of this consultation exercise, the provisions on councillors’ pensions has been retained, but this is only maintained pending any decision made following that forthcoming separate consultation.

15: Special Cases

There are numerous references in the 2008 Scheme to particular bodies which may or may not continue to be relevant. For example:-

- Employees of Rent Service Agency (Regulation 130A, B and C of the 1997 Regulations, and
- Learning and Skills Council for England employees; City of London, Local Government Reorganisation; Manchester Corporation; Teachers; Environment Agency closed fund, Metropolitan Civil Staff Superannuation and Meat Hygiene Service (Regulations 132 to 142 and 144 to 145 and Schedules 6, 7 and 8 of the 1997 Regulations).

Comments are invited on the extent to which the bodies themselves, or any particular protection already afforded to them, needs to be maintained and carried forward into the 2014 Scheme.

16: Regulation 23 of the 1997 Transitional Provisions Regulations

Regulation 23 of the 1997 Transitional Provisions Regulations, which covered former NHS staff transferring in the main to the Education sector, was not carried forward in the 2008 Transitional Provisions Regulations. Views are invited on whether this needs to be re-instated in the 2013 Regulations. In particular, are consultees able to confirm whether there are any persons who were previously covered by the protection in that regulation who lost it when the 2008 Transitional Provisions Regulations revoked it or what steps have been taken to provide alternative means of protection?

17: Survivor benefits

Consultees are invited to comment on a situation which appears to have developed as a consequence of Regulation 42A of the 1997 Transitional Provisions Regulations not being carried forward into the 2008 Scheme. This results in the benefits payable to a post-retirement civil partner being based on all membership and so place them, potentially, in a better position than the spouse of a post-retirement marriage. We are in discussions with HM Treasury about this matter, but in the meantime, Ministers would welcome any views you might have on our interpretation of these provisions and, if corrective action is thought to be necessary, how that might be achieved.

Part C - Governance and Administration Regulations

Later in the year, we will be coming forward with a set of draft Governance and Administration Regulations for statutory consultation. This will comprise two main elements. Firstly, those provisions of the 2008 Scheme that were not included in either this or December's consultation including:-

- Pension funds and employers' payments
- Determination of questions and disputes (inc IDRPs)
- Policy statements and information
- Special adjustments:-
 - Abatement
 - Forfeiture
 - Misconduct obligation

And secondly, those provisions of the Public Service Pensions Act that we will need to incorporate into the 2013 Scheme Regulations after HM Treasury has made the necessary commencement orders. The main areas we will need to address include:-

- Governance - (Scheme Advisory Board and local Pension Boards)
- Revaluation - (linked to Treasury orders)
- Exceptions to allow, in some cases, membership to be accrued in the existing Scheme after 1 April 2014
- Cost cap
- Independent review of valuation reports
- Information about schemes.

STATUTORY INSTRUMENTS

2013 No.

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	1st April 2014

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of, and Schedule 3 to, the Superannuation Act 1972(1).

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

The Secretary of State makes the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2013.

(2) These Regulations extend to England and Wales.

(3) These Regulations come into force on 1st April 2014.

(4) In these Regulations, where an expression is used in relation to provisions in the 1995, 1997, Benefits, Administration, 2008 Scheme Transitional, or 2013 Regulations, those expressions are to be construed in accordance with the meaning given to those expressions in the provisions referred to, unless the context indicates otherwise.

(5) In these Regulations—

“the 1995 Regulations” means the Local Government Pension Scheme Regulations 1995(2);

“the 1995 Scheme” means the occupational pension scheme constituted by the 1995 Regulations;

“the 1997 Regulations” means the Local Government Pension Scheme Regulations 1997(3);

(1) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

(2) S.I. 1995/2953; these regulations are varied by and applied by virtue of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 (S.I. 1997/1613).

“the 1997 Scheme” means the occupational pension scheme constituted by the 1997 Regulations;

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(4);

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008(5);

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

“the 2008 Scheme” means the occupational pension scheme constituted by the Administration Regulations, the Benefits Regulations and the 2008 Scheme Transitional Regulations;

“the 2013 Regulations” means the Local Government Pension Scheme Regulations 2013(6);

“the 2014 Scheme” means the occupational pension scheme constituted by these Regulations and the 2013 Regulations;

“the Earlier Schemes” means the 1995, the 1997 and the 2008 Schemes collectively;

“Protected Final Pensionable Pay” has the meaning given in regulation 25(3) of these Regulations;

“public service pension scheme” has the same meaning as in section 1 of the Pensions Scheme Act 1993(7).

Revocation of Regulations

2.—(1) Except where these Regulations provide otherwise, the Regulations listed in Schedule 1 are revoked.

(2) Accordingly, no person may become a member of the 2008 Scheme after 31st March 2014 or accrue benefits under the 2008 Scheme in respect of any service after that date.

Membership before 1st April 2014

3.—(1) Notwithstanding the revocations effected by regulation 2 of these Regulations, the regulations listed in Schedule 1 continue to have effect so far as is necessary—

- (a) so that membership accrued in the 1997 and 2008 Schemes in respect of service before 1st April 2014, the pension rights accrued at that date, and any rights and obligations imposed on any person under those Schemes in relation to service before 1st April 2014, are preserved; and
- (b) so that benefits are payable in accordance with these Regulations.

(2) In paragraph (1)(a) the expression “pension rights accrued” includes any right to any pension, lump sum, grant or other benefit due to or in respect of a member.

(3) Where a person has been an active member of the 2014 Scheme, retirement pension payable to a member as a consequence of paragraph (1) is payable in accordance with regulation 11 (retirement benefits).

(4) But retirement pension payable to a member under paragraph (3) is subject to actuarial adjustment if it would have been subject to actuarial adjustment under the 2008 Scheme, irrespective of whether retirement pension under the 2014 Scheme payable at the same time is subject to actuarial adjustment.

(5) Where a person has not been an active member of the 2014 Scheme, benefits payable as a consequence of paragraph (1) are payable in accordance with the 2008 Scheme as applied by this regulation.

(6) Any pensionable pay received or contribution paid by a member after 1st April 2014 which relates to work carried out before that date shall be dealt with in accordance with the 2008 Scheme.

(3) S.I. 1997/1612; these regulations are varied and applied by virtue of the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (S.I. 2008/238).

(4) S.I. 2007/1166.

(5) SI 2008/239.

(6) S.I. 2013/

(7) 1993 c. 48; section 1 has amendments which are not relevant to this instrument.

(7) An increase in membership may be awarded to a member under regulation 12(4) of the Benefits Regulations (power of employing authority to increase total membership of active members) after 1st April 2014 if the member's relevant date for the purposes of that regulation is before 1st April 2014.

(8) Where an employing authority grants an increase in membership under regulation 12A (duty of employing authority to increase total membership: enhanced protection) of the Benefits Regulations⁽⁸⁾ following a notice served by a member before 6th April 2009, that increase shall be an increase in membership of the 2008 Scheme notwithstanding the fact that the grant may occur after 31st March 2014.

(9) A member's final pay for the purposes of regulations 8 to 11 of the Benefits Regulations as applied by this regulation, is the pensionable pay calculated in accordance with regulation 25 (calculation of final pay) of these Regulations.

Statutory underpin

4.—(1) This regulation applies to a person who—

- (a) was an active member of the 2008 Scheme on 31st March 2012 who was 10 years or less from the normal retirement age applicable to that member under the 2008 Scheme on 1st April 2012;
- (b) who receives payment of benefits under the 2014 Scheme on or after the normal retirement age applicable to that member under the 2008 Scheme;
- (c) who does not have a disqualifying break in service.

(2) The date on which the person receives benefits under paragraph (1)(b), or, if earlier, the normal retirement age applicable to that member under the 2008 Scheme, is the underpin date for the purposes of this regulation.

(3) A disqualifying break in service for the purposes of paragraph 1(c) is a break of more than 5 years in membership of a public service pension scheme.

(4) The benefits that are payable under the 2014 Scheme to a person to whom this regulation applies, are increased by the amount by which the underpin amount exceeds the assumed benefits on the underpin date.

(5) The assumed benefits are calculated by assessing the benefits the member would have been entitled to under the 2014 Scheme if—

- (a) the member had paid contributions under regulation 9 of the 2013 Regulations (contributions) from 1st April 2014 to the underpin date;
- (b) the member had paid no additional contributions under regulations 16 (additional regular contributions) or 17 (additional voluntary contributions) of the 2013 Regulations during that period;
- (c) the member had not been awarded additional annual pension under regulation 31 of the 2013 Regulations (award of additional pension) during that period;
- (d) the member had received no transfer value payment in respect of rights accrued under a registered pension scheme or a European pensions institution;
- (e) the revaluation adjustment made to the member's account had been made up to and including the end of the scheme year prior to the member attaining the normal retirement age applicable to that member under the 2008 Scheme.

(6) The underpin amount is calculated by assessing the benefits the member would have been entitled to under the 2008 Scheme if—

- (a) the member had continued to accrue membership under the 2008 Scheme rather than benefits in the 2014 Scheme from 1st April 2014 to the underpin date;
- (b) the period of membership taken into account were the period specified in regulation 6(a) of the Benefits Regulations (period for which a member has paid, or is treated as having paid contributions); and

⁽⁸⁾ Regulation 12A was inserted by S.I. 2009/3150.

- (c) the final pay for the purposes of regulations 8 to 11 of the Benefits Regulations were the Protected Final Pensionable Pay calculated in accordance with regulation 25 (calculation of final pay) of these Regulations as at the underpin date.

Membership of the 2014 Scheme

5.—(1) A person who is an active member of the 2008 Scheme immediately before 1st April 2014 becomes an active member of the 2014 Scheme on 1st April 2014 and that person's benefits under the 2014 Scheme are aggregated with any entitlement to benefits from the active membership at 31st March 2014 under the 1997 or 2008 Schemes.

(2) Notwithstanding regulation 3(3) of the 2013 Regulations (active membership), a person who is eligible to be an active member of the 2008 Scheme immediately before 1st April 2014 who is not a member of the 2008 Scheme, does not become a member of the 2014 Scheme on 1st April 2014 unless that date is the automatic enrolment date for that member.

(3) Paragraph (1) does not apply to a person who ceases to be an active member on 31st March 2014 by virtue of regulation 14 of the Administration Regulations (ending of membership) and these Regulations apply to any such person as if that person is not an active member immediately before 1st April 2014.

(4) If any person has notified an employer under regulation 14(2) of the Administration Regulations before 1st April 2014 of a wish to leave the 2008 Scheme, but would not (apart from this paragraph) have ceased to be an active member immediately before 1st April 2014—

- (a) paragraph (1) does not apply to that person;
- (b) the person's active membership ceases on 31st March 2014; and
- (c) these Regulations apply to that person as if that person is not an active member immediately before 1st April 2014.

(5) A designation by an authority of an employee or class of employees as being eligible for membership of the 2008 Scheme pursuant to regulations 4, 7, 8, 8B or 12 of the Administration Regulations has effect as designation as being eligible for membership of the 2014 Scheme.

Admission agreements

6.—(1) Any admission agreement entered into before 1st April 2014 continues to have effect after 1st April 2014 and employees of admission bodies designated in accordance with an admission agreement as eligible for membership of the Local Government Pension Scheme are, subject to regulation 5(2) of these Regulations, members of the scheme by virtue of the agreement.

(2) Regulation 8B of the Administration Regulations (eligibility for membership: employees of Newcastle International Airport Limited) continues to have effect notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations).

Qualifying service for the 2014 Scheme

7.—(1) Any period as an active member in the 1997 and 2008 Schemes counts as qualifying service in the 2014 Scheme for the purposes of Regulation 3(7)(a) and (c) of the 2013 Regulations (active membership).

(2) Any transfer value payment accepted into the 1997 or 2008 Schemes counts as a transfer value payment into the 2014 Scheme for the purposes of regulation 3(7)(b), (d) and (e) of the 2013 Regulations.

(3) A member of the 2014 Scheme who has a deferred benefit under the Earlier Schemes is treated as having qualifying service for a period of 2 years for the purposes of regulation 3(7) of the 2013 Regulations, but if that deferred benefit—

- (a) is for less than 2 year's membership; and
- (b) is aggregated with any 2014 Scheme benefits,

and the aggregate of that membership and the service in the 2014 Scheme is less than 2 years, the member may elect instead of having a deferred benefit under the 2014 Scheme, to have regulation 18 of the 2013

Regulations (rights to return of contributions) deemed to apply to the contributions and accordingly to receive a refund of those contributions where the conditions for such a refund are satisfied.

(4) A person to whom regulation 5(1) of these Regulations applies (membership of the 2014 Scheme), and who has at least 3 months qualifying service in the 2014 Scheme (which expression includes for this purpose any of the period of active membership in the Earlier Schemes if aggregated with membership of the 2014 Scheme), who ceases to be an active member of the 2014 Scheme before achieving two years qualifying service in that Scheme may elect—

- (a) to receive a refund under regulation 18 of the 2013 Regulations (rights to return of contributions) of the contributions paid both into the Earlier Schemes and the 2014 Scheme (where the period in respect of which contributions to the Earlier Schemes were paid has been aggregated with membership of the 2014 Scheme);
- (b) to be a deferred member of the 2014 Scheme notwithstanding regulation 6(1) of the 2013 Regulations (deferred and deferred pensioner members); or
- (c) if the member has reached the age of 65, to draw retirement pension immediately, notwithstanding regulation 6(1) of the 2013 Regulations.

(5) An election under paragraph (3) or (4) must be made in writing to the member's administering authority within the period of 1 year beginning with the date on which the active membership ceased and in default of any election being made the member shall—

- (a) in the case of a member satisfying the conditions in paragraph (3), be awarded a deferred benefit under the 2014 Scheme;
- (b) in the case of a member satisfying the conditions in paragraph (4), be awarded a deferred benefit in the 2014 Scheme, or an immediate pension, as appropriate.

Pensionable pay

8.—(1) For the purposes of regulation 20(1) of the 2013 Regulations (meaning of pensionable pay) no account is taken of—

- (a) any supplement paid—
 - (i) by the Environment Agency or the Natural Resources Body for Wales; or
 - (ii) to an employee whose employment transferred on 1st April 2010 from the Learning and Skills Council for England to a local authority or to London Councils Limited,in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the 2008 or 2014 Schemes; or
- (b) in the case of an employee or former employee of the Commission for New Towns, any payment made under any scheme relating to the termination of the employment of employees by the Commission in respect of the completion before a specified date of specified functions,

(2) Notwithstanding regulation 20(2)(f) of the 2013 Regulations (meaning of pensionable pay: exclusions), a member's pensionable pay for the purposes of regulation 20(1) of those Regulations, includes an amount in respect of an amount treated as the money value to the member of the provision of a motor vehicle or an amount paid in lieu of such provision, if the condition specified in regulation 13(8) of the 1997 Regulations (meaning of "pay": money value of provision of motor vehicle) is satisfied in relation to the member, unless the condition specified in regulation 13(9) of those Regulations is satisfied in relation to the member.

(3) For the purposes of calculating assumed pensionable pay under regulation 21 of the 2013 Regulations (assumed pensionable pay), if the periods referred to in paragraph (6) of that regulation fall before 1st April 2014, the calculation may be based on the earnings a member received before 1st April 2014 as if any remuneration received during that period fell to be assessed as pensionable pay under the 2013 Regulations.

Transfer payments

9.—(1) Where a transfer payment is to be made to a registered pension scheme or qualifying recognised overseas pension scheme in respect of a member of the 2014 Scheme, that transfer payment shall include

any benefits accrued by that member under the 1997 and 2008 Schemes that are aggregated with the service under the 2014 Scheme.

(2) Where a transfer payment is received from a registered pension scheme or a European Pensions Institution in respect of a member of the 2014 Scheme, if the relevant date was before 1st April 2014, that transfer payment shall be dealt by the appropriate administering authority as if it had been received in respect of membership of the 2008 Scheme.

(3) The relevant date for the purposes of paragraph (2) is the date on which the member made an election to the administering authority for the transfer payment to proceed.

Interfund adjustments etc

10.—(1) Paragraph (2) applies to a member with deferred benefits relating to the 1997 or 2008 Schemes in a fund who—

- (a) became an active member of the 2014 Scheme by virtue of regulation 5(1) of these Regulations,
- (b) subsequently became a deferred member of the 2014 Scheme,
- (c) becomes an active member in a different fund with a break in membership of any public service pension scheme of less than 5 years, and
- (d) elects to aggregate those deferred benefits with the benefits accruing under the 2014 Scheme.

(2) A member falling within the description in paragraph (1) is entitled, notwithstanding the revocations effected by regulation 2—

- (a) to have the pension rights accrued in respect of service before 1st April 2014 preserved by regulation 3, with final salary calculated according to regulation 25 of these Regulations; and
- (b) to have a payment made by the first administering authority to the subsequent administering authority in respect of those pension rights, calculated in accordance with actuarial guidance issued by the Secretary of State.

(3) Paragraph (4) applies to a member with deferred benefits relating to the 1997 or 2008 Schemes in a fund who—

- (a) became an active member of the 2014 Scheme by virtue of regulation 5(1) of these Regulations,
- (b) subsequently became a deferred member of the 2014 Scheme,
- (c) becomes an active member in a different fund with a break in membership of any public service pension scheme of 5 years or more, and
- (d) elects to aggregate those deferred benefits with the benefits accruing under the 2014 Scheme.

(4) A member falling within the description in paragraph (3) is entitled to a cash equivalent value payment in relation to the deferred benefits to be paid by the first administering authority to the subsequent administering authority and credited to the member's active member account to purchase additional pension calculated in accordance with actuarial guidance issued by the Secretary of State.

(5) A member entitled to a refund of contributions from the Earlier Schemes, who becomes an active member of the 2014 Scheme in a different fund, is entitled to a cash equivalent value payment in relation to the benefits in respect of that membership, which is to be credited to the member's active member account to purchase additional pension calculated in accordance with actuarial guidance issued by the Secretary of State.

(6) A member with deferred benefits relating to the Earlier Schemes, who does not become a member of the 2014 Scheme on 1st April 2014 but who subsequently becomes an active member of the 2014 Scheme in a different fund, may elect to receive a cash equivalent value payment in relation to the deferred benefits to be credited to the member's active member account to purchase additional pension calculated in accordance with actuarial guidance issued by the Secretary of State.

(7) In this regulation—

“the first administering authority” means the appropriate administering authority at the time when the member accrued the membership which gives rise to the deferred benefits; and

“the subsequent administering authority” means the appropriate administering authority at the time the member elects to aggregate benefits under the 2014 Scheme with benefits from the Earlier Schemes.

Retirement benefits

11.—(1) A member to whom regulation 5(1) of these Regulations (membership of the 2014 Scheme) applies must, upon drawing a retirement pension under regulation 30(1), (2), (3) or (5) of the 2013 Regulations (retirement pension), draw any aggregated benefits accrued in the 1997 Scheme and 2008 Scheme at the same time as those benefits accrued under the 2014 Scheme are drawn.

(2) A member to whom regulation 5(1) of these Regulations applies must, if exercising the option in regulation 30(4) of the 2013 Regulations (flexible retirement), make a request to receive the benefits mentioned in paragraph (3) and such benefits may, with the member's employer's consent be paid to the member notwithstanding that the member has not retired.

(3) The benefits referred to in paragraph (2) are—

- (a) all of the aggregated benefits from the 1997 Scheme,
- (b) all, part or none of the aggregated benefits accrued under the 2008 Scheme,
- (c) all, part or none of the aggregated benefits accrued under the 2014 Scheme, and
- (d) any additional benefits in accordance with actuarial guidance issued by the Secretary of State.

Ill-health retirement

12.—(1) A member who qualifies for Tier 1 or Tier 2 benefits under the 2013 Regulations who would have benefited from the protection in regulation 20(13) of the Benefits Regulations (transitional protection for those aged 45 before 1st April 2008) if those Regulations had applied on the date the member's employment was terminated, is entitled to benefits equalling the higher of—

- (a) the Tier 1 or Tier 2 benefits, as the case may be, calculated under the 2013 Regulations and these Regulations, or
- (b) the benefits the member would have received under paragraph (a) if the amount to be added under regulation 39(1) or (2) of the 2013 Regulations (calculation of ill-health pension amounts) were calculated by reference to the period that would have been added had regulation 28 of the 1997 Regulations (amounts of ill-health pension and grant) applied and if—
 - (i) the period of membership the member had accrued under the 2008 Scheme and the 2014 Scheme had counted as a period of membership of the 1997 Scheme; and
 - (ii) the member's final pay for the purposes of the calculation of benefits under regulation 28 of the 1997 Regulations was calculated in accordance with regulation 25 of these Regulations (calculation of final pay).

(2) The 2013 Regulations shall apply to a person in respect of whom benefits are paid under regulation 20(2) of the Benefits Regulations (early leavers: ill-health) as if that person were in receipt of Tier 1 Benefits under the 2013 Regulations.

(3) The 2013 Regulations shall apply to a person in respect of whom benefits are paid under regulation 20(3) of the Benefits Regulations as if that person were in receipt of Tier 2 Benefits under the 2013 Regulations.

(4) The 2013 Regulations shall apply to a person in respect of whom benefits are, or have been paid under regulation 20(4) of the Benefits Regulations as if that person were, or had been in receipt of Tier 3 Benefits under the 2013 Regulations.

(5) A certificate produced by an IRMP under the 2008 Scheme may be used for the purposes of making determinations under the 2014 Scheme.

Lump sum commutation

13. Where a member elects to commute pension under regulation 33 of the 2013 Regulations (election for lump sum instead of pension), the member's benefits under the 1997 and 2008 Schemes which are aggregated with the member's benefits under the 2014 Scheme are taken into account for the purposes of regulation 33(1) and any lump sum received in respect of those benefits under the 1997 Scheme or the 2008 Scheme are taken into account for the purposes of regulation 33(2) of the 2013 Regulations.

Contributions

14.—(1) Notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations), the Administration Regulations and the Benefits Regulations continue to have effect so far as is necessary to ensure that where—

- (a) a member has a period of absence from work which begins before 1st April 2014 and ends after that date, the period falling before 1st April 2014 is to be dealt with in accordance with those Regulations and the period falling after 31st March 2014 is to be dealt with in accordance with the 2013 Regulations; and
- (b) a member receives pensionable pay after 31st March 2014 which relates to a period prior to 1st April 2014, the member's contributions are payable on the pensionable pay as defined in regulation 4 of the Benefits Regulations, and

any contributions that the member makes after 1st April 2014 in respect of the absence or that pay must be allocated according to the period to which they relate and benefits are accrued accordingly.

(2) A member entitled to a refund of contributions under regulation 18 of the 2013 Regulations (rights to return of contributions) who has paid contributions under the Earlier Schemes and has aggregated the periods in which those contributions were paid with membership of the 2014 Scheme, is entitled to a refund of the contributions paid to the Earlier Schemes at the same time.

Additional contributions

15.—(1) A member's ARC payment period under regulation 23 (payment of additional regular contributions (ARCs)), and ASB payment period under regulation 24A (payment of additional contributions: survivor benefits (ASBCs))(9), of the Administration Regulations, and an added years contract under regulation 55 of the 1997 Regulations (payments to increase total membership) terminates on 31st March 2014 and the increased pension payable to a member or survivor under the 2008 Scheme relating to an ARC, an ASB or an added years contract shall be recalculated to reflect the fact that the payment period terminated on that date.

(2) The recalculation required by paragraph (1) shall be carried out by the appropriate administering authority taking account of actuarial guidance issued by the Secretary of State.

(3) A person whose ARC or ASB payment period, or added years contract is terminated by virtue of paragraph (1) may enter into a MARC or MASARC contract under regulation 16 of the 2013 Regulations (additional regular contributions) from 1st April 2014 to the end of the payment period that would have applied but for paragraph (1), on the same actuarial assumptions as applied at, and using the member's age and gender at, the date the terminated ARC or ASB payment period commenced, or added year contract was taken out, and regulation 16(4) of the 2013 Regulations is modified accordingly.

(4) A contract under regulation 25 of the Administration Regulations (additional voluntary contributions and shared cost additional voluntary contributions) entered into before 1st April 2014 continues to have effect and the accumulated values under such a contract may be used in accordance with regulation 17 of the 2013 Regulations (additional voluntary contributions).

(5) Regulation 66(8) of the 1997 Regulations (elections as to use of accumulated value of AVCs prior to 13th November 2001) continues to have effect.

Annual allowance

16. If a member gives the administering authority notice of joint and several liability under section 237B of the Finance Act 2004(10) (liability of scheme administrator) in respect of the member's annual allowance charge after 1st April 2014, the administering authority may adjust the member's benefits accrued within the 1997 or 2008 Schemes in accordance with actuarial guidance issued by the Secretary of State.

(9) Regulation 24A was inserted by S.I. 2009/3150.

(10) 2004 c. 12. Section 237B was inserted by the Finance Act 2011 (c. 11).

Survivor benefits

17.—(1) Survivor pensions in the case of a survivor of a member to whom regulation 5(1) of these Regulations (membership of the 2014 Scheme) applies and who aggregated membership, are calculated by adding together the 2008 Scheme survivor pension and the 2014 Scheme survivor pension.

(2) Subject to paragraph (8), 2008 Scheme survivor pensions are calculated under the 2008 Scheme, notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations), taking account of the deceased member's membership up to 31st March 2014 but excluding any augmentation under regulation 20(2) of the Benefits Regulations (early leavers: ill-health) and using final pay calculated in accordance with regulation 25 of these Regulations (calculation of final pay).

(3) 2014 Scheme survivor pensions are calculated in accordance with the 2013 Regulations.

(4) Subject to paragraph (8), survivor pensions in the case of a survivor of a member who did not accrue any membership in the 2014 Scheme are calculated under the Earlier Schemes notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations).

(5) Subject to paragraph (8), death grants in the case of a member who did not accrue any membership of the 2014 Scheme are calculated under the Earlier Schemes notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations).

(6) Death grants in the case of an active member who accrued any membership of the 2014 Scheme are calculated under the 2014 Scheme regardless of whether the member had accrued any membership of the Earlier Schemes.

(7) Death grants in the case of a deferred or pensioner member to whom regulation 5(1) of these Regulations (membership of the 2014 Scheme) applies and who aggregated membership are calculated by adding together the death grant calculated under the 2008 and 1997 Schemes based on membership of those schemes accrued before 1st April 2014, and death grant calculated under the 2014 Scheme based on membership after 31st March 2014.

(8) For the purposes of calculating eligibility of a person to a pension under the 2008 Scheme the definition of "eligible child" contained in Schedule 1 to the 2013 Regulations (interpretation) replaces the definition contained in regulation 26 of the Benefits Regulations (meaning of "eligible child").

Interest

18. Where interest is due for late payment of any benefit under the 2014 Scheme and a member to whom regulation 5(1) of these Regulations (membership of the 2014 Scheme) applies and who has aggregated membership is entitled to a payment under the 1997 or 2008 Schemes at the same time, interest calculated in accordance with regulation 49 of the 2013 Regulations (interest on late payment of certain benefits) shall be payable on that payment also.

The 85 year rule

19. Schedule 2 (which makes transitional provision relating to the so-called "85 year rule") has effect.

Appropriate funds

20. The pension funds which are the appropriate funds for members of the 1997 Scheme or the 2008 Scheme who do not become members of the 2014 Scheme shall continue to be the appropriate funds for those members.

Application of abatement policy in individual cases

21. Notwithstanding the revocation of regulation 110 of the 1997 Regulations (application of abatement policy in individual cases), paragraph (5) of regulation 110 of the 1997 Regulations shall continue to apply to a person who was a member of the 1995 Scheme immediately before 1st April 1998.

Pension sharing

22.—(1) Valuations of benefits of a person who is a member of the 2014 Scheme shall, for the purposes of a Pension Sharing Order which has an effective date on or after 1st April 2014, take account of any benefits the member has accrued in the 1997 and 2008 Schemes.

(2) The beneficiary of an Order of the type described in paragraph (1) is not to be credited with any benefits under the 1997 or 2008 Schemes, but is entitled to a pension credit under the 2014 Scheme in compliance with the Pension Sharing Order and calculated in accordance with actuarial guidance issued by the Secretary of State.

(3) Where a Pension Sharing Order requires a pension debit in respect of a percentage of a member's pension benefits, any benefits accrued in the 1997 Scheme, 2008 Scheme or 2014 Scheme shall be debited by the same percentage unless the Order specifies otherwise.

(4) Where a Pension Sharing Order requires a pension debit in terms other than a percentage of a member's pension benefits, the debit is to apply in proportion to the cash equivalent transfer value of the benefits accrued within the 1997 Scheme, the 2008 Scheme and the 2014 Scheme unless the Order specifies otherwise.

Councillor pensions

23. Notwithstanding the revocation of the 2008 Transitional Regulations, the 1997 Regulations continue to have effect in respect of councillor members and their councillor membership as applied by regulation 137A(11) of those Regulations (members of local authorities – general), with the modifications set out in Schedule 8 to those Regulations (councillor members).

Mis-sold personal pensions

24. Regulations 108A (provision of information, charging and prescribed persons)(12) and 122A of the 1997 Regulations (credited periods for transferring members with mis-sold pension rights) are preserved so far as is necessary to ensure that administering authorities are under a duty to provide information requested to a prescribed person as to the restitution payment applicable to an individual but no membership may be granted under the 1997 Scheme or the 2008 Scheme in relation to a restitution payment.

Calculation of final pay

25.—(1) Notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations), unless a member's final pensionable pay is Protected Final Pensionable Pay, that member's final pensionable pay is calculated according to the regulations under which contributions relating to that pay were paid.

(2) A member's final pensionable pay is Protected Final Pensionable Pay, if that member—

- (a) was an active member of the 2008 Scheme on 31st March 2014,
- (b) has had no break in membership of any public service pension scheme of more than 5 years, and
- (c) has aggregated benefits accrued under the 2014 Scheme with benefits accrued under the 2008 Scheme.

(3) Protected Final Pensionable Pay is the higher of—

- (a) the pay the member was receiving at that member's normal retirement date, calculated in accordance with regulations 8 to 11 of the Benefits Regulations, as if the 2008 Scheme were still in force, or
- (b) the member's final pensionable pay calculated according to the regulations under which contributions relating to that pay were paid.

(11) Regulation 137A and Schedule 8 were inserted by S.I. 2003/1022.

(12) Regulations 108A and 122A were inserted by S.I. 1997/594 as amended by S.I. 1997/1613.

(4) Where a member has a certificate of protection of pension benefits issued under regulation 23 of the 1997 Regulations (permanent reductions in pay: certificates of protection of pension benefits), that certificate continues to have effect for the calculation of the member's final pay.

(5) Where a member's pensionable pay was reduced or restricted for the purposes of regulation 10 of the Benefits Regulations (final pay: reductions), or would have been considered to be reduced or restricted for those purposes if that regulation had continued to have effect, that regulation continues to have effect for the calculation of the member's final pay notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations).

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

Parliamentary Under Secretary of State
Department for Communities and Local Government

SCHEDULES

SCHEDULE 1

Regulation 2

The 1997 Regulations in so far as they are not already revoked;
The Benefits Regulations;
The Administration Regulations;
The 2008 Scheme Transitional Regulations.

SCHEDULE 2

Regulation 19

1. Where a member makes a request to receive immediate payment of retirement benefits under—
 - (a) regulations, 30(1) (choice of early payment of pension) or 30A (choice of payment of pension: pensioner member with deferred benefits)(**13**) of the Benefits Regulations,
 - (b) regulation 30(3) (retirement benefits: early retirement) of the 2013 Regulations if the member was aged 60 or over at the date of making the request, or
 - (c) regulation 30(4) (retirement benefits: flexible retirement) of the 2013 Regulations; and
 - (d) the member satisfies the 85 year rule,

that part of the member's retirement benefits which is calculated by reference to any period of membership before the relevant date shall not be reduced in accordance with regulations 30(4) or 30A(4) of the Benefits Regulations or regulation 30(3) or (4) of the 2013 Regulations.

2.—(1) For the purposes of paragraph 1, the relevant date for a member who will be aged 60 or more on 31st March 2016 and who was a member of the 1997 Scheme before 1st October 2006, is the earlier of—

- (a) 1st April 2016, and
- (b) the date on the day after the day on which the member leaves local government employment.

(2) For the purposes of paragraph 1, the relevant date for a member who will not be aged 60 or more on 31st March 2016, but who was a member of the 1997 Scheme before 1st October 2006, is 1st April 2008.

- 3.—(1) For the purposes of this Schedule, a member satisfies the 85 year rule if the sum of—

(13) Regulation 30A was inserted by S.I. 2010/2090.

- (a) the member's age in whole years on the date the request is made under paragraph 1(a);
- (b) the member's total membership in whole years;
- (c) in a case where the request is made after the member's local government employment ends, the period beginning with the end of that employment and ending with the date the request is made; and
- (d) in the case of a person who was a member of the 1995 Scheme immediately before 1st April 1998, any qualifying period counted by virtue of regulation 123 of the 1997 Regulations (rights as to service not matched by credited period) which was awarded before 1st April 2008,

is 85 years or more.

(2) In calculating the member's total membership—

- (a) active membership in the 2014 Scheme is treated in the same manner as membership of the Earlier Schemes, and
- (b) no account is to be taken of—
 - (i) any increase in membership awarded under regulations 12 (power of employing authority to increase total membership of active members) or 12B (conversion of periods under Discretionary Compensation Regulations etc into membership)(**14**) of the Benefits Regulations,
 - (ii) any membership credited after 1st October 2012 under regulation 84 (right to count credited period) of the Administration Regulations, or
 - (iii) any membership credited under regulation 40A (Water Act company pensions: Environment Agency payments)(**15**) of the Administration Regulations.

4.—(1) This paragraph applies to a member to whom regulation 4 of the 2008 Scheme Transitional Regulations (membership accrued before 1st April 2008: deferred members), regulation 16 of the Administration Regulations (re-employed and rejoining deferred members), or regulation 10(1) of these Regulations applies.

(2) Where such a member does not choose, or does not choose as respects all periods of membership, to be treated as if regulation 3 of the 2008 Scheme Transitional Regulations (membership accrued before 1st April 2008: active members) applies, or to have the member's membership aggregated under regulation 16 of the Administration Regulations, or under the 2013 Regulations, as the case may be, then in applying paragraph 2 of this Schedule as respects any later membership, the total membership excludes unaggregated periods.

5.—(1) This paragraph applies to a member who was a member of the 1997 Scheme before 1st October 2006 who—

- (a) before 1st October 2006 elected to make additional contributions to the Scheme to increase total membership under regulation 55(1) of the 1997 Regulations (payments to increase total membership); and
- (b) was assumed to retire from a local government employment on a date before the member's 65th birthday ("the assumed date") for the purposes of calculating additional contributions under regulation 55(6) of the 1997 Regulations.

(2) Where a member to whom this paragraph applies—

- (a) continues paying the additional contributions until the assumed date; and
- (b) retires on or after the assumed date,

the member shall not pay any additional contributions after that date and the whole of the additional period may be counted as part of the total membership.

(3) An additional period counted as a period of total membership as a result of this paragraph shall be treated as a period of membership before 1st April 2008.

6.—(1) This paragraph applies to a person who was a member before 1st October 2006 and who—

(14) Regulation 12B was inserted by S.I. 2009/3150.

(15) Regulation 40A was inserted by S.I. 2009/3150.

- (a) leaves local government employment and ceases to be a member of the 1997 Scheme, the 2008 Scheme or the 2014 Scheme (whether before, on, or after that date); and
- (b) resumes such employment before the relevant date for the purposes of paragraph 1.

(2) If a member to whom this paragraph applies aggregates any period of membership after the resumption of employment with the period of membership accrued in the previous local government employment, this Schedule applies to the whole period of the aggregated membership.

7.—(1) This paragraph applies to a member who was a member before 1st October 2006, who retires having reached the age of 60 on or after 1st April 2016 and before 1st April 2020, and whose retirement benefits would (but for the provisions of this paragraph) have been actuarially reduced on account of the age at which they were drawn.

(2) That part of the member's retirement benefits which is calculated by reference to any period of membership after 31st March 2008 shall be reduced in accordance with actuarial guidance issued by the Secretary of State.

STATUTORY INSTRUMENTS

2013 No. 0000

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Miscellaneous
Amendments) Regulations 2013

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(1).

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

The Secretary of State makes the following Regulations:

Citation, extent and commencement

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Miscellaneous Amendments) Regulations 2013.

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

(3) These Regulations shall come into force on *** but—

(a) regulation 3 shall have effect from 1st April 2013;

(b) the provisions inserted by regulation 5(1)(a) and (b)—

(i) relating to the deputy chair of the London Legacy Development Corporation shall have effect from 1st April 2012; and

(ii) relating to the Housing Ombudsman, shall have effect from 1st April 2013;

(1) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

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

- (c) regulation 7 shall have effect as follows—
- (i) the provision substituted has effect from 1st October 2012, but
 - (ii) the revocation of paragraphs (3A) to (3G) of regulation 38 of the Local Government Pension Scheme (Administration) Regulations 2008⁽³⁾, effected by the substitution of regulation 38, has effect from 1st April 2012.

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

2. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007⁽⁴⁾ are amended in accordance with regulation 3.

3. In regulation 39(1)(c) for “regulation 6 (payment after relevant accretion)” substitute “regulations 6 (payment after relevant accretion), 11 (de minimis rule for pension schemes) or 12 (payments by larger pension schemes)”.

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

4. The Local Government Pension Scheme (Administration Regulations) 2008 are amended in accordance with regulations 5 to 7.

5.—(1) In regulation 9 (eligibility in certain cases of persons who are not employees)—

- (a) in paragraph (1) omit the word “or” at the end of sub-paragraph (f) and after sub-paragraph (g) insert—

“(h) the Housing Ombudsman; or

- (i) a person appointed as chairman or deputy chairman of the London Legacy Development Corporation.”;

- (b) after paragraph (7A) insert—

“(7B) If the Housing Ombudsman is an active member, that Ombudsman must be treated as being in the employment of the Housing Ombudsman but any decision by the Ombudsman in the capacity of employing authority which affects the benefits to which the Ombudsman is or may be entitled, has effect only if confirmed in writing by the person who is chair of the Housing Ombudsman Service’s Audit and Risk Committee⁽⁵⁾.

(7C) If the chairman of the London Legacy Development Corporation is not the Mayor of London, and is an active member, that chairman must be treated as being in the employment of that Corporation.

(7D) If the deputy chairman of the London Legacy Development Corporation is an active member, that deputy chairman must be treated as being in the employment of that Corporation.

(7E) A person appointed as deputy chairman of the London Legacy Development Corporation may not be an active member if that person is a member of the Greater London Authority.”; and

- (c) in paragraph (8) at the end insert—

“Housing Ombudsman” means an individual appointed as housing ombudsman by the Secretary of State under Schedule 2 to the Housing Act 1996⁽⁶⁾;

“Housing Ombudsman Service” means a scheme for the investigation of complaints approved by the Secretary of State under that Act;

“London Legacy Development Corporation” means the body established under the London Legacy Development Corporation (Establishment) Order 2012⁽⁷⁾; and

(3) S.I. 2008/239, amended by S.I. 2008/1083, S.I. 2008/2425, S.I. 2008/2989, S.I. 2008/3245, S.I.2009/1025, S.I. 2009/3150, S.I. 2010/528, S.I. 2010/2090 and S.I. 2012/1989; paragraphs (3A) to (3G) of regulation 38 were inserted by S.I. 2008/2989.

(4) S.I. 2007/1166, amended by S.I. 2008/1083, S.I. 2008/2425, S.I. 2009/3150, S.I. 2010/528, S.I. 2010/2090, S.I. 2011/561 and S.I. 2012/1989.

(5) The Housing Ombudsman is required by the scheme approved by the Secretary of State under paragraph 3 of Schedule 2 to the Housing Act 1996 (c. 52) to appoint an Audit and Risk Committee to scrutinise the operation of the scheme.

(6) 1996 c. 52.

“deputy chairman of the London Legacy Development Corporation” means the person appointed in writing by the chairman of that corporation to hold the position of deputy chairman”.

6.—(1) For regulation 13(3) (joining the Scheme) substitute—

“(3) But a person who, in respect of an employment, has given notice to his or her employer before 1st October 2012—

- (a) before that person’s employment commenced, or before that person was designated as eligible to become a member of the Scheme, that he or she did not wish to become a member of the Scheme; or
- (b) under regulation 14 (ending of membership),

does not become a member of the Scheme by virtue of paragraph (1) or (2).”.

(2) For regulation 13(4) substitute—

“(4) A person who would, apart from this paragraph, be an active member of the Scheme by virtue of paragraph (1) or (2) who is employed under a contract of employment of less than 3 months does not become a member on the day specified in paragraph (1) or (2) but becomes an active member—

- (a) on the member’s automatic enrolment date, or
- (b) if the person applies to become a member.”.

(3) After regulation 13(5) insert—

“(5A) A person who is eligible to be an active member of the Scheme but who is not an active member, becomes a member of the Scheme in an employment on the automatic enrolment date or automatic re-enrolment date relating to that employment.”.

(4) After regulation 13(6) insert—

“(7) In this regulation—

“automatic enrolment date” means the automatic enrolment date applicable to the member’s employer within the meaning of section 3 of the Pensions Act 2008⁽⁸⁾, subject to sections 4 and 30 of that Act.

“automatic re-enrolment date” means the automatic re-enrolment date applicable to the member’s employer within the meaning of section 5 of the Pensions Act 2008⁽⁹⁾ and regulation 12 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010⁽¹⁰⁾.”.

7. For regulation 38 substitute—

“Special circumstances where revised actuarial valuations and certificates must be obtained

38.—(1) If a person—

- (a) ceases to be a Scheme employer,
- (b) ceases to be a body specified in regulation 8(1),
- (c) ceases to be an admission body participating in the Scheme, or
- (d) was an employing authority, but no longer has an active member contributing to a fund,

that person becomes “an exiting employer” for the purposes of this regulation.

(2) When a person becomes an exiting employer, the appropriate administering authority must obtain—

- (a) an actuarial valuation at the exit date of the liabilities of the fund in respect of benefits due to the exiting employer’s current and former employees; and
- (b) a revised rates and adjustment certificate showing the exit payment due from the exiting employer in respect of those benefits.

(7) S.I. 2012/310.

(8) 2008 c. 30; section 3 was substituted by the Pensions Act 2011.

(9) 2008 c. 30; section 5 was substituted by the Pensions Act 2011.

(10) S.I. 2010/772.

(3) Where for any reason it is not possible to obtain all or part of the exit payment due from the exiting employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the exiting employer, the administering authority must obtain a further revision of any rates and adjustment certificate for the fund showing—

- (a) in the case where a body is a transferee admission body within the meaning of regulation 6(2)(a) or (b), the revised contribution due from the body which is the related employer in relation to that admission body; and
- (b) in any other case, the revised contributions due from each employing authority which contributes to the fund,

with a view to providing that assets equivalent to the exit payment due from the exiting employer are provided to the fund over such period of time as the administering authority considers reasonable.

(4) Where in the opinion of an administering authority there are circumstances which make it likely that a Scheme employer or admission body will become an exiting employer, the administering authority may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary's opinion—

- (a) the contribution at the common rate should be adjusted; or
- (b) any prior individual adjustment should be increased or reduced,

with a view to providing that assets equivalent to the exit payment that will be due from the employing authority are provided to the fund by the exit date or, where the employing authority is unable to meet that liability by the exit date, over such period of time thereafter as the administering authority considers reasonable.

(5) When an exiting employer has paid an exit payment into a fund, no further payments are due from that authority in respect of any liabilities relating to the benefits due to any current or former employees of that employer as a result of these Regulations or the Benefits Regulations.

(6) Paragraph (6) applies where—

- (a) an administering authority agrees with an employing authority as mentioned in regulation 40(4) or (5); or
- (b) it appears likely to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with an employing authority exceeds the amount specified, or likely as a result of the assumptions stated for that authority, in a rates and adjustments certificate by virtue of regulation 36(8).

(7) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that employing authority.

(8) For the purposes of this regulation—

“exiting employer” means an employer of any of the descriptions specified in paragraph (1);

“exit payment” means the assets required to be paid over such period of time as the administering authority considers reasonable, to meet the liabilities specified in paragraph (2);

“exit date” means the date on which the employer becomes an exiting employer; and

“related employer” means any Scheme employer which is a party to the admission agreement.”.

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

Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England and Wales, amend the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (“the Benefits Regulations”) and the Local Government Pension Scheme (Administration) Regulations 2008 (“the Administration Regulations”).

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

Regulation 1 provides that the Regulations come into force on *** but makes provision for various provisions to have effect from different dates.

Regulation 3 adds to the categories of small payments authorised for commutation into lump sums.

Regulation 5 makes provision to permit the Housing Ombudsman, as a corporation sole, and the Chair and Deputy Chair of the London Legacy Development Corporation, to be eligible for membership.

Regulation 6 clarifies the provisions relating to membership of the Scheme following the introduction of the employer duties for automatic enrolment and re-enrolment. In particular, affected eligible members with a contract of less than three months will have no barrier to automatic entry to the scheme.

Regulation 7 recasts regulation 38 of the Administration Regulations to make it clear that all employers in the Local Government Pension Scheme are subject to this Regulation. It sets out the action to be taken when an employer ceases to participate in the LGPS or, in the opinion of the administering authority, participation is likely to cease at some point, so that any unmet liabilities are addressed at that point.

The effect of Regulation 7 is to also revoke the provisions in Regulation 38(3A) to (3G) of the Administration Regulations relating to the liabilities of the former Housing Corporation. These provisions are no longer required following the restructuring of the Homes and Communities Agency and the closure of the Tenant Services Authority.

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