



Department for
Communities and
Local Government

Local Government Pension Scheme 2014

Consultation

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The Consultation Process and How to Respond

Scope of the consultation

Topic of this consultation	Local Government Pension Scheme 2014 regulations.
Scope of this consultation	<p>This consultation seeks responses from interested parties, on draft regulations for the new Scheme to come into force in April 2014. The consultation is in two parts :-</p> <p>a) a set of more detailed set of draft regulations further to the earlier consultations commenced on 21 December 2012 and 28 March 2013. A copy of the previous consultations can be found at: https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/local-government-pensions</p> <p>b) a set of specific questions.</p>
Geographic scope	England and Wales.
Impact Assessment	To follow.

Basic Information

To	<p>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
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	<p>Town Clerk, City of London Corporation Clerk, South Yorkshire Passenger Transport Authority Clerk, West Midlands Passenger Transport Authority Fire and Rescue Authorities in England and Wales Police and Crime Commissioners National Probation Service for England and Wales Local Government Association (LGA) Local Government Pensions Committee</p> <p>Association of Local Authority Chief Executives Public Sector People Managers' Association Society of Local Authority Chief Executives Chartered Institute of Public Finance and Accountancy Association of Local Authority Medical Advisors Association of Colleges Association of Educational Psychologists</p> <p>Association of Consulting Actuaries Association of District Treasurers Society of County Treasurers Society of Welsh Treasurers Society of Metropolitan Treasurers Society of London Treasurers</p> <p>National Association of Pension Funds National Association of Local Councils Society of Local Council Clerks</p> <p>Trades Union Congress GMB UCATT UNISON Unite Prospect NAPO</p> <p>Equality and Human Rights Commission</p>
Body responsible for the consultation	The Secretary of State for Communities and Local Government is responsible for policy and the consultation exercise.
Duration	6 weeks.
Compliance with the consultation principles guidance	This consultation complies with the consultation principles guidance.

Background

<p>Getting to this stage</p>	<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>
<p>Previous engagement</p>	<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 statutory consultation.</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. On 28 March 2013, the Department issued a 2nd consultation with a more detailed set of draft regulations covering membership, contributions and benefits; draft transitional provisions and savings regulations; and draft miscellaneous regulations amending the Local Government Pension Scheme Regulations 2008.</p> <p>Responses to these consultations have been taken into account in this latest consultation exercise.</p>

How to respond

1. You should respond to this consultation by **2 August 2013**.
2. You can respond by email to Philip.perry@communities.gsi.gov.uk

When responding please ensure you have the words “LGPS 2014 Consultation” in the email subject line.

Alternately you can write to:

LGPS 2014 Consultation
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/series/local-government-pensions>.

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 third period of statutory consultation on the new Local Government Pension Scheme which will come into effect from 1 April 2014. Your comments are invited on the set of draft regulations at **Annex A** and the separate list of related questions included at **Annex B**.
- 1.2 **The closing date for responses on the draft regulations at Annex A and the related questions at Annex B is 2 August.**

Part A: Draft Local Government Pension Scheme Regulations 2013

- 1.3 This third period of consultation on the Local Government Pension Scheme 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 letters of 21 December and 27 March included a detailed summary of the background to the reform process.
- 1.4 The set of draft regulations attached at **Annex A** represents the next key stage in the development of the new Scheme's regulations. In addition to an updated set of draft regulations relating to membership, contributions and benefits (see Part 1 of the draft regulations at **Annex A**), the attached draft also includes a new Part 2 covering Scheme administration.
- 1.5 Responses to the second consultation exercise have been considered in preparing the attached set of draft regulations and in some cases, the representations made have been taken on board. However, in view of the significant and wide-ranging amendments proposed by the Local Government Association/Trade Unions Project Team and Board since the second consultation was launched in March, a significant number of those earlier comments are no longer relevant. Our intention therefore, is to consider both sets of representations at the end of this current exercise and decide their relevance.
- 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 look closely at Part 2 of the draft regulations on Scheme administration. In general terms, we have carried across

existing provisions from the current Scheme where these apply, but there are some material differences compared to the current Scheme in certain areas, for example, nomination for cohabiting partners. More details are given in **Chapter 2** below.

- 1.7 Your comments are also invited on **Annex B** which lists specific questions where further consideration is necessary.
- 1.8 In view of the target to make and lay these regulations in the Summer, Ministers have agreed to a consultation period of 6 weeks. Ministers consider this consultation period to be appropriate given the extensive consultation already carried out and the desirability of finalising the regulations containing the key elements of the new Scheme early enough for those affected to be able to take account of them.
- 1.9 Your comments should therefore be sent by 2 August (see the section on “**How to Respond**”).

Part B - Related proposals

Discussion paper on Scheme governance

- 1.10 The Public Service Pensions Act 2013^a includes several key provisions on Scheme governance that we will be required at some stage in the future to introduce into the new Scheme. In particular, we will need to introduce Scheme regulations to confer powers on each administering authority to establish local pension boards as required by Section 5 of the Act and to establish a national scheme advisory board as required by Section 7.
- 1.11 A discussion paper on scheme governance is being published separately. The paper explains these requirements in more detail and invites comment on a number of key questions that will help us to formulate draft regulations on governance for consultation later in the year. The separate paper can be found at: <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/local-government-pensions>
- 1.12 The discussion paper on Scheme governance closes on 30 August 2013.

Councillors' pensions

- 1.13 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 Scheme in

^a <http://www.legislation.gov.uk/ukpga/2013/25/contents/enacted>

England from 2014^a. A separate consultation paper on this issue was published on 10 April and set out a number of options on access and also covered contribution rates.

- 1.14 The consultation *Taxpayer funded pensions for councillors and other elected local office holders* closes on 5 July and can be found at: <https://www.gov.uk/government/consultations/taxpayer-funded-pensions-for-councillors-and-other-elected-local-office-holders>

Fair Deal

- 1.15 HM Treasury will be consulting with interested parties shortly on the possible application of Fair Deal for members of the Local Government Pension Scheme and Teachers' Pension Scheme employed in higher and further education. Once this exercise has reached a conclusion, we will issue a broader consultation covering the legal options for securing pensions protection for Scheme members. Until a new legal mechanism for pensions protection is in place, the current Pensions Direction made under the Local Government Act 2003 will remain in force. The Government will also consider whether employers should meet Scheme deficits at the point Scheme members are transferred from an organisation.

Cost control

- 1.16 Following constructive and helpful discussions with the Local Government Association 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. We now have agreement in principle from HM Treasury on how this process will work but discussions on the fine detail of the arrangement are ongoing. We will circulate a paper to interested parties once final agreement has been reached. The intention will then be to consult on draft regulations as part of the exercise on new governance provisions.

Transitional Regulations

- 1.17 The responses to the main elements of the new Transitional Regulations we consulted on in March will now be considered with the view of them being made and laid at the same time as the main regulations in September. In the meantime, we would wish to reassure people with some special circumstances, that any specific protection or alteration of how the main regulations affect a particular group for some historic reason will be taken into account in the Transitional Regulations. If anyone has any concerns about whether

^a <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121219/wmstext/121219m0001.htm>

the specific situation is being addressed in those regulations, can you please respond to this consultation identifying what needs to be done.

- 1.18 We are also mindful that the consultation in March excluded any transitional issues stemming from the Local Government Pension Scheme (Administration) Regulations 2008. If there are any specific situations that needs to be addressed, could you please identify them in your response to this consultation

Chapter 2

Proposals for Consultation

The Regulations are being made under the Superannuation Act 1972. Where applicable this summary compares the current draft with the one on which the Department consulted on 28 March 2013, as well as with the Local Government Pension Scheme Regulations currently in force.

Part 1 Membership, contributions and benefits

Preliminary Provisions

Regulation 1 is unchanged from the previous draft.

Regulation 2 in the previous draft would have obliged each administering authority to establish a pensions board. The relevant paragraph has been moved to 53(4). Otherwise Regulation 2 is unchanged.

Membership

Regulation 3 is unchanged, except that 3(7)(h) makes it clear that active membership ceases at age 75.

Regulation 4 is unchanged.

Regulation 5 includes some minor alterations from the previous draft.

Regulation 6 includes minor modifications for the sake of clarification, including one which makes it clear that, in order to be treated as a deferred member, qualifying service of at least two years need not have been accrued in one single employment.

Regulation 7 includes minor modifications, including one making it explicit that pension credit members may qualify for pension.

Regulation 8 is unchanged.

Contributions

Regulation 9 is substantively changed from earlier versions to the extent that sub-paragraphs (4) and (5) have been removed. The automatic cost of living uprating provided for in the current Scheme has been removed because of the impact it would have on the agreement with government that the target cost of the new Scheme for future service shall consist of member contributions set

by the statutory schedule and designed to yield 6.5% together with employer contributions of 13%. If, retained, there is a significant risk that cost of living uprating based on CPI would, from the outset, be out of step with pay growth trends.

To ensure that the yield from the tariff table can be maintained at the agreed 6.5%, the policy we intend to consult on shortly, is for the scheme advisory board to undertake a review at each triennial valuation and, if necessary, to report to the Secretary of State on whether any changes to the table are necessary to restore the average yield to 6.5%. Any proposed change to the table would of course be subject to the normal statutory consultation.

Regulation 10 has been re-worded so that 50-50 arrangements cease if a member goes on to nil payment as a result of absence caused by illness or injury.

Regulation 11 has been altered so as to stipulate that members on sick pay must continue to pay pension contributions. The Regulation makes it clear that during various types of absence, including trade disputes, pension continues to be accrued as normal.

Regulation 12 now consists of only two paragraphs, as (3) and (4) have been withdrawn. It is considered that the concept of “adjusted pay” represents an unnecessary complication and contributions during child-related leave are now dealt with through “assumed pensionable pay”.

Regulation 13 now has an additional sub-paragraph to deal with additional pension contributions.

Regulation 14 in the previous draft dealt with contributions during trade dispute absence. This is now dealt with in Regulation 11(4). The current form of Regulation 14 sets out the process for accruing pension during absence for illness.

Regulation 15 is a new Regulation dealing with the responsibilities of employers to pay contributions during various types of employee absences.

Regulation 16 has been altered from the previous draft, so that voluntary supplementary arrangements become known as “additional pension contributions”. It is now stated that members may fund these “APCs” by means of a lump sum. We have received representations to the effect that extremely few members have purchased survivor benefit and it is therefore proposed that the option for new purchases of this element be discontinued.

Q1. Is the Department right in saying that the take up of additional survivor benefits is extremely low?

Regulation 17 has been re-framed so as to give further details on the arrangements for Additional Voluntary Contributions (AVCs). There are new paragraphs specifically to deal with the arrangements for survivors’ payments and tax in relation to members who have paid AVCs.

Regulation 18 has been further modified. There is an additional paragraph (2) which provides for the refund of Shared Cost Additional Voluntary Contribution payments made by the Scheme employer and an additional paragraph (6) to provide for repayments to a person's estate in the event of that person's death.

Regulation 19 has been duly modified, paragraph (1)(e) in particular. The previous wording of paragraph (1)(e) has been withdrawn, because members to whom it applies would not have any benefit entitlement which they could forfeit. The new version of 1(e) makes it clear that the death of the member does not give rise to an entitlement to a refund. This is because the member's beneficiary will receive a payment of death grant.

Regulation 20 is substantively unchanged.

Regulation 21 on assumed pensionable pay (APP) has some modifications compared to the previous draft, making it clear that APP only applies to the relevant employment and during the duration of the circumstances concerned. The circumstances which give rise to the use of APP have been reduced to those relating to sickness / injury, child-related leave and reserve forces service leave. There is a new formula in paragraph (5) on the formula for calculating the annual rate of APP.

Pension accounts

This section of the Regulations details the new system of pension accounts which will ensure that each member accumulates pension on a career average basis.

Regulation 22 has two new paragraphs, (5) and (6), dealing with aggregation of benefits in cases of members with previous active membership.

Regulation 23 includes clarifications of the necessary processes for dealing with the operation of active member's accounts.

Regulation 24 is modified, with new paragraphs dealing with the end of active membership, index rate adjustments and deferred refund accounts.

Regulation 25 dealing with retirement pension accounts has additions to deal with the award of Tier 2 benefits and revaluation adjustments.

Regulation 26 has been further rearranged for clarity. The effect of additional voluntary contributions, index rate adjustment and the award of Tier 2 benefits are now taken into account.

Regulation 27 on flexible retirement accounts includes additional paragraphs on the process to be followed in starting flexible retirement accounts and, in particular, the effect of revaluation adjustment and index rate adjustment.

Regulation 28 has been expanded to make it clear that the balance in the deferred pensioner member's account is adjusted each year by the index rate adjustment. Additionally, the amount in the deferred pensioner member's account may be adjusted by amounts calculated in accordance with guidance as a result of a pension sharing order or to account for any tax to which the administering authority may become chargeable under the Finance Act 2004.

Regulation 29 on pension credit accounts has two additional paragraphs explaining adjustments by index rate adjustment and as a result of a pension sharing order.

Benefits

Regulation 30 has been modified for clarification, including additional paragraphs on concurrent employments and pension credit members.

Regulation 31 on additional pension no longer has paragraph (4), which obliged employing authorities to pay a sum into the appropriate fund to meet the cost of any additional pension granted. This obligation has been moved to Regulation 68(3). There is additional capacity to use additional pension to cover periods of absence.

Regulation 32's paragraph (9) has been amended to make it clear that payment of pension due to ill health to deferred pensioners will commence from the date of the determination of incapability. This is a change from the previous draft in consultation 2 which provided for pension to be paid from the date the person became incapable of work, which could be many years previously and lead to significant backdating and thus present a heavy cost to funds. Your views are sought as to whether the new wording is acceptable.

Regulation 33 has been altered to make it clear that pension purchased by means of Additional Voluntary Contribution cannot be commuted to a lump sum.

Regulation 34 is unchanged.

Ill-health retirement

Regulation 35's sub paragraph (1) includes a change of the words "employing authority" to "Scheme employer" in order to aid clarity and to simplify the range of definitions the Scheme has on these terms. See Schedule 1 for the definition of Scheme employer. Also in sub paragraph (1), the word "draw" has been changed to "take".

Sub paragraph 4 differs from earlier versions we have consulted on, to the extent that the qualifying condition of "reduced likelihood" used in the past, has now been changed to "not immediately capable of undertaking any gainful employment". The change has been made to address concerns that the provision in the current regulations and carried forward in the first two

consultations, is less than clear and leads to confusion when applying the subsequent qualifying conditions for a tier 1,2 or 3 ill health pension.

The rest of this draft regulation remains unchanged from consultation 2.

Regulation 36's sub paragraph (2) has the following additional words added at the start "Except in the circumstances specified in Regulation 37(11)...". Also, as elsewhere, the term "employing authority" has been changed to "Scheme employer".

Regulation 37 remains unchanged from consultation 2, apart from changing "employing authority" to "Scheme employer" and "authority" to "employer".

Regulation 38 remains unchanged from consultation 2, apart from changing "employing authority" to "Scheme employer".

Regulation 39's sub paragraph (2)(a) has been expanded to make it clear that any election to pay reduced contributions under Regulation 10 will have lapsed at the date of the termination of the member's employment. A new sub paragraph (9) has been included to deal with the Tier 3/Tier 2 pension account adjustment following a review under Regulation 37(5) or (10). At sub paragraph (10) the words "in part time service wholly or partly" have been replaced with "working reduced contractual hours" to reflect the fact that the enhancement of pension only applies to any reduction in contractual pay where the reduction in hours has been certified by an IRMP. **Q2. Should there be enhancement in this way given that there would be no equivalent protection for a member who remained in part time work rather than taking ill-health retirement?**

Survivor benefits

In the previous draft, the Regulations on the calculation of survivor benefit excluded member-only pension which may have been purchased, whilst including any survivor pension which may have been purchased. As noted in the entry for Regulation 16 above, it is now proposed that the option for purchasing new survivor pension be discontinued.

Regulation 40 is unchanged.

Regulation 41 on survivor benefits for partners of active members has been duly modified, in particular to include the effect of AVCs.

Regulation 42 on survivor benefits for children of active members has been duly modified, in particular to include the effect of any AVCs purchased but to exclude the effect of pension debit.

Regulation 43 on death grants in respect of deferred members and deferred pensioner members has an additional paragraph relating to pension credit members.

Regulation 44 on survivor benefits for partners of deferred and deferred pensioner members has been duly modified, in particular to include the effect of AVCs.

Regulation 45 on survivor benefits for children of deferred members has been duly modified, in particular to include the effect of any AVCs purchased.

Regulation 46 on death grants in respect of pensioner members has a simplified paragraph (3) on the calculation of the grant.

Regulation 47 on survivor benefits for partners of pensioner members has been duly modified, in particular taking into account the effect of transferred-in benefit and AVCs, but excluding the effect of any commutation to a lump sum.

Regulation 48 on survivor benefits for children of pensioner members has been duly modified, in particular to include the effect of any AVCs purchased, but to exclude the effect of commutation to a lump sum.

Adjustment of benefits

Regulation 49 is the equivalent of Regulation 54 in the previous draft. The wording is unchanged.

Regulation 50 is the equivalent of Regulation 55 in the previous draft. The wording is unchanged.

Regulation 51 on Guaranteed Minimum Pensions continues with the effect of Regulation 50A of the Administration Regulations 2008, the wording of which is substantively the same. **Q3. Comments are requested as to whether this Regulation should be retained or if it would be sufficient to rely on the overriding legislation.**

Regulation 52 is the equivalent of Regulation 53 in the previous draft. The wording is unchanged.

Part 2 Administration

Regulation 53 provides for the maintenance of pension funds and the establishment of pensions boards.

Regulation 54 on admission agreement funds continues with the effect of Regulation 32 of the Administration Regulations 2008, the wording of which is substantively the same. There is, however, an additional sub-paragraph on the requirement for rates and adjustment certificates. **Q4. Is there a need to provide for separate admission agreement funds to be established in the new Scheme?**

Regulation 55, on governance compliance statements, replaces Regulation 31 of the Administration Regulations 2008. Statements will need to include all relevant details of the local pensions board.

Regulation 56 on accounts and audit continues with the effect of Regulation 33 of the Administration Regulations 2008, with necessary updating of the first year on which the requirements will apply.

Regulation 57 on pension fund annual reports continues with the effect of Regulation 34 of the Administration Regulations 2008, with necessary updating of the first year on which the requirements will apply.

Regulation 58, on funding strategy statements, substantively continues with the effect of Regulation 35 of the Administration Regulations 2008.

Regulation 59 on pension administration strategy continues with the effect of Regulation 65 of the Administration Regulations 2008, the wording of which is substantively the same.

Regulation 60, on statements of policy about exercise of discretionary functions, substantively continues with the effect of Regulation 66 of the Administration Regulations 2008.

Regulation 61, on statements of policy concerning communications with members and Scheme employers, continues with the effect of Regulation 67 of the Administration Regulations 2008, but is a more detailed explanation of the requirements.

Regulation 62 on actuarial valuations and certificates continues with the effect of Regulation 36 of the Administration Regulations 2008, with necessary updating of the first year on which the requirements will apply. There is a new definition for “rates and adjustment certificate”.

Regulation 63 generally continues with the effect of Regulation 36A of the Administration Regulations 2008, with necessary updating of the first year on which the requirements will apply.

Regulation 64 carries forward the provisions of Regulation 38 of the Administration Regulations 2008 based on responses to the earlier consultation on the Local Government Pension Scheme (Miscellaneous Amendments) Regulations 2013 dated 28 March. In particular, it details the circumstances in which administering authorities should obtain payments from “exiting employers”.

Regulation 65 on revised certificates, substantively continues with the effect of Regulation 38A of the Administration Regulations 2008.

Regulation 66 on the supply of copies, substantively continues with the effect of Regulation 37 of the Administration Regulations 2008.

Regulation 67 on employer’s contributions substantively continues with the effect of Regulation 39 of the Administration Regulations 2008.

Regulation 68 on employer's further payments substantively continues with the effect of Regulation 41 of the Administration Regulations 2008.

Regulation 69 on payment by Scheme employers to administering authorities generally continues with the effect of Regulation 42 of the Administration Regulations 2008, with additional requirements relating to 50-50 arrangements. **Q5. Is the list of statement items shown at Regulation 69(3) complete? If not, could you please describe what needs to be included.**

Regulation 70 on additional costs arising from Scheme employers' level of performance substantively continues with the effect of Regulation 43 of the Administration Regulations 2008. **Q6. Should we include provision for interest to be paid on the late payment by scheme employers? If so, what period would constitute "late"?**

Regulation 71 on interest on late payments by Scheme employers substantively continues with the effect of Regulation 44 of the Administration Regulations 2008.

Regulation 72 on first instance decisions generally continues with the effect of Regulation 55 of the Administration Regulations 2008. The question of entitlement to return of contributions is now specified.

Regulation 73 on notification of first instance decisions substantively continues with the effect of Regulation 57 of the Administration Regulations 2008.

Regulation 74 on applications for adjudication of disagreements substantively continues with the effect of Regulation 58 of the Administration Regulations 2008.

Regulation 75 on decisions of the adjudicator substantively continues with the effect of Regulation 59 of the Administration Regulations 2008.

Regulation 76 on reference to the administering authority replaces Regulation 60 of the Administration Regulations 2008. The Regulation has been considerably re-worded, with particular attention having been given to the various deadlines involved in the adjudication process.

Regulation 77 on decisions of the administering authority substantively continues with the effect of Regulation 61 of the Administration Regulations 2008.

Regulation 78 on rights of representation substantively continues with the effect of Regulation 62 of the Administration Regulations 2008.

Regulation 79 on appeals by administering authorities substantively continues with the effect of Regulation 63 of the Administration Regulations 2008. It is now stipulated that the administering authority must inform the

Secretary of State whether it wishes to continue with an appeal which has been stayed or to withdraw it.

Regulation 80 on rights of representation substantively continues with the effect of Regulation 64 of the Administration Regulations 2008.

Regulation 81 was numbered as Regulation 49 in the previous draft, but the wording is unaltered.

Regulation 82 was numbered as Regulation 50 in the previous draft, but the wording is unaltered.

Regulation 83 was numbered as Regulation 51 in the previous draft, but the wording is unaltered.

Regulation 84 was numbered as Regulation 52 in the previous draft, but the wording is unaltered.

Regulation 85 was numbered as Regulation 45 in the previous draft, but the wording is substantially unaltered.

Regulation 86 on joint liability in respect of annual allowance charge substantively continues the effect of Regulation 68A of the Administration Regulations 2008.

Regulation 87 was numbered as Regulation 56 in the previous draft, but the wording is unaltered.

Regulation 88 on pension increase under the Pensions Schemes Act 1993 substantively continues with the effect of Regulation 48 of the Administration Regulations 2008. **Q7. Should the new regulations set out what fund should pay in the case where an administering authority has more than one fund?**

Regulation 89 on annual benefit statements substantively replaces Regulation 68 of the Administration Regulations 2008. Statements must now be issued no later than six months after the end of the tax years to which they relate, although members may request an earlier statement.

Regulation 90 on information to be supplied by employees substantively replaces Regulation 69 of the Administration Regulations 2008.

Regulation 91 substantively continues with the effect of Regulation 72 of the Administration Regulations 2008. **Q8. Do you think the current forfeiture provisions which have been carried forward into these draft regulations work well, or would you prefer it all to be dealt with by the courts with the removal of the role of the Secretary of State?**

Regulation 92 substantively continues with the effect of Regulation 73 of the Administration Regulations 2008.

Regulation 93 substantively continues with the effect of Regulation 74 of the Administration Regulations 2008.

Regulation 94 substantively continues with the effect of Regulation 75 of the Administration Regulations 2008.

Regulation 95 substantively continues with the effect of Regulation 79 of the Administration Regulations 2008.

Regulation 96 substantively continues with the effect of Regulation 80 of the Administration Regulations 2008.

Regulation 97 substantively continues with the effect of Regulation 81 of the Administration Regulations 2008.

Regulation 98 replaces Regulation 82 of the Administration Regulations 2008.

Regulation 99 substantively continues with the effect of Regulation 83 of the Administration Regulations 2008.

Regulation 100 replaces Regulation 84 of the Administration Regulations 2008.

Regulation 101 substantively continues with the effect of Regulation 85 of the Administration Regulations 2008.

Regulation 102 substantively continues with the effect of Regulation 86 of the Administration Regulations 2008.

Schedule 1

The definition for “nominated co-habiting partner” is replaced by one simply for “co-habiting partner”. There are additional definitions for “reserve forces pay”, “Scheme employer” and “Scheme employer’s consent”.

Schedule 2

Schedule 2 is substantively unchanged from the previous draft, but there is a minor alteration at Part 3, Paragraph 12(d).

Schedule 3

Schedule 3 represents a significant departure from any earlier version of the Scheme’s regulations in terms of trying to identify those who are required to hold a fund rather than referring back to the position stated in earlier versions. We have taken a great deal of effort to make this as accurate as possible but

we would welcome your help in ensuring that we have correctly identified the appropriate administering authority for every scheme employer.

List of Chapter 2 questions

Regulation 16

Q1. Is the Department right in saying that the take up of additional survivor benefits is extremely low?

Regulation 39

Q2. Should there be enhancement in this way given that there would be no equivalent protection for a member who remained in part time work rather than taking ill-health retirement?

Regulation 51

Q3. Comments are requested as to whether this Regulation should be retained or if it would be sufficient to rely on the overriding legislation.

Regulation 54

Q4. Is there a need to provide for separate admission agreement funds to be established in the new Scheme?

Regulation 69

Q5. Is the list of statement items shown at Regulation 69(3) complete? If not, could you please describe what needs to be included.

Regulation 70

Q6. Should we include provision for interest to be paid on the late payment by scheme employers? If so, what period would constitute "late"?

Regulation 88

Q7. Should the new regulations set out what fund should pay in the case where an administering authority has more than one fund?

Regulation 91

Q8. Do you think the current forfeiture provisions which have been carried forward into these draft regulations work well, or would you prefer it all to be dealt with by the courts with the removal of the role of the Secretary of State?

STATUTORY INSTRUMENTS

2013 No.

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme Regulations 2013

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

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Membership, contributions and benefits

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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(a).

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(b).

(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.

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) 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.

(a) 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.

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

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 Scheme employer 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 Scheme employer 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 pensionable age (meaning that a contributions equivalent premium cannot be paid under section 55 of the Pension Schemes Act 1993^(a));
- (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 at 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 (rights to return of contributions).
- (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 regulation 91 (forfeiture of pension rights after conviction for employment-related offences).

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—

- (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^(b),
 - (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^(c), 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^(d);

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

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

(c) 2006 c. 42.

(d) 2008 c. 14.

- (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 Scheme employer that the person wishes to leave the Scheme.

(3) But an active member who gives notice under paragraph (2) specifying no date, or 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, by virtue of a written notice given under paragraph (2), 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.

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 two years;
- (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 (7)(c).

(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—

- (a) was an active member of the Scheme and had qualifying service for a period of two years; or
- (b) was a pension credit member,

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(a) 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 Regulation 10 (temporary reduction in contributions), 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 Scheme employer 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) 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 Scheme employer 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 (contributions).

(a) 1999 c. 30.

(3) An active member may cancel the election under paragraph (1) at any time by giving written notice to the member's Scheme employer 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 from the beginning of the first pay period after—

- (a) the member's automatic re-enrolment date; and
- (b) going on to no pay as a result of sickness or injury provided that the member is still on no pay at the beginning of that pay period,

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 Scheme employer 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 (contributions) or 10 (temporary reduction in contributions) during an absence from work on child-related leave in accordance with regulation 12 (contributions during child-related leave).

(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 (contributions during reserve forces service leave).

(3) An active member must pay contributions under regulations 9 or 10 during an absence from work because of illness or injury in accordance with regulation 14 (contributions during absence for illness etc).

(4) A person remains an active member of the Scheme during any absence from work—

- (a) of the description mentioned in paragraphs (1) to (3)
- (b) due to a trade dispute, or
- (c) with permission from the member's Scheme employer,

and continues to accrue earned pension in accordance with regulation 23(4) or (5).

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 pensionable pay received, including statutory pay but that pay does not include any amount that reduces the member's actual pensionable 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 pensionable pay (including statutory pay) for any of that 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).

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 pensionable pay the member would have received if the former employment had continued.

(2) The contributions under paragraph (1) are on the pensionable 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)—

- (a) that member is treated for the purposes of these Regulations as if that member had paid contributions under paragraph (1);
- (b) if that member has an arrangement under regulation 16 (additional pension contributions) which was entered into prior to the commencement of that member's period of absence, that member is treated for the purposes of these Regulations as if that member had paid contributions under regulation 16.

Contributions during absence for illness etc

14.—(1) An active member away from employment by reason of illness or injury must pay contributions in accordance with regulations 9 or 10 on any pensionable pay received, including statutory pay but that pay does not include any amount that reduces the member's actual pensionable pay on account of possible entitlement to statutory pay.

(2) If an active member is absent from employment by reason of illness or injury and is not entitled to receive pensionable pay (including statutory pay) for any period that member—

- (a) is treated for the purposes of these Regulations as if that member had paid contributions for that period under paragraph (1); and
- (b) if that member has an arrangement under regulation 16 (additional pension contributions) which was entered into prior to the commencement of the period of absence, that member is treated for the purposes of these Regulations as if that member had paid contributions under regulation 16.

Employer contributions during absences

15.—(1) A Scheme employer must pay contributions on the assumed pensionable pay of an active member on child-related leave.

(2) A Scheme employer must pay contributions on the pensionable pay received, including statutory pay, of an active member on reserve forces service leave or who is absent from employment by reason of illness or injury.

(3) If an active member on reserve forces service leave has an arrangement under regulation 16 (additional pension contributions) the Scheme employer must pay the employer contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions) if that regulation applies even if the active member is not required to pay contributions.

(4) Subject to paragraph (5), if an active member who is absent from work with permission with no pensionable pay otherwise than because of illness or injury, child-related leave or reserve force service leave, elects to enter into an arrangement to pay additional contributions under regulation 16 (additional pension contributions), the member's Scheme employer must pay contributions under regulation 16(2)(e) to meet two-thirds of the cost of the arrangement.

(5) The amount that a Scheme employer can be required to pay under paragraph (4) may not exceed the cost of an arrangement which would give rise to additional pension accrual equivalent to that which a member would have accrued if treated as receiving assumed pensionable pay for the period of absence from work up to a maximum period of 36 months.

(6) In paragraph (4) the expression "absent from work with permission" does not include an absence due to a trade dispute.

Additional pension contributions

16.—(1) Subject to paragraph (15), an active member who is paying contributions under regulation 9 (contributions) may enter into arrangements to pay additional pension contributions ("APCs") by regular contributions in accordance with paragraph (2), and a member who is paying

contributions under regulation 10 (temporary reduction in contributions) may do so if the arrangement is to cover a period of absence of the description in regulation 11(4) (contributions during absence from work) unless the appropriate administering authority determines in any particular case that it would not be practical to allow APCs to be paid by regular contributions.

(2) Where APCs are to be paid by regular contributions, 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 APC is to be attached to;
- (d) must specify the amount of additional pension to be credited to the active member's pension account at the end of the scheme year; and
- (e) may be funded in whole or in part by the member's Scheme employer.

(3) Subject to paragraph (15), an active member who is paying contributions under regulation 9 (contributions) may enter into arrangements to pay APCs by lump sum contribution in accordance with paragraph (4), and a member who is paying contributions under regulation 10 (temporary reduction in contributions) may do so if the arrangement is to cover a period of absence of the description in regulation 11(4) (contributions during absence from work).

(4) Where APCs are to be paid by a lump sum contribution, the arrangements mentioned in paragraph (3)—

- (a) must specify the amount of extra contribution to be paid;
- (b) must, where the member has more than one active member pension account, specify which account the APC is to be attached to;
- (c) must specify the amount of additional pension to be credited to the active member's pension account at the end of the scheme year; and
- (d) may be funded in whole or in part by the member's Scheme employer.

(5) The amount of additional annual pension that is to be credited to the active member's pension accounts pursuant to arrangements under this regulation must not exceed £5,000 in aggregate but additional pension to cover a period of absence of the description in regulation 11(4) (contributions during absence from work), up to the amount of pension that member would have accrued if treated as receiving assumed pensionable pay during the absence, does not count towards the £5,000 limit.

(6) The amount of the contributions to be paid in respect of arrangements under this regulation 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; and
- (b) the gender of the member.

(7) Actuarial guidance issued by the Secretary of State under paragraph (6) may be revised at any time and if so, from the 1st April following any such revision, any contributions payable are to be based on the revised actuarial guidance.

(8) An application by an active member to make arrangements under this regulation must—

- (a) be made in writing to the member's appropriate administering authority, and a copy sent to the member's Scheme employer if that member is not employed by the administering authority,
- (b) where those arrangements are under paragraph (1), 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.

(9) 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 paragraphs (1) to (4) if that authority is not satisfied that the member is in reasonably good health.

(10) 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 (temporary reduction in contributions) unless the arrangement was to cover a period of absence of the description in regulation 11(4) (contributions during absence from work),
- (d) the member ceases to be an active member of the Scheme, or
- (e) the member dies.

(11) 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 (6) 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.

(12) If additional contributions are paid in accordance with arrangements made under this regulation, and are not refunded under regulation 18 (rights to return of contributions), that member's active member's pension account must be credited with the amount specified in those arrangements as additional pension at the end of the scheme year in which the contributions are paid, or at the date the arrangements terminate, if earlier.

(13) If a member who is paying APCs dies or is granted Tier 1 or Tier 2 benefits in relation to the pension account to which the arrangements are attached before the end of the period the arrangements made under paragraph (1) were due to cease ("the APC period"), 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 APC period and the additional pension bought by those contributions is to be included in the active member's pension account for the year of death, or as the case may be, leaving.

(14) If a member fails to pay all the additional contributions due under arrangements made under paragraph (1), and paragraph (13) does not apply to that member, the member's active member pension account must be credited with additional pension of an amount calculated in accordance with actuarial guidance issued by the Secretary of State.

(15) Where an arrangement is one to which regulation 15(4) (employer contributions during absences) applies, application by an active member to make the arrangements under this regulation must be made before the expiry of a period of 30 days beginning with the day on which the person returns to work.

(16) Where an active member to whom regulation 11(4) applies (contributions during absence from work) has an arrangement under this regulation which was entered into prior to the commencement of the period of absence, the APCs under that arrangement—

- (a) must be paid by the member during any period of child-related leave, which for this regulation includes any period of additional maternity, additional adoption leave, or additional paternity leave during which the member receives no pensionable pay;
- (b) must be paid by the member during any period of reserve forces service leave where regulation 13(1) (contributions during reserve forces service leave) applies;
- (c) must be paid by the member during any period of absence for illness or injury where regulation 14(1) applies;
- (d) must be paid by the member during any period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work).

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 an agreement between the appropriate administering authority and a body approved for the purposes under the Finance Act 2004(a) (“the AVC provider”), registered in accordance with that Act and administered in accordance with the Pensions Act 2004(b).

(3) Where an active member wishes to make contributions to an arrangement under paragraph (1), the 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 Scheme employer, 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 (but see paragraph (4); 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) Where a member is paying AVCs for life insurance and pensionable pay in a pay period, net of any deductions made by the Scheme employer, is less than the AVC due, the member may pay the contribution due by way of a payment direct to the AVC provider or to the Scheme employer for onward transmission to that body in order to ensure that the life assurance cover continues.

(5) A member may vary the amount specified in, or cease contributing to, an arrangement by service of a further written notice given to the member’s Scheme employer by the member or by the AVC provider authorised by the member to act on the member’s behalf.

(6) For the purposes of regulation 5(5) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(c) the retirement date used for the purposes of paragraph 6ZA(1) of Schedule 2 to those regulations(d) is, where no acceptable date has been specified for that purpose by the member, normal pension age or, if the member has already attained normal pension age, age 75.

(7) If a member draws benefits under regulation 30(1), (2), (4), (5) or (7) (retirement benefits) or, if a member who draws benefits under regulation 30(6) (flexible retirement) makes an election to draw the realisable value in the AVC arrangement at the same time, that member must notify the appropriate administering authority that the realisable value under arrangements made under this regulation—

- (a) 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; and
- (b) to the extent that the realisable value has not been taken as a lump sum, it is to be used—
 - (i) 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, or
 - (ii) to the extent that it has not been used to purchase additional pension under the Scheme, to purchase an annuity from one or more insurance companies (within the meaning of section 275 of the Finance Act 2004(e)).

(a) 2004 c. 12.

(b) 2004 c. 35.

(c) S.I. 1996/1655; paragraph (5) of regulation 5 was substituted by S.I. 2010/2659.

(d) Paragraph 6ZA was inserted by S.I. 2002/1383.

(e) 2004 c. 12.

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

(9) A person with an arrangement under paragraph (1) who becomes a deferred member of the Scheme is entitled to a deferred AVC account with the AVC provider.

(10) A member must transfer the realisable value in a deferred AVC account to another registered pension scheme or qualified recognised overseas pension scheme if making a transfer under regulation 96 (rights to payment out of pension fund).

(11) Where a member aggregates a deferred member's pension account or a deferred refund account with an active member's pension account, the realisable value in any deferred AVC account must be transferred to an arrangement under this regulation and the member may make an election to make further payments to the arrangement.

(12) If—

- (a) an active member who is paying contributions to an AVC or SCAVC for the purpose of life assurance dies, or
- (b) an active member who is paying contributions to an AVC or SCAVC other than for the purpose of life assurance dies, or
- (c) a deferred member dies and has a deferred AVC account attached to the deferred member's pension account, or
- (d) a member who has made an election under paragraph (7)(b)(ii) dies before the annuity has been purchased,

the appropriate administering authority shall, at its absolute discretion, decide that any life assurance sum due under (a), and the realisable value of any arrangement under (b) to (d), 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.

(13) Where a member had attained the age of 75 at the date of death, any tax chargeable under section 206 of the Finance Act 2004 is to be deducted from the payment due under paragraphs (12) or (14).

(14) If the total of payments due under paragraph (12) have not been paid 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 have been expected to have become aware of the member's death, an amount equal to the shortfall must be paid to the member's personal representatives.

(15) Regulations 72 (first instance decisions) and 91 (forfeiture of pension rights after conviction for employment-related offences) do not apply in relation to an annuity purchased under paragraph (7)(b)(ii).

Rights to return of contributions

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

- (a) any contributions paid under or in accordance with regulations 9 or 10 in relation to that active membership;
- (b) any additional contributions paid by the person under regulation 16 in relation to that active membership;
- (c) the realisable value of any AVC or SCAVCs paid by the person, or SCAVCs paid by the Scheme 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 contributions included in a transfer payment received from a registered pension scheme or from a pension scheme or arrangement of a European Pensions Institution.

(2) Where a person is entitled to repayment under paragraph (1)(c), the realisable value of any SCAVC contributions paid by the Scheme employer are repayable to the Scheme employer (other than contributions specifically paid for additional life assurance cover, in respect of additional survivor benefits or paid by the employer under a salary sacrifice scheme).

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

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

(5) 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 five years beginning with the date the person's active membership ceased if no request is made before then or, if the person attains age 75 before then, on the day before attaining age 75.

(6) If a person entitled to a repayment under paragraph (1) dies before the payment is made, the administering authority must pay the sum due to the person's estate.

(7) 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(a) from 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(b).

(8) This regulation is subject to regulation 19 (exclusion of rights to return of contributions).

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 ;
- (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;
- (e) is an active member and dies in service.

(2) Where paragraph (1)(b) applies the Scheme employer 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, cohabiting partner or any of the member's dependents.

Meaning of pensionable pay

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

- (a) all the salary, wages, fees and other payments paid to the employee, and

(a) 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.

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

- (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;
 - (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) 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) During the period the circumstances specified in paragraph (2) apply in relation to an employment, the pensionable pay that an active member is, in relation to that employment, treated as receiving for the purposes of these Regulations (including this regulation), other than regulations 9 to 14 (contributions), 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 on relevant child-related leave;
- (c) is absent on reserve forces service leave.

(3) Relevant child-related leave for the purposes of paragraph 2(b) means any period during which the member is on child-related leave other than any part of that period where the pensionable pay received is greater than the assumed pensionable pay.

(4) Paragraph (2)(c) 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) The annual rate of assumed pensionable pay for an employment for a scheme year is—

- (a) where the member is paid monthly—
 - (i) the pensionable pay the member received relating to that employment in the 3 months preceding the commencement of the pay period in which the circumstance specified in paragraph (2) began;
 - (ii) less any regular or irregular lump sum received;
 - (iii) with the resulting sum being grossed up to an annual figure;
 - (iv) to which any regular lump sum payment received should be added;
- (b) where the member is paid otherwise than monthly—
 - (i) the pensionable pay the member received relating to that employment in the 12 weeks preceding the commencement of the pay period in which the circumstance specified in paragraph (2) began;

- (ii) less any regular or irregular lump sum received;
- (iii) with the resulting sum being grossed up to an annual figure;
- (iv) to which any regular 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 commenced after the first date on which the member is treated as receiving assumed pensionable pay.

Pension accounts

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 (rights to return of contributions);
- (c) all the benefits in the account are forfeited under regulation 91 (forfeiture of pension rights after conviction for employment-related offences);
- (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) due to aggregation of the benefits in the account with a different account, it is no longer required.

(5) Where a member with an active member’s pension account also has a deferred refund account, the benefits in the deferred refund account must be aggregated with the active member’s pension account and the deferred refund account closed.

(6) Where a member with an active member's pension account also has a deferred member's pension account the member may elect to aggregate the benefits in the deferred member's pension account with those in the active member's pension account in the following circumstances—

- (a) within 12 months of starting a new employment, or such longer time as the new Scheme employer permits;
- (b) within 12 months of terminating one concurrent employment, or such longer time as the Scheme employer in any other employment permits; or
- (c) within 12 months of rejoining the Scheme after having opted out and becoming a deferred member, or such longer time as the Scheme employer permits.

(7) Where a deferred member's pension account or a deferred refund account is to be aggregated with an active member's pension account and the gap between the member's last day of membership to which the deferred member's pension account or deferred refund account relates and the first day of active membership to which the active member's pension account relates does not exceed 5 years, the balance in the deferred member's account or deferred refund account shall be recalculated, before aggregation, as if the amount in that account had been increased by the revaluation adjustment and not the index rate adjustment.

Active member's 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); plus
- (b) the amount of earned pension, if any, for the scheme year; plus
- (c) the amount of any additional member pension acquired during the scheme year pursuant to arrangements made under regulation 16(1) or (3) (additional pension contributions) ; plus or minus, as the case may be,
- (d) the sum resulting from any pension account adjustment during the scheme year,

must be adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State.

(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 for a scheme year is 1/98th of the member's pensionable pay received in that year 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 (award of additional pension);
- (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; or
- (f) an adjustment of the description mentioned in regulation 94 (adjustment of accounts following forfeiture etc).

(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, but no revaluation adjustment is to be made to the active member pension account for that scheme year.

(8) If a member starts to draw benefits under regulation 30(6) (flexible retirement) any pension account adjustment applicable to the active member's pension account must be made immediately before the date on which benefits start to be paid.

(9) Where—

- (a) a pension debit as is mentioned in paragraph (6)(c) is made, or
- (b) the joint liability amount specified in a notice given in relation to an election as mentioned in 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) or (3) (additional pension contributions); 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 at the end of the scheme year in which the member becomes a deferred member is adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State.

(8) The balance calculated under paragraph (7) is the opening balance for the following scheme year and thereafter, subject to paragraph (9), the balance in the account is adjusted each year by the index rate adjustment.

(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) (adjustments to active member's pension accounts).

(11) If a member ceases to be an active member without becoming entitled to any benefits because that member has less than two years qualifying service—

- (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 (right to return of contributions);
- (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.

(13) Paragraphs (3) to (10) of this regulation apply to deferred refund accounts as they apply to deferred member pension accounts.

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)(b)(i) (additional voluntary contributions);
- (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) (deferred member's pension account) if a deferred member's pension account had been opened for that member.

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

(5) The amount of any pension adjustment not already accounted for under paragraph (2)(a) is, for the purposes of paragraph (2)(e)—

- (a) 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 87 (tax) or as a result of a pension sharing order, and
- (b) any increase in pension resulting from a decision to award Tier 2 benefits under regulations 37(7)(b) or 37(10) (special provision in respect of members receiving Tier 3 benefits).

(6) The balance in the member's account at the end of the scheme year in which the member becomes a pensioner member is adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State.

(7) The balance calculated under paragraph (6) is the opening balance for the following scheme year and, thereafter, the balance is adjusted each year by the index rate adjustment.

(8) For the purposes of this regulation a full retirement pension means a retirement pension other than a pension payable under regulation 30(6) (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 amount of any additional pension purchased under regulation 17(6)(b)(i) (additional voluntary contributions);
- (c) the early payment reduction or deferred payment enhancement (if any), and the amount of pension to which that reduction or enhancement applies;
- (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 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 given up for a lump sum in accordance with regulation 33 (election for lump sum instead of pension) and the amount of accrued pension specified in paragraph (2)(a) is reduced accordingly.

(5) The amount of any pension adjustment not already accounted for under paragraph (2)(a) is, for the purposes of paragraph (2)(e), the aggregate of the amounts calculated in accordance with actuarial guidance issued by the Secretary of State to account for—

- (a) any tax to which the administering authority may become chargeable under the Finance act 2004 in accordance with regulation 87 (tax); or
- (b) a pension sharing order.

(6) The balance in the member's account is adjusted each year by the index rate adjustment.

(7) 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 following modifications—

- (a) all references to deferred members are to be read as references to deferred pensioner members; and
- (b) in addition to the items mentioned in paragraph (5)(a) and (b), account is also taken of any increase in pension resulting from a decision to award Tier 2 benefits under regulation 37(7)(b) or 37(10) (special provision in respect of members receiving Tier 3 benefits).

(8) 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(6) (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)(b)(i) (additional voluntary contributions);
- (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)(d) is the amount the member has given up in return for a lump sum in accordance with regulation 33 (election for lump sum instead of pension) and the amount of accrued pension specified in paragraph (2)(a) is reduced accordingly.

(4) The amount of any pension adjustment not already accounted for under paragraph (2)(a) is, for the purposes of paragraph (2)(e), the aggregate of the amounts calculated in accordance with actuarial guidance issued by the Secretary of State to account for an adjustment as a consequence of a matter specified in regulation 23(6) (adjustments to active member's pension accounts).

(5) At the end of the scheme year in which the member became entitled to the immediate payment of a retirement pension under regulation 30(6) (flexible retirement), the balance in the member's flexible retirement pension account is adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State.

(6) The balance calculated under paragraph (5) is the opening balance for the following scheme year and, thereafter, the balance of the account is adjusted each year by the index rate adjustment.

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 (7)(c) (special provision in respect of members receiving Tier 3 benefits)—

- (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.

(3) The amount of accrued pension transferred under paragraph (2) is the opening balance for the following scheme year and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

(4) The amount in the deferred pensioner member's account may be adjusted by amounts calculated in accordance with actuarial guidance issued by the Secretary of State as a result of a pension sharing order or to account for any tax to which the administering authority may become chargeable under the Finance Act 2004 in accordance with regulation 87 (tax).

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.

(3) The amount credited under paragraph (2) is the opening balance for the following scheme year and, thereafter, the balance in the account each year is adjusted by the index rate adjustment.

(4) The amount in a pension credit account may be adjusted by amounts calculated in accordance with actuarial guidance issued by the Secretary of State as a result of a further pension sharing order.

Benefits

Retirement benefits

30.—(1) Subject to paragraph (3), a member who attains normal pension age and is not an employee in local government service is entitled to, and must take, immediate payment of a retirement pension without reduction.

(2) A member to whom paragraph (1) applies and who has concurrent employments may draw a pension in relation to an employment so long as the member is not an employee in local government service in relation to that employment.

(3) A member to whom paragraph (1) applies may elect to defer payment of a retirement pension to a date after that member's normal pension age up to the date when that member attains the age of 75.

(4) A member who starts to receive payment of a retirement pension from a date after that member's normal pension age is entitled to enhancement of the pension by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.

(5) A member who has not attained normal pension age but who has attained the age of 55 or over, may elect 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.

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

(7) 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 take immediate payment of —

(a) retirement pension relating to that employment payable under regulation 16 (additional pension contributions), 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.

(8) A Scheme employer, former employer which is a Scheme employer, or, where a member's employer or former employer 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 (5) or (6).

(9) In paragraphs (1) to (8) of this regulation the expression "member" means a member with qualifying service for a period of two years and does not include a pension credit member.

(10) Subject to paragraph (11), a pension credit member who attains normal pension age is entitled to, and must take, immediate payment of a retirement pension deriving from the pension

credit, without reduction, irrespective of whether that pension credit member is also an employee in local government service.

(11) A pension credit member may elect to defer payment of a retirement pension deriving from a pension credit to a date after that member's normal pension age and, if the member does so, is entitled to immediate payment of a retirement pension from any date up to the date when that member attains the age of 75, enhanced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State, irrespective of whether the pension credit member is also an employee in local government service.

(12) A pension credit member who has attained the age of 55 or over may elect to receive immediate payment of a retirement pension deriving from the pension credit, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State, irrespective of whether the pension credit member is also an employee in local government service.

Award of additional pension

31.—(1) A Scheme employer 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 Scheme employer 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 sub-paragraph (b), the resolution to award additional pension is made within 6 months of the date the member's employment ended but this limit does not apply where a Scheme employer is contributing to the purchase of additional pension to cover a period of absence up to the amount of pension that a member would have accrued if treated as receiving assumed pensionable pay during the absence.

(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 Scheme employers which have power under section 1 of the Localism Act 2011^(a) (local authority's general power of competence) or section 5A(1) of the Fire and Rescue Services Act 2004^(b) (powers of fire and rescue authorities) in the exercise of those powers.

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) Subject to paragraphs (3) and (4), in the case of a member who leaves local government service and who 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(3), (5), (11) or (12) to have a pension paid from a date other than normal pension age, the first period for which retirement pension is payable

(a) 2011 c. 20.

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

begins on the date the member specifies in a written notice to the appropriate administering authority.

(4) When, in a written notice to the appropriate administering authority, a member elects under regulation 30(6) (flexible retirement) to receive immediate payment of all or part of that member's benefits, if the member's Scheme employer consents to the payment, the first period for which retirement pension is payable begins on the date of the reduction in hours or grade.

(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 (early payment of retirement pension on ill-health grounds: active members) 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 Tier 2 benefits following a review under regulation 37(7)(b) or (10) (special provision in respect of members in receipt of Tier 3 benefits) the first period for which those benefits are payable is the date of the review.

(10) Where a member is entitled to early payment of pension due to ill-health under regulation 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members), the first period for which retirement pension is payable begins on the date of the determination that the member is permanently incapable 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(7)(a) (additional voluntary contributions), 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;
- (b) a deferred pensioner member; or
- (c) any additional pension purchased by the member under regulation 17(7)(b)(i) (additional voluntary contributions).

Commutation and small pensions

34.—(1) Any authorised payments within the meaning of section 164 (authorised member payments) of the Finance Act 2004(a) listed in sub-paragraphs (a) to (c) may be paid in

(a) 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).

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(a).

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

(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 a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must take, 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 (calculation of ill-health pension amounts).

(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, is not immediately capable of undertaking any gainful employment.

(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 (special provision in respect of members receiving Tier 3 benefits), 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.

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

Role of the IRMP

36.—(1) A decision as to whether a member is entitled under regulation 35 (early payment of retirement pension on ill-health grounds: active members) 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 Scheme employer 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) Except in the circumstances specified in regulation 37(11) (special provision in respect of members receiving Tier 3 benefits) 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 Scheme employer is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of IRMP.

(4) The Scheme employer and IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation and regulations 37 (special provision in respect of members receiving Tier 3 benefits) and 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members).

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 Scheme employer 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 Scheme employer determines to be gainful employment, or fails to answer inquiries made by the employer under paragraph (2), and the employer 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) A Scheme employer 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) A Scheme employer must review payment of Tier 3 benefits after they have been in payment for 18 months.

(6) A Scheme employer 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 a Scheme employer 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) (early payment of retirement pension on ill-health grounds: active members);

- (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) A Scheme employer 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) A Scheme employer may, following a request for a review 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 employer 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) (role of the IRMP).

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 Scheme employer or appropriate administering authority where the member's former Scheme employer 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 Scheme employer, 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—

- (a) 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,
- (b) 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 Scheme employer, or appropriate administering authority where the member's former Scheme employer 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 Scheme employer, 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 Scheme employer 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) (role of the IRMP).

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 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 and treating any election under regulation 10 (temporary reduction in contributions) as lapsed at the date of the termination of the member's employment.

(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 (9), 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 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members) 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) Paragraph (3) applies in the case of a member entitled to Tier 2 benefits following a review under regulation 37(5) or (10) with the following modifications—
- (a) the references to the date on which the member’s employment terminated are to be read as references to the date on which the review was carried out; and
 - (b) the account that the member has on the date the review takes place is treated as if it were an active member’s pension account for the purposes of the calculation of the benefits to which the member is entitled.
- (10) For the purposes of this regulation—
- (a) in calculating assumed pensionable pay in accordance with regulation 21(5) (assumed pensionable pay), 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)(a) if an IRMP has certified that the member was working reduced contractual hours as a consequence of the 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) for any period after the date of termination of employment under regulation 35 (early payment of retirement pension on ill-health grounds: active members).

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 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 additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
 - (iv) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
 - (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 at the end of the scheme year in which the survivor member's account was opened is adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State.

(6) The balance calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following scheme year and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

(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) as from the day following the date the pension under regulation 41(1) ceased to be paid.

(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 relating to the age at which it was drawn, or following a Scheme pays election, or any pension debit applied on account of a pension sharing order,
- (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
- (iv) the pension included 15.3125% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
- (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 to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
 - (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
 - (iv) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
 - (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) as from the day following the date the other eligible child's or children's pension ceased to be paid.
- (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 relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
 - (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
 - (iv) the pension included 20.4167% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
 - (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 relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
 - (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
 - (iv) the pension included 40.833% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
 - (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 at the end of the scheme year in which the survivor member's account was opened is adjusted by the valuation adjustment applicable to the scheme year in accordance with guidance issued by the Secretary of State.
- (13) The balance calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following scheme year and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

Death grants: deferred members, pension credit members and deferred pensioner 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 pension credit members (including persons entitled to a pension credit who die before the appropriate administering authority awards a pension credit) as it applies to deferred members with the modification that for the amount of death grant calculated under paragraph (3), the amount calculated under paragraph (3)(a) and (b) is multiplied by 3.

(6) 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) (early payment of retirement pension on ill-health grounds: active members) and any lump sum paid under regulation 33 (election for lump sum instead of pension).

Survivor benefits: partners of deferred members and deferred pensioner members

44.—(1) If a deferred member dies leaving a surviving spouse, civil partner or 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 pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
- (d) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
- (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) If the member ceased to be an active member, became a deferred member and died all within the same scheme year, the balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State.

(6) Where—

- (a) paragraph (5) applies, the balance calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following scheme year;
- (b) paragraph (5) does not apply, the balance under paragraph (3) is the opening balance of the survivor member's pension account for the following scheme year,

and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

(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) (survivor benefits: partners of deferred members), 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 (9) or (10) as from the day following the date the pension under regulation 44(1) ceased to be paid.

(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 adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
- (d) the pension included 15.3125% of any pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
- (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 adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31,
- (d) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
- (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) as from the day following the date the other eligible child's or children's pension ceased to be paid.

(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 (8) 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 adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
- (d) the pension included 20.41667% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
- (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 (8) 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 adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
- (d) the pension included 40.8333% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions),
- (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) If the member ceased to be an active member, became a deferred member and died all within the same scheme year, the balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State.

(13) Where—

- (a) paragraph (12) applies, the balance calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following scheme year;
- (b) paragraph (12) does not apply, the balance under paragraph (3) or (8), as the case may be, is the opening balance of the survivor member's pension account for the following scheme year,

and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

(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) Subject to paragraph (4), the death grant is 10 times the annual amount the member was receiving as retirement pension at the date of death, but the amount so calculated is reduced by the amounts of any retirement pension paid to the member.

(4) Where any pension paid to a member derived from a pension credit, the death grant is 5 times the annual amount the member was receiving as that pension at the date of death, reduced by the amount of that pension paid to the member.

(5) 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 (other than a pensioner member where the pension the member was in receipt of was derived from a pension credit) dies leaving a surviving spouse, civil partner or 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,
- (c) there had been no commutation under regulation 33 (election for lump sum instead of pension),
- (d) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension),
- (e) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions), and
- (f) any transferred in benefit had accrued at a rate of 49/160ths.

(5) If the member ceased to be an active member, became a pensioner member and died all within the same scheme year, the balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State.

(6) Where—

- (a) paragraph (5) applies, the balance calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following scheme year;

(b) paragraph (5) does not apply, the balance under paragraph (3) is the opening balance of the survivor member's pension account for the following scheme year, and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

(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 (other than a pensioner member where the pension the member was in receipt of was derived from a pension credit) 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 pensioner member under regulation 47(1) (survivor benefits: partners of pensioner members), 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 (9) or (10) from the day following the date the pension under regulation 47(1) ceased to be paid.

(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 to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (d) there had been no commutation under regulation 33 (election for lump sum instead of pension),
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension), and
- (f) the pension included 15.3125% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(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 to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (d) there had been no commutation under regulation 33 (election for lump sum instead of pension)
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension), and
- (f) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(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) as from the day following the date the other eligible child's or children's pension ceased to be paid.

(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 (8) 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 to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
- (d) there had been no commutation under regulation 33 (election for lump sum instead of pension),
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension), and
- (f) the pension included 20.41667% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(10) The amount of pension payable under paragraph (8) 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 to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order, and
- (d) there had been no commutation under regulation 33 (election for lump sum instead of pension), and
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 31 (award of additional pension), and
- (f) the pension included 40.8333% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(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) If the member ceased to be an active member, became a pensioner member and died all within the same scheme year, the balance in the survivor member's pension account at the end of the scheme year in which the survivor member's account was opened is adjusted by the revaluation adjustment applicable to that scheme year in accordance with guidance issued by the Secretary of State.

(13) Where—

- (a) paragraph (12) applies, the balance calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following scheme year;

(b) paragraph (12) does not apply, the balance under paragraph (3) or (8), as the case may be, is the opening balance of the survivor member's pension account for the following scheme year,
and, thereafter, the balance in the account is adjusted each year by the index rate adjustment.

Adjustments of benefits

No double entitlement

49.—(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(a).

Limit on total amount of benefits

50.—(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(b) 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.

Guaranteed minimum pensions

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

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

(3) If the member—

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

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

(a) 1993 c. 48.

(b) 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.

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

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

(6) Subject to regulation 30(3) (retirement after normal retirement date), where paragraph (3), (4) or (5) applies, the member may consent to a postponement of the entitlement.

(7) For the purposes of this regulation, a person has a guaranteed minimum if they have such a minimum under section 14 (earner's guaranteed minimum) of the Pension Schemes Act 1993(a) in relation to benefits under these Regulations, and references to entitlement are to the entitlement to payment of a pension in accordance with paragraph (1).

(8) In this regulation "contracted out employment" shall be construed in accordance with section 8 of the Pension Schemes Act 1993.

Pension debits

52.—(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(b).

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

PART 2

Administration

Administering authorities

Scheme Managers

53.—(1) The bodies listed in Part 1 of Schedule 3, referred to in these Regulations as "administering authorities", must maintain a pension fund for the Scheme.

(2) An administering authority is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate administering authority under these Regulations.

(3) The appropriate administering authority in relation to a person who is or has been a member of the Scheme, or is entitled to any benefit in respect of a person who is or has been a member of the Scheme, is the authority specified in Part 2 of Schedule 3 in relation to that person.

(4) 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 the Scheme; and
- (c) requirements imposed by the Pensions Regulator in relation to the Scheme.

(a) 1993 c. 48; section 14 was amended by the Proceeds of Crime Act 2002, the Pensions Act 1995, and the Social Security Contributions (Transfer of Functions, etc) Act 1999.

(b) 1999 c. 30.

Admission agreement funds

54.—(1) An administering authority which has made an admission agreement may establish a further pension fund (an “admission agreement fund”) in addition to the fund maintained under regulation 53(1) (scheme managers) (“the main fund”).

(2) Immediately after an authority establishes an admission agreement fund, it must give the Secretary of State written notice that it has done so.

(3) The notice must specify the admission bodies whose employees are eligible for benefits from the admission agreement fund.

(4) Where an admission agreement fund is established—

- (a) the liabilities of the main fund as respects membership in employment with those specified bodies become liabilities of the admission agreement fund; and
- (b) assets of such value as an actuary appointed by the appropriate administering authority determines to be appropriate must be transferred from the main fund to the admission agreement fund.

(5) When valuations under regulation 62 (actuarial valuations and certificates) of both the main fund and the admission agreement fund are first obtained after the admission agreement fund is established, the administering authority must obtain from the actuary appointed by the authority—

- (a) a transfer statement; and
- (b) a rates and adjustment certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for its main fund.

(6) The transfer statement must specify whether, in the actuary’s opinion, there is a need for further assets to be transferred from the main fund to the admission agreement fund and, if so, their value.

(7) Where the transfer statement specifies that assets of a specified value need to be transferred, the administering authority must arrange for assets of that value to be transferred as soon as is reasonably practicable.

Administering authorities: governance compliance statement

55.—(1) An administering authority must prepare a written statement setting out—

- (a) whether the authority delegates its functions, or part of its functions under these Regulations to a committee, a sub-committee or an officer of the authority;
- (b) if the authority does so—
 - (i) the terms, structure and operational procedures of the delegation,
 - (ii) the frequency of any committee or sub-committee meetings,
 - (iii) whether such a committee or sub-committee includes representatives of Scheme employers or members, and if so, whether those representatives have voting rights;
- (c) the extent to which a delegation, or the absence of a delegation, complies with guidance given by the Secretary of State and, to the extent that it does not so comply, the reasons for not complying.
- (d) details of the terms, structure and operational procedures relating to the local pension board established under regulation 53(4) (scheme managers).

(2) An administering authority must keep a statement prepared under paragraph (1) under review, and make such revisions as are appropriate, following a material change to any of the matters mentioned in that paragraph.

(3) Before preparing or revising a statement under this regulation, an administering authority must consult such persons as it considers appropriate.

(4) An administering authority must publish its statement under this regulation, and any revised statement.

Accounts and audit

56.—(1) After any of its pension funds has been audited, an administering authority must immediately send copies of the following to each body whose employees are active members—

- (a) a summary of the revenue account and balance sheet of the fund; and
- (b) any report by the auditor.

(2) The pension input period for the purposes of section 238 of the Finance Act 2004^(a) is the year ending on 31st March 2015 and each year ending on 31st March after that year.

Strategies, statements and reports

Pension fund annual report

57.—(1) An administering authority must, in relation to each year beginning on 1st April 2014 and each subsequent year, prepare a document (“the pension fund annual report”) which contains—

- (a) a report about the management and financial performance during the year of each of the pension funds maintained by the authority;
- (b) a report explaining the authority’s investment policy for each of those funds and reviewing the performance during the year of the investments of each fund;
- (c) a report of the arrangements made during the year for the administration of each of those funds;
- (d) for each of those funds, a statement by the actuary who carried out the most recent valuation of the assets and liabilities of the fund in accordance with regulation 62 (actuarial valuations and certificates), of the level of funding disclosed by that valuation;
- (e) the current version of the statement under regulation 55 (governance compliance statement);
- (f) for each of the funds, the fund account and net asset statement with supporting notes and disclosures prepared in accordance with proper practices;
- (g) an annual report dealing with—
 - (i) the extent to which the authority and the Scheme employers in relation to which it is the administering authority have achieved any levels of performance set out in a pension administration strategy in accordance with regulation 59 (pension administration strategy), and
 - (ii) such other matters arising from a pension administration strategy as it considers appropriate;
- (h) the current version of the statement referred to in regulation 58 (funding strategy statement)
- (i) the current version of the statement under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (statement of investment principles)^(b);
- (j) the current version of the statement under regulation 61 (statements of policy concerning communications with members and Scheme employers); and
- (k) any other material which the authority considers appropriate.

(2) The authority must publish the pension fund annual report on or before 1st December following the scheme year end.

(a) 2004 c. 12; section 238 was amended by the Finance Act 2011 (c. 11).

(b) S.I. 2009/3093.

(3) In preparing and publishing the pension fund annual report, the authority must have regard to guidance given by the Secretary of State.

Funding strategy statement

58.—(1) An administering authority must, after consultation with such persons as it considers appropriate, prepare, maintain and publish a written statement setting out its funding strategy.

(2) The first statement must be published no later than 31st March 2015.

(3) The authority must keep the statement under review and, after consultation with such persons as it considers appropriate, make such revisions as are appropriate following a material change in its policy set out in the statement, and if revisions are made, publish the statement as revised.

(4) In preparing, maintaining and reviewing the statement, the administering authority must have regard to—

- (a) the guidance set out in the document published in March 2004 by CIPFA, the Chartered Institute of Public Finance and Accountancy and called “CIPFA Pensions Panel Guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No. 6)”**(a)**; and
- (b) the statement of investment principles published by the administering authority under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009**(b)**.

Pension administration strategy

59.—(1) An administering authority may prepare a written statement of the authority’s policies in relation to such of the matters mentioned in paragraph (2) as it considers appropriate (“its pension administration strategy”) and, where it does so, paragraphs (3) to (7) apply.

(2) The matters are—

- (a) procedures for liaison and communication with Scheme employers in relation to which it is the administering authority (“its Scheme employers”);
- (b) the establishment of levels of performance which the administering authority and its Scheme employers are expected to achieve in carrying out their Scheme functions by—
 - (i) the setting of performance targets,
 - (ii) the making of agreements about levels of performance and associated matters, or
 - (iii) such other means as the administering authority considers appropriate;
- (c) procedures which aim to secure that the administering authority and its Scheme employers comply with statutory requirements in respect of those functions and with any agreement about levels of performance;
- (d) procedures for improving the communication by the administering authority and its Scheme employers to each other of information relating to those functions;
- (e) the circumstances in which the administering authority may consider giving written notice to any of its Scheme employers under regulation 70 (additional costs arising from Scheme employer’s level of performance) on account of that employer’s unsatisfactory performance in carrying out its Scheme functions when measured against levels of performance established under sub-paragraph (b);
- (f) the publication by the administering authority of annual reports dealing with—
 - (i) the extent to which that authority and its Scheme employers have achieved the levels of performance established under sub-paragraph (b), and

(a) ISBN No 085299 996 8; copies may be obtained from CIPFA at 3 Robert Street, London WC2N 6RL.

(b) S.I. 2009/3093.

- (ii) such other matters arising from its pension administration strategy as it considers appropriate; and
 - (g) such other matters as appear to the administering authority after consulting its Scheme employers and such other persons as it considers appropriate, to be suitable for inclusion in that strategy.
- (3) An administering authority must—
- (a) keep its pension administration strategy under review; and
 - (b) make such revisions as are appropriate following a material change in its policies in relation to any of the matters contained in the strategy.
- (4) In preparing or reviewing and making revisions to its pension administration strategy, an administering authority must consult its Scheme employers and such other persons as it considers appropriate.
- (5) An administering authority must publish—
- (a) its pension administration strategy; and
 - (b) where revisions are made to it, the strategy as revised.
- (6) Where an administering authority publishes its pension administration strategy, or that strategy as revised, it must send a copy of it to each of its employing authorities and to the Secretary of State as soon as is reasonably practicable.
- (7) An administering authority and its Scheme employers must have regard to the pension administration strategy when carrying out their Scheme functions.
- (8) In this regulation references to the functions of an administering authority include, where applicable, its functions as a Scheme employer.

Statements of policy about exercise of discretionary functions

60.—(1) A Scheme employer must prepare a written statement of its policy in relation to the exercise of its functions under regulations—

- (a) 16(2)(e) and 16(4)(d) (funding of additional pension);
- (b) 30(6) (flexible retirement);
- (c) 30(8) (waiving of actuarial reduction); and
- (d) 31 (award of additional pension),

and an administering authority must prepare such a statement in relation to the exercise of its functions under regulation 30(8) in cases where a former employer has ceased to be a Scheme employer.

(2) Each Scheme employer must send a copy of its statement to each relevant administering authority and must publish its statement.

(3) A body required to prepare a statement under paragraph (1) must—

- (a) keep its statement under review; and
- (b) make such revisions as are appropriate following a change in its policy.

(4) Before the expiry of a month beginning with the date any such revisions are made, each Scheme employer must send a copy of its revised statement to each relevant administering authority, and must publish its statement as revised.

(5) In preparing, or reviewing and making revisions to its statement, a body required to prepare a statement under paragraph (1) must have regard to the extent to which the exercise of the functions mentioned in paragraph (1) in accordance with its policy could lead to a serious loss of confidence in the public service.

(6) In this regulation a relevant administering authority in relation to a Scheme employer, is any authority which is an appropriate administering authority for that employer's employees.

Statements of policy concerning communications with members and Scheme employers

61.—(1) An administering authority must prepare, maintain and publish a written statement setting out its policy concerning communications with—

- (a) members;
- (b) representatives of members;
- (c) prospective members; and
- (d) Scheme employers.

(2) In particular the statement must set out its policy on—

- (a) the provision of information and publicity about the Scheme to members, representatives of members and Scheme employers;
- (b) the format, frequency and method of distributing such information or publicity; and
- (c) the promotion of the Scheme to prospective members and their employers.

(3) The statement must be revised and published by the administering authority following a material change in their policy on any of the matters referred to in paragraph (2).

Actuarial valuations

Actuarial valuations and certificates

62.—(1) An administering authority must obtain—

- (a) an actuarial valuation of the assets and liabilities of each of its pension funds as at 31st March 2016 and on 31st March in every third year afterwards;
- (b) a report by an actuary in respect of the valuation; and
- (c) a rates and adjustments certificate prepared by an actuary.

(2) Each of those documents must be obtained before the first anniversary of the date (“the valuation date”) as at which the valuation is made or such later date as the Secretary of State may agree.

(3) A report under paragraph (1)(b) must contain a statement of the demographic assumptions used in making the valuation; and the statement must show how the assumptions relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(4) A rates and adjustments certificate is a certificate specifying—

- (a) the primary rate of the employer’s contribution; and
- (b) the secondary rate of the employer’s contribution,

for each year of the period of three years beginning with 1st April in the year following that in which the valuation date falls.

(5) The primary rate of employers’ contributions is the amount in respect of the cost of future accruals which, in the actuary’s opinion, should be paid to a fund by all bodies whose employees contribute to it so as to secure its solvency, expressed as a percentage of the pay of their employees who are active members.

(6) The actuary must have regard to—

- (a) the existing and prospective liabilities arising from circumstances common to all those bodies;
- (b) the desirability of maintaining as nearly constant a common rate as possible;
- (c) the current version of the administering authority’s funding strategy mentioned in regulation 58 (funding strategy statements); and
- (d) the desirability of securing long term cost efficiency of the fund.

(7) The secondary rate of employers' contributions is any percentage or amount by which, in the actuary's opinion, contributions at the primary rate should, in the case of a Scheme employer, be increased or reduced by reason of any circumstances peculiar to that employer.

(8) A rates and adjustments certificate must contain a statement of the assumptions on which the certificate is given as respects—

- (a) the number of members who will become entitled to payment of pensions under the provisions of the Scheme; and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(9) The administering authority must provide the actuary preparing a valuation or a rates and adjustments certificate with the consolidated revenue account of the fund and such other information as the actuary requests.

Aggregate scheme costs

63.—(1) Administering authorities and Scheme employers must have regard to any guidance issued by the Secretary of State about how future costs of the Scheme will be met.

(2) To enable the Secretary of State to calculate those costs for the purposes of that guidance, each administering authority must provide to the Secretary of State by 31st August 2016, and by 31st August in every third year afterwards, all the information used for the purposes of providing an actuarial valuation under regulation 62 (actuarial valuations and certificates).

(3) For the purposes of that guidance, an actuary appointed by the Secretary of State shall provide to the Secretary of State by 31st October 2016 and in every third year afterwards—

- (a) an actuarial valuation of the assets and liabilities of the Scheme as at 31st March 2016 and in every third year afterwards, based on the information provided to the Secretary of State under paragraph (2), carried out in accordance with any direction issued by the Treasury under section 11 of the Public Service Pensions Act 2013(a);
- (b) a report in respect of the valuation (“the valuation report”); and
- (c) an overall cost certificate.

(4) The valuation report must contain a statement of the financial and demographic assumptions used in making the valuation; and the statement must show how the assumptions relate to the events which have actually occurred in relation to the members of the Scheme since the last valuation.

(5) The assumptions used in making the valuation under paragraph (4) shall be determined by the Secretary of State after consultation with such persons with whom consultation appears to the Secretary of State to be desirable.

(6) An overall cost certificate is a certificate—

- (a) specifying the cost of future accrual of pension liabilities; and
- (b) adjusted where appropriate to reflect surpluses or deficits arising from variations between events which have actually occurred in relation to members of the Scheme and the assumptions used in making valuations for each year following 31st March 2013.

Special circumstances where revised actuarial valuations and certificates must be obtained

64.—(1) If a person—

- (a) ceases to be a Scheme employer (including ceasing to be an admission body participating in the Scheme), or
- (b) was a Scheme employer, but no longer has an active member contributing to a fund,

(a) 2013 c. 25.

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 adjustments certificate showing the exit payment due from the exiting employer in respect of those benefits.

(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 adjustments certificate for the fund showing—

- (a) in the case where a body is an admission body falling within paragraph 1(d) of Part 3 of Schedule 2 to these Regulations (scheme employers: bodies providing services as a result of transfer of a service), 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 Scheme employer 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 (including an 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 primary rate should be adjusted; or
- (b) any prior secondary rate adjustment should be increased or reduced,

with a view to providing that assets equivalent to the exit payment that will be due from the Scheme employer are provided to the fund by the exit date or, where the Scheme employer 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.

(6) Paragraph (7) applies where—

- (a) a Scheme employer agrees to pay increased contributions to meet the cost of an award of additional pension under regulation 31(award of additional pension); 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 a Scheme employer 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 62(8) (actuarial valuations and certificates: assumptions).

(7) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that Scheme employer.

(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 (other than an administering authority in its role as an administering authority) .

Aggregate scheme costs: revised certificates

65. Where as a result of the valuation exercise under regulation 63 (aggregate scheme costs), the Secretary of State amends these Regulations, an administering authority must consider whether the rates and adjustments certificate obtained under regulation 62(1)(c) (actuarial valuations and certificates) should be revised to take account of the amendment; and if, in the authority's view the certificate should be so revised—

- (a) the authority must ensure that the certificate is revised accordingly and as soon as possible; and
- (b) the revised certificate must cover the period beginning with 1st April in the second year following that in which the valuation date falls under regulation 62 (actuarial valuations and certificates).

Supply of copies of valuations, certificates etc

66.—(1) An administering authority must send copies of any valuation, report, certificate or revised certificate obtained under regulations 62 (actuarial valuations and certificates) or 64 (special circumstances where revised actuarial valuations and certificates must be obtained) to—

- (a) the Secretary of State;
- (b) each body with employees who contribute to the fund in question; and
- (c) any other body which is, or may become liable to make payments to that fund.

(2) An administering authority must also send to the Secretary of State—

- (a) a copy of the consolidated revenue account with which the actuary was provided under regulation 62(9); and
- (b) a summary of the assets of the fund at the valuation date (unless such a summary is contained in the report under regulation 62(1)(b)).

Payments

Employer's contributions

67.—(1) A Scheme employer must contribute to the appropriate fund in each year covered by a rates and adjustment certificate under regulation 62 (actuarial valuations and certificates) or 64 (circumstances in which revised actuarial valuations and certificates must be obtained) the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).

(2) During each of those years a Scheme employer must make payments to the appropriate fund on account of the amount required for the whole year.

(3) Those payments on account must—

- (a) be paid at the end of the intervals determined under regulation 69 (payment by Scheme employers to administering authorities); and
- (b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.

(4) An employer's contribution for any year is the primary percentage for that year of—

- (a) the pensionable pay on which contributions have been paid into the fund by active members in accordance with regulations 9 to 14 (contributions), and
- (b) the assumed pensionable pay in respect of members on child-related leave,

increased or reduced by any secondary rate adjustments specified for that employer for that year in the rates and adjustments certificate.

(5) The primary percentage is the primary rate of the employer's contribution specified in that certificate expressed as a percentage of the pay of its employees who are active members of the Scheme.

(6) A Scheme employer must also contribute to the appropriate fund in each year any employer contributions made under regulation 16 (additional pension contributions).

Employer's further payments

68.—(1) Any extra charge on the appropriate fund resulting from a member's becoming entitled to benefits under regulation 35 (early payment of retirement pension on ill-health grounds) or 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members) must be paid into the fund by the Scheme employer concerned.

(2) An administering authority may require the Scheme employer concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund resulting from retirements benefits becoming immediately payable to a member under regulation 30(6) (flexible retirement) or (7) (early leavers on grounds of redundancy or business efficiency), including the cost as calculated by an actuary appointed by the administering authority, as a result of a waiver of any reduction under regulation 30(8).

(3) Other than where regulation 64(6) (special circumstances where revised actuarial valuations and certificates must be obtained) applies, a Scheme employer making an award under regulation 31 (award of additional pension) must pay a sum into the appropriate fund to meet the cost of any additional pension, in accordance with actuarial guidance issued by the Secretary of State.

Payment by Scheme employers to administering authorities

69.—(1) Every Scheme employer must pay to the appropriate administering authority on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine—

- (a) all amounts received from time to time from employees under regulations 9 to 14 and 16 (contributions);
- (b) any charge payable under regulation 68 (employer's further payments) of which it has been notified by the administering authority during the interval;
- (c) a contribution towards the cost of the administration of the fund; and
- (d) any amount specified in a notice given in accordance with regulation 70 (additional costs arising from Scheme employer's level of performance).

(2) But—

- (a) a Scheme employer must pay the amounts mentioned in paragraph (1)(a) within the prescribed period referred to in section 49(8) of the Pensions Act 1995(a); and
- (b) paragraph (1)(c) does not apply where the cost of the administration of the fund is paid out of the funds under regulation 4(5) of the Local Government Pensions Scheme (Management and Investment of Funds) Regulations 2009 (management of pension fund)(b).

(3) Every payment under paragraph (1)(a) must be accompanied by a statement showing—

- (a) the name, pay and band (as set out in column 1 of the table in regulation 9(2) (contributions)) of each of the Scheme employer's employees who is an active member;
- (b) which employees are paying contributions under regulation 10 (temporary reduction in contributions);
- (c) which employees are paying contributions under regulation 16 (additional pension contributions); and
- (d) the amounts which represent deductions in each of the pay bands from each of the employees and the periods covered by the deductions, distinguishing amounts representing deductions for any voluntary contributions.

(a) 1995 c. 26.

(b) S.I. 2009/3093.

(4) An administering authority may direct that the information mentioned in paragraph (3) shall be given to the authority in such form, and at such intervals (not exceeding 12 months) as it specifies in the direction.

(5) If an amount payable under paragraph (1)(c) or (d) can not be settled by agreement, it must be determined by the Secretary of State.

(6) Paragraphs (1) to (5) do not apply to a Scheme employer which is an administering authority, but such an authority must pay its share of any contribution towards the cost of administration of the fund where it has required a contribution from Scheme employers under paragraph (1)(c).

Additional costs arising from Scheme employer's level of performance

70.—(1) This regulation applies where, in the opinion of an administering authority, it has incurred additional costs which should be recovered from a Scheme employer because of that employer's level of performance in carrying out its functions under these Regulations.

(2) The administering authority may give written notice to the Scheme employer stating—

- (a) the administering authority's reasons for forming the opinion mentioned in paragraph (1);
- (b) the amount the authority has determined the Scheme employer should pay under regulation 69(1)(c) or (d) (payments by Scheme employers to administering authorities) in respect of those costs and the basis on which the specified amount is calculated; and
- (c) where the administering authority has prepared a pension administration strategy under regulation 59, the provisions of the strategy which are relevant to the decision to give the notice and to the matters in sub-paragraphs (a) or (b).

Interest on late payments by Scheme employers

71.—(1) An administering authority may require a Scheme employer from which any payment is due under regulations 67 to 70 (employer's contributions or payments) is overdue to pay interest on that amount.

(2) The date on which any amount due under regulations 67 (employer's contributions), 68 (employer's further payments), 70 (additional costs arising from Scheme employer's level of performance) is overdue is one month from the date specified by the administering authority for payment.

(3) The date on which any amount due under regulation 69 (payment by Scheme employers to administering authorities) (other than an extra charge payable under regulation 68 and referred to in regulation 69(1)(b)) is overdue is the day after the date when that payment is due.

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

Decisions

First instance decisions

72.—(1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) In these Regulations, reference to the Scheme employer or appropriate administering authority of a prospective member is a reference to the body that would be that prospective member's Scheme employer or appropriate administering authority if that person were to become an active member in the employment by virtue of which eligibility to join the Scheme would be established.

(3) The appropriate administering authority must decide any question concerning—

- (a) a person's previous service or employment;
 - (b) the crediting of additional pension under regulation 16 (additional pension);
 - (c) the amount of any benefit, or return of contributions, a person is or may become entitled to out of a pension fund.
- (4) A person's Scheme employer must decide any question concerning any other matter relating to the person's rights or liabilities under the Scheme.
- (5) A decision under this regulation must be made as soon as is reasonably practicable.

Notification of first instance decisions

73.—(1) Every person whose rights or liabilities are affected by a decision under regulation 72 (first instance decisions) must be notified of it in writing by the body which made it as soon as is reasonably practicable.

(2) A notification of a decision that the person is not entitled to a benefit must contain the grounds for the decision.

(3) A notification of a decision about the amount of a benefit must contain a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

- (a) specify the rights available under regulations 74 (applications for adjudication of disagreements) and 76 (references of adjudications to administering authority);
- (b) specify the time limits within which the rights under those regulations may be exercised; and
- (c) specify the job title and the address of the person appointed under regulation 74(1) to whom an application may be made.

Applications for adjudication of disagreements

74.—(1) Each Scheme employer and administering authority must appoint a person ("the adjudicator") to consider applications from any person whose rights or liabilities under the Scheme are affected by—

- (a) a decision under regulation 72 (first instance decisions); or
- (b) any other act or omission by a Scheme employer or administering authority,

and to make a decision on such applications.

(2) An applicant under paragraph (1)(a) may apply to the adjudicator appointed by the body making the decision, within six months of the date notification of the decision is given under regulation 72.

(3) An applicant under paragraph (1)(b) may apply to the adjudicator appointed under paragraph (1) by the body responsible for the act or omission, within six months of the date of the act or omission which is the cause of the disagreement, or, if there is more than one, the last of them.

(4) The adjudicator may extend the time for making an application under paragraph (2) or (3).

(5) An application under paragraph (2) or (3) must—

- (a) set out the applicant's name, address and date of birth;
- (b) if the applicant is not a member of the Scheme, set out the applicant's relationship to any relevant member of the Scheme and give that member's full name, address, date of birth, national insurance number and the name of the member's Scheme employer;
- (c) include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;

- (d) be accompanied by a copy of any written notification under regulation 73 (notification of first instance decision);
 - (e) be signed by or on behalf of the applicant.
- (6) The adjudicator must determine—
- (a) the procedure to be followed when exercising functions under this regulation; and
 - (b) the manner in which those functions are to be exercised.

Decisions of the adjudicator

75.—(1) The adjudicator must give written notice of a decision under regulation 74 (applications for adjudication of disagreements) to—

- (a) the applicant;
- (b) the Scheme employer; and
- (c) if the Scheme employer is not an administering authority, to the appropriate administering authority

before the expiry of two months beginning with the date on which the application was received.

(2) But if no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out—

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision (“the expected decision date”).

(3) A notice under paragraph (1) must include—

- (a) a statement of the decision;
- (b) a reference to any legislation on which the adjudicator relied;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of these Regulations conferring the discretion;
- (d) a reference to the right of the applicant to refer the disagreement for reconsideration by the appropriate administering authority under regulation 76 (reference of adjudications to administering authority) and to the time within which the applicant may do so; and
- (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme that remains unresolved including the address at which it may be contacted.

(4) A decision under paragraph (1) takes effect as a decision of the Scheme employer or administering authority, as the case may be, except where the matter concerns the exercise of a discretion, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration.

Reference of adjudications to administering authority

76.—(1) An applicant under regulation 74 (applications for adjudication of disagreements) may refer a decision under regulation 75 (decisions of the adjudicator) for reconsideration by the appropriate administering authority.

(2) A reference under paragraph (1) must—

- (a) be made before the relevant date;
- (b) set out the applicant’s full name, address and date of birth;
- (c) if the applicant is not a member of the Scheme, set out the applicant’s relationship to any relevant member of the Scheme and give that member’s full name, address, date of birth, national insurance number and the name of the member’s Scheme employer;
- (d) include a statement that the applicant wishes the decision to be reconsidered by the administering authority;

- (e) set out the details of the grounds on which the applicant relies;
 - (f) be accompanied by a copy of any written notifications under regulations 73 (notification of first instance decisions) and 75 (decisions of the adjudicator); and
 - (g) be signed by or on behalf of the applicant.
- (3) The relevant date for the purposes of paragraph (2)(a) is—
- (a) in a case where notice of a decision has been given under regulation 75(1), six months from the date the notice is received;
 - (b) in a case where an interim reply has been sent under regulation 75(2), but no notice has been given under regulation 75(1), seven months from the expected decision date;
 - (c) in a case where no notice have been given under regulation 75(1) and no interim reply was sent under regulation 75(2), nine months from the date on which the application was made.
- (4) The administering authority must determine—
- (a) the procedure to be followed when exercising its functions under this regulation; and
 - (b) the manner in which those functions are to be exercised, but it must ensure that no person who was involved in the making of a first-instance decision or a decision under regulation 75 (decisions of the adjudicator) is involved in a decision on reconsideration.
- (5) For the purposes of paragraph (1) of this regulation, the appropriate administering authority is the administering authority which is or was the last appropriate administering authority for the member who is the applicant, or who is the relevant member in relation to any other applicant.

Decisions of the administering authority on reconsideration

77.—(1) An administering authority must give written notice of decision after reconsideration under regulation 76 (reference of adjudications to administering authority) to—

- (a) the applicant; and
- (b) where the administering authority is not the Scheme employer, to the Scheme employer, before the expiry of the period of two months beginning with the date the application is received.

(2) But if no such notice is given before the expiry of that period, an interim reply must be sent as soon as is reasonably practicable to the persons mentioned in paragraph (1)(a) and (b) setting out—

- (a) the reasons for the delay; and
 - (b) an expected date for giving the decision (“the expected decision date”)
- (3) A notice under paragraph (1) must include—
- (a) a statement of the decision;
 - (b) a reference to any legislation on which the administering authority relied;
 - (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of these Regulations conferring the discretion;
 - (d) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme that remains unresolved;
 - (e) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes Act 1993(a); and
 - (f) the addresses at which the Pensions Advisory Service and the Pensions Ombudsman may be contacted.

(a) 1993 c. 48.

(4) A decision under paragraph (1) takes effect as a decision of the administering authority except where the where the matter concerns the exercise of a discretion, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration .

Rights of representation

78.—(1) An application under regulation 74 (applications for adjudication of disagreements) or 76 (reference of adjudications to administering authority) may be made or continued to be made on behalf of the applicant by a representative nominated by the applicant.

(2) Where a person who has the right to make, or has made such an application dies, the application may be made or continued on the applicant's behalf by the applicant's personal representatives.

(3) Where such a person is a minor or is or becomes incapable of acting, the application may be made or continued on the applicant's behalf by a family member or some other suitable representative.

(4) Where a representative is nominated before an application is made, the application must specify the representative's full name and address, and whether that address is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used, the representative must nevertheless be sent a copy of—

- (a) any notice under regulation 75(1) (decisions of the adjudicator) or 77(1) (decisions of the administering authority on reconsideration); or
- (b) an interim reply under regulation 75(2) or 77(2).

Appeals by administering authorities

79.—(1) This regulation applies where a Scheme employer—

- (a) has decided, or failed to decide any question falling to be decided by that employer under regulation 72 (first instance decisions), otherwise than in the exercise of a discretion; and
- (b) is not an administering authority.

(2) Where this regulation applies, an administering authority maintaining a pension fund into which a Scheme employer pays contributions may appeal to the Secretary of State against the employer's decision on a question or failure to make a decision on a question.

(3) Such an appeal must be made by notice in writing given before the end of—

- (a) the period of six months beginning with the relevant date; or
- (b) such longer period as the Secretary of State allows.

(4) The relevant date is—

- (a) where a Scheme employer has decided a question, the date of the notification of the decision;
- (b) where a Scheme employer has failed to decide a question, the date of the failure.

(5) For the purposes of paragraph (4)(b) a Scheme employer is to be taken to have failed to decide a question if it has not given a decision in writing at the expiry of three months beginning with the date on which the administering authority has requested a decision in writing.

(6) Subject to paragraph (7), the Secretary of State must make a decision on the appeal which is to take effect as a decision of the Scheme employer and must issue a notice in writing to the appellant and to any other person appearing to the Secretary of State to be affected by it.

(7) The appeal must be stayed if, before the appeal is determined, any application is made, to the adjudicator under regulation 74 (applications for adjudication of disagreements), or reference to the administering authority under regulation 76 (reference of adjudications to administering authority) in respect of any of the matters which are the subject of the appeal under this regulation.

(8) The administering authority must inform the Secretary of State whether it wishes to continue with an appeal stayed under paragraph (7), or to withdraw it and if the appeal is continued, the Secretary of State must make a decision under paragraph (6).

Exchange of information

80.—(1) A Scheme employer which is not an administering authority must—

- (a) inform the appropriate administering authority of all decisions made by the employer under regulation 72 (first instance decisions) or by an adjudicator appointed by the Scheme employer under regulation 74 (applications for adjudication of disagreements) concerning members; and
- (b) give that authority such other information as it requires for discharging its Scheme functions.

(2) If—

- (a) an administering authority makes any decision under regulations 72 (first instance decisions), 75 (decisions of the adjudicator) or 76 (reference of adjudications to administering authority) about a person for whom it is not the Scheme employer; and
- (b) information about that decision is required by the person's Scheme employer for discharging that employer's Scheme functions,

that authority must give that employer that information.

Interest on late payment of certain benefits

81.—(1) Where all or part of a pension or lump sum payment due under these Regulations (other than a payment due under regulation 17 (additional voluntary contributions)) 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) in the case of a lump sum payment, 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 (election for lump sum instead of pension) 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 (commutation and small pensions) 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(a).

(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

82.—(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

(a) 2004 c. 12.

Administration of Estates (Small Payments) Act 1965(a) 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

83.—(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
- (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

84.—(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(b).

Deduction and recovery of member's contributions

85.—(1) A Scheme employer may deduct from a person's pay any contributions payable by the member under these Regulations.

(2) Sums payable under regulation 13(1) (reserve forces leave) may be deducted by the member's former employer from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(c), to the extent that they are payable in respect of the same period.

(3) An administering authority may recover any contributions or sum remaining due and not deducted under paragraph (1) or (2)—

- (a) as a simple contract debt in any court of competent jurisdiction; or
- (b) by deducting it from any payment by way of benefits to or in respect of the person in question under these Regulations.

(4) But the sums mentioned in paragraph (2) are only recoverable under paragraph (3) if unpaid for 12 months after the person ceases to perform relevant reserve forces service.

(5) If—

(a) 1965 c. 32; there are amendments to section 6 which are not relevant to this instrument.
(b) 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).
(c) 1951 c. 65.

- (a) a Scheme employer deducts in error any amount in respect of contributions from a person's pay or any other sum due to that person; and
- (b) the amount has not been repaid before the expiry of the period of one month beginning with the date of the deduction,

the appropriate body must pay interest on the amount, and the due date for the calculation of the interest payable is the date of the deduction.

(6) Where the employee's contributions have been paid into a fund, the repayment and any interest must be made out of that fund.

(7) Interest must be 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.

(8) The "appropriate body" for the purposes of paragraph (5) is—

- (a) the appropriate administering authority, where the employee's contributions have been paid into a fund; and
- (b) the person's Scheme employer where the employee's contributions have not yet been paid into a fund.

Joint liability in respect of annual allowance charge

86.—(1) This regulation applies where a member gives notice to the appropriate administering authority of joint and several liability under section 237B (liability of scheme administrator) of the Finance Act 2004(a) in respect of the member's annual allowance charge.

(2) Where the joint liability amount specified in the notice is met by the pension fund, the appropriate administering authority shall reduce the value of the member's rights accrued under the Scheme in accordance with actuarial guidance issued by the Secretary of State.

Tax

87. 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.

Pension increase under the Pensions Schemes Act 1993

88. Any increase of pension required by reason of Chapter 3 of Part 4 of the Pension Schemes Act 1993 (protection of increases in guaranteed minimum pensions: anti-franking)(b) must be paid from the appropriate fund held by the administering authority.

Annual benefit statements

89.—(1) An administering authority must issue an annual benefit statement to each of its active, deferred, deferred pensioner and pension credit members.

(2) Subject to paragraph (3), the statement must be issued no later than 6 months after the end of the scheme year to which it relates.

(3) A statement must be issued before the end of the 6 month period mentioned in paragraph (2) where a member makes a request in writing to the administering authority, unless that authority is unable to comply with the request because relevant data is not available.

(4) A statement must contain an illustration of the amount of benefit entitlement in respect of the rights that may arise under the Scheme which—

- (a) has been accrued by the member at the relevant date; and

(a) 2004 c. 12; section 237B was inserted by the Finance Act 2011 (c. 11).

(b) 1993 c. 48.

(b) in the case of an active member, is capable of being accrued by that member if remaining in the Scheme until normal retirement age.

(5) The illustration must be calculated in accordance with Treasury directions specified under section 14 of the Public Services Pensions Act 2013^(a).

(6) The relevant date is 31st March before the date that the statement is issued, or such later date as the authority may choose.

Information to be supplied by employees

90.—(1) Before the expiry of three months beginning with the date on which a person becomes a member, the Scheme employer must ask the member in writing for the documents specified in paragraph (2).

(2) Those documents are—

- (a) a statement in writing listing all the person's previous periods of employment; and
- (b) copies of all notifications previously given to the member under these Regulations and their equivalents under any previous regulations.

(3) A request under this regulation must contain a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining the member's rights under the Scheme.

(4) The Scheme employer need not request any documents if it is satisfied that it, or the appropriate administering authority (if different), already has all material information.

Forfeiture

Forfeiture of pension rights after conviction for employment-related offences

91.—(1) If a member is convicted of a relevant offence, the former Scheme employer may apply to the Secretary of State who may issue a forfeiture certificate.

(2) A relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment.

(3) Where a former Scheme employer applies for a forfeiture certificate, it must at the same time send the convicted person and the appropriate administering authority a copy of the application.

(4) Where a forfeiture certificate is issued, the member's former Scheme employer may direct that any of the member's rights under these Regulations are forfeited.

(5) The former Scheme employer must serve a notice of its decision to make a direction on the member.

(6) A forfeiture certificate is a certificate that the offence—

- (a) was gravely injurious to the State, or
- (b) is liable to lead to a serious loss of confidence in the public service.

(7) If the former Scheme employer incurred loss as a direct consequence of the relevant offence, it may only give a direction under paragraph (4) if it is unable to recover its loss under regulation 93 (recovery or retention where former member has misconduct obligation) or otherwise, except after an unreasonable time or at disproportionate cost.

(8) A direction under paragraph (4) may only be given if an application for a forfeiture certificate has been made by the former Scheme employer before the expiry of the period of three months beginning with the date of conviction.

(a) 2013 c. 25.

Interim payments directions

92.—(1) If—

- (a) a person leaves an employment in which that person was a member of the Scheme because of an offence in connection with that employment; and
- (b) a forfeiture certificate has been issued under regulation 91(1) (forfeiture of pension rights after conviction of employment-related offences) in respect of that offence,

the former Scheme employer may give an interim payments direction to the appropriate administering authority.

(2) But it may not give such a direction if it has—

- (a) notified the person of a decision under regulation 72 (first instance decisions) on any question as to entitlement to benefit; or
- (b) given any direction under regulation 91(4) (“a forfeiture direction”).

(3) An interim payments direction is a direction to make interim payments to any person who appears to the former Scheme employer to be a person who would be entitled to receive payment of a benefit under the Scheme if no forfeiture direction were given.

(4) The person to whom payments must be made and the amounts must be specified in the direction.

(5) The amounts must not exceed the amounts which the person specified would be entitled to be paid if no forfeiture direction were given.

(6) An interim payments direction is not a decision under regulation 72 (first instance decisions) as to any person’s entitlement to a benefit.

(7) Payments in accordance with an interim payments direction shall be deemed to be payments in respect of a benefit to which the recipient was entitled (regardless of any contrary forfeiture direction or decision under regulation 72).

Recovery or retention where former member has misconduct obligation

93.—(1) This regulation applies where a person—

- (a) has left an employment in which that person was or had at some time been a member of the Scheme, in consequence of grave misconduct or a criminal, negligent or fraudulent act or omission in connection with that employment;
- (b) has incurred some monetary obligation, arising out of that misconduct, act or omission, to the body that was the Scheme employer in that employment; and
- (c) is entitled to benefits under these Regulations.

(2) The former Scheme employer may recover or retain out of the appropriate fund—

- (a) the amount of the monetary obligation; or
- (b) the value at the time of recovery or retention of all rights in respect of the former employee with respect to that person’s previous membership (as determined by an actuary).

(3) The rights specified in paragraph (2)(b) do not include earned pension credited under regulation 101 (inward transfer of pension rights), additional pension purchased by the member under regulation 16 (additional pension contributions) or additional voluntary contributions paid by the member under regulation 17 (additional voluntary contributions).

(4) The former Scheme employer must give the former employee—

- (a) not less than three months’ notice of the amount to be recovered or retained under paragraph (2); and
- (b) a certificate showing the amount recovered or retained, how it is calculated and the effect on the person’s benefits or prospective benefits.

(5) If there is any dispute over the amount of the monetary obligation specified in paragraph (1)(b), the former Scheme employer may not recover or retain any amount under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbitrator.

Adjustment of accounts following forfeiture etc

94.—(1) Where a forfeiture direction is issued under regulation 91 (forfeiture of pension rights after conviction for employment-related offences) the appropriate administering authority must transfer out of the member's pension account the benefits which are forfeited.

(2) Where an amount is recovered or retained under regulation 93 (recovery or retention where former member has misconduct obligation), the appropriate administering authority must transfer out of the member's pension account the amount recovered or retained and pay it to the relevant Scheme employer.

(3) If the effect of a forfeiture direction, or of the recovery or retention of an amount, is to extinguish the member's entitlement to benefits, the administering authority must close the member's pension account.

(4) If after making a payment under paragraph (2) the appropriate administering authority is required to make a transfer payment under Chapter 4 or Chapter 5 of Part 4 of the Pension Schemes Act 1993 or to make a payment under regulation 103 (changes of administering authority) for a former employee, the former Scheme employer must repay it if requested to do so.

Protection of guaranteed minimum pension rights

95.—(1) The power to direct forfeiture of benefits under regulation 91 (forfeiture of pension rights after conviction for employment-related offences) or to recover or retain amounts under regulation 93 (recovery or retention where former member has misconduct obligation) may not be exercised so as to deprive a person of the guaranteed minimum pension or any widow's, widower's or surviving civil partner's guaranteed minimum pension.

(2) But such a power may be exercised if the person is convicted—

- (a) of the offence of treason; or
- (b) of one or more offences under the Official Secrets Acts 1911 to 1989 for which the person has been sentenced on the same occasion—
 - (i) to a term of imprisonment of at least 10 years, or
 - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years.

Transfers

Rights to payment out of pension fund

96.—(1) A member may apply for a transfer under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993 (as modified by these Regulations) and where the member does so the amount of any transfer payment due in respect of the member under the relevant transfer may only be paid by the administering authority from its pension fund if the transfer payment is a recognised transfer (within the meaning of section 169 of the Finance Act 2004(a)).

(2) Where such a transfer payment is to be or has been paid from a fund, no other payment or transfer of assets may be made from the fund as respects the accrued rights covered by the transfer payment.

(3) Paragraph (2) overrides anything to the contrary in any regulations including these Regulations or in any local Act scheme.

(a) 2004 c. 12.

Contracting-out requirements affecting transfers out

97.—(1) There must be deducted from the transfer payment to be made in respect of any person—

- (a) the amount of any contributions equivalent premium payable pursuant to section 55 of the Pension Schemes Act 1993; or
- (b) an amount sufficient to meet the liability in respect of the person's contracted-out rights.

(2) But the amount mentioned in paragraph (1) may not be deducted where the transfer payment is made to a registered pension scheme which is contracted-out.

(3) Where the amount mentioned in paragraph (1)(a) is deducted, the appropriate administering authority must use that amount to pay the premium.

(4) Where the amount mentioned in paragraph (1)(b) is deducted, the appropriate administering authority may use the amount in preserving the liability mentioned in that paragraph in the appropriate fund unless the member wishes a transfer payment in respect of it to be paid to the trustees or managers of a non-contracted out registered pension scheme.

(5) Contracted-out rights, in relation to a member, are—

- (a) the member's, and any surviving spouse's, civil partner's or cohabiting partner's rights to guaranteed minimum pensions; and
- (b) the member's section 9(2B) rights as defined in regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996(a).

Bulk transfer (transfers of undertakings etc)

98.—(1) This regulation applies where—

- (a) two or more members' active membership ends on their joining a registered non-local government scheme ("the new scheme");
- (b) it is agreed by—
 - (i) the members' appropriate administering authority,
 - (ii) the members' Scheme employers (if different), and
 - (iii) the trustees or managers of the new scheme,that a payment should be made under this regulation; and
- (c) the members—
 - (i) agree in writing that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993, and
 - (ii) waive any rights they might have under those Chapters by virtue of the cessation of their active membership.

(2) The appropriate administering authority must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5 of Part 4 of the Pensions Schemes Act 1993, as they apply as modified by these Regulations (assuming in any case where a member would not be entitled to such a payment that the member was so entitled).

(3) The appropriate administering authority must provide each member with sufficient information in writing to check that fact before the member agrees as mentioned in paragraph (1)(c).

(4) The appropriate administering authority must—

(a) S.I. 1996/1172; the definition of section 9(2B) rights in regulation 1(2) was amended by S.I. 1997/786, 1999/3198 and 2011/1246.

- (a) set aside (whether in cash or in assets or both) such part of the appropriate fund (“the transfer payment”) as an actuary appointed by the authority and an actuary appointed by the trustees or managers of the new schemes for the purpose may agree as appropriate for the acquisition of such rights in that scheme as they may so agree; and
- (b) pay or transfer it to the trustees or managers of the new scheme for the benefit of the relevant members.

(5) The appropriate administering authority must certify to the new scheme’s trustees or managers the amount included in the transfer payment which represents each member’s contributions and interest on them.

(6) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made from the pension fund by reason of membership covered by the transfer payment.

(7) Paragraph (6) overrides anything to the contrary in any regulations including these Regulations or in any local Act scheme.

Calculation of amount of transfer payment

99.—(1) The amount of the transfer payment to be paid under regulation 98 (bulk transfers) is the amount determined by an actuary appointed by the member’s appropriate administering authority to be equal to the value at the date they join the new scheme of the actual and potential liabilities payable from its fund which have then accrued in respect of the members and the persons who are or may become entitled to benefits under the Scheme through them.

(2) The actuary may make such adjustments as are thought fit in calculating that amount and in particular as respects the period from that date to the date of actual payment of the transfer value.

(3) The actuary must specify in the valuation the actuarial assumptions used in making it.

(4) The Scheme employer shall bear the costs of determining the appropriate part of the fund and apportioning the fund.

(5) But if there is more than one Scheme employer involved, each shall bear such part of the costs as the actuary determines to be appropriate.

Inward transfers of pension rights

100.—(1) An active member with relevant pension rights may request the appropriate administering authority to accept a transfer value for some or all of those rights from the relevant transferor.

(2) Relevant pension rights are—

- (a) accrued rights under a registered scheme other than rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit; and
- (b) accrued rights under a European pensions institution.

(3) Accrued rights under a registered scheme include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993(a).

(4) The relevant transferor is the trustees or managers of the scheme under which the transferring person’s relevant pension rights arise.

(5) But the relevant transferor for the rights specified in paragraph (3) is the trustees and managers of the scheme, or the insurance company, to which a payment in respect of the person’s accrued rights has been made.

(6) A request from a transferring person under paragraph (1) must be made by notice in writing given before the expiry of the period of 12 months beginning with the date on which the person

(a) Section 19 was amended by S.I. 2001/3649, 2005/2050 and 2007/3014.

first became an active member in an employment (or such longer period as the Scheme employer may allow).

(7) Where a request under paragraph (1) is duly made, the administering authority may accept the transfer value and credit it to its pension fund.

Effect of acceptance of transfer value

101.—(1) Where a transfer value has been accepted under regulation 100 (inward transfer of pension rights), the administering authority must credit the active member's pension account with the appropriate amount of earned pension.

(2) The calculation of the appropriate amount of earned pension for the purposes of paragraph (1) is to be in accordance with actuarial guidance issued by the Secretary of State.

Community scheme transfers

102.—(1) The persons mentioned in paragraph (2) are entitled to such rights under the Scheme as are specified in actuarial guidance issued by the Secretary of State.

(2) Those persons are—

- (a) a person who became employed by an EU institution after having been employed in local government service; or
- (b) a surviving spouse, civil partner, cohabiting partner, dependant or child of such a person.

(3) In this regulation—

- (a) "EU institution" means a body treated as one of the EU's institutions for the purposes of the European Union's scheme; and
- (b) "the European Union's scheme" means the pension scheme provided for officials and other servants of the European Union in accordance with regulations adopted by the Council of the European Union.

Changes of administering authority

103.—(1) This regulation applies where—

- (a) an administering authority becomes an active member's appropriate administering authority;
- (b) immediately before it does so, another administering authority was that member's appropriate administering authority; and
- (c) in a case where a member has the option of aggregating the past period of membership with the current period of membership, the member has exercised the option to aggregate those periods.

(2) An administering authority which has ceased to be a member's appropriate administering authority must make a transfer value payment to the member's new appropriate administering authority in accordance with actuarial guidance issued by the Secretary of State.

(3) Where paragraph (2) applies as respects 10 or more members by virtue of a single event, the amount of the payment under that paragraph shall be determined by agreement between an actuary appointed by the administering authority by which the payment must be made and an actuary appointed by the administering authority to which it must be made.

(4) Where the actuaries cannot agree on the amount within 12 months of the date of transfer, or where there is more than one date of transfer, the date of the last transfer which relates to the single event—

- (a) the matter shall be referred to a third actuary, chosen by agreement between the actuaries, or in default of agreement, by the President of the Institute and Faculty of Actuaries; and
- (b) that actuary's determination shall be final.

(5) The costs of determining the amount to be transferred shall be paid in equal shares by the fund held by the member's former appropriate administering authority and the fund held by the member's new appropriate administering authority.

(6) Any payment under paragraph (2) must be credited to the new appropriate administering authority's fund.

(7) This regulation does not apply where a member enters an employment which is concurrent with another in which the member is also an active member.

Signed by authority of the Secretary of State.

Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

Date

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(a);

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

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

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

“administering authority” means a body listed in Part 1 of Schedule 3 which is required to hold a fund for the purposes of these Regulations;

“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;

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

(b) S.I. 2010/1055

“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(a);

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

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

“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(c) and regulation 12 of the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010(d) for those of its eligible jobholders who are not active members 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(e);
- (b) ordinary maternity leave under section 71 of that Act;
- (c) additional maternity or adoption leave under section 73 or 75B of that Act(f) during which the member receives some pensionable pay;
- (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 during which the member receives some pensionable pay.

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

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

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

- (a) the person (P) has fulfilled the condition in paragraph (b) for a continuous period of at least 2 years on the date the member (M) died, and
- (b) the condition is that—
 - (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;

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

(a) 2004 c. 12; section 227 has been amended by the Finance Act 2009 and the Finance Act 2011.
(b) 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.
(c) Section 5 was substituted by the Pensions Act 2011 and there have been further amendments which are not relevant to this instrument.
(d) S.I. 2010/772.
(e) 1996 c. 18; section 75A was inserted by the Employment Act 2002.
(f) 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.

“deferred payment enhancement” means the amount by which a member’s entitlement is increased pursuant to regulation 30(4) or (11);

“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(5), (6) or (12);

“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 and who was born before, on, or in the case of a natural child, within 12 months of the member’s death; or
- (b) a step-child or child accepted by the deceased as a member of the family (excluding a child sponsored by the member through a registered charity) who—
 - (i) meets any of conditions A to C; and
 - (ii) was dependent on the member at the date of death.

Condition A is that the person is aged under 18.

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.

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

“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(b);

“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(c); or

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

(b) 1971 c. 56.

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

(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(a);

“local government service” means an 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(b)

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

“occupational pension scheme” has the meaning given by section 1 of the Pensions Schemes Act 1993(d);

“ordinary adoption leave” means leave under section 75A of the Employment Rights Act 1996(e);

“ordinary maternity leave” means leave under section 71 of the Employment Rights Act 1996;

“paternity leave” means leave under regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(f);

“payment period” means a period of service to which an employee’s wages or salary payments relate;

“pensionable age” has the meaning given in section 181 of the Pension Schemes Act 1993;

“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 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);

“pension debit” means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999(g);

“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;

“Pensions Regulator” means the body corporate established under section 1 of the Pensions Act 2004(h)

“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 Pension Schemes Act 1993(i);

“qualifying recognised overseas pension scheme” has the same meaning as in section 169(2) of the Finance Act 2004(a);

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- (a) 2004 c.12; section 237B was inserted by the Finance Act 2011.
 - (b) 1995 c. 26.
 - (c) 1995 c. 26.
 - (d) 1993 c. 48; the definition of “occupational pension scheme” was substituted by the Pensions Act 2004 and was amended by S.I. 2007/3014.
 - (e) 1996 c. 18; section 75A was inserted by the Employment Act 2002 and was amended by the Work and Families Act 2006.
 - (f) S.I. 2002/2788.
 - (g) 1999 c. 30.
 - (h) 2004 c. 35.
 - (i) 1993 c. 48; section 1 has amendments which are not relevant to this instrument.

“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**(b)** 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,

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**(c)**), 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**(d)**;

“reserve forces pay” means the total of—

- (a) pay for performing relevant reserve forces service (including marriage, family and similar allowances), and
- (b) any payments under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951**(e)**;

“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**(f)**;

“reevaluation 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 employer” means a body listed in Schedule 2 employing an employee who is eligible to be a member and includes an admission body;

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

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

“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**(g)** in respect of the member’s annual allowance charge;

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

“shared cost additional voluntary contribution arrangements” means arrangements established under regulation 17 to which both the Scheme employer 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**(h)**;

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

(a) 2004 c. 12.
(b) 2000 c. 8.
(c) 2006 c. 46.
(d) 2004 c. 12.
(e) 1951 c. 65.
(f) 1996 c. 14.
(g) 2004 c. 12. Section 237B was inserted by the Finance Act 2011.
(h) 1992 c. 4.

“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(a);

“transferred in 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.

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(b).
5. A fire and rescue authority within the meaning of the Fire and Rescue Services Act 2004(c).
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(d).
8. The Commission for Local Administration in England.
9. A probation trust established under section 5 of the Offender Management Act 2007(e) 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(f).

(a) 1992 c.52.
 (b) 2011 c.20.
 (c) 2004 c. 21.
 (d) 2011 c.13.
 (e) 2007 c. 21.
 (f) 2008 c. 26.

- 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(**a**).
- 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(**b**).
- 19.** An Education Action Forum within the meaning of section 11 of the School Standards and Framework Act 1998(**c**).
- 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(**d**).
- 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(**e**).
- 22.** The Valuation Tribunal Service established under section 105 of the Local Government Act 2003(**f**) and the Valuation Tribunal for Wales established under regulation 4 of the Valuation Tribunal for Wales Regulations 2010(**g**).
- 23.** A conservation board established under section 86 of the Countryside and Rights of Way Act 2000(**h**).

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(**i**) (interpretation),
 - (b) a levying body within the meaning of section 74 of the Local Government Finance Act 1988(**j**) (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(**k**).

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- (a) 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).
- (b) 1995 c. 25.
- (c) 1998 c. 31.
- (d) 2010 c. 32. Section 1 has been amended by the Education Act 2011 (c. 21).
- (e) 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).
- (f) 2003 c. 26. Section 27 was amended by the Local Government and Public Involvement in Health Act 2007 (c.28).
- (g) SI 2010/713 (W 69)
- (h) 2000 (c. 37). There are amendments to section 86 which are not relevant.
- (i) 1992 c.14.
- (j) 1988 c. 41.
- (k) 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).

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(a).

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(b) (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.

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(c) (Secretary of State’s powers),
 - (iii) directions made under section 497A of the Education Act 1996(d);
- (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.

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

(b) 1989 c. 42.

(c) 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.

(d) 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).

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 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^(a) 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^(b), which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule)^(c) 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

(a) 2000 c.8.

(b) 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.

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

- (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—

- (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, to the satisfaction of the bodies mentioned in paragraph 6, the level of risk arising as a result of the matters mentioned in that paragraph;
- (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(a) 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 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(b) 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(c)	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

(a) 1996 c. 56.

(b) SI 2008/239. Regulation 8A was inserted by SI 2009/447.

(c) 1974 c. 7.

SCHEDULE 3

Regulation 53

Part 1

Pension funds

1. The following bodies are required to maintain a pension fund and are administering authorities for the purposes of these Regulations—

- (a) a county council in England;
- (b) a London borough council;
- (c) the Corporation of London;
- (d) Bath and North East Somerset Council;
- (e) Bedford Borough Council;
- (f) Bradford District Council;
- (g) Cheshire West and Chester Council;
- (h) East Riding of Yorkshire Council;
- (i) Middlesbrough Borough Council;
- (j) South Tyneside Council;
- (k) Tameside Borough Council;
- (l) Royal Borough of Windsor and Maidenhead Council;
- (m) Wirral Borough Council;
- (n) Wolverhampton City Council;
- (o) the South Yorkshire Pension Authority;
- (p) the Environment Agency;
- (q) the London Pensions Fund Authority;
- (r) Flintshire County Council;
- (s) Carmarthenshire County Council;
- (t) Caernarfonshire and Merionethshire County Council;
- (u) Cardiff County Council;
- (v) Swansea County Council;
- (w) Flintshire County Council;
- (x) Gwynedd Council;
- (y) Powys County Council;
- (z) Rhonda Cynon Taff County Borough Council;
- (aa) Torfaen County Borough Council.

Part 2

Appropriate Administering Authorities

1. Subject to paragraph 3, the appropriate administering authority for a member of the Scheme is the authority specified in column 2 of the following table for a person of that description.

2. The appropriate administering authority for a former member of the Scheme, or a person entitled to any benefit in respect of a person who is or has been a member of the Scheme, is the same authority as would be the appropriate administering authority for the member in question if that member were still an active member.

3. The Secretary of State may, on application by a Scheme employer, by direction substitute a different administering authority as the appropriate administering authority for a person or class of person.

4. A direction under paragraph 3—

- (a) may only be given after the Secretary of State has consulted any bodies appearing to be affected by a proposed direction, and
- (b) may include provision as to the making of adjustments between funds, the transfer of assets and liabilities, and any other consequential or incidental matters.

5.

<i>Member</i>	<i>Appropriate administering authority</i>
An employee of an administering authority.	That administering authority.
Except where an Scheme employer is listed elsewhere in this table, an employee of a Scheme employer listed in paragraphs 1 to 7, 9, 10, 12, 14, 18, 19, 21, and 23 of Part 1 of Schedule 2, or paragraph 2, 4 or 13 of Part 2 of Schedule 2, which is situated wholly or mainly within the local government area of an administering authority.	That administering authority.
An employee of a Scheme employer listed in paragraphs 1, 8, 9, 10 or 11 of Part 2 of Schedule 2. An employee of the Greater London Authority. An employee of the Commission for Local Administration in England. An employee of the Lee Valley Regional Park Authority. An employee of the Valuation Tribunal Service employed in the London headquarters. An employee of a proprietor of an Academy where immediately before the school achieved Academy status, the appropriate administering authority in relation to that school was the London Pensions Fund Authority.	The London Pensions Fund Authority.
Except where an employee falls within the category of employee for whom this table provides that the London Pensions Fund Authority is the appropriate administering authority, an employee of a proprietor of an Academy.	The administering authority within whose local government area the relevant Academy is located.
An employee of a passenger transport executive.	The same administering authority as is the appropriate administering authority for the integrated transport authority to which the passenger transport authority is accountable.
An employee of a Scheme employer listed in paragraphs 5 or 6 of Part 2 of Schedule 2.	The same administering authority as is the appropriate administering authority for the local authority or body to which the Scheme employer is connected or which it is under the control of.
An employee of the Broads Authority	Norfolk County Council
An employee of an admission body eligible for	The administering authority with which the

membership of the Scheme.	employer has made the admission agreement.
An employee of the Natural Resources Body for Wales eligible for membership of the Scheme.	The Environment Agency.
An employee of the Children and Family Court Advisory and Support Service	Bradford District Council
An employee of the Public Services Ombudsman for Wales; An employee of the Residuary body for Wales.	Cardiff County Council.
An employee of the National Probation Service local board for the Thames Valley area.	Windsor and Maidenhead Council.
An employee of the National Probation Service local board for the South Wales area.	Rhondda, Cynon, Taff County Borough Council.
An employee of the National Probation Service local board for the Dyfed Powys area.	Carmarthenshire Council.

Related specific questions

Assumed Pensionable Pay

The circumstances set out in draft regulation 21(2) reflects current Treasury policy which restricts the application of assumed pensionable pay to those cases where accrual at normal or contractual pay during the period of absence is protected by statute. However, Treasury have said that they would be willing to consider representations for others to be included on a case-by-case basis. We understand that the criteria to be applied in such cases is that the event giving rise to the leave of absence is temporary, unexpected and represents good employment practice.

Any request for the list of circumstances shown at draft regulation 21(2) to be extended should be sent as part of your response to this consultation with your supporting argument with particular reference to the criteria mentioned above.

Club transfers

The section of the draft regulations on transfers (Regulations 95 to 102) contains no specific provisions on how the club scheme is to operate in the new scheme. This policy area is being considered within Government but at the time of this consultation, no firm decisions have been reached.

Our intention is to include such provision before the main regulations are made and laid later in the year, but in the meantime, we would be happy to consider any comments that consultees may wish to make about how club transfers should operate in the new Scheme.

Consultees may also wish to note that the new Transitional Regulations will include provision dealing with the final salary link for incoming transfers from other public sector schemes.

Former scheme employers

In discussions with the Project Board, it has been suggested that special provision should be made in the new Scheme for “former scheme employers”. In particular, it would be helpful to know how best to manage employer discretions that apply to deferred members. For example, should these transfer to the relevant administering authority or stay with the former employer or any successor body?

Views are also invited on whether any changes to the draft regulations are needed to help manage the deficits of former scheme employers.

Employers' contributions to be no less than employees' contributions

In the agreement reached with Government, the Project Board set out two principles applying to the management of future costs in the new Scheme. These are (a) that the contribution rate paid by employers must always be at least that set by the fund actuary and (b), that the total employer rate (future and past service) shall never be less than the total yield set for employees.

These principles have not been taken forward in this set of draft regulations but we will formally consult on them when draft regulations on governance and cost management are issued later in the year. In the meantime, consultees may wish to comment on this issue as part of their response.

Specific circumstances where "scheme employer" may not work

The current regulations include a variety of references to "scheme employer" and "employing authority", often without any clear reasoning behind the different use. We are proposing in these draft regulations to rely on the single definition of "scheme employer", whilst recognising that there may be some instances where this may not work. If you are aware of any such examples, could you please give full details in your response.

Adjustment of pension accounts

The section of the draft regulations dealing with the various types of pension accounts (Regulations 22 to 29) includes reference to situations where individual accounts may need to be adjusted. It is possible that we have not dealt with every conceivable adjustment. On that basis, consultees are invited to comment on whether the new scheme should include a general power allowing administering authorities to make "any other adjustment" that they consider to be appropriate to ensure that accounts can be maintained as intended.

Forfeiture and recovery

In drafting Regulations 93 (and the related Regulation 91 On Forfeiture), we have tried to simplify the corresponding provisions in Regulations 74 and 76 of the current Administration Regulations. Comments are invited on whether we have adequately replicated these provisions or if any additional elements need to be brought into the new Scheme.