

27 March 2009

Circular 06/2009

To: Salaries and Wages Departments  
Human Resources Departments  
Pensions Contacts

Dear Colleagues

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

**1. Purpose of this Circular**

This circular has been issued to advise authorities of the following:

- a) the changes to the Local Government Pension Scheme for Northern Ireland effective from 1<sup>st</sup> April 2009;
- b) the matters which employing authorities must consider; and
- c) the actions being taken by NILGOSC to implement the new scheme.

The information contained in this circular is based on NILGOSC's current understanding of the new regulations and much of the information is replicated from circular 04/2008 with updated references to the regulations.

**2. Content**

- Background
- Summary of improved benefits of the Scheme
- Detailed description of the new Scheme
- Action list for employing authorities
- Update on actions being taken by NILGOSC

**3. Background**

The regulations introducing the new look Scheme were made on 25<sup>th</sup> February 2009 and come into operation on 1<sup>st</sup> April 2009. The most significant change after consultation is the introduction of a two tier ill-health benefits system.

#### 4. Summary of the improved benefits of the Scheme

- An improved accrual rate (the rate at which pension builds up) of 1/60<sup>th</sup> (previously 1/80<sup>th</sup>) for all new and existing members on and from 1 April 2009 with the option to convert up to 25% of the 'capital' value of the pension to lump sum;
- Nominated co-habiting partners pensions are introduced;
- A two-tier ill-health pension system;
- Members can buy extra scheme pension in multiples of £250 up to a maximum of £5,000 (either for themselves or themselves and any survivor);
- Employers may also grant extra scheme pension up to a maximum of £5,000;
- The death-in-service lump sum is increased to 3 times pensionable pay;
- The death grant payable on the death of a deferred member is increased from 3 to 5 times pension; and
- The death grant payable on the death of a pensioner is increased from 5 to 10 times pension, less pension already paid, if paid before age 75.

#### 5. Detailed description of the new Scheme

The following sections detail the main changes to the Scheme and amended procedures to implement the changes. A revised Employers' Guide is currently being drafted and will be available on our website as soon as possible. Many of the Scheme's calculations require factors provided by the Government Actuary's Department. Unfortunately the majority of these factors are still in draft form and it will be a few weeks before the final factors are confirmed, thus delaying completing both the Employers' Guide and updating the website. In the interim, please refer to this circular for information.

##### 5.1 Accrual rate<sup>1</sup>

This is the rate at which pension builds up in a final salary scheme. Under the old scheme the accrual rate is 1/80<sup>th</sup> pension and a 3/80<sup>th</sup> lump sum for every year of membership. The new scheme introduces a 1/60<sup>th</sup> accrual rate, but no automatic lump sum. However, members are still able to convert pension to lump sum at the rate of £12 of lump sum for every £1 of pension given up, providing their lump sum does not exceed 25% of the capital value of their benefits. A 1/60<sup>th</sup> accrual rate for pension plus the lump sum conversion option provides a higher level of pension benefits than the 1/80<sup>th</sup> pension and 3/80<sup>th</sup> lump sum provided by the old scheme.

##### 5.2 Automatic entry from 1<sup>st</sup> April 2009<sup>2</sup>

All employees who have a contract of 3 months or more and who are under age 75 will be eligible for membership of the LGPS (NI). **Please note that employees with a contract of less than 3 months will be ineligible to join the Scheme.** An employing authority can specify in their admission agreement which members or class of employees are eligible for membership.

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<sup>1</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulation 7 (5)

<sup>2</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulation 2 and LGPS (Administration Regulations (NI) 2009 Regulation 6

Employees with more than one contract will have the right to opt out of membership in all or some of their employments<sup>3</sup>. This is a change from the current practice which is that a member must be in the Scheme for all employments.

All existing members at 31<sup>st</sup> March 2009 will transfer to the new Scheme but see the comments under 'Existing Casual Employees'.

All existing employees who have opted out at 31 March 2009 will not be auto enrolled at 1<sup>st</sup> April 2009 but will have the right to opt in if they have a contract for 3 months or more and are under age 75.

Employees who have opted out of the Scheme more than once may only reapply to rejoin if their employer or future employer consents<sup>4</sup>. Employers should check that their Policy Statement includes this discretion.

Employers may also wish to circulate information on the new scheme to all employees who have previously opted out. A new form, Opt out/Join the Scheme from 1 April 2009 -LGS3, has been created to assist employers. A pdf of this form is attached, it is available from NILGOSC on request or to download from the website at [www.nilgosc.org.uk](http://www.nilgosc.org.uk). Copies of the Short Guide to the Scheme are available on request for any employers who wish to distribute these to employees who have opted out previously or who are new to their employment. A pdf of the Short Guide is also forwarded with this circular.

### **5.3 Existing casual employees at 31<sup>st</sup> March 2009**

Existing casual employees will now be able to opt out of the scheme even if they have other continuing employments.

Employers will now need to identify whether, in the case of existing contributors to the scheme who are casual employees, there is mutuality of obligation in employment law i.e. there is a contract of employment between the parties where the employer is obligated to offer work and the employee is obligated to accept work when it is offered. This is as a consequence of the House of Lords Decision in the case of Carmichael and Others v National Power plc. The clear implication of this House of Lords decision for casuals was that a contract of employment can only exist when work is offered by the authority and is accepted by the employee.<sup>5</sup> Those employees with mutuality of obligation in employment law will be able to remain in the scheme on and from 1 April 2009. Technically those employees, where the relationship between the employer and the existing casual member means there is no mutuality of obligation, should be removed from the scheme on the first day on or after 1<sup>st</sup> April when they are not offered work or are offered work but do not accept it.

NILGOSC is able to provide listings of casual employees for an employer on request. Leavers Forms, LGS15s, should be completed for all casual employees

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<sup>3</sup> LGPS (Administration) Regulations (NI) 2009 – Regulation 10 (3)

<sup>4</sup> LGPS (Administration) Regulations (NI) 2009 – Regulation 9 (5)

<sup>5</sup> This House of Lords decision is appended to an old LGPC Circular (circular 87 of June 2000) at <http://www.lge.gov.uk/lge/aio/56226>.

who are no longer eligible for membership. It is likely that the majority of these members will have concurrent posts (i.e. another employment with the same employer) and their service under the casual record will be adjusted and added to the record for the concurrent post. If the casual employee does not have a concurrent post then they will be entitled to deferred benefits, payable at their normal retirement age.

#### **5.4 New casual employees from 1<sup>st</sup> April 2009**

Employers will now need to establish whether or not, for new casual employees, there is mutuality of obligation in employment law in order that personnel and payroll can establish their eligibility for membership.

If there is mutuality of obligation, and the mutuality of obligation is open ended (or for at least 3 months) that person will be eligible to join the Scheme and remain in the Scheme until such time as the mutuality of obligation ends.

If there is not mutuality of obligation between the employer and the employee i.e. the employer is not obligated to offer work and the person is not obligated to accept it, then they are no longer eligible for membership. For example employees who work as part of a bank of casual staff will not have mutuality of obligation and will therefore not be able to join the Scheme.

#### **5.5 Contribution Banding for Employees<sup>6</sup>**

The new scheme introduces contribution banding from 1<sup>st</sup> April 2009. Employers are required to determine the contribution rate for each active member and inform each member of their contribution rate before 1<sup>st</sup> April 2009. The contribution rates are as follows:

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

The Range will be revised each year from 1<sup>st</sup> April by the same rise in the Retail Prices Index which is applied to pensions in payment under the Pensions (Increase) Review Orders. The first revision will be on 1 April 2010.

The Band for part-time members is that for the whole-time equivalent employment but contributions will only be paid on the actual part-time pay. This is to ensure that there is no less favourable treatment of part-time employees.

A whole-time term-time worker is not treated as part-timer. In other words, the pay is not brought up to a 52 week pay in order to determine the contribution bands. To determine the whole-time equivalent pay for a part-time term-timer, the pay is brought up to the number of weeks which the term-timer works e.g. 43.2 weeks. A 'term-time worker' is defined as a person whose contract of

<sup>6</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulation 3

employment provides for regular pattern of periods of work and periods of no work so as to result in a recognisable cycle of work consisting of one year.

It should be noted that a 'family friendly' pattern of employment where an employee works 11 months out of 12 months is not to be treated as term-time under the new regulations but is treated as part-time.

An employee who has several posts will have a contribution rate calculated separately for each post. **Each post must have a separate NILGOSC record.**

The employer may revise the contribution rate for a member when there is a permanent material change to the terms and conditions of a member's employment which affect his pensionable pay during a financial year and the date from which it applies. The employer is required to notify the member of any change. It should be noted that NILGOSC's pension administration software can only accept 4 changes in Band per year per employment.

Employers will need to establish a policy on how existing employees will be allocated to a contribution band before 1 April 2009, how to allocate a new employee to a contribution band on or after 1 April 2009 and when to revise a contribution band. There is no requirement for employing authorities to have a written policy on the allocation of bands to individual members, however, a written policy may make it easier for payroll departments to implement the employer's policy and help with queries. There is no need to forward a copy of this policy to NILGOSC.

Furthermore, employers will need to have a procedure for dealing with queries relating to a member's contribution band. The employer is required by the regulations to notify their employees of the band on which they will pay contributions. **The regulations require that employers notify employees of the employer's address from which they may obtain information on the decision and of the right of appeal to the County Court.** As it is an employer decision based on a employer policy NILGOSC cannot take queries on behalf of employers.

Employers will need to ensure that their payroll system is updated to cater for tiered employee contributions. This may require payroll programmes to be amended to ensure the following:

- It can allocate staff to the correct band (or bands if an employee has two jobs each one of which falls into a different band),
- It can update the bands in line with Pensions Increase each April, and
- It can reallocate employees to a different band at any time during the year.

## **5.6 Lower Rates Rights members<sup>7</sup>**

These existing manual members, who had a right to pay a 5% contribution rate because they were employed in a manual capacity at 31 January 2003, will pay contributions in accordance with the following table:

Year commencing	Contribution Rate
1 <sup>st</sup> April 2009	5.25%
1 <sup>st</sup> April 2010	5.5%
1 <sup>st</sup> April 2011	6.5% or the contribution rate applicable to the member's pay range, whichever is lower
1 <sup>st</sup> April 2012	Contribution rate applicable to the member's pay range

## **5.7 Payment of contributions during absences**

If a member goes on unpaid leave of absence or maternity leave, paternity leave or adoption leave, he/she must continue to pay for any added years they were purchasing under the old scheme (based on the pay they would have received had they not been on leave), and for any additional pension they are purchasing under Additional Regular Contributions (ARCs). Anyone contributing to the in-house AVC scheme for life cover should also continue their contributions during absences otherwise the life cover will lapse.

## **5.8 Pensionable pay**

The definition of what is not pensionable pay has been expanded to include 'any payment to buy out an existing term or condition of employment'<sup>8</sup>.

The pensionable pay of a part-time employee continues to be the pensionable pay he/she would have received if they had worked the contractual hours. The employer determines the proportion of contractual hours which a part-timer works compared with a comparable whole-time employment.

Under the Regulations<sup>9</sup> the employer decides which emoluments are pensionable and it is important that employees clearly understand which emoluments are pensionable. Contracts of employment should accurately reflect the Scheme definitions of pensionable pay.

## **5.9 Final Pay/Certificates of Protection<sup>10</sup>**

Benefits are calculated on final pay, being the last year's pensionable pay, or either of the two preceding years if higher, plus the average of any fluctuating emoluments received in the last three years.

If a member's pensionable pay is reduced or restricted because he/she chooses to remain in employment at a lower grade or with less responsibility he/she may choose to have his/her benefits based on the average of 3 consecutive years in the last 10 years ending on a 31<sup>st</sup> March (plus RPI from the end of the 3 year period).

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<sup>7</sup> LGPS (Amendment and Transitional Provisions) Regulations (NI) 2009 Regulation 9

<sup>8</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulation 4 (2)

<sup>9</sup> LGPS (Administration) Regulations (NI) 2009 – Regulation 50 (1)(b)

<sup>10</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulations 8,9,10,11

Employers will need to ensure that payroll data is kept for 10 years in respect of any cases where the member's pay has reduced in the circumstances outlined above.

No new Certificates of Protection can be issued in respect of reductions in pay or restrictions in pay which are outside of the employee's control on or after 1<sup>st</sup> April 2009.

### **5.10 Additional Regular Contributions (ARCs)<sup>11</sup>**

Members will be able to buy additional pension in multiples of £250 up to a maximum of £5,000. This additional pension may be purchased either to provide a pension for themselves only or a pension for themselves plus any survivor. If this additional pension is taken earlier or later than normal retirement age then it is either actuarially reduced or increased respectively.

The additional pension purchased may be commuted for cash when it comes into payment under the same terms as the rest of the pension.

The cost of calculating Additional Regular Contributions is based on tables provided by the Government Actuary's Department (GAD). The cost depends on the following factors:

- The member's age at the date the contributions start;
- The period the member wishes to pay over (minimum one year)
- The amount the member is buying (in multiples of £250)
- Whether the additional pension is for the member only or for the member plus any dependants
- Whether the member is male or female.

The actuary may change the rates from time to time and it is possible that the monthly payments could be revised in the future. If the rates are changed they will affect both new applicants and existing purchasers.

A member will be required to pass a Good Health Medical before being accepted for ARCs.

A new booklet has been written on 'Increasing your Benefits' and will be available shortly. There will also be information on ARCs on the website along with an ARC calculator. This will enable members to easily calculate the cost of the various options e.g. different amounts of pension paid for over different periods. This calculator will be finalised when we receive confirmation of the final Government Actuary's Department (GAD) factors for the calculations

### **5.11 Employer option to award additional pension**

An employing authority may increase the pension of a member by not more than £5,000 a year payable from his/her normal retirement date. This facility is in addition to the power of an employing authority to increase membership by up to 10 years (augmentation). It should be noted that this facility only increases the member's pension and has no impact on any survivor's benefits.

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<sup>11</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulation 14 and LGPS (Administration) Regulations (NI) 2009 – Regulations 19 and 20

The additional pension awarded may be commuted for cash when it comes into payment under the same terms as the rest of the pension.

The cost of this additional pension is calculated in accordance with tables issued by GAD and is payable by lump sum.

Employers will need to determine a policy on this new discretion.

### **5.12 Power of employing authority to increase total membership of members (augmentation)<sup>12</sup>**

An employing authority may augment the membership of a member by up to a maximum period of 10 years. Employer's discretionary policies should already reflect this change which was introduced by the LGPS (Amendment No 3) Regulations (Northern Ireland) 2007 with effect from 1 April 2007. There is no longer a restriction to potential service to age 65.

Employers will need to amend their augmentation policy to remove any reference to an age 65 restriction.

A change from 1<sup>st</sup> April 2009 is that in the event of retirement due to redundancy or business efficiency an employer may resolve to augment membership for a period of up to 6 months from the date of leaving but effective from the leaving date. In all other circumstances an employer may only award membership before the member leaves employment.

New augmentation factors will apply for any membership awarded from 1<sup>st</sup> April 2009 as this provide benefits on a 1/60<sup>th</sup> accrual rate. Again these factors are outstanding.

### **5.13 Additional Voluntary Contributions (AVCs)<sup>13</sup>**

There are no changes to the regulations regarding AVCs and members can continue to contribute to AVCs up to 50% of their **pensionable pay** by regular contributions.

### **5.14 Retirement Benefits (post 31 March 2009 membership only)**

Retirement benefits continue to be payable at age 65 without reduction. The pension for any membership accrued on or after 1 April 2009 is calculated as:

$1/60 \times \text{final pensionable pay} \times \text{membership (post 31<sup>st</sup> March 2009)}$ .

There is no automatic lump sum but members continue to have the option to convert pension to lump sum at the rate of £12 lump sum for every £1 of pension given up. This is subject to the HMRC rules which state that maximum lump sum cannot exceed 25% of the 'capital value' of pension benefits. The 'capital value'

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<sup>12</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulation 12

<sup>13</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulation 15 and LGPS (Administration) Regulations (NI) 2009 – Regulations 21,22 and 23

is approximately 20 times the annual pension plus the value of the lump sum and AVC fund, after commutation.

### **5.15 Retirement Benefits (pre and post 31 March 2009) membership**

Retirement benefits calculated as a result of Scheme membership built up to 31 March 2009 will continue to be calculated as an annual pension based on 1/80<sup>th</sup> of final year's pensionable pay **and** an automatic tax-free lump sum of three times the pension. Any retirement benefits which are built up on or after 1 April 2009 will provide an annual pension based on 1/60<sup>th</sup> of final year's pensionable pay. There is no automatic lump sum on post 31 March 2009 membership. Therefore, a member whose membership straddles 1<sup>st</sup> April 2009 will have pension benefits based on both 1/80<sup>th</sup> and 1/60<sup>th</sup> accrual rates and a lump sum of three times the 1/80<sup>th</sup> pension. However, the final benefits are calculated using the final year's pensionable pay as outlined in section 5.9.

A member may exchange part of total pension (1/80<sup>th</sup> and 1/60<sup>th</sup>) for extra lump sum if they so wish. The conversion rate is as described under section 5.14.

### **5.16 Retirement after normal retirement age<sup>14</sup>**

Members continue to be able to remain in the scheme after age 65 (if their employer allows them to remain in employment); however, all benefits must be paid no later than the day before the member's 75<sup>th</sup> birthday even if he/she is not retired. Under the new scheme the entire pension will be actuarially increased to compensate the member for working after age 65.

Previously only benefits accrued up to age 65 were actuarially increased on late retirement and there was no actuarial increase on benefits accrued after age 65. The increase which applies under the current scheme is 0.02% for each day of delay in the case of the member's pension and 0.01% in the case of the retirement grant. This increase is calculated before any pension is given up for lump sum under the 12:1 commutation factors.

### **5.17 Flexible Retirement**

Flexible retirement arrangements are amended to allow members over age 55 (age 50 for existing members until 1 April 2010), who, with their employer's consent, reduce their hours or grade, to make a request to the Committee to receive all or part of their benefits while continuing to work. Employers may need to amend their policy statement to include payment of part of their benefits.

At this stage it is unclear how payment of part of a member's benefits can be implemented. Guidance is awaited from the Government Actuary on this matter.

### **5.18 Redundancy and Business Efficiency<sup>15</sup>**

Immediate payment of pension benefits following redundancy/business efficiency retirement is now on or after age 55. Members at 31<sup>st</sup> March 2009 may have redundancy/business efficiency benefits paid on or after age 50 only on leaving before 31<sup>st</sup> March 2010.

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<sup>14</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulations 17

<sup>15</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulations 19

### 5.19 Ill-health Retirement<sup>16</sup>

The regulations introduce a two-tier ill-health benefits system in the event of permanent ill-health for active members who have at least one year's total membership. The two tiers are as follows:

- **Tier 1** – if the member is permanently incapable of carrying out their job and has no reasonable prospect of gaining any employment before age 65, the pension is based on accrued membership plus 100% of prospective membership between leaving and age 65.
- **Tier 2** - If the member is permanently incapable of carrying out their job and has a reasonable prospect of obtaining any gainful employment before age 65, then the pension is based on accrued membership plus 25% of prospective membership between leaving and age 65.

'Gainful employment' is defined as paid employment for not less than 30 hours in each week for a period of not less than 12 months.

'Permanently incapable' is defined as the member will, more likely than not, be incapable until, at the earliest, his 65<sup>th</sup> birthday.

In the new scheme there is no facility to commute benefits in the event of serious ill-health, however, existing members at 31<sup>st</sup> March 2009 will have transitional protection for the serious ill-health option until 1<sup>st</sup> October 2009.

It should be noted that there is ongoing protection for any existing member who is age 45 before 1<sup>st</sup> April 2009. In this case, the membership enhancement under the 2002 Regulations is used if that would provide a higher enhancement period.

There is also additional protection until 1<sup>st</sup> October 2009 for all existing members of the scheme<sup>17</sup> if the ill-health benefits under the new scheme would place them in a worse position that they would have been under the 2002 Regulations; then the 2002 Regulations continue to apply.

Finally, under the old regulations the ill-health enhancement for a part-timer is based on average hours over the period of scheme membership or full-time enhancement if the person had membership of 13 1/3<sup>rd</sup> or more years in which they had been full-time. The new regulations base the ill-health enhancement on the hours which the employee is working at the date of leaving.

If the independent occupational health doctor is satisfied that a member has reduced his/her hours of work because of the medical condition which results in the termination of employment, then the ill-health benefits will be calculated as if the normal hours of work (prior to ill-health) for that member applied.

The regulations require the Department of Environment to issue statutory guidance regarding ill-health retirement which both the Committee and the independent medical practitioner must regard. This has not yet been issued.

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<sup>16</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulations 20

<sup>17</sup> LGPS (Transitional) Regulations (NI) 2009 – Regulation 10

Due to the variable nature of the ill-health benefits which may be awarded under the tiered ill-health system and the requirement to provide benefits under the 2002 Regulations, if better, NILGOSC will no longer issue ill-health retirement quotations prior to ill-health assessment by the Committee's occupational health doctor. We are happy to issue quotations once the member has been medically examined and the doctor's decision has been received.

#### **5.20 Early payment of Deferred Benefits on ill-health<sup>18</sup>**

Deferred Benefits arise when a member leaves the Scheme without immediate payment of pension benefits. The benefits then become payable when the member reaches his/her normal retirement age. If a member becomes ill before their benefits are payable he/she can apply to NILGOSC and request that the benefits are brought into payment early due to their permanent ill-health.

The new Scheme requires the deferred member to be permanently incapable of discharging efficiently the duties of the former employment by reason of ill-health or infirmity of the mind or body and the ill-health is likely to prevent the member obtaining gainful employment (whether in local government or otherwise) before reaching his normal retirement age.

'Gainful employment' and 'permanently incapable' are as defined under section 3.19.

#### **5.21 Death Grants<sup>19</sup>**

The death grant is increased from 2 to 3 times pensionable pay for death-in-service, increased from 3 to 5 times pension for death of a deferred member and increased from 5 to 10 times pension, less pension already paid, for death of a pensioner before age 75.

#### **5.22 Survivor benefits<sup>20</sup>**

Spouse's pensions are based on a 1/160<sup>th</sup> accrual rate and there is a change in the way widowers' pensions are calculated. If the spouse (now a widower) married the member before retirement then the Scheme member's entire membership counts towards the pension. Previously only membership from 1 April 1972 counted towards a widower's pension. The survivor benefits payable on 'post-retirement' relationships remain the same as in the old Scheme i.e. if the member marries the partner after retirement then a widow's pension is based on the member's post 5 April 1978 membership and a widower's pension is based on the member's post 5 April 1988 membership. Civil partners' and the new nominated cohabiting partner's pensions are based on a 1/160<sup>th</sup> accrual rate but only on membership post 5<sup>th</sup> April 1988.

Children's pensions are paid to eligible children, the amount depending on the number of children and whether there is a spouse's, civil partner's or cohabiting

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<sup>18</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulation 31

<sup>19</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulations 23,32 and 35

<sup>20</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulations 24,26, 27, 28, 33, 34, 36 and 37

partner's pension payable. The minimum 10 year membership guarantee for children's pensions has been removed from the scheme but for deaths-in-service, children's pensions are calculated on the deceased member's full prospective service to age 65. It should be noted that children's pensions are now payable until the child reaches age 18 or age 23 and is in full-time education. Some children who are disabled within the meaning of the Disability Discrimination Act 1995 may be treated as an eligible child beyond age 23 and continue to receive a child's pension.

Survivor's pensions following death-in-service are now based on the deceased's notional membership to age 65.

The short-term survivor's pension payable at a higher rate for the first 3 or 6 months after death has been removed due to the increased lump sum death benefits.

### **5.23 Nominated cohabiting partner<sup>21</sup>**

The new Scheme provides for a member to nominate a 'nominated cohabiting partner', of either the opposite or same sex, to receive a survivor's pension subject to the terms in the regulations which are as follows:

- Both the Scheme member and their nominated cohabiting partner must be free to marry or form a civil partnership with each other, and
- They are both living together as if they were husband and wife, or civil partners, and
- Neither the Scheme member nor the nominated cohabiting partner are living with anyone else as if they were husband and wife, or civil partners, and
- Either the nominated cohabiting partner is financially dependant on the scheme member or they are both financially interdependent on each other.

All of the above conditions have to have been met for a continuous period of at least 2 years immediately prior to the Scheme member's death and a nomination, signed by both parties, has to be effective in order for a survivor's pension to be payable.

A nomination ceases to be effective if any of the following apply:

- either the Scheme member or the nominated cohabiting partner gives written notice to the Committee to cancel the nomination; or
- the Scheme member makes a subsequent nomination; or
- either party marries or forms a civil partnership or lives with a third person as if they were husband and wife or civil partners; or
- the nominated partner predeceases the Scheme member.

A nomination for cohabiting partner form will be available either from NILGOSC on request or from the NILGOSC website after 31<sup>st</sup> March 2009.

It is important to note that only active members who have contributed to the scheme on or after 1 April 2009 can nominate cohabiting partners. Members who deferred their benefits before 1 April 2009 and pensioners who retired before 1<sup>st</sup> April 2009 cannot nominate a cohabiting partner.

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<sup>21</sup> LGPS (Benefits, Membership and Contributions) Regulations (NI) 2009 – Regulation 25

#### **5.24 Deferring drawing a pension<sup>22</sup>**

A deferred member may defer drawing their pension until the day before age 75. However, a member retiring at or after age 65 will now also have the option of deferring their benefit until the day before age 75 at the latest.

#### **5.25 Employing Authority decisions<sup>23</sup>**

Employing authorities are reminded that the regulations require employing authorities to decide the following in relation to each of their employees who is a member:

- Whether he/she is a whole-time, a variable-time or a part-time employee, or whether his/her employment is of a casual nature;
- Which of his/her emoluments are remuneration on which contributions are payable;
- What rate of contributions the employee is liable to pay to the fund; and
- If a part-time employee the proportion of contractual minimum hours of employment each week to comparable whole-time employment.

The regulations also require that employing authorities notify a member, in writing, of any of the above decisions and also provide a conspicuous statement which directs the employee's attention to the employer's address where they may obtain further information about the decision and to his/her right of appeal to the county court under regulation 59.

#### **5.26 Exercise of Discretionary functions: policy statements<sup>24</sup>**

Employing Authorities are reminded that they must prepare a written statement of their policy in relation to the exercise of the following functions under the Benefits Regulations:

Regulation 12 – Power of employing authority to increase total membership of members

Regulation 13 – Power of employing authority to award additional pension

Regulation 18 – Flexible Retirement

Regulation 30 – Choice of early payment of pension

It is also advisable that the policy statement includes policies on the following discretions under the Administration Regulations:

Regulation 9 (5) – Consent to admission if a member has already opted out more than once

Regulation 21(3) – Contribute to a Shared Cost AVC Scheme

**Each employing authority must publish its policy statement and forward a copy to the Committee before 31<sup>st</sup> July 2009.**

#### **5.27 Cost sharing**

The Department is to issue a consultation paper on a cost sharing mechanism and issue guidance before 31<sup>st</sup> March 2010. The guidance will describe the manner in which the costs will be met by employers and members after 31<sup>st</sup> March 2011.

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<sup>22</sup> LGPS (Administration) Regulations (NI) 2009 – Regulation 45(6)

<sup>23</sup> LGPS (Administration) Regulations (NI) 2009 – Regulations 50 and 52

<sup>24</sup> LGPS (Administration) Regulations (NI) 2009 – Regulation 62

## 5.28 Pensions Administration Strategy – additional costs arising from an employing authority’s level of performance

The regulations enable the Committee to publish a Pensions Administration Strategy, if it wishes, after consulting with employing authorities, which will set out the levels of performance which the Committee and employing authorities are expected to achieve. Should the Committee incur additional costs because of an employing authority’s level of performance in carrying out its functions, then the Committee will be able to charge the employing authority any additional costs incurred. If the employing authority and the Committee cannot agree on the charge being levied it will require determination by the Department.

## 6. Action List for Employing Authorities

Annex A contains a ‘To do’ list for employing authorities. Some of this you will have completed already.

## 7. Update on actions being taken by NILGOSC

**Website** – the website has been updated with links to the new regulations. The remainder of the website will be updated as soon as possible.

**NILGOSC Forms** – the Scheme’s forms are being revised and updated to collect additional information. During the next few months we will be renumbering the current forms and issuing revised forms to employers. The table below shows the revised numbering and the title of the forms. Please continue to use the existing forms until you have been provided with new forms. All forms will be available to download from the website at [www.nilgosc.org.uk](http://www.nilgosc.org.uk).

<b>New Form</b>	<b>Old Form</b>	<b>Title</b>
<b>STARTERS</b>		
LGS1	LGS1	Employee's Membership Form
LGS2	LGS2	Opt- out form (new employee)
LGS3*	LGS3	Opt out / join the Scheme from 1 April 2009
LGS4	LGS4	Purchase of Added Years – removed from 1 April 2009
<b>FINANCE / REMITTANCES</b>		
LGS6	LGS6	Monthly remittances
LGS7	LGS7	Annual Return
<b>LEAVER FORMS</b>		
LGS10	LGS31	Opting out form (if a member)
LGS11	LGS5	Early Leaver's Request
LGS12	LGS3	Internal Refund of contributions
LGS13	LGS13	Certificate of Protection – removed from 1 April 2009
LGS15	LGS15	Leaver's Form
LGS16	LGS51	Employer - notification of employee leaving
LGS17	LGS40	Employers Request for Quote of Retirement Benefits
LGS18	LGS18	Death form
<b>RECORD MAINTENANCE</b>		
LGS20	LGS20	Death Grant - Expression of Wish
LGS21*		Nomination of cohabiting partner
LGS22	LGS22	Medical request – active or deferred member
LGS24	LGS33	Pension record maintenance - change in name/address etc

LGS25	LGS14	Change in hours
LGS26*		ARCs - member purchase
LGS27*		ARCs - employer purchase
LGS34	LGS34	Notification of Breaks in employment
LGS35	LGS35	Re-employment following a break
* new form		

### **NILGOSC Guides**

All NILGOSC literature is in the process of being rewritten and will be printed as soon as possible. As before these guides (with the exception of the Employers' Guide) will be available on request or can be downloaded from the website.

**Short Guide** – This new guide to the Scheme has been printed and is being mailed directly to the home address of all active members before the end of March. The Short Guide is also available on the website at [www.nilgosc.org.uk](http://www.nilgosc.org.uk). A pdf of this Short Guide is being emailed with this circular.

**Members' Guide** – this guide is being rewritten and will be printed as soon as possible.

**Employers' Guide** – this guide is being rewritten and will be published on the website as soon as possible.

**Retirement Guide** – this guide is being rewritten and will be printed as soon as possible.

**Increasing your Benefits** – this guide explains how ARCs and AVCs can be used to increase a member's benefits. It is currently being printed and will be available shortly.

### **8. Any questions or further information**

If you have any questions regarding the content of this circular, please contact either myself, Mark Wright, Trevor Davidson or any member of the Pensions Development Team.

Yours sincerely



Zena Kee  
Pensions Manager

## Annex A

### Action List for Employing Authorities

What needs to be done?	By when?
Ensure payroll can hold an individual contribution rate for each post and record up to 4 changes per year	31 <sup>st</sup> March 2009
Allocate each member an individual contribution rate under the new scheme	31 <sup>st</sup> March 2009
Inform each member of their allocated contribution rate	31 <sup>st</sup> March 2009
Ensure that payroll software can hold different contribution rates for an employee in respect of multiple employments	31 <sup>st</sup> March 2009
It is recommended that employers draft a policy on attribution to contribution bands. This should include how to respond to appeals regarding allocation to contribution bands and state under which circumstances you might change a member's contribution rate should their earnings change after March 2009.	31 <sup>st</sup> March 2009
Identify existing casual members and review contracts of employment.	31 <sup>st</sup> March 2009
Establish which members cannot remain in the scheme, based on the new entry requirements, and inform both the member and NILGOSC by Leavers Form (LGS15).	Inform members by 31 <sup>st</sup> March 2009. Forward LGS15s to NILGOSC asap
Determine how you will pick up cases where an employee with less than 3 months service has their contract extended and should be offered the chance to backdate their scheme membership.	31 <sup>st</sup> March 2009
Review any potential terminal illness cases as there will only be commutation on serious ill-health under the new scheme up until 30 <sup>th</sup> September 2009.	30 <sup>th</sup> September 2009
Each employer must review, update and produce a written statement on the following employer discretions: <ul style="list-style-type: none"> <li>• Augmentation – update existing policy to remove any references to age 65.</li> <li>• Employer awarding additional pension up to a maximum of £5,000 per annum – formulate a policy</li> <li>• Flexible retirement – update policy to include part benefits being drawn under flexible retirement</li> <li>• Early payment of pension</li> <li>• Employee opting out more than once</li> <li>• Shared Cost AVC Scheme</li> </ul> The statement must be published and a copy forwarded to NILGOSC.	Publish and forward copy to NILGOSC by 31 <sup>st</sup> July 2009
Consider how to retain member's pensionable pay details as at 31 March each year for a continuous 10 year period	31 <sup>st</sup> March 2010
There will be a change to annual returns for year end 31 <sup>st</sup> March 2010 to include employee contributions deducted at different rates during the year and ARCS. Employers should ensure that this information can be provided at the year end.	Early in 2009
Review any potential redundancy/business efficiency cases	31 <sup>st</sup> March 2010

where the member (existing at 31 <sup>st</sup> March 2009) falls between age 50 and below age 55 before 31 <sup>st</sup> March 2010. After 31 <sup>st</sup> March 2010 redundancy/business efficiency pensions are only payable to members aged 55 or more.	
Consider whether to circulate employees who have opted out of the current scheme with details of the new scheme	31 <sup>st</sup> March 2009