

2008 No.

LOCAL GOVERNMENT

**Local Government Pension Scheme (Benefits, Membership and
Contributions) Regulations (Northern Ireland) 2008**

Made - - - - *****
Coming into force - - *1 April 2009*

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

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2008 and shall come into operation on 1st April 2009.

(2) In these Regulations—

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

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2008(d);

“the 2002 Scheme” means the occupational pension scheme constituted by the 2002 Regulations;

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

“deferred member” has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995, except where he has exercised his right to aggregate membership in accordance with regulation 13 (re-employed and rejoining deferred members) of the Administration Regulations;

(a) S.I. 1972/1073 (N.I. 10); Art. 9 was amended by Art. 34 S.I. 2005/1968 (N.I. 18); Art. 14 was amended by Art. 12 S.I. 1990/1509 (N.I. 13).
(b) S.R. & O (N.I.) 1973 No. 504 Article 7 (1); S.I. 1976/424 (N.I. 6).
(c) S.R. 2002 No. 352 as amended by S.R. 2002 No. 353, S.R. 2004 No. 139, S.R. 2005 No.206, S.R 2005 No. 274, S.R. 2006 No. 6, S.R. 2006 No. 112 and S.R. 2007 No. 152.
(d) S.R. 2008 No.XX.
(e) 1950 c. 10 (N.I.)

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

“employing authority” means a body employing an employee who is eligible to be a member;

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

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

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

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

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

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

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

“the Scheme” means the Local Government Pension Scheme 2008 constituted by these Regulations, the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2008(b) and the Local Government Pension Scheme (Transitional Provisions) Regulations (Northern Ireland) 2008(c);

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

(a) whose pay is calculated by reference to his duties (rather than necessarily by reference to the number of hours he has worked), or

(b) whose duties only have to be performed on an occasional basis; and

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

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

(d) that his contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis.

Active members

2.—(1) The term “active member” in relation to the Scheme is to be construed in accordance with regulation 3(1) of, and Schedule 1 to, the Administration Regulations.

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

(3) But a person is not an active member unless he is employed under a contract of employment for at least three months.

Contributions payable by active members

3.—(1) Subject to paragraph (10), each active member shall make contributions to the Scheme at the contribution rate from his pensionable pay in each employment in which he is active member.

(2) Subject to paragraph 3(5), the annual contribution rate to be applied to a person who becomes an active member is determined by his employing authority at the commencement of his membership on the basis of his pensionable pay in accordance with the following table.

| <i>Band</i> | <i>Range</i> | <i>Contribution rate</i> |
|-------------|-----------------|--------------------------|
| 1 | £0-£12,000 | 5.5% |
| 2 | £12,001-£14,000 | 5.8% |
| 3 | £14,001-£18,000 | 5.9% |

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

(b) S.R. 2008 No. XXX

(c) S.R. 2008 No. XXX

| | | |
|---|-------------------|------|
| 4 | £18,001-£30,000 | 6.5% |
| 5 | £30,001-£40,000 | 6.8% |
| 6 | £40,001-£75,000 | 7.2% |
| 7 | More than £75,000 | 7.5% |

(3) On 1st April 2009, and each subsequent anniversary, the figures in the second column of the table in paragraph (2) (“Range”) are increased by applying the appropriate increase and rounding the result down to the nearest £100.

(4) In paragraph (3), “the appropriate increase” means the amount by which the figures would be increased with effect from 6th April of the relevant year if they were pensions to which the Pensions (Increase) Act (Northern Ireland) 1971(a) applied.

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

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

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

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

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

(9) The amount of an employee’s pensionable pay for the purposes of this regulation is calculated in accordance with regulation 4.

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

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

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

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

Meaning of “pensionable pay”

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

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

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

- (a) payments for non-contractual overtime;

(a) 1971 c. 35.

- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate his contract of employment; or
- (e) any payment as a inducement not to terminate his employment;

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

Benefits

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

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

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

(3) Subject to paragraph (4), a member who has satisfied one of the conditions in paragraph (1) need not satisfy either of them again if he ceases to be a an active member and subsequently becomes such a member again before drawing benefits under regulation 16, 17, 19, 20, 30 or 31.

(4) Paragraph (3) does not apply to a member in respect of whom a transfer payment has been made under regulations 77 to 80 of the Administration Regulations.

Periods of membership

6.—(1) These are the periods that count as periods of membership (and which may accordingly be aggregated under regulation 16, or as the case may be, 17 of the Administration Regulations)—

- (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 3;
- (b) any period added under regulations 12 or 20; and
- (c) any period added following a transfer in of pension rights under regulation 81 to 83 of the Administration Regulations.

(2) [Where a member who has left local government employment rejoins such employment before his normal retirement age, the periods mentioned in paragraph (1) are (unless he chooses otherwise) aggregated with such subsequent periods.]

Calculation of length of periods of membership

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

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

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

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

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

Final pay: general

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

(2) A member's final pay period is the year ending with the day on which he stops being an active member or, if that would produce a higher figure, either of the two immediately preceding years.

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

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

Final pay: reserve forces, maternity leave etc.

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

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

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

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

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

Final pay: reductions

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

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

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

(3) The calculation is made by dividing by 3 [*the sum of*] the member's annual pensionable pay in any 3 consecutive years of his choice ending with 31 March within the period of ten years ending with the last day he was an active member.

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

(a) S.I. 2006/246.

Final pay: fees

11.—(1) Subject to paragraph (2), where a variable-time employee's pensionable pay for the purposes of regulation 8(1) consists of or includes fees, his final pay is calculated as the sum of—

- (a) the average of all such fees for the three consecutive years ending with the final pay period; and
- (b) any sums falling within regulation 4(1), other than fees, for the final pay period.

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

Power of employing authority to increase total membership of members

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

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

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

(4) If the reason for the member leaving his employment is redundancy, a resolution under paragraph (1) may be passed at any date up to the date six months after the relevant date.

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

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

Power of employing authority to award additional pension

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

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

Election to pay additional regular contributions (ARCs)

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

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

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

Elections to pay additional voluntary contributions (AVCs)

15.—(1) A member who has entered into an arrangement to pay additional voluntary contributions ("AVCs") or to contribute to a shared cost AVC in addition to any contributions he may pay under these Regulations is entitled to additional benefits in accordance with one of the methods permissible under the Finance Act 2004(a).

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

(a) 2004 c. 12.

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

Retirement benefits

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

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

Retirement after normal retirement age

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

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

(3) The pension is payable immediately on retirement.

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

Flexible retirement

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

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

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

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

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

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

(7) The value of any benefits paid to a member under paragraph (1) shall be taken into account in any subsequent calculation of his benefits under regulation 16, 17, 19, 20, 30 or 31 in accordance with guidance issued by the Government Actuary.

Early leavers: inefficiency and redundancy

19.—(1) Where—

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

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

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

Early leavers: ill-health

20.—(1) Where a member leaves local government employment on the grounds that—

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

the Committee may determine that his retirement pension comes into payment before his normal retirement age in accordance with this regulation in the circumstances set out in paragraph (2), (3) or (4), as the case may be.

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

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

(3) If the Committee determine that, although he has no reasonable prospect of obtaining any gainful employment within 3 years of leaving his employment, it is likely that he will be able to obtain any gainful employment before his normal retirement age, his benefits are increased—

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

(4) If the Committee determine that it is likely that he will be able to obtain any gainful employment within 3 years of leaving his employment, his benefits—

- (a) are those he would have received if the date on which he leaves his employment were the date on which he would have retired at normal retirement age; and
- (b) unless discontinued under paragraph (8), are payable for so long as he is not in any gainful employment.

(5) Where the Committee is considering whether a person who has ceased to hold a local government employment is entitled to benefit under this regulation, it shall refer for decision to an independent registered medical practitioner qualified in occupational health medicine, appointed by the Committee, as to whether in his opinion, expressed as a certificate, the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he—

- (a) has no reasonable prospect of obtaining any gainful employment before reaching his normal retirement age;
- (b) has no reasonable prospect of obtaining any gainful employment within 3 years of leaving his employment, but it is likely that he will be able to obtain any gainful employment before reaching his normal retirement age; or
- (c) will be likely to be able to obtain any gainful employment within 3 years of leaving his employment.

(6) A person who receives benefits under paragraph (4) shall—

- (a) inform the Committee if he obtains employment; and
- (b) answer any inquiries made by the Committee as to his current employment status, including as to his pay and working hours.

(7) The Committee shall—

- (a) make inquiries as to a person's current employment status, where he receives benefits under paragraph (4) for 18 months; and
- (b) where he is not in gainful employment, obtain a further certificate from an independent registered medical practitioner as to the matters set out in paragraph (5).

(8) The Committee shall—

- (a) discontinue the payment of benefits under paragraph (4) where it considers—
 - (i) that the person is in gainful employment; or
 - (ii) in reliance on the certificate obtained under paragraph (7)(b), that he is capable of obtaining such employment,

and may recover any payment made in respect of any period before discontinuance during which it considers him to have been in gainful employment;

- (b) in any event discontinue the payment of benefits under paragraph (4) after the benefits have been in payment to a person for 3 years;

(9) A person in respect of whom the payment of benefits is discontinued under paragraph (8) shall be treated as a pensioner member with deferred benefits from the date the suspension takes effect, and shall not be eligible to receive benefits under paragraph (4) in respect of any future period.

(10) If a person in respect of whom the payment of benefits has been discontinued under paragraph (8) subsequently becomes an active member of the Scheme, his earlier period of active membership in respect of which benefits were paid under paragraph (4) shall not be aggregated with his later active membership.

(11) Where the Committee has made a determination under paragraph (4) in respect of a member, it may make a subsequent determination under paragraph (3) in respect of him and any increase in benefits payable as a result of any subsequent determination is payable from the date of that determination.

(12) Subject to paragraph (13) and (14), in the case of a member in part-time employment, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is calculated in accordance regulation 7(3) as if he had remained in such part-time employment until his actual normal retirement age.

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

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

(15) In this regulation—

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

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

“qualified in occupational health medicine” means—

- (a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in a EEA State; and for the purposes of this definition,

“competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order^(a); or

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

Election for lump sum in lieu of pension

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

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

(3) For the purposes of this regulation, a member’s accrued rights include rights accrued in respect of any payments made by or for him in accordance with the 2002 Regulations.

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

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

Limit on total amount of benefits

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

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

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

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

Death grants: active members

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

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

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

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

(5) If the Committee has not made payments under paragraph (1) equalling in aggregate the member’s death grant before the expiry of two years beginning with his death, it must pay an amount equal to the shortfall to the member’s personal representatives.

Survivor benefits: active members

24.—(1) If a member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.

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

(2) The pension is calculated by multiplying his total membership, augmented as if regulation 20(2) applied, by his final salary and divided by 160.

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

Meaning of “nominated cohabiting partner”

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

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

(3) The condition is that—

- (a) A is able to marry, or form a civil partnership with, B;
- (b) A and B are living together as if they were husband and wife or as if they were civil partners;
- (c) neither A nor B is living with a third person as if they were husband and wife or as if they were civil partners; and
- (d) either B is financially dependent on A or A and B are financially interdependent.

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

(5) A nomination ceases to have effect if—

- (a) either A or B gives written notice of revocation to the Committee;
- (b) A makes a subsequent nomination under this regulation;
- (c) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or as if they were civil partners; or
- (d) B dies.

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

- (a) the nomination has effect at the date of A’s death; and
- (b) B satisfies the Committee that the condition in paragraph (3) was satisfied for a continuous period of at least 2 years immediately prior to A’s death.

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

Meaning of “eligible child”

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

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

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

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

(5) If the Committee wish—

- (a) it may treat education or training as continuous despite a break; or

- (b) it may suspend payment of any entitlement to benefits under regulation 28, 34 or 37 during such a break.

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

Children's pensions

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

(2) The pension is payable from the death of the member.

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

(4) The amount of that pension is calculated in accordance with regulation 28, 34 or 37, as the case may be.

(5) In the case of a member who was a pension debit member, the pension is calculated by reference to the pension to which the deceased would have been entitled had his shareable rights not been subject to a pension debit.

Children's pensions: active members

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

(2) If a survivor benefit is payable under regulation 24—

(a) where there is only one such child, the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by his final pay, and dividing by 320; and

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

(i) the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by his final pay, and dividing by 160; and

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

(3) If no survivor benefit is payable under regulation 24—

(a) where there is only one such child, the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by his final pay, and dividing by 240; and

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

(i) the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by his final pay, and dividing by 120; and

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

Calculation on leaving early

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

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

(3) Subject to regulations 30 and 31, his retirement pension becomes payable on attaining normal retirement age.

(a) 1995 c. 50.

(4) But that entitlement is extinguished if an aggregation takes place under regulation 6(2) or if a transfer out takes place under regulations 76 to 78 (transfers out) of the Administration Regulations.

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

Choice of early payment of pension

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

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

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

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

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

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

Early payment of pension: ill-health

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

(2) Before determining whether to agree to a request under paragraph (1), the Committee must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether that condition is likely to prevent the member from obtaining gainful employment (whether in local government or otherwise) before reaching his normal retirement age, or at least 3 years, whichever is the sooner.

(3) In this regulation, "gainful employment", "permanently incapable" and "qualified in occupational health medicine" have the same meaning as in regulation 20.

Death grants: deferred members

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

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

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

(4) If the Committee have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with his death, they must pay an amount equal to the shortfall to the member's personal representatives.

Survivor benefits: deferred members

33.—(1) If a deferred member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.

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

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

Children's pensions: deferred members

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

(2) If a survivor benefit is payable under regulation 33—

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

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

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

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

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

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

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

(i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 120; and

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

Death grants: pensioner members

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

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

(3) The death grant is his pension in payment multiplied by 10, but the amount so calculated is reduced by the amounts of any retirement pension paid to him.

Survivor benefits: pensioner members

36.—(1) If a pensioner member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.

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

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

Children's pensions: pensioner members

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

(2) If a survivor benefit is payable under regulation 36—

- (a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating his benefits, by his final pay, and dividing by 320; and
 - (b) where there is more than one such child—
 - (i) the pension is calculated by multiplying the member's total membership used in calculating his benefits, by his final pay, and dividing by 160; and
 - (ii) those children are jointly entitled in equal shares.
- (3) If no survivor benefit is payable under regulation 33—
- (a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating his benefits, by his final pay, and dividing by 240; and
 - (b) where there is more than one such child—
 - (i) the pension is calculated by multiplying the member's total membership used in, calculating his benefits by his final pay, and dividing by 120; and
 - (ii) those children are jointly entitled in equal shares.

Pension increases under the Pensions (Increase) Acts

38. Where a pension to which the Pensions (Increase) (Northern Ireland) Act 1971(a) applies is payable out of the fund, any increase under that Act or the Pensions (Increase) (Northern Ireland) Order 1974(b) must be paid from the fund.

Commutation: small pensions

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

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

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

Guidance on future costs

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

No double entitlement

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

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

(a) 1971 c. 35.
 (b) S.I. 1974/1267 (N.I. 2); amended by ??
 (c) 2004 c. 12.

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

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

(4) This regulation also applies to any survivor benefits payable under regulation 24 (survivor benefits: active members), 27 (children's pensions), 33 (survivor benefits: deferred members), 34 (children's pensions: deferred members), 36 (survivor benefits: pensioners) or 37 (children's pensions: pensioner members).

Sealed with the Official Seal of the Department of the Environment on *** 2007.

Name

A senior officer of the Department of the Environment

(a) 1993 c. 49.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out provisions relating to benefits, membership and contributions in the new Local Government Pension Scheme (“the Scheme”) which will come into operation on 1st April 2008 and replace the Local Government Pension Scheme 2002 (“the 2002 Scheme”).

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

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

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

Regulation 4 defines pensionable pay.

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

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

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

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

Regulations 14 and 15 respectively provide for voluntary additional payments to increase pension and for AVCs.

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

Regulation 19 makes provision relating to redundancy and inefficiency.

Regulation 20 makes provision relating to ill-health retirement.

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

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

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

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

A regulatory impact assessment was published alongside the Local Government Pension Scheme (Benefits, Contributions and Membership) Regulations 2007 (SI 2007/1166), which assesses the cost implications on employers within the Local Government Pension Scheme who are businesses, charities and voluntary organisations in England and Wales. A separate regulatory impact assessment has not been produced for these Regulations. The regulatory impact assessment can be viewed at www.communities.gov.uk/lgps.