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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 34**

**LOCAL GOVERNMENT**

**Local Government Pension Scheme (Amendment and  
Transitional Provisions) Regulations (Northern Ireland) 2009**

*Made - - - - 25th February 2009*

*Coming into operation 1st April 2009*

The Department of the Environment makes these Regulations in exercise of the powers conferred by Articles 9 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972<sup>(1)</sup> and now vested in it<sup>(2)</sup>.

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, interpretation and retrospection**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 and except as provided for in paragraph (2), shall come into operation on 1st April 2009.

(2) These Regulations shall come into operation as follows—

- (a) regulation 8 on 1st February 2009;
- (b) paragraphs (2) and (9) of Schedule 3 on 1st April 2007;
- (c) paragraphs (3) and (4) of Schedule 3 on 6th April 2006;
- (d) paragraph (5) of Schedule 3 on 1st April 2004; and
- (e) paragraphs (6), (7) and (8) of Schedule 3 on 1st October 2006.

(3) In these Regulations—

“the 2002 Regulations” means the Local Government Pension Scheme Regulations (Northern Ireland) 2002<sup>(3)</sup>;

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(1) [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 \(N.I. 13\)](#).  
(2) [S.R. & O \(N.I.\) 1973 No. 504](#) Article 7(1); [S.I. 1976/424 \(N.I. 6\)](#).  
(3) [S.R. 2002 No. 352](#) as amended by [S.R. 2002 No. 353](#), [S.R. 2004 No. 139](#), [S.R. 2005 No. 206](#), [S.R. 2005 No. 274](#), [S.R. 2006 No. 6](#), [S.R. 2006 No. 112](#), [S.R. 2007 No. 152](#), [S.R. 2007 No. 448](#) and [S.R. 2007 No. 479](#).

“the 2002 Scheme” means the occupational pension scheme constituted by the 2002 Regulations, the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002<sup>(4)</sup> and the Local Government Pension Scheme Regulations (Northern Ireland) 2000<sup>(5)</sup> (so far as they continue to operate);

“active member” has the same meaning as in Article 121(1) of the Pension (Northern Ireland) Order 1995<sup>(6)</sup>;

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009<sup>(7)</sup>;

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009<sup>(8)</sup>;

“the Committee” means the Northern Ireland Local Government Officers’ Superannuation Committee established under section 1 of the Local Government (Superannuation) Act (Northern Ireland) 1950<sup>(9)</sup>;

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

“deferred member” has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995 except as provided in regulation 12 (re-employed and rejoining deferred members) of the Administration Regulations;

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

“employing authority” means a body employing an employee who is eligible to be a member or is a local authority as defined in Article 2 of the Superannuation (Northern Ireland) Order 1972<sup>(10)</sup> (but see regulation 6(6) (admission agreements – further provisions) of the Administration Regulations);

“employment” includes office;

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

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

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

“occupational pension scheme” has the meaning given by section 150(5) of the Finance Act 2004<sup>(11)</sup>;

“pension credit” means a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999<sup>(12)</sup> or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999<sup>(13)</sup>;

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

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

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

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

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

(8) S.R. 2009 No. 32.

(9) 1950 c. 10 (N.I.).

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

(11) 2004 c. 12.

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

(13) 1999 c. 30.

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

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

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

“preserved benefits” means benefits to which a person—

(a) was entitled immediately before the commencement date and which are preserved by virtue of regulation 3(1) and 3(2)(a) (membership accrued before 1st April 2009: active members); and

(b) becomes entitled under the Benefits Regulations and Administration Regulations, and which have not become payable and which have not had an election made in respect of them under regulation 12 (re-employed and rejoining deferred members) of the Administration Regulations;

“the Scheme” means the occupational pension scheme constituted by these Regulations, the Administration Regulations, the Benefits Regulations and the 2002 Regulations (so far as they continue to operate);

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

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

### **Revocation of Regulations**

2.—(1) Except where these Regulations provide otherwise, in particular Schedule 5, the Regulations listed in Schedule 1 are revoked.

(2) Accordingly, no person may become a member of the 2002 Scheme after 31 March 2009 or accrue benefits in it in respect of any service after that date.

### **Membership accrued before 1st April 2009: active members**

3.—(1) This regulation applies to a person who was an active member of the 2002 Scheme and becomes a member of the Scheme by virtue of regulation 2 (active members) of the Benefits Regulations.

(2) Notwithstanding the revocations effected by regulation 2, the Regulations listed in Schedule 1 continue to have effect, subject to regulation 4, so far as is necessary so that—

(a) the person’s total membership accrued in the 2002 Scheme in respect of, or calculated by reference to, his service before 1st April 2009, and the pension rights accrued at that date, are preserved; and

(b) his benefits under the 2002 Scheme are payable immediately where benefits become payable without reduction under regulations 16 (normal retirement), 17 (retirement after normal retirement date), 19 (early leavers: business efficiency and redundancy) and 20 (early leavers: ill-health) of the Benefits Regulations, or with the appropriate actuarial reduction in line with guidance produced by the Government Actuary where benefits become payable under regulations 18 (flexible retirement) or 30 (choice of early payment of pension) of the Benefits Regulations.

(3) But his final pay, for the purposes of any calculation of benefits under paragraph (2), is calculated in accordance with regulations 8 (final pay: general) to 11 (final pay: fluctuating emoluments) of the Benefits Regulations.

(4) And, for the purposes of regulation 24 (survivor benefits: active members), 33 (survivor benefits: deferred members) or 36 (survivor benefits: pensioner members) of the Benefits Regulations as they apply to nominated cohabiting partners or civil partners, only periods of membership after 5th April 1988 are to be taken into account.

#### **Membership accrued before 1st April 2009: deferred members**

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

- (a) who was a deferred member of the 2002 Scheme;
- (b) who becomes a member of the Scheme by virtue of regulation 9 (joining the scheme) of the Administration Regulations; and
- (c) whose preserved benefits under the 2002 Scheme have not yet come into payment.

(2) He may choose, by notice in writing to the Committee within 12 months (or such longer period as the Committee may allow) of becoming a member of the Scheme under paragraph (1)(b), to be treated as if regulation 3 applied.

#### **Membership accrued before 1st April 2009: concurrent employments**

5. Where a member to whom regulation 3 applies has membership to which regulation 13 (concurrent employments) of the Administration Regulations also applies, the calculation of any period for the purposes of the latter provision is carried out separately in respect of periods of employment before 1st April 2009 as if regulation 35 of the 2002 Regulations still applied and in respect of periods of employment after 31st March 2009 in accordance with regulation 13 of the Administration Regulations.

#### **Survivor benefits**

6.—(1) Subject to paragraphs (2) and (3), any survivor benefits payable in respect of a person to whom regulation 3 or 4 applies are calculated as if the Benefits Regulations applied to all of his membership, whether it accrued before or after 1st April 2009.

(2) The survivor benefits payable in respect of a deferred member to whom regulation 4 does not apply are calculated as if his total membership before 1st April 2009 was a separate period of membership to which the conditions in force at the time he became a deferred member apply.

(3) Regulations 44 (reduction of some surviving spouses' pensions) and 44A (calculation of pension for surviving civil partner) of the 2002 Regulations continue to apply to a deferred or pensioner member who marries or enters a civil partnership after becoming such a member.

#### **Deferred members: limit on death grant**

7. Where a person to whom regulation 3 applies becomes a deferred member after 31st March 2009 and dies before his pension comes into payment, the death grant to which he is entitled under any provision of the Scheme or the 2002 Scheme as continued in effect by regulation 3, shall not exceed his retirement pension multiplied by 5.

#### **Members' contributions: information**

8. The employing authority of the person to whom regulation 2(3) (active members) of the Benefits Regulations applies shall inform him, before 1st April 2009, of the contribution rate

applicable to him in accordance with regulation 3(2) (contribution payable by active members) of those Regulations.

### **Members' contributions: lower rate rights**

9.—(1) Subject to paragraph (4), the contribution rates set out in the table in regulation 3(2) (contribution payable by active members) of the Benefits Regulations (“the 2009 table”) do not apply to a person to whom regulation 11(3) (members' contributions) of the 2002 Regulations, as continued in effect by regulation 3, applies.

(2) Instead, the contribution rate to be applied to such a member is calculated in accordance with the following table.

**Table**

<i>Year commencing</i>	<i>Contribution rates</i>
1st April 2009	5.25%
1st April 2010	5.5%
1st April 2011	6.5%

(3) But if the application of the table set out in paragraph (2) would result in a member's contribution rate being higher than if the 2009 table applied, his contribution shall be paid at the lower rate.

(4) After 31st March 2012, such a member makes contributions in accordance with the 2009 table.

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

10. Where the benefits payable to a member in respect of whom the Committee makes a determination under regulation 20(1) of the Benefits Regulations before 1st October 2009 would place him in a worse position than he would otherwise be had the 2002 Regulations continued to apply, then those Regulations shall have effect in relation to him as if they were still in force.

### **The 85 year rule**

11.—(1) This regulation applies to a person—

- (a) to whom regulation 3 applies; and
- (b) where—
  - (i) the Committee may pay benefits following a request under regulation 18 (flexible retirement) of the Benefits Regulations; or
  - (ii) the Committee may pay benefits following a request under regulation 30 (choice of early payment of pension) of those Regulations.

(2) Schedule 2 (which makes transitional provision relating to the so-called “85 year rule”) has effect in relation to such a person.

### **Application of abatement policy in individual cases**

12. Notwithstanding the revocation of regulation 113 (application of abatement policy in individual cases) of the 2002 Regulations, paragraph (4) of that regulation shall continue to apply to a person who was a member for the Local Government Pension Scheme constituted under the

Local Government Pension Scheme Regulations (Northern Ireland) 2000(14) immediately before 1st August 2000.

**Pension sharing**

13. Part 10 (pension sharing) of the Administration Regulations applies to those persons listed in regulation 4(2)(a) (deferred members and pensioners: general) of the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002(15).

**Amendments to the Local Government Pension Scheme Regulations (Northern Ireland) 2002**

14. The 2002 Regulations shall be amended as provided by Schedule 3.

**Minor and consequential amendments**

15. The provisions specified in Schedule 4 shall have effect with the amendments made by that Schedule.

**Transitional and transitory provisions and savings**

16.—(1) Schedule 5 shall have effect for the purpose of making transitional and transitory provisions and savings.

(2) Nothing in that Schedule affects the general operation of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954(16).

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



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

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

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

(16) 1954 c. 33 (N.I.).

## SCHEDULE 1

Regulation 2

### REGULATIONS REVOKED

Local Government Pension Scheme Regulations (Northern Ireland) 2002, except for the provisions listed below—

Regulation 9(3) to (5) (excluded membership),

Regulation 17, (optional contributions during absences) for the purpose of enabling the Committee to make after 31st March 2009 a calculation in accordance with paragraph (2A),

Regulation 24, (permanent reductions in pay: certificates of protection of pension benefits) as it applies to a member in respect of whom a certificate is issued (whether before or after 1st April 2009) under paragraph (3) of that regulation relating to a reduction or restriction of pay occurring before 1st April 2009,

Regulation 41, (death grants) for the purpose of enabling the Committee to make after 31st March 2009 a payment required by paragraph (7),

Regulation 44, (reduction of some surviving spouses' pensions) as continued by regulation 6(3),

Regulation 44A, (calculation of pension for surviving civil partner) as continued by regulation 6(3),

Regulation 46, (meaning of “eligible child”) for the purpose of enabling the Committee to make after 31st March 2009 a determination whether a child of a deceased member is an “eligible child” within the meaning of regulation 46,

Regulation 57, (payments to increase total membership) as it applies to a member who has elected, before 1st April 2009, to make additional contributions to increase his total membership by an additional period,

Regulation 68(8) (elections as to use of accumulated value of AVCs),

Regulation 76, (accounts and audit) as it applies to the year ending 31st March 2009,

Regulation 84 (discontinuance of additional voluntary contributions),

Regulation 111 (provision of information, charging and prescribed persons),

Regulations 125(6A) and 125(6B) (right to count credited period),

Regulation 126 (credited periods for transferring members with mis-sold pension rights),

Regulation 127 (rights as to service not matched by credited period),

Schedule 3, paragraph 3 and Notes 1 and 2 (excluded membership), and

Schedule 5 (mis-sold pensions);

Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002;

Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2004<sup>(17)</sup>;

Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2005<sup>(18)</sup>;

Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2005<sup>(19)</sup>;

Local Government Pension Scheme (Civil Partnership) (Amendment) Regulations (Northern Ireland) 2006<sup>(20)</sup> (except Regulation 2);

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<sup>(17)</sup> S.R. 2004 No. 139.

<sup>(18)</sup> S.R. 2005 No. 206.

<sup>(19)</sup> S.R. 2005 No. 274.

<sup>(20)</sup> S.R. 2006 No. 6.

Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2006<sup>(21)</sup>;

Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2007<sup>(22)</sup> (except regulations 8(2), 30(2) and 31(2));

Local Government Pension Scheme (Amendment No. 3) Regulations (Northern Ireland) 2007<sup>(23)</sup>; and

Local Government Pension Scheme (Amendment No. 4) Regulations (Northern Ireland) 2007<sup>(24)</sup>.

## SCHEDULE 2

Regulation 11

### THE 85 YEAR RULE: TRANSITIONAL PROVISIONS AND SAVINGS

1. Subject to paragraph 7, where a member—
  - (a) makes a request to receive the immediate payment of retirement benefits under regulation 18(1) (flexible retirement) or 30(1) (choice of early payment of pension) of the Benefits Regulations; and
  - (b) satisfies the 85 year rule,

that part of his retirement pension and grant which is calculated by reference to any period of membership before the relevant date shall not be reduced in accordance with regulation 18(2) or, as the case may be, regulation 30(4) of the Benefits Regulations.

2. For the purposes of paragraph 1, the relevant date for a member who was a member before 1st October 2006 is—

- (a) in the case of a member who will be aged 60 or more on 31st March 2016, the earlier of—
  - (i) 1st April 2016; and
  - (ii) the date on the day after the day on which the member leaves local government employment; or
- (b) in any other case, 1st April 2008.

- 3.—(1) For the purposes of this Schedule, a member satisfies the 85 year rule if the sum of—
  - (a) his age in whole years on the date his local government employment ends or the date he makes a request under regulation 18(1) of the Benefits Regulations if later;
  - (b) his total membership in whole years;
  - (c) in a case where he makes a request after his local government employment ends, the period beginning with the end of that employment and ending with the date he makes the request; and
  - (d) in the case of a person who was a member immediately before 1st February 2003, any qualifying period counted by virtue of regulation 127 (rights as to service not matched by credited period) of the 2002 Regulations which was awarded before 1st April 2008,

is 85 years or more.

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<sup>(21)</sup> S.R. 2006 No. 112.

<sup>(22)</sup> S.R. 2007 No. 152.

<sup>(23)</sup> S.R. 2007 No. 448.

<sup>(24)</sup> S.R. 2007 No. 479.



(2) But, in calculating his total membership, no account is to be taken of any increase in membership awarded under regulation 12 (power of employing authority to increase total membership) of the Benefits Regulations.

4.—(1) This paragraph applies to a member to whom regulation 4 (membership accrued before 1st April 2009: deferred members) or regulation 12 (re-employed and rejoining deferred members) of the Administration Regulations applies.

(2) Where such a member—

(a) does not choose; or

(b) does not so choose as respects all periods of his membership,

to be treated as if regulation 3 (membership accrued before 1st April 2009: active members) applied, or to have his membership aggregated under regulation 12 of the Administration Regulations, as the case may be, then in applying paragraph 2 as respects any later membership, his total membership excludes unaggregated periods.

5.—(1) This paragraph applies to a member who was a member before 1st October 2006 who—

(a) before 1st October 2006 elected to make additional contributions to the Scheme to increase his total membership under regulation 57(1) (payments to increase total membership) of the 2002 Regulations; and

(b) was assumed to retire from a local government employment on a date before his 65th birthday (“the assumed date”) for the purposes of calculating his additional contributions under regulation 57(5) of the 2002 Regulations.

(2) Where a member to whom this paragraph applies—

(a) continues paying the additional contributions until the assumed date; and

(b) retires on or after the assumed date,

he shall not pay any additional contributions after that date and the whole of the additional period may be counted as part of his total membership.

(3) An additional period counted as a period of total membership as a result of this paragraph shall be treated as a period of membership before 1st April 2008.

6.—(1) Paragraphs 1 to 5 apply to a person who was a member before 1st October 2006 and who—

(a) leaves local government employment and ceases to be a member of the 2002 Scheme or the Scheme (whether before or after that date); and

(b) resumes such employment before the relevant date for the purposes of paragraph 1.

(2) And any period of membership after that resumption is aggregated with the period of membership accrued in his previous local government employment for the purposes of paragraph 1.

(3) But any increase in his total membership under regulation 12 of the Benefits Regulations is not counted for the purpose of paragraph 3(1)(b).

7.—(1) This paragraph applies to a member who retires, having reached the age of 60, on or after 1st April 2016 and before 1st April 2020, and whose retirement pension and grant would (but for the provisions of this paragraph) have been actuarially reduced by virtue of paragraphs 1 and 2.

(2) That part of his retirement pension and grant which is calculated by reference to any period of membership after 31st March 2008 shall be reduced in accordance with guidance issued by the Government Actuary.

## SCHEDULE 3

Regulation 14

AMENDMENTS TO THE LOCAL GOVERNMENT PENSION  
SCHEME REGULATIONS (NORTHERN IRELAND) 2002

1. The 2002 Regulations shall be amended as provided by paragraphs 2 to 9.
2. In regulation 17 (optional contributions during absences), after paragraph (2) insert—
 

“(2A) But in calculating the pay on which the contributions are made, any amount the person receives on account of a day’s work carried out under regulation 12A of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999<sup>(25)</sup> or regulation 21A of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002<sup>(26)</sup> that exceeds any maternity, paternity or parental leave pay due for that day, shall be disregarded.”.
3. In regulation 41 (death grants), for paragraph (7) substitute—
 

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

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

it must pay an amount equal to the shortfall to the member’s personal representatives.”.
4. For regulation 46 (meaning of “eligible child”), substitute—
 

“46.—(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 is born on or after the first anniversary of the date of the 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 as an eligible child after he reaches the age of 18 and until he reaches the age of 23 if he commences full-time education or vocational training after the date of the member’s death.

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

  - (a) treat education or training as continuous despite a break; or
  - (b) suspend payment of any entitlement to benefits under regulations 47, 48 and 49 during a break in education or vocational training.

(6) The Committee may treat a dependent child who is disabled within the meaning of the Disability Discrimination Act 1995<sup>(27)</sup> as an eligible child.”.
5. In regulation 88 (rights to return of contributions) after paragraph (3), insert—
 

“(3A) If a member dies before repayment of contributions have been made, these shall be treated as a lump sum death benefit for the purposes of section 168 of the Finance Act 2004.”.

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<sup>(25)</sup> S.R. 1999 No. 471; regulation 12A was inserted by S.R. 2006 No. 372; regulation 10.

<sup>(26)</sup> S.R. 2002 No. 377; regulation 21A was inserted by S.R. 2006 No. 373; regulation 6.

<sup>(27)</sup> 1995 c. 50.

6. In regulation 126 (credited periods for transferring members with mis-sold pension rights), in paragraph (3) for “regulation 125(6A)” substitute “regulation 125(6B)”.
7. In regulation 137(b) (valuation date), delete “and regulation 139(1)”.
8. In regulation 139(1) (calculation), for “from the valuation date” substitute “from the day on which the pension sharing order takes effect”.
9. In Schedule 1 (interpretation), for the definition “occupational pension scheme”, substitute—  
““occupational pension scheme” means—
  - (a) an occupational pension scheme within the meaning of section 1 of the Pension Schemes (Northern Ireland) Act 1993 other than—
    - (i) a retirement benefits scheme (as defined in section 611 of the Taxes Act) which is not of a description mentioned in section 596(1)(a), (b) or (c) of that Act;
    - (ii) an additional voluntary contributions scheme;
    - (iii) a personal pension scheme; or
    - (iv) a self employed pension arrangement; and
  - (b) a European pensions institution as defined in Article 269(8) of the Pensions (Northern Ireland) Order 2005(28).”.

#### SCHEDULE 4

Regulation 15

#### MINOR AND CONSEQUENTIAL AMENDMENTS

#### **The Local Government (Superannuation) (Milk Marketing Board for Northern Ireland) Regulations (Northern Ireland) 1997**

1. The Local Government (Superannuation) (Milk Marketing Board for Northern Ireland) Regulations (Northern Ireland) 1997(29) shall be amended as provided for in paragraphs 2 and 3.
2. In regulation 1(2) (citation, commencement and interpretation)—
  - (a) before the definition of “admission agreement employee”, insert—  
““the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009(30);”; and
  - (b) for the definition of “admission agreement employee”, substitute—  
““admission agreement employee” means employment with an admission body in which the employee is an active member in the same way as if the admission body were an employing authority;”.
3. In regulation 2 (preservation of membership of scheme) at both places where it occurs, for “the principal Regulations” substitute “the Administration Regulations”.

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(28) S.I. 2005/255 (N.I. 1).

(29) S.R. 1997 No. 137 as amended by Schedule M4 to S.R. 2000 No. 177 (Schedule M4 to S.R. 2000 No. 177 was amended by regulation 11 of S.R. 2001 No. 64) and S.R. 2002 No. 353.

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

## **Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000**

4. The Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000(31) shall be amended as provided in paragraphs 5 and 6.

5. In regulation 2 (general interpretation)—

(a) for the definition of “the 2000 regulations” substitute—

““the 2002 Regulations” means the Local Government Pension Scheme Regulations (Northern Ireland) 2002(32);

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009(33);”;

(b) before the definition of “the Committee” insert—

““the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009(34);”;

(c) in the definition of “the Committee” for “Schedule A1 of the 2000 Regulations” substitute “Schedule 1 of the Administration Regulations”; and

(d) after the definition of “traded option” insert—

““the Transitional Regulations” means the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009(35);”.

6. In regulation 5 (management of the fund)—

(a) for paragraph (2) substitute—

“(2) The Committee must pay or credit to the fund, in addition to any other sum the Benefits Regulations, the Administration Regulations and the Transitional Regulations specify must be paid or credited to the fund—

(a) the amounts payable by it or paid to it for the credit of the fund by employing authorities under regulations 34 (employer’s contributions) to 37 (payments by employing authorities to the Committee) of the Administration Regulations;

(b) all members’ contributions including those made by virtue of the Transitional Regulations, except contributions payable under regulation 21 (additional voluntary contributions and shared cost additional voluntary contributions);

(c) all income arising during the year from investment of the fund;

(d) all capital money deriving from such investment; and

(e) all additional payments received by it under the Benefits Regulations, Administration Regulations or Transitional Regulations.”; and

(b) in paragraph (3) for “regulations L5 to L7 of the 2000 regulations” substitute “regulations 34 to 37 of the Administration Regulations”.

(31) S.R. 2000 No. 178 as amended by Regulations S.R. 2001 No. 62, S.R. 2003 No. 433, S.R. 2004 No. 260 and S.R. 2006 No. 400.

(32) S.R. 2002 No. 352 as amended by S.R. 2002 No. 353, S.R. 2004 No. 139, S.R. 2005 No. 206, S.R. 2005 No. 274, S.R. 2006 No. 6, S.R. 2006 No. 112, S.R. 2007 No. 152, S.R. 2007 No. 448 and S.R. 2007 No. 479.

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

(34) S.R. 2009 No. 32.

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

## **The Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001**

7. The Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001<sup>(36)</sup> shall be amended as provided in paragraphs 8 to 10.

8. In regulation 2 (general interpretation)—

(a) in paragraph (1)—

(i) after the definition of “assumed member” insert—

““the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009<sup>(37)</sup>”;

(ii) for the definition of “the LGPS Regulations” substitute—

““the LGPS Regulations” means the Benefits Regulations, the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009<sup>(38)</sup> and the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009<sup>(39)</sup>”;

(iii) after the definition of “the 2000 Regulations” insert—

““the 2002 Regulations” means the Local Government Pension Scheme Regulations (Northern Ireland) 2002<sup>(40)</sup>”;

(iv) in the definition of “pensionable remuneration” for “regulation 12 of the LGPS Regulations” substitute “regulation 4 of the Benefits Regulations”; and

(v) in the definition of “the Scheme” for “the LGPS Regulations” substitute “the Benefits Regulations”; and

(b) in paragraph (2) for “the 2000 Regulations” substitute “the 2002 Regulations”; and

(c) in paragraph (3) in both places where it occurs after “the 2000 Regulations” insert “or the 2002 Regulations”.

9. In regulation 32(1) (interpretation of Part V) for “as a member of the fire brigade as defined in Article 2(2) of the Fire Services (Northern Ireland) Order 1984<sup>(41)</sup>” substitute “retained or volunteer membership with a fire and rescue authority as defined in Article 3 of the Fire and Rescue Services (Northern Ireland) Order 2006<sup>(42)</sup>”.

10. In regulation 35(1) (allowances for pensioners)—

(a) for sub-paragraph (b) substitute—

“(b) on so ceasing regulation 33 does not apply, but he becomes entitled under the Benefits Regulations to receive payments in respect of an annual retirement pension and regulation 10 (final pay: reductions) of those Regulations or regulation 24(1) (different relevant period for calculating pensionable remuneration where a material reduction has been certified) of the LGPS Regulations does not apply; and”;

(b) in sub-paragraph (c) for “the LGPS Regulations” substitute “the Benefits Regulations”.

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<sup>(36)</sup> S.R. 2001 No. 279 as amended by S.R. 2002 No. 353, S.R. 2003 No. 61 and S.R. 2006 No. 6.

<sup>(37)</sup> S.R. 2009 No. 32.

<sup>(38)</sup> S.R. 2009 No. 33.

<sup>(39)</sup> S.R. 2009 No. 34.

<sup>(40)</sup> S.R. 2002 No. 352 as amended by S.R. 2002 No. 353, S.R. 2004 No. 139, S.R. 2005 No. 206, S.R. 2005 No. 274, S.R. 2006 No. 6, S.R. 2006 No. 112, S.R. 2007 No. 152, S.R. 2007 No. 448 and S.R. 2007 No. 479.

<sup>(41)</sup> S.I. 1984/1821 (N.I. 11).

<sup>(42)</sup> S.I. 2006/1254 (N.I. 9).

### **The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007**

11. The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007<sup>(43)</sup> shall be amended as provided for in paragraphs 12 to 14.

12. In regulation 2 (general interpretation)—

(a) after the definition of “the 2003 Regulations” insert—

““the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009<sup>(44)</sup>;

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009<sup>(45)</sup>”; and

(b) for the definition of “the Pension Regulations” substitute—

““the Pension Regulations” means the Benefits Regulations, the Administration Regulations, the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009<sup>(46)</sup> and the Local Government Pension Scheme Regulations (Northern Ireland) 2002<sup>(47)</sup> (so far as they continue to operate);”.

13. In regulation 3(1)(b)(ii) (application of the regulations) for “regulation 7 (leaving the scheme) of the Pension Regulations” substitute “regulation 10 (ending of membership) of the Administration Regulations”.

14. In regulation 5(1)(b) (discretionary compensation) for “regulation 54 (power of employing authority to increase total membership) of the Pension Regulations” substitute “regulation 12 (power of employing authority to increase total membership of members) or 13 (power of employing authority to award additional pension) of the Benefits Regulations”.

## SCHEDULE 5

Regulations 2(1) and 16

### TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

1. In this Schedule—

(a) “the former provisions” means any provisions which by virtue of these Regulations cease to apply to any person at any time;

(b) references to the revocation of any provision shall be taken to include its ceasing to apply to any person or in any situation (and related expressions shall be construed accordingly); and

(c) “the 2009 provisions” means the Administration Regulations, the Benefits Regulations and these Regulations.

2.—(1) The substitution of the 2009 provisions for the former provisions does not affect the continuity of the law.

(2) Anything done or having effect as if done under or for the purposes of any of the former provisions has effect, if it could have been done under or for the purposes of the corresponding

<sup>(43)</sup> S.R. 2007 No. 93.

<sup>(44)</sup> S.R. 2009 No. 33.

<sup>(45)</sup> S.R. 2009 No. 32.

<sup>(46)</sup> S.R. 2009 No. 34.

<sup>(47)</sup> S.R. 2002 No. 352 as amended by S.R. 2002 No. 353, S.R. 2004 No. 139, S.R. 2005 No. 206, S.R. 2005 No. 274, S.R. 2006 No. 6, S.R. 2006 No. 112, S.R. 2007 No. 152, S.R. 2007 No. 448 and S.R. 2007 No. 479.

provision of the 2009 provisions, as if done also under or for the purposes of that corresponding provision.

(3) Any reference, whether express or implied, in the 2009 provisions or any other instrument or document to a provision of the 2009 provisions shall, so far as the context permits, be construed as including, in relation to the times, circumstances and purposes in relation to which the corresponding provision of the former provisions has effect, a reference to that corresponding provision.

(4) Any reference, whether express or implied, in any provision of the former provisions or in any other instrument or document to a provision of the former provisions shall be construed, so far as is required for continuing its effect, as including a reference to the corresponding provision of the 2009 provisions.

(5) Any document made, served or issued after the 2009 provisions come into operation in relation to any person which contains a reference to any of the former provisions shall be construed, except so far as a contrary intention appears, as referring or, as the context may require, including a reference to the corresponding provision of the 2009 provisions.

(6) Where any provision of the former provisions (“the re-enacting provision”) re-enacted, with or without modification, a previous provision revoked by the 2002 Regulations or any other former provision, then, so far as is necessary to prevent the continuity of the law from being affected, any reference in the 2009 provisions or in any other instrument or document to the re-enacting provision shall, so far as the context permits, be construed as including a reference to that previous provision.

(7) Where by virtue of paragraph 2(6) of Schedule 5 to the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002<sup>(48)</sup> any reference to such a previous provision includes a reference to an earlier provision, sub-paragraph (6) applies so as to include a reference to that earlier provision too.

3.—(1) Where—

- (a) any provision continues to have effect in relation to any person by virtue of these Regulations; and
- (b) on the day before the commencement date it has effect in relation to him subject to any saving, transitional provision or modification,

nothing in these Regulations affects the operation of that saving, transitional provision or modification.

(2) The revocation by these Regulations of any provision previously revoked subject to savings does not affect the continued operation of those savings, in so far as they remain capable of having effect.

4.—(1) If any person to whom a relevant benefit is or may become payable would, apart from this paragraph be placed in a worse position in relation to that benefit than that he would have been in had these Regulations not been made and makes an election under this paragraph, these Regulations shall have effect, in relation to him and to that benefit, as if they had provided for his position to continue without amendment (but see sub-paragraph (4)).

(2) An election under sub-paragraph (1) must be made by notice in writing given to the Committee before the expiry of the period of 6 months beginning with the commencement date.

(3) In this paragraph—

“relevant benefit” means a benefit payable to, or in respect of, a person who before the commencement date—

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<sup>(48)</sup> S.R. 2002 No. 353 as amended by S.R. 2006 No. 6.

*Status: This is the original version (as it was originally made).*

(a) left an employment in which he was an active member (whether or not he has subsequently become an active member again); or

(b) died while in such employment; and

“benefit” includes a return of contributions and any pension payable to a widow, widower, surviving civil partner, nominated cohabiting partner or any dependant by virtue of a surrender.

(4) If an election under sub-paragraph (1) is made in relation to a benefit in respect of a person who is an active member, or subsequently becomes an active member again—

(a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued by virtue—

(i) of periods of membership before he left the employment referred to in sub-paragraph (a) of the definition of “relevant benefit” (or, if he left such an employment more than once, the last time he left before the commencement date); or

(ii) of contributions paid in respect of such periods of membership; and

(b) in determining entitlement to, or the amount of, the benefit to that extent, he shall be treated as if he had never become an active member again at any time after he so left (but without prejudice to the application of this paragraph),

and these Regulations shall have effect accordingly.

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## EXPLANATORY NOTE

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

These Regulations set out transitional provisions relating to members of the Local Government Pension Scheme 2002 (“the 2002 Scheme”), which is to be replaced by the new Local Government Pension Scheme (“the Scheme”) with effect from 1st April 2009.

Their effect is to protect the benefits accrued by members of the 2002 Scheme before 1st April 2009 and to protect their rights.

Article 14 of the Superannuation (Northern Ireland) Order 1972 confers express powers to make regulations retrospective in effect. In these Regulations, regulation 8 and certain provisions of Schedule 3 are retrospective; however no one will be adversely affected by the retrospective provisions.

Regulation 2 provides for revocation, subject to savings, of the Local Government Pension Scheme Regulations (Northern Ireland) 2002 (“the 2002 Regulations”) and of a number of subsequent Regulations that amend the 2002 Regulations or make provision dependent on them, which are set out in Schedule 1. It follows that, after 1st April 2009, no person may become a member of the 2002 Scheme or accrue benefits in it (regulation 2(2)).

Regulations 3 to 5 preserve the membership and benefits accrued in the 2002 Scheme.

Regulation 6 provides survivor benefits and regulation 7 for limits on death grants for deferred members.

Regulation 8 requires employing authorities to inform certain members of the contribution rates applicable to them, regulation 9 provides for lower contribution rates in certain cases.



Regulation 11 and Schedule 2 make provision relating to the so-called “85-year rule” about early retirement.

Regulation 12 saves provisions about abatement policy contained in the 2002 Regulations, regulation 13 deals with pension sharing.

Regulation 14 and Schedule 3 deal with amendments to the 2002 Regulations.

Regulation 15 and Schedule 4 deal with minor and consequential amendments.

Regulation 16 and Schedule 5 provide for the continuity of the application of the Scheme provisions and contains general savings and transitional provisions.

A full regulatory impact assessment has not been produced for this Statutory Rule as it has no impact on the cost of businesses, charities or voluntary bodies and does not have a significant financial impact on any public bodies.