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STATUTORY RULES OF NORTHERN IRELAND

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**2002 No. 352**

**LOCAL GOVERNMENT**

**Local Government Pension Scheme  
Regulations (Northern Ireland) 2002**

*Made - - - - 19th November 2002*

*Coming into operation 1st February 2003*

The Department of the Environment, in exercise of the powers conferred by Article 9 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972<sup>(1)</sup> and now vested in it<sup>(2)</sup> and of every other power enabling it in that behalf, and after consultation 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, hereby makes the following Regulations: –

**PART I**

**PRELIMINARY PROVISIONS**

**Citation and commencement**

**1.** These Regulations may be cited as the Local Government Pension Scheme Regulations (Northern Ireland) 2002 and shall come into operation on 1st February 2003.

**Interpretation**

**2.—(1)** Schedule 1 contains definitions of expressions used in these Regulations which apply for their interpretation.

**(2)** References to members and membership generally refer to active members and active membership respectively.

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(1) S.I. 1972/1073 (N.I. 10)  
(2) S.R. & O (N.I.) 1973 No. 504 Article 7(1); S.I. 1976/424 (N.I. 6)

**PART II**  
**PRIMARY PROVISIONS**  
**CHAPTER I**  
**MEMBERSHIP**

*Eligibility for active membership*

**General eligibility for membership: employees of Scheme employers etc.**

**3.—**(1) A person may only be an active member if this regulation, or regulation 4 enables him to be one and he is not prevented by regulation 5.

(2) A person may be a member if he is employed by a Scheme employer.

(3) A Scheme employer is a local authority as defined in Article 2 of the Order of 1972<sup>(3)</sup>.

**Agreements to enable employees of non-Scheme employers to be members (“admission agreements”)**

**4.—**(1) The Committee may make an admission agreement with any admission body and such an agreement may provide that a period of employment by the admission body before the date of the agreement counts as membership of the Scheme (or does so for some purposes).

(2) An admission agreement is an agreement that all or any specified class of the admission body’s employees may be members.

(3) The following are admission bodies –

(a) a body which provides a public service in the United Kingdom otherwise than for the purposes of gain and which either –

(i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest, whether because the operations of the admission body are dependent on the operations of the Scheme employer or otherwise, or

(ii) is approved by the Department for the purpose of admission to the Scheme;

(b) a body to the funds of which any Scheme employer contributes;

(c) a body to which any monies are payable from monies appropriated by or under an enactment as defined in section 98(1) of the Northern Ireland Act 1998<sup>(4)</sup>;

(d) a body representative –

(i) of local authorities, or

(ii) of local authorities and officers of local authorities, or

(iii) of officers of local authorities, or

(iv) of Scheme employers;

(e) a statutory undertaker;

(f) a non-statutory undertaker;

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<sup>(3)</sup> As extended by The Housing (Northern Ireland) Order 1981 (S.I. 1981/156), Part II, Article 5(3)

<sup>(4)</sup> 1998 c. 47

- (g) the managers of a voluntary school within the meaning of Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986<sup>(5)</sup>;
  - (h) the governing body of an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997<sup>(6)</sup>; and
  - (i) a body which provides services or assets referred to in a transfer arrangement.
- (4) An admission body referred to in paragraph (3)(d)(iii) is only an admission body if it is formed for the purpose of consultation as to the common interests of local authorities and the discussion of matters relating to local government.
- (5) Approval under paragraph (3)(a)(ii) may be subject to such conditions as the Department thinks fit and it may withdraw approval at any time if such conditions are not met.
- (6) It must be a term of an admission agreement made with a non-associated admission body within sub-paragraphs (b) and (c) of paragraph (3) that the body which provides the funding or from which monies are appropriated (and, if more than one, all of them) guarantees the liability of the admission body to pay all amounts due from it under the Regulations.
- (7) In the case of an admission agreement with a transferee admission body –
- (a) the transferor Scheme employer, if not the Committee, must be a party to the admission agreement;
  - (b) only those employees of the transferee admission body who are employed in connection with the provision of the services or assets referred to in the transfer arrangement are eligible to be members of the Scheme;
  - (c) the admission agreement shall require an indemnity or bond in an approved form and with an authorised insurer or a relevant institution; and
  - (d) provision shall be made for the matters set out in Schedule 2.
- (8) Where a transferor Scheme employer and a transferee admission body undertake to meet the requirements of paragraph (7), the Committee must admit to the Scheme the eligible employees of the transferee admission body specified by that body and, where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.
- (9) An admission agreement must terminate if the admission body ceases to be such a body.
- (10) An admission agreement may make such other provision about its termination as the parties to the agreement consider appropriate.
- (11) When the Committee makes an admission agreement, it must promptly inform the Department of the date on which the agreement takes effect, the admission body's name and, in the case of an admission agreement with a transferee admission body, the name of the relevant transferor scheme employer.
- (12) The Committee must notify the Commissioners of Inland Revenue of the admission of an admission body within the time prescribed in regulations made under section 605 of the Taxes Act<sup>(7)</sup> and provide such information as may be so prescribed.
- (13) Any question which may arise between the Committee and any other party to an admission agreement relating to the construction of the agreement or to the rights and obligations under that agreement shall be referred in writing for determination to the Department.
- (14) An employee of an admission body may not be a member if he is a member of another occupational pension scheme (within the meaning of section 1 of the Pension Schemes (Northern

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(5) S.I. 1986/594 (N.I. 3) as amended by S.I. 1993/2810 (N.I. 12) and S.I. 1997/1772 (N.I. 15)

(6) S.I. 1997/1772 (N.I. 15)

(7) 1988 c. 1; section 605 was amended by section 105 of the Finance Act 1994 (c. 9). For the regulations, see S.I. 1995/3103

Ireland) Act 1993<sup>(8)</sup>) other than where the accrual of benefits under that pension scheme would not affect approval of the Scheme as an approved scheme.

(15) These Regulations apply to employment with an admission body in which the employee is a member in the same way as if the body were a Scheme employer.

(16) In this regulation, regulation 5 and in Schedule 2 (where applicable) –

- (a) “authorised insurer” means –
  - (i) a person who has permission under Part IV of the Financial Services and Markets Act 2000<sup>(9)</sup> to effect or carry out contracts of insurance, or
  - (ii) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance;
- (b) “indemnity or bond in an approved form” means an indemnity or bond to meet a level of risk exposure arising on premature termination of the transfer arrangement actuarially assessed to the satisfaction of the Committee and the transferor Scheme employer if not the Committee;
- (c) “non-associated admission body” means a body described in –
  - (i) paragraph (3)(a)(ii),
  - (ii) paragraph (3)(b) where, at the date that the admission agreement is made, the contributions paid to a body by any one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, or
  - (iii) paragraph 3(c);
- (d) “a non-statutory undertaker” means a body who, though not authorised by any statutory provision to do so, is primarily engaged in carrying on –
  - (i) any railway, light railway, road transport, water transport, canal, inland navigation, dock, harbour or pier; or
  - (ii) any undertaking for the promotion of industrial development or the promotion of the development of tourist traffic;
- (e) “relevant institution” means –
  - (i) a person who has permission under Part IV of the Financial Services and Markets Act 2000 to accept deposits;
  - (ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits; or
  - (iii) a person who is exempt from the general prohibition in respect of accepting deposits as a result of an exemption order made under section 38 (1) of that Act;
- (f) “a statutory undertaker” means a body authorised by any statutory provision to carry on –
  - (i) any railway, light railway, road transport, water transport, canal, inland navigation, dock, harbour, or pier; or
  - (ii) any undertaking for the promotion of industrial development or the promotion of the development of tourist traffic;
- (g) “transferee admission body” means an admission body described in paragraph (3)(i);

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<sup>(8)</sup> 1993 c. 49

<sup>(9)</sup> 2000 c. 8

- (h) “transfer arrangement” means a contract or other arrangement made with a transferor Scheme employer for the provision of, or making available of, services or assets, for the purposes of or in connection with the exercise of a function of that transferor Scheme employer; and
  - (i) “transferor Scheme employer” means an authority or body which is a Scheme employer or an admission body.
- (17) The definitions of “authorised insurer” and “relevant institution” in paragraph (16) must be read with –
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.

### **Further restrictions on eligibility**

5.—(1) If a person’s employment entitles him to belong to another statutory pension scheme, that employment does not entitle him to be a member, unless that other scheme was made under Article 9 of the Order of 1972.

(2) A statutory pension scheme is an occupational pension scheme provided by or under an enactment.

(3) A person may not become a member after his 65th birthday.

(4) Part-time employment as a member of a fire brigade maintained in pursuance of the Fire Services (Northern Ireland) Order 1984(10) on terms under which the employee is or may be required to engage in fire fighting does not entitle the employee to be a member of the Scheme.

(5) Any person who as a member of staff of the University of Ulster is eligible to participate in the Universities' Superannuation Scheme is not entitled to be a member of the Scheme.

(6) A person who is a member and is an employee of a transferee admission body is treated as leaving a local government employment when he ceases to be employed in connection with the services or assets referred to in the transfer arrangement.

### *Joining and leaving the Scheme*

#### **Joining the Scheme**

6.—(1) A person who wishes to become an active member must apply in writing to his employer or future employer.

(2) An eligible person who applies before he begins his employment becomes a member when his employment begins unless he applies to join later.

(3) An eligible employee who applies becomes a member on the first day of the first payment period following the application.

(4) A payment period is a period of service to which the employee’s wages or salary payment relate.

(5) An employee is deemed to have applied to become a member, unless he notified his employer in writing that he did not wish to do so –

- (a) before his employment began; or
- (b) if he only became eligible to be a member later, before the date he became eligible.

- (6) But paragraph (5) does not apply –
  - (a) to casual employees; or
  - (b) to former members who opted to leave the Scheme by a notification under regulation 7.
- (7) An application for membership may be withdrawn before membership begins.
- (8) A former active member may reapply for such membership.
- (9) But a person who has given more than one notification under regulation 7 may only reapply again if –
  - (a) his employer or future employer consents; or
  - (b) he is beginning a new employment with a new employing authority and he reapplies before he has been employed for three months; or
  - (c) he is a person about whom information may be given under Article 164(1) of the Pensions (Northern Ireland) Order 1995, as it has effect in the case of the Scheme.

### **Leaving the Scheme**

- 7.—(1) A person stops being a member if he ceases to be eligible for membership.
- (2) A person may leave the Scheme if he wishes but must notify his employer accordingly in writing.
- (3) A member who gives such a notification stops being a member from the date the notification specifies.
- (4) But, if a date earlier than the notification or no date is specified, he stops being a member at the end of the payment period during which the notification is given.
- (5) Where notification is given by a person before he has been a member for three months, he must be treated as not having been a member in that period.

## CHAPTER II

### *COUNTING MEMBERSHIP FOR THE SCHEME*

#### **Periods of membership: “total membership”**

- 8.—(1) The following periods count as periods of membership –
  - (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 11, 16 or 17 or 88(5);
  - (b) any period during which a member is away from work because of illness or injury;
  - (c) any period which a member is entitled to count as membership under –
    - (i) Chapter II or III of Part III, or
    - (ii) regulation 125(1) (periods credited on payment of transfer values);
  - (d) in the case of a member who belonged to the Scheme before the commencement date, any period he is entitled to count under the Transitional Regulations.
- (2) For most purposes a member’s “total membership” is the total of the periods he is entitled to count under paragraph (1), disregarding any period which would otherwise count twice (but see regulations 9, 10 and 34, Schedule 4 and the Transitional Regulations).
- (3) A person may not count any period of membership if his contributions for that period have been returned to him and, if all his contributions to the fund are returned to him, he may not count any period of membership credited to him on the receipt of a transfer value.

(4) A person may not count any period of membership if his rights in respect of it have been transferred to a non-local government scheme, a personal pension scheme, a self-employed pension arrangement, a retirement annuity contract or an appropriate policy by payment of a transfer value.

(5) Where a person pays contributions under regulation 17(3) (trade disputes) for any period, that period counts as a period within paragraph (1)(a) even if his contract of employment did not subsist throughout that period.

(6) Periods of membership before and after any unpaid period of maternity absence or period of parental leave in respect of which the member does not pay any contributions shall be treated as continuous.

### **Excluded membership**

**9.**—(1) Superannuable membership does not count towards the membership period required before a person is entitled to any benefit.

(2) Superannuable membership is –

(a) any period of added years; and

(b) any additional period of membership which counts as such by virtue of Chapter II of Part III.

(3) The Table in Schedule 3 sets out other sorts of membership which do not count for some purposes.

(4) The first column of that Table describes the membership and the second column specifies the purposes for which such membership does not count.

(5) That Table has effect subject to the notes at the end.

### **Length of period of membership: calculation of benefit**

**10.**—(1) In calculating the amount of any benefit, fractions of years of membership count.

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

(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) Paragraph (3) does not apply in determining a member's total membership for regulation 30(1) (entitlement to ill-health enhancement) (and see regulation 30(6) to (10) as to the determination of the enhanced membership period in such cases).

## **CHAPTER III**

### **CONTRIBUTIONS**

#### **Members' contributions**

**11.**—(1) Each member shall make contributions to the Scheme at the standard contribution rate on his pay in each employment in which he is an active member (but see regulation 14).

(2) The standard contribution rate for a member is six per cent., unless he is a member with lower rate rights in accordance with regulation 13(2) or (3).

(3) The standard contribution rate for a member with lower rate rights is five per cent.

(4) A person who is an active member in more than one employment must make contributions for each of those employments.

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

(6) For this regulation any reduction in 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.

(7) Regulations 15 to 17 affect this regulation.

### **Meaning of “pay”**

**12.**—(1) An employee’s 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 pay does not include –

- (a) payments for non-contractual overtime;
- (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;
- (e) any payment as an inducement not to terminate his employment;
- (f) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision.

(3) For regulation 11, the pay of a part-time employee for any period is the pay he would have received if during that period he had worked the contractual hours.

(4) But paragraph (3) does not apply to periods during which the employee was away from work by reason of illness or injury with reduced or no pay.

(5) If a Scheme employer agrees with the bodies or persons representative of any description of employees the method for determining the whole or a specified part of the pay of employees of that description for the period during which the agreement applies, the pay of a member who is such an employee is the amount so determined.

(6) A Scheme employer must notify in writing every member affected by such an agreement.

(7) A notification to a member under paragraph (6) must include a conspicuous statement as to the place where he may obtain information about details of the agreement.

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

### **Members with lower rate rights**

**13.**—(1) A member has lower rate rights for regulation 11 if he falls within paragraph (2).

(2) A member falls within this paragraph if –

- (a) immediately before the commencement date he was entitled to contribute to the Scheme at the rate of five per cent; and
- (b) since that date either –
  - (i) he has remained in continuous employment in the same capacity and a member, or



- (ii) he falls within paragraph (3).
- (3) A member falls within this paragraph if he is –
  - (a) a continuously-employed manual worker who immediately before the commencement date was in a local government employment in which he was entitled to contribute to the Scheme at the rate of five per cent. by reason of being a manual worker; or
  - (b) a statutory transferee who was so entitled immediately before he left the Scheme on statutory transfer and has applied to his employing authority to continue to be so entitled before the expiry of the period of 30 days beginning with the date he rejoins the Scheme or such longer period as that authority may allow.
- (4) A continuously-employed manual worker is a person –
  - (a) who on or after the commencement date has been transferred from the employment he held immediately before that date to another local government employment which is described by his employer as a manual employment; or
  - (b) who on or after that date has been transferred more than once and all of whose employments since that date have been local government employments which are so described.
- (5) A statutory transferee is a person who –
  - (a) left the Scheme by reason of his employment being transferred by virtue of an enactment to a person who was not a Scheme employer; and
  - (b) has rejoined the Scheme on a further transfer by virtue of an enactment to a person who is a Scheme employer and for whom he is employed in the same capacity as that in which he was employed immediately before he left the Scheme.
- (6) For this regulation whether a person's employment is continuous must be determined in accordance with Chapter III of Part I of the Employments Rights (Northern Ireland) Order 1996<sup>(11)</sup> but any period not exceeding one month and one day when he is not employed may be disregarded.

#### **Employer's discretion to reduce member's contribution rate**

14.—(1) The employing authority of a person who is an active member in its employment and has a total membership in local government employment of at least 40 years may by resolution determine that he should not be liable to make contributions to the Scheme on his pay in its employment or should only be liable to make them at a rate less than the standard contribution rate.

(2) The member's liability is reduced or, as the case may be, extinguished in accordance with the resolution at the expiry of the period of one month beginning with the date on which it is passed.

(3) But for these Regulations the member shall continue to be treated as paying the contributions under regulation 11 for which he would otherwise be liable.

(4) For paragraph (1) membership counts as membership in local government employment unless –

- (a) it is a credited period counted under regulation 125 (periods credited on inward transfer); or
- (b) the member was entitled to count it under any corresponding earlier provision and he is entitled to count it under regulation 8(1)(d).

#### **Inland Revenue limits on contributions**

15.—(1) A Class A member may not pay contributions on any pay exceeding the Revenue permitted maximum.

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(11) S.I. 1996/1919 (N.I. 16)

(2) The total contributions to the Scheme and any other approved occupational pension scheme or approved personal pension scheme by a person in any tax year in respect of any employment in which he is a member must not exceed 15 per cent. of his remuneration for that year in that employment.

(3) An occupational pension scheme or personal pension scheme is approved if it has been approved by the Commissioners of Inland Revenue under Part XIV of the Taxes Act.

### **Obligatory contributions during absences**

**16.**—(1) If a member –

- (a) is away from his employment with permission (otherwise than because of illness or injury) for a continuous period of less than 31 days or away on jury service for any period; and
- (b) is receiving reduced pay or no pay,

he must make contributions at the standard contribution rate on the pay he would have received during that period but for his absence.

(2) If a person who is a member or has applied to be a member goes on maternity leave, she must make contributions at the standard contribution rate, as respects any part of her period of maternity absence for which she is a member and entitled to receive pay (including any statutory maternity pay payable to her under the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(12)</sup>, on that pay.

(3) That pay includes any such statutory pay but not any amount by which her actual pay is reduced on account of her possible entitlement to such statutory pay.

(4) If a person who is a member or has applied to be a member –

- (a) goes on ordinary maternity leave; and
- (b) is not entitled to receive pay (including statutory maternity pay payable to her under the Social Security Contributions and Benefits Act (Northern Ireland) 1992) for all or any part of that period of leave,

for these Regulations she shall be treated as if she had paid contributions under paragraph (2) for the unpaid period of that ordinary maternity leave and on the pay that she would have received during that period but for her absence.

(5) If a person who is a member or has applied to be a member goes on reserve forces service leave, he must pay contributions under regulation 11 and any payments under Chapter III of Part III which he was paying immediately before his relevant reserve forces service began, if (and only if) during that service his reserve forces pay equals or exceeds the pay he would have received if he had continued to be employed in his former employment.

(6) Those contributions continue to be payable to the fund at the same rates on that pay.

(7) If he is not obliged to pay contributions under paragraph (5), for these Regulations he is treated as if he had paid them and also any payments under Chapter III of Part III which he would have been liable to pay if he had continued to be employed in his former employment.

(8) If a person who is a member or has applied to be a member goes on reserve forces service leave –

- (a) he may continue to pay any contributions under Chapter IV of Part III (AVCs and SCAVCs) which he was paying immediately before his leave began;
- (b) he may opt to discontinue payment under that Chapter; and

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(12) 1992 c. 7

- (c) unless he has opted, the Committee must continue throughout the period of his relevant reserve forces service leave to pay any such contributions which were to be used to provide benefits for him on his death.
- (9) If a person who is a member or has applied to be a member goes on reserve forces service leave –
  - (a) his relevant reserve forces service counts as a period of membership in his former employment; and
  - (b) if during that service, he dies, attains his normal retirement age or becomes incapable for health reasons of working efficiently in local government employment, he shall be treated as if he were in that employment at that time.

### **Optional contributions during absences**

17.—(1) If a member –

- (a) is away from his employment with permission (otherwise than because of illness or injury) for a continuous period of more than 30 days; and
- (b) is receiving reduced or no pay,

he must make contributions under regulation 16 at the standard contribution rate for the first 30 days and may make contributions under that regulation for the remaining period of his absence or, if the total period of his absence exceeds 36 months, for 36 months including the first 30 days, on the pay he would have received but for his absence.

(2) If –

- (a) a person who is a member or has applied to be a member is on maternity leave, other than ordinary maternity leave; and
- (b) for the whole or part of the period of her maternity absence (“the unpaid period”) she is not entitled to receive pay (including any statutory maternity pay payable to her under the Social Security Contributions and Benefits (Northern Ireland) Act 1992) but is a member,

she may make contributions under regulation 16 at the standard contribution rate as respects the unpaid period, as if her pay in the employment were equal to the pay she was entitled to receive immediately before the unpaid period began (including any such statutory pay, but not any amount by which her actual pay is reduced on account of her possible entitlement to such statutory pay).

(3) If a person –

- (a) is away from work without permission for a period of one or more days during and because of a trade dispute (“a trade dispute absence”); and
- (b) was a member immediately before that period (or, where two or more periods of absence have occurred because of one such dispute, the first such period),

he may make a contribution under regulation 16 for the relevant contribution period at the rate of 16 per cent on his lost pay for that period.

(4) A person’s lost pay is the difference between –

- (a) his actual pay (if any); and
- (b) the pay he would have received but for any trade dispute absence,

(disregarding any guarantee payments under Part V of the Employment Rights (Northern Ireland) Order 1996).

(5) A period is a person’s relevant contribution period if –

- (a) it is coextensive with one of the intervals at which he was required under regulation 11 to make standard contributions; and

(b) it includes all or part of his trade dispute absence.

(6) To make contributions under this regulation a person must apply to the employing authority in writing before the expiry of the period of 30 days beginning with the day on which he returns to work or such longer period as the Committee may allow.

(7) But if he ceases to be employed by that authority without returning to work, he may apply under paragraph (6) before the expiry of the period of 30 days beginning with the day he so ceases or such longer period as the Committee may allow.

(8) An application under paragraph (6) or (7) may be made by the person's personal representatives if he has died without having made such an application.

(9) The termination of a person's contract of employment because of a trade dispute does not prevent this regulation applying to him if he again becomes an employee of the same Scheme employer and a member not later than the day after the dispute ends.

## CHAPTER IV

### BENEFITS

#### *Preliminary*

#### **General qualification for benefits**

**18.**—(1) Membership of the Scheme only entitles the member to benefits under this Chapter if—

- (a) his total membership is at least two years;
- (b) a transfer value is credited to him; or
- (c) neither paragraph (a) nor (b) applies and he—
  - (i) has attained state pensionable age; or
  - (ii) will attain that age before the following 6th April.

(2) But paragraph (1) does not apply—

- (a) to a benefit under regulation 26 (normal retirement) in a case where the member's normal retirement date is his 65th birthday or under regulation 29(2) (ill-health grants); or
- (b) to benefits in respect of a member under regulation 41 (death grants), regulation 42 (surviving spouse's short-term pension), regulation 47 (children's short-term pensions) or regulation 48 (children's long-term pensions).

#### **Calculations**

**19.**—(1) The amount of any benefit payable as a result of a person's membership is generally calculated by multiplying his final pay by the appropriate multiplier.

(2) Unless another multiplier is indicated, the appropriate multiplier for a pension is—

$$\frac{\text{the member's total membership}}{80}$$

(3) Unless another multiplier is indicated, the appropriate multiplier for a retirement grant is—

$$\frac{3 \times \text{the member's total membership}}{80}$$

(4) But—

- (a) benefits payable to a pension debit member are reduced as provided in regulation 20; and
  - (b) benefits payable on or after the death of a pensioner member are calculated by multiplying the amount of his former retirement pension by the multiplier specified for the benefit in question.
- (5) Unless otherwise indicated, references to the amounts of pensions are to their annual rate.
- (6) The amount of a deceased person's former retirement pension is the amount of the pension he would have received immediately before his death, but for –
- (a) regulation 31 (re-employed pensioners);
  - (b) regulation 33 (elections for early payment);
  - (c) regulation 36 (surrenders);
  - (d) regulation 52 (commutation in cases of exceptional ill-health);
  - (e) regulation 56 (effect of increases under Chapter II of Part III for older members);
  - (f) regulation 59 (effect of increases under Chapter III of Part III for older members); or
  - (g) regulation 113 (application of abatement policy in individual cases).
- (7) Periods are measured in years and fractions of a year (calculated as specified in regulation 10).
- (8) A pensioner member includes a person who would have been entitled to a pension but for regulation 113 (application of abatement policy in individual cases).
- (9) But paragraph (8) does not stop a person to whom it applies from also being an active member.

### **Pension debit member**

**20.**—(1) The benefits payable to a pension debit member shall be reduced to take into account the debit to which the shareable rights of the pension debit member are subject under a pension sharing order.

(2) The amount of the reduction shall be calculated in accordance with guidance issued by the Government Actuary.

### **Replacement of rights**

**21.**—(1) Subject to paragraph (2), a pension debit member who is an active member may not replace any rights debited as a consequence of a pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made(**13**).

(2) The provisions of paragraph (1) shall not apply in circumstances which the Commissioners of Inland Revenue may stipulate in relation to “moderate earners” in any taxation exception or concession made by them from time to time under paragraph 18(10) and (11) of Schedule 10 to the Finance Act 1999(**14**), or otherwise.

(3) For the purpose of this regulation, “moderate earners” has the meaning in paragraphs (4) to (6) of regulation 5 of the Retirement Benefits Schemes (Sharing of Pensions on Divorce) Regulations 2000(**15**).

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(13) See section 590(3) (bb) of the Income and Corporation Taxes Act 1988 (1988 c. 1) inserted by paragraph 2(3) of Schedule 10 to the Finance Act 1999 (1999 c. 16).

(14) See S.I. 2000/1085, 1093

(15) S.I. 2000/1085

## **Final pay**

**22.**—(1) A member's final pay for an employment is his pay for as much of the final pay period as he is entitled to count as active membership in local government employment (but see paragraphs (3) to (11), regulations 23 and 24(2) and Schedule 4).

(2) A member's final pay period is the year ending with the day on which he stops being an active member (but see paragraph (10) and regulations 23 and 24).

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

(4) But in calculating death grant or the rate of surviving spouse's or children's short-term pension payable on the death of an active member, actual pay in part-time employment is to be used, or, in calculating death grant, three eightieths of final pay multiplied by total membership if greater.

(5) 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 for this Chapter.

(6) 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 by virtue of regulation 16(5), 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.

(7) For the purposes of this Chapter, a member's pay for any period of maternity absence during the final pay period in respect of which she pays or is treated as paying contributions is the pay she would have received had she not been absent.

(8) If a member is absent from work for any other reason during his final pay period, he is only to be treated for this Chapter as having received the pay he would otherwise have received if he has made the appropriate contributions under Chapter III for the period he is absent.

(9) If in any case where regulation 12(5) (collective pay agreements) applies to a member's pay during any part of the final pay period –

- (a) his average weekly earnings from his local government employment in that period (other than payments for overtime and bonuses) –
  - (i) exceed by more than 50 per cent. the lower earnings limit at the end of that period, and
  - (ii) do not exceed the upper earnings limit at the end of that period; and
- (b) his final pay would be greater if determined using those earnings,

it is to be determined using them.

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

(11) Final pay does not include any pension in payment.

## **Other final pay periods**

**23.**—(1) Where the whole or part of a member's pay consists of fluctuating emoluments, his final pay period for them is not the period specified in regulation 22(2) but –

- (a) the period of three years ending with the last day he was an active member; or
- (b) any other period he may with the consent of his employing authority elect, being a period of not less than three nor more than five years –

(i) ending with a day which is that last day or of which that last day is the anniversary, and

(ii) falling within the period of 13 years ending with that last day.

(2) But if he was only entitled to receive fluctuating emoluments during part of the period mentioned in paragraph (1)(a), that part is substituted for the period referred to in that paragraph.

(3) If a member has been absent from work during any part of the year specified in regulation 22(2), his final pay period is the last 365 days he is entitled to count as a period of active membership.

(4) A member to whom paragraph (5) applies may elect that instead of his final pay period being determined under regulation 22(2) or paragraph (1), (2) or (3), it should instead be –

(a) as respects so much of his pay as does not consist of fluctuating emoluments, a year ending with a day –

(i) falling within the period of three years ending with the last day he was an active member, and

(ii) of which that last day is the anniversary; and

(b) as respects so much of his pay as consists of fluctuating emoluments, that period of three years.

(5) This paragraph applies to a member whose pay in the period which he would elect as his final pay period if he made an election under paragraph (4) is higher than his pay in a final pay period determined under regulation 22(2) or paragraph (1), (2) or (3).

(6) Where paragraph (1) or (2) applies or a member elects for the period specified in paragraph (4) (b), as respects so much of his pay as consists of fluctuating emoluments his final pay is the annual average of his fluctuating emoluments during his final pay period.

(7) An election under this regulation by a member must be made by notice in writing given to the Committee before the expiry of the period of one month, or such longer period as the Committee may allow, beginning with the day he is notified of his entitlement to a benefit.

(8) Where a member has died without having made an election under this regulation, the Committee may make an election on his behalf (whether or not the period within which he could have elected has expired).

### **Permanent reductions in pay: certificates of protection of pension benefits**

**24.**—(1) Where a certificate has been issued as respects a member's pay under paragraph (3) or (5) and the date of reduction or, as the case may be, restriction specified in the certificate is not more than 10 years before the date on which he ceases to be an active member, he may elect that his final pay period should be –

(a) a year ending with a day –

(i) falling within the period of five years ending with the last day he was an active member, and

(ii) of which that last day is the anniversary; or

(b) any three consecutive years –

(i) falling within the period of 13 years ending with the last day he was an active member, and

(ii) ending with a day of which that last day is the anniversary.

(2) Where a member elects for the period specified in paragraph (1)(b), his final pay is the annual average of his pay during that period.

- (3) If, otherwise than by virtue of a member's own circumstances –
- (a) his rate of pay is reduced; or
  - (b) the rate at which it may be increased is restricted in such a way that it is likely that the rate of his retirement pension will be adversely affected,

he is entitled to be issued with a certificate to this effect by his employing authority (but see paragraph (5)).

(4) A member is not entitled to be issued with a certificate under this regulation if the reduction in his rate of pay –

- (a) is temporary; or
- (b) consists in the termination of, or a reduction in, a temporary increase in the rate of pay.

(5) The employing authority may issue a certificate without an application from the member, but need not issue a certificate if he does not apply for one within 12 months after the date of reduction or restriction.

(6) A certificate issued under this regulation must specify the date of the reduction or restriction.

(7) The employing authority must send a copy of the certificate to the Committee.

(8) The employing authority must keep a record of the certificate including such information as would be necessary for applying paragraph (1) for the period of 10 years beginning with the date of reduction or restriction specified in it.

(9) An election under this regulation by a member must be made by notice in writing given to the Committee before the expiry of the period of one month, or such longer period as the Committee may allow, beginning with the date on which he is notified of his entitlement to a benefit.

(10) Where a member has died without having made an election under this regulation, the Committee may make an election on his behalf (whether or not the period within which he could have elected has expired).

### **Revenue restrictions**

**25.** Schedule 4 contains restrictions on the amounts of benefits which a member is entitled to under the Scheme.

### *Retirement benefits*

#### **Normal retirement**

**26.—**(1) If a member who has attained his normal retirement age retires from a local government employment, he is entitled to a pension and retirement grant which are payable immediately.

(2) The normal retirement date of a member is his 65th birthday.

(3) But the normal retirement date of a member who was a member immediately before the commencement date is –

- (a) his 60th birthday if on the day before that day he has total membership of at least 25 years; or
- (b) the day after the date on which he first has such total membership if that date is on or after his 60th birthday but before his 65th birthday.

(4) A member's normal retirement age is his age on his normal retirement date.



### **Retirement after the normal retirement date**

27. A member who with the consent of his employing authority remains in service after his 65th birthday is entitled to the immediate payment of a pension and retirement grant when he retires from service.

### **Redundancy etc.**

28.—(1) If –

- (a) a member who is aged 50 or more retires from a local government employment; and
- (b) his employing authority certifies the reason for his retirement was his redundancy,

he is entitled to a pension and retirement grant which are payable immediately.

(2) In paragraph (1) “redundancy” includes retirement in the interests of efficiency, or because the member held a joint appointment which has been ended because the other holder has left it.

### **Ill-health**

29.—(1) Where a member leaves a local government employment by reason of being permanently incapable of discharging efficiently the duties of that employment or any other comparable employment with his employing authority because of ill-health or infirmity of mind or body, he is entitled to an ill-health pension and grant which are payable immediately.

(2) A member –

- (a) whose total membership is at least one year, but less than two years;
- and
- (b) to whom no transfer value is credited,

is entitled to an ill-health grant (but not a pension), unless paragraph (3) applies to him.

(3) This paragraph applies to a member if –

- (a) he is entitled to any payment out of the fund; or
- (b) he would receive at least as much as the grant if his contributions were returned to him.

(4) In paragraph (1), “comparable employment” means employment in which, when compared with the member’s employment –

- (a) the contractual provisions as to capacity either are the same or differ only to an extent that is reasonable given the nature of the member’s ill-health or infirmity of mind or body; and
- (b) the contractual provisions as to place, remuneration, hours of work, holiday entitlement, sickness or injury entitlement and other material terms do not differ substantially from those of the member’s employment.

### **Amounts of ill-health pension and grant**

30.—(1) Where the member’s total membership is at least 5 years, the multiplier for an ill-health pension or grant is by reference to the member’s enhanced membership period instead of his total membership.

(2) A member’s enhanced membership period is –

- (a) if his total membership is less than 10 years, twice his total membership;
- (b) if his total membership is at least 10 years, but not more than 13 122/365 years, 20 years; and
- (c) otherwise, his total membership plus 6 243/365 years.

(3) But the enhanced membership period must not exceed 40 years or the total membership the member would have had if he had continued as an active member until he was 65, whichever is the shorter.

(4) If the member became entitled to ill-health benefits under the Scheme before he was in the employment from which he has retired, his enhanced membership period must be calculated –

- (a) by including in his total membership his total in the previous employment; and
- (b) deducting from his total membership the period by which his membership period for that employment was increased for calculating those benefits.

(5) The maximum period which may be added to a member's total membership period to calculate his enhanced membership period in respect of all his local government employments is 10 years.

(6) Where membership includes membership in part-time employment, the enhanced membership period allowed under paragraph (2) must be calculated by first working out what it would be if the employment were all whole-time, and then reducing the resulting period by multiplying it by the appropriate fraction (but see paragraphs (7) and (10)).

(7) The member's enhanced membership period must not be reduced below that which is calculated by reference to his membership in whole-time employment, disregarding his membership in part-time employment.

(8) The appropriate fraction is the fraction of which the numerator is the member's total membership and the denominator is the period which would be his total membership if his employment had all been whole-time.

(9) In the case of a member in part-time employment with non-cyclical fluctuating contractual hours, that fraction must be determined by making separate calculations for each period over which averaging of the member's hours occurs in calculating his contractual hours.

(10) If the member's total membership includes a period of at least 13 122/365 years in whole-time employment, paragraph (6) does not apply.

(11) If a member is entitled under regulation 29(2) to an ill-health grant (but not a pension), the multiplier for the grant is –

the member's total membership

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### **Re-employed pensioners**

**31.**—(1) Where a member is entitled to two retirement pensions because of having been a member in two employments which were not concurrent, he may elect for a single new pension.

(2) If he so elects, he becomes entitled to a single retirement pension and retirement grant, each calculated by reference to the augmented period (but see paragraph (7)).

(3) The augmented period is the member's total membership in the later employment, increased by the period which would have been aggregated if he had made an election under regulation 34(1) as respects his earlier employment when he became an active member in his later employment.

(4) But if the retirement pension from the earlier employment was calculated using a longer period of membership than the period which is the augmented period under paragraph (3), the longer period is the augmented period for paragraph (2).

(5) No election may be made if the pension for the earlier employment –

- (a) is paid under regulation 33 and subject to a reduction, or
- (b) is an equivalent pension benefit pension.

(6) The member must set off any retirement grant he received because of his membership in the earlier employment (“the first grant”) against the retirement grant under this regulation and, if it was greater, repay the difference between the grants to the Committee.

(7) Any additional period which did not count in the calculation of the first grant because of regulation 56(3), does not count in calculating the retirement grant under this regulation either.

(8) Any surrender of the pension from the earlier employment operates to the same extent on the single pension.

(9) Where the later retirement is one to which regulation 29 (ill-health) applies and the member does not become entitled to a single pension if his earlier pension is not payable under that regulation, the membership enhancement period is 6 243/365 years more than his total membership.

### **Further provisions about elections under regulation 31**

**32.**—(1) An election under regulation 31 must be made by giving notice in writing to the Committee.

(2) The election must be made before the expiry of the period of three months beginning with the date the member becomes entitled to the pension for the later employment and has effect from that date.

(3) If a member does not repay any amount due under paragraph (6) of regulation 31 before the expiry of the period of three months beginning with the date he elects, his election is void (and so he is not entitled to the single pension).

### **Other early leavers: deferred retirement benefits and elections for early payment**

**33.**—(1) If a member leaves a local government employment (or is treated for these Regulations as if he had done so) before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he is aged 50 or more he may elect to receive payment of them immediately.

(2) An election made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6)).

(3) If the member elects, he is entitled to a pension and retirement grant payable immediately.

(4) If the sum –

(a) of the member’s age in whole years on the date his local government employment ends or the date he elects, if later;

(b) of his total membership in whole years; and

(c) in a case where he elects after his local government employment ends, of the period beginning with the end of that employment and ending with the date he elects,

is less than 85 years, his retirement pension and grant must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary (but see paragraphs (5) and (6) and regulation 39(5)) (Guaranteed Minimum Pensions).

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

(6) If a member who has left a local government employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable as certified in accordance with regulation 98(4) of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body –

(a) he may elect to receive payment of the retirement benefits immediately, whatever his age; and

(b) paragraphs (2) and (4) do not apply.

(7) If a member does not elect for immediate payment under this regulation, he is entitled to receive a pension and grant without reduction payable from his normal retirement date or from such earlier date on or after his 60th birthday as the member elects on which the sum of the items referred to in sub-paragraphs (a) to (c) of paragraph (4) is 85 years or more.

(8) An election under paragraph (1) must be made by notice in writing to the member's Scheme employer.

### **Re-employed and rejoining deferred members**

**34.**—(1) Where a deferred member becomes an active member again before becoming entitled to the immediate payment of retirement benefits in respect of his former membership, he may elect to have his former membership aggregated with his membership on or after the date he becomes an active member again.

(2) But an election may only be made by a Class B member as respects former Class B membership or Class C membership and an election may only be made by a Class C member as respects former Class C membership.

(3) Where a member elects under paragraph (1) –

- (a) he ceases to be entitled to rights under the Scheme in respect of his former membership (except in so far as he is entitled by virtue of having become an active member again to rights in respect of the aggregated total membership); and
- (b) he ceases to count as a deferred member for these Regulations as respects his former membership (unless he becomes a deferred member again after ceasing to be an active member).

(4) Where an election under paragraph (1) is made by a member who has ceased to be an active member more than once, the election may be made as respects his total membership at each of the times he so ceased or only as respects such of those periods of membership as are specified in the election.

(5) Where a member who may elect under paragraph (1) does not do so or does not elect as respects all periods of his membership –

- (a) in applying regulations 19(2) and (3), 30(2), 31 and 33(4) as respects any later membership, his total membership excludes unaggregated periods;
- (b) for the purpose only of calculating whether the member has the necessary total membership –
  - (i) referred to in regulation 18 (1) (a) to be entitled to benefits under this Chapter,
  - (ii) referred to in regulation 29 (2) (a) to be entitled to an ill-health grant, or
  - (iii) referred to in regulation 30 (1),
 the unaggregated periods of membership shall be taken into account; and
- (c) as respects each unaggregated period of his former membership –
  - (i) paragraph (3) does not apply,
  - (ii) he shall continue to be treated as a deferred member or, as the case may be, as a pensioner member (and not as an active member), and
  - (iii) he shall be entitled to the same rights as if he were not also an active member (but subject to regulation 37 and, in the case of a pensioner member, to regulation 31).

(6) For this regulation a period of membership is an unaggregated period if –

- (a) no previous election has been made under this regulation for its aggregation; and

- (b) in the case of a period as respects which the member was entitled to elect under regulation D12(1)(c) of the 2000 Regulations (elections to remain entitled to preserved benefits) or any previous corresponding provision of the Scheme, such an election was made.
- (7) An election under paragraph (1) must be made by notice in writing to the Committee.
- (8) References in this regulation to former membership include all membership which the member was entitled to count as total membership immediately before he ceased his former active membership.
- (9) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, for paragraph (1) of this regulation he shall be treated as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.
- (10) In the case of a member who first becomes a member on or after 2nd April 2001 any period of membership in the employment of a non-associated admission body (as defined in regulation 4(16)(c)) shall not be aggregated with any other periods of membership for the purpose of calculating his retirement grant.

### **Concurrent employments**

- 35.—**(1) Where a person –
- (a) ceases to be an active member in one employment (“the first employment”); and
  - (b) continues as an active member in another employment he held concurrently with the first employment,
- he may elect to have his former membership in respect of the first employment aggregated with his membership in that other employment.
- (2) If he so elects, the provisions of regulation 34 shall apply as if references to –
- (a) his former membership or former active membership were references to his membership from his first employment;
  - (b) the new employment were references to his concurrent employment; and
  - (c) the employment in which he becomes an active member again were references to that concurrent employment.
- (3) In the case of a person to whom this regulation applies, the period of membership which will be aggregated with his membership from the concurrent employment will be equal to his membership from his first employment, as reduced under regulation 10(4) if the first employment was part-time, multiplied by the fraction –

$$\frac{\text{whole-time rate of pay in the first employment}}{\text{whole-time rate of pay in concurrent employment}}$$

where

the rate of pay in each case is the annual rate of pay on the last day of the first employment.

### **Surrenders of pension**

- 36.—**(1) A member may apply to the Committee to surrender part of the retirement pension which is or may become payable to him, so that, if he is survived by his spouse or any dependant of his (“the beneficiary”), the equivalent value of that part is paid instead to the beneficiary under this regulation.

(2) The application must be made in the period of one month ending with or one month beginning with the date on which the member retires.

(3) The Committee must allow the application if it is satisfied that the member is in good health.

(4) The Committee may require the member to produce, at his own expense, sufficient medical evidence to satisfy it in accordance with paragraph (3).

(5) The surrender must not result in a pension being paid to the beneficiary of less than such amount as is specified in guidance issued for this paragraph by the Government Actuary.

(6) The aggregate amount surrendered must not –

(a) result in the reduction of the retirement pension to less than the pension which would become payable to the beneficiary; or

(b) exceed one third of the retirement pension.

(7) On the death of the member the beneficiary becomes entitled to a pension at a rate equivalent to the value of the surrender in the beneficiary's favour at the time when the surrender was made.

(8) The equivalent rate is such rate as is indicated in guidance issued by the Government Actuary.

(9) If the surrender is allowed, it has effect from the date on which the member retires from his employment.

(10) But it does not take effect if the beneficiary or member dies before that date, and it ceases to have effect if the beneficiary dies before the member.

#### **No double entitlement**

**37.**—(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 may elect under which provision he is to be paid those benefits;

and

(b) if he does not elect, the employing authority may notify him in writing of the provision.

(2) An election by a member must be by notice in writing, given to the employing authority before the expiry of the period of three months beginning with the day on which he becomes entitled to elect.

(3) Paragraph (1) does not affect the member's rights under the Pension Schemes (Northern Ireland) Act 1993(16).

#### **Requirements as to time of payment**

**38.**—(1) Retirement benefits under this Chapter may not be paid to a person before he has retired from the employment in which he was a member.

(2) But they must begin to be paid not later than the member's 75th birthday even if he has not retired (and see also regulation 39(3)).

#### **Guaranteed minimum pensions etc.**

**39.**—(1) Where a member's local government employment is contracted-out employment and he has a guaranteed minimum in relation to service before 6th April 1997, from the date he attains state pensionable age he is entitled to a pension at a weekly rate equal to not less than that guaranteed minimum.

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

(3) If the member –

- (a) continues in the same employment for a further period of five years after attaining state pensionable age; and
- (b) does not then leave it,

he is entitled from the end of that period to so much of his retirement pension as equals that guaranteed minimum (unless he consents to a postponement of the entitlement).

(4) For paragraph (1), a person has a guaranteed minimum if he has such a minimum under section 10 of the Pension Schemes (Northern Ireland) Act 1993 in relation to benefits under these Regulations.

(5) A person's retirement pension is not to be reduced under regulation 33(4) to less than the aggregate of –

- (a) any minimum rate of equivalent pension benefits applicable under the Insurance Act; and
- (b) one eightieth of his final pay (expressed as an annual rate), multiplied by the length in years of the whole period of his membership in contracted-out employment during the period beginning with the relevant date and ending with 30th April 1995.

(6) In paragraph (5) “the relevant date” means –

- (a) in the case of a man, 17th May 1990; and
- (b) in the case of a woman, 6th April 1978.

(7) Where a person's local government employment is or was contracted-out employment, a surrender under regulation 36 (together with any previous surrenders) must not result in the annual rate of the retirement pension being less than one eightieth of his final pay multiplied by the length in years of the whole period of his membership in contracted-out employment beginning with the relevant date and ending with 30th April 1995.

(8) Where a person making a surrender under regulation 36 has a guaranteed minimum, the surrender (together with any previous surrenders) must not result in the weekly rate of the retirement pension being less than the guaranteed minimum.

(9) Where a person making a surrender under regulation 36 –

- (a) is in local government employment;
- (b) has attained normal retirement age; and
- (c) has total membership of at least two years or a transfer value credited to him,

references in paragraphs (7) and (8) to the retirement pension are references to the retirement pension which would become payable if he ceased to hold his employment on the day the surrender takes effect.

(10) This regulation overrides any provision in these Regulations to the extent to which it conflicts with it, except –

- (a) regulation 51 (commutation);
- (b) regulation 113 (application of abatement policy in individual cases);
- (c) regulation 114 (forfeiture); and
- (d) regulation 115 (interim payments directions).

### Revaluation of guaranteed minimum

**40.**—(1) Where the guaranteed minimum of a person who has ceased to be an active member is appropriately secured, his earnings factors for the purposes of section 10(2) of the Pension Schemes (Northern Ireland) Act 1993 must be determined –

- (a) by reference to the last order under Article 23 of the Social Security Pensions (Northern Ireland) Order 1975<sup>(17)</sup> or section 130 of the Social Security Administration (Northern Ireland) Act 1992<sup>(18)</sup> (revaluation orders) to come into force before the end of the tax year in which he ceased to be an active member; and
- (b) without reference to the last such order to come into force before the end of the final relevant year.

(2) For such a person the weekly equivalent mentioned in section 10(2) of the Pension Schemes (Northern Ireland) Act 1993 is to be increased –

- (a) by at least the prescribed percentage for each relevant year after the end of the tax year in which he ceased to be an active member, and
- (b) in accordance with such additional requirements as may be prescribed for the purposes of section 12(3) of the Pension Schemes (Northern Ireland) Act 1993.

(3) In this regulation –

“appropriately secured” has the meaning given in section 15(3) of the Pension Schemes (Northern Ireland) Act 1993;

“final relevant year” has the meaning given in section 12(5) of that Act;

“relevant year” has the meaning given in section 10(8) of that Act; and

“prescribed percentage” has the meaning given in regulation 62 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996<sup>(19)</sup>.

### *Death grants*

#### **Death grants**

**41.**—(1) If a member dies, the Committee at its absolute discretion may make payments 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.

(2) The aggregate amount paid under paragraph (1) must not exceed the member’s death grant.

(3) The multiplier for an active member’s death grant is 2.

(4) The multiplier for a deferred member’s death grant is the same as for his retirement grant.

(5) The multiplier for a pensioner member’s death grant is 5, but the amount so calculated is reduced by the amounts of any retirement pension paid to him.

(6) The multiplier for the death grant of a member who remains in service after his 65th birthday as referred to in regulation 27 is whichever of –

(a) 2, or

(b)  $3 \times$  the member’s total membership

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(17) S.I. 1975/1503 (N.I. 15) Article 23 was repealed by the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9)

(18) 1992 c. 8

(19) S.R. 1996 No. 493



gives the greater amount.

(7) If the Committee has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of the period of 2 years beginning with his death, it must pay an amount equal to the shortfall to the member's personal representatives.

(8) For these Regulations, any payments made under paragraph (1) must be treated as payments made by way of death grant.

### *Surviving spouses' pensions*

#### **Surviving spouse's short-term pension**

**42.**—(1) If an active or pensioner member dies leaving a surviving spouse, the spouse is entitled to a short-term pension.

(2) It is payable for three months after the member's death.

(3) But if there are eligible children in the spouse's care, it is payable for a further three months.

(4) Where the deceased was an active member, the annual rate of short-term pension is equal to the deceased's final pay.

(5) Where the deceased was a pensioner member, the annual rate of short-term pension is equal to his retirement pension immediately before the death (but see regulation 44).

(6) In this regulation "pensioner member" includes a person whose retirement pension has been commuted under regulation 52 (exceptional ill-health).

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

#### **Surviving spouse's long-term pension**

**43.**—(1) If a member dies leaving a surviving spouse, the spouse is entitled to a spouse's long-term pension.

(2) If the deceased was an active or pensioner member, the long-term pension is payable from the end of the period for which the short-term pension is payable.

(3) The long-term pension payable on a deferred member's death is payable from the death.

(4) If the deceased was an active member with a total membership of at least two years, the long-term pension is equal to half the ill-health pension to which the deceased would have been entitled under regulation 29 if he had become entitled to a pension under that regulation on the date he died.

(5) If the deceased was an active member with a total membership of less than two years or a deferred member, the multiplier for the long-term pension is –

~~the deceased's total membership~~

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(but see regulation 44).

(6) But where the deceased was a deferred member and a pension debit member, the long-term pension is equal to half the pension to which the deceased would have been entitled under regulation 26 if he had become entitled to a pension under that regulation on the date that he died (but see regulation 44).

(7) If the deceased was a pensioner member, the long-term pension is equal to half his retirement pension immediately before the date of death (but see regulation 44).

(8) For the purposes of this regulation –

- (a) any increase in the pensioner member's retirement pension made under regulation 57(2);
  - (b) any reduction in that pension under regulation 33 or 36 (surrender); and
  - (c) any loss of that pension as a result of an election made under regulation 31,
- shall be disregarded.

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

#### **Reduction of some surviving spouses' pensions**

**44.**—(1) Where a male pensioner member or deferred member marries and dies, the pension to which his widow is entitled under regulation 42 or 43 is calculated as if his retirement pension were only so much of his actual pension as is attributable to the period of his membership in contracted-out employment after 5th April 1978.

(2) Except in the case of a short term pension payable to the widower of an active member, the pension to which a widower is entitled under regulation 42 or 43 is calculated as if the member's retirement pension were only so much of her actual pension as is attributable to her membership after 5th April 1988.

(3) But relevant additional membership also counts as membership after 5th April 1988, where the widower was married to the member at some time while she was in local government employment after 31st March 1972.

(4) Relevant additional membership is membership –

- (a) forming the enhanced element of a member's total period of membership by virtue of a retirement to which regulation 30 applied after 5th April 1988;
- (b) added by virtue of a resolution under Chapter II of Part III or regulation 130 or under the Transitional Regulations after that date;
- (c) counted by reason of a payment made under Chapter III of Part III or paragraph 7 of Schedule 4 after that date (or treated by the Transitional Regulations as so made);
- (d) treated as membership after 5th April 1988 by virtue of the 2000 Regulations; or
- (e) attributable to a transfer value accepted by the Scheme after 5th April 1988.

#### **Surviving spouse's guaranteed minimum pension**

**45.**—(1) If the guaranteed minimum pension rule applies, the pension to which a person is entitled under regulation 42 or 43 must be not less than the surviving spouse's guaranteed minimum.

(2) The guaranteed minimum pension rule applies if –

- (a) the employment in which the deceased was a member was contracted-out employment; and
- (b) he had a guaranteed minimum in relation to benefits under these Regulations.

(3) Paragraph (1) overrides any contrary provision in these Regulations except–

- (a) regulation 51 (commutation of small pensions);
- (b) regulation 114 (forfeiture); and
- (c) regulation 115 (interim payments directions).

### *Children's pensions*

#### **Meaning of “eligible child”**

**46.**—(1) The eligible child of a deceased member is –

- (a) the deceased's legitimate or adopted child; or
- (b) a child who was wholly or mainly dependent on the deceased at the time of his death or, where the child is born after the member's death, who would have been so dependent if he had been born before or on the date of the deceased member's death,

but does not include a child who was born on or after the first anniversary of the date of the deceased's death.

(2) A person only counts as a child if –

- (a) he is aged under 17;
- (b) since he became 17 he has been engaged continuously in full-time education or in training for a trade, profession or vocation; or
- (c) he is physically or mentally incapacitated and became so whilst a child within paragraph (a) or (b).

(3) If the Committee wishes, it may treat education or training as continuous despite a break.

#### **Children's short-term pensions**

**47.**—(1) If an active member or pensioner member dies leaving one or more eligible children, they are entitled to a children's short-term pension.

(2) If a short-term pension is payable to a surviving spouse under regulation 42, the children's short-term pension is payable only for three months after the death.

(3) Otherwise, it is payable for six months after the death.

(4) Where the deceased was an active member, the annual rate of children's short-term pension is equal to the deceased's final pay.

(5) Where the deceased was a pensioner member, the annual rate of children's short-term pension is equal to his retirement pension immediately before the death.

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

(7) If a short-term pension is payable to a surviving spouse under regulation 42, the children's short-term pension is reduced by that pension, if one or more of the children are in the care of the surviving spouse.

(8) Where, if a children's long-term pension and a surviving spouse's long-term pension were payable instead of short-term pensions, that would result in a greater aggregate pension, long-term pensions shall be payable instead of short-term pensions.

(9) Where –

- (a) a children's short-term pension is payable for one or more children who are not in the care of a person to whom a short-term pension is payable (or would be payable apart from paragraph (8)); and

(b) a children's long-term pension would be greater,  
the long-term pension shall be payable instead of the short-term pension.

(10) In this regulation “pensioner member” includes a person whose retirement pension has been commuted under regulation 52 (exceptional ill-health).

### **Children’s long-term pensions**

**48.**—(1) If a member dies leaving one or more eligible children, they are entitled to a children’s long-term pension.

(2) If the deceased was an active member or pensioner member, it is payable from the end of the period for which the short-term spouse’s and short-term children’s pensions are payable.

(3) The pension payable on the death of a deferred member is payable from the day after his death.

(4) An eligible child ceases to be entitled to a long-term pension when he ceases to be a child within regulation 46(2).

(5) If the deceased was an active member, the pension is the appropriate fraction of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 29(1) (ill-health).

(6) If the deceased was a deferred member, the pension is the appropriate fraction of the amount of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 26 (normal retirement).

(7) If the deceased was a pensioner member, the pension is the appropriate fraction of his retirement pension disregarding –

- (a) any increase made under regulation 57(2),
- (b) any reduction made under regulation 33 or regulation 36, and
- (c) any loss of pension as a result of an election made under regulation 31.

(8) But 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.

(9) If, apart from this paragraph, the calculation of the long-term pension would be based on a member’s retirement pension calculated on the basis of membership of less than –

- (a) 10 years; or
- (b) the period he would have been entitled to count if his active membership had continued until his 65th birthday,

(whichever is the shorter), then that period should be used instead in calculating it.

(10) The appropriate fractions are –

- (a) where there is one eligible child –
  - (i) if a surviving spouse’s long-term pension is payable, one quarter,
  - (ii) otherwise one-third;
- (b) where there is more than one eligible child –
  - (i) if a surviving spouse’s long-term pension is payable, one half,
  - (ii) otherwise two-thirds.

(11) If a child in full-time training for a trade, profession or vocation is receiving pay at an annual rate exceeding the training rate –

- (a) the pension is reduced by the excess; but
- (b) if the pension would be greater without the child, he need not be counted.

(12) In paragraph (11) “the training rate” means the current annual rate of an official pension which began to be paid on 1st April 1994 at an annual rate of £1,450.

### **Discretions as to payment of children's pensions**

49.—(1) If a children's pension is payable for more than one eligible child, the Committee may apportion it amongst the children as it thinks fit.

(2) The Committee may pay the whole or part of a children's pension to a person other than an eligible child, to be applied for the benefit of one or more eligible children as it directs.

### **Dependants of re-employed pensioners**

50.—(1) If –

- (a) after a member became entitled to an unreduced retirement pension, he entered further local government employment in which he died; and
- (b) assuming that immediately before he died he had retired from the further employment, he would have been entitled to elect under regulation 31 for a single pension,

the benefits payable under the Scheme on his death (except short-term pensions) and any surrendered benefits must be calculated in the case of each beneficiary using whichever of assumptions A and B gives that beneficiary the most favourable benefits.

(2) Assumption A is that the deceased did so retire and assumption B is that he did so retire and so elect.

(3) An unreduced retirement pension is a pension which is not reduced under regulation 33(4) (early leavers).

(4) Where –

- (a) a member dies in a new employment; and
- (b) assuming he had retired from it on the date he died, he would have been entitled to a retirement pension under this Chapter (whether payable immediately or not),

the short-term pension under regulation 42 is the sum of –

- (i) his final pay in the new employment, and
- (ii) the rate at which his retirement pension from his former employment is payable (after taking into account any reduction under regulation 113 (application of abatement policy in individual cases)).

(5) Where a member dies in a new employment, the long-term pension under regulation 43 is the greater of amount A or amount B.

(6) Amount A is half the sum of –

- (a) the member's retirement pension; and
- (b) the retirement pension to which he would have been entitled if on the date of death he had become entitled to a pension under regulation 29(1) (ill-health) from the new employment.

(7) Amount B is half the retirement pension to which the member would have been entitled if on the date of death he had become entitled under regulation 29(1) and had elected under regulation 31 for a single pension.

(8) Amount A and amount B are both to be calculated on the basis that the retirement pensions have not been –

- (a) reduced by virtue of a surrender under regulation 36; or
- (b) increased under regulation 56 (effect of increases under Chapter II of Part III for older members).

## Commutation

### Commutation: small pensions

**51.**—(1) If the annual rate of the retirement pension which a member who has attained state pensionable age is entitled to be paid is not more than £195, the Committee may pay him a lump sum representing the capital value of the pension.

(2) The Committee may also pay a lump sum representing the capital value of a long-term pension which is payable to any surviving spouse or to or in respect of an eligible child or children, if the annual rate does not exceed £260.

(3) If a member is entitled to more than one retirement pension under the Scheme or more than one long-term pension is payable under the Scheme following a member's death, a lump sum is only payable if the aggregate amount payable to that member or following that death is £195 or less, as the case may be, £260.

(4) Any increase payable under the Pensions (Increase) Act (Northern Ireland) 1971<sup>(20)</sup> in respect of a pension must be included in its annual rate.

(5) The capital value of a pension must be calculated as shown in guidance issued by the Government Actuary.

(6) Where a payment is made in respect of a retirement pension, a payment representing the capital value of any long-term pension, which would be payable to the member's spouse if that spouse survived the member, must also be made.

(7) The payment of a lump sum in respect of a pension discharges the Committee from its liability for it and, where the payment is made to a member, for any short-term or long-term pensions which may become payable on his death.

(8) The Committee must deduct from any payment under this regulation any tax for which it may become liable under section 599 of the Taxes Act<sup>(21)</sup>.

### Commutation: exceptional ill-health

**52.**—(1) If, when a retirement pension first becomes payable to a member, the Committee is satisfied that his life expectancy is less than one year, it may pay him a lump sum equal to five times the amount by which the annual rate of the retirement pension exceeds his guaranteed minimum.

(2) Such a payment discharges the Committee's liability for that pension (except the guaranteed minimum) and for any lump sum death grant calculated by reference to that pension (except the guaranteed minimum) under the Scheme.

(3) The Committee must deduct from any such payment any tax for which it may become liable under section 599 of the Taxes Act.

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<sup>(20)</sup> 1971 c. 35 (N.I.)

<sup>(21)</sup> 1988 c. 1 section 599 was amended by the Finance Act 1989 (c. 26), Schedule 6, paragraphs 11 and 18

**PART III**  
**OPTIONAL ADDITIONAL BENEFITS**  
**CHAPTER I**  
*PRELIMINARY*

**Scope of Part III: limits on benefits**

**53.**—(1) This Part makes provision for benefits to be paid to or in respect of members which are additional to those set out in Part II.

- (2) No arrangements may be made under this Part as a result of which –
- (a) the contributions payable by members;
  - (b) the years of membership which a member may count; or
  - (c) the benefits payable to or in respect of members,
- exceed the amounts specified in Schedule 4.

**CHAPTER II**  
*INCREASE OF MEMBERSHIP BY EMPLOYING AUTHORITY*

**Power of employing authority to increase total membership of members leaving employment at or after 50**

**54.**—(1) An employing authority may resolve to increase the total membership of a member who leaves his employment on or after his 50th birthday.

- (2) The additional period of membership must not exceed –
- (a) the member’s total membership on the date he leaves his employment (“the relevant date”);
  - (b) the period by which that period falls short of 40 years;
  - (c) the period by which that period would have been increased if he had continued as an active member until he was 65; or
  - (d) 6 243/365 years,
- whichever is the shortest.

(3) A resolution under paragraph (1) may only be passed by an employing authority during the period –

- (a) beginning one month before the relevant date; and
- (b) ending 6 months after that date.

(4) If such a resolution is passed before the relevant date it is conditional on the satisfaction on that date of the conditions for its making.

(5) The death of the member after the relevant date does not affect his former employing authority’s power under this regulation.

- (6) The relevant additional period may only be counted as a period of membership if –
- (a) the Committee and the employing authority agree before the expiry of the relevant period that the employing authority will pay increased contributions under regulation 79 to meet the cost of the increase in membership; or
  - (b) the employing authority makes the payment required by regulation 80(1) by reason of the resolution within that period.

- (7) The relevant period is the period of one month beginning –
- (a) with the date on which the resolution was passed; or
  - (b) if by virtue of paragraph (4) the resolution was conditional, with the date on which the member leaves his employment.

(8) If neither paragraph (6)(a) nor (6)(b) applies, the resolution shall cease to have effect.

(9) If a person has been credited with a period of service under regulation 7, or has been paid compensation under regulation 31 of the Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001(22) in respect of a cessation of employment, no resolution may be passed under this regulation by reason of that cessation.

(10) If a person becomes entitled on leaving an employment to an ill-health pension under regulation 29 calculated by reference to an enhanced membership period, no resolution may be passed under this regulation by reason of his leaving that employment.

### **Power of employing authority to increase total membership of new members**

**55.**—(1) An employing authority may resolve to increase a member's total membership.

(2) Such a resolution may only be passed before the expiry of the period of six months beginning with the day on which he becomes a member.

(3) The member must be aged less than 59 when he becomes a member.

(4) The resolution must specify the additional period of membership.

(5) That period must not exceed the maximum addition under Schedule 4.

(6) Where the employing authority has passed a resolution under paragraph (1) the additional period may be counted as part of the member's total membership.

(7) But if when the member leaves his employment with the employing authority no person becomes immediately entitled to payment of a pension in respect of his membership the additional period may not be so counted.

### **Effect of increases under this Chapter for older members**

**56.**—(1) This regulation applies where a member –

- (a) is entitled under this Chapter to count an additional period as a period of membership; and
- (b) was aged at least 45 on the first day of the earliest period of local government employment he is entitled to count as membership.

(2) Where this regulation applies the retirement pension –

- (a) to which the member would otherwise be entitled under regulation 26; or
- (b) to which he would otherwise be entitled under regulation 33 (before applying any reduction under paragraph (4) of that regulation),

is increased by multiplying his final pay by the length in years of the additional period and dividing the resulting amount by 240.

(3) The additional period does not count in the calculation of the standard retirement grant.



## CHAPTER III

### MEMBERS' OPTIONS TO INCREASE PENSIONS

#### *Purchase of added years*

#### **Payments to increase total membership**

**57.**—(1) An active member may elect to make additional contributions to the Scheme to increase his total membership by an additional period.

(2) That period must not exceed the maximum addition under Schedule 4.

(3) The election must be made by giving notice in writing to the Committee earlier than the member's 64th birthday.

(4) If –

(a) the Committee passes a resolution requiring a member to satisfy it that he is in good health by producing to it a report at his own expense provided by an independent registered medical practitioner approved by the Committee; and

(b) it is not so satisfied,

the election is void.

(5) The amounts of the additional contributions must be such percentage of the member's pay for the time being as is shown as appropriate in guidance issued by the Government Actuary.

(6) A member's pay for the time being is the pay received by him for the interval at the end of which the additional contribution falls to be paid.

(7) Where a member is away from work (otherwise than because of illness or injury) with reduced or no pay, for paragraph (6) he is treated as having received the pay he would have received if he had not been away (unless his contract of employment has ceased).

(8) For paragraph (6) any reduction in pay by reason of the actual or assumed enjoyment of any statutory entitlement during any period in which the member is away from work (other than a period of maternity absence) shall be disregarded.

(9) If a member continues paying the additional contributions until –

(a) his normal retirement date,

(b) or if earlier his last birthday before the date after his 60th birthday when the sum of the items referred to in sub-paragraphs (a) to (c) of regulation 33(4) is 85 years or more,

the whole of the additional period may be counted as part of his total membership.

(10) Otherwise, the part of that period which may be so counted must be calculated as specified in regulation 84 (discontinuance of additional contributions).

(11) The additional contributions are payable from the member's next birthday after his election.

#### **Part-time employees**

**58.**—(1) If a person in a part-time employment elects under regulation 57, the periods mentioned in that regulation must be reduced in the proportion his contractual hours bear to the number of contractual hours of a single comparable whole-time employment.

(2) But the amounts of his additional contributions must be calculated as a percentage of his actual pay (subject to paragraphs (7) and (8) of regulation 57).

(3) Where any person has made such an election, if –

(a) his employment ceases to be part-time and becomes whole-time employment;

- (b) his employment ceases to be whole-time and becomes part-time employment; or
- (c) his contractual hours in the part-time employment alter,

his additional contributions continue to be payable at the same percentage of his pay, but the additional period counted by reason of contributions paid after the change must be calculated as if the change had occurred immediately before the election.

(4) Paragraphs (1) to (3) do not apply to old elections.

(5) But the member may elect for paragraph (2) to apply to an old election and, if he does so, the additional period counted by reason of contributions paid after that election must be calculated as if paragraphs (1) to (3) had always applied as respects his old election.

(6) A member's election under paragraph (5) must be made by giving notice in writing to the Committee not later than one year before his normal retirement date.

(7) Old elections are elections made before 1st August 2000.

### **Effect of increases under this Chapter for older members**

**59.** Regulation 56 applies as respects additional periods counted under the previous provisions of this Chapter as it applies as respects additional periods counted under Chapter II.

### *Conversion between lump sums and pensions*

#### **Election for pension in lieu of retirement grant**

**60.**—(1) Where a member, or a deferred member immediately before the commencement date, has become entitled to the immediate payment of a pension under Part II or Part D of the 2000 Regulations as the case may be, he may make an election under this regulation for the whole or part of the retirement grant or, in the case where the entitlement to pension is under regulation 29 or regulation D7 of the 2000 Regulations, of the ill-health retirement grant to be used instead by the Scheme to provide pension for him.

(2) The election must be made by notice in writing to the Committee given not more than three months before the date on which the member becomes so entitled.

(3) The election must specify the amount of the grant which the member wishes to be used for the provision of pension.

(4) Where a member makes such an election, he becomes entitled to such additional pension as is shown as appropriate in guidance issued by the Government Actuary.

(5) The additional pension is payable immediately.

(6) Where a member makes such an election, for these Regulations the amount of his pension includes the amount of any additional pension payable under this regulation.

(7) No person who has elected under regulation 61 may also elect under this regulation.

#### **Election for lump sum in lieu of pension**

**61.**—(1) Where –

- (a) a Class C member, including a deferred member immediately before the commencement date, has become entitled to the immediate payment of a pension under Part II or Part D of the 2000 Regulations as the case may be; and
- (b) the retirement grant to which he is entitled (apart from any election made under this regulation) is less than his permitted maximum,

he may make an election under this regulation for that grant to be increased to his permitted maximum.

(2) The election must be made by notice in writing to the Committee given not more than three months before the date on which the member retires or a deferred member's pension comes into payment.

(3) Where a member or a deferred member elects under this regulation –

- (a) the retirement grant to which he is entitled is increased in accordance with the election; and
- (b) the retirement pension to which he is entitled and any other benefits payable to or in respect of him are to be calculated by reference to such reduced period of membership as appears to the Committee to be appropriate by virtue of that increase.

(4) That reduced period must be calculated by the Committee on the advice of an actuary appointed by it.

(5) A member's or a deferred member's permitted maximum for this regulation is the maximum lump sum to which he is entitled in accordance with Schedule 4 and (so far as relevant) any restrictions imposed under –

- (a) section 8C of the Pension Schemes (Northern Ireland) Act 1993<sup>(23)</sup> (transfer, commutation etc.);
  - (b) section 15 of that Act (discharge of liability);
  - (c) section 17 of that Act (commutation, surrender and forfeiture);
  - (d) section 73 of that Act (assignment, surrender and commutation of benefit).
- (6) No person who has elected under regulation 60 may also elect under this regulation.

## CHAPTER IV

### *ADDITIONAL VOLUNTARY CONTRIBUTIONS*

#### *Members only AVC schemes*

#### **Elections to pay AVCs**

**62.**—(1) An active member may elect to pay contributions under this regulation (“AVCs”) in addition to any other contributions he may pay under this Part.

(2) The election must specify the percentage of his remuneration he wishes to pay or the amount he wishes to pay on his usual pay days.

(3) It must also specify whether he wishes any of his AVCs to be used to provide benefits payable on his death (“death benefits”).

(4) If he does, he must specify the proportion to be so used.

(5) The Committee may require the amount of the AVCs to be at least the specified minimum.

(6) The Committee may not do so after AVCs are first paid under the election.

(7) The specified minimum is the amount specified in regulation 2(8) of the Pension Schemes (Voluntary Contributions Requirements and Voluntary and Compulsory Membership) Regulations (Northern Ireland) 1987<sup>(24)</sup>.

(8) A member may elect to vary the amount of his AVCs or the proportion of them to be used to provide death benefits.

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<sup>(23)</sup> 1993 c. 49 Section 8C was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))  
<sup>(24)</sup> S.R. 1987 No. 286

(9) A member may elect to stop paying AVCs.

(10) An election under this regulation must be made by notice in writing to the Committee.

(11) An active member may elect to transfer into his additional voluntary contributions scheme constituted under this Chapter the accumulated value of any other additional voluntary contributions scheme to which he has subscribed.

### **Payment of AVCs**

**63.**—(1) AVCs must normally be payable by an active member on his usual pay day.

(2) No contributions may be paid to cover any period during which the person contributing is not an active member.

(3) A person may not pay AVCs after he leaves his employment with the employer who was his employing authority when he elected under regulation 62(1) to pay them.

(4) But he may do so if his last usual pay day with that employer falls after that time (or if he makes a fresh election in relation to another employment).

### **Functions of employing authorities**

**64.**—(1) An employing authority must send any notice of election to pay or to cease paying AVCs to the Committee as soon as possible.

(2) The employing authority must make the arrangements necessary so as to enable a member to begin paying AVCs before the expiry of the period of two months (or such longer period as the Committee may allow) beginning with the date he elects to pay them.

(3) The employing authority must make the arrangements necessary to enable a member who has elected to vary his AVCs or to stop paying them to do so before the expiry of the period of two months (or such longer period as the Committee may allow) beginning with the date he so elects.

### **Death benefits**

**65.**—(1) If a member elects for any of his AVCs to be used to provide death benefits, the Committee must make arrangements for those benefits to be provided under a pension policy with an AVC insurer.

(2) The policy must provide for the Committee to pay the AVC insurer the same amounts as the AVCs to be so used within one month after the member's usual pay day.

(3) The policy must reflect the restrictions on AVCs and the provisions which apply under these Regulations.

(4) In entering into the pension policy the Committee must give effect to the member's wishes about the benefits it provides, so far as is practicable.

### **Retirement benefits**

**66.**—(1) The Committee must invest any AVCs which are not to be used to provide death benefits with an approved AVC body.

(2) Subject to regulations 67 and 68, when a member who has paid AVCs during his employment leaves his employment with the employer who was his employing authority when he elected under regulation 62(1) to pay them, the Committee must use the accumulated value of the contributions invested under paragraph (1) for the provision of additional pension benefits under a pension policy at any time prior to the 75th birthday of the member.

(3) But if the member dies before the policy is entered into, the accumulated value is payable to his personal representatives.

(4) In entering into the pension policy the Committee must give effect to the member's wishes about the benefits it provides, so far as is practicable.

(5) The benefits must be money purchase benefits and their value reasonable considering the accumulated value.

(6) The AVCs may only be used to provide benefits in the form of a lump sum if –

- (a) all the pension benefits payable to or in respect of the member under the Scheme are being commuted under regulation 51 (commutation of small pensions); and
- (b) the annual rate referred to in that regulation is not exceeded by aggregating with them the additional pension benefits provided by the pension policy entered into under paragraph (2).

### **Changes of employment in which membership is continued**

**67.**—(1) If a member who is paying AVCs leaves his employment with the employer who was his employing authority when he elected under regulation 62(1) to pay them and enters a new employment in which he is also a member, he may elect that that election should continue to have effect.

(2) But he may only do so if he enters the new employment before the expiry of the period of one month and one day beginning with the date he left the former employment.

(3) The election must be made by notice given in writing to the member's new employing authority before the expiry of the period of one month beginning with the date the new employment begins (or such longer period as that authority may allow).

(4) The new employing authority must send the notice of election to the Committee in relation to the new employment.

(5) The member may continue paying AVCs under his existing election with effect from his next pay day in his new employment after his election to continue.

(6) But he may not pay any AVCs to cover any period falling between the employments.

(7) Regulation 66(2), this regulation and regulation 68 apply to changes in the new employment as if the election under regulation 62(1) had been given in that employment (and so on).

### **Elections as to use of accumulated value of AVCs**

**68.**—(1) Subject to paragraph (8), this regulation applies where a person –

- (a) leaves his employment with the employer who was his employing authority when he made an election under regulation 62(1) or (11) without entitlement to the immediate payment of retirement benefits;
- (b) stops being an active member without leaving that employment;
- (c) leaves his employment with the employer who was his employing authority when he made an election under regulation 62(1) or (11) with entitlement to the immediate payment of retirement benefits –
  - (i) under regulation 26 (normal retirement) or 28 (redundancy etc); or
  - (ii) by virtue of an election under regulation 33 (early payment); or
- (d) becomes entitled to an ill-health pension under regulation 29.

(2) Subject to paragraph (7), a person must elect to have the accumulated value used –

- (a) where paragraph (1)(a) applies to him, in one or more of the permissible ways; and

(b) where paragraph (1)(b) applies to him, in the way mentioned in paragraph (3)(b).

(3) The permissible ways are –

- (a) to subscribe to an occupational pension scheme (other than the Scheme);
- (b) to subscribe to a personal pension scheme (including an additional voluntary contributions scheme, other than an FSAVC scheme);
- (c) to subscribe to a self-employed pension arrangement;
- (d) to purchase an appropriate policy from one or more AVC insurers.

(4) Where paragraph (1)(c) or (d) applies to a person, he may elect for the accumulated value to be used to provide additional pension for him under the Scheme, or partly to provide such pension for him.

(5) Where a member makes an election under paragraph (4), he becomes entitled to such additional pension as is shown as appropriate in guidance issued by the Government Actuary.

(6) The accumulated value may not be used to provide an additional lump sum benefit to the member unless it arises out of contributions made under any voluntary contributions scheme where the payments began before 8th April 1987.

(7) Where a person who has stopped being employed by an employing authority or being a member receives –

- (a) an ill-health grant under regulation 29(2);
- (b) a repayment of contributions under regulation 88; or
- (c) a payment under regulation 89(2),

he must immediately be paid the accumulated value.

(8) A person who made an election under regulation C24(1) of the 2000 Regulations prior to the commencement date shall continue to have the rights to make elections as to the use of the accumulated value as under the provisions of those Regulations as in operation prior to that date and accordingly, so far as is necessary to give effect to those rights and to make provision for any matters incidental to them, those provisions shall be treated as if they had continued in effect.

(9) In this regulation, “the accumulated value” means the accumulated value of the additional contributions invested under regulation 66(1).

#### *Shared cost schemes (SCAVCs)*

#### **Establishment of shared cost AVC schemes (SCAVCs)**

**69.**—(1) An employing authority may resolve to establish and maintain arrangements under this Chapter for the purpose of enabling contributions (“SCAVCs”) to be paid by and for active members under this regulation, in addition to the others which may be paid under this Part.

(2) The resolution must specify whether all active members in employment under the Scheme with the employing authority are eligible to take part in the arrangements and, if not, the conditions for eligibility.

(3) It must also specify whether SCAVCs may be used to provide benefits payable on the death of active members (“death benefits”).

(4) If they may, it must specify whether the whole or a proportion is to be so used, and, if a proportion, specify it.

(5) It must also specify the amount of the contributions which the authority will pay under the arrangements for members who are themselves paying contributions under them.

### **Applications to pay SCAVCs**

**70.**—(1) If an active member whose employing authority has established arrangements for SCAVCs under regulation 69 wishes to pay SCAVCs he must apply to it in writing.

(2) The employing authority must notify the member in writing before the expiry of the period of three months beginning with its receipt of his application whether it has accepted or rejected it.

(3) A notification of acceptance must specify the percentage of the member's pay which the employing authority will pay in contributions under the arrangements.

(4) It must also specify whether any and, if so, what proportion of the contributions is to be used to provide death benefits and the nature of any such benefits.

(5) A member may elect to stop paying SCAVCs.

(6) The election must be made by notice in writing to his employing authority.

### **Functions of employing authority**

**71.**—(1) Where an employing authority accepts an application under regulation 70 it must send a copy of the notification of acceptance to the Committee.

(2) The employing authority must make the arrangements necessary to enable a member whose application to pay SCAVCs has been accepted to begin paying them before the expiry of the period of two months (or such longer period as the Committee may allow) beginning with the date he applies to pay them.

(3) The employing authority must make the arrangements necessary to enable a member who has elected to stop paying SCAVCs to do so before the expiry of the period of two months (or such longer period as the Committee may allow) beginning with the date he so elects.

### **Application and investment of SCAVCs**

**72.**—(1) Where the arrangements established by an employing authority provide for any of the SCAVCs to be used to provide death benefits, the Committee must make such arrangements for the provision of those benefits as are specified in regulation 65(1).

(2) The Committee must invest any SCAVCs which are not to be used to provide death benefits with an approved AVC body.

(3) Regulations 65(2) to (4) and 66(2) to (6) apply as respects SCAVCs as they apply as respects AVCs.

### **Changes of employment in which membership is continued**

**73.**—(1) If a member who is paying SCAVCs leaves his employment and enters a new employment in which he is also a member, he may elect to have the accumulated value of the invested additional contributions specified in regulation 66(2) (as it applies by virtue of regulation 72(3)) used –

(a) to make a contribution to the arrangements the new employing authority has made under this Chapter for AVCs; or

(b) if –

(i) his new employing authority has established arrangements under this Chapter for the payment of SCAVCs, and

(ii) he has made an application to contribute under those arrangements which has been accepted,

to make a contribution to the new employer's SCAVCs arrangements.

(2) Such an election must be made by notice in writing to the member's new employing authority and may only be made if the member enters the new employment before the expiry of the period of one month and one day beginning with the date he left the former employment.

(3) The new employing authority must send a copy of any election under this regulation to the Committee.

(4) Where an election is made under paragraph (1)(a), it must specify –

(a) whether the member wishes the election to be treated as an election under regulation 62(1) in respect of the member's new employment; and

(b) if he does, the matters which require to be specified in such an election.

(5) Where the election is made under paragraph (1)(a), the Committee must apply and invest the sum received as mentioned in regulation 66, together with any additional contributions falling to be so invested under that regulation by virtue of contributions made in respect of the new employment by virtue of any election which is treated as made under paragraph (4).

### **Termination**

74.—(1) Where a member who is paying SCAVCs –

(a) leaves his employment and does not enter new employment in which he is an active member; or

(b) stops being an active member without leaving that employment,

regulation 68 applies as respects the elections he must or may make for the use of the accumulated value of the invested additional contributions specified in regulation 66(2) (as it applies by virtue of regulation 72(3)) as it would apply to a person in his circumstances as respects the accumulated value mentioned in regulation 68.

(2) Where neither paragraph (1)(a) nor (b) applies and an employing authority or a member stops paying SCAVCs (otherwise than by reason of the member having left his employment and entered new employment in which he is a member), the employing authority must give notice to the Committee.

## **PART IV**

### **ADMINISTRATION**

#### **CHAPTER I**

#### ***PENSION FUND AND EMPLOYERS' PAYMENTS***

##### ***Pension fund***

### **The fund**

75. The Committee is responsible for maintaining the fund.

### **Accounts and audit**

76.—(1) The Committee shall keep accounts of all financial transactions of the fund.

(2) The Secretary of the Committee shall prepare the financial statements for the financial year ended 31st March 2003 and subsequent financial years in accordance with paragraph (3) and shall



forward three copies of the financial statements duly signed and dated by him to the Department not later than 30th June after the expiration of the financial year to which the financial statements relate.

- (3) The financial statements shall comprise –
- (a) a Foreword;
  - (b) a Statement of the Committee’s Responsibilities;
  - (c) an Accounting Officer’s Statement;
  - (d) a Fund Account;
  - (e) a Net Assets Statement; and

shall contain the information specified in Part IV of Schedule 6.

(4) The financial statements shall give a true and fair view of the Fund Account for the financial year, and the Net Assets Statement as at the end of the financial year.

(5) The financial statements kept by the Committee shall be audited annually by a local government auditor who shall report on the financial statements audited and shall send his report, together with two audited copies of the financial statements duly signed and dated by him, to the Department within 14 days after completion of the audit.

(6) The Department on receipt of the local government auditor’s report and the audited copies of the financial statements shall send a copy of such report and financial statements to the Secretary of the Committee who shall –

- (a) lay such copy of the report and financial statements before the next meeting of the Committee; and
- (b) forward a copy of such report and financial statements to each employing authority.

(7) The local government auditor may require –

- (a) the production before him of all documents and financial records of the Committee which he thinks necessary for the purpose of the audit ;
- (b) any person holding or accountable for any such documents or financial records to appear before him at the audit or any adjournment thereof ; and
- (c) any such person to make and sign a declaration as to the correctness of the documents or financial records.

(8) The Committee shall annually at such time as the Department may direct make to it a report of its proceedings during the preceding year, and the Department shall lay a copy of such report before the Assembly.

#### **Actuarial valuations and certificates**

77.—(1) The Committee must obtain –

- (a) an actuarial valuation of the assets and liabilities of the fund as at 31st March 2004 and in every third year afterwards;
- (b) a report by an actuary; and
- (c) a rates and adjustments certificate.

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

(3) A rates and adjustments certificate is a certificate specifying –

- (a) the common rate of employer’s contribution; and
- (b) any individual adjustments,

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

(4) The common rate of employer's contribution is the amount which in the actuary's opinion should be paid to the fund by all bodies whose employees contribute to it so as to secure its solvency, expressed as a percentage of the pay of their employees who are active members.

(5) The actuary must have regard –

(a) to the existing and prospective liabilities of the fund arising from circumstances common to all those bodies; and

(b) to the desirability of maintaining as nearly constant a rate as possible.

(6) An individual adjustment is any percentage or amount by which in the actuary's opinion contributions at the common rate should in the case of a particular body be increased or reduced by reason of any circumstances peculiar to that body.

(7) A rates and adjustments certificate must contain a statement as to the assumptions on which the certificate is given as respects –

(a) the number of members who will become entitled to payment of pensions under provisions of the Scheme; and

(b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(8) A report under paragraph (1)(b) must contain a statement as to the demographic assumptions used in making the valuation, showing how they relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(9) The Committee must provide the actuary preparing a valuation or a rates and adjustment certificate with the consolidated final accounts of the fund and such other information as he requests.

(10) The Committee must send copies of any valuation, report or certificate under this regulation or revision under regulation 78 –

(a) to the Department;

(b) to each body with employees who contribute to the fund in question; and

(c) to any other body which is or may become liable to make payments to that fund.

(11) The Committee must also send to the Department –

(a) a copy of the consolidated final accounts with which the actuary was provided under paragraph (9); and

(b) a summary of the assets of the fund at the valuation date (unless such a summary is contained in the report).

### **Special circumstances where revised actuarial valuations and certificates must be obtained**

**78.—**(1) Where an admission agreement ceases to have effect, the Committee must obtain –

(a) an actuarial valuation as at the date on which that agreement ceases to have effect, of the liabilities of the fund in respect of current and former employees of the admission body which is a party to that admission agreement (the outgoing admission body); and

(b) a revision of the certificate provided under regulation 77(3), showing the revised contributions due from the outgoing admission body.

(2) Where it is not possible for any reason to obtain the revised contributions from the outgoing admission body or from an insurer or any person providing a guarantee or indemnity on behalf of that admission body, the Committee may obtain a further revision of any rates and adjustment certificate for the fund, showing –

- (a) in the case where the outgoing body is a transferee admission body, the revised contributions due from the body which is the transferor Scheme employer in relation to that outgoing admission body; and
  - (b) in any other case, the revised contributions due from each employing authority which contributes to the fund.
- (3) The Committee may obtain from an actuary a certificate specifying, in the case of an admission body, the percentage or amount by which, in the actuary's opinion, –
- (a) the contribution at the common rate should be adjusted; or
  - (b) any prior individual adjustment should be increased or reduced,
- with a view to providing that the value of the assets of the fund in respect of current and former employees of that admission body is neither materially more nor materially less than the anticipated liabilities of the fund in respect of those employees at the date that the admission agreement is to end.
- (4) This paragraph applies where –
- (a) the Committee agrees with an employing authority under regulation 54(6)(a) that the employing authority will pay increased contributions under regulation 79; or
  - (b) it appears to the Committee that the amount of the liabilities arising or likely to arise in respect of members in employment with an employing authority exceeds the amount specified in, or likely as a result of, the assumptions stated for that authority in a rates and adjustments certificate by virtue of regulation 77(7).
- (5) Where paragraph (4) applies, the Committee must obtain a revision of the rates and adjustments certificate affected, showing the resulting changes as respects that employing authority.
- (6) In this regulation “transferee admission body” and “transferor scheme employer” have the same respective meanings as in regulation 4(16).

#### *Employers' liability to make payments*

#### **Employer's contributions**

- 79.—(1) An employing authority must contribute to the fund in each year covered by a rates and adjustments certificate under regulation 77 or 78 the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).
- (2) During each of those years an employing authority must make payments to the fund on account of the amount required for the whole year.
- (3) Those payments on account must –
- (a) be paid at the end of the intervals determined under regulation 81(1); and
  - (b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.
- (4) An employer's contribution for any year is the common percentage for that year of the pay on which contributions have during that year been paid to the fund under Part II by employees who are active members (other than contributions under regulation 17(3)), increased or reduced by any individual adjustment specified for that employer for that year in the rates and adjustments certificate.
- (5) The common percentage is the common rate of employer's contribution specified in that certificate, expressed as a percentage.
- (6) Where an employee –
- (a) is treated, under regulation 16(4), as if she had paid contributions; or
  - (b) has paid contributions during a period of maternity absence,

the pay on which the common percentage is calculated is the pay the employee would have received if she has not been absent.

### **Employer's further payments**

**80.**—(1) Where an employing authority passes a resolution under regulation 54 it must pay the appropriate sum to the fund before the expiry of the relevant period (as defined in paragraph (7) of that regulation) unless before the end of that period it has agreed as mentioned in paragraph (6) (a) of that regulation.

(2) Where an employing authority passes a resolution under regulation 130 in a case where paragraph (4)(a) of that regulation does not apply, it must pay the appropriate sum to the fund before the expiry of the period of one month beginning with the date on which the resolution is passed.

(3) The appropriate sum for a member is such sum as is shown as appropriate in guidance issued by the Government Actuary.

(4) Any extra charge on the fund resulting from –

- (a) a resolution under regulation 14, 54, 55 or 130; or
- (b) a member becoming entitled to an ill-health pension calculated under regulation 30 by reference to an enhanced membership period; or
- (c) a member becoming entitled to a pension calculated under regulation 28 (redundancy, etc) or regulation 33 (other early leavers, etc),

must be repaid to the fund by the employing authority concerned (but, in the case of resolutions under regulations 54 and 130, only so far as not paid under paragraph (1) or, as the case may be, paragraph (2)).

(5) Any additional payments that are due under paragraph (4) shall be made, if the Committee agrees by –

- (a) a single payment of an amount determined by the Committee on the advice of an actuary appointed by it; or
- (b) instalments, each of an amount determined by the Committee on the advice of an actuary appointed by it, covering a period not exceeding 5 years, or such longer period as the Committee may allow, the first and subsequent instalments becoming payable as agreed between the Committee and the employing authority.

### **Payments by employing authorities to the Committee**

**81.**—(1) Every employing authority must pay to the Committee, on or before such dates falling at intervals of not more than 12 months as the Committee may determine (but in the case of the amounts mentioned in sub-paragraph (a) not later than the time required under Article 49(8) of the Pensions (Northern Ireland) Order 1995(25)) –

- (a) all amounts from time to time deducted from the pay of its employees under these Regulations;
- (b) any amount received by it under regulation 17, (by deduction or otherwise) during the interval; and
- (c) any extra charge payable under regulation 80 of which it has been notified by the Committee during the interval.

(2) Every payment under paragraph (1)(a) shall be accompanied by a statement showing –

- (a) the name and pay of each of the employing authority's employees who is an active member;
  - (b) which employees are paying voluntary contributions;
  - (c) the amounts which represent deductions from the pay of each of the employees and the periods covered by the deductions, distinguishing amounts representing deductions for voluntary contributions.
- (3) The Committee may direct the information mentioned in paragraph (2) to be given to it instead in such form and at such intervals (not exceeding 12 months) as it specifies in the direction.
- (4) Paragraphs (1) and (2) do not apply to the employing authority which is the Committee.
- (5) Voluntary contributions are contributions other than those under Part II.

### *Interest*

#### **Interest**

**82.**—(1) The Committee may require an employing authority from which payment of any amount due under regulation 79, 80 or 81 is overdue by more than ten days to pay interest on that amount.

(2) Interest under paragraph (1) or under regulation 88(1) and (3), 90(5) or 95, must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

### *Constitution and powers of the Committee*

#### **Administration and management**

**83.**—(1) For the purposes of these Regulations the Committee shall be constituted in accordance with Part I of Schedule 6.

(2) The Committee shall have the powers specified in Part II of Schedule 6.

(3) The expenses and allowances payable by the Committee shall be in accordance with Part III of Schedule 6.

## CHAPTER II

### *MEMBERS' CONTRIBUTIONS*

#### **Discontinuance of additional contributions**

**84.**—(1) A member paying additional contributions under regulation 57 may elect to stop payment and must do so if he ceases to be an active member.

(2) Such an election must be made by notice in writing to the Committee and the employing authority.

(3) If a member stops paying such contributions before his normal retirement date on leaving his employment because of such permanent incapacity as mentioned in regulation 29(1) or on his death, he is to be treated as having completed payment of those contributions.

(4) If a member stops paying such contributions before his normal retirement date on leaving his employment by reason of redundancy at least 12 months after he elected to pay them, he may elect to make a lump sum payment to the fund.

(5) Such an election must be made by notice in writing to the Committee given not later than the expiry of the period of three months beginning on the day after he leaves his employment (or such longer period as it may allow).

(6) The amount of that payment must be calculated by an actuary appointed by the Committee as representing the capital value of the unpaid contributions.

(7) If the member duly makes that payment before the expiry of the period of one month beginning with the date on which he is notified of its amount, he must be treated as having completed paying his additional contributions under regulation 57.

(8) If a member stops paying such contributions before his normal retirement date and neither paragraph (3) nor (4) applies, such proportion of the original additional period covered by the election may be counted as part of his total membership as the length of the period during which he paid such contributions bears to the length of the full period during which they were to have been paid.

(9) If a member –

- (a) stops paying such contributions before his normal retirement date on leaving his employment;
- (b) has not become entitled to the payment of any benefit under the Scheme for that employment and has not made an election under regulation 31;
- (c) is not treated under this regulation as having completed paying his contributions; and
- (d) within 12 months after leaving that employment again enters local government employment, without having received any payment under regulation 88 or 89,

he may pay his employing authority in his new employment an amount equal to the additional contributions that would have been payable if he had not stopped contributing.

(10) If he pays that amount within three months after re-entering local government employment the election under regulation 57 continues in effect and the break in payments must be disregarded.

(11) This regulation does not apply if the member who stops paying contributions receives a return of contributions which includes additional contributions under regulation 57.

(12) In paragraph (4) “redundancy” includes retirement in the interests of efficiency or because the member held a joint appointment which has been ended because the other holder has left it.

#### **Separate treatment of AVCs and SCAVCs from other contributions**

**85.**—(1) Regulations 88 and 89 (return of contributions) do not apply to AVCs or SCAVCs payable under (or interest on late payments which relate to AVCs or SCAVCs under) Chapter IV of Part III or under any pension policy or agreement made for the payment of AVCs before the commencement date.

(2) The regulations mentioned in paragraph (3) do not apply in relation to benefits under such a policy or agreement.

(3) Those regulations are –

- (a) regulation 98 (first instance decisions);
- (b) regulation 114 (forfeiture);
- (c) regulation 115 (interim payments directions); and
- (d) regulation 116 (recovery and retention in cases of misconduct).

#### **Over-provision: calculation and return of surplus AVC and SCAVC funds**

**86.**—(1) The Committee must comply with the requirements of regulation 5 of the AVC Regulations.

(2) If the Scheme is the leading scheme in relation to a member, the Committee must also comply with the requirements of regulation 6 of those Regulations, so far as they concern main schemes.

(3) Where surplus funds fall to be repaid under that regulation because of over-provision relating to death benefits, the Committee must repay the member (or, if he has died, his personal representatives) out of the accumulated value of the payments made by the Committee with respect to the pension policy under regulation 65 or 72(1).

(4) Where any other benefit is abated, the repayment must be made out of the accumulated value of the additional contributions mentioned in regulation 66(2).

(5) In this regulation –

“AVC Regulations” are the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(26);

“leading scheme” and “main schemes” have the respective meanings given in regulation 2 of those Regulations; and

“surplus funds” has the meaning given in regulation 6 of those Regulations.

#### **Cost of calculations for transfer of AVCs or SCAVCs into the Scheme where no transfer is requested**

87. Where –

(a) at a member’s request the Committee gives him information concerning the amount payable if he elects under regulation 68(4) (including that regulation as applied by regulation 74(1)) for the accumulated value of his invested additional contributions to be used to provide additional pension for him under the Scheme, but

(b) he does not make such an election before the expiry of the period of three months beginning with the date it gives him the information,

it may deduct the cost of calculating the additional pension from the accumulated value of the additional contributions mentioned in regulation 66(2).

#### **Rights to return of contributions**

88.—(1) If a member with less than 2 years' membership –

(a) ceases to be employed by a Scheme employer or to be an active member without becoming entitled to a retirement pension; or

(b) ceases to be an active member by reason of a notification under regulation 7(2),

he is entitled to be repaid his contributions from the fund with interest calculated to the date he ceased to be employed.

(2) But a person is not entitled to interest on his contributions under paragraph (1) if he ceased to be a member by reason of a notification under regulation 7(2) or on leaving his employment by reason of his resignation, or by reason of his dismissal because of inefficiency, an offence of a fraudulent character or because of grave misconduct in either case in connection with that employment.

(3) If repayment of the contributions (with interest due under paragraph (1), if applicable) has not been made before the expiry of the period of one year beginning with the date when active membership ceases, the person is entitled to interest on the repayment which should have been made, calculated as provided in regulation 82(2), the due date being the date when active membership ceased.

(4) A person who is entitled to a repayment of contributions under paragraph (1) may waive his entitlement for any period and, if he becomes an active member again before the expiry of that period, he shall cease to be so entitled (but without prejudice to any entitlement arising later under that paragraph in respect of those contributions).

(5) A person who continues as an active member in another employment he held concurrently with the employment in which he has ceased to be an active member may elect for an amount equal to the repayment to be treated as contributions to the Scheme as respects his membership in that concurrent employment, entitling him to a period of membership equal to the period of membership in the employment which has ceased, as reduced under regulation 10 (4) if the employment which has ceased was part-time, multiplied by the fraction –

$$\frac{\text{whole-time rate of employment which has ceased}}{\text{whole-time rate of employment which is continuing}}$$

where

the rate of pay in each case is the annual rate of pay on the last day of employment in the employment which has ceased.

(6) A person who elects under paragraph (5) ceases to be entitled to that repayment (but without prejudice to any entitlement arising later in respect of the concurrent employment).

(7) The Committee must deduct from any repayment under this regulation any tax to which it may become chargeable under section 598 of the Taxes Act (charge to tax on repayment of employee's contributions).

(8) The contributions which must be repaid under paragraph (1) are any contributions or payments paid by the member to any pension fund under Part II or Chapter III of Part III or by way of additional contributory payments or added period payments, or paid under any of the relevant old provisions (unless already returned and not repaid), which are attributable to a period of membership which might have counted under these Regulations in relation to the employment in which he has ceased to be a member, but not to any earlier period of membership in respect of which a benefit or transfer value has been paid.

(9) The relevant old provisions are regulations C3, C5, C6, C7, C13 and C14 of the 2000 Regulations and regulations C1, C2, C3, C6, C7, and C9 of the 1992 Regulations.

(10) Added period payments are payments made for the purposes of the former regulations.

(11) "Additional contributory payment" has the meaning given in Schedule A1 to the 2000 Regulations.

### **Exclusion of rights to return of contributions**

**89.**—(1) A person is not entitled to a repayment under regulation 88(1) if –

- (a) he becomes a member again within one month and one day (otherwise than in employment he held concurrently with the employment in which he was previously a member);
- (b) he left his employment because of –
  - (i) an offence of a fraudulent character, or
  - (ii) grave misconduct,
 in either case in connection with that employment, or
- (c) regulation 120(2) applies.

(2) But where paragraph (1)(b)(ii) applies, the employing authority may direct the payment out of the fund to him or, where paragraph (1)(b)(i) applies, to him or to his spouse or any dependant of his, of a sum equal to all or part of his contributions.



- (3) A person is not entitled to a repayment under regulation 88(1) if –
  - (a) he is for the time being entitled to be paid, or has been paid, a benefit under regulation 29(3) (ill-health grant) or an ill-health retirement grant under regulation D8 of the 2000 Regulations;
  - (b) a transfer value has been credited to the fund for him.
- (4) A person who is entitled to a repayment under regulation 88(1)(a) ceases to be entitled to it if he returns to local government employment before receiving it.

### **Deduction and recovery of member's contributions**

**90.**—(1) An employing authority may deduct from a person's pay any contributions payable by him under these Regulations.

(2) Sums payable under regulation 16(5) or (8)(c) (reserve forces) may be deducted by the member's former employer from any payment made to him under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) (Northern Ireland) Order 1953(27), to the extent that they are payable in respect of the same period.

(3) The Committee may recover any such sum remaining due and not deducted under paragraph (1) or (2) –

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

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

(5) If –

- (a) an employing authority deducts any amount in error from a person's pay or any other sum due to him in respect of contributions, other than contributions due to be repaid to him by virtue of his having left without any rights under the Scheme, (which are dealt with under regulation 88); and
- (b) the amount has not been repaid to him before the expiry of the period of one month beginning with the date of deduction,

the appropriate body must pay him interest on that amount calculated as provided in regulation 82(2), the due date being the date of deduction.

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

(7) "The appropriate body" for the purpose of paragraph (5) is –

- (a) the Committee where the employee's contributions have been paid into the fund; and
- (b) the person's employing authority where the employee's contributions have not yet been paid into the fund.

## CHAPTER III

### *PAYMENT OF BENEFITS ETC.*

#### **Pension increases and cash equivalents under the Pension Schemes (Northern Ireland) Act 1993**

**91.** Any increase in a pension required by reason of Chapter III of Part IV of the Pension Schemes (Northern Ireland) Act 1993<sup>(28)</sup> (protection of increases in guaranteed minimum pensions: anti-franking) must be paid from the fund.

#### **Pension increases under the Pensions (Increase) Acts**

**92.** Where a pension to which the Pensions (Increase) Act (Northern Ireland) 1971<sup>(29)</sup> applies is payable out of the fund, any increase under that Act or the Pensions (Increase) (Northern Ireland) Order 1974<sup>(30)</sup>, must be paid from the fund.

#### **Contributions equivalent premiums**

**93.**—(1) Where a Scheme employer pays a contributions equivalent premium under section 51 of the Pension Schemes (Northern Ireland) Act 1993 in respect of any member, it is entitled to recover, or where the employer is the Committee, retain from the fund a sum not exceeding the premium.

(2) But if the Scheme employer may recover or retain any sum under section 57 of that Act in respect of the premium, then only the balance may be recovered or retained under paragraph (1).

(3) Where a contributions equivalent premium is refunded under regulation 54(1)(c) of the Occupational Pension Schemes (Contracting out) Regulations (Northern Ireland) 1996<sup>(31)</sup>, the Committee shall credit to the fund a sum equal to the amount of the premium.

#### **Commencement of pensions**

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

(2) The first period for which any retirement pension under regulation 33 is payable begins –

- (a) in a case where he elects under paragraph (1) of that regulation, with the day on which he elects;
- (b) in a case where he elects under paragraph (7) of that regulation for an earlier date than his normal retirement date, with that date; and
- (c) otherwise, with his normal retirement date.

(3) Any short-term pension payable on the death of a member is payable in respect of a period beginning with the day after the date on which he dies.

(4) The first period for which any long-term pension is payable on the death of a member in a case where no short-term pension is payable begins with the day after the date on which he dies.

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(28) 1993 c. 49

(29) 1971 c. 35 (N.I.)

(30) S.I. 1974/1267 (N.I. 2)

(31) S.R. 1996 No. 493

### **Interest on late payment of certain benefits**

**95.**—(1) Where all or part of a pension or lump sum payment due under these Regulations or the 2000 Regulations is not paid within the relevant period after the due date, the Committee must pay interest on the unpaid amount to the person to whom it is payable calculated from the due date as provided in regulation 82(2).

(2) The relevant period –

- (a) in the case of a pension is one year;
- (b) in the case of a payment made under regulation 41(1) or 142, is the period ending one month after the date on which the Committee receives notification of the member’s death; and
- (c) otherwise is one month.

(3) In the case of a pension the due date is the date on which it becomes payable.

(4) In the case of a retirement grant, the due date is the date on which it is payable.

(5) In the case of a death grant, the due date is the date on which the member dies.

(6) In the case of an ill health grant, the due date is the day after the member ceased to hold his employment.

(7) In the case of a payment of a lump sum under regulation 51, 52, 142 or 143 the due date is the day after the member would otherwise become entitled to payment of a pension.

(8) In this regulation, references to “member” include a surviving spouse, eligible child or children or a pension credit member and the reference in paragraph (4) to the “retirement grant” includes the lump sum grant referred to in regulation 133(2)(a).

### **Payments due in respect of deceased persons**

**96.**—(1) If when a person dies the total amount due to his personal representatives under the Scheme (including anything due to him at his death) (“the amount due”) does not exceed the small payments amount, the Committee may pay the whole or part of the amount due from the fund –

- (a) to his personal representatives; or
- (b) to the person, or to or among any one or more of any persons, appearing to the Committee to be beneficially entitled to the estate,

without the production of probate or letters of administration of his estate.

(2) The small payments amount is the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) (Northern Ireland) Act 1967(32) and applying in relation to his death.

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

### **Non-assignability**

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

(2) No such benefit is assignable or chargeable with his or any other person’s debts or other liabilities.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with an income payments order under Article 283 of the Insolvency (Northern Ireland) Order 1989(33).

## CHAPTER IV

### *DETERMINATIONS, INFORMATION AND RECORDS*

#### *Initial determinations of questions*

#### **First instance decisions**

**98.**—(1) Any question concerning the rights or liabilities under these regulations of any person other than a Scheme employer shall be decided in the first instance by the relevant body.

(2) Where the body by which any such question falls to be decided is ascertainable by reference to this regulation or regulation 99, for the purposes of this Chapter that body shall be the relevant body.

(3) Where the Committee is considering whether a person who has ceased to hold a local government employment is entitled to a benefit under regulation 29 or 33(6), it shall refer for decision to an independent registered medical practitioner appointed by the Committee who is qualified in occupational health medicine, the following questions –

- (a) whether at the time that employment ceased, in the case of entitlement under regulation 29 or 33, or at the date in question, in the case of regulation 33, the person was, on the balance of probabilities, permanently incapable of discharging efficiently the duties of the local government employment he had ceased to hold and, if so,
- (b) whether the permanent incapacity was by reason of ill-health or infirmity of mind or body.

(4) The decision of the independent registered medical practitioner on the questions referred to him under paragraph (3) shall be expressed in the form of a certificate.

(5) The independent registered medical practitioner must be in a position to certify, and must include in his certification a statement that –

- (a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and
- (b) he is not acting, and has not at any time acted, as the representative of the member, the Scheme employer or any other party in relation to the same case.

(6) In paragraph (3) –

- (a) “permanently incapable” means incapable until, at the earliest, the member’s 65th birthday, and
- (b) “qualified in occupational health medicine” means holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State (which has the meaning given by the European Specialist Medical Qualifications Order 1995(34) or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

#### **Decisions as to status of employees and decisions as to benefits**

**99.**—(1) The employing authority shall decide in relation to each of its employees who is a member –

- (a) whether he is an officer or a manual worker;

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(33) S.I. 1989/2405 (N.I. 19)

(34) S.I. 1995/3208, amended by S.I. 1997/2928

- (b) whether he is whole-time, a variable-time or a part-time employee, or whether his employment is of a casual nature;
  - (c) which of his emoluments are remuneration on which contributions are payable; and
  - (d) if he is a part-time employee the proportion which his contractual minimum hours of employment in each week bear to those of a comparable whole-time employment.
- (2) In relation to any employment in which a person is a member, the Committee is to decide –
- (a) what previous service or employment (if any) he is entitled to count as a period of membership;
  - (b) whether any, and if so what, periods of service as a part-time employee are included in such a period;
  - (c) what proportion of whole-time service his service during any such period represents;
  - (d) whether a payment in lieu of contributions has been made or equivalent pension benefits have been assured under Part III of the Insurance Act in respect of any period of non-participating employment;
  - (e) what rate of contribution the employee is liable to pay to the fund;
  - (f) whether he is entitled to count as a period of membership –
    - (i) any, and if so how many, added years, or
    - (ii) any, and if so what, additional period; and
  - (g) whether for the purposes of Schedule 4 he is a Class A member, a Class B member or a Class C member (within the meaning of that Schedule).
- (3) The questions specified in paragraph (1) shall be decided as soon as is reasonably practicable after –
- (a) the person becomes a member; or
  - (b) any change occurs in the number of the member’s regular or usual hours of employment; or
  - (c) any other material change occurs in or in relation to the employment.
- (4) The questions specified in paragraph (2) shall be decided as soon as is reasonably practicable after the person becomes a member of the Scheme in respect of the relevant employment.
- (5) Any question as to whether a person is entitled to a benefit under these Regulations is to be decided by the Committee.
- (6) Where a person is or may become entitled to a benefit payable out of the fund, the Committee shall decide the amount of the benefit.
- (7) The decision under paragraph (5) shall be made as soon as is reasonably practicable after the cessation of the employment or, as the case may be, the death of the employee and that under paragraph (6) as soon as is reasonably practicable after the occurrence of the event by virtue of which the entitlement arises or may arise.
- (8) In this regulation “benefit” includes a return of contributions and a benefit specified in regulation F6(11) or (14) of the 1992 Regulations and Part N of the 2000 Regulations.

### **Notification of decisions**

**100.**—(1) A body which has decided any question under regulation 99 shall, as soon as is reasonably practicable after doing so, send a written notification of its decision to every person whose rights or liabilities are affected.

- (2) The notification shall include –

- (a) in the case of a decision that the person is not entitled to a benefit, the grounds for the decision;
- (b) in the case of a decision as to the amount of a benefit, a statement showing how the amount is calculated;
- (c) in the case of a notification under sub-paragraph (a) or (b) a conspicuous statement directing the person's attention –
  - (i) to the address from which he may obtain further information about the decision, including details of any calculation of service or benefits,
  - (ii) to his right under regulation 102 to make an application to an appointed person, the address at which he may be contacted and his job title, and
  - (iii) to his right under regulation 104 to apply to the Committee for a reconsideration of the matter within the time limit referred to in that regulation; and
- (d) in the case of a decision by an employing authority made under regulation 99, a conspicuous statement directing the person's attention –
  - (i) to the address from which he may obtain further information about the decision, and
  - (ii) to his right of appeal to the county court under regulation 107.

#### *Resolution of disputes*

#### **Appointment of persons to resolve disputes**

**101.**—(1) The Committee must appoint a panel of persons it considers to be suitably qualified for the purpose of resolving disagreements in respect of which an application is made under regulation 102.

(2) For this Chapter the persons appointed under paragraph (1) are “appointed persons”.

(3) An application under regulation 102 may be decided by one or more appointed persons (and references to “the appropriate appointed person”, in relation to any application, are to the appointed person or persons to whom the application in question is referred).

(4) An application must not be referred to a person who has previously been involved in the subject matter of the disagreement.

(5) An appointed person shall hold and vacate office under the terms of his appointment.

(6) But he may resign by notice in writing to the Committee.

(7) The Committee shall determine –

- (a) the procedure to be followed by the persons appointed by it when exercising their functions as appointed persons; and
- (b) the manner in which those functions are to be exercised.

#### **Right to apply for an appointed person to review a decision**

**102.**—(1) Where there is a disagreement about a matter in relation to the Scheme between a member or an alternative applicant and the Committee, the member or, as the case may be, the alternative applicant may –

- (a) apply directly to the appropriate appointed person to decide the disagreement; or
- (b) apply to the Committee for it to refer the disagreement to an appointed person for decision.

(2) These persons are alternative applicants –

- (a) a widow, widower or surviving dependant of a deceased member or any other person to whom benefits in respect of him may be paid;
  - (b) a prospective member;
  - (c) a pension credit member;
  - (d) a person entitled to a pension credit;
  - (e) a person who ceased to be a member or to fall within sub-paragraph (a), (b), (c) or (d) during the period of six months ending with the date of the application; and
  - (f) in the case of a disagreement relating to the question as to whether a person claiming to be a member or to fall within sub-paragraph (a), (b), (c), (d) or (e) does so, the claimant.
- (3) The application for a decision must set out particulars of the disagreement, including a statement as to its nature with sufficient details to show why the applicant is aggrieved.
- (4) An application by –
- (a) a member or prospective member;
  - (b) a person who ceased to be such a person during the period of six months ending with the date of the application; or
  - (c) a person claiming to be a person within paragraph (a) or (b),
- must set out his full name, address, date of birth, his national insurance number (if any) and the name of his employing authority.
- (5) An application by –
- (a) a person entitled to a pension credit or a pension credit member;
  - (b) a person who ceased to be such a person or member during the period of six months ending with the date of the application; or
  - (c) a person claiming to be a person or member within sub-paragraph (a) or (b),
- must set out his full name, address and date of birth.
- (6) An application by any other person must set out –
- (a) his full name, address and date of birth;
  - (b) his relationship to the member; and
  - (c) the member’s full name, address, date of birth and national insurance number and the name of his employing authority.
- (7) The application must be signed by or on behalf of the applicant.
- (8) The application must be accompanied by a copy of any written notification issued under regulation 100.
- (9) The application must be made before the end of the period of six months beginning with the relevant date or such further period as the appropriate appointed person considers reasonable .
- (10) Where the disagreement relates to a decision under regulation 99, the relevant date is the date notification of it is given under regulation 100.
- (11) Otherwise, the relevant date is the date of the act or omission which is the cause of the disagreement or, if there is more than one, the last of them.

#### **Notice of decisions by the appointed person under regulation 102**

**103.**—(1) A decision on the matters raised by an application under regulation 102 must be issued by the appropriate appointed person –

- (a) to the applicant; and

(b) to the Committee,  
by notice in writing before the expiry of the period of two months beginning with the date the application was received.

(2) But, if no such notice is issued before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1) setting out the reasons for the delay and an expected date for issuing the decision.

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

- (a) a statement of the decision;
- (b) reference to any legislation or provisions of the Scheme relied upon;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (d) a reference to the rights of the applicant to refer the disagreement for reconsideration by the Committee under regulation 104, specifying the time within which he may do so; and
- (e) a statement that OPAS (the Pensions Advisory Service)<sup>(35)</sup> is available to assist members and beneficiaries of the Scheme in connection with any difficulty with the Scheme which remains unresolved and the address at which OPAS may be contacted.

### **Reference of disagreement to the Committee**

**104.**—(1) Where an application about a disagreement has been made under regulation 102, an application may be made to the Committee to reconsider the disagreement by the person who applied under regulation 102.

(2) The application must set out particulars of the grounds on which it is made, including a statement that the applicant under this regulation wishes the disagreement to be reconsidered by the Committee.

(3) An application made by the person who applied under regulation 102 must set out the matters required by paragraph (4), (5) or (6), as the case may be, of that regulation to be included in his application.

(4) The application must be accompanied by a copy of any written notification issued under regulation 100.

(5) Where notice of a decision on the application under regulation 102 has been issued, the application under this regulation must state why the applicant is dissatisfied with that decision and be accompanied by a copy of that notice.

(6) The application must be signed by or on behalf of the person making it.

(7) An application for reconsideration may only be made before the expiry of the period of six months beginning with the relevant date.

(8) Where notice of a decision on the matters raised by the application under regulation 102 has been issued, the relevant date is the date of that notice.

(9) Where –

- (a) an interim reply has been sent under regulation 103(2); but
- (b) no notice of decision has been issued before the expiry of the period of one month beginning with the date specified in the reply as the expected date for issuing the decision,

the relevant date is the date with which that period expires.

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<sup>(35)</sup> OPAS Limited is a company limited by guarantee under the Companies Act 1985 (c. 6): registered number 2459671. The Occupational Pensions Advisory Service's address for correspondence is 11 Belgrave Road, London, SW1V 1RB



(10) Where no notice of decision has been issued or interim reply has been sent before the expiry of the period of three months beginning with the date the application under regulation 102 was made, the relevant date is the date with which that period expires.

#### **Notice of decisions by the Committee under regulation 104**

**105.**—(1) The Committee must issue its decision on the matters raised by an application under regulation 104 to the parties to the disagreement by notice in writing before the expiry of the period of two months beginning with the date the application was received (but see paragraph (2)).

(2) If no such notice is issued before the expiry of that period, an interim reply must be sent immediately to those parties, setting out the reasons for the delay and an expected date for issuing the decision.

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

- (a) a statement of the decision;
- (b) in a case where there has been a decision made under regulation 103, an explanation as to whether and, if so, to what extent that decision is confirmed or replaced;
- (c) a reference to any legislation or provisions of the Scheme relied upon;
- (d) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (e) a statement that OPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with any difficulties with the Scheme which remain unresolved and of the address at which OPAS (the Pensions Advisory Service) may be contacted; and
- (f) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes (Northern Ireland) Act 1993 and of the address at which he may be contacted.

#### **Rights of representation**

**106.**—(1) An application under regulation 102 or 104 may be made or continued on behalf of the applicant by a representative nominated by him.

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

(3) Where such a person is a minor or is or becomes otherwise incapable of acting for himself, the application may be made or continued on his behalf by a member of his family or some other person suitable to represent him.

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

(5) Where a representative's address is not to be so used, the appropriate appointed person or the Committee, as the case may be, must send to the applicant a copy of a decision under regulation 103(1) or 105(1) or an interim reply under regulation 103(2) or 105(2).

#### **Referral of decisions under regulation 99(1) to the county court**

**107.** Where an employing authority has either decided or failed to decide such question as is mentioned in regulation 99(1), that question shall be determined by the county court having jurisdiction in the county court division in which such member as is mentioned in regulation 99(1)

is employed or was last employed or, where that member is or was last employed in two or more county court divisions, in one of those divisions.

### *Information and records*

#### **Statements of policy concerning exercise of discretionary functions**

**108.**—(1) The Committee and each employing authority must formulate and keep under review their policy concerning the exercise of their functions under regulation 33 (early leavers) and under Part III.

(2) Before formulating that policy the employing authorities must consult the Committee and the Committee must consult employing authorities.

(3) Before the expiry of the period of four months beginning with the commencement date –

- (a) each employing authority shall send to the Committee, and
- (b) the Committee shall send to each employing authority,

a written statement as to the policy which is being applied by that employing authority, or, as the case may be, the Committee in the exercise of its functions on or after that date, and each such employing authority and the Committee shall publish that statement.

(4) Where, as a result of a review under paragraph (1), an employing authority or the Committee determines to amend its policy, it must send a copy of the statement of the amended policy to the Committee or, as the case may be, the employing authority before the expiry of the period of one month beginning with the date on which it so determines.

(5) In formulating its policy under paragraph (1), the Committee and an employing authority must have regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service.

#### **Information to be supplied by employees**

**109.**—(1) Before the expiry of the period of three months beginning with the date a person becomes a member, the employing authority must ask him in writing for the documents specified in paragraph (2).

(2) Those documents are –

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

(3) The employing authority must also ask for those documents before the expiry of the period of three months beginning with the occurrence of any change as respects his employment which is material for the Scheme.

(4) A request under paragraph (1) or (3) must include a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining his rights under the Scheme.

(5) The employing authority need not request any documents if satisfied that it or the Committee (if different) already has all material information.

### **Exchange of information by authorities**

**110.**—(1) An employing authority which is not the Committee must inform the Committee of all decisions made by the employing authority under this Chapter concerning members and give the Committee such other information as it requires for discharging its functions under the Scheme.

(2) If –

- (a) the Committee makes any decision under this Chapter about a person for whom it is not the employing authority; and
- (b) information about the decision is required by his employing authority for discharging that employer’s functions under the Scheme,

the Committee must give that employing authority that information.

### **Provision of information, charging and prescribed persons**

**111.**—(1) For the purposes of Article 164(1) of the Pensions Order (prescribed circumstances in which information may be provided) (“the prescribed circumstances”) the prescribed circumstances are that the individual to whom the information relates, or, where he has died, his personal representatives, has requested or consented in writing to the provision of the information.

(2) For the purposes of Article 164(1) of the Pensions Order (persons to whom information may be provided and the imposition of reasonable fees in respect of expenses incurred in providing that information) the prescribed persons are those persons described in paragraph 1 of Schedule 5.

(3) For the purposes of Article 164(2) of the Pensions Order (persons on whom fees may be imposed in respect of administrative expenses incurred in connection with admission, readmission or payment) the prescribed persons are the persons referred to in paragraph 2 of Schedule 5.

(4) For the purposes of Article 164(4) of the Pensions Order (person prescribed in the case of an occupational pension scheme under Article 9 of the Order of 1972) the Committee is a prescribed person.

(5) Where –

- (a) information is requested by a prescribed person in the prescribed circumstances in relation to an individual to whom regulation 126 applies for the purpose of establishing what payment would need to be made to the Scheme in respect of the individual to restore the position to what it would have been if the individual had been an active member of the Scheme throughout the period in question (“the restitution payment”); or
- (b) an individual to whom regulation 126 applies, applies to become a member of the Scheme or applies to have a restitution payment accepted having become a member of the Scheme after the period in question,

the Committee shall calculate the restitution payment in accordance with the provisions of regulation 126.

## **CHAPTER V**

### ***SPECIAL ADJUSTMENTS***

#### ***Abatement during new employment***

### **Statements of policy concerning abatement of retirement pensions in new employment**

**112.**—(1) The Committee must formulate and keep under review its policy concerning abatement (that is, the extent, if any, to which the amount of retirement pension payable to a member from the

fund maintained by it under the Scheme should be reduced (or whether it should be extinguished) where the member has entered a new employment with a Scheme employer).

(2) Before formulating that policy the Committee must consult with employing authorities.

(3) Before the expiry of the period of four months beginning with the commencement date, the Committee shall publish a statement as to the policy which is being applied by it where a member who is so entitled enters such a new employment on or after that date.

(4) Where, as a result of reviewing its policy concerning abatement, the Committee determines to amend it, it must publish a statement of the amended policy before the expiry of the period of one month beginning with the date it determines to do so.

(5) In formulating its policy concerning abatement, the Committee must have regard to –

- (a) the level of potential financial gain at which it wishes abatement to apply;
- (b) the administrative costs which are likely to be incurred as a result of abatement in the different circumstances in which it may occur; and
- (c) the extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.

(6) In paragraph (5)(a) the reference to financial gain is a reference to the financial gain which it appears to the Committee may be obtained by a member as a result of his entitlement both to a pension and to pay under the new employment.

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

**113.**—(1) Where a member who is entitled to the payment of a retirement pension proposes to enter a new employment with a Scheme employer, he must inform the employer about that entitlement.

(2) If such a member enters such a new employment he must immediately notify the Committee in writing.

(3) The Committee –

- (a) must apply the policy published by it under regulation 112 to the member; and
- (b) it may reduce the annual rate of that pension or, as the case may be, may cease to pay it, during the period while he holds the new employment, in accordance with that policy.

(4) But no reduction under paragraph (3) of the pension of a person who was a member immediately before the commencement date may exceed the reduction which would have applied under the 2000 Regulations if those Regulations had applied when the member entered his new employment.

### *Misconduct*

#### **Forfeiture of pension rights after conviction of employment-related offences**

**114.**—(1) If a member is convicted of a relevant offence, a Minister of the Crown may issue a forfeiture certificate.

(2) Where a forfeiture certificate is issued the member's former employing authority may direct that any of the rights in respect of him under these Regulations or the 2000 Regulations as respects his previous membership are forfeited.

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

(4) A forfeiture certificate is a certificate that the offence –

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

(5) If the former employing authority incurred loss as a direct consequence of the relevant offence, it may only give a direction under paragraph (2) if it is unable to recover its loss under regulation 116 or 118 or otherwise, except after an unreasonable time or at disproportionate cost.

(6) A direction under paragraph (2) may only be given if an application to a Minister of the Crown for a forfeiture certificate has been made by the former employing authority before the expiry of the period of three months beginning with the date of the conviction.

(7) Where a former employing authority applies for a forfeiture certificate, it must at the same time send the convicted person and the Committee a copy of the application.

### **Interim payments directions**

**115.**—(1) If –

- (a) a person leaves an employment in which he was a member, because of an offence in connection with that employment; and
- (b) a forfeiture certificate has been issued under regulation 114(1) in respect of that offence, his former employing authority may give an interim payments direction to the Committee.

(2) But his former employing authority may not give such a direction if it has given any direction under regulation 114(2) (“a forfeiture direction”).

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

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

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

(6) An interim payments direction is not a decision under regulation 98 as to any person’s entitlement to a benefit.

(7) Payments in accordance with an interim payments direction shall be deemed to be payments in respect of a benefit to which the recipient was entitled (regardless of any contrary forfeiture direction or decision under regulation 98).

### **Recovery or retention where former member has misconduct obligation**

**116.**—(1) This regulation applies where a person –

- (a) has left an employment, in which he was or had at some time been a member, in consequence of a criminal, negligent or fraudulent act or omission on his part in connection with that employment;
- (b) has incurred some monetary obligation, arising out of that act or omission, to the body which was his employing authority in that employment; and
- (c) is entitled to benefits under Part II.

(2) The former employing authority may recover or retain out of the fund –

- (a) the amount of the monetary obligation; or
- (b) the value at the time of the recovery or retention of all rights in respect of the former employee under the Scheme with respect to his previous membership (as determined by an actuary),

whichever is less.

(3) The rights specified in paragraph (2)(b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of regulation 68(4) (including that regulation as it applies by virtue of regulation 74).

(4) The former employing authority must give the former employee—

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

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

### **Protection of GMP rights**

**117.**—(1) The power —

- (a) to give directions under regulation 114(2); or
- (b) to recover or retain amounts under regulation 116(2),

may not be exercised so as to deprive a person of his guaranteed minimum pension or any widow's or widower's guaranteed minimum pension.

(2) But such a power may be so exercised if the person left his employment —

- (a) because of the offence of treason; or
- (b) because of one or more offences under the Official Secrets Acts 1911 to 1989<sup>(36)</sup> for which the former member has been sentenced on the same occasion —
  - (i) to a term of imprisonment of at least 10 years, or
  - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years.

### **Transfer of sums from the fund to compensate for former member's misconduct**

**118.**—(1) This regulation applies where —

- (a) a person has left an employment in which he was a member because of —
  - (i) an offence of a fraudulent character, or
  - (ii) grave misconduct,
 in either case in connection with that employment;
- (b) his former employing authority in that employment has suffered direct financial loss by reason of the offence or misconduct; and
- (c) either —
  - (i) the former employee became entitled to benefits under Part II or the 2000 Regulations and a direction has been given under regulation 114(2), or
  - (ii) he did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 88 (whether or not he has waived his right).

(2) If the former employing authority is the Committee, it may retain an appropriate amount in the fund.

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(36) 1911 c. 28, 1920 c. 25, 1939 c. 121, 1989 c. 6

(3) Otherwise, the Committee must pay the former employing authority an appropriate amount out of the fund, if requested to do so.

(4) But if a contributions equivalent premium or a payment in lieu of contributions is due or has been made in respect of the former employee, the Committee may reduce an amount retained under paragraph (2) or a payment under paragraph (3) by the amount of any contributions equivalent premium and by half the amount of any payment in lieu of contributions.

(5) An appropriate amount is an amount not exceeding –

- (a) the amount of the direct financial loss; or
- (b) the amount of any contributions which could have been returned to the former employee, or paid to his spouse or a dependant, under regulation 89(2) or regulation C21(4) of the 2000 Regulations, less the amount of any which have been so returned or paid,

whichever is the less.

(6) If after making a payment under paragraph (3) the Committee is required to make any transfer payment under Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993<sup>(37)</sup> or under regulation 122 for a former employee, the former employing authority must repay it, if requested to do so.

## CHAPTER VI

### *TRANSFERS*

#### *Transfers out*

#### **Application of Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993**

**119.**—(1) For sections 8C<sup>(38)</sup> (requirements as to transfer, commutation etc. for contracting-out), 15 (discharge of liability) and 16 (transfer of accrued rights) and Chapter IV of Part IV (transfer values) of the Pension Schemes (Northern Ireland) Act 1993 and any regulations made under any of those sections or that Chapter, the managers of the Scheme in relation to a member are the Committee.

(2) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996<sup>(39)</sup> (pre-1986 leavers), Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993 shall apply to all members of the Scheme regardless of the date their membership ended.

(3) The references in regulation 4 of those Regulations to regulation 3 of those Regulations include a reference to regulation K7(2) of the 2000 Regulations and any corresponding earlier provisions.

(4) Regulation 5 of those Regulations (treatment of a number of employments as a single employment) only applies if the employments are treated as a single employment for the purposes of the Scheme.

(5) Sub-paragraph (a) of regulation 10(2) of those Regulations (interest on late payment of cash equivalents) does not apply where the member has required the cash equivalent to be paid to a club scheme.

(6) Regulation 18 of those Regulations (termination of pensionable service in certain circumstances to be disregarded) only applies if –

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<sup>(37)</sup> 1993 c. 49

<sup>(38)</sup> 1993 c. 49 Section 8c was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

<sup>(39)</sup> S.R. 1996 No. 619

- (a) in the case of a termination before the commencement date, no election was made under regulation D12(1)(c) of the 2000 Regulations (or any corresponding earlier provision) in respect of the membership which ended; and
- (b) in any case, no election has been made under regulation 34(1) to have the membership which ended aggregated with later service.

### **Rights to payment out of the fund**

**120.**—(1) The amount of any transfer payment due in respect of a member under Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993 is payable by the Committee from the fund.

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

(3) Paragraph (2) overrides anything to the contrary in the former regulations, any other provision of these Regulations or the Transitional Regulations.

### **Contracting-out requirements affecting transfers out**

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

- (a) the amount of any contributions equivalent premium payable pursuant to section 51 of the Pension Schemes (Northern Ireland) Act 1993; or
- (b) an amount sufficient to meet the liability in respect of his contracted-out rights.

(2) But the amount mentioned in paragraph (1)(b) may not be deducted where –

- (a) the transfer payment is made to an occupational pension scheme which is contracted-out or an appropriate personal pension scheme; and
- (b) that scheme’s trustees or managers undertake to accept liability for his contracted-out rights.

(3) Where the amount mentioned in paragraph (1)(a) is deducted, if the Committee thinks fit, that amount may be used in preserving the liability mentioned in paragraph (2)(b) in the fund.

(4) Otherwise, it must be used in paying the premium.

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

- (a) his and his surviving spouse’s rights to guaranteed minimum pensions; and
- (b) his section 5(2B) rights (as defined in regulation 1(2)) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996<sup>(40)</sup>.

### *Bulk transfer arrangements*

#### **Bulk transfers (transfers of undertakings) etc.**

**122.**—(1) This paragraph applies where –

- (a) two or more members' active membership ends on their joining an approved non-local government scheme (“the new scheme”);
- (b) it is agreed by –
  - (i) the Committee,

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<sup>(40)</sup> S.R. 1996 No. 493; the definition of “section 5(2B) rights” was substituted by S.R. 1997 No. 160 Schedule 1, paragraph 5



- (ii) the members' employing authorities (if different), and
  - (iii) the trustees or managers of the new scheme,
- that a payment should be made under this regulation; and
- (c) the members agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993 and waive any rights they might have under that Chapter by virtue of the cessation of their active membership.
- (2) The Committee must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights each of the members will acquire under the new scheme are at least equivalent to those which he would have obtained if a transfer value had been paid to the same scheme under Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993, as it applies by virtue of regulation 119, (assuming in any case where the member would not be entitled to such a payment that he was).
- (3) The Committee must provide each member with sufficient information in writing to check that the requirement of paragraph (2) is satisfied before he agrees as mentioned in paragraph (1)(c).
- (4) Where paragraph (1) applies, the Committee must –
- (a) set aside (whether in cash or in assets or both) such part of the fund (“the transfer payment”) as an actuary appointed by it and an actuary appointed by the scheme managers of the new scheme for the purpose may agree as appropriate for the acquisition of such rights in that scheme as they may so agree; and
  - (b) pay or transfer it to the trustees or managers of the new scheme for the benefit of the relevant members.
- (5) The Committee must certify to the new scheme’s trustees or managers the amount included in the transfer payment which represents each member’s contributions.
- (6) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made from the fund by reason of membership covered by the transfer payment.
- (7) Paragraph (6) overrides anything to the contrary in the former Regulations or these Regulations.

### **Calculation of amount of transfer payment under regulation 122**

- 123.**—(1) The amount of the transfer payment to be paid under regulation 122 is the amount determined by an actuary appointed by the Committee to be equal to the value at the date the members join the new scheme of the actual and potential liabilities payable from the fund which have then accrued in respect of the members and the persons who are or may become entitled to benefits under the Scheme through them.
- (2) The actuary may make such adjustments as he thinks fit in calculating that amount and, in particular, as respects the period from that date to the date of actual payment of the transfer value.
  - (3) He must specify in his valuation the actuarial assumptions he has used in making it.
  - (4) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund.
  - (5) But if there is more than one employing authority involved, each shall bear such part of the costs as the actuary determines to be appropriate.

## *Transfers in*

### **Inward transfers of pension rights**

**124.**—(1) If a person who becomes an active member has relevant pension rights, he may request the Committee to accept a transfer value for some or all those rights from the relevant transferor.

(2) Relevant pension rights are accrued rights under –

- (a) an occupational pension scheme (other than the Scheme);
- (b) a personal pension scheme;
- (c) a retirement annuity contract approved by the Commissioners of Inland Revenue under section 620 or 621 of the Taxes Act; or
- (d) a self-employed pension arrangement,

but do not include rights to benefits under a scheme, contract or arrangement which are attributable (directly or indirectly) to a pension credit.

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

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

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

(6) A request from a transferring person under paragraph (1) must be made by notice in writing.

(7) That notice must be given before the expiry of the period of 12 months beginning with the date he became an active member (or such longer period as the Committee may allow).

(8) Where a request under paragraph (1) is duly made the Committee may accept the transfer value and credit it to the pension fund.

### **Right to count credited period**

**125.**—(1) Where a transfer value has been accepted under regulation 124, the member may count the credited period as a period of membership for these Regulations (but see Schedule 3).

(2) If the transfer value –

- (a) is paid by the trustees or managers of a club scheme;
- (b) represents all the rights relating to the member in that scheme;
- (c) has been calculated –
  - (i) in a case where Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993 applies, in accordance with that Chapter, and
  - (ii) otherwise, in a manner consistent with that prescribed under that Chapter,

the credited period is the period which, if used to calculate a transfer value to be paid by the Scheme, would produce an amount equal to the transfer value received.

(3) If the transfer value is not paid by the trustees or managers of a club scheme, the credited period must be calculated in a manner consistent with that Chapter.

(4) In calculating the credited period under paragraph (3) due allowance must be given for the expected increase in the member's pensionable pay between the date he became a member (or, if more than twelve months later or such longer period as the Committee may allow, the date on which the transfer value is received) and his normal retirement date or, if earlier, the date on or after

the member's 60th birthday on which the sum of items referred to in sub-paragraphs (a) to (c) of regulation 33(4) is 85 years or more.

(5) If the member is a man, the credited period must be treated as a period after 5th April 1978.

(6) If the member is a woman, the credited period must be treated as a period after 31st March 1972.

(7) The Committee must give the member a written notice stating the period of membership he may count under paragraph (1).

(8) The notice must contain a statement of the kind required by regulation 100(2)(c)(i).

### **Credited periods for transferring members with mis-sold pension rights**

**126.**—(1) Regulation 125(3) does not apply where –

(a) the transferring person is a person about whom information may be given under Article 164(1) of the Pensions (Northern Ireland) Order 1995 (mis-sold personal pensions), as it has effect in the case of the Scheme (see regulation 111); and

(b) the transfer value satisfies the conditions specified in paragraph (2).

(2) Those conditions are –

(a) that it is paid by the trustees or managers of the personal pension scheme mentioned in Article 164(1)(a)(ii) of that Order;

(b) that it represents all the rights relating to the member in that scheme;

(c) that it is paid on an application made to the Committee before the expiry of the period of 12 months beginning with the date the transferring person becomes an active member (or such longer period as it may allow); and

(d) that in the opinion of the Committee it is not less than the restitution amount.

(3) Where paragraph (1) applies, the credited period is the period of membership the transferring person could have counted if he had been an active member throughout the personal pension period.

(4) The restitution amount is the aggregate –

(a) of the amount that would be necessary (as at the date on which the request for the calculation of the restitution amount is received by the Committee) to purchase a period of membership for these Regulations equal to the length of the personal pension period on the basis of a transfer from a scheme which is not a club scheme (including the value of rights under the Pensions (Increase) Act (Northern Ireland) 1971<sup>(41)</sup> and the Pensions (Increase) (Northern Ireland) Order 1974<sup>(42)</sup>);

(b) of the transfer value paid out of the Scheme to the personal pension scheme; and

(c) of interest on any such transfer value at such rate as is approved for the time being by the Government Actuary, calculated over the period commencing with the date on which that transfer value was paid out of the Scheme and ending with the date as at which the transfer value is taken to be paid to the Scheme.

(5) The Committee must determine the amount mentioned in paragraph (4)(a) in such manner as is for the time being indicated in guidance issued by the Government Actuary.

(6) The personal pension period is the period for which the transferring person was eligible to be an active member but in respect of which he made contributions to the personal pension scheme instead.

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<sup>(41)</sup> 1971 c. 35

<sup>(42)</sup> S.I. 1974/1267 (N.I. 12)

(7) Where a transfer value has been accepted in relation to a woman to whom this regulation applies and in respect of whom a transfer value has been paid previously by the Committee to a personal pension scheme any part of which transfer value was attributable to membership before 5th April 1988, then the credited period shall be apportioned as membership before 6th April 1988 and as membership after 5th April 1988 in the same proportions as it would have been had the woman become or remained a member of the Scheme throughout the personal pension period.

(8) If in the opinion of the Committee the transfer value does not satisfy the conditions specified in paragraph (2) for the reason only that it is less than the restitution amount, the Committee may accept the transfer value on the basis that the credited period which the member may count is such proportion of the personal pension period as the Committee determines.

### **Rights as to service not matched by credited period**

**127.**—(1) Where the member’s transferred-in service exceeds the credited period, he may count the excess as a period which counts towards his total membership for the purposes of the provisions mentioned in paragraph (2).

(2) Those provisions are –

- (a) regulation 18(1) (general qualification for benefits);
- (b) paragraphs (a) and (b) of the definition of “normal retirement date” in regulation 26(3);
- (c) regulation 43(4) and (5) (amount of active member’s surviving spouse’s long-term pension);
- (d) regulation 88(1) (return of contributions).

(3) A period which may be counted under paragraph (1) counts as its actual length.

(4) The Committee must give the member a written notice stating the period of membership he may count under paragraph (1).

(5) The notice must contain a statement of the kind required by regulation 100(2)(c)(i).

(6) The transferred-in service of a transferring member is the service in respect of which he has accrued rights to benefits under his previous occupational pension scheme or appropriate policy (whether or not the transfer value covers all those rights).

(7) The period of that service is the period certified by the trustees or managers of that scheme or issuers of that policy.

### *Community scheme transferees*

#### **Community scheme transferees**

**128.**—(1) Community scheme transferees and their surviving spouses, dependants and children are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

(2) A Community scheme transferee is a person who became employed by a Community institution after having been employed in local government employment.

**PART V**  
**SPECIAL CASES**  
**CHAPTER 1**  
*ELIGIBILITY*

**Separate employments etc.**

**129.**—(1) Where a person holds separate employments under one Scheme employer, these Regulations apply as if each of them were with a different employer.

(2) For the purposes of these Regulations, a clerk of a district council who performs functions under Article 9(2) (conduct of elections) of the Electoral Law (Northern Ireland) Order 1972<sup>(43)</sup> shall, in relation to those functions, be treated as if he were employed by that district council and any fees paid to him in connection with those functions shall be treated as remuneration paid to him by that district council.

**CHAPTER II**  
*CONVERSION OF DISCRETIONARY PAYMENTS  
REGULATIONS PERIODS INTO MEMBERSHIP*

**Conversion of periods credited under Discretionary Payments Regulations etc. into membership**

**130.**—(1) Where, apart from paragraph (9) of regulation 54, an employing authority could pass a resolution under that regulation to increase a person's total membership, it may resolve that his total membership be increased by the whole or part of the period credited to him as mentioned in that paragraph.

(2) Where –

- (a) any person has been credited by an employer (“the transferor employer”) under any scheme, the terms of which correspond to Part III of the Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001<sup>(44)</sup> with a period of service in respect of a former employment;
- (b) the transferor employer's liability in respect of payments falling due to that person as respects that credited period has been transferred to an employing authority;
- (c) apart from paragraph (9) of regulation 54, if –
  - (i) the person's employment with the transferor employer had been employment with the employing authority, and
  - (ii) any actions taken by the transferor employer under the scheme mentioned in subparagraph (a) had been taken by that authority,

that authority could pass a resolution under regulation 54 to increase his total membership, it may resolve that his total membership be increased by the whole or part of the period credited to him.

(3) The additional period must not exceed the period which would be the maximum additional period under regulation 54 if –

- (a) a resolution under that regulation could be passed in relation to him; and

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<sup>(43)</sup> S.I. 1972/1264 (N.I. 13) as amended by the Local Government (Postponement of Elections and Reorganisation) (Northern Ireland) Order 1972 (S.I. 1972/1998 (N.I. 21))

<sup>(44)</sup> S.R. 2001 No. 279

- (b) the period of 10 years were substituted for the period of 6 243/365 years in paragraph (2) (d) of that regulation.
- (4) The additional period may only be counted as a period of membership if –
  - (a) the employing authority and the Committee agree that the employing authority will pay increased contributions under regulation 79 to meet the cost of the increase in membership; or
  - (b) the employing authority makes the payment which is required by regulation 80(2) within the period specified in that regulation,
 but it may be so counted as from the date from which the resolution has effect.
- (5) If the employing authority fails to pay those increased contributions or make that payment, the resolution shall cease to have effect.
- (6) Where the resolution has effect, the period credited as mentioned in regulation 54(9) is reduced or extinguished accordingly (but without prejudice to any payments which have fallen due or have been made before that date).
- (7) No resolution may be passed under this regulation, the result of which would be to place any individual in a worse position than he would otherwise be.
- (8) If the person was credited as mentioned in regulation 54(9) on or after the commencement date, this regulation only applies if –
  - (a) the employing authority is an authority which has reasonable grounds to believe that it will cease to exist as a result of a provision made by or under an enactment; or
  - (b) the employing authority has ceased to exist as a result of any such provision;
 and where sub-paragraph (b) applies “employing authority” includes the body to which the former employing authority’s functions as respects the former employee in question have been transferred in connection with its cessation.

### CHAPTER III

#### *RIGHTS UNDER ARTICLE 14 OF THE SUPERANNUATION (NORTHERN IRELAND) ORDER 1972*

#### **Rights under Article 14 of the Superannuation (Northern Ireland) Order 1972**

**131.**—(1) If, apart from this regulation, any provision of these Regulations, which re-enacts with any modification any provision of the Scheme which ceases to have effect by virtue of the Transitional Regulations in relation to any person to whom a relevant benefit is or may become payable, would place him in a worse position in relation to that benefit than that he would have been in if that modification had not been made and he makes an election under this paragraph, these Regulations shall have effect, in relation to him and to that benefit, as if these Regulations had re-enacted that provision of the Scheme without modification (but see paragraph (4)).

(2) An election under paragraph (1) must be made by notice in writing given to the Committee within the period of six months beginning with the commencement date.

(3) In this regulation –

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

- (a) ceased to hold 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 or any dependant by virtue of a surrender.

(4) If an election under 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 the cessation referred to in paragraph (3) (or, if there has been more than one such cessation, the last of them 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 the cessation referred to in paragraph (3) (but without prejudice to the application of this paragraph);

and these Regulations shall have effect accordingly.

## PART VI

### PENSION SHARING

#### CHAPTER I

##### *SHARING OF RIGHTS UNDER THE SCHEME*

#### **Interpretation**

**132.** References in this Part to a pension credit member are to that person in relation to his pension credit rights and not in relation to any other rights he may have under the Scheme.

#### **Discharge of liability for pension credit rights**

**133.**—(1) The Committee may discharge its liability in respect of a pension credit in accordance with either sub-paragraph (2) or sub-paragraph (3) of paragraph 1 of Schedule 5 to the 1999 Order.

(2) Where the Committee discharges its liability by conferring pension credit rights on the person entitled to the pension credit, those rights shall be to –

(a) a pension and a lump sum grant; and

(b) a death grant.

(3) A pension credit member is not entitled to a lump sum grant if the transferor has been paid a retirement grant before the valuation date.

(4) The pension at the valuation date shall be calculated –

(a) by reference to the value of the pension credit member’s pension credit rights calculated in accordance with regulation 10 of the Pension Sharing (Implementation and Discharge of Liability) Regulations (Northern Ireland) 2000(45); and

(b) in accordance with guidance issued by the Government Actuary.

### **Aggregation**

**134.**—(1) Pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under the Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member, he may not count any period which may count for any purpose as a period of membership in connection with his pension credit benefits towards the membership period required before he is entitled to any benefit which relates to his active membership, or in the calculation of that benefit.

### **Death of person entitled to a pension credit before discharge**

**135.**—(1) Where a person entitled to a pension credit dies before liability in respect of his pension credit has been discharged in accordance with regulation 133(1), such liability shall be discharged by the Committee by the payment of a lump sum.

(2) The lump sum shall be equal to three times the annual rate of the pension that would have been paid to him if on the date of his death he had become entitled to a pension as a pension credit member, calculated in accordance with guidance issued by the Government Actuary.

(3) The Committee shall pay the lump sum to the deceased's personal representatives.

### **Safeguarded rights**

**136.**—(1) A pension credit member's safeguarded rights for the purposes of the Scheme and of the Pension Schemes (Northern Ireland) Act 1993 and regulations made under that Act are such of his rights falling within section 64A(1)(46) of that Act as represent the safeguarded percentage of the rights acquired by him in the Scheme by virtue of the pension credit.

(2) The "safeguarded percentage" is the percentage of the shareable rights by reference to which the amount of the pension credit is determined which are contracted-out rights.

(3) "Contracted-out rights" has the meaning given in section 64A(5) of the Pension Schemes (Northern Ireland) Act 1993.

### **Valuation date**

**137.** For the purposes of—

- (a) calculating the cash equivalent referred to in Article 27(2) of the 1999 Order; and
- (b) regulation 133(3) and (4) and regulation 139(1),

the valuation date shall be the first day of the implementation period as defined in Article 31(1) of that Order.

## **CHAPTER II**

### ***PENSION CREDIT MEMBERS AND PENSION CREDIT***

#### **Application of the Regulations to pension credit members**

**138.** Part I (preliminary provisions), regulations 95 (interest on late payment of certain benefits), 96 (payments due in respect of deceased persons) and 97(non-assignability) and Chapter IV (determinations, information and records) of Part IV (Administration) of these Regulations apply to a pension credit member.

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(46) Section 64A was inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999



### **Calculation**

**139.**—(1) The annual rate of the pension at normal benefit age shall be the pension calculated as referred to in regulation 133(4), increased in accordance with the Pensions (Increase) Act (Northern Ireland) 1971(47) and, if applicable, the Pensions Increase (Northern Ireland) Order 1974 from the valuation date.

(2) The lump sum grant shall be equal to three times the annual rate of the pension.

### **Payment of benefits**

**140.**—(1) A pension credit member who attains normal benefit age is entitled to the immediate payment of a pension and, if applicable, a lump sum grant.

(2) The pension and the lump sum grant are payable from the fund.

(3) The pension is payable for life.

### **Death grants**

**141.**—(1) When a pension credit member dies before he attains the age of 70, the Committee shall pay a death grant.

(2) The amount of the death grant of a pension credit member who dies before his normal benefit age is a lump sum equal to three times the annual rate of the pension that would have been paid to him if on the date of his death he had become entitled to that pension.

(3) The amount of the death grant of a pension credit member who dies after he is in receipt of a pension under this Part is a lump sum equal to five times the annual rate of the pension being paid to him at the date of his death but reduced by the amount of any payments of that pension made to him under regulation 140.

(4) The Committee at its absolute discretion may make payments of a death grant to or for the benefit of the pension credit member's nominee or personal representatives, or any person appearing to the Committee to have been his relative or dependant at any time.

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

### **Commutation: small pensions**

**142.**—(1) If the annual rate of the pension to which a pension credit member is entitled is –

(a) not more than £195, if he has received a lump sum grant; or

(b) otherwise, not more than £260,

the Committee may pay him a lump sum representing the capital value of the pension.

(2) If the pension credit member is entitled to more than one pension under the Scheme, a lump sum is only payable if the aggregate amount payable to that member is less than £195 or £260, as the case may be.

(3) The capital value of the pension must be calculated in accordance with guidance issued by the Government Actuary.

(4) The payment of a lump sum in respect of a pension due to the pension credit member under this regulation discharges the Committee from its liability for the pension.

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(47) 1971 c. 35 (N.I.) sections 3, 8 and 15 are amended by Article 36 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(5) The Committee must deduct from any payment under this regulation any tax to which it may become chargeable under section 599 of the Income and Corporation Taxes Act 1988<sup>(48)</sup>.

### **Commutation: serious ill-health**

**143.**—(1) In circumstances where a pension credit member is suffering from serious ill-health at any time prior to the date when he first becomes entitled to receive a pension under this Part, the whole of that pension may be commuted for a lump sum and the total of –

- (a) that lump sum; and
- (b) the lump sum grant (if applicable)

(“the commutation payment”) paid to the pension credit member.

(2) The lump sum referred to in paragraph (1)(a) shall be equal to five times the annual rate of the pension to which the pension credit member would have been entitled if on the date of commutation he had reached the normal benefit age.

(3) If applicable, the lump sum grant shall be equal to three times that annual rate.

(4) In this regulation, “serious ill-health” means ill-health which is such as to give rise to a life expectancy of less than one year from the date on which commutation of the pension is to take effect.

(5) Before making any decision as to whether a pension credit member may be entitled under paragraph (1), the Committee must obtain from an independent registered medical practitioner which it has appointed a certificate as to whether in his opinion the pension credit member is suffering from serious ill-health.

(6) Payment of the commutation payment discharges the Committee’s liability to the pension credit member in respect of his pension credit benefits.

(7) The Committee must deduct from the commutation payment any tax to which it may become chargeable under section 599 of the Income and Corporation Taxes Act 1988.

## CHAPTER III

### *TRANSFERS*

### **Transfers out**

**144.** For the purposes of Chapter II of Part IVA<sup>(49)</sup> of the Pension Schemes (Northern Ireland) Act 1993 (requirements relating to pension credit benefits), the managers of the Scheme in relation to a pension credit member is the Committee.

### **Transfers in**

**145.**—(1) A pension credit member is not entitled to request the Committee to accept a transfer value for relevant pension rights and the Committee must not accept a transfer value of such rights where they have accrued to a pension credit member.

(2) “Relevant pension rights” has the meaning given in regulation 124(2).

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<sup>(48)</sup> 1988 c. 41 Section 599 was amended by the Finance Act 1989 (c. 26), Schedule 6, paragraphs 11 and 18

<sup>(49)</sup> Part IVA of the Pension Schemes (Northern Ireland) Act 1993 was inserted by the Welfare Reform and Pensions (Northern Ireland) Order 1999, Article 34

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Sealed with the Official Seal of the Department of the Environment on 19th November 2002.

*J. Ritchie*  
A senior officer of the  
Department of the Environment

## SCHEDULES

### SCHEDULE 1

Regulation 2(1)

#### INTERPRETATION

“The Act of 1937” means the Local Government Superannuation Act 1937**(50)** or the Local Government Superannuation (Scotland) Act 1937**(51)**;

“The Act of 1950” means the Local Government (Superannuation) Act (Northern Ireland) 1950**(52)**;

“The Act of 1953” means the Local Government Superannuation Act 1953**(53)**;

“The Acts of 1937 to 1953” means the Act of 1937 and the Act of 1953;

“The Act of 1959” means the National Insurance Act (Northern Ireland) 1959**(54)**;

“The Act of 1975” means the Social Security (Northern Ireland) Act 1975**(55)**;

“The 1950 Regulations” means the Local Government (Superannuation) Regulations (Northern Ireland) 1950**(56)**;

“The 1962 Regulations” means the Local Government (Superannuation) Regulations (Northern Ireland) 1962**(57)**;

“The 1981 Regulations” means the Local Government (Superannuation) Regulations (Northern Ireland) 1981**(58)**;

“The 1992 Regulations” means the Local Government (Superannuation) Regulations 1992**(59)**;

“The 1999 Act” means the Welfare Reform and Pensions Act 1999**(60)**;

“The 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999**(61)**;

“The 2000 Regulations” means the Local Government Pension Scheme Regulations (Northern Ireland) 2000**(62)**;

“active member” has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995**(63)**;

“actuary” means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries;

“added years” has the meaning given in Schedule A1 to the 2000 Regulations;

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**(50)** 1937 c. 68

**(51)** 1937 c. 69

**(52)** 1950 c. 10 (N.I.)

**(53)** 1953 c. 25

**(54)** 1959 c. 21 (N.I.)

**(55)** 1975 c. 15

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

**(57)** S.R. & O. (N.I.) 1962 No. 210

**(58)** S.R. 1981 No. 96; amended by other instruments listed in Schedule 21 to the Local Government (Superannuation) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 547)

**(59)** S.R. 1992 No. 547; amended by other instruments listed in Schedule M3 to the Local Government Pension Scheme Regulations (Northern Ireland) 2000 (S.R. 2000 No. 177)

**(60)** 1999 c. 30

**(61)** S.I. 1999/3147 (N.I. 11)

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

**(63)** S.I. 1995/3213 (N.I. 22)

“additional voluntary contributions provision” is a provision of an occupational pension scheme approved under section 591 of the Taxes Act, which provides for the payment by employees of voluntary contributions;

“additional voluntary contributions scheme” means a scheme approved under section 591 of the Taxes Act, to which an employer is not a contributor and which provides benefits additional to those provided by an occupational pension scheme;

“admission agreement” has the meaning given in regulation 4(2);

“admission agreement employee” means such an employee as is mentioned in regulation 4.

“admission body” means a body mentioned in regulation 4(3);

“appropriate personal pension scheme” means a personal pension scheme for which there is in force a certificate issued in accordance with regulations made under section 3 of the Pension Schemes (Northern Ireland) Act 1993;

“appropriate policy” means a policy of insurance or annuity contract which provides an annuity which satisfies requirements prescribed under section 91(2)(c) of the Pension Schemes (Northern Ireland) Act 1993(64);

“approved AVC body” means a building society or a person operating an approved scheme which provides benefits in respect of persons who have paid contributions in addition to those provided in relation to them under an occupational pension scheme;

“approved non-local government employment” means employment in which a person participates in an approved non-local government scheme;

“approved non-local government scheme” means a non-local government scheme which is –

- (a) approved under Part XIV of the Taxes Act; or
- (b) approved by the Commissioners of Inland Revenue for the purposes of these Regulations;

“approved scheme” has the meaning given in section 612 of the Taxes Act;

“Assembly” means the Northern Ireland Assembly;

“AVCs” means contributions made under regulation 63;

“AVC insurer” means –

- (a) a person who has permission under Part IV of the Financial Services and Markets Act 2000(65) to carry out contracts of long-term insurance; or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long term insurance,

and this definition must be read with –

- (i) section 22 of the Financial Services and Markets Act 2000;
- (ii) any relevant order under that section;
- (iii) Schedule 2 to that Act;

“AVC pension policy” means a contract entered into on behalf of a member by the Committee with an AVC insurer for the payment by the company of pension benefits to the intended recipients of those benefits which are in addition to those payable under Part II and Chapters II and III of Part III;

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(64) 1993 c. 49

(65) 2000 c. 8

“away on jury service”, in relation to a person, means being away from work with permission given so that he could –

- (a) attend for jury service in pursuance of a summons under the Juries (Northern Ireland) Order 1996<sup>(66)</sup>; or
- (b) attend as a juror at an inquest under the Coroners Act (Northern Ireland) 1959<sup>(67)</sup>;

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

“Belfast Corporation” means the council of the former county borough of Belfast;

“The Belfast Corporation Superannuation Scheme” means the superannuation scheme made by Belfast Corporation under section 5A<sup>(68)</sup> of the Act of 1950, on 4th August 1964 or 20th April 1951 (both as amended) as the circumstances require;

“building society” has the meaning given in the Building Societies Act 1986<sup>(69)</sup>;

“cancelling notice”, in relation to a person’s relevant reserve forces service, means –

- (a) the agreement (by a member who has not waived his right to receive a return of contributions under regulation 88) to receive them; or
- (b) a notice in writing given by him to the Committee not later than 12 months after the end of the period of service to which the notice relates (or within such longer period as it may allow) that the service should not be treated as relevant reserve forces service;

“child” has the meaning given in regulation 46;

“Class A member”, “Class B member” and “Class C member” have the meanings given in paragraph 1(1) of Schedule 4 and “Class B membership” and “Class C membership” shall be construed accordingly;

“club scheme” means an occupational pension scheme which –

- (a) provides benefits calculated by reference to final pay;
- (b) (except where it is established and maintained in the Channel Islands or the Isle of Man) is approved by the Commissioners of Inland Revenue under Chapter I of Part XIV of the Taxes Act;
- (c) is open to new participants, or is a closed scheme the trustees or managers of which also provide an open scheme which is a club scheme for new employees of the same employer and of the same grade or level of post as the participants in the closed scheme; and
- (d) complies with reciprocal arrangements for the payment and receipt of transfer values with the schemes made under Article 9 of the Order of 1972;

“The Committee” means the Northern Ireland Local Government Officers' Superannuation Committee established under section 1 of the Act of 1950;

“The Communities' scheme” means the pension scheme provided for officials and other servants of the Communities in accordance with regulations adopted by the Council of the European Communities;

“Community institution” includes a body treated as one of the Communities' institutions for the purposes of the Communities' scheme;

“continuity conditions” has the meaning given in paragraph 1(1) of Schedule 4;

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<sup>(66)</sup> S.I. 1996/1141 (N.I. 6)

<sup>(67)</sup> 1959 c. 15 (N.I.)

<sup>(68)</sup> Section 5A was inserted by 1951 c. 9, section 2

<sup>(69)</sup> 1986 c. 53

“contracted-out employment” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “contracted-out”, in relation to a scheme, must be construed in accordance with that Act;

“contractual hours” –

- (a) in relation to an employee (other than an employee with non-cyclical fluctuating hours), means the number of hours specified in his contract of employment as his contractual hours for the purposes of the Scheme; and
- (b) in relation to an employee with non-cyclical fluctuating hours, means the number of hours calculated as his contractual hours for the purposes of the Scheme in accordance with the provisions of his contract of employment;

“contractual weeks”, in relation to an employee, means the number of weeks in every period of 12 months for which, assuming he is not away on unpaid leave, pay is payable to him;

“contract of employment” includes terms of office;

“contributory employee” means a person who was entitled to participate in the benefits of a superannuation fund maintained under Part I of the Act of 1937;

“deferred member” has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995, except as provided in regulation 34(3) and (5);

“the Department” means the Department of the Environment;

“earnings factors” means the earnings factors referred to in section 10 of the Pension Schemes (Northern Ireland) Act 1993;

“eligible child” has the meaning given in regulation 46;

“employee” includes a permanent, temporary or casual employee;

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

“employment” includes office;

“equivalent pension benefit” has the same meaning as in section 56(1) of the National Insurance Act (Northern Ireland) 1966(70);

“fees” includes other payments in the nature of fees;

“final pay” shall be construed in accordance with regulation 22;

“final pay period” shall be construed in accordance with regulations 22 and 23;

“fluctuating emoluments” are any part of an employee’s earnings which are not paid on a fixed basis and are additional to the basic wage or salary;

“former local authority” means a body, other than a Scheme employer, which was a local authority within the meaning of the Act of 1937 as originally enacted;

“the former regulations” means the 2000 Regulations, or as the circumstances require, the 1992 Regulations, the 1981 Regulations, the 1962 Regulations or the 1950 Regulations and shall be deemed also, in the case of a member who immediately before 1st April 1973 was subject to the Belfast Corporation Superannuation Scheme to include the provisions of that Scheme;

“FSAVC scheme” means a scheme approved by virtue of section 591(2)(h) of the Taxes Act;

“the fund” means the superannuation fund established under the 1950 Regulations;

“Government department” has the meaning given in section 176 of the Pension Schemes (Northern Ireland) Act 1993;

“the Great Britain Acts” means the National Insurance Acts 1965 to 1974(71);

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(70) 1966 c. 6 (N.I.)

(71) 1965 c. 51; 1966 c. 6; 1967 c. 73; 1969 c. 4; 1969 c. 44; 1971 c. 50; 1972 c. 57; 1974 c. 14

“guaranteed minimum pension” means the guaranteed minimum as defined in sections 10 and 13 of the Pension Schemes (Northern Ireland) Act 1993 (minimum pensions for earners, widows and widowers), so far as it is attributable to earnings factors for the tax year 1988-89 or for subsequent tax years, increased in accordance with the requirements of section 105 of that Act (annual increase of guaranteed minimum pensions);

“ill-health pension” and “ill-health grant” shall be construed in accordance with regulation 29;

“the Insurance Act” means the National Insurance Act (Northern Ireland) 1966;

“the Isle of Man Act” means the National Insurance (Isle of Man) Act 1961 (an Act of Tynwald);

“local Act contributor” means a person who was entitled to participate in the benefits of a pension fund maintained under a local Act scheme;

“local Act scheme” has the meaning given in section 8 of the Superannuation Act 1972<sup>(72)</sup>, except that where it refers to any time before 25th March 1972 it has the same meaning as in the Act of 1937;

“local authority” has the meaning assigned to it by Article 2 of the Order of 1972 and shall include the Northern Ireland Housing Executive;

“local government auditor” has the same meaning as in the Local Government Act (Northern Ireland) 1972<sup>(73)</sup>;

“local government employment” means –

- (a) in relation to any time before 1st March 1993, employment by virtue of which the person employed was, or is deemed to have been, a contributory employee or a local Act contributor; and
- (b) in relation to any time after 28th February 1993, means employment by virtue of which the person employed is or has been, or is or has been deemed to be a member of the Scheme, or a pensionable employee (within the meaning of the 1992 Regulations) or a local Act contributor;

“lower earnings limit” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“manual worker” is an employee who is not an officer;

“maternity rights returner” is a woman who exercises a right to return to work after being away from work wholly or partly because of pregnancy or confinement;

“member” has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995 except that it shall not include a pension credit member except where specific reference is made to such member in regulation 95;

“Minister” means the Minister of the Environment;

“money purchase benefits” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“non-cyclical fluctuating hours” means hours which the employing authority are entitled to require the employee to work in a contractual week in any case where those hours vary in a way which is not cyclical;

“non-local government scheme” means an occupational pension scheme or other arrangements for superannuation, not being –

- (a) the superannuation scheme provided in regulations made under the Act of 1950; or

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<sup>(72)</sup> 1972 c. 11

<sup>(73)</sup> 1972 c. 9 (N.I.)



(b) the superannuation scheme provided in regulations for the time being in force under Article 9 of the Order of 1972;

“normal benefit age” means 65;

“normal retirement age” has the meaning given in regulation 26(3);

“normal retirement date” has the meaning given in regulation 26(2);

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 of the Pension Schemes (Northern Ireland) Act 1993 other than –

(a) 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;

(b) an additional voluntary contributions scheme;

(c) an appropriate policy;

(d) a personal pension scheme; or

(e) a self-employed pension arrangement;

“officer” means an employee whose duties are wholly or mainly administrative, professional, technical or clerical;

“official pension” has the meaning given in the Pensions (Increase) (Northern Ireland) Act 1971(74);

“the Order of 1972 ”means the Superannuation (Northern Ireland) Order 1972(75);

“ordinary maternity leave” means for any period prior to 24th September 1996, leave under Article 15 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(76) and for any period commencing on or after 24th September 1996, leave under Part IX of the Employment Rights (Northern Ireland) Order 1996(77);

“parental leave” means leave under regulation 13(1) of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999(78);

“part-time employee” means an employee –

(a) whose contract of employment provides that he is such an employee for the Scheme; or

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

“payment in lieu of contributions” means a payment made in lieu of contributions under the Act of 1959, the Insurance Act, the Great Britain Acts or the Isle of Man Act;

“payment period” has the meaning given in regulation 6(4);

“pay” shall be construed in accordance with regulation 12;

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

“the Pensions Order” means the Pensions (Northern Ireland) Order 1995;

“pension credit” means a credit under Article 26(1)(b) of the 1999 Order or under section 29(1) (b) of the 1999 Act;

“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 attributable to a pension credit;

(74) 1971 c. 35 (N.I.)

(75) S.I.1972/1073 (N.I. 10)

(76) S.I. 1976/2147 (N.I. 28)

(77) S.I 1996/1919 (N.I. 16); section 70C was inserted by the [Employment Relations \(Northern Ireland\) Order 1999](#) (S.I. 1999 /2790 (N.I. 9) paragraph 3, Part III of Schedule 4

(78) S.R. 1999 No. 471

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

“pension debit” means a debit under Article 26(1)(a) of the 1999 Order or under section 29(1)(a) of the 1999 Act ;

“pension debit member” means a member, whether an active member, a deferred member or a pensioner member, whose shareable rights under the Scheme are subject to a pension debit;

“pension sharing order” in relation to a pension credit member, a pension debit member, a person entitled to a pension credit or pension credit rights means the order or provision by virtue of which Article 26 of the 1999 Order or section 29 of the 1999 Act takes effect;

“period of maternity absence” means any period throughout which a woman –

- (a) is absent from duty by reasons of pregnancy or confinement; and
- (b) may exercise the right under her contract of employment to return to work;

“permanently incapable” means incapable until, at the earliest, the member’s 65th birthday;

“personal pension scheme” means a personal pension scheme (within the meaning of section 1 of the Pension Schemes (Northern Ireland) Act 1993) which has been approved under Chapter IV of Part XIV of the Taxes Act or provisionally approved under section 655(5) of that Act;

“preserved benefits” means benefits to which a person becomes entitled under regulation 33, or the corresponding provisions of the former regulations and which have not had an election made in respect of them under regulation 34(1) nor have yet become payable;

“principal civil service pension scheme” has the meaning given in Article 4(10) of the Order of 1972;

“prospective member” means a person who under his contract of service or these Regulations –

- (a) may, if he wishes or his employer consents, become a member or will be able to do so if he continues in the same employment sufficiently long, or
- (b) will become a member unless he chooses not to do so;

“reference banks” means the seven largest persons for the time being who –

- (a) have permission under Part IV of the Financial Services and Markets Act 2000 to accept deposits;
- (b) are incorporated in and carrying on within the United Kingdom a regulated activity of accepting deposits; and
- (c) quote a base rate in sterling;

and for this definition the size of a person at any time is to be determined by reference to the gross assets denominated in sterling of that person, together with any subsidiary (as defined in Article 4 of the Companies (Northern Ireland) Order 1986)<sup>(79)</sup>, as shown in the audited end-of-year accounts last published before that time and this definition must be read with –

- (i) section 22 of the Financial Services and Markets Act 2000;
- (ii) any relevant order under that section; and
- (iii) Schedule 2 to that Act;

“relevant reserve forces service” means service (other than service for the purposes of training only or service for a period in respect of which a cancelling notice has been served) –

- (a) in pursuance of any notice or directions given under any enactment which provides for the calling out on permanent service, or the calling into actual service, or the embodiment

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<sup>(79)</sup> S.I. 1986/1032 (N.I. 6); Articles 4 and 4A were substituted for Article 4 by Article 62(1) of S.I. 1990/1504 (N.I. 10)

of, any reserve or auxiliary force, or members of such a force, or the recall of service pensioners;

- (b) in pursuance of any obligation or undertaking to serve when called upon as a commissioned officer; or
- (c) rendered by virtue of section 28 or 65 of the Reserve Forces Act 1996<sup>(80)</sup>,

and paragraph (b) applies whether or not the obligation or undertaking is legally enforceable, but not in the case of an obligation or undertaking to accept a permanent commission or a commission for a fixed term or to serve for the purposes of periodical training;

“reserve forces pay”, in relation to any person, is the total of –

- (a) his pay for performing relevant reserve forces service (including marriage, family and similar allowances); and
- (b) any payments under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) (Northern Ireland) Order 1953<sup>(81)</sup>;

“reserve forces service leave”, in relation to a person, means being away from work –

- (a) after –
  - (i) he has left the employment in which he is an active member; or
  - (ii) he has been granted leave of absence from such an employment, in order to perform reserve forces service;
- (b) without having agreed to receive a return of contributions under regulation 88; and
- (c) without having elected that the absence is not to count as such by giving notice in writing to the Committee not later than 12 months after the end of the period of reserve forces service to which the notice relates (or within such longer period as it may allow);

“reserve or auxiliary force” means the whole or part of the Royal Navy Reserve (including the Royal Fleet Reserve), the Royal Marines Reserve, the Territorial Army, the Army Reserve, the Air Force Reserve, the Royal Air Force Volunteer Reserve or the Royal Auxiliary Air Force;

“Revenue agreement”, in relation to a member, means agreement in writing by the Commissioners of Inland Revenue given after an application to them by the Committee that he may be treated as a Class B member or a Class C member by virtue of his membership before 1st June 1989 or, as the case may be, 17th March 1987 of a scheme approved under Chapter I of Part XIV of the Taxes Act;

“Revenue permitted maximum” means the permitted maximum, within the meaning of section 590C(2) of the Taxes Act;

“SCAVCs” means contributions made under regulation 70;

“the Scheme” means the occupational pension scheme constituted by these Regulations, the Transitional Regulations and the 2000 Regulations (so far as they continue to operate);

“Scheme employer” means a body as defined in regulation 3(3) (but see regulation 4(15));

“Scheme managers” means –

- (a) in relation to a statutory scheme, the Government department concerned or police or fire authority administering the scheme; and
- (b) in any other case, the person responsible for the management of the scheme;

“self-employed pension arrangement” has the same meaning as in section 176 of the Pension Schemes (Northern Ireland) Act 1993;

<sup>(80)</sup> 1996 c. 14  
<sup>(81)</sup> S.I. 1953/197

“service” –

- (a) in Chapter VI of Part IV means service or employment with any employer; and
- (b) elsewhere, means service with a Scheme employer,

and service rendered by an employee of a Scheme employer 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 the Scheme employer;

“service pensioner” means a person in receipt of a pension (other than a pension awarded in respect of disablement) granted –

- (a) in respect of service in the Royal Navy, the Royal Marines, the regular army and the regular air force or any reserve or auxiliary force which has been called out on permanent service or which has been embodied; or
- (b) in respect of that and other service;

“shareable rights” means a person’s shareable rights mentioned in Article 24(2) of the 1999 Order or under section 27(2) of the 1999 Act;

“standard contribution rate” shall be construed in accordance with regulation 11;

“state pensionable age” means pensionable age within the meaning of section 122 of the Social Security Contributions and Benefits Act (Northern Ireland) 1992<sup>(82)</sup>;

“superannuable membership” has the meaning given in regulation 9(2);

“the Taxes Act” means the Income and Corporation Taxes Act 1988<sup>(83)</sup>;

“tax year” means the 12 months beginning with 6th April in any year;

“the Transitional Regulations” means the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002<sup>(84)</sup>;

“total membership” and “total period of membership” shall be construed in accordance with regulation 8(2);

“trade dispute” has the meaning given by Article 2(4) and (7) of the Industrial Relations (Northern Ireland) Order 1992<sup>(85)</sup>;

“trade dispute absence” means absence from duty, otherwise than with leave, for a period of one or more days during and because of a trade dispute;

“transfer date” in relation to a pension credit member and pension credit rights means the day on which the pension sharing order takes effect;

“transferor” in relation to a pension credit member or a person entitled to a pension credit means the person to whose shareable rights the pension sharing order relates;

“unaggregated period”, in relation to a period of membership, has the meaning given in regulation 34(6) and “aggregated” shall be construed accordingly;

“upper earnings limit” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“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;

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<sup>(82)</sup> 1992 c. 7

<sup>(83)</sup> 1988 c. 1

<sup>(84)</sup> S.R. 2002 No. 353

<sup>(85)</sup> S.I. 1992/807 (N.I. 5)

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

- (a) that he is such an employee for the purposes of the Scheme; or
- (b) 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.

## SCHEDULE 2

Regulation 4(7)(d) and (16)

### MATTERS TO BE INCLUDED IN AN ADMISSION AGREEMENT IN CERTAIN CASES

1. An admission agreement with a transferee admission body, shall contain provision for the matters set out in paragraphs 2 to 15.
2. A reference to the date of the transfer arrangement.
3. A requirement for the transferee admission body to pay to the Committee all contributions and payments due under the Regulations.
4. A provision whereby the transferor Scheme employer may set off against any payments due to the transferee admission body an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Regulations) due from the transferee admission body as an employing authority.
5. A reference to the indemnity or bond in the approved form.
6. A warranty from the transferee admission body that such an indemnity or bond is in place.
7. A provision requiring the transferee admission body to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and in any employer’s guide published by the Committee and provided to the transferee admission body.
8. An undertaking from the transferee admission body to the Committee that it shall not do anything to prejudice the status of the Scheme as an exempt approved scheme within the meaning given by section 592(1) of the Taxes Act.
9. A representation and warranty from the transferee admission body to the Committee and to the transferor Scheme employer that all the transferee admission body’s employees or class of employees who are specified as members are employed in connection with the services or assets referred to in the transfer arrangement.
10. An undertaking from the transferee admission body that it will promptly notify the Committee and the transferor Scheme employer in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for its employees who are members and of any terminations of employment by virtue of redundancy, in the interests of efficiency, an offence of a fraudulent character or due to grave misconduct.
11. A requirement that the transferee admission body notifies the Committee and the transferor Scheme employer of each occasion on which it exercises discretion.
12. A requirement that the transferee admission body notifies the Committee and the transferor Scheme employer of any matter which may affect, or is likely to affect, its participation in the Scheme and that it gives immediate notice of any actual or proposed change in its status which may give rise to a termination, including take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution.
13. A minimum period of three months’ notice to terminate the admission agreement but automatic termination, as required by regulation 4(9) in the event that the transferee admission body ceases to be such a body.

14. A right for the Committee to terminate the agreement in the event of –
- (a) the insolvency, winding up or liquidation of the transferee admission body;
  - (b) a breach by the transferee admission body of any of its obligations under the admission agreement (but where the breach is capable of remedy only where it has not been remedied within a reasonable time);
  - (c) the withdrawal of approval by the Commissioners of Inland Revenue to the participation of the transferee admission body as a Scheme employer; or
  - (d) a failure by the transferee admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the Committee requiring it to do so.
15. A requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the transferor Scheme employer and of the Committee (if different).

## SCHEDULE 3

Regulation 9(3) and 125(1)

## EXCLUDED MEMBERSHIP

## TABLE

<i>Description of membership</i>	<i>Purposes for which membership does not count</i>	<i>Relevant Notes</i>
1. A credited period which is counted as a period of membership under regulation 125(1) or was counted under any corresponding earlier provision and is counted under regulation 8(1)(d).	Calculating total membership for paragraph 2, 4, 5 or 6(1) of Schedule 4 (and see regulation 14(4)).	
2. Any period which has already been counted to determine whether a relevant member was entitled to the relevant benefit or has been or may be used to calculate its amount.	All regulations. (but see regulation 34(5)(b).	(1) and (2)
3. So much of a Class A member's total membership as exceeds 40 years.	Calculating the amount of any benefit under the Regulations.	(3) to (5)
4. So much of the total membership of a Class B member or Class C member as –	Calculating the amount of any benefit under the Regulations.	(3) to (5)
(a) is membership before he attains the age of 60 and exceeds 40 years, or		

<i>Description of membership</i>	<i>Purposes for which membership does not count</i>	<i>Relevant Notes</i>
(b) exceeds 45 years.		

5. So much of the Calculating the amount of any membership of a member as benefit under regulations 18 to respects whom an amount is 36. recovered or retained under regulation 116 (misconduct obligations) as requires to be excluded to reduce the value referred to in regulation 116(2) (b) by that amount.

*Notes:*

- (1) For paragraph 2, a relevant member is a member who –
  - (a) has entered the employment of a Scheme employer or former local authority after becoming entitled to payment of a pension benefit (other than a benefit under the National Insurance Act (Northern Ireland) 1966); or
  - (b) has entered such employment after becoming entitled to a benefit under regulation 33 and has not made an election under regulation 34(1) (or, in a case where he was able to do so, gave notice under regulation D12(1)(c) of the 2000 Regulations (retention of entitlement to preserved benefits)), and the relevant benefit for a relevant member is the benefit mentioned in paragraph (a) or, as the case may be, paragraph (b).
- (2) Paragraph 2 applies to a maternity rights returner –
  - (a) unless she has made an election under regulation 34(1);
  - (b) in a case where she was able to give notice under regulation D12(1)(c) of the 2000 Regulations (retention of entitlement to preserved benefits), if she did so.
- (3) Any membership, which is excluded by paragraph 3 or 4(a) for calculating the amount of a death grant under regulation 41 in a case where a pension is reduced under regulation 44, is taken from the beginning of the period of membership.
- (4) A period which –
  - (a) is the excess of any enhanced membership period counted under regulation 30 (ill-health) over the total membership otherwise; or
  - (b) is counted by virtue of regulation F6(1)(a) of the 1992 Regulations (war service), counts as membership before attaining the age of 60 for calculating the amount of any benefit under regulations 18 to 36.
- (5) For paragraphs 3 and 4 the total membership includes any earlier period which was taken into account in the calculation of a retirement pension or an annual pension under the former regulations.

## SCHEDULE 4

Regulations 8(2), 22(1), 25, 53(2), 55(5), 57(2), 61(5) and 99(2)

## REVENUE RESTRICTIONS

*Preliminary*

## 1.—(1) In these Regulations –

“Class A member” is a member who –

- (a) became a member on or after 1st June 1989 and is not to be treated as a Class B member or Class C member by virtue of a Revenue agreement; or
- (b) was a Class B member or a Class C member immediately before that date and is deemed to have become a Class A member by virtue of making a Class A election;

“Class A election” means an election duly made by a Class B member or a Class C member by notice in writing to the Committee, before the date on which he ceases to be an active member

for any reason (including death), that he wishes to be treated as a Class A member for the Scheme, as from 1st June 1989;

“Class B member” is a member who –

- (a) became a member on or after 17th March 1987 and before 1st June 1989, or is to be treated as a Class B member by virtue of a Revenue agreement;
- (b) has continued to be a member since before 1st June 1989 and has not had a continuity break or satisfies one of the continuity conditions in relation to any period when he was not a member;
- (c) is not to be treated as a Class C member by virtue of a Revenue agreement;
- (d) has continued to be a member since before 1st June 1989 and has either not had a continuity break or satisfies one of the continuity conditions in relation to any period when he was not a member; and
- (e) is not deemed to have become a Class A member by virtue of making a Class A election;

“Class C member” is a member who –

- (a) became a member before 17th March 1987 and has not had a continuity break or is to be treated as a Class C member by virtue of a Revenue agreement;
- (b) has continued to be a member since before 17th March 1987 or satisfies one of the continuity conditions in relation to any period when he was not a member;
- (c) has continued to be a member since before that date or satisfies one of the continuity conditions in relation to any period when he was not a member; and
- (d) is not deemed to have become a Class A member by virtue of a Class A election;

“continuity break” is a change of employment from a Scheme employer (including an admission body) to a non-associated or transferee admission body (as defined in regulation 4(16)(c) and (g)) but does not include a change in the case of a person who was a member of the Scheme on 2nd April 2001;

“continuity conditions”, in relation to a Class B member or a Class C member, are –

- (a) that his active membership ceased on his secondment or posting to another employer, at the time of the secondment or posting he had a definite expectation that he would become an active member again when it ended, and he again became an active member at the end of his secondment or posting;
- (b) that his active membership ceased by reason of his unpaid absence and he began paying contributions again under regulation 11 within one month of returning to work;
- (c) that the member’s active membership ceased wholly or partly because of her pregnancy or confinement and she began paying contributions again under that regulation within one month of returning to work as a maternity rights returner;
- (d) that the member’s active membership ceased otherwise than as mentioned in paragraph (a), (b) or (c) and within one month he rejoined the Scheme as an active member and began paying contributions again under that regulation;

“existing rights member” means a member to whom regulation 5(2) of the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990(86) applies;

“relevant benefits” has the meaning given in section 612(1) of the Taxes Act 1988.

- (2) A person has retained rights if he is entitled to or has received relevant benefits accrued under –
  - (a) an approved scheme, or a scheme in respect of which approval is sought;



- (b) a relevant statutory scheme (as defined in section 611A of the Taxes Act);
  - (c) a fund to which section 608 of that Act applies (funds approved before 6th April 1980);
  - (d) a retirement benefits scheme (as defined in section 611 of that Act) accepted by the Commissioners of Inland Revenue as a scheme which corresponds as mentioned in section 596(2)(b) of that Act;
  - (e) a contract or trust scheme approved under section 620 of that Act or a personal pension scheme approved under section 631 of that Act; or
  - (f) transfer payments from pension schemes which are established outside the United Kingdom held in a type of arrangement mentioned in sub-paragraph (a), (b) or (e).
- (3) But retained rights which are death benefits must be disregarded if –
- (a) the member’s pay in the first year of his employment during which he is a member does not exceed one quarter of the Revenue permitted maximum for the year of assessment in which that first year begins; or
  - (b) they do not exceed £2,500.
- (4) Retained rights may be disregarded if, after 31st August 1991, the member started to purchase benefit or was given extra benefits under Part III, and
- (a) where the member became a member on or after 14th March 1989, his remuneration in the first year of his employment during which he is a member does not exceed one quarter of the Revenue permitted maximum for the year of assessment in which the first year begins; or
  - (b) where the member became a member before 14th March 1989, his remuneration in the first year in which he starts to accrue benefits under Part III does not exceed one quarter of the Revenue permitted maximum for the year of assessment in which the first year begins.
- (5) For sub-paragraph (2) benefits accrued under the Scheme must be disregarded unless they accrued in respect of a period of membership as respects which the person is treated as a deferred member or a pensioner member by virtue of regulation 34(5).
- (6) In this Schedule “final remuneration” means, subject as provided in sub-paragraphs (7) to (10), the greater of –
- (a) the highest total remuneration for any period of twelve complete and consecutive months (ending on the last day of the month) falling wholly within the five years preceding the relevant date; and
  - (b) the yearly average of the total emoluments from the employer which are assessable to income tax under Case I or II of Schedule E and upon which income tax liability has been determined in any three or more consecutive years ending at the end of any month not earlier than 10 years before the relevant date.
- (7) Where final remuneration is calculated by reference to any period other than the last complete year ending on the relevant date, the member’s total remuneration or total emoluments may be increased for any year in proportion to any increase in the retail prices index from the last day of that period up to the relevant date, but for a Class C member this shall not apply to the calculation of the maximum retirement grant benefit unless the member’s aggregate retirement benefit is similarly increased beyond the maximum amount which could have been paid but for this provision and the similar provision in the definition of total remuneration and then only to the same extent.
- (8) In respect of a Class B member, final remuneration for the purpose of the calculation of the retirement grant shall not exceed £100,000 or such other sum as may for the time being be specified in an order made by the Treasury under section 590(3) of the Taxes Act<sup>(87)</sup>.

(87) 1988 c. 1; the provisions of Schedule 6 to the Finance Act 1989 (c. 26) which amend section 590(3) of the Taxes Act do not have effect as regards a person who became a member of the Scheme before 1st June 1989

(9) In respect of any member whose remuneration in any tax year after 5th April 1987 used for the purpose of calculating retirement benefits has exceeded £100,000 (or such other sum as may for the time being be specified in an order made by the Treasury under section 590(3) of the Taxes Act) final remuneration shall not exceed the amount ascertained in accordance with sub-paragraph (6)(b) and sub-paragraph (6)(a) shall not apply unless the member chooses to adopt £100,000 (or such other sum as may for the time being be specified in an order made by the Treasury under section 590(3) of the Taxes Act).

(10) Remuneration and total emoluments shall not include any amounts which arise from the acquisition or disposal of shares or any interest in shares or from a right to acquire shares or anything in respect of which tax is chargeable by virtue of section 148 of the Taxes Act.

(11) In this Schedule –

- (a) “relevant date” means the last day on which the member is an active member;
- (b) “service” means service in local government employment;
- (c) “total remuneration” in relation to any member means the aggregate of –
  - (i) actual amounts received for the twelve complete and consecutive months ending on or immediately prior to the date for which total remuneration is to be calculated (in this definition called the “calculation date”) which correspond to the fixed annual rates of salary for the time being in respect of that member’s service; and
  - (ii) that member’s average annual remuneration from the employer or otherwise in respect of service by the way of commissions, fluctuating emoluments or other benefits assessed to income tax under Schedule E (but not within sub-paragraph(i)) for the 36 complete and consecutive months ending on or immediately prior to the calculation date, but remuneration within the scope of this sub-paragraph for a year prior to that ending with the calculation date may be increased in proportion to any increase in the retail price index from the last day of that year up to the calculation date.

#### *Class A members*

2.—(1) This paragraph sets out limits on benefits in respect of local government employment payable to or in respect of a Class A member under these Regulations.

(2) The aggregate pension payable must not exceed one sixtieth of the member’s final remuneration multiplied by his years of service.

(3) Subject to sub-paragraph (2), the aggregate pension payable on retirement must not exceed the lesser of –

- (a) one thirtieth of the member’s final remuneration multiplied by the member’s years of service or 20 years if less; and
- (b) two-thirds of the member’s final remuneration less the value of any retained rights.

(4) But for a pension payable under regulation 29 (ill-health) the limit is the maximum retirement grant payable under sub-paragraph (6) or (7) assuming he had continued as an active member until his normal retirement date.

(5) The aggregate pension payable to a member who has elected under regulation 7 to leave the Scheme but remains in local government employment is the greater of –

- (a) one sixtieth of the member’s final remuneration multiplied by his years of service prior to leaving the Scheme or 40 years if less; and
- (b) the maximum pension that could have been payable at his normal retirement date under sub-paragraph (2) or (3) multiplied by the fraction of which –

- (i) the numerator is the member's years of service prior to leaving the Scheme or 40 years if less, and
- (ii) the denominator is his total period of membership assuming he had remained an active member until his normal retirement date or 40 years if less.

This amount may be increased by 5 per cent. for each complete year, or in line with any increase in the retail prices index if greater, between the relevant date and the date on which the pension becomes payable.

(6) For sub-paragraphs (2), (3), (4) and (5) a member who is entitled to be paid a lump sum on retirement is treated as if he were entitled instead to be paid a pension on retirement of an annual amount equal to one twelfth of the lump sum.

(7) The aggregate benefit payable by way of lump sum must not exceed three eightieths of the member's final remuneration, multiplied by his years of service.

(8) Subject to sub-paragraph (7), the aggregate benefit payable by way of a lump sum must not exceed the lesser of –

- (a) three times the initial pension paid to the member under Part II and Part III excluding Chapter IV of Part III; and
- (b) one and a half times the member's final remuneration.

(9) But for a lump sum payable under regulation 29 the limit is the maximum retirement grant payable under sub-paragraph (7) or (8) assuming he had continued as an active member until his normal retirement date.

(10) The benefits payable by way of lump sum on the death of an active or deferred member must not exceed four times his final remuneration (disregarding the proviso in paragraph 1(9), paragraph 1(10) and paragraph 9(6)) less any lump sum death in service retained rights (other than a refund of the member's contributions and any interest on such contributions) or, if greater £5000.

(11) The total service taken into account under sub-paragraphs (2), (4), (7) and (9) must not exceed 40 years.

(12) The aggregate pension in respect of local government employment for a surviving spouse or eligible child of a member (other than a pension provided by surrender of the member's own pension under regulation 36) payable or prospectively payable to that surviving spouse or eligible child shall not exceed –

- (a) in the case of an active or deferred member, an amount equal to two thirds of the amount which would be payable under sub-paragraph (4), ignoring any retained rights, if the member had retired under regulation 29 on the date of his death; and
- (b) in the case of a pensioner member, an amount equal to two thirds of the amount payable at the date of death under sub-paragraph (2), (3), (4), (5) or (6), ignoring any retained rights.

(13) If pensions are payable to more than one of the member's surviving spouse and eligible children, the aggregate of all such pensions shall not exceed –

- (a) on the death of an active member or a deferred member the amount payable under sub-paragraph (4); and
- (b) on the death of a pensioner member, the amount payable under sub-paragraph (2), (3), (4), (5) or (6).

(14) The final remuneration of a Class A member must not exceed the Revenue permitted maximum.

(15) But if a Class A member is an existing rights member sub-paragraph (14) does not apply for calculating any benefit under the Scheme in so far as it is calculated by reference to a credited period which is counted as a period of membership under regulation 125(1).

*Class B members and Class C members*

3. Paragraphs 4 to 6 set out limits on benefits in respect of local government employment payable to or in respect of a Class B member or Class C member under these Regulations and paragraph 7 limits additional contributions in some circumstances.

4.—(1) Subject to sub-paragraph (2), the aggregate pensions payable on retirement at normal retirement date must not exceed the lesser of –

- (a) for Class B members, one thirtieth of the member's final remuneration multiplied by his years of service, or 20 years if less;
- (b) for Class C members with less than 10 years service, the member's final remuneration multiplied by the fraction specified below –

1 to 5 years	1/60th for each year
6 years	8/60ths
7 years	16/60ths
8 years	24/60ths
9 years	32/60ths

- (c) two thirds of the member's final remuneration less the value of any retained rights.

(2) But if it results in a higher sum than the maximum under sub-paragraph (1), the maximum aggregate pension on retirement at his normal retirement date is one sixtieth of the member's final remuneration multiplied by his years of service or 40 years if less.

(3) But for a pension payable under regulation 29 the limit is the maximum pension payable under sub-paragraph (1) or (2), multiplied by the years of service the member would have had if he had continued as an active member until his normal retirement date.

(4) For a pension payable under regulation 28 or 33, if it results in a higher sum, for the maximum under sub-paragraph (2) there is substituted an amount equal to the amount that would be the maximum under sub-paragraph (2) if the member had remained an active member until his normal retirement date, multiplied by the fraction of which –

- (a) the numerator is –
  - (i) his years of service, or
  - (ii) 40 years,
 whichever is less, and
- (b) the denominator is –
  - (i) his years of service, assuming he had remained an active member until his normal retirement date, or
  - (ii) 40 years,
 whichever is less.

This amount may be increased by 5 per cent. for each complete year, or in line with any increases in the retail prices index if greater, between the relevant date and the date on which the pension becomes payable.

(5) The aggregate pension payable on retirement after the member's normal retirement date must not exceed –

- (a) the amount payable under sub-paragraph (1) or (2) on the basis the actual retirement date was the member's normal retirement date;

- (b) the amount that could have been payable under sub-paragraph (1) or (2) on retirement at normal retirement date –
  - (i) with such an increase as an actuary appointed by the Committee considers appropriate in view of the period of delay in payment between his normal retirement date and the actual date the pension becomes payable, or
  - (ii) adjusted to reflect any increase in the general level of retail prices in Great Britain during that period;
- (c) one sixtieth of the member's final remuneration, multiplied by his increased period of membership,

whichever is the greatest.

(6) For sub-paragraphs (1) to (5) a member who is entitled to be paid a lump sum on retirement is treated as if he were entitled instead to be paid a pension on retirement of an annual amount equal to one twelfth of the lump sum.

- (7) A member's increased period of membership is the sum of –
  - (a) his total membership ending with his normal retirement date; and
  - (b) his total membership after his normal retirement date,

but must not exceed 45 years.

(8) The aggregate pension in respect of local government employment for a surviving spouse or eligible child of a member (other than a pension provided by surrender of the member's own pension under regulation 36) payable or prospectively payable to that surviving spouse or eligible child shall not exceed –

- (a) in the case of an active or deferred member, an amount equal to two thirds of the amount which would be payable under sub-paragraph (3), ignoring any retained rights, if the member had retired in circumstances entitling him to an ill-health pension and grant under regulation 29 on the date of his death; and
- (b) in the case of a pensioner member, an amount equal to two thirds of the amount payable at the date of death under sub-paragraph (1), (2), (3), (4) or (5) ignoring any retained rights and increased in line with any subsequent increase in the retail prices index.

(9) If pensions are payable to more than one of the member's surviving spouse and eligible children, the aggregate of all such pensions shall not exceed –

- (a) on the death of an active member or deferred member the amount payable under sub-paragraph (3); and
- (b) on the death of a pensioner member, the amount payable under sub-paragraph (1), (2), (3), (4) or (5).

5.—(1) Subject to sub-paragraph (3), the aggregate benefit payable by way of a retirement grant for a Class B member on retirement at or before his normal retirement date must not exceed the lesser of –

- (a) three times the initial pension paid to the member under Part II and Part III, excluding Chapter IV of Part III; and
- (b) one and a half times the member's final remuneration less the value of any retained benefits in lump sum form.

(2) Subject to sub-paragraph (3), the aggregate benefit payable by way of a retirement grant on retirement at his normal retirement date for a Class C member must not exceed the lesser of –

- (a) if the member has less than 20 years service, his final remuneration multiplied by the fraction set out in the table below –

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

<i>Years of service to normal retirement date</i>	<i>80ths of final remuneration</i>
1 to 8	3 for each year
9	30
10	36
11	42
12	48
13	54
14	63
15	72
16	81
17	90
18	99
19	108; and

(b) one and a half times the member's final remuneration less the value of any retained rights in lump sum form.

(3) If it results in a higher sum than the maximum under sub-paragraph (1) or (2), the maximum aggregate retirement grant is three eightieths of the member's final remuneration multiplied by each year of service or 40 years if less.

(4) But for a retirement grant payable under regulation 29, the limit is the maximum retirement grant payable under sub-paragraph (1), (2) or (3) assuming he continued as an active member until his normal retirement date.

(5) The aggregate benefit payable to a Class C member by way of retirement grant before his normal retirement date is the greater of –

- (a) three eightieths of the member's final remuneration multiplied by his years of service or 40 years if less; and
- (b) the maximum lump sum that could have been payable on retirement at his normal retirement date under sub-paragraph (2) multiplied by the fraction of which –
  - (i) the numerator is the member's actual period of local government employment prior to leaving the Scheme or 40 years if less, and
  - (ii) the denominator is his total period of membership assuming he had remained an active member until his normal retirement date or 40 years if less.

This amount may be increased in line with any increase in the retail prices index between the relevant date and the date on which the benefit becomes payable.

(6) The aggregate benefit payable to a Class B member or a Class C member by way of a retirement grant on retirement after his normal retirement date must not exceed the greatest of –

- (a) the amount payable under sub-paragraph (1), (2) or (3) on the basis that the actual retirement date was the member's normal retirement date;
- (b) the amount that could have been payable under sub-paragraph (1), (2) or (3) on retirement on his normal retirement date together with interest in respect of the period of the delay in payment between that date and the actual date of payment;

(c) three eightieths of the member's final remuneration multiplied by his increased period of membership.

(7) A member's increased period of membership is the aggregate of –

(a) his total membership ending with his normal retirement date; and

(b) his total period of membership after his normal retirement date

but must not exceed 45 years.

(8) The benefits payable by way of a lump sum on the death of an active or deferred member must not exceed four times his final remuneration (disregarding the proviso in paragraph 1(9), paragraph 1(10) and paragraph 9(6)) less any lump sum death in service retained rights (other than a refund of the member's contributions and any interest on such contributions) or, if greater, £5,000.

6.—(1) The years of service taken into account under paragraph 4(1) and (2), and the total membership taken into account under paragraphs 4(7)(a) and 5(7)(a) must not exceed 40 years.

(2) Without prejudice to Schedule 3, a credited period which is counted as a period of membership under regulation 125(1) does not count in calculating years of service for sub-paragraph (1) or paragraph 4 or 5.

7.—(1) If adding the additional contributions payable by a Class B member or a Class C member under an agreement made by him before the commencement date (other than AVCs payable under Schedule C3 to the 2000 Regulations or any corresponding earlier provision) to those payable by him under regulations 11, 16 and 17 and any FSAVC scheme would cause the total of those contributions to exceed 15 per cent. of his remuneration, he may not pay that excess, but he may pay a lump sum representing it to the Scheme at a time permitted by the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990.

(2) That lump sum must be calculated in a way approved by the Government Actuary, who may issue guidance indicating how it is to be done.

*Maximum additions under regulations 55 and 57*

8.—(1) The maximum addition under regulation 55 or 57 is –

(a) the period (if any) by which the person's potential period of membership falls short of 40 years; or

(b) his potential period of membership,

whichever is the shorter.

(2) His potential period of membership is the period he would be entitled to count as a period of membership in relation to his local government employment, assuming –

(a) if he is not an active member on the date of the resolution, that he became such a member on that date; and

(b) that he continued as an active member until his normal retirement date.

(3) If –

(a) the resolution under regulation 55 relates to a person who on the date of the resolution has retained rights; or

(b) on the date of the election under regulation 57 the member has retained rights,

the period of 40 years mentioned in sub-paragraph (1) must be reduced by the appropriate period.

(4) The appropriate period is such period as is certified by an actuary appointed by the Committee to be sufficient to secure –

(a) that the aggregate of –

- (i) the relevant income benefits, and
  - (ii) the pension equivalent of the relevant capital benefits,
- will not exceed two-thirds of his final remuneration; and
- (b) that his retirement grant or, in the case of a Class C member, the aggregate of the retirement grant attributable to his period of membership before his normal retirement date and any retained rights in lump sum form, will not exceed his final remuneration by more than 50 per cent.
- (5) In this regulation –
- “pension equivalent” has the meaning given in regulation 5(5)(b) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993<sup>(88)</sup>;
- “the relevant income benefits”, in relation to a member, means the aggregate annual amount of –
- (a) the actuarial value, expressed as an annuity payable to him, of the retained rights which are pension benefits; and
  - (b) the part of his retirement pension attributable to his period of membership before his normal retirement date; and
- “the relevant capital benefits”, in relation to a member, means the aggregate amount of –
- (a) his retirement grant; and
  - (b) any lump sum comprised in the relevant benefits which are pension benefits.
- (6) For the purposes of sub-paragraphs (4) and (5) –
- (a) it is to be assumed that the person will, until his normal retirement date, continue in the same employment and on the same terms and conditions (including, in particular, his scale of pay) as at the date of the resolution or, as the case may be, the election (assuming, if he has not entered the employment of the authority at that date, that he had done so on that date on the scale of pay at which the employment was offered to him);
  - (b) any period of membership on or after that date is to be disregarded; and
  - (c) regard is to be had to any advice from the Commissioners of Inland Revenue as to the calculation of the value of the earlier benefits.

#### *Controlling directors*

9.—(1) This paragraph applies to any member who is a controlling director, as defined in paragraph 5(5) of Schedule 23 to the Taxes Act.

(2) Regulation 23(1)(a) does not apply to a controlling director.

(3) For determining whether a controlling director who is a Class A member has retained rights, “approved scheme” includes –

- (a) a retirement annuity contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act; or
- (b) any personal pension scheme approved under Chapter IV of that Part,

so far as it provides benefits secured by contributions in respect of his service with his Scheme employer or an associated employer.

(4) An employer is associated with another if one is controlled by the other or both are controlled by a third party; and control must be construed in accordance with section 840 of the Taxes Act

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<sup>(88)</sup> S.I. 1993/3016



or, in the case of a close company (as defined in section 416 of that Act) in accordance with that section 416.

(5) Paragraph 1(3)(a) and 1(4) do not apply to controlling directors.

(6) Final remuneration shall be ascertained in accordance with paragraph 1(6)(b) and paragraph 1(6)(a) shall not apply.

#### *Overriding provisions*

10. Where by virtue of the Taxes Act or any later enactment schemes which were approved schemes before a certain date, have effect as if their rules restricted the total benefits payable under them, the rules of the Scheme have effect subject to those restrictions, notwithstanding any amendments of them by virtue of these or any earlier Regulations after the date of that Act or enactment, and in so far as those restrictions would permit those total benefits to be greater than is otherwise permitted under the Scheme, those restrictions shall prevail.

## SCHEDULE 5

Regulation 111(2) and (3)

### MIS-SOLD PENSIONS

#### **Prescribed persons**

1. For the purposes of regulation 111(2) (prescribed persons to whom information may be provided) the persons are –

- (a) a person who is or has been an authorised person within the meaning of the Financial Services and Markets Act 2000<sup>(89)</sup> (“the 2000 Act”) (“an authorised person”);
- (b) an appointed representative within the meaning of section 39 of the 2000 Act (“an appointed representative”);
- (c) a recognised self-regulating organisation within the meaning of the 2000 Act;
- (d) a designated professional body within the meaning of the 2000 Act;
- (e) the Financial Services Authority having the functions conferred on it by or under the 2000 Act;
- (f) the Investors Compensation Scheme Limited;
- (g) a professional indemnity insurer of an authorised person or an appointed representative;
- (h) the Chartered Accountants Compensation Scheme Limited;
- (i) the Solicitors Indemnity Fund Limited;
- (j) a person or body arbitrating or adjudicating in, or investigating or considering, a complaint brought by such an individual as is mentioned in Article 164 of the Pensions Order against an authorised person or an appointed representative;
- (k) A person or body appointed to act on behalf of any of the above.

2. For the purposes of regulation 111(3) (persons on whom fees may be imposed) the persons are any person listed in sub-paragraphs (a) to (d) and (f) to (i) of paragraph 1 and any person or body appointed to act on behalf of any of those persons.

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<sup>(89)</sup> 2000 c. 8

SCHEDULE 6

Regulation 76(3) and 83(1) to (4)

THE COMMITTEE

PART I

CONSTITUTION OF THE COMMITTEE

1. The Committee shall consist of a chairman appointed by the Minister and the following other members –

- (a) five members appointed by the Minister after consultation with such organisations as may be recognised by him as representative of Scheme employers; and
- (b) five members appointed by the Minister after consultation with such organisations as may be recognised by him as representative of employees affected by the Regulations.

2.—(1) Subject to the provisions of sub-paragraph (2) and paragraph 5, the term of office of a member of the Committee shall be four years from the date of his appointment.

(2) The Minister may extend the term of office of a member of the Committee by a maximum period of 18 months.

3. The quorum of the Committee shall be six, or such other number as the Committee may, with the approval of the Department, determine.

4. The Committee may act notwithstanding any vacancy in its number so long as the number of vacancies does not exceed the number of remaining members.

5. A casual vacancy occurring in the membership of the Committee shall be filled by the Minister after consultation with the Committee and a person so appointed shall hold office for the residue of the term of the member in whose place he is so appointed.

6. A member of the Committee may resign his membership by giving notice in writing, signed by him, to the Minister.

7. Where any member of the Committee is absent from the meetings thereof for more than six months consecutively (except for a reason approved by the Minister) or becomes bankrupt or makes a composition with his creditors or is convicted of an indictable offence, the Committee shall forthwith by resolution declare the office to be vacant and shall notify that fact in such manner as it thinks fit, and thereupon the office shall become vacant.

8. A member of the Committee on vacating his office at the expiration of the term thereof shall (subject to the foregoing provisions of this Schedule) be eligible for re-appointment.

9. No defect in the appointment of any person acting as a member of the Committee shall vitiate any proceedings of the Committee in which he has taken part.

PART II

POWERS OF THE COMMITTEE

10. The Committee, which shall be a body corporate with perpetual succession and a common seal, and with capacity to acquire and hold land, shall subject to paragraphs 2 to 8, perform such functions as may be assigned to it by these Regulations.

11. The Committee may appoint a sub-committee or an officer employed by the Committee to discharge, with or without restrictions or conditions as the Committee thinks fit, any of the functions

assigned to the Committee by the Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000<sup>(90)</sup>.

12. The number of members of a sub-committee appointed under paragraph 11, and their term of office shall be fixed by the Committee or in the case of an officer his term of office shall be fixed by the Committee.

13. A sub-committee appointed under paragraph 11 shall consist of members of the Committee and may include officers of the Committee appointed under paragraphs 20 and 21.

14. A sub-committee or an officer appointed under paragraph 11 shall report to the Committee at each of its meetings setting out all actions taken under such appointment.

15. The Committee may revoke any appointment made under paragraph 11, or any restriction or condition imposed under paragraph 11 or anything fixed under paragraph 12.

16. Any arrangements made by the Committee for the discharge of the functions specified in the Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000 by a sub-committee or officer shall not prevent the Committee from exercising those functions.

17. The seal of the Committee shall be authenticated by the signatures of two of the members and of the secretary or some other person authorised by the Committee to act in that behalf.

18. Every document purporting to be an instrument issued by the Committee and to be sealed with the seal of the Committee authenticated in the manner provided by paragraph 17, or to be signed by the secretary or any person authorised to act in that behalf, shall be received in evidence and, unless the contrary is proved, shall be deemed to be such instrument without further proof.

19. Subject to the provisions of these Regulations, the Committee shall have power to regulate its own procedures.

20. The Committee may with the approval of the Department appoint persons to hold any of the following offices –

Secretary to the Committee;

Deputy Secretary to the Committee; and

such other offices under the Committee as the Department may designate in writing.

21. In addition to the appointments mentioned in paragraph 20, the Committee may appoint such other officers as may be required for the performance of the functions of the Committee.

22.—(1) The Committee may make arrangements with any Scheme employer, admission body, Government department, district council or area board, for the exercise of any pension function by the Committee on behalf of any Scheme employer, admission body, Government department, district council, or area board on such terms as may be provided for by the arrangements.

(2) For the purposes of this paragraph, “area board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(91)</sup>.

23. Section 18(2) of the Interpretation Act (Northern Ireland) 1954<sup>(92)</sup> shall apply to any appointment made by virtue of paragraph 20 or 21 as if each of these paragraphs was an enactment referred to in that section but a person shall not be removed from any office mentioned in paragraph 20 without the written concurrence of the Department.

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<sup>(90)</sup> S.R. 2000 No. 178 as amended by S.R. 2001 No. 61 and by S.R. 2001 No. 62

<sup>(91)</sup> S.I. 1972/1265 (N.I. 14)

<sup>(92)</sup> 1954 c. 33 (N.I.)

## PART III

### EXPENSES AND ALLOWANCES PAYABLE BY THE COMMITTEE

24. The expenses of the Committee, including payments in respect of reasonable out-of-pocket expenses incurred by the members in connection with the discharge of their duties as such, shall be defrayed out of the fund.

25. The Committee may, in addition to any payment made under paragraph 24, pay to the Chairman of the Committee such allowance as it considers to be reasonable.

26. The Committee may in addition to any payments made under paragraph 24 or 25, pay to a member of the Committee an attendance allowance in connection with service as a member of the Committee, but such allowance shall not exceed the amount of attendance allowance as the Department may from time to time determine under section 36 of the Local Government Act (Northern Ireland) 1972(93).

27. A member of the Committee entitled to an attendance allowance under paragraph 26 shall make a claim for such allowance in such form as the Committee may direct to the Secretary of the Committee and shall make a declaration that –

- (a) he has not or will not make any claim for allowances from any other body in respect of the approved duty to which the claim refers;
- (b) the amounts claimed are strictly in accordance with the provisions of this Part; and
- (c) he has necessarily incurred or suffered the loss of earnings or additional expenses claimed for the purpose of enabling him to perform an approved duty.

28. A claim for an attendance allowance shall be submitted to the Committee within four months, or such longer period as the Committee may in exceptional circumstances allow, from the date of the approved duty in respect of which the allowance is claimed.

29. In this Part –

“approved duty” means attendance at a meeting of the Committee or of any sub-committee thereof or the doing of anything approved by the Committee for the purpose of, or in connection with, the discharge of the functions of the Committee; and

“attendance allowance” means a payment in respect of any loss of earnings necessarily suffered or any additional expenses (other than expenses on account of travelling or subsistence) necessarily suffered or incurred by a member for the purpose of enabling him to perform any approved duty.

## PART IV

### CONTENTS OF FINANCIAL STATEMENTS AUDITED BY THE LOCAL GOVERNMENT AUDITOR

30. An account of the financial additions to, withdrawals from and changes in value of the fund of the Scheme during the Scheme year to which the accounts relate.

31.—(1) A statement, as at the end of the Scheme year to which the accounts relate, of the assets at market value, or the Committee’s estimate thereof where market value is not readily ascertainable, and liabilities of the Scheme, other than liabilities to pay pensions and benefits after the end of that Scheme year –

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(93) 1972 c. 9 (N.I.) as amended by the Financial Provisions (Northern Ireland) Order 1978 (S.I. 1978/1041 (N.I. 11)) and S.R. 1999 No. 449

- (a) giving, in the case of any assets which are stated at an estimate of their market value, the reason why the valuation is an estimate;
- (b) showing the distribution of the investments and other assets of the Scheme between each of the following categories (where none of the investments falls within a particular category, that fact is not required to be stated), namely –
  - (i) policies of insurance;
  - (ii) public sector fixed interest investments and separately showing quoted securities and unquoted securities;
  - (iii) other fixed interest investments and separately showing quoted securities and unquoted securities;
  - (iv) index-linked securities and separately showing quoted securities and unquoted securities;
  - (v) equities (including convertible shares) and separately showing quoted equities and unquoted equities;
  - (vi) property (which in this paragraph and in paragraphs (vii) and (ix) means any right or interest in freehold or leasehold land or buildings);
  - (vii) unit trusts invested in property;
  - (viii) other unit trusts;
  - (ix) managed funds (other than unit trusts) invested in property;
  - (x) other managed funds (not being unit trusts);
  - (xi) loans (whether or not secured by mortgages);
  - (xii) cash deposits and cash in hand;
  - (xiii) investments and other assets not included in paragraphs (i) to (xii); and
- (c) showing separately, in the case of investments in each category, investments in the United Kingdom and investments outside the United Kingdom, and in the case of investments mentioned in head (b)(vii) to (x) investments where the company operating the unit trust or managed funds is, and investments where it is not, a company registered in the United Kingdom.

(2) Where the assets include policies of insurance which are specifically allocated to the provision of benefits for, and which provide all the benefits payable under the Scheme to, particular members or other persons in respect of particular members or both, those policies must be included in the statement and there must be a note of the existence of such policies but that entry need not include their market value or an estimate.

(3) Where the assets –

- (a) are invested only for the purposes of securing additional money purchase benefits derived from voluntary contributions to which section 107 of the Pension Schemes (Northern Ireland) Act 1993(94) applies; and
- (b) are specifically allocated to the provision of additional benefits for particular members (or both),

a note that heads (a) and (b) of sub-paragraph (1) apply must be included in the statement, but that entry need not include the market value or an estimate of value of those assets.

32. Quoted securities should be valued at mid-market value.

33. Where any assets or liabilities are denominated in currencies other than sterling, a translation of those assets into sterling and an explanation of the basis on which they have been translated.

34. Particulars of any investment (other than in United Kingdom Government securities) in which more than 5 per cent. of the total value of the net assets of the Scheme is invested, and if any such investment is a policy of insurance, a statement of its main characteristics.

35. Particulars of any employer-related investments, within the meaning of Article 40 of the Pensions Order (restriction on employer-related investments) including those in excess of the restriction prescribed in regulations made under that Article.

36. In respect of every amount shown in the accounts other than the amounts referred to in paragraph 37, a statement of the corresponding amount for the Scheme year previous to the one to which the accounts relate.

37. The total amount of the purchases and the total amount of the sales of investments during the Scheme year to which the accounts relate.

38. A statement whether the accounts have been prepared in accordance with the Statement of Recommended Practice, the guidelines “Financial Reports of Pension Schemes” published by the Pensions Research Accountants Group<sup>(95)</sup> or another organisation approved for this purpose by the Accounting Standards Board<sup>(96)</sup>, current at the end of the Scheme year to which the accounts relate and, if not, an indication of where there are any material departures from those guidelines.

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## EXPLANATORY NOTE

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

These Regulations replace certain provisions of the Local Government Pension Scheme Regulations (Northern Ireland) 2000 (S.R. 2000 No. 177) (as amended) and constitute the occupational pension scheme for persons employed by a local authority or engaged in other employment, who are active members of the Scheme on or after the commencement date of these Regulations, and replace them in part for other members in accordance with the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 353).

The main changes are as follows –

### Part II

- regulation 4(1) provides that agreements to enable employees of admitted bodies to be members of the Scheme may provide that periods of employment before the date of the agreement may count as Scheme membership;
- regulation 5 simplifies the restrictions on eligibility for membership to exclude only those who have access to another occupational pension scheme, part-time firemen and any person who, as a member of staff of the University of Ulster, is eligible to participate in the Universities' Superannuation Scheme;

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<sup>(95)</sup> Copies may be purchased from Accountancy Books, P.O. Box 620, Central Milton Keynes MK9 25X

<sup>(96)</sup> See S.R. 1990 No. 338

- regulation 8(6) provides that periods of membership before and after unpaid maternity absence or parental leave in respect of which the member does not pay any contributions are treated as a continuous period;
- regulation 11 sets a standardised contribution rate of 6 per cent. for all new members. At present manual employees pay 5 per cent. and others 6 per cent. Regulation 13 protects the position of existing manual employees currently paying 5 per cent. as they will continue to do so;
- regulation 14 gives employers a new discretion to reduce or waive a member's contribution once 40 years membership has been reached;
- regulations 15, 25, 53, 55, 57, and 61 and Schedule 4 set out overriding Inland Revenue limits on the amount of benefits which a member is entitled to under the Scheme;
- regulation 16 ensures that periods of unpaid statutory ordinary maternity leave are treated as periods of membership;
- regulations 22 to 24 define final pay and extend the provision for protecting the value of a member's pension following a change in the circumstances of employment e.g. when pensionable pay is reduced for reasons outside a member's control;
- regulation 26 defines the normal retirement age for new members as 65 but protects the position of existing members who may retire between the ages of 60 and 65;
- regulation 29 continues the provision for ill-health retirement benefits where a member leaves employment by reason of being permanently incapable of discharging efficiently the duties of that employment including any other comparable employment with his employer;
- regulation 30 provides that the maximum period which may be added to a member's total membership period to calculate his enhanced membership period in respect of all his local government employments is 10 years;
- regulation 33 gives members aged at least 50 (instead of from age 60) the right to apply for early payment of Scheme benefits (subject, in the case of members aged less than 60 to the consent of the employer). Benefits paid under these circumstances are subject to the "85 year rule" to decide if they should be actuarially reduced. This test is satisfied if the total of the employee's age and membership is equal to or greater than 85. Where the test is not satisfied a reduction in benefits is applied. An employing authority, instead of the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC), may determine on compassionate grounds that benefits should not be reduced;
- regulation 34 places the onus on a deferred member to elect to carry earlier periods of membership forward on rejoining the Scheme, enabling an election to be made at any time during the fresh period of membership;
- regulation 35 provides a method of calculating membership where one of two concurrent employments terminates and the member elects to keep the periods of service aggregated for the purposes of calculating benefits;
- regulations 46 to 50 define an eligible child for the purposes of children's pension rights and provide a simplified structure for the payment of children's pensions. The test of financial dependency required in the case of a child who is not the legitimate or adopted child of a member is extended to include a posthumous child who would have been dependent on that member;

### Part III

- regulation 54 gives employers a new discretionary power to augment Scheme membership by up to 6 $\frac{2}{3}$  years on the termination of a member's employment for members aged 50 or over;
- regulation 60 allows members and deferred pensioners an option to convert part or all of their retirement grant to provide extra pension;

- regulation 61 allows those members who joined the Scheme before March 1987, to convert part of their pension for additional retirement grant;
- regulations 62 to 68 set out a simplified structure for the payment of additional voluntary contributions and give the member the option to transfer the accumulated value of the contributions into additional Scheme membership;
- regulation 62(11) specifically provides for the transfer into a member's additional voluntary contributions scheme of the accumulated value from other additional voluntary contribution schemes;
- regulation 66 allows a longer period after retirement i.e. up to age 75 (65 at present), before the value of additional voluntary contributions must be used to pay for a pension;
- regulation 68 (elections as to accumulated value of additional voluntary contributions) only allows the use of the accumulated value of the additional voluntary contributions to provide a Scheme benefit when a member ceases to be an active member of the Scheme with immediate entitlement to a pension. This does not affect the rights of a member who entered into the additional voluntary contributions scheme before this change takes effect;
- regulations 69 to 74 allow employers to set up a shared-cost additional voluntary contributions scheme with members. The facility of a jointly funded scheme will give members the option to transfer the accumulated value of the contributions into additional Scheme membership;

#### Part IV

- regulation 78 gives NILGOSC the power to set revised contribution rates for employers with immediate effect where the costs to the pension fund exceed the assumptions stated in the rates and adjustment certificate obtained under regulation 77, which would otherwise determine these rates. It also allows the actuary to provide, in certain circumstances, that where an outgoing admission body cannot pay revised contributions to the fund, that liability is borne by the Scheme employer who is party to the admission agreement;
- regulation 82 gives NILGOSC the power to charge interest where an employing authority is more than 10 days overdue in making certain payments to the pension fund;
- regulation 98(5) introduces specific requirements as to the independence of the registered medical practitioner who is required to produce a certificate in connection with ill-health retirements;
- regulation 108 requires employers and NILGOSC to formulate, publish and keep under review, policy statements concerning the exercise of their discretionary functions. Employers and NILGOSC are required to consult each other on the formulation of policy;
- regulations 112 and 113 give NILGOSC the discretion to decide its own policy on abatement (that is the extent to which the amount of retirement pension payable to a member should be reduced on re-employment);
- r- egulations 119 to 123 apply the provisions in the Pension Schemes (Northern Ireland) Act 1993 about transfers of rights out of occupational pension schemes with a few modifications and enable an alternative basis to be used where bulk transfers out of the Scheme are made by agreement;
- regulations 124 to 128 set out a simplified procedure for transferring rights into the Scheme, operating on a cash equivalent transfer basis, and provide for adjustments between pension funds where internal transfers occur;
- regulation 130 gives employers the discretion to convert awards made under the Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001 into Scheme membership.



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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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