

**2002 No. 353**

**LOCAL GOVERNMENT**

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

*Made - - - - - 19th November 2002*

*Coming into operation 1st February 2003*

**ARRANGEMENT OF REGULATIONS**

*Preliminary provisions*

1. Citation, commencement and retrospection.
2. Interpretation.

*Application of 2002 Regulations and old provisions*

3. Cessation of old provisions for active members.
4. Deferred members and pensioners: general.
5. Re-employment of members (Schedule D5 to the 2000 Regulations etc.).

*Counting old membership of existing members under 2002 Regulations*

6. Entitlement of active members to count old membership.
7. Entitlement of re-employed members to count old membership.
8. Membership before 1st April 1972.
9. Rights under old provisions affecting membership periods (extra payments, absences etc.).
10. Rights under Schedule C5 to the 2000 Regulations: counting of membership.

*Augmentation*

11. Duty of employing authority to increase total membership of members with membership before the commencement date.

*Special provisions about rights relating to old membership*

12. Continuity of elections within regulation 9(1).
13. Continuity of rights within regulation 10(1).
14. Temporary right to pay off liabilities under regulation 13 by capital payment.
15. Equivalent pension benefits.

*The fund and the Committee*

16. The fund and the Committee.
17. Continuation of employer's liability for certain payments.

*Special cases*

18. Community scheme transferees.

*Supplementary provisions*

19. Cost of resolutions.
20. Amendments to the Local Government Pension Scheme Regulations (Northern Ireland) 2000.
21. Minor and consequential amendments.
22. Transitional and transitory provisions and savings.
23. Revocations.

## SCHEDULES

- Schedule 1 Additional regulations which are "old provisions".
- Schedule 2 Re-employment of members (Schedule D5 to the 2000 Regulations etc.).
- Schedule 3 Amendments to the Local Government Pension Scheme Regulations (Northern Ireland) 2000.
- Schedule 4 Minor and consequential amendments.
- Schedule 5 Transitional and transitory provisions and savings.

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

*Preliminary provisions*

### **Citation, commencement and retrospection**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002 and shall come into operation on 1st February 2003 and except as provided for in paragraphs (2) and (3) shall have effect from that date.

(2) Paragraphs 3 and 4(a) of Schedule 3 shall have effect from and including 1st April 1998.

(3) Paragraphs 2 and 4(b) of Schedule 3 shall have effect from and including 15th December 1999.

### **Interpretation**

2.—(1) In these Regulations –

“the 2002 provisions” means the 2002 Regulations, these Regulations and the Investment Regulations;

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(a) S.I. 1972/1073 (N.I. 10); Article 14 was amended by Article 12 of the Pensions (Miscellaneous Provisions) (Northern Ireland) Order 1990 (S.I. 1990/1509(N.I. 13))

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

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

“the common provisions” means regulations 51 and 52 and Part IV of the 2002 Regulations and the Investment Regulations;

“the Investment Regulations” means the Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000(b);

“the old provisions” means the 2000 Regulations, the additional regulations specified in Schedule 1 (so far as they relate to the Scheme) and any other regulations relating to the Scheme and made under Article 9 or 14 of the Superannuation (Northern Ireland) Order 1972, so far as they continue in effect;

“the replaced provisions” means regulations C21, C26A, H1, H3 to H7, M2, M3, M4 and Parts J, K L, and N of and Schedules K1, K2, L1 and L2 to the 2000 Regulations;

“the saved provisions” means the old provisions (other than the replaced provisions), in so far as they remain capable of having effect and subject to the provisions of these Regulations and, in particular, the amendments specified in Schedules 3 and 4.

(2) For these Regulations, a member must be treated as remaining an active member throughout –

- (a) a period of maternity absence;
- (b) any period which is treated as membership by virtue of regulation B13(1)(b) of the 2000 Regulations (absence for illness or injury); and
- (c) any period as respects which a notice under regulation C7(2) of those Regulations (trade disputes absence) has been given,

whether or not he or she otherwise would be so treated.

(3) Paragraph (2) shall not apply as respects any part of such a period which falls after a time when the member ceases to be an active member by virtue of regulation B11 of the 2000 Regulations (leaving the Scheme).

(4) Subject to the previous provisions of this regulation, expressions used in these Regulations and in the 2002 Regulations have the same meaning as in those Regulations.

(5) So far as is necessary for the purposes of regulation 1(2) and (3) these Regulations shall be deemed to have effect from and including 1st April 1998.

#### *Application of 2002 Regulations and old provisions*

#### **Cessation of old provisions for active members**

3.—(1) Any person who is an active member of the Scheme immediately before the commencement date shall continue to be an active member on that date and, subject to the provisions of these Regulations, the old provisions shall cease to apply to him.

(2) Paragraph (1) shall not apply to any person who ceases to be an active member on the day before the commencement date –

- (a) by virtue of regulation B11 of the 2000 Regulations (leaving the Scheme); or
- (b) by virtue of leaving local government employment on that date and becoming a pensioner member on the commencement date,

and these Regulations shall apply to any such person as if he had already so ceased immediately before the commencement date.

(3) If any person has notified his employer under regulation B11(2) of the 2000 Regulations before the commencement date that he wishes to cease to be an active member, but would not (apart from this paragraph) have ceased to be an active member immediately before the commencement date –

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(a) S.R. 2002 No. 352

(b) S.R. 2000 No. 178 as amended by S.R. 2001 No. 61 and S.R. 2001 No. 62

- (a) paragraph (1) shall not apply to him;
- (b) he shall cease to be such a member on the day before the commencement date; and
- (c) these Regulations shall apply to him as if he had already so ceased immediately before the commencement date.

(4) Where (apart from these Regulations) a person away on relevant reserve forces service would be treated under the 2000 Regulations as an active member on the commencement date, paragraph (1) shall apply to him, unless as a result of a cancelling notice his relevant reserve forces service on and after the commencement date is not to be treated as such service.

(5) Where such a notice is served, these Regulations shall apply to such a person as if he had already ceased to be an active member immediately before the commencement date.

#### **Deferred members and pensioners: general**

**4.**—(1) Except where these Regulations provide otherwise, in relation to the persons specified in paragraph (2) –

- (a) the saved provisions shall continue to apply;
- (b) the common provisions shall apply; and
- (c) Part II (except regulations 51 and 52) and Parts III and V of the 2002 Regulations shall not apply (except in so far as they affect the common provisions).

(2) Those persons are –

- (a) any person who immediately before the commencement date was a deferred member or a pensioner member and does not on or after that date become an active member; or
- (b) any person who is or may become entitled to any benefit under the Scheme in respect of such a person; or
- (c) any other person whose entitlement to the payment of any pension or other benefit has arisen before that date or who may become so entitled by virtue of the death of any person who has died before that date.

#### **Re-employment of members (Schedule D5 to the 2000 Regulations etc.)**

**5.** Schedule 2 shall have effect for the purpose of making provision concerning cases where members are re-employed and regulations 3(1) and 4 are subject to that Schedule.

#### *Counting old membership of existing members under 2002 Regulations*

#### **Entitlement of active members to count old membership**

**6.** Any person who continues as an active member of the Scheme on the commencement date by virtue of regulation 3 may count for regulation 8(1)(d) of the 2002 Regulations the same length of membership as the total period he was entitled to count under the old provisions immediately before that date (but see regulations 8 to 11 and Schedule 2).

#### **Entitlement of re-employed members to count old membership**

**7.**—(1) Any member to whom regulation 3 does not apply who becomes an active member again on or after the commencement date may count for regulation 8(1)(d) of the 2002 Regulations the same length of membership as he would have been entitled to count for that regulation if regulation 6 had applied to him (but see Schedule 2).

(2) Where paragraph (1) applies to a member who is entitled to count a period of membership under regulation B13(1)(a) of the 2000 Regulations by virtue of regulation 9(5)(c) of these Regulations, for paragraph (1) the member shall be deemed to have been entitled to count that period immediately before the commencement date.

#### **Membership before 1st April 1972**

**8.**—(1) If immediately before the commencement date a member –

- (a) was entitled to count a period of membership before 1st April 1972; and
- (b) had not, being eligible to do so, made a relevant election; or
- (c) having made such an election ceased to make payments under it,

for regulation 6 that period of membership or, as the case may be, the unpaid part of it must be reduced to 89 per cent. of its length.

(2) Paragraph (1) only applies to a female member if she duly elected under regulation E12(1)(b) or (2)(b) of the 1992 Regulations (election by wife of dependent and permanently incapacitated husband).

(3) A relevant election is an election wholly or partly in respect of membership before 1st April 1972, made or having effect as if made under regulation C13 of the 2000 Regulations or made under regulation C9 of the 1992 Regulations (payments to avoid reduction of retirement grant and death grant).

(4) Where a member to whom paragraph (1) would have applied if he had been married immediately before the commencement date marries on or after that date while he is an active member and before he becomes entitled to benefits under the Scheme, paragraph (1) shall apply to him as if he had been married immediately before that date.

(5) Despite anything in these Regulations, a relevant election under which payments were being made immediately before the commencement date shall continue to have effect on and after that date to the extent that it relates to a period of membership before 1st April 1972 (subject to the continuation of payments under it at the same rate as they were made before the commencement date) whether or not immediately before the commencement date the election also related to a later period.

(6) But if a member to whom paragraph (1) would have applied apart from his continuing to make payments under a relevant election until the commencement date (“a continuing member”), fails after that date to complete the payments due under that election in respect of membership before 1st April 1972 (otherwise than by virtue of his death or his becoming entitled to a retirement pension under regulation 29 of the 2002 Regulations), paragraph (1) shall apply to him as if he had so ceased before the commencement date.

(7) If a continuing member –

- (a) completes the payments due under the election in respect that membership; or
- (b) fails to complete them by virtue of his death or his becoming entitled to a retirement pension under regulation 29 of the 2002 Regulations,

for regulation 8(1)(d) of those Regulations he may count the full period of membership in relation to which he made the election.

(8) For paragraph (1) the unpaid part of the period is the part of it in respect of which payments (including payments by instalments of a lump sum) have not been made.

(9) Where paragraph (1) applies by virtue of paragraph (6) any payments made on or after the commencement date must be taken into account for paragraph (8).

#### **Rights under old provisions affecting membership periods (extra payments, absences etc.)**

**9.**—(1) Any notice given or having effect as if given or deemed to have been given under –

- (a) regulation C5(3) or (4) of the 2000 Regulations (payments in respect of leave of absence);
- (b) regulation C6(5) of those Regulations (payments in respect of maternity absence);
- (c) regulation C7(2) of those Regulations (payments in respect of absence owing to trade dispute); or
- (d) regulation C9 of those Regulations (payments to increase membership),

by a member to whom regulation 3(1) applies shall cease to have effect (but see regulation 12).

(2) Where a member to whom paragraph (1) applies has made any payment under regulation C5(3) or, as the case may be, regulation C6(4), C7(2) or C9(2) of the 2000

Regulations in pursuance of the notice, the Committee must calculate the period as respects which payment has been made.

(3) The Committee must notify the member of that period as soon as practicable after the commencement date.

(4) The period the member may count for regulation 8(1)(d) of the 2002 Regulations includes the period calculated under paragraph (2).

(5) Nothing in these Regulations affects –

(a) any right of any person who has ceased to be employed before the commencement date to give a notice under regulation C5(3) or C6(5) of the 2000 Regulations not later than 30 days after he ceased to be employed;

(b) any right of any person who has ceased to be employed before the commencement date (or his personal representatives) to give a notice under paragraph (2) of regulation C7 of the 2000 Regulations within the period mentioned in paragraph (4) of that regulation; or

(c) if such a person as is specified in sub-paragraph (a) or (b) makes a payment in pursuance of the notice, his right to count the period as respects which the payment is made under regulation B13(1)(a) of the 2000 Regulations.

(6) In the case of a notice served under regulation C7(2) of the 2000 Regulations where the member has died, references in this regulation to the member shall be taken where appropriate as references to the member's personal representatives.

#### **Rights under Schedule C5 to the 2000 Regulations: counting of membership**

**10.**—(1) Where any member to whom regulation 3(1) applies has any rights to make any payments which remain payable immediately before the commencement date by virtue of paragraph 1(3) of Schedule C5 to the 2000 Regulations –

(a) those rights shall cease (but see regulation 13);

(b) the Committee must calculate the period as respects which payment has been made and notify the member of that period as soon as practicable after the commencement date; and

(c) the period the member may count for regulation 8(1)(d) of the 2002 Regulations includes the period so calculated.

(2) The period mentioned in paragraph (1)(c) is such period as the Committee determines to be appropriate.

(3) A period is only appropriate if the rights in respect of that period under the 2002 Regulations will be at least equal in value to the member's rights in respect of the payments he has made under the old provisions.

(4) Where the Committee thinks fit, it must obtain the advice of an actuary appointed by it before making a determination under paragraph (2) and a statement as to the actuarial basis of that advice.

#### *Augmentation*

#### **Duty of employing authority to increase total membership of members with membership before the commencement date**

**11.**—(1) Where a relevant event occurs –

(a) in relation to a member who is entitled to count membership by virtue of regulation 6 or 7; or

(b) in relation to a member to whom paragraph 6(6) of Schedule 2 applies as respects a period of membership,

the relevant authority must determine whether his rights under the Scheme in respect of that membership are at least equal in value to the rights to which he was entitled immediately before the commencement date ("his 2000 rights").

(2) If the relevant authority determines that a member's 2000 rights were of a greater value than his rights under the Scheme in respect of the membership mentioned in paragraph (1), it must resolve to increase the member's total membership for the 2002 Regulations by an additional period so that his rights under the Scheme in respect of the membership mentioned in paragraph (1) are at least equal in value to his 2000 rights.

(3) But if that additional period would exceed the period which would be the maximum addition under Schedule 4 to the 2002 Regulations if the resolution were made under regulation 55 of those Regulations –

- (a) it must be reduced to the amount of the maximum addition; and
- (b) the relevant authority must resolve that the appropriate multiplier for one or both of the purposes mentioned in regulation 19(2) and (3) of those Regulations (calculations of pensions and retirement grants) must be increased accordingly so that (taking the effects of the reduced additional period and the increase in any such multiplier together) his rights under the Scheme in respect of the membership mentioned in paragraph (1) are at least equal in value to his 2000 rights.

(4) Before –

- (a) making a determination under paragraph (1); or
- (b) determining the additional period under paragraph (2) or the increase in any appropriate multiplier under paragraph (3)(b),

the relevant authority must consider the advice of an actuary if it considers it appropriate.

(5) Where the relevant authority has passed a resolution under paragraph (2), the additional period counts as part of the member's total period of membership for regulation 8(1)(d) of the 2002 Regulations.

(6) The relevant authority must give notice of the making of such a resolution to the member before the expiry of the period of six months beginning with the relevant date.

(7) The relevant authority is –

- (a) in the case of a member who is an active member when the relevant event occurs, his employing authority; and
- (b) otherwise, the Committee.

(8) A relevant event occurs in relation to a member if –

- (a) he becomes immediately entitled to payment of a benefit under the 2002 Regulations or any other person whose entitlement is in respect of him becomes so entitled; or
- (b) he applies under section 89A of the Pension Schemes (Northern Ireland) Act 1993<sup>(a)</sup> for a statement of entitlement; or
- (c) he is provided with such information as is mentioned in regulation 122(3) of the 2002 Regulations (bulk transfers etc.).

(9) The relevant date is –

- (a) in the case mentioned in paragraph (8)(a), the date on which the amount of the benefit is determined;
- (b) in the case mentioned in paragraph (8)(b) or (c), the date on which the member's membership ceases.

#### *Special provisions about rights relating to old membership*

#### **Continuity of elections within regulation 9(1)**

**12.**—(1) An active member who has given or is deemed to have given a notice which ceases to have effect under regulation 9(1) must be informed by the Committee in writing that it proposes to treat the notice –

- (a) as having been given under the corresponding provision of the 2002 Regulations; but

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(a) 1993 c. 49; Section 89A was inserted by Article 149 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

- (b) as if the notice related only –
  - (i) to so much of the amount remaining to be paid in pursuance of the notice as has not been paid before the commencement date, and
  - (ii) to so much of the period as respects which he gave the notice as he may not count by virtue of regulation 9(4); and
- (c) as enabling the member to make additional contributions at the protected rate.

(2) Where a member is so informed, the notice is to be so treated as from the commencement date unless the member (or, in a case where the member has died, his personal representative) has informed the Committee in writing before the expiry of the period of three months beginning with that date (or such longer period as it may allow) that he does not wish it to be so treated.

- (3) Any election by a member to whom regulation 3(1) applies which –
  - (a) was made or had effect as if made under regulation C24 of the 2000 Regulations (additional voluntary contributions); and
  - (b) was in effect immediately before the commencement date,

shall continue to have effect as if it had been made under the 2002 Regulations.

(4) The protected rate is the rate at which the member was making payments by virtue of the notice immediately before the commencement date, expressed as a percentage of his remuneration at that time.

#### **Continuity of rights within regulation 10(1)**

**13.**—(1) Regulation 12 applies in relation to a right which ceases to have effect under regulation 10(1)(a) as if –

- (a) that right arose under a notice which ceases to have effect by virtue of regulation 9(1); and
- (b) the corresponding provision of the 2002 Regulations was regulation 57,

(but see the following provisions).

(2) If the right arose under regulation 38 of the 1981 Regulations and immediately before the commencement date the member had the right to make any payments by lump sum payable by instalments, then for regulation 12 the protected rate is the rate at which he was paying instalments immediately before the commencement date, expressed as a percentage of his remuneration at that time.

(3) Regulation 57(5) of the 2002 Regulations does not apply where regulation 57 applies by virtue of paragraph (1), and instead the Committee must calculate the amounts of the additional contributions by reference to the preferential rate.

(4) The preferential rate is the rate at which the member was making payments (including payments by instalments of a lump sum) by virtue of paragraph 1(3) of Schedule C5 to the 2000 Regulations immediately before the commencement date, expressed as a percentage of his remuneration at that time.

#### **Temporary right to pay off liabilities under regulation 13 by capital payment**

**14.**—(1) A member to whom regulation 12 applies by virtue of regulation 13(1), may make an election to make a capital payment in full satisfaction of his liabilities in respect of any period for which he remains liable to make any payment by virtue of regulation 13(1).

(2) Such an election may only be made by notice in writing to the Committee before the end of the period of six months beginning with the commencement date.

(3) When the Committee receives such an election it must notify the member of the amount of the capital payment required.

(4) But if that capital payment, when aggregated with the member's total contributions (as mentioned in regulation 15(2) of the 2002 Regulations) payable in the tax year in which he

makes the election, would exceed the maximum amount so payable by him, such an election is ineffective.

(5) Where following a payment under such an election any body's liabilities in respect of the member under regulation L6 of the 2000 Regulations continue by virtue of regulation 17(3), then, despite that regulation, he is entitled to count a period of membership of the same length as if all payments to be made in respect of that period under regulation L6 of the 2000 Regulations had been made.

### **Equivalent pension benefits**

**15.**—(1) This paragraph applies where –

- (a) when a member left his local government employment he was not entitled in relation to that employment to a retirement pension under regulation 26, 28, 29 or 33 of the 2002 Regulations (or any corresponding provision of any earlier Regulations) and he receives a return of contributions;
- (b) the whole or some part of his period of membership was in service in a non-participating employment or in service which relates to employment with a non-local government employer in a non-participating employment;
- (c) a period of his service in a non-participating employment came to an end by reason –
  - (i) of the repeal of section 55(1) of the National Insurance Act (Northern Ireland) 1966(a), or
  - (ii) of the provisions of regulation 2(2) of the National Insurance (Non-Participation Assurance of Equivalent Pension Benefits) Regulations (Northern Ireland) 1960(b) (as modified by regulation 10(2)(a) or (b) of the National Insurance (Non-participation Transitional Provisions) (Northern Ireland) Regulations 1975 (“the 1975 Regulations”)(c); and
- (d) at some time during the settlement period (within the meaning of regulation 2 of the 1975 Regulations) he became, and has remained, assured of equivalent pension benefits.

(2) Where paragraph (1) applies, the member is entitled under the 2002 Regulations in relation to that employment to an annual retirement pension payable at the rate of the equivalent pension benefits applicable to him in respect of any period of membership –

- (a) in service in a non-participating employment; or
- (b) which relates to service with a non-local government employer in a non-participating employment.

(3) That pension is payable from the first date on which he –

- (a) has attained state pensionable age; and
- (b) is no longer in any local government employment.

(4) Where a pension is payable under paragraph (2) to a member who attains state pensionable age for a period of service in a non-participating employment, which counts for the purpose of calculating any benefits payable to the member (other than excepted service), no relevant provision shall apply so as to reduce the pension below the minimum rate of equivalent pension benefits applicable for that period of service under the Insurance Act.

(5) A relevant provision is a provision of the 2002 Regulations for the surrender, assignment, reduction, termination or suspension of a pension.

(6) Paragraph (4) does not apply to any relevant provision for the reduction, termination or suspension of a pension, which is used for a purpose prescribed by regulations made, or deemed to have been made, under section 56(1)(c) of the National Insurance Act (Northern Ireland) 1966 (equivalent pension benefits).

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(a) 1966 c. 6 (N.I.); section 55(1) was repealed by the Social Security Act 1973 (c. 38), section 100(2)(b), Schedule 28  
(b) S.R. & O. (N.I.) 1960 No. 181  
(c) S.R. 1975 No. 48 as amended by the National Insurance (Non participation – Transfer of Functions) (Transitional) Regulations (Northern Ireland) 1983 (S.R. 1983 No. 15)

(7) For these Regulations and the 2002 Regulations, a member to whom paragraph (1) applies shall be treated as having ceased to hold the employment for which he receives a return of contributions on the day before the date of receipt.

(8) Entitlement to a pension under paragraph (2) must be disregarded –

(a) for regulations 19(4), (6) and (8), 31, 37(1), 41(5), 44, 47(5), 48(7) and 88(1)(a) of the 2002 Regulations; and

(b) for determining whether a person is at any time a pensioner member or a deferred member.

(9) For this regulation a member may count the excess period referred to in regulation 127(1) of the 2002 Regulations (service not matched by period credited on transfer into the Scheme).

(10) In this regulation –

“non-participating employment” has the same meaning as in section 55 of the Insurance Act or the corresponding provision of the Great Britain Acts or the Isle of Man Act.

“excepted service”, in relation to any person, is any earlier period of such service as is mentioned in paragraph (4), being service in respect of which –

(a) a payment in lieu of contributions has been made; or

(b) equivalent pension benefits satisfying the requirements of the Insurance Act have already been assured to him.

#### *The fund and the Committee*

#### **The fund and the Committee**

**16.—**(1) The fund for the old provisions immediately before the commencement date shall continue to be the fund for those provisions and shall be the fund for the 2002 Regulations.

(2) Without prejudice to paragraph (1), any liabilities under the old provisions, as they continue to apply by virtue of these Regulations, shall continue to be payable by the Committee from the fund as respects those liabilities immediately before that date.

(3) Where immediately before that date any body is or may become liable to make payments to the Committee or to the fund in respect of any liability arising under the old provisions in respect of any person, liabilities in respect of whom continue to arise on or after that date under those provisions, that body shall continue to be the body which is or may become so liable.

#### **Continuation of employer’s liability for certain payments**

**17.—**(1) Nothing in these Regulations affects the liability of any body to make payments under regulation L6 of the 2000 Regulations in respect of any member who continues as an active member on the commencement date by virtue of regulation 3(1).

(2) But if the member (or his personal representative) informs the Committee under regulation 12(2) (as applied by regulation 13(1)) that he does not wish a right which ceases to have effect under regulation 10(1)(a) to be treated as mentioned in regulation 12(1), regulation L6 of the 2000 Regulations shall cease to apply in relation to that member’s payments so far as they become due on or after the commencement date.

(3) Where, in a case in which payments continue to be made under regulation L6(1) of the 2000 Regulations by virtue of paragraph (1), following an election under regulation 14(1) a member makes a capital payment in full satisfaction of his liabilities in respect of any period, any liabilities which any body has in respect of him under that regulation are not affected.

#### *Special Cases*

#### **Community scheme transferees**

**18.—**(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 –
- (a) who became employed by a Community institution after having been employed in local government employment;
  - (b) in respect of whom the scheme managers of the Communities' scheme were paid a transfer value under Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993 or Part K of the 2000 Regulations or any corresponding earlier provisions; and
  - (c) in respect of whom the Committee has been repaid for the credit of the fund an amount which in accordance with that guidance may be treated as equivalent to that transfer value.

(3) The rights to which any person is entitled by virtue of guidance under this regulation must not be less valuable than those to which he would have been entitled if regulation K13 of the 2000 Regulations still applied to him.

*Supplementary provisions*

**Cost of resolutions**

**19.** Any extra charge on the fund resulting from a resolution under these Regulations by an employing authority in relation to any member must be repaid to the fund by that authority.

**Amendments to the Local Government Pension Scheme Regulations (Northern Ireland) 2000**

**20.** The 2000 Regulations shall be amended as provided by Schedule 3.

**Minor and consequential amendments**

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

**Transitional and transitory provisions and savings**

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

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

**Revocations**

**23.** The replaced provisions are hereby revoked, but subject to the provisions of these Regulations and, in particular, Schedule 5.

Sealed with the Official Seal of the Department of the Environment on 19th November 2002.

(L.S.)

*J. Ritchie*

A senior officer of the Department of the Environment

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

## SCHEDULE 1

Regulation 2(1)

### ADDITIONAL REGULATIONS WHICH ARE “OLD PROVISIONS”

The Local Government (Superannuation) (Milk Marketing Board for Northern Ireland) Regulations (Northern Ireland) 1997(a).

## SCHEDULE 2

Regulations 5, 6 and 7(1)

### RE-EMPLOYMENT OF MEMBERS (SCHEDULE D5 TO THE 2000 REGULATIONS ETC.)

#### **Interpretation**

1. In this Schedule –

“active deferred member” means any person who was a deferred member and an active member immediately before the commencement date and continues as an active member on that date by virtue of regulation 3;

“active pensioner” means a person who was a pensioner member and an active member immediately before the commencement date and continues as an active member on that date by virtue of regulation 3;

“rejoining pensioner” means a person who was a pensioner member but not an active member immediately before the commencement date, and becomes an active member again on or after that date (otherwise than in an employment which is a new employment to which paragraph 3(1) applies);

“rejoining deferred member” means any person who –

- (a) immediately before the commencement date was a deferred member (or would have been apart from being a pensioner member) but was not an active member; and
- (b) becomes an active member again on or after that date.

#### **Active and rejoining pensioners: general**

2. Despite regulation 3 –

- (a) the saved provisions shall continue to apply; and
- (b) Part II (except regulations 51 and 52) and Parts III and V of the 2002 Regulations shall not apply,

in relation to an active pensioner or a rejoining pensioner in his capacity as a pensioner member as respects his membership before the commencement date, except where the following provisions of this Schedule provide otherwise.

#### **Re-employment and abatement**

3.—(1) Where immediately before the commencement date Part I of Schedule D5 to the 2000 Regulations (reduction of retirement pensions) applies to any person by virtue of one or more new employments with employing authorities which continue on that date –

- (a) that Part of that Schedule shall cease to apply to him if after that date there is a period of more than one month during which he is not employed by any of those employing authorities; and
- (b) if after such a period the member enters employment with any employing authority, regulations 112 and 113 of the 2002 Regulations (abatement) shall apply instead as respects that employment.

(2) Regulations 112 and 113 of the 2002 Regulations shall apply instead of Part I of Schedule D5 to the 2000 Regulations to a rejoining pensioner and a rejoining deferred member.

#### **Combined benefits**

4.—(1) An active deferred member, an active pensioner or a former active pensioner may not make an election under Part II of Schedule D5 to the 2000 Regulations on or after the commencement date, but he may make an election under regulation 31(1) of the 2002 Regulations.

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

(2) A rejoining pensioner or a rejoining deferred member or a former such person may not make an election under Part II of Schedule D5 to the 2000 Regulations on or after the date on which he becomes an active member again, but he may make an election under regulation 31(1) of the 2002 Regulations.

(3) Where an election has been made under Part II of Schedule D5 to the 2000 Regulations on or after the commencement date by a person who later becomes unable to make such an election by virtue of sub-paragraph (2) –

- (a) that election shall continue to have effect; and
- (b) that Part of that Schedule shall continue to apply,

unless he makes an election under regulation 31(1) of the 2002 Regulations affecting the pension in question.

(4) If he does so, regulation 31(1) to (8) of the 2002 Regulations shall apply and the saved provisions shall cease to apply to him as respects the pension in question.

#### **Separate benefits and dependants' benefits**

5.—(1) This paragraph applies where an active pensioner, a rejoining pensioner, an active deferred member or a rejoining deferred member or a former such person does not make an election under regulation 31(1) of the 2002 Regulations.

(2) Regulation 31(9) of those Regulations shall apply in relation to him instead of paragraph 16 of Schedule D5 to the 2000 Regulations.

(3) When he dies, regulation 50 of the 2002 Regulations (dependants of re-employed pensioners) shall apply instead of Part IV of Schedule D5 to the 2000 Regulations.

(4) But, if he made an election under paragraph 9(1) of Schedule D5 to the 2000 Regulations which continues in effect until his death, regulation 50 of the 2002 Regulations shall apply as if the single pension to which he became entitled by virtue of that election was an unreduced retirement pension within regulation 50(1) of those Regulations.

(5) This sub-paragraph applies if when he dies, by virtue of regulation 50 of the 2002 Regulations, all the benefits payable on his death (except short-term pensions payable under the old provisions or the 2002 Regulations) are calculated on the assumption that he has made an election under regulation 31(1) of the 2002 Regulations.

#### **Members with preserved rights**

6.—(1) Where immediately before the commencement date there is an election in force in respect of a member's benefits under regulation D12(1)(c) of the 2000 Regulations (elections to remain entitled to preserved benefits under regulation D11(1) of those Regulations), for these Regulations he shall be treated as a deferred member (and not as an active member) as respects his rights to preserved benefits and the membership in question (but see the following provisions of this paragraph).

(2) Sub-paragraph (1) is without prejudice to regulation 34(5) of the 2002 Regulations and applies despite the fact that the member –

- (a) continues as an active member by virtue of regulation 3; or
- (b) becomes an active member again on or after the commencement date (whether immediately before he does so he is a deferred member or a pensioner member).

(3) Sub-paragraph (1) ceases to apply to a person falling within sub-paragraph (2)(b) as respects any part of his former membership which he elects under regulation 34(1) of the 2002 Regulations to aggregate with later membership.

(4) Sub-paragraph (1) also ceases to apply if any person falling within that sub-paragraph makes an election under regulation 31(1) of the 2002 Regulations.

(5) Where sub-paragraph (4) applies, the member shall cease to be entitled to count under the saved provisions any period of membership to which he is entitled under the old provisions but as respects which he elected under regulation D12(1)(c) of the 2000 Regulations to remain entitled to preserved benefits.

(6) He shall instead be entitled to count that period as a period of membership for the purposes of regulation 8(1)(d) of the 2002 Regulations.

(7) But regulations 8 to 10 shall apply as to the adjustment of the length of that period as if it had been a period which he was entitled to count by virtue of regulation 6.

### **Elections for aggregation: members rejoining the day before the commencement date**

7. Where on the day before the commencement date a member was eligible to make an election under regulation D12(1)(c) of the 2000 Regulations by reason of having re-entered local government employment in the period of three months ending at that time, but had not done so –

- (a) he may make an election under regulation 34(1) of the 2002 Regulations at any time whilst he remains an active member in that employment; but
- (b) if he does not make such an election before he ceases to be such a member in that employment, he shall be treated for the purposes of these Regulations as if he had made an election under regulation D12(1)(c) of the 2000 Regulations on the day before the commencement date as respects all the membership as to which he could have made that election.

### **Limitations on benefits**

8.—(1) Where an active pensioner, a rejoining pensioner, an active deferred member or a rejoining deferred member has not made an election under regulation 31(1) of the 2002 Regulations –

- (a) Part III of Schedule C4 to the 2000 Regulations (limitations on benefits) shall continue to apply as respects the benefits derived from his membership before the commencement date; and
- (b) Schedule 4 to the 2002 Regulations shall only apply as respects his membership after that date.

(2) Sub-paragraph (1) ceases to apply to an active deferred member or a rejoining deferred member as respects any part of his former membership which he elects under regulation 34(1) of the 2002 Regulations to aggregate with later membership; and accordingly Schedule 4 to the 2002 Regulations shall apply as respects all benefits payable to or in respect of him in relation to the membership aggregated.

### **Continuity of elections by certain rejoining deferred members**

9.—(1) This sub-paragraph applies where a rejoining deferred member –

- (a) becomes an active member again –
  - (i) before the expiry of the period of 12 months beginning with the date he ceased to be an active member, and
  - (ii) before becoming entitled to the immediate payment of benefits under the 2000 Regulations;
- (b) immediately before ceasing to be an active member was making payments under an election made under regulation C9 or C13 of the 2000 Regulations; and
- (c) elects under regulation 34(1) of the 2002 Regulations.

(2) Where sub-paragraph (1) applies the member may pay his employing authority in the employment in which he is an active member an amount equal to the amount which would have been payable if he had continued to be an active member and to make those payments.

(3) That amount must be paid before the expiry of the period of three months beginning with the date he becomes an active member again.

- (4) If he pays his employing authority that amount –
  - (a) that payment shall be treated as having been made under regulation 57 of the 2002 Regulations; and
  - (b) that election shall be treated as having been made under that regulation as respects so much of the period of membership as he may not count by virtue of regulation 7 (and accordingly the amount of his additional contributions shall be determined under regulation 57 of the 2002 Regulations).
- (5) Sub-paragraph (1) does not apply if the member –
  - (a) has received a return of contributions which includes additional contributions under regulation C9 of the 2000 Regulations made under the election mentioned in sub-paragraph (1)(b); or
  - (b) has requested such a return of contributions.

## **SCHEDULE 3**

Regulation 20

### **AMENDMENTS TO THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS (NORTHERN IRELAND) 2000**

1. The 2000 Regulations shall be amended as provided by paragraphs 2 to 4.
2. In regulation B13, after paragraph (2) add –

“(3) 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.”.

3. For regulation C6 there shall be substituted the following –

“C6.—(1) 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), on that pay.

(2) 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.

(3) 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 any 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 (1) 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.

(4) 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 elect to make contributions 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 begun (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).

(5) An election under paragraph (4) shall be made by notice in writing to the employing authority given before the expiry date of the period of 30 days beginning with the earlier of –

(a) the day on which the member returns to duty; and

(b) the day on which she ceases to be employed by that employing authority.”.

4. In Schedule A1 –

(a) after the definition “Officer” insert –

““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(a) and for any period commencing on or after 24th September 1996, leave under Part IX of the Employment Rights (Northern Ireland) Order 1996(b);”;

(b) after the definition “The Order of 1972” insert –

““parental leave” means leave under regulation 13(1) of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999(c);”.

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(a) S.I. 1976/2147 (N.I. 28)

(b) S.I. 1996/1919(N.I. 16); section 70C was inserted by the Employment Relations (Northern Ireland) Order (S.I. 1999/2790 (N.I. 9) paragraph 3, Part III of Schedule 4

(c) S.R. 1999 No. 471

## MINOR AND CONSEQUENTIAL AMENDMENTS

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

1. The Local Government (Superannuation) (Milk Marketing Board for Northern Ireland) Regulations (Northern Ireland) 1997 shall be amended as provided by paragraphs 2 and 3.

2. In regulation 1(2) –

- (a) in the definition of “admitted employee” for “regulation B6(15)” substitute “regulation 4(15)”; and
- (b) in the definition of “the principal Regulations” for “the Local Government Pension Scheme Regulations (Northern Ireland) 2000” substitute “the Local Government Pension Scheme Regulations (Northern Ireland) 2002”.

3. In regulation 2 for “regulation B6(3)” substitute “regulation 4(3)” and for “regulation B6” substitute “regulation 4”.

**The Local Government Pension Scheme Regulations (Northern Ireland) 2000**

4. The 2000 Regulations(a) shall be amended as provided by paragraphs 5 to 22.

5. In regulation D8(4) after the words “regulation J3 (decisions as to benefits)” insert the words “or regulation 98 of the 2002 Regulations (first instance decisions)”.

6. In regulation D12 –

- (a) in paragraph (1)(a)(i) after the words “regulation C21” insert the words “or regulation 88 of the 2002 Regulations”; and
- (b) in paragraph (1)(a)(ii) after the words “regulation K14” insert the words “or regulation 124 of the 2002 Regulations”.

7. At the end of regulation D15 insert the words “or, as the case may be, the corresponding provisions of the 2002 Regulations (in accordance with Schedule 2 to the Transitional Regulations)”.

8. In regulation D16(10) –

- (a) after the words “these regulations” insert the words “or the 2002 Regulations or the Transitional Regulations”;
- (b) at the end of sub-paragraph (a) insert the words “or regulation 112 or 113 of the 2002 Regulations (abatement) or any provision of the Transitional Regulations relating to those provisions”;
- (c) in sub-paragraph (b) after the words “regulation H4” insert the words “or regulation 114 of the 2002 Regulations or regulation 117 of those Regulations (so far as it relates to regulation 114)”; and
- (d) in sub-paragraph (c) after the words “regulation H5” insert the words “or regulation 51 of the 2002 Regulations.”

9. In regulation D20 –

- (a) after the words “Schedule C4 (limitations on contributions and benefits)” insert the words “or, as the case may be, the corresponding provisions of the 2002 Regulations (in accordance with Schedule 2 to the Transitional Regulations)”; and
- (b) for the words “Part H” substitute the words “regulation H2 and regulations 51, 52, 95 to 97 and 114 to 118 of the 2002 Regulations.”

10. In regulation E4(b) –

- (a) in paragraphs (1)(b) and (2), after the words “Schedule D5 (re-employed pensioners)” in both places where they occur, insert the words “or regulation 113 (abatement) of the 2002 Regulations”; and

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(a) S.R. 2000 No. 177; amended by S.R. 2001 No. 61, S.R. 2001 No. 63, S.R. 2001 No. 64 and S.R. 2002 No. 115

(b) Regulation E4 was substituted by S.R. 2001 No. 63, regulation 5

(b) in paragraph (2) after the words “Schedule D5” in the second place where they occur, insert the words “or regulation 113 (abatement) of the 2002 Regulations”.

11. In regulation E6 at the end add the words “or, as the case may be, the corresponding provisions of the 2002 Regulations (in accordance with Schedule 2 to the Transitional Regulations)”.

12. In regulation F1(2) after the words “Schedule D5 (re-employed pensioners)” insert the words “or, as the case may be (in accordance with Schedule 2 to the Transitional Regulations), regulation 50(4) of the 2002 Regulations”.

13. In regulation F2(2) after the words “Schedule D5 (re-employed pensioners)” insert the words “or, as the case may be (in accordance with Schedule 2 to the Transitional Regulations), regulation 50 of the 2002 Regulations”.

14. In regulation F4(1)(b) and (2) –

(a) after the words “regulation H6” insert the words “or, as the case may be, regulation 52 of the 2002 Regulations”; and

(b) after the words “Schedule D5 (re-employed pensioners)” insert the words “or, as the case may be, regulation 113 (abatement) of the 2002 Regulations”.

15. In regulation F5 –

(a) in paragraph (2) after the words “Schedule D5 (re-employed pensioners)” insert the words “or, as the case may be, regulation 113 (abatement) of the 2002 Regulations”; and

(b) for paragraph (3)(c) for the words from “regulation H6 or Part I of Schedule D5” substitute “regulation H6 or as the case may be, regulation 52 of the 2002 Regulations or Part 1 of Schedule D5 or, as the case may be, regulation 113 (abatement) of the 2002 Regulations”.

16. At the end of regulation F9 add the words “or, as the case may be, regulation 50 of the 2002 Regulations (in accordance with Schedule 2 to the Transitional Regulations)”.

17. In regulation F10(3) –

(a) after the words “these regulations” insert the words “or the 2002 Regulations or the Transitional Regulations”;

(b) in sub-paragraph (a) after the words “regulation H4” insert the words “or regulation 114 of the 2002 Regulations or regulation 117 of those Regulations (so far as it relates to regulation 114)”; and

(c) in sub-paragraph (b) after the words “regulation H5” insert the words “or regulation 51 of the 2002 Regulations”.

18. In regulation G3(5)(b) after the words “Schedule D5 (re-employed pensioners)” insert the words “or, as the case may be, regulation 113 (abatement) of the 2002 Regulations”.

19. In regulations G6(1)(b) and (3) and G7(1)(b) –

(a) after the words “regulation H6” insert the words “or, as the case may be, regulation 52 of the 2002 Regulations”; and

(b) after the words “Schedule D5” insert the words “or, as the case may be, regulation 113 (abatement) of the 2002 Regulations”.

20. In regulation G12 after the words “Schedule D5 (re-employed pensioners)” insert the words “or, as the case may be, regulation 50 of the 2002 Regulations (in accordance with the Transitional Regulations)”.

21. In Schedule A1 –

(a) after the definition of “The 1992 regulations” insert –

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

(b) after the definition of “The Transitional Provisions Regulations” insert –

“ “The Transitional Regulations” means the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002;”.

22. In paragraph 4 of Schedule B1 after the words “Schedule D5”, wherever they occur, insert the words “or, as the case may be, regulation 31(1) to (8) of the 2002 Regulations”.

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

23. The Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001(a) shall be amended as provided by paragraphs 24 to 43.

24. In regulation 2 –

(a) in paragraph (1) –

(i) for the definition of “the LGPS Regulations” substitute –

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

(ii) after the definition of “the 1992 Regulations” insert –

“ “the 2000 Regulations” means the Local Government Pension Scheme Regulations (Northern Ireland) 2000;

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

(iii) after the definition of “LGPS member” insert –

“ “pensionable remuneration” means pay within the meaning of regulation 12 of the LGPS Regulations;”;

(b) at the end of paragraph (2) add the words “or, if the expression is not defined in those Regulations, in the 2000 Regulations”; and

(c) in paragraph (3) after the words “1992 Regulations” in both places where they occur, insert the words “or the 2000 Regulations”.

25. In regulation 4 –

(a) in paragraph (1) in the definition of “occupational pension” after the words “LGPS Regulations”, in both places where they occur, insert the words “or the 2000 Regulations”; and

(b) in paragraph (3) for the words “regulation B5(1)” substitute the words “regulation 129(1)”.

26. In regulation 5(1) –

(a) in sub-paragraph (b)(i) for the words “regulation D6(2)(a)” substitute the words “regulation 28(1)(b)”;

(b) for sub-paragraph (e) substitute –

“(e) on that date the aggregate of –

(i) his total period of membership, and

(ii) any periods of superannuable membership (as defined in regulation 9 of the LGPS Regulations) and any increase in membership under regulation 11 of the Transitional Regulations,

amounts to at least 5 years;”.

27. In regulation 6 –

(a) in paragraph (1)(c)(ii) after the words “regulation B10” insert the words “of the 2000 Regulations or regulation 6”;

(b) in paragraph (1)(d) after the words “regulation B12” insert the words “of the 2000 Regulations or regulation 7”;

(c) for paragraphs (2)(c) and (d) substitute –

“(c) that any election or determination which, on the assumptions mentioned in sub-paragraphs (a) and (b), might have been made with respect to a period of special service under paragraph 2 of Schedule D1 to the 2000 Regulations (optional alternative relevant periods for calculating pensionable remuneration) –

(i) in the circumstances mentioned in paragraph 3 of Schedule D1 to the 2000 Regulations had been made; and

(ii) in the circumstances mentioned in paragraph 4 or 5 of Schedule D1 to the 2000 Regulations or regulation 23 or 24 of the LGPS Regulations had not been made; and

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(a) S.R. 2001 No. 279

(d) that paragraph 6(b) of Schedule D1 to the 2000 Regulations did not apply with respect to a period of special service.”.

28. In regulation 7(1), for sub-paragraph (c) substitute –

“(c) the aggregate of his total period of membership and any periods which count as periods of superannuable membership (as defined in regulation 9 of the LGPS Regulations) and any increase in membership under regulation 11 of the Transitional Regulations apply (or, if he is an assumed member, would count or, as the case may be, apply or be awarded apart from a relevant disqualification and on the relevant assumptions); or”.

29. In regulations 8(2) and 9(2) –

(a) in sub-paragraph (a) for the words from “regulation D6” to “satisfied” substitute the words “regulation 28 of the LPGA Regulations”; and

(b) in sub-paragraph (b) for the words “regulation D6(2)(a)” substitute the words “regulation 28(1)(b)”.

30. In regulation 10 –

(a) in paragraph (1)(c)(ii) for the words “regulation D6(1)” substitute the words “regulation 28”; and

(b) in paragraph (2)(a) for the words “Part D” substitute the words “Part II”.

31. In regulation 15 –

(a) in paragraph (3) for sub-paragraph (a) substitute –

“(a) a pension under regulation 26, 28, 29 or 33 of the LPGA Regulations (including a single pension under regulation 31 of those Regulations); or”; and

(b) in paragraph (7) for the words from “paragraph 5 of Schedule D5” to the end substitute “no regard shall be had to regulation 113 (abatement) of the LGPS Regulations.”.

32. In regulation 16 –

(a) in paragraph (3) for the words “Part D” substitute the words “Part II”; and

(b) in paragraph (4) for the words “paragraph 4(7) of Schedule B1 to” substitute the words “regulation 8(4) of”.

33. In regulation 17(4) for the words “regulation D2” substitute the words “regulations 19 and 56”.

34. In regulation 18 –

(a) in paragraphs (1) and (6) for the words “regulation D14” substitute the words “regulation 36”; and

(b) in paragraph (3) for the words “regulation D6(2)(a)” substitute the words “regulation 28”.

35. In regulation 19 –

(a) in paragraph (1)(a) for the words “Part F” substitute the words “regulations 42 to 45”; and

(b) in paragraph (3) for the words “regulation F6(2)” substitute the words “regulation 44”.

36. In regulation 20(2)(b) for the words “regulation D7(1)(b)” substitute the words “regulation 29(1)”.

37. In regulation 21(1)(a) and (2)(a) for the words “regulation G4 or G7” substitute the words “regulation 47”.

38. In regulation 23(1)(a) and (2)(a) for the words “regulation G3, G5 or G6” substitute the words “regulation 48”.

39. In regulation 24 –

(a) in paragraph (3)(b) for the words “regulation D7(1)(b)” substitute the words “regulation 29(1)”; and

(b) in paragraph (5)(b)(i) for the words “regulation G10(1)” substitute the words “regulation 48(11)”.

40. In regulation 25(1) and (2) for the words “regulation G11” substitute the words “regulation 49”.

41. In regulations 28(2) and 31(6), omit the words “Without prejudice to any statutory provision to the contrary,”.

42. In regulation 35 –

(a) in paragraph (1)(b) –

(i) for the words “Part D” substitute the words “Part II”; and

(ii) for the words “paragraph 4(1) of Schedule D1 to” substitute the words “regulation 24(1) of”;  
and

(b) in paragraph (1)(c) for the words “relevant period for the purposes of regulation D1 of” substitute the words “final pay period for”.

43. In paragraph 8 of Schedule 3, for the words from “Parts D” to the end of the paragraph substitute the words “the LPGS Regulations were references to the 2000 Regulations as modified by paragraphs 2 and 3 of Schedule F1 to those Regulations.”.

## SCHEDULE 5

Regulations 22(1) and 23

### TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

1. In this Schedule –

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

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

2.—(1) The substitution of the 2002 provisions for the former provisions does not affect the continuity of the law.

(2) Anything done or having effect as if done under or for the purposes of any of the former provisions has effect, if it could have been done under or for the purposes of the corresponding provision of the 2002 provisions, as if done also under or for the purposes of that corresponding provision.

(3) Any reference, whether express or implied, in the 2002 provisions or any other instrument or document to a provision of the 2002 provisions shall, so far as the context permits, be construed as including, in relation to the times, circumstances and purposes in relation to which the corresponding provision of the former provisions has effect, a reference to that corresponding provision.

(4) Any reference, whether express or implied, in any provision of the former provisions or in any other instrument or document to a provision of the former provisions shall be construed, so far as is required for continuing its effect, as including a reference to the corresponding provision of the 2002 provisions.

(5) Any document made, served or issued after the 2002 provisions come into operation in relation to any person which contains a reference to any of the former provisions shall be construed, except so far as a contrary intention appears, as referring or, as the context may require, including a reference to the corresponding provision of the 2002 provisions.

(6) Where any provision of the former provisions (“the re-enacting provision”) re-enacted, with or without modification, a previous provision revoked by the 2000 Regulations or any other former provision, then, so far as is necessary to prevent the continuity of the law from being affected, any reference in the 2002 provisions or in any other instrument or document to the re-enacting provision shall, so far as the context permits, be construed as including a reference to that previous provision.

(7) Where by virtue of paragraph 2(6) of Schedule M2 to the 2000 Regulations any reference to such a previous provision includes a reference to any earlier provision, sub-paragraph (6) applies so as to include a reference to that earlier provision too.

3.—(1) Where –

(a) any provision continues to have effect in relation to any person by virtue of these Regulations;  
and

(b) on the day before the commencement date it has effect in relation to him subject to any saving, transitional provision or modification,

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

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

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

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

(3) In this paragraph –

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

- (a) left an employment in which he was an active member (whether or not he has subsequently become an active member again); or
- (b) died while in such employment; and

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

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

- (a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued by virtue –
  - (i) of periods of membership before he left the employment referred to in sub-paragraph (a) of the definition of “relevant benefit” (or, if he left such an employment more than once, the last time he left before the commencement date); or
  - (ii) of contributions paid in respect of such periods of membership; and
- (b) in determining entitlement to, or the amount of, the benefit to that extent, he shall be treated as if he had never become an active member again at any time after he so left (but without prejudice to the application of this paragraph);

and these Regulations shall have effect accordingly.

## **EXPLANATORY NOTE**

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

These Regulations are supplemental to the Local Government Pension Scheme Regulations (Northern Ireland) 2002 (“the 2002 Regulations”) which set out the pension arrangements of the Local Government Pension Scheme (“the Scheme”) from 1st February 2003 (“the commencement date”). These Regulations make provision for the transition from the Scheme arrangements set out in the Local Government Pension Scheme Regulations (Northern Ireland) 2000 (“the 2000 Regulations”), and the other regulations specified in Schedule 1 to these Regulations, to those set out in the 2002 Regulations. These Regulations revoke provisions of the 2000 Regulations relating to administration of the Scheme (which are replaced by provisions in Part IV of the 2002 Regulations) for all members of the Scheme and revoke the other provisions for those who are members in their employment on that date (“active members”). But they provide for the continuation of certain provisions of the 2000 Regulations for members who are not then active members. They also make amendments to those Regulations to provide for continuity of membership in periods of maternity absence or parental leave and in relation to an employee’s obligations to make contributions during a period of maternity absence.

Regulation 3 transfers the active members from the arrangements under the 2000 Regulations to those under the 2002 Regulations.

Regulation 4 provides that the 2000 Regulations continue to apply to deferred and pensioner members who do not become active members again, except for provisions about administration, which are replaced by provisions in the 2002 Regulations.

Regulation 5 and Schedule 2 make provision about the treatment of deferred and pensioner members who are re-employed.

Regulations 6 and 7 provide for active members and re-employed members to be able to count for the 2002 Regulations Scheme membership from before the commencement date.

Regulation 8 modifies the arrangements under the 2000 Regulations for counting certain earlier membership for the purposes of calculating benefits for surviving spouses of members.

Regulations 9 and 10 make provision for the cessation of certain existing rights to make additional payments under the Scheme, subject to regulations 12 to 13.

Regulation 11 obliges employers to augment members’ membership, where their rights under the 2002 Regulations are less valuable than under the 2000 Regulations.

Regulations 12 to 14 enable the rights to make payments, which otherwise cease to have effect under regulations 9 and 10, to continue where the member wishes.

Regulation 15 makes provision as to equivalent pension benefits under the National Insurance Act.

Regulation 16 provides for continuity of the pension fund and the Northern Ireland Local Government Officers’ Superannuation Committee.

Regulation 17 provides for certain authorities to continue to be liable for certain payments as respects employees who are members.

Regulation 18 continues the special position of certain groups of members as to whom the Scheme has effect with particular modifications.

Regulations 19 to 23 contain supplemental provisions.

Regulation 20 and Schedule 3 insert amendments into the 2000 Regulations to ensure

- periods of membership before and after unpaid periods of maternity absence or parental leave are treated as continuous, and
- periods of unpaid statutory maternity leave are treated as periods of membership.

Schedule 4 contains minor and consequential amendments connected with the transition between the old provisions governing the Scheme and the new ones.

Schedule 5 provides for the continuity of the application of the Scheme provisions and contains general savings and transitional provisions.

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

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