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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 33**

**LOCAL GOVERNMENT**

**Local Government Pension Scheme (Administration)  
Regulations (Northern Ireland) 2009**

*Made* - - - - *25th February 2009*

*Coming into operation* *1st April 2009*

The Department of the Environment make these Regulations 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>.

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

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. These Regulations may be cited as the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 and shall come into operation on 1st April 2009.

**Interpretation**

2.—(1) Schedule 1 (interpretation) contains definitions of expressions used in these Regulations which apply for their interpretation unless the context indicates they have a different meaning.

(2) Unless that is so, references to members or membership generally refer to active members or active membership respectively unless otherwise stated or the context indicates a different meaning.

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(1) [S.I. 1972/1073 \(N.I. 10\)](#); Art. 9 was amended by Art. 34 [S.I. 2005/1968 \(N.I. 18\)](#); Art. 14 was amended by Art. 12 [S.I. 1990/1509\(N.I. 13\)](#).  
(2) [S.R. & O \(N.I.\) 1973 No. 504](#)Article 7(1); [S.I. 1976/424 \(N.I. 6\)](#).

## PART 2

### MEMBERSHIP OF SCHEME

#### General eligibility for membership

- 3.—(1) A person may only be an active member of the Scheme if—
- (a) this regulation, or any of regulations 4 (employees of community admission bodies) to 6 (admission agreements – further provisions) enables him to be one; or
  - (b) he is employed under a contract of employment of more than 3 months,
- and he is not prevented by regulation 8 (further restrictions on eligibility).
- (2) A person may be an active member if he is employed by an employing authority.

#### Employees of community admission bodies

4.—(1) Subject to the requirements of this regulation and regulation 6 (admission agreements – further provisions), the Committee may make an admission agreement with any community admission body.

- (2) The following are community 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 an employing authority for the body and the employing authority to be regarded as having a community of interest whether because the operations of the body are dependent on the operations of the employing authority 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 employing authority contributes;
  - (c) a body representative of—
    - (i) local authorities;
    - (ii) local authorities and officers of local authorities;
    - (iii) officers of local authorities where it is formed for the purpose of consultation on the common interests of local authorities and the discussion of matters relating to local government; or
    - (iv) employing authorities;
  - (d) a statutory undertaker;
  - (e) a non-statutory undertaker;
  - (f) the managers of a voluntary school within the meaning of Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(3); and
  - (g) the governing body of an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997(4).
- (3) Approval under paragraph (2)(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.
- (4) Where, at the date that an admission agreement is made with a body mentioned in paragraph (2)(b), the funding contributions paid to the body by one or more employing authorities

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(3) 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).

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

equal in total 50% or less of the total amount it receives from all sources, it must be a term of the admission agreement that the employing authority which provides funding (or, if more than one, all of them) guarantees the liability of the body to pay all amounts due from it under these Regulations or the Benefits Regulations.

(5) In this regulation—

(a) “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; and

(b) “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.

### **Employees of transferee admission bodies**

5.—(1) Subject to the requirements of this regulation and regulation 6 (admission agreements – further provisions), the Committee may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing or will provide—

(a) a service or assets in connection with the exercise of a function of an employing authority as a result of the transfer of the service or assets by means of a contract or other arrangement; or

(b) a public service and which is approved by the Department for the purposes of admission to the Scheme.

(3) In the case of an admission agreement with a transferee admission body under paragraph (2)(a) the employing authority, if it is not also the Committee, must be a party to the admission agreement.

(4) Approval under paragraph (2)(b) 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.

(5) An admission agreement with a transferee admission body shall require that—

(a) in the case of a body under—

(i) paragraph (2)(a), the employing authority; or

(ii) paragraph (2)(b), the transferee admission body, to the satisfaction of the Committee, shall carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee admission body; and

(b) where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity bond to meet the level of risk identified.

(6) The indemnity or bond must be with—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(5) to accept deposits or to effect and carry out contracts of general insurance;
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) and (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 accept deposits or to effect and carry out contracts of general insurance; or
  - (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.
- (7) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 2 (matters to be included in admission agreements with transferee admission bodies).
- (8) This paragraph applies where a transferee admission body undertakes to meet the requirements of this regulation and—
- (a) in the case of a body under paragraph (2)(a), the employing authority undertakes to meet the requirements of this regulation; or
  - (b) in the case of a body under paragraph (2)(b), the Department approves the body for admission to the Scheme and the conditions, if any, to which the approval is subject, have been met.
- (9) Where paragraph (8) applies—
- (a) the Committee must admit to the Scheme the eligible employees of the transferee admission body specified by the body; and
  - (b) where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations and the Benefits Regulations.
- (10) Only those employees of the transferee admission body who are employed in connection with the provision of a service or assets mentioned in paragraph (2) are eligible to be designated, under regulation 6(1), members of the Scheme.

#### **Admission agreements – further provisions**

- 6.—(1) A person employed by a community admission body or an eligible person employed by a transferee admission body may only be a member if he, or a class of employees to which he belongs, is designated in an admission agreement by the body as being eligible for membership of the Scheme.
- (2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.
- (3) When the Committee makes an admission agreement, it must promptly inform the Department of—
- (a) the date the agreement takes effect;
  - (b) the admission body's name; and
  - (c) in the case of an agreement with a transferee admission body under regulation 5(2)(a) (employees of transferee admission bodies), the name of the relevant employing authority.
- (4) The Committee and an admission body may make an admission agreement despite the fact they do not exercise their functions or provide services or assets in areas that overlap or adjoin each other.

(5) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Department for determination.

(6) These Regulations and the Benefits Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the admission body were an employing authority.

### **Separate employments, etc.**

7.—(1) Where a person holds separate employments under one employing authority, these Regulations and the Benefits Regulations apply as if each of them were with a different employer.

(2) For the purposes of these Regulations and the Benefits 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>(6)</sup> shall, in relation to those functions, be treated as if he were employed by that district council and his pay shall be treated as fluctuating emoluments by that district council.

### **Further restrictions on eligibility**

8.—(1) If a person's employment entitles him to belong to another public service pension scheme, or would so entitle him were it not for his age, 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) "Public service pension scheme" has the meaning given by section 150 (meaning of "pension scheme") of the Finance Act 2004<sup>(7)</sup>.

(3) An employee of an admission body may not be a member if he is a member of another occupational pension scheme in relation to the employment in respect of which he would otherwise be eligible to be a member of the Scheme under regulation 6<sup>(1)</sup> (admission agreements – further provisions).

(4) A person can not become a member after the day before his 75th birthday.

(5) Retained or volunteer membership with a fire and rescue authority (within the meaning given to that term by Article 3 of the Fire and Rescue Services (Northern Ireland) Order 2006<sup>(8)</sup>) on terms under which the retained or voluntary member is or may be required to engage in fire-fighting does not entitle the retained or voluntary member to be a member of the Scheme.

(6) 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.

### **Joining the Scheme**

9.—(1) A person who is eligible to be an active member of the Scheme on the day his employment begins becomes an active member on that day unless he notifies his employer in writing before his employment begins that he does not wish to become a member on that date.

(2) A person who applies to become a member after the date he would otherwise become a member under paragraph (1) becomes a member on the first day of the first payment period following the application.

(3) An application for membership may be withdrawn before membership begins.

(4) A former active member who is eligible for membership may reapply for membership of the Scheme and he becomes an active member on the first day of the first payment period following the application.

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<sup>(6)</sup> S.I.1972/1264 (N.I. 13) as amended by S.I. 1972/1998 (N.I. 21).

<sup>(7)</sup> 2004 c. 12.

<sup>(8)</sup> S.I. 2006/1254 (N.I. 9).

(5) But a person who has given more than one notification under regulation 10 (ending of membership) may only reapply again if—

- (a) his employer or future employer consents;
- (b) he is beginning a new employment with a new employing authority and he reapplies before he has been employed for 3 months; or
- (c) he is a person about whom information may be given under Article 164(1) of the Pensions Order(9), as it has effect in the case of the Scheme.

(6) In paragraphs (2) and (4), regulation 10(5) and regulation 19(7) (payment of additional regular contributions), a payment period is a period of service to which the employee's wages or salary payment relate.

### **Ending of membership**

**10.—**(1) A person stops being a member in an employment if he stops being eligible for membership in that employment.

(2) A person who wishes to leave the Scheme must notify his employer in writing.

(3) A person with more than one employment may leave the Scheme if he wishes in respect of one, some or all of the employments.

(4) A member who gives a notice under paragraph (2) stops being a member in the specified employment from the date the notification specifies.

(5) But, if a date earlier than the date specified in the notice or no date is specified, he stops being a member at the end of the payment period during which the notice is given.

(6) Where notice is given by a person before he has been a member for 3 months, he must be treated as not having been a member in that period.

(7) A person who is a member and an employee of a transferee admission body shall be treated for the purpose of these Regulations and the Benefits Regulations as leaving a local government employment when he ceases to be employed in connection with the provision of the service or assets under regulation 5(2) (employees of transferee admission bodies) by virtue of which he became eligible to join the Scheme.

### **Periods of membership**

**11.—**(1) A person may not count any period of membership if his contributions for that period have been returned to him.

(2) A person may not count any period of membership if his rights in respect of it have been transferred by payment of a transfer value (see Part 9).

(3) A person may not count as a period of membership for the purpose of calculating any benefit under regulations 16 (normal retirement) to 20 (early leavers: ill-health) or 29 (calculation on leaving early) to 31 (early payment of pension: ill-health) of the Benefits Regulations so much of his membership as requires to be excluded to reduce the value under regulation 70(2)(b) by the amount recovered or retained under regulation 70 (recovery or retention where former member has misconduct obligation).

(4) Where a person pays contributions under regulation 16 (contributions during trade dispute absence) for any period, that period counts as a period within regulation 6 (periods of membership) of the Benefits Regulations even if his contract of employment did not subsist throughout that period.

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(9) S.I. 1995/3213 (N.I. 22) as amended by S.I. 2001/3649.

(5) A period of membership under regulation 6(1)(a) of the Benefits Regulations includes any period for which a member is treated as having paid contributions under regulation 13 (concurrent employments) or 41(4) (rights to return of contributions) of these Regulations.

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

**12.—**(1) Where a deferred member becomes an active member in an employment (“the new employment”) before becoming entitled to the immediate payment of retirement benefits, he may, by giving notice in accordance with paragraph (4), choose to have his membership in any former employment aggregated with his membership in the new employment.

(2) Where he has ceased to be an active member more than once, he may choose to aggregate under paragraph (1)—

- (a) his membership at each of the times he so ceased; or
- (b) only such periods of membership as are specified in the notice.

(3) But a member cannot choose to aggregate any period of former membership which he could have chosen to aggregate with another period of former membership but did not before the expiry of the period mentioned in paragraph (4)(b).

(4) Notice for the purposes of paragraph (1) must be given in writing to the Committee—

- (a) while the deferred member is an active member in the new employment; and
- (b) before the expiry of the period of 12 months beginning with the date that he became an active member again (or such longer period as the Committee may allow).

(5) References in this regulation to former membership include all membership which the member was entitled to count as membership immediately before he ceased his former active membership.

(6) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, he shall be treated for the purposes of this regulation as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

(7) But paragraph (6) does not apply to a member who is the subject of—

- (a) a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006(10) (“the TUPE Regulations”) apply; or
- (b) a transfer that is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

### **Concurrent employments**

**13.—**(1) Where a person—

- (a) ceases to be an active member in one employment in respect of which he has at least 3 months’ total membership (“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 12 (re-employed and rejoining deferred members) shall apply as if references to—

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(10) S.I. 2006/246.



- (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 7(3) and (4) (calculation of lengths of periods of membership) of the Benefits Regulations if the first employment was part-time, multiplied by the fraction—

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

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

## PART 3

### CONTRIBUTIONS

#### **Contributions during child-related leave**

**14.**—(1) If a person who is a member, or has applied to be a member, goes on maternity, paternity or adoption leave, the person must make contributions as respects any part of his period of maternity, paternity or adoption absence for which the person is a member and entitled to receive pay (including statutory pay).

(2) But that pay does not include any amount that reduces the member's actual pay on account of possible entitlement to statutory pay.

(3) Such contributions must be made at the contribution rate on that pay.

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

- (a) goes on ordinary maternity leave, paternity leave or ordinary adoption leave; and
- (b) is not entitled to receive pay (including statutory pay) for all or any part of that period of leave,

the person shall be treated as if the person had paid contributions under paragraph (1) for the unpaid period of that leave and on the pay that the person would have received during that period but for the absence.

(5) If a person who is a member or has applied to be a member—

- (a) is on maternity or adoption leave (other than ordinary maternity or adoption leave); and
- (b) for all or part of that period maternity or adoption absence is not entitled to receive pay (including statutory pay) but is a member,

the person may make contributions at the contribution rate as respects the unpaid period of that absence as if the person's pay in the employment were equal to the adjusted pay.

(6) The adjusted pay shall be the pay the person was entitled to receive immediately before the unpaid period began (including statutory pay) but—

- (a) not including any amount that reduces his actual pay on account of the person's possible entitlement to statutory pay; and



- (b) disregarding any amount he receives on account of a day's work carried out under regulation 12A of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999<sup>(11)</sup> or regulation 21A of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002<sup>(12)</sup>.

(7) A member to whom paragraph (5) applies may continue to pay contributions under regulation 21 (additional voluntary contributions and shared cost additional voluntary contributions) which he was paying immediately before the leave began.

(8) If an active member goes on maternity, paternity or adoption leave, the member must continue to make any payments that member was making under regulation 19 (payment of additional regular contributions) or regulation 57 (payments to increase total membership) of the 2002 Regulations on the pay the member would have received during the period but for the leave.

(9) In this regulation—

“ordinary adoption leave” means leave under Article 107A of the Employment Rights (Northern Ireland) Order 1996<sup>(13)</sup>;

“ordinary maternity leave” means leave under Article 103 of that Order<sup>(14)</sup>;

“paternity leave” means leave under regulation 4 or 8 of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002;

“period of maternity, paternity or adoption absence” means any period throughout which a member is absent from duty because he is exercising his right to take—

- (a) ordinary maternity or adoption leave;
- (b) additional maternity or adoption leave under Article 105 or 107B of the Employment Rights (Northern Ireland) Order 1996<sup>(15)</sup>; or
- (c) paternity leave; and

“statutory pay” means any statutory maternity, paternity or adoption pay payable under the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(16)</sup>.

### **Contributions during reserve forces service leave**

**15.—**(1) This regulation applies to a person who—

- (a) is a member or who has applied to be a member; and
- (b) goes on reserve forces service leave.

(2) He must pay contributions under regulation 3 (contributions payable by active members) of the Benefits Regulations and any payments under regulation 19 (payment of additional regular contributions) of these Regulations or regulation 57 (payments to increase total membership) of the 2002 Regulations that he was paying immediately before his relevant reserve forces service began if (and only if) his reserve forces pay during that service equals or exceeds the pensionable pay he would have received if he had continued to be employed in his former employment.

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

(4) If he is not obliged to pay contributions under paragraph (2) he must be treated as if he had paid them and also any payments under regulation 19 of these Regulations or regulation 57 of the

<sup>(11)</sup> S.R. 1999 No. 471; regulation 12A was inserted by S.R. 2006 No. 372; regulation 10.

<sup>(12)</sup> S.R. 2002 No. 377; regulation 21A was inserted by S.R. 2006 No. 373; regulation 6.

<sup>(13)</sup> S.I. 1996/1919 (N.I. 16); Article 107A was inserted by S.I. 2002/2836 (N.I. 2).

<sup>(14)</sup> Article 103 was amended by S.I. 2002/2836 (N.I. 2).

<sup>(15)</sup> Article 105 was amended by Article 14 of S.I. 2002/2836 (N.I. 2) and Article 107B was inserted by Article 3 of S.I. 2002/2836 (N.I. 2).

<sup>(16)</sup> 1992 c. 7.

2002 Regulations that he would have been liable to pay if he had continued to be employed in his former employment.

(5) If he was paying any contributions under regulation 21(1) (additional voluntary contributions and shared cost additional voluntary contributions) immediately before his leave began—

- (a) he may continue to pay, or stop paying, them; and
- (b) unless he has stopped paying them, the Committee must throughout the period of his relevant reserve forces service, continue to pay such contributions which were to be used to provide benefits for him on his death.

(6) His relevant reserve forces service counts as a period of membership in his former employment.

(7) If during that service, he—

- (a) dies;
- (b) attains his normal retirement age; or
- (c) 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.

### **Contributions during trade dispute absence**

16.—(1) 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—
  - (i) that period; or
  - (ii) where two or more periods of absence have occurred because of one dispute, the first such period,

he may make a contribution for the relevant contribution period at the rate of 16% on his lost pensionable pay for that period.

(2) A person’s lost pensionable pay is the difference between—

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

and, in determining that difference, any guarantee payments under Part 3 of the Employment Rights (Northern Ireland) Order 1996 must be disregarded.

(3) A period is a person’s relevant contribution period if—

- (a) it is co-extensive with one of the intervals at which he is required under regulation 3 (contributions payable by active members) of the Benefits Regulations to make contributions; and
- (b) it includes all or part of his trade dispute absence.

(4) 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 employing authority and a member not later than the day after the dispute ends.

(5) A member to whom paragraph (1) applies—

- (a) may continue to pay contributions under regulation 21 (additional voluntary contributions and shared cost additional voluntary contributions) which he was paying immediately before the trade dispute absence began; and
- (b) must continue to make any payments he was making under regulation 19 (payment of additional regular contributions) of these Regulations or regulation 57 (payments to increase total membership) of the 2002 Regulations on the pensionable pay he would have received during the period but for his absence.

(6) In this regulation, “trade dispute” has the meaning given in Article 127 of the Trade Union and Labour Relations (Northern Ireland) Order 1995(17).

### **Contributions during absences with permission**

17.—(1) If a member—

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

he must make the payments specified in paragraph (2) on the pensionable pay he would have received during the period but for his absence (“his deemed pay”).

(2) The payments are—

- (a) contributions at the contribution rate; and
- (b) any payments he was making under regulation 19 (payment of additional regular contributions) of these Regulations or regulation 57 (payments to increase total membership) of the 2002 Regulations.

(3) The member may continue to pay contributions under regulation 21 (additional voluntary contributions and shared cost additional voluntary contributions) which he was paying immediately before the absence began.

(4) 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 pay or no pay,

he must make payments specified in paragraph (5) on his deemed pay.

(5) The payments are—

- (a) contributions at the contribution rate for the first 30 days’ absence; and
- (b) any payments he was making under regulation 19 of these Regulations or regulation 57 of the 2002 Regulations.

(6) The member may—

- (a) make contributions at the contribution rate on his deemed pay for the remainder of the period of absence subject to a maximum of 36 months; and
- (b) continue to make any payments he was making under regulation 21 which he was paying immediately before his absence began.

**Applications to make absence contributions**

**18.—**(1) To make contributions under regulations 14(5) (contributions during child-related leave), 16 (contributions during trade dispute absence) or 17(6)(a) (contributions during absences with permission), a person must apply to his employing authority in writing before the expiry of a period of 30 days beginning with the day—

- (a) on which he returns to work, if he returns to work following the absence; or
- (b) on which he ceases to be employed, if he ceases to be employed by that employing authority without returning to work.

(2) In either case, such longer period as the Committee may allow.

(3) A person's personal representatives may make an application under paragraph (1) if he has died without making an application.

**Payment of additional regular contributions (ARCs)**

**19.—**(1) A member who chooses to pay additional contributions under regulation 14 (election to pay additional regular contributions (ARCs)) of the Benefits Regulations must make his request in writing to the Committee.

(2) The member's request must be copied to the member's employing authority and must state the length of the period ("the ARC payment period") over which he wishes to pay the additional regular contributions ("ARCs").

(3) If—

- (a) the Committee passes a resolution requiring a member to satisfy it that he is in reasonable health by producing to it a report by a registered medical practitioner, approved by the Committee, of the results of a medical examination undertaken at the member's own expense; and
- (b) it is not so satisfied,

it may refuse his request.

(4) The length of the ARC payment period must be such that it ends before the member's normal retirement age.

(5) The member may only pay ARCs if the Committee notifies him in writing that it agrees to the request.

(6) The Government Actuary shall from time to time determine the amount of ARCs required for any given amount of increased pension and may determine different amounts of ARCs—

- (a) for—
  - (i) persons of different ages; or
  - (ii) men or women; or
- (b) depending on the length of different ARC payment periods.

(7) Where the Committee agrees to the member's request—

- (a) it must notify him and his employing authority of the amount of ARCs payable by him in accordance with the Government Actuary's determination, expressed as an amount in pounds sterling; and
- (b) the member must pay those ARCs from the next payment period (as defined in regulation 9(6) (joining the Scheme)) following the date of the Committee's notification under paragraph (5).

(8) The Government Actuary may at any time redetermine any amount determined under paragraph (6) and, if he does so, the member must, from 1st April following the redetermination, pay ARCs in accordance with the redetermination.

(9) If the member pays (or is treated under regulation 20 (discontinuance of ARCs) as having paid) ARCs for the whole of the ARC payment period, he must be credited with the additional annual pension of the amount that those ARCs purchase.

### **Discontinuance of ARCs**

**20.**—(1) A member—

- (a) may stop paying his ARCs before the end of the ARC payment period if he notifies the Committee and his employing authority in writing that he wishes to do so; and
- (b) must stop doing so if he ceases to be an active member.

(2) If a member stops paying his ARCs before the end of the ARC payment period—

- (a) on leaving his employment on the grounds of ill-health and his employing authority makes a determination in respect of him under regulation 20(2) or (3) (early leavers: ill-health) of the Benefits Regulations; or
- (b) on his death,

he is treated as having paid his ARCs up to the end of that period.

(3) If a member stops paying his ARCs and paragraph (2) does not apply to him, he must be credited with additional pension of an amount determined by the Government Actuary, having regard to the ARCs he paid before he stopped.

### **Additional voluntary contributions and shared cost additional voluntary contributions**

**21.**—(1) An active member may elect to pay additional voluntary contributions (“AVCs”) into a scheme established under contract between the Committee and a body approved for the purposes of the Finance Act 2004(18) (“an additional voluntary contributions arrangement”).

(2) The additional voluntary contributions arrangement must be a money purchase pension scheme registered in accordance with the Finance Act 2004 and administered in accordance with that Act, the Pensions Act 2004(19) and the Pensions (Northern Ireland) Order 2005(20).

(3) Where the member’s employing authority, at its discretion, contributes to the arrangement, the additional voluntary contributions arrangement is known as a shared cost additional voluntary contributions arrangement and contributions to it as “SCAVCs”.

(4) Such AVCs and SCAVCs are in addition to any other contributions the member may pay under regulation 19 (payment of additional regular contributions).

(5) Where a member elects to pay AVCs or SCAVCs, he must first—

- (a) notify his employing authority in writing; and
- (b) in the notification specify—
  - (i) the percentage of his pensionable pay he wishes to pay or the amount he wishes to pay on his usual pay days from his pay;
  - (ii) whether he wishes any of his AVCs or SCAVCs to be used to provide benefits payable on his death (“death benefits”); and
  - (iii) if he does, the proportion so to be used.

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(18) 2004 c. 12.

(19) 2004 c. 35.

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

(6) Subject to paragraph (7), a member may—

(a) vary—

(i) the amount of his AVCs or SCAVCs; or

(ii) the proportion of them to be used to provide death benefits; or

(b) stop paying AVCs or SCAVCs.

(7) Where he wishes to take the steps in paragraph (6), he must first notify his employing authority in writing.

(8) An active member may transfer, by notifying the Committee in writing within 12 months of joining, or such longer period as the Committee may allow, into his additional voluntary contributions scheme constituted under this regulation the accumulated value of any other additional voluntary contributions scheme to which he has subscribed.

(9) An election to pay AVCs or SCAVCs may be made in respect of each employment in respect of which a person is a member.

(10) The maximum a person may specify under paragraph (5)(b)(i) or notify under paragraph (7) as the varied amount in respect of each employment for which he makes such an election is 50% of the pensionable pay of that employment or an amount equal to 50% of the pensionable pay of that employment.

#### **Use of accumulated value of AVCs and SCAVCs**

**22.—**(1) This regulation applies where a person who has paid AVCs or SCAVCs during his employment or made a transfer under regulation 21(8) (additional voluntary contributions)—

(a) leaves his employment with the employing authority notified under regulation 21(5)(a)—

(i) without entitlement to immediate payment of retirement benefits; or

(ii) with such entitlement under regulation 16 (normal retirement), 17 (retirement after the normal retirement age), 18 (flexible retirement), 19 (early leavers: inefficiency and redundancy), 30 (choice of early payment of pension) or 31 (early payment of pension: ill-health) of the Benefits Regulations;

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

(c) becomes entitled to ill-health benefits under regulation 20 (early leavers: ill- health) of the Benefits Regulations.

(2) A person mentioned in paragraph (1)(a)(i) must notify his employing authority in writing that he wishes the accumulated value of the AVCs or SCAVCs (“the accumulated value”) to be used in one or more of the permissible ways specified in the notification.

(3) The permissible ways are—

(a) to subscribe to a registered pension scheme (other than the Scheme);

(b) to purchase an appropriate policy from one or more insurance companies (within the meaning of section 275 of the Finance Act 2004).

(4) A person mentioned in paragraph (1)(a)(ii) or (1)(c) may notify his employing authority in writing that he wishes the accumulated value to be used to provide additional pension for him under the Scheme, or partly to provide such pension for him.

(5) If he does so, he becomes entitled to such additional pension as is shown as appropriate in guidance issued by the Government Actuary.

(6) The employing authority must send notification under paragraph (2) or (4) to the Committee as soon as possible.

(7) In the case of a person mentioned in paragraph (1)(b)—

- (a) the employing authority must, as soon as is possible, inform the Committee that the person has stopped being an active member; and
  - (b) the accumulated value must be used to subscribe to a registered scheme that is not an occupational pension scheme.
- (8) The Committee must make such arrangements as are necessary for the use of the accumulated value in accordance with a notification under paragraph (2) or (4) or with paragraph (7)(b).

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

**23.**—(1) Regulations 41 (rights to return of contributions) and 42 (exclusion of rights to return of contributions) do not apply to—

- (a) AVCs or SCAVCs payable under these Regulations or any other agreement made for the payment of AVCs before the commencement date; or
  - (b) interest on late payments which relate to AVCs or SCAVCs.
- (2) The regulations mentioned in paragraph (3) do not apply in relation to benefits under—
- (a) such a policy as mentioned in regulation 22(3)(b); or
  - (b) any agreement made for the payment of AVCs or SCAVCs before the commencement date.
- (3) Those regulations are—
- (a) regulation 50 (first instance decisions – general);
  - (b) regulation 68 (forfeiture of pension rights after conviction of employment-related offences);
  - (c) regulation 69 (interim payments directions); and
  - (d) regulation 70 (recovery or retention where former member has misconduct obligation).

### **Cost of calculations of additional pension where no notification given under regulation 22(4)**

**24.**—(1) This regulation applies where, at a member's request, the Committee gives him information concerning the amount of additional pension which would be payable if he were to give notification in regulation 22(4) (use of accumulated value of AVCs and SCAVCs).

(2) If the member does not give such notification before the expiry of the period of 3 months beginning with the date the Committee gives him the information, it may deduct the cost of calculating that amount from the accumulated value of the additional contributions mentioned in regulation 15(1) (elections to pay additional voluntary contributions) of the Benefits Regulations.

## **PART 4**

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

#### **Administration and management**

**25.**—(1) For the purposes of these Regulations and the Benefits Regulations the Committee shall be constituted in accordance with Part 1 of Schedule 3 (constitution of the Committee).

(2) The Committee shall have the powers specified in Part 2 of Schedule 3 (powers of the Committee).

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



**The fund**

26. The Committee is responsible for maintaining the fund and any admission agreement fund established under regulation 28 (admission agreement funds).

**Governance policy statement**

27.—(1) The Committee must, after consultation with such persons as it considers appropriate, prepare, maintain and publish a written statement setting out—

- (a) whether the Committee delegates its function or part of its function in relation to maintaining a pension fund to a sub-committee or an officer of the Committee; and
- (b) if it delegates that function or part of that function to a sub-committee or an officer of the Committee—
  - (i) the frequency of any sub-committee meetings;
  - (ii) the terms of reference, structure and operational procedures of the delegation; and
  - (iii) whether the sub-committee includes representatives of employing authorities or members, and if so, whether those representatives have voting rights.

(2) The first such statement must be published before 1st April 2010.

(3) The statement must be revised and published by the Committee following a material change in its policy on any of the matters referred to in paragraph (1).

**Admission agreement funds**

28.—(1) Where the Committee has made an admission agreement, it may establish a further pension fund (an “admission agreement fund”) in addition to the fund.

(2) Immediately the Committee establishes an admission agreement fund, it must give the Department written notice that it has done so.

(3) The notice must specify the admission bodies whose employees are eligible for benefits from the admission agreement fund.

(4) Where an admission agreement fund is established—

- (a) the liabilities of the fund as respects membership in employment with those specified bodies become liabilities of the admission agreement fund; and
- (b) assets of such value as an actuary appointed by the Committee determines to be appropriate must be transferred from the fund to the admission agreement fund.

(5) When valuations under regulation 31 (actuarial valuations and certificates) of both the fund and the admission agreement fund are first obtained after the admission agreement fund is established, the Committee must obtain a transfer statement from the actuary appointed by the Committee.

(6) The transfer statement must specify whether, in the opinion of the actuary, there is a need for further assets to be transferred from the fund to the admission agreement fund and, if so, their value.

(7) Where the transfer statement specifies that assets of a specified value need to be transferred, the Committee must arrange for assets of that value to be transferred as soon as is reasonably practicable.

**Accounts and audit**

29.—(1) The Committee shall keep accounts of all financial transactions of the fund (including any admission agreement fund it establishes).

(2) The Secretary of the Committee shall prepare the financial statements for the financial year ended the 31st March 2010 and subsequent financial years in accordance with paragraph (4) and shall forward 3 copies of the financial statements duly signed and dated by him to the Department no later than the 30th June after the expiration of the financial year to which the financial statements relate.

(3) The input period for the purposes of section 238 of the Finance Act 2004 is the year ending 31st March 2010 and each year ending 31st March thereafter.

(4) 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 be prepared in accordance with guidance for the time being issued by the Department of Finance and Personnel.

(5) 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.

(6) The financial statements kept by the Committee shall be audited annually by the local government auditor who shall report on the financial statements audited and shall send his report, together with 2 audited copies of the financial statements duly signed and dated by him, to the Department within 14 days after the completion of the audit.

(7) 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.

(8) 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.

(9) 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 a report before the Northern Ireland Assembly.

### **Funding strategy statement**

**30.**—(1) The Committee shall, after consultation with such persons as it considers appropriate, prepare, maintain and publish a written statement setting out its funding strategy.

(2) In preparing and maintaining the statement Committee shall have regard to—

- (a) the guidance set out in the document published in March 2004 by Chartered Institute of Public Finance and Accountancy ("CIPFA") and called "CIPFA Pensions Panel guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No. 6)"; and

- (b) the statement of investment principles published by the Committee under regulation 10 (statement of investment principles) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000<sup>(21)</sup>.
- (3) The first such statement shall be published before 1st April 2010.
- (4) The statement shall be revised and published by the Committee following, and in accordance with, any—
  - (a) material change in its policy on the matters set out in the statement; and
  - (b) material change to the statement of investment principles under regulation 10(4) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000.

### **Actuarial valuations and certificates**

**31.**—(1) The Committee must obtain—

- (a) an actuarial valuation of the assets and liabilities of the fund (including any admission agreement funds) as at 31st March 2010 and in every third year afterwards;
  - (b) a report by an actuary in respect of the valuation; and
  - (c) a rates and adjustments certificate prepared by an actuary.
- (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 report under paragraph (1)(b) must contain a statement of the demographic assumptions used in making the valuation and the statement must show how the assumptions relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.
- (4) A rates and adjustments is a certificate specifying—
- (a) the common rate of employer’s contribution;
  - (b) any individual adjustments; and
  - (c) the total contribution rate payable,

for each year of the period of 3 years beginning with 1st April in the year following that in which the valuation date falls.

(5) 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.

(6) The actuary must have regard to—

- (a) the existing and prospective liabilities of the fund arising from circumstances common to all those bodies;
- (b) the desirability of maintaining as nearly constant a common rate of employer’s contribution as possible; and
- (c) the current version of the Committee’s funding strategy statement mentioned in regulation 30 (funding strategy statement).

(7) 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.

(8) A rates and adjustments certificate must contain a statement of the assumptions on which the certificate is given as respects—

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(21) [S.R. 2000 No. 178](#); regulation 10 was amended by [S.R. 2003 No. 433](#).

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

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

during the period covered by the certificate.

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

### **Supply of copies of valuations, certificates, etc.**

**32.**—(1) The Committee must send copies of any valuation, report, certificate or revised certificate obtained under regulation 31 (actuarial valuations and certificates) or 33 (special circumstances where revised actuarial valuations and certificates must be obtained) to—

(a) the Department;

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

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

(2) The Committee must also send to the Department—

(a) a copy of the consolidated revenue account with which the actuary was provided under regulation 31(9); and

(b) a summary of the assets of the fund at the valuation date (unless such summary is contained in the report under regulation 31(1)(b)).

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

**33.**—(1) When obtaining a transfer statement under regulation 28(5) (admission agreement funds), the Committee must also obtain from the actuary a rates and adjustments certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for the fund.

(2) Where an admission agreement ceases to have effect, the Committee must obtain—

(a) an actuarial valuation on an appropriate basis determined by the fund's actuary as agreed with the Committee 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 party to that admission agreement ("the outgoing admission body");

(b) a revision of any rates and adjustments certificate provided under regulation 31(4) (actuarial valuations and certificates), showing the revised contributions due from or surplus due to the outgoing admission body; and

(c) such revised contributions due to the fund or surplus due to the outgoing admission body from the fund will be paid as a lump sum within one month of the date of the rates and adjustments certificate or such longer period as the Committee and the outgoing admission agreement body agree.

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

(a) in the case where that outgoing admission body is a transferee admission body within regulation 5(2)(a) or 5(2)(b) (employees of transferee admission bodies), the revised contributions due from the body which is the employing authority 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.
- (4) 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.
- (5) Paragraph (6) applies where—
  - (a) the Committee agrees with an employing authority under regulation 35(4) (employer's payment following decision to increase membership or award additional pension); or
  - (b) it appears to the Committee that the amount of liabilities arising or likely to arise in respect of members in employment with an employing authority differs from the amount specified in, or likely as a result of, the assumptions stated for that employing authority in the actuary's report by virtue of regulation 31(1).
- (6) The Committee must obtain a revision of the rates and adjustments certificate affected, showing the resulting changes as respects that employing authority.

### **Employer's contributions**

- 34.—**(1) An employing authority must contribute to the fund, or as the case may be, an admission agreement fund, in each year covered by a rates and adjustments certificate under regulation 31 (actuarial valuations and certificates) or 33 (special circumstances where revised actuarial valuations and certificates must be obtained) the amount appropriate for that employing 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 or admission agreement 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 37 (payments by employing authorities to the Committee); 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 or admission agreement fund, under regulation 14 (contributions during child-related leave), 15 (contributions during reserve forces service leave), 17 (contributions during absences with permission) of these Regulations or 3 (contributions payable by active members) of the Benefits Regulations by employees who are active members, 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 14(4) as if he had paid contributions; or
    - (b) has paid contributions during a period of maternity, paternity or adoption absence (within the meaning of that regulation),

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

### **Employer's payment following resolution to increase membership or award additional pension**

**35.**—(1) This regulation applies where an employing authority makes a resolution under—

(a) regulation 12 of the Benefits Regulations (which confers power to increase the membership of a member by an additional period); or

(b) regulation 13 of those Regulations (which confers power to award additional pension).

(2) Unless paragraph (4) applies, the employing authority must pay the appropriate sum for the person to whom the resolution relates to the fund or admission agreement fund before the expiry of the relevant period.

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

(4) This paragraph applies where the Committee and the employing authority agree before the expiry of the relevant period that the employing authority will pay increased contributions under regulation 34 (employer's contributions) or an amount to meet the cost of the increase in membership or the additional pension.

(5) Any extra charge on the fund or admission agreement fund resulting from the resolution must be repaid to the fund by the employing authority concerned but only so far as not paid under paragraphs (2) or (4).

(6) In the case of a resolution under regulation 12 of the Benefits Regulations, the additional period in question may only be counted as a period of membership if one of the conditions in paragraph (8) is met.

(7) In the case of a resolution under regulation 13 of those Regulations, a person is only entitled to the additional pension awarded if one of the conditions in paragraph (8) is met.

(8) The conditions are that either—

(a) the employing authority makes the payment required by paragraph (2) within the relevant period; or

(b) paragraph (4) applies.

(9) The relevant period is—

(a) the period of one month beginning with the date of the resolution; or

(b) such longer period as the employing authority and the Committee agree.

(10) If neither of the conditions in paragraph (8) is met, the resolution ceases to have effect.

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

**36.**—(1) Any extra charge on the fund or an admission agreement fund resulting from a member becoming entitled to benefits calculated under regulation 20(2)(b), 20(3)(b) (early leavers: ill-health) or 31 (early payment of pension: ill-health) of the Benefits Regulations must be repaid to the fund or an admission agreement fund by the employing authority concerned.

(2) The Committee may require the employing authority concerned to make additional payments to the fund or an admission agreement fund in respect of any extra charge on the fund or admission agreement fund resulting from retirement benefits becoming immediately payable to a member under—

(a) regulation 18 (flexible retirement);

(b) regulation 19 (early leavers: business efficiency and redundancy); or  
 (c) regulation 30 (choice of early payment of pension),  
 of the Benefits Regulations, including the cost, as calculated by the fund's actuary, incurred by the fund or an admission agreement fund as a result of a waiver of or determination not to apply such reduction as provided for in regulation 18(3) or 30(5) of those Regulations.

(3) Any additional payments that are due under paragraphs (1) and (2) 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**

**37.**—(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—

- (a) all amounts from time to time deducted from the pay of its employees under these Regulations or the Benefits Regulations;
- (b) any amount it has received by deduction or otherwise under regulation 14(5) (contributions during child-related leave), 16 (contributions during trade dispute absence), 17 (contributions during absences with permission) or 21 (additional voluntary contributions and shared cost additional voluntary contributions) during the interval;
- (c) any extra charge payable under regulation 35 (employer's payment following resolution to increase membership or award additional pension) or 36 (employer's further payments) of which it has been notified by the Committee during the interval; and
- (d) a contribution towards the cost of the administration of the fund, which shall include any amount specified in a notice given in accordance with regulation 38 (additional costs arising from employing authority's level of performance).

(2) But—

- (a) an employing authority must pay the amounts mentioned in paragraph (1)(a), not later than the time required under Article 49(8) of the Pensions Order(22); and
- (b) paragraph (1)(d) does not apply where the cost of the administration of the fund is paid out of the fund under regulation 5(4) (management of the fund) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000(23).

(3) Every payment under paragraph (1)(a) must be accompanied by a statement showing—

- (a) the name, pay and band (as set out in column 1 of the table in regulation 3(2) of the Benefits Regulations) of each employing authority's employees who is an active member;
- (b) which employees are paying contributions under regulation 19(1) (payment of additional regular contributions) or 21(1) (additional voluntary contributions and shared cost additional voluntary contributions); and

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

(23) S.R. 2000 No. 178; relevant amending Regulations are S.R. 2001 No. 62.



- (c) the amounts which represent deductions in each of the pay bands from the pay of each of the employees and the periods covered by the deductions, distinguishing amounts representing deductions for voluntary contributions.
- (4) The Committee may direct that the information mentioned in paragraph (3) shall be given to it instead in such form and at such intervals (not exceeding 12 months) as it specifies in the direction.
- (5) If the annual amount payable under paragraph (1)(d) cannot be settled by agreement, it must be determined by the Department.
- (6) Paragraphs (1) and (3) do not apply to the Committee.

### **Additional costs arising from employing authority's level of performance**

**38.**—(1) This regulation applies where, in the opinion of the Committee, it has incurred additional costs which should be recovered from an employing authority because of that employing authority's level of performance in carrying out its functions under the Scheme.

- (2) The Committee may give written notice to the employing authority stating—
  - (a) the Committee's reasons for forming the opinion mentioned in paragraph (1);
  - (b) the Committee's opinion that the employing authority's contribution under regulation 37(1)(d) should include an amount specified in the notice in respect of the additional costs attributable to that employing authority's level of performance;
  - (c) the basis on which the specified amount is calculated; and
  - (d) where the Committee has prepared a pension administration strategy under regulation 61 (pension administration strategy), the provisions of the strategy which are relevant to the decision to give the notice and to the matters in sub-paragraph (a), (b) or (c).

### **Interest**

**39.**—(1) The Committee may require an employing authority from which payment of any amount due under regulations 34 to 37 (employers' contributions or payments) is overdue to pay interest on that amount.

(2) The date on which any amount due under regulations 34 to 36 is overdue is the date 10 days from the date specified by the Committee for payment.

(3) The date on which any amount due under regulation 37 (payments by employing authorities to the Committee) (other than an extra charge payable under regulation 34 or 35 and referred to in regulation 37(1)(c)) is overdue is the day after the date when that payment is due.

(4) Interest due under paragraph (1) or payable to a person under regulation 40(5) (deduction and recovery of a member's contributions), 41(2) (rights to return of contributions) or 46 (interest on late payment of certain benefits) must be calculated at 1% above base rate on a day to day basis from the due date to the date of payment and compounded with 3-monthly rests.

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

**40.**—(1) An employing authority may deduct from a person's pay any contributions payable by him under the Scheme.

(2) Sums payable under regulation 15(2) or 15(5)(b) (contributions during reserve forces service leave) may be deducted by the member's former employer from any payment made to him under Part 5 of the Reserve and Auxiliary Forces (Protection Civil of Interests) (Northern Ireland) Order 1953(24), to the extent that they are payable in respect of the same period.

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(24) S.I. 1953/197.

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

- (a) as a simple contract debt in an 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 the Scheme.

(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; 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; and the due date for the calculation of interest under regulation 39(4) (interest) is the date of deduction.

(6) Where the employee's contributions have been paid into the fund or an admission agreement fund, the repayment and interest must be made out of that fund or the admission agreement 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 or an admission agreement fund; and
- (b) the person's employing authority where the employee's contributions have not yet been paid into the fund or an admission agreement fund.

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

**41.—**(1) If a member with less than 3 months' membership ceases to be employed by an employing authority or to be an active member without becoming entitled to a retirement pension, he is entitled to be repaid his contributions from the fund or admission agreement fund.

(2) If repayment of contributions 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 39(4) (interest), the due date being the date when active membership ceased.

(3) 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).

(4) 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 7(3) (calculation of length of periods of membership) the Benefits Regulations if the employment which has ceased was part-time, multiplied by the fraction—

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

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

(5) A person who elects under paragraph (4) ceases to be entitled to that repayment (but without prejudice to any entitlement arising later in respect of the concurrent employment).

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

**42.—**(1) A person is not entitled to a repayment under regulation 41 (rights to return of contributions) if—

- (a) he becomes a member again within one month and one day;
- (b) he left his employment because of—
  - (i) an offence of a fraudulent character; or
  - (ii) grave misconduct,in connection with his employment; or
- (c) regulation 75(2) (rights to payment out of the fund) applies.

(2) But where paragraph (1)(b) applies the employing authority may direct the payment out of the fund or admission agreement fund to him or, in a case of an offence of a fraudulent character, to him or to his spouse, civil partner, nominated cohabiting partner 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 41(1), if a transfer value has been credited to the fund or admission agreement fund for him.

(4) A person ceases to be entitled to such a repayment under regulation 41(1) if he returns to local government employment before receiving it.

## **PART 5**

### **PAYMENT OF BENEFITS, ETC.**

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

**43.** Any increase in a pension required by reason of Chapter 3 of Part 4 of the 1993 Act<sup>(25)</sup> (protection of increases in guaranteed minimum pensions: anti-franking) must be paid from the fund or an admission agreement fund.

#### **Contributions equivalent premiums**

**44.—**(1) Where an employing authority pays a contributions equivalent premium under section 51 of the 1993 Act in respect of any member, it is entitled to recover, or where the employer is the Committee, retain from the fund or admission agreement fund a sum not exceeding the premium.

(2) But if the employing authority 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 the contributions equivalent premium is refunded under regulation 54(1)(c) (re-entry into employment which is contracted out by reference to the same scheme) of the Occupational Pension Schemes (Contracting out) Regulations (Northern Ireland) 1996<sup>(26)</sup>, the Committee shall credit to the fund or admission agreement fund a sum equal to the amount of the premium.

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<sup>(25)</sup> 1993 c. 49.

<sup>(26)</sup> 1996 No. 493.

**Commencement of pensions**

**45.—**(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 on which his employment ends.

(2) In the case of a member who leaves local government employment and is not entitled to immediate payment of a retirement pension under any of regulations 16 (normal retirement) to 20 (early leavers: ill-health) of the Benefits Regulations and does not make a choice under regulation 30 (choice of early payment of pension) of those Regulations, the first period for which any retirement pension is payable begins, unless he asks by notice in writing to the Committee to defer payment, with his 65th birthday (but any such deferral shall not extend beyond the day before his 75th birthday).

(3) The first period for which any retirement pension under regulation 30 (choice of early payment of pension) of the Benefits Regulations is payable begins with the day on which the member chooses under paragraph (1) of that regulation.

(4) The first period for which any retirement pension under regulation 31 (early payment of pension: ill-health) of the Benefits Regulations is payable begins on the date when the member became permanently incapable as determined under that regulation.

(5) The first period for which any survivor's benefits are payable under regulation 24 (survivor benefits: active members), 27 (children's pensions), 33 (survivor benefits: deferred members), 34 (children's pensions: deferred members), 36 (survivor benefits: pensioners) or 37 (children's pensions: pensioner members) of the Benefits Regulations on the death of a member begins with the day after the date on which he dies.

(6) A person who is entitled to a retirement pension under regulation 16 (normal retirement) or 17 (retirement after normal retirement age) of the Benefits Regulations may choose to defer payment until a date no later than the day before his 75th birthday.

(7) He must notify the Committee in writing of his choice of date and such notice must be given not less than 3 months before the beginning of the first period for which the benefit would otherwise be payable.

(8) A person may by notice in writing to the Committee alter the date specified in a notice referred to in paragraph (7) or any such subsequent notice under this paragraph but any such subsequent notice must be given not less than 3 months before the date specified in the preceding notice in order for the change of payment date to take effect.

**Interest on late payment of certain benefits**

**46.—**(1) Where all or part of a pension or lump sum payment due under these Regulations, the Benefits Regulations or the former 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 39(4) (interest).

(2) The relevant period is—

- (a) in the case of a pension under regulation 24(1) (survivor benefits: active members), 27(1) (children's pension), 33(1) (survivor benefits: deferred members) or 36(1) (survivor benefits: pensioner) of the Benefits Regulations, the period ending one month after the date on which the Committee receives notification of the member's death;
- (b) in the case of any other pension, one year; and
- (c) otherwise, one month.

(3) The due date is—

- (a) in the case of a pension, the date on which it becomes payable;

- (b) in the case of a lump sum under the Transitional Regulations and regulation 21 (election for a lump sum in lieu of pension) of the Benefits Regulations, the benefit crystallisation event date;
- (c) in the case of a death grant under regulation 23 (death grants: active members), 32 (death grants: deferred members) or 35 (death grants: pensioner members) of the Benefits Regulations, the date on which the member dies or, where notification of death is received more than 2 years after the date of death, the date of notification; and
- (d) in the case of a payment of a lump sum under regulation 39 (commutation: small pensions) of the Benefits Regulations, the date of the commutation election or, if later, the nominated date (within the meaning of paragraph 7(3) of Part 1 of Schedule 29 to the Finance Act 2004)(27).

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

47.—(1) Paragraph (2) applies 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 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(28) and applying in relation to his death.

(2) The Committee may pay the whole or part of the amount due from the fund or admission agreement fund to—

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

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

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

### **Non-assignability**

48.—(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 or 283A of the Insolvency (Northern Ireland) Order 1989(29).

## **PART 6**

### **DETERMINATION OF QUESTIONS AND DISPUTES**

#### **Interpretation of Part**

49. In this Part a reference to the employing authority of a prospective member is a reference to the body that would be his employer if he were to become an active member in the employment by virtue of which he would be eligible to join the Scheme.

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(27) 2004 c. 12.

(28) 1967 c. 5 (N.I.).

(29) S.I. 1989/2405 (N.I. 12).

**First instance decisions – general**

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

- (a) whether he is a whole-time, variable-time or part-time employee;
- (b) which of his emoluments are remuneration on which contributions are payable;
- (c) what rate of contribution the employee is liable to pay to the fund or admission agreement fund; 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 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 National Insurance Act (Northern Ireland) 1966<sup>(30)</sup> in respect of any period of non-participating employment; and
- (e) any question about counting additional periods as membership or crediting additional pension.

(3) The questions specified in paragraph (1) shall be decided as soon as is reasonably practicable after—

- (a) the person becomes a member;
- (b) any change occurs in the number of the member's regular or casual 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 the Scheme shall be decided by the Committee.

(6) Where a person is or may become entitled to benefit payable out of the fund or an admission agreement 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 Local Government (Superannuation) Regulations (Northern Ireland) 1992<sup>(31)</sup>, Part N (pension sharing) of the Local Government Pension Scheme Regulations (Northern Ireland) 2000<sup>(32)</sup> and Part VI (pension sharing) of the 2002 Regulations.

<sup>(30)</sup> 1966 c. 6 (N.I.).

<sup>(31)</sup> S.R. 1992 No. 547; as amended by other instruments listed in Schedule M3 to the Local Government Pension Scheme Regulations (Northern Ireland) 2000 (S.R. 2000 No. 177).

<sup>(32)</sup> S.R. 2000 No. 177; as amended by S.R. 2001 No. 61, S.R. 2001 No. 63, S.R. 2001 No. 64, S.R. 2002 No. 115 and S.R. 2002 No. 353.

### **First instance determinations: ill-health**

**51.**—(1) Where the Committee is considering whether a person who has ceased to hold a local government employment is entitled to a benefit under regulation 20 (early leavers: ill-health) or 31 (early payment of pension: ill-health) of the Benefits Regulations, it shall refer for decision to the independent registered medical practitioner, who is qualified in occupational health medicine and who has been appointed by the Committee under regulation 20(4) of those Regulations.

(2) 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 employing authority or any other party in relation to the same case.

(3) The Committee and the independent registered medical practitioner must have regard to guidance given by the Department when carrying out their function under this regulation, when making an ill-health determination.

### **Notification of first instance decisions**

**52.**—(1) Every person whose rights or liabilities are affected by a decision under regulation 50 (first instance decisions: general) or 51 (first instance determinations: ill-health) shall be notified of it by the Committee or the employing authority which made it as soon as is reasonably practicable.

(2) A 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 paragraphs (a) or (b) a conspicuous statement directing the person's attention to—
  - (i) the address from which he may obtain further information about the decision, including details of any calculation of service or benefits;
  - (ii) his right under regulation 54 (right to apply for an appointed person to review a decision) to make an application to an appointed person, the address at which he may be contacted and his job title; and
  - (iii) his right under regulation 56 (reference of disagreement to the Committee) 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 50, a conspicuous statement directing the person's attention to—
  - (i) the employing authority's address from which he may obtain further information about the decision; and
  - (ii) his right of appeal to the county court under regulation 59 (referral of decisions under regulation 50(1) to the county court).

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

**53.**—(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 54 (right to apply for an appointed person to review a decision).



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

(3) An application under regulation 54 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**

**54.**—(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 a 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, surviving civil partner or nominated cohabiting partner (as defined in regulation 25 of the Benefits Regulations) of a deceased member;
- (b) a dependant of a deceased member or any other person to whom benefits in respect of him may be paid;
- (c) a prospective member;
- (d) a pension credit member;
- (e) a person entitled to a pension credit;
- (f) a person who ceased to be a member, or to fall within sub-paragraph (a), (b), (c), (d) or (e) during the period of 6 months ending with the date of the application; and
- (g) 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), (e) or (f) 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 a prospective member;
- (b) a person who has ceased to be a member or prospective member during the period of 6 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 6 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 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, 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 52 (notification of first instance decisions).
- (9) The application must be made before the end of the period of 6 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 51 (first instance determinations: ill-health), the relevant date is the date notification of it is given under regulation 52.
- (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 54**

**55.**—(1) A decision on the matters raised by an application under regulation 54 (right to apply for an appointed person to review a decision) 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 2 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 the 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 56 (reference of disagreement to the Committee), specifying the time within which he may do so; and
- (e) a statement that the Pensions Advisory Service(33) 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 it may be contacted.

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(33) The Pensions Advisory Service Ltd, company limited by guarantee, No. 2459671; Registered in England and Wales; Registered office is 11 Belgrave Road, London SW1V 1RB.

**Reference of disagreement to the Committee**

**56.**—(1) Where an application about a disagreement has been made under regulation 54 (right to apply for an appointed person to review a decision), an application may be made to the Committee to reconsider the disagreement by the person who applied under regulation 54.

(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 54 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 52 (notification of first instance decisions).

(5) Where notice of a decision on the application under regulation 54 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 6 months beginning with the relevant date.

(8) Where notice of a decision on the matters raised by the application under regulation 54 has been issued, the relevant date is the date of that notice.

(9) Where—

- (a) an interim reply has been sent out under regulation 55(2) (notice of decisions by the appointed person under regulation 54); 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.

(10) Where no notice of decision has been issued or interim reply has been sent before the expiry of the period of 3 months beginning with the date the application under regulation 54 was made, the relevant date is the date with which that period expires.

**Notice of decisions by the Committee under regulation 56**

**57.**—(1) The Committee must issue its decision on the matters raised by an application under regulation 56 (reference of disagreement to the Committee) to the parties to the disagreement by notice in writing before the expiry of the period of 2 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 the 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 55 (notice of decisions by the appointed person under regulation 54), 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 the Pension 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 the Pension 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 1993 Act<sup>(34)</sup> and of the address at which he may be contacted.

### **Rights of representation**

**58.**—(1) An application under regulation 54 (right to apply for an appointed person to review a decision) or 56 (reference of disagreement to the Committee) 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 55(1) (notice of decisions by the appointed person under regulation 54) or 57(1) (notice of decisions by the Committee under regulation 56) or an interim reply under regulation 55(2) or 57(2).

### **Referral of decisions under regulation 50(1) to the county court**

**59.** Where an employing authority has either decided or failed to decide such question as is mentioned in regulation 50(1) (first instance decisions: general), 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 50(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.

## **PART 7**

### **POLICY STATEMENTS AND INFORMATION**

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

**60.**—(1) An employing authority which is not the Committee must—

- (a) inform the Committee of all decisions made by the employing authority under Part 6 or this Part concerning members; and
- (b) give the Committee such other information as it requires for discharging its functions under the Scheme.

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(34) 1993 c. 49.

(2) If—

- (a) the Committee makes any decision under Part 6 or this Part 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 employing authority's Scheme functions,

the Committee must give the employing authority that information.

### **Pension administration strategy**

**61.**—(1) The Committee may prepare a written statement of its policies in relation to such of the matters mentioned in paragraph (2) as it considers appropriate ("its pension administration strategy") and, where it does so, paragraphs (3) to (7) apply.

(2) The matters are—

- (a) procedures for liaison and communication with employing authorities;
- (b) the establishment of levels of performance which the Committee and employing authorities are expected to achieve in carrying out their Scheme functions by—
  - (i) the setting of performance targets;
  - (ii) the making of agreements about levels of performance and associated matters; or
  - (iii) such other means as the Committee considers appropriate;
- (c) procedures which aim to secure that the Committee and employing authorities comply with statutory requirements in respect of Scheme functions and with any agreement about levels of performance;
- (d) procedures for improving communication between the Committee and employing authorities in respect of information relating to Scheme functions;
- (e) the circumstances in which the Committee may consider giving written notice to such an employing authority under regulation 38(2) (additional costs arising from employing authority's level of performance) on account of that authority's unsatisfactory performance in carrying out its Scheme functions when measured against levels of performance established under sub-paragraph (b);
- (f) the publication by the Committee of annual reports dealing with—
  - (i) the extent to which the Committee and employing authorities have achieved the levels of performance established under sub-paragraph (b); and
  - (ii) such other matters arising from the pension administration strategy as it considers appropriate; and
- (g) such other matters as appear to the Committee, after consulting the employing authorities and such other persons as it considers appropriate, to be suitable for inclusion in that strategy.

(3) The Committee must—

- (a) keep its pension administration strategy under review; and
- (b) make such revisions as are appropriate following a material change in its policies in relation to any matters contained in the strategy.

(4) In preparing or reviewing and making revisions to its pension administration strategy the Committee must consult employing authorities and such other persons as it considers appropriate.

(5) The Committee must publish—

- (a) its pension administration strategy; and

(b) where revisions are made to it, the strategy as revised.

(6) When the Committee publishes its pension administration strategy, or that strategy as revised, it must send a copy of it to each employing authority and to the Department.

(7) The Committee and employing authorities must have regard to the current version of any pension administration strategy when carrying out their Scheme functions.

(8) In this regulation references to the functions of the Committee include, where applicable, its functions as an employing authority.

### **Exercise of discretionary functions: policy statements**

**62.**—(1) Each employing authority must prepare a written statement of its policy in relation to the exercise of its functions under regulations 12 (power of employing authority to increase total membership of members), 13 (power of employing authority to award additional pension), 18 (flexible retirement) and 30 (choice of early payment of pension) of the Benefits Regulations.

(2) Before the expiry of the period of 4 months beginning with the commencement date each employing authority shall send a copy of its statement to the Committee and must publish its statement.

(3) An employing authority must—

(a) keep its statement under review; and

(b) make such revisions as are appropriate following a change in its policy.

(4) Where, as a result of a review under paragraph (3), an employing authority determines to amend its policy, it must send a copy of the statement of the amended policy to the Committee before the expiry of a period of one month beginning with the date any such revisions are made and must publish the revised statement.

(5) In preparing or reviewing and making revisions to its policy statement an employing authority must have regard to the extent to which the exercise of any of the functions mentioned in paragraph (1) in accordance with its policy could lead to a serious loss of confidence in the public service.

### **Communication policy statements**

**63.**—(1) The Committee must prepare, maintain and publish a written statement setting out its policy concerning communications with—

(a) members;

(b) representatives of members;

(c) prospective members; and

(d) employing authorities.

(2) In particular, the statement must set out its policy on—

(a) the provision of information and publicity about the Scheme to members, representatives of members and employing authorities;

(b) the format, frequency and method of distributing such information or publicity; and

(c) the promotion of the Scheme to prospective members and their employing authorities.

(3) The statement published under regulation 108B of the 2002 Regulations<sup>(35)</sup> must be revised and published by the Committee following such material change in its policy on any of the matters referred to in paragraph (2).

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(35) [S.R. 2002 No. 352](#); regulation 108B was inserted by [S.R. 2007 No. 152](#).

**Annual benefit statements**

**64.**—(1) The Committee shall issue an annual benefit statement to each of its active, deferred and pension credit members.

(2) The first such statement must be issued on or before 1 April 2011 and subsequent statements must issue on or before 1st April in each year after that year.

(3) An annual benefit statement shall contain an illustration of the amount of benefit entitlement in respect of rights that may arise under the Scheme, which—

- (a) has been accrued by the member at the relevant date; and
- (b) in the case of an active member (excluding those who are members by virtue of being variable-time employees), is capable of being accrued by him if he remains in the Scheme until his normal retirement age.

(4) The illustration shall be calculated—

- (a) in the case of active members, on the member's pensionable pay (or, in the case of part-time employees, the whole-time equivalent) for the 12 month period ending with the relevant date;
- (b) in the case of deferred members, on the member's final pay; and
- (c) in the case of pension credit members, in accordance with regulation 90 (calculation), but with the substitution in paragraph (1) of that regulation of "the relevant date" for "normal benefit age".

(5) The relevant date is—

- (a) 31st March prior to the date that the statement is issued; or
- (b) such later date as the Committee may choose.

**Information to be supplied by employees**

**65.**—(1) Before the expiry of the period of 3 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 3 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.



## PART 8

### SPECIAL ADJUSTMENTS

#### **Statements of policy concerning abatement of retirement pensions in new employment**

**66.**—(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 any fund maintained by it under the Scheme should be reduced (or whether it should be extinguished) where the member has entered new employment with an employing authority).

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

(3) Before the expiry of the period of 4 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 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 of its determination.

(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 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**

**67.**—(1) Where a member who is entitled to the payment of a retirement pension proposes to enter a new employment with an employing authority, 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 have regard to regulation 12 (application of abatement policy in individual cases) of the Transitional Regulations;
- (b) must apply the policy published by it under regulation 66 (statements of policy concerning abatement of retirement pensions in new employment) to the member; and
- (c) 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) Any retirement pension paid following a request under regulation 18(1) (flexible retirement) of the Benefits Regulations is not subject to abatement under regulation 66 in respect of any subsequent employment with the employing authority who is his employing authority at the date of his request.

#### **Forfeiture of pension rights after conviction of employment-related offences**

**68.**—(1) If a member is convicted of a relevant offence, his former employing authority may apply to a Minister of the Crown who 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 the Benefits Regulations, these Regulations or the former 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 70 (recovery or retention where former member has misconduct obligation) or 72 (transfer of sums from the fund to compensate for a former member's misconduct) 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 3 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**

**69.—**(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 68(1) (forfeiture of pension rights after conviction of employment-related offences) 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 68(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 50 (first instance decisions – general) 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 50).

### **Recovery or retention where former member has misconduct obligation**

**70.—**(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 who were his employing authority in that employment; and
  - (c) is entitled to benefits under the Benefits Regulations.
- (2) The former employing authority may recover or retain out of the fund or admission agreement 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 AVCs or SCAVCs.

(4) The former employing authority must give the former employee—

- (a) not less than 3 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 payment under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbitrator.

### **Protection of guaranteed minimum pension rights**

71.—(1) The power—

- (a) to give directions under regulation 68(2) (forfeiture of pension rights after conviction of employment-related offences); or
- (b) to recover or retain amounts under regulation 70(2) (recovery or retention where former member has misconduct obligation),

may not be exercised so as to deprive a person of his guaranteed minimum pension or any widow's, widower's or surviving civil partner's guaranteed minimum pension.

(2) But such 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(36) for which the former member has been sentenced on the same occasion to—
  - (i) a term of imprisonment of at least 10 years; or
  - (ii) 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**

72.—(1) This regulation applies where—

- (a) a person has left an employment in which he was member because of—

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(36) 1911 c. 28 and 1989 c. 6.

- (i) an offence involving fraud; 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 the Benefits Regulations and these Regulations or the 2002 Regulations and a forfeiture direction has been given; or
  - (ii) he did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 41 (rights to return to contributions) (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 or admission agreement fund.

(3) Otherwise, the Committee must pay the former employing authority an appropriate amount out of the fund or admission agreement 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 the 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, civil partner, nominated cohabiting partner or a dependant, under regulation 42(2) (exclusion of rights to return of contributions) or regulation 89(2) (exclusion of rights to return of contributions) of the 2002 Regulations, less the amount of any contributions 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 4 or Chapter 5 of Part 4 of the 1993 Act<sup>(37)</sup> or under regulation 77 (bulk transfers (transfers of undertakings), etc.) for a former employee, the former employing authority must repay it, if requested to do so.

## PART 9

### TRANSFERS

#### Interpretation of Part

73. In this Part—

“Chapters 4 and 5” means Chapters 4 and 5 of Part 4 of the 1993 Act (transfer values and early leavers)

“club scheme” means a registered pension scheme which—

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(37) 1993 c. 49; Chapter 5 was inserted by Art. 241 of S.I. 2005/255 (N.I. 1).

- (a) (except where it is established and maintained in the Channel Islands or the Isle of Man) is a registered scheme;
- (b) provides benefits calculated by reference to final pay;
- (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<sup>(38)</sup>.

#### **Application of Chapter 4, etc.**

74.—(1) For the purposes of—

- (a) sections 8C<sup>(39)</sup> (requirements as to transfer, commutation, etc. for contracting out), 15 (discharge of liability) and 16 (transfer of accrued rights) of the 1993 Act;
- (b) Chapters 4 and 5; and
- (c) any regulations made under any of those sections or Chapters 4 and 5,

of the 1993 Act, the managers of the Scheme in relation to a member are the Committee.

(2) A member with a period of membership of under 3 months shall have the same rights to a cash transfer as if the 3 month condition in section 97AA (1)(b)(i) of the 1993 Act<sup>(40)</sup> were satisfied and Chapter 5 applied to him.

(3) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996<sup>(41)</sup> (pre-1986 leavers), Chapters 4 and 5 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service.

(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) Regulation 10(2)(a) 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 (termination of pensionable service in certain circumstances to be disregarded) of those Regulations only applies if, in any case, no election has been made under regulation 12(1) (re-employed and rejoining deferred members) or 13 (concurrent employments) to have the service which terminated aggregated with later or concurrent service or no election has been made under regulation 41(4) (rights to return of contributions).

(7) For this regulation and regulation 75 (rights to payment out of the fund)—

- (a) the Committee, in relation to a member, is the body maintaining the pension fund to which he is contributing immediately before his pensionable service terminated; but
- (b) if that fund has been closed, the Committee is the body which would be liable to pay him his pension for that employment if he had been entitled to receive payment of such a pension when his pensionable service terminated.

(8) In this regulation, “pensionable service” has the same meaning as in section 66 of the 1993 Act.

<sup>(38)</sup> S.I. 1972/1073 (N.I. 10); Art. 9 was amended by Art. 34 S.I. 2005/1968 (N.I. 18).

<sup>(39)</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>(40)</sup> 1993 c. 49; section 97AA was inserted by Art. 241 of S.I. 2005/255 (N.I. 1).

<sup>(41)</sup> S.R. 1996 No. 619.

**Rights to payment out of the fund**

75.—(1) A member may apply for a transfer under Chapter 4 or 5 (as modified by regulation 74 (application of Chapter 4, etc.)) and where he does so the amount of any transfer payment (as defined in regulation 77(4)(a) (bulk transfers (transfer of undertakings), etc.) due in respect of the member under the relevant Chapter may only be paid by the Committee from the fund or admission agreement fund if it is a recognised transfer (within the meaning of section 169 of the Finance Act 2004(42)).

(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 or admission agreement fund as respects the accrued rights covered by the transfer payment.

(3) Paragraph (2) overrides anything to the contrary in—

- (a) the former Regulations;
- (b) the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002(43); or
- (c) any other provision under these Regulations, the Benefits Regulations or the Transitional Regulations.

**Contracting-out requirements affecting transfers out**

76.—(1) There must be a deduction 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 1993 Act; or
- (b) an amount sufficient to meet the liability in respect of his contracted-out rights.

(2) But the amount mentioned in paragraph (1) may not be deducted where the transfer payment is made to a registered pension scheme which is contracted out.

(3) Where the amount mentioned in paragraph (1)(a) is deducted, the Committee must use that amount to pay the premium.

(4) Where the amount mentioned in paragraph (1)(b) is deducted, the Committee may use the amount in preserving the liability mentioned in that paragraph in the fund or admission agreement fund, unless the member wishes a transfer payment in respect of it to be paid to the trustees or managers of a non-contracted-out registered pension scheme.

(5) Contracted-out rights, in relation to a member, are—

- (a) his and his surviving spouse's, civil partner's or nominated co-habiting partner'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(44)).

**Bulk transfers (transfer of undertakings), etc.**

77.—(1) This regulation applies where—

- (a) two or more members' active membership ends on their joining a registered non-local government scheme ("the new scheme");
- (b) it is agreed by—
  - (i) the Committee;

(42) 2004 c. 12.

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

(44) 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—

- (i) agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5; and
- (ii) waive any rights they might have under those Chapters 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 that each of the members will acquire under the new scheme are at least equivalent to those which he would have obtained if the transfer value had been paid to the same scheme under Chapter 4 or 5, as it applies by virtue of regulation 74 (application of Chapter 4, etc.) (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) The Committee must—

- (a) set aside (whether in cash or in assets or both) such part of the fund or admission agreement fund (“the transfer payment”) as an actuary appointed by it and an actuary appointed by the trustees or 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 and interest on them.

(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 or admission agreement fund by reason of membership covered by the transfer payment.

(7) Paragraph (6) overrides anything to the contrary in—

- (a) the former Regulations;
- (b) the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002; or
- (c) these Regulations, or the Benefits Regulations.

### **Calculation of amount of transfer payment under regulation 77**

**78.**—(1) The amount of the transfer payment to be paid under regulation 77 (bulk transfers (transfer of undertakings), etc.) 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—

- (a) of the actual and potential liabilities payable from the fund or admission agreement 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; or
- (b) is the balance of the employing authority’s assets after ensuring that its deferred members and pensioner members liabilities which are not transferred, are fully funded.

(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 or admission agreement fund and apportioning that 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.

### **Inward transfers of pension rights**

**79.**—(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 registered scheme but do not include rights to benefits under the scheme 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 1993 Act.

(4) The relevant transferor is the trustees or managers of the scheme 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, 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 fund or admission agreement fund.

### **Right to count credited period**

**80.**—(1) Where the transfer value has been accepted under regulation 79 (inward transfers of pension rights), the member may count the credited period as a period of membership for these Regulations and the Benefits Regulations<sup>(45)</sup>.

(2) If the transfer value—

(a) is paid by the trustees or managers of a club scheme and the member has made the request under regulation 79 before the expiry of 12 months beginning with the date he became an active member;

(b) represents all the rights relating to the member in that scheme; and

(c) has been calculated—

(i) in a case where Chapter 4 or 5 applies, in accordance with that Chapter; and

(ii) otherwise, in a manner consistent with that prescribed under the relevant 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 paragraph (2) does not apply, the credited period must be calculated in a manner consistent with Chapter 4 or 5.

(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 12 months later, the date on which the transfer value is received) and his normal retirement age.

<sup>(45)</sup> See also regulation 6(c) of the Benefits Regulations.

- (5) The Committee must give the member a written notice—
- (a) stating the period of membership he may count under paragraph (1); and
  - (b) containing a conspicuous statement giving the address from which further information may be obtained.

### **Community scheme transferees**

**81.**—(1) The persons mentioned in paragraph (2) are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

- (2) Those persons are—
- (a) a person who became employed by a Community institution after having been employed in local government employment; or
  - (b) a surviving spouse, civil partner, nominated cohabiting partner, dependant or an eligible child of such a person.
- (3) In this regulation—
- (a) “Community institution” means a body treated as one of the Communities’ institutions for the purposes of the Communities’ scheme; and
  - (b) “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.

## **PART 10**

### **PENSION SHARING**

#### **PRELIMINARY PROVISIONS**

#### **Pension debit member**

**82.**—(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 for this purpose by the Government Actuary.

#### **SHARING OF RIGHTS UNDER THE SCHEME**

#### **Interpretation**

**83.** 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**

**84.**—(1) The Committee may discharge its liability in respect of a pension credit in accordance with either paragraph 1(2) or 1(3) of Schedule 5 of the 1999 Order<sup>(46)</sup>.

(2) Where the Committee discharges its liability by conferring pension credit rights on the person entitled to the pension credit, those shall be to—

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

- (a) a pension and if applicable 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 a 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<sup>(47)</sup>; and
  - (b) in accordance with guidance issued by the Government Actuary.

### **Aggregation**

- 85.**—(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 he 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 a person entitled to a pension credit before discharge**

- 86.**—(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 84<sup>(1)</sup> (discharge of liability for pension credit rights), such liability shall be discharged by the Committee by payment of a lump sum.
- (2) The lump sum shall be equal to 3 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**

- 87.**—(1) A pension credit member's safeguarded rights for the purposes of the Scheme and of the 1993 Act and regulations made under that Act are such of his rights falling with section 64A(1) of that Act<sup>(48)</sup> 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 1993 Act.

### **Valuation date**

- 88.** For the purposes of—
- (a) calculating the cash equivalent referred to in Article 27(2) of the 1999 Order; and
  - (b) regulation 84<sup>(3)</sup> and (4) (discharge of liability for pension credit rights),
- the valuation date shall be the first day of the implementation period as defined in Article 31(1) of that Order.

<sup>(47)</sup> S.R. 2000 No. 145; amended by S.R. 2000 No. 335, regulation 11.

<sup>(48)</sup> 1993 c. 49; section 64A was inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

## PENSION CREDIT MEMBERS AND PENSION CREDIT

### Application of the Regulations to pension credit members

**89.** Part 1 (preliminary), regulations 46 (interest on late payment of certain benefits), 47 (payments due in respect of deceased persons) and 48 (non-assignability) and Parts 6 (determination of questions and disputes) and 7 (policy statements and information) apply to a pension credit member.

### Calculation

**90.**—(1) The annual rate of the pension at normal benefit age shall be the pension calculated as referred to in regulation 84(4) (discharge of liability for pension credit rights), increased in accordance with the Pensions (Increase) Act (Northern Ireland) 1971(49) and, if applicable, the Pensions Increase (Northern Ireland) Order 1974(50) from the day on which the pension sharing order takes effect.

(2) Where applicable, the lump sum grant shall be equal to 3 times the annual rate of pension.

### Payment of benefits

**91.**—(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 if applicable the lump sum grant are payable from the fund or admission agreement fund.

(3) The pension is payable for life.

### Death grants: pension credit members

**92.**—(1) Regulations 23 (death grants: active members), 32 (death grants: deferred members) and 35 (death grants: pensioner members) of the Benefits Regulations shall apply in relation to a pension credit member.

(2) 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.

(3) If the Committee has not made payments under paragraph (2) equalling in aggregate the pension credit member's death grant before the expiry of the period of 2 years—

(a) beginning with his death; or

(b) beginning with the date on which the Committee could reasonably be expected to have become aware of his death,

it must pay an amount equal to the shortfall to the pension credit member's personal representatives.

### Commutation: small pensions

**93.**—(1) Regulation 39 (commutation: small pensions) of the Benefits Regulations shall apply if as a result of a pension sharing order the annual rate of the retirement pension which a member who has attained normal benefit age is entitled to be paid falls below the sum mentioned in that regulation.

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(49) 1971 c. 35 (N.I.) sections 3, 8 and 15 were amended by Article 36 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

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

(2) Regulation 39 of those Regulations shall apply in respect of the retirement pension payable to a pension credit member in respect of a pension credit and the amount of that pension shall for the purpose of this regulation be aggregated with any other pension payable to that member under the Scheme.

## TRANSFERS

### Transfers out

**94.** For the purposes of Chapter 2 of Part 4A(51) (requirements relating to pension credit benefits) of the 1993 Act, the managers of the Scheme in relation to a pension credit member is the Committee.

### Transfers in

**95.—**(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 79(2) (inward transfers of pension rights).

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



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

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(51) Part 4A of the Pension Schemes (Northern Ireland) Act 1993 was inserted by the Welfare Reform and Pensions (Northern Ireland) Order 1999, Article 34.

## SCHEDULE 1

Regulation 2

### INTERPRETATION

- “the 1993 Act” means the Pension Schemes Act (Northern Ireland) 1993<sup>(52)</sup>;
- “the 1999 Act” means the Welfare Reform and Pensions Act 1999<sup>(53)</sup>;
- “the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999<sup>(54)</sup>;
- “the 2002 Regulations” means the Local Government Pension Scheme Regulations (Northern Ireland) 2002<sup>(55)</sup>;
- “active member” has the same meaning as in Article 121(1) of the Pensions Order<sup>(56)</sup>;
- “actuary” means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries;
- “admission agreement”, in relation to an admission body, means an agreement that all, or any designated class, of the body’s employees may be members;
- “admission agreement fund” means a pension fund established under regulation 28 (admission agreement funds);
- “admission body” means a body mentioned in regulation 4(2) (employees of community admission bodies) or regulation 5(2) (employees of transferee admission bodies);
- “appropriate policy” means a policy of insurance or an annuity contract which provides an annuity which satisfies requirements prescribed under section 91(2)(c) of the 1993 Act;
- “ARCs” means additional regular contributions as referred to in regulation 19 (payment of additional regular contributions);
- “AVCs” means additional voluntary contributions as referred to in regulation 21 (additional voluntary contributions and shared cost additional voluntary contributions);
- “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 Superannuation Scheme” means the superannuation scheme made by Belfast Corporation under section 5A of the Local Government (Superannuation) Act (Northern Ireland) 1950<sup>(57)</sup>, on 4th August 1964 or 20th April 1951 (both as amended) as the circumstances require;
- “benefit crystallisation event” shall be construed in accordance with section 216 of the Finance Act 2004<sup>(58)</sup>;
- “the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009<sup>(59)</sup>;
- “cancelling notice”, in relation to person’s relevant reserve forces service, means—
- (a) an agreement, by a member who has not waived his right to receive a return of contributions under regulation 41 (rights to return of contributions) to receive a return of contributions; or

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<sup>(52)</sup> 1993 c. 49.

<sup>(53)</sup> 1999 c. 30.

<sup>(54)</sup> S.I. 1999/3147 (N.I. 11).

<sup>(55)</sup> S.R. 2002 No. 352; as amended by S.R. 2002 No. 353, S.R. 2004 No. 139, S.R. 2005 No. 206, S.R. 2005 No. 274, S.R. 2006 No. 6, S.R. 2006 No. 112, S.R. 2007 No. 152, S.R. 2007 No. 372 and S.R. 2007 No. 479.

<sup>(56)</sup> S.I. 1995/3213 (N.I. 22).

<sup>(57)</sup> 1950 c. 10 (N.I.); section 5A was inserted by 1951 c. 9, section 2.

<sup>(58)</sup> 2004 c. 12;

<sup>(59)</sup> S.R. 2009 No. 32.

- (b) a notice in writing given by the person 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 the Committee may allow) that the service should not be treated as relevant reserve forces service;

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

“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;

“contract of employment” includes terms of office;

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

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

“the Department” means the Department of the Environment;

“eligible child” has the meaning given in regulation 26 (meaning of “eligible child”) of the Benefits Regulations;

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

“employing authority” means a body employing an employee who is eligible to be a member or is a local authority as defined in Article 2 of the Order of 1972<sup>(60)</sup> (but see regulation 6(6) (admission agreements – further provisions));

“employment” includes office;

“equivalent pension benefit” has the same meaning as in section 56(1) of the National Insurance Act (Northern Ireland) 1966<sup>(61)</sup>;

“final pay” shall be construed in accordance with regulation 8 (final pay: general) of the Benefits Regulations;

“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;

“the former Regulations” means the 2002 Regulations, the Local Government Pension Scheme Regulations (Northern Ireland) 2000<sup>(62)</sup>, or as the circumstances require, the Local Government (Superannuation) Regulations (Northern Ireland) 1992<sup>(63)</sup>, the Local Government (Superannuation) Regulations (Northern Ireland) 1981<sup>(64)</sup>, the Local Government (Superannuation) Regulations (Northern Ireland) 1962<sup>(65)</sup> or the Local

<sup>(60)</sup> S.I. 1972/1073 (N.I. 10); as extended by The Housing (Northern Ireland) Order 1981 (S.I. 1981/156, Part 2, Article 5(3)).

<sup>(61)</sup> 1966 c. 6 (N.I.).

<sup>(62)</sup> S.R. 2000 No. 177; as amended by S.R. 2001 No. 61, S.R. 2001 No. 63, S.R. 2001 No. 64, S.R. 2002 No. 115 and S.R. 2002 No. 353.

<sup>(63)</sup> S.R. 1992 No. 547; as amended by other instruments listed in Schedule M3 to the Local Government Pension Scheme Regulations (Northern Ireland) 2000 (S.R. 2000 No. 177).

<sup>(64)</sup> S.R. 1981 No. 96; as amended by other instruments listed in Schedule 21 to the Local Government (Superannuation) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 547).

<sup>(65)</sup> S.R. & O. (N.I.) 1962 No. 210.



Government (Superannuation) Regulations (Northern Ireland) 1950<sup>(66)</sup> 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;

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

“guaranteed minimum pension” means the guaranteed minimum as defined in sections 10 and 13 (minimum pensions for earners, widows, widowers and surviving civil partner) of the 1993 Act, 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) and in this definition “earnings factors” means the earnings factors referred to in section 10 of that Act and “tax year” means the 12 months beginning with 6th April in any year;

“local government auditor” has the same meaning as in the Local Government (Northern Ireland) Order 2005<sup>(67)</sup>;

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

“member” has the same meaning as in Article 121(1) of the Pensions Order but, except in regulation 64 (annual benefit statements) and in Part 10 (pension sharing), shall not include a pension credit member;

“Minister” means the Minister of the Environment;

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

“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 Local Government (Superannuation) Act (Northern Ireland) 1950; or
- (b) the superannuation scheme provided in regulations for the time being in force under Article 9 of the Order of 1972;

“normal benefit age” for the purposes of Part 10, means 65;

“normal retirement age” is 65;

“occupational pension scheme” has the meaning given by section 150(5) of the Finance Act 2004<sup>(68)</sup>;

“the Order of 1972” means the Superannuation (Northern Ireland) Order 1972<sup>(69)</sup>;

“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 National Insurance Act (Northern Ireland) 1959<sup>(70)</sup>, National Insurance Act (Northern

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<sup>(66)</sup> S.R. & O. (N.I.) 1950 No. 103 (p. 423).

<sup>(67)</sup> S.I. 2005/1968 (N.I. 18).

<sup>(68)</sup> 2004 c. 12.

<sup>(69)</sup> S.I. 1972/1073 (N.I. 10).

<sup>(70)</sup> 1959 c. 21 (N.I.).

Ireland) 1966<sup>(71)</sup>, the National Insurance Acts 1965 to 1974<sup>(72)</sup> or the National Insurance (Isle of Man) Act 1961 (an Act of Tynwald);

“pension credit” means a credit under Article 26(1)(b) of the 1999 Order or 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;

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

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

“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” means the order or provision by virtue of which Article 26 of the 1999 Order or section 29 of the 1999 Act takes effect;

“pensionable pay” has the meaning given in regulation 4 (meaning of “pensionable pay”) of the Benefits Regulations;

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

“the Pensions Order” means the Pensions (Northern Ireland) Order 1995;

“preserved benefits” means benefits to which a person—

(a) was entitled immediately before the commencement date and which are preserved by virtue of regulation 3(1) and 3(2)(a) of the Transitional Regulations; and

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

“prospective member” means a person who under his contract of employment or these Regulations —

(a) may, if he wishes or his employer consents, become a member;

(b) will be able to do so if he continues in the same employment sufficiently long; or

(c) 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 4 of the Financial Services and Markets Act 2000<sup>(73)</sup> to accept deposits;

(b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits; and

(c) quote a base rate in sterling,

and for the purpose of 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 section 1159 of the Companies Act 2006)<sup>(74)</sup> or before the commencement of

<sup>(71)</sup> 1966 c. 6 (N.I.).

<sup>(72)</sup> 1965 c. 51; 1966 c. 6; 1967 c. 73; 1969 c. 4; 1969 c. 44; 1971 c. 50; 1972 c. 57; 1974 c.14.

<sup>(73)</sup> 2000 c. 8.

<sup>(74)</sup> 2006 c. 46.

section 1159, as defined by Article 4 of the Companies (Northern Ireland) Order 1986<sup>(75)</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;

“registered scheme” means a pension scheme registered by the Commissioners for Her Majesty’s Revenue and Customs under Part 4 of the Finance Act 2004<sup>(76)</sup>;

“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 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>(77)</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 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) (Northern Ireland) Order 1953<sup>(78)</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 41 (rights to return of contributions); 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 the Committee 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;

“SCAVCs” means shared cost additional voluntary contributions as referred to in regulation 21 (additional voluntary contributions and shared cost additional voluntary contributions);

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<sup>(75)</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).

<sup>(76)</sup> 2004 c. 12.

<sup>(77)</sup> 1996 c. 14.

<sup>(78)</sup> S.I. 1953/197.

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

“Scheme function” means any function under the Regulations which constitute the Scheme;

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

“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 or 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;

“solvency” means the Committee’s funding objective as set out in the funding strategy statement prepared under regulation 30 (funding strategy statement);

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

“the Transitional Regulations” means the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009<sup>(79)</sup>;

“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;

“trustees or managers”, for the purposes of Part 10, has the meaning given in Article 43(1) of the of the 1999 Order or under section 46(1) of the 1999 Act;

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

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

- (a) that he is such an employee for 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 5

### MATTERS TO BE INCLUDED IN ADMISSION AGREEMENTS WITH TRANSFEREE ADMISSION BODIES

1. A requirement for the transferee admission body to pay to the Committee all contributions and payments due under these Regulations and the Benefits Regulations.

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

2. If required by regulation 5(5), a reference to the indemnity or bond in accordance with regulation 5(6) and a warranty from the transferee admission body that such an indemnity or bond is in place.

3. A provision requiring the transferee admission body to adopt the practices and procedures relating to the operation of the Scheme set out in these Regulations, the Benefits Regulations, the Transitional Regulations and in any employer's guide published by the Committee and provided to the transferee admission body.

4. An undertaking from the transferee admission body to the Committee that it will not do anything to prejudice the status of the Scheme as a registered scheme.

5. A representation and warranty from the transferee admission body to the Committee that all the body's employees or class of employees who are specified as members are employed in connection with the provision of the service or assets being carried out by the transferee admission body as a result of those matters referred to in regulation 5(2).

6. An undertaking from the transferee admission body that it will promptly notify the Committee 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 or in the interests of efficiency.

7. A requirement that the transferee admission body notifies the Committee of each occasion on which it exercises a discretion under these Regulations, the Benefits Regulations or the Transitional Regulations and the manner in which it exercises that discretion.

8. A requirement that a transferee admission body—

- (a) notifies the Committee of any matter which may affect, or is likely to affect, its participation in the Scheme; and
- (b) gives immediate notice to the Committee of any actual or proposed change in its status which may give rise to a termination,

and, for these purposes, a termination includes a take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of the body's business or constitution.

9. A provision—

- (a) for automatic termination of the admission agreement, as required by regulation 6(2), if the transferee admission body ceases to be such a body; and
- (b) otherwise for a minimum period of 3 months' notice to terminate the agreement.

10. 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); or
- (c) 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.

11. A requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the Committee.

12. In relation to a transferee admission body under regulation 5(2)(a)—

- (a) a reference to the date of the contract, other arrangement or direction by which the body met the requirements of that regulation;

- (b) a provision whereby the employing authority 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 these Regulations) due from the transferee admission body as an employing authority;
- (c) a provision requiring the employing authority to keep under assessment the level of risk arising as a result of the matters set out in regulation 5(5);
- (d) provision that where a representation or notification must be given to the Committee under paragraph 5, 6, 7 or 8, it must also be given to the employing authority; and
- (e) a requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the employing authority, if different from the Committee.

### SCHEDULE 3

Regulation 25

#### THE COMMITTEE

#### PART 1

#### CONSTITUTION OF THE COMMITTEE

1. The Committee appointed by the Minister shall consist of—
  - (a) a chairman;
  - (b) 2 members as appears to him to be appropriate;
  - (c) 5 members appointed after consultation with such organisations as may be recognised by him as representative of employing authorities; and
  - (d) 5 members appointed after consultation with such organisations as may be recognised by him as representative of employees affected by the Scheme.
- 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 4 years from the date of his appointment.
- (2) The Minister may extend the term of office of a member or the chairman of the Committee by a maximum period of 18 months.
3. The quorum of the Committee shall be 6, 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 numbers 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 was 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 6 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 a manner as it thinks fit, and thereupon the office shall become vacant.

8. A member of the Committee on vacating his office at the expiry 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 2

### POWERS OF THE COMMITTEE

10. The Committee, which shall be a body corporate with perpetual succession and a common seal, and with the 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, the Benefits Regulations and the Transitional 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>(80)</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 its 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 signature—

(a) of any member; or

(b) of any other person authorised by the Committee (whether generally or specifically) for that purpose.

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 Benefits Regulations and the Transitional Regulations, the Committee shall have the 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—

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<sup>(80)</sup> S.R. 2000 No. 178; as amended by S.R. 2001 No. 61, S.R. 2001 No. 62 and S.R. 2006 No. 400.



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 employing authority, admission body, Government department, district council or the Regional Health and Social Care Board, for the exercise of any pension function by the Committee on behalf of any employing authority, admission body, Government department, district council or the Regional Health and Social Care Board on such terms as may be provided for by the arrangements.

(2) For the purposes of this paragraph, “the Regional Health and Social Care Board” means the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009<sup>(81)</sup>.

23. Section 18(2) of the Interpretation Act (Northern Ireland) 1954<sup>(82)</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.

## PART 3

### 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, with the approval of the Department, 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.—(1) The Committee may, with the approval of the Department, pay to a member of the Committee an allowance, in addition to any payments made under paragraph 24.

(2) Such allowance shall not exceed the amount as the Department may from time to time determine under section 36 of the Local Government Act (Northern Ireland) 1972<sup>(83)</sup>.

(3) The allowance shall be claimed in respect of an approved duty by a Committee member.

(4) A claim shall be made to the Secretary of the Committee in such form as the Committee may direct and shall include a declaration that the member—

(a) has not and will not make any claim for allowances from any other body in respect of the approved duty to which the claim refers; and

(b) the amounts claimed are strictly in accordance with the provisions of this Part.

27. A claim for an allowance shall be submitted to the Committee within one month, 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.

<sup>(81)</sup> 2009 c. 1.

<sup>(82)</sup> 1954 c. 33 (N.I.).

<sup>(83)</sup> 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.

28. 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.

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## EXPLANATORY NOTE

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

These Regulations set out provisions relating to the administration of the new Local Government Pension Scheme (“the Scheme”) which is to come into operation on 1 April 2009 and is constituted by these Regulations and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 (“the Benefits Regulations”) and the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009.

The provisions in these Regulations supersede without modification most of those in the Local Government Pension Scheme Regulations (Northern Ireland) 2002 (as amended) that they replace. Reference is made where relevant to a nominated cohabiting partner as a category of dependant beneficiary in the Benefits Regulations. The other main changes are mentioned in the following description of the arrangement of these Regulations.

The Regulations are divided into the following Parts—

Part 1 deals with citation, commencement and interpretation;

Part 2 sets out the rules relating to membership of the Scheme. Regulation 9 (joining the Scheme) does not require any person who is eligible to be a member of the Scheme to apply to be such, unless he is applying for membership on a date other than that on which he would otherwise automatically become a member;

Part 3 deals with contributions. Regulation 19 (additional regular contributions) sets out the procedures, where a member chooses to pay additional contributions under regulation 14 (election in respect of additional pension) of the Benefits Regulations. Regulations 21 to 23 simplify and update provisions dealing with additional voluntary contributions and shared cost additional voluntary contributions;

Part 4 deals with pension funds and employers’ payments. Regulation 39 (interest) provides that interest payable on overdue amounts is payable from the day after the amount is due, the only exception being any extra charge payable by an employing authority under regulation 35 (employer’s payment following resolution to increase membership or award additional pension) or regulation 36 (employer’s further payments);

Part 5 deals with the payment of benefits;

Part 6 deals with determination of questions and disputes. Regulation 50 (first instance decisions) requires the employing authority to decide what contribution rate a member must pay. This is consequential on regulation 3 of the Benefits Regulations, which provides that the contribution rate a member pays is based on his pensionable pay and a range of pay bands;

Part 7 deals with policy statements and information;

Part 8 deals with special adjustments;

Part 9 deals with transfers; and

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

Part 10 deals with pension sharing.

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