

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2016

S.R. 2016 No. 128

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment (“the Department”) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under sections 1 and 3 of, and Schedule 3 to, the Public Service Pensions Act (Northern Ireland) 2014 (“the 2014 Act”). The Statutory Rule is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations amend:
 - 2.1.1. the Local Government Pension Scheme Regulations (Northern Ireland) 2014 (S.R. 2014 No. 188) (“the Principal Regulations”);
 - 2.1.2. The Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2014 (“the Transitional Regulations”);
 - 2.1.3. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 (“the Benefits Regulations”);
 - 2.1.4. The Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 (“the Administration Regulations”);
 - 2.1.5. The Local Government Pension Scheme Regulations (Northern Ireland) 2002 (“the 2002 Regulations”); and
 - 2.1.6. The Local Government Pension Scheme Regulations (Northern Ireland) 2000 (“the 2000 Regulations”).
- 2.2. These Regulations make a number of minor amendments and will have retrospective effect to the same operational date as the Principal Regulations, 1 April 2015.
- 2.3. Regulation 2 introduces amendments to the principal Regulations by regulations 3 to 26 of these Regulations. Regulation 3 clarifies regulation 3 (active membership) of the principal Regulations that automatic re-enrolment applies to all those who would be entitled to be a member but who have opted out of the Scheme.
- 2.4. Regulation 4 inserts regulation 10A (separate employments) which ensures that separate employments with the same employing authority are treated in the same way as employments with different employers. New regulation 10A also specifies that pay received by the clerk of a council for the performance of functions under Article 9(2) of the Electoral Law (Northern Ireland) Order

1972 will be treated as pensionable pay and in relation to those functions the clerk of the council will be treated as if employed by that district council.

- 2.5. Regulation 5 amends regulation 17 (employing authority contributions during absences) to clarify the regulatory basis on which lost pension for absences is calculated.
- 2.6. Regulation 6 amends regulation 18 (additional pension contributions) to clarify the circumstances in which such arrangements cease to have effect.
- 2.7. Regulations 7 and 11 amend regulations 19 (additional voluntary contributions) and 34 (election for lump sum instead of pension) to apply the same policy for additional voluntary contributions to that which applied under the 2009 Regulations. Regulation 7 also gives the administering authority the discretion, in the event of the member's death, to pay any sum from a member's AVC pot to a member's nominee, personal representative or relative/dependant.
- 2.8. Regulation 8 makes a number of amendments to regulation 23 (assumed pensionable pay) to ensure that members on child-related leave who receive pay which is greater than their assumed pensionable pay accrue benefits on that higher level of pay.
- 2.9. Regulation 9 amends regulation 24 (pension accounts) to ensure that where a deferred member becomes an active member again, the benefits in the deferred member's pension account will not be automatically aggregated with those in the active member's pension account unless the member makes an election to the Committee to aggregate them. However where a person who has opted out of active membership, becomes entitled to deferred benefits and then re-joins the Scheme in the same employment thereby creating a new active member pension account, that member cannot aggregate the respective pension accounts associated with that employment.
- 2.10. Regulation 10 amends regulation 33 (commencement of pensions) to clarify that a notice can be served before a member fulfils the criteria to make an election, for example, so that the member can give notice 3 months before reaching the age of 55 of an intention to draw benefits from that age.
- 2.11. Regulation 12 amends regulation 38 (role of the IRMP) to clarify that the independent registered medical practitioner (IRMP) must certify that where a member has been working reduced contractual hours or at a lower grade and as a consequence has had reduced pay whether that member was wholly or temporarily in part time service as a result of that condition that caused or contributed to that member's ill-health retirement. This regulation also clarifies that the IRMP is not to be considered to have acted in a case merely because a different member of the same occupational health provider has acted in that case.
- 2.12. Regulation 13 amends regulation 39 (calculation of ill-health pension amounts) to clarify that reductions in the number of contractual hours worked or working at a lower grade due to ill-health should not affect the calculation of benefit entitlement.
- 2.13. Regulation 14 amends provisions relating to death grants payable to persons who have separate categories of membership in addition to active membership.

That regulation and regulations 15, 16 and 17 also ensure that benefits payable to survivors are not reduced in cases where members spend some period of time working reduced hours or at a lower grade as a result of the condition from which they died. Regulation 14 also makes a minor amendment to clarify the calculation of councillors' survivor benefits.

- 2.14. Regulation 18 amends regulation 66 (statements of policy about the exercise of discretionary functions) to ensure that employers who are admitted to the Scheme after 1 April 2015 shall publish a policy statement on its discretionary functions within 4 months of admission. This is consistent with the requirement for those employers in the Scheme before that date.
- 2.15. Regulation 19 inserts a new paragraphs (13A), (13B), (13C) and (13D) to regulation 70 (special circumstances where revised actuarial valuations and certificates can be obtained) to give the Committee the discretion, subject to the approval of the Department, to specify a date on which the future accrual of benefits will cease in respect of active members employed by a particular contributing body where the Committee considers it necessary to protect the solvency of the fund or to prevent liabilities in relation to one contributing body falling onto other contributing bodies.
- 2.16. Regulation 20 amends regulation 74 (employing authority's further payments) to clarify that the Committee has the power to require an additional payment from an employer who has waived reductions in pension, where a member aged 55 or more, but who has not yet reached normal retirement age, elects to receive early payment of pension. It also inserts new paragraphs which require payments to be made by employers within one month of the relevant date or such longer period as the employer and Committee may agree. The relevant date changes depending on the circumstances under which the need for an additional payment from the employing authority to the Committee arises and is now defined within regulation 74.
- 2.17. Regulation 21 amends regulation 75 (payments by employing authorities to the Committee) for occasions when the Ministry of Defence makes payments to employers in regard to members to members on reserve forces leave.
- 2.18. Regulations 22 and 23 make amendments to regulations 90 (exchange of information) and 99 (annual benefit statements), respectively, to ensure the principal Regulations comply with the Public Service Pension Act (Northern Ireland) 2014.
- 2.19. Regulation 24 amends regulation 105 (adjustment of accounts following forfeiture, etc.) to continue a provision relating to contributions equivalent premium which applied under the 2009 Regulations. A minor technical amendment is also made to ensure the relevant employing authority receives payment of any forfeited pension rights.
- 2.20. Regulation 25 amends regulation 108 (rights to payment out of the fund) to ensure that where a member applies for transfer under this regulation, that member's normal pension age is defined as that contained in Schedule 1 (interpretation) of the principal Regulations and not defined as that contained in the Pension Schemes (Northern Ireland) Act 1993.
- 2.21. Regulation 26 inserts the definitions of "the 2000 Regulations", "retirement grant", "retiring allowance" and "standard retirement grant" in to Schedule 1

(interpretation). It also amends the definition of “revaluation adjustment” to refer to the relevant Order made by the Department of the Finance and Personnel.

- 2.22. Regulation 27 introduces amendments to the Transitional Regulations by regulations 28 to 31 of these Regulations. Regulation 28 inserts regulation 9A (aggregation adjustment, etc.) to enable the aggregation of continuing former final salary benefits under the earlier Schemes with benefits under the 2015 Scheme.
- 2.23. Regulation 29 amends regulation 17 (survivor benefits) by extending additional membership counted for the purposes of calculating survivor pensions to cover membership created by all types of voluntary contributions. A minor amendment consequent on the introduction of regulation 9A is also made.
- 2.24. Regulation 30 amends regulation 21 (councillors’ pensions) to ensure that a councillor who transfers from the 2009 Scheme to new Scheme (i.e. already elected to the new council) under regulation 21(3) has the appropriate amount of pension credited to their new active member pension account. The amendment made by regulation 14 of these Regulations to Regulation 41(4)(a) (survivor benefits) of the Principal Regulations also refers.
- 2.25. Regulation 31 inserts a paragraph into Schedule 3 (the 85 year rule: transitional provisions and savings) to enable an employing authority to waive actuarial reductions in cases where members apply for flexible retirement before satisfying the 85 year rule.
- 2.26. Regulation 32 amends regulation 30 (choice of early payment of pension) to ensure that deferred members who left under Benefits Regulations can access their benefits before age 60 without employer consent subject to appropriate actuarial reduction.
- 2.27. Regulation 33 amends regulation 91(4) (payment of benefits) to ensure that pension credit members can access their benefits, subject to the appropriate actuarial reduction, at or after age 55.
- 2.28. Regulation 34 amends regulation 33(2) (other early leavers: deferred retirement benefits and elections for early payment) of the 2002 Regulations to ensure that deferred members who left under those Regulations can access their benefits from age 55 without employer consent subject to the appropriate actuarial reduction.
- 2.29. Regulation 35 introduces an amendment to the 2000 Regulations by regulation 36 of these Regulations. Regulation 36 amends regulation D11 (entitlement to deferred retirement benefits (“preserved benefits”)) of the 2000 Regulations to ensure that deferred members who left under those Regulations can access their benefits from age 55 without employer consent subject to the appropriate actuarial reduction.

3. Background

- 3.1. The Public Service Pensions Act (Northern Ireland) 2014 (“the 2014 Act”) sets out the framework for public service pensions from 1 April 2015. Section 3(3)(b) of the 2014 Act provides that scheme regulations may make retrospective provision.

- 3.2. The Principal Regulations were made under Article 9 of, and Schedule 3 to the Superannuation (Northern Ireland) Order 1972 (“the 1972 Order”). Section 28 of the 2014 Act provides for regulations made under Article 9 of the 1972 Order in respect of a person’s pensionable service on or after 1 April 2015, to have effect as if they were scheme regulations under the 2014 Act, provided the Regulations could have been made under the powers contained in the 2014 Act. Article 9 of the 1972 Order provide that regulations may include all or any of the provisions (including transitional provisions) referred to in Schedule 3 to that Order.

4. Consultation

- 4.1. As required by section 21 of the 2014 Act, the Department has consulted with such persons or representatives of such persons as appeared to the Department to be appropriate. A total of 13 responses were received. Of the 13 responses 5 were from employing authorities, 4 from trade unions and 2 from other organisations, one from the administering authority and one from the Additional Voluntary Contributions (AVC) provider.
- 4.2. Copies of the consultation paper and the Department’s Response can be found at:
<https://www.doeni.gov.uk/topics/local-government>

5. Equality Impact

- 5.1. The Department, having carried out its own screening exercise, is satisfied that these Regulations will not lead to a significant discriminatory or negative differential impact on any particular Section 75 group.

6. Regulatory Impact

- 6.1. The Department has carried out a preliminary screening exercise in terms of the regulatory impact of the new cost control arrangements, and has determined that they will have no direct or indirect adverse impact on businesses, the voluntary/community sector (including charities) and the social economy sector.

7. Financial Implications

- 7.1. No Executive expenditure required.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department is satisfied that the Regulations comply with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. Not applicable.

11. Additional Information

- 11.1. Not applicable.