

SCHEDULE 2

Regulation 18

Transitional provision – the 85 year rule

1.—(1) Sub-paragraph (3) applies where a member of the description in paragraph 3(1) or (2) makes an election to receive immediate payment of retirement benefits under—

- (a) regulation 30(1) (choice of early payment of pension) of the Benefits Regulations;
- (b) regulation 29(5) (retirement benefits: early retirement) of the 2014 Regulations if the member was aged 60 or over at the date of making the request;
- (c) regulation 29(5) (retirement benefits: early retirement) of the 2014 Regulations if the member is aged 55 or over but aged under 60 at the date of making the request and the Scheme employer agrees that sub-paragraph (3) should apply; or
- (d) regulation 29(6) (retirement benefits: flexible retirement) of the 2014 Regulations.

(2) Sub-paragraph (4) applies where paragraph 1(c) would otherwise apply, but the member's Scheme employer does not agree that paragraph 1(3) should apply.

(3) Where this sub-paragraph applies—

- (a) if the member satisfies the 85 year rule, that part of the member's retirement benefits which is calculated by reference to any period of membership before the relevant date shall not be reduced in accordance with regulation 30(4) of the Benefits Regulations or regulation 29(5) or (6) of the 2014 Regulations; and
- (b) if the member does not satisfy the 85 year rule, that part of the member's retirement benefits which is calculated by reference to any period of membership before the relevant date is reduced by reference to the period between the date of the request and the date the member would satisfy the 85 year rule, or age 65 if earlier.

(4) Where this sub-paragraph applies—

- (a) if the member satisfies the 85 year rule, that part of the member's benefits which is calculated by reference to any period of membership before the relevant date is reduced by reference to the period between the date of the election and the day before age 60; and
- (b) if the member does not satisfy the 85 year rule, that part of the member's benefits which is calculated by reference to any period of membership before the relevant date is reduced by reference to the period between the date of the election and the date the member would satisfy the 85 year rule, or age 65 if the member would not satisfy the 85 year rule before that time, or the day before age 60 if later.

(5) In this Schedule, references to a Scheme employer are to be read as including a former employer which is a Scheme employer, or where a member's employer or former employer has ceased to be a Scheme employer, the appropriate administering authority.

2.—(1) A member's Scheme employer may determine to waive the reduction referred to in paragraph 1(3)(b) or (4) in whole or in part where paragraph 1(1)(b), (c) or (d) applies and on compassionate grounds where paragraph 1(1)(a) applies.

(2) Regulation 58 of the 2014 Regulations (statements of policy about exercise of discretionary functions) applies to paragraph 1(1)(c) and to sub-paragraph (1) of this paragraph as if they were specified in paragraph (1) of that regulation.

(3) Where a Scheme employer agrees that paragraph 1(1)(c) should apply to a member, or determines to waive a reduction under sub-paragraph (1), an administering authority may require the Scheme employer concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund, as calculated by an actuary appointed by the administering authority, resulting from the agreement or waiver of reduction.

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3.—(1) For the purposes of paragraph 1, the relevant date for a member who will be aged 60 or more on 31st March 2020 and who was a member of the 1998 Scheme before 1st December 2006, is the earlier of—

- (a) 1st April 2020; and
- (b) the day after the day on which the member leaves local government employment.

(2) For the purposes of paragraph 1, the relevant date for a member who will not be aged 60 or more on 31st March 2020, but who was a member of the 1998 Scheme before 1st December 2006, is 1st April 2008.

4.—(1) For the purposes of this Schedule, a member satisfies the 85 year rule if the sum of—

- (a) the member's age in whole years on the date the request is made under paragraph 1;
- (b) the member's total membership in whole years;
- (c) in a case where the request is made after the member's local government employment ends, the period beginning with the end of that employment and ending with the date the request is made; and
- (d) in the case of a person who was a member of the 1987 Scheme immediately before 1st April 1998, any qualifying period counted by virtue of regulation 123 of the 1998 Regulations (rights as to service not matched by credited period) which was awarded before 1st April 2008,

is 85 years or more.

(2) In calculating the member's total membership—

- (a) the periods of membership taken into account are—
 - (i) the total membership the member accrued under the Earlier Schemes which counts as membership in relation to the employment in respect of which the member has made a request to receive immediate payment of retirement benefits under paragraph 1, plus
 - (ii) the period during which the member paid, or is treated as having paid, contributions under regulation 9 or 10 of the 2014 Regulations (contributions and temporary reduction in contributions), plus
 - (iii) any period after 31st March 2015 of unpaid absence due to industrial action, or absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave, if contributions have been paid under regulation 16 of the 2014 Regulations (additional pension contributions) to cover that period, and
- (b) no account is to be taken of—
 - (i) any increase in membership awarded under regulation 12 (power of employing authority to increase total membership of active members) of the Benefits Regulations,
 - (ii) any membership credited after 1st February 2013 under regulation 79 (right to count credited period) of the Administration Regulations or regulation 9 (transfers), or
 - (iii) subject to paragraph 5, any period on or after the date specified in regulation 31(4) of the 2014 Regulations (commencement of pensions following flexible retirement) or the date benefits became payable under regulation 18 of the Benefits Regulations or regulation 34(1A) of the 1998 Regulations (retirement benefits: flexible retirement).

5.—(1) This paragraph applies to a member who received immediate payment under regulation 29(6) of the 2014 Regulations, regulation 18 of the Benefits Regulations or

regulation 34(1A) of the 1998 Regulations (retirement benefits: flexible retirement) of some, but not all, of the benefits to which that member was entitled.

(2) Where this paragraph applies, this Schedule, with the exception of paragraph 4(2)(b)(iii), continues to apply to any undrawn benefits accrued by the member before the date the member started to receive payment of benefits under those regulations.

6.—(1) This paragraph applies to a member to whom regulation 4 of the 2009 Scheme Transitional Regulations (membership accrued before 1st April 2009: re-joining deferred members), regulation 13 of the Administration Regulations (re-employed and re-joining deferred members) or regulation 10(1) (interfund adjustments) applies.

(2) Where such a member does not choose, or does not choose as respects all periods of membership, to be treated as if regulation 3 of the 2009 Scheme Transitional Regulations (membership accrued before 1st April 2009: active members) applies, or to have the member's membership aggregated under regulation 13 of the Administration Regulations (re-employed and re-joining deferred members), or under regulation 22 of the 2014 Regulations (pension accounts), as the case may be, then in applying paragraphs 1 to 5 and 9 of this Schedule as respects any later membership, the total membership excludes un-aggregated periods.

7.—(1) This paragraph applies to a member who was a member of the 1998 Scheme before 1st December 2006 who—

- (a) before 1st December 2006 elected to make additional contributions to the Scheme to increase total membership under regulation 54(1) of the 1998 Regulations (payments to increase total membership); and
- (b) was assumed to retire from a local government employment on a date before the member's 65th birthday ("the assumed date") for the purposes of calculating additional contributions under regulation 54(5) of the 1998 Regulations.

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

- (a) continues paying the additional contributions until the assumed date; and
- (b) retires on or after the assumed date,

the member shall not pay any additional contributions after that date and the whole of the additional period may be counted as part of the total membership for the purposes of paragraphs 1 to 5 of this Schedule.

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

8.—(1) This paragraph applies to a person who was an active member of one of the Earlier Schemes before 1st December 2006 and who—

- (a) ceases to be an active member of the 1998 Scheme, the 2009 Scheme or the 2015 Scheme (whether before, on or after that date); and
- (b) resumes active membership before the relevant date for the purposes of paragraphs 1 and 2.

(2) If a member to whom this paragraph applies aggregates any period of membership after the resumption of employment with the period of membership accrued in the previous local government employment, this Schedule applies to the whole period of the aggregated membership.