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STATUTORY INSTRUMENTS

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**2003 No. 1022**

**PENSIONS, ENGLAND**

**The Local Government Pension Scheme and  
Discretionary Compensation (Local Authority  
Members in England) Regulations 2003**

<i>Made</i>	- - - -	<i>7th April 2003</i>
<i>Laid before Parliament</i>		<i>7th April 2003</i>
<i>Coming into force</i>	- -	<i>1st May 2003</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 7 and 24 of the Superannuation Act 1972(1) and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned, the local authorities with whom consultation appeared to him to be desirable and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate, hereby makes the following Regulations:—

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme and Discretionary Compensation (Local Authority Members in England) Regulations 2003 and shall come into force on 1st May 2003.

(2) These Regulations apply only to England(2).

**Amendment of The Local Government Pension Scheme Regulations 1997**

2. The Local Government Pension Scheme Regulations 1997(3) shall be amended in accordance with regulations 3 to 8 of these Regulations.

**Re-employed and rejoining deferred members**

3. In regulation 32 (re-employed and rejoining deferred members), for paragraph (2) substitute—

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(1) 1972 (c. 11); section 24 was amended by the Police Pensions Act 1976 (c. 35), Schedule 2, paragraph 10.  
(2) The Secretary of State's functions under section 7 and 24 of the Superannuation Act 1972 so far as exercisable in relation to Scotland are transferred to Scottish Ministers; see section 63 of the Scotland Act 1998 (c. 46) and regulation 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).  
(3) S.I. 1997/1612; relevant amending instruments are S.I. 1997/1613, 1998/1238, 1999/1212, 3438, 2000/1164, 3025, 2001/770, 1481, 3401, 2002/206 and 819.

- “(2) But an election may only be made—
- (a) by a Class B member as respects former Class B membership or Class C membership;
  - (b) by a Class C member as respects former Class C membership; and
  - (c) by a councillor member as respects former councillor membership.”.

#### **Eligibility: members of local authorities**

4. In regulation 131(4) (further cases of eligibility: non-employees)—
- (a) in paragraph (2), after sub-paragraph (g) add the following—  
“(h) an eligible councillor”; and
  - (b) after paragraph (14), add the following—  
“(15) If a councillor member is an active member, he shall be treated as being in the whole-time employment of the local authority of which he is a member and references to employment by or under such an employer and all similar expressions shall be construed accordingly.”.

#### **Modifications for councillor members**

5. After regulation 137 (certain City of London employees and former contributors), insert the following—

##### *“Councillor Members*

#### **Members of local authorities—general**

**137A.** These Regulations apply to councillor members in respect of their councillor membership with the modifications set out in Schedule 8.”.

#### **Interpretation**

6. In Schedule 1—
- (a) after the definition of “contributory employee” insert—  
““Councillor member” means a person who is a member of the Scheme by reason of being an eligible councillor;  
“Councillor membership” means any period of membership which counts in respect of service as a member of a local authority and not other local government employment;”; and
  - (b) after the definition of “eligible child” insert—  
““eligible councillor” means a member of a local authority in England who is eligible under or by virtue of regulations made under section 18 of the Local Government and Housing Act 1989(5) (schemes for allowances) to be a member of the Scheme;”.

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(4) Regulation 131 was amended by S.I. 2000/1164, regulation 6 and S.I. 2001/1481, regulation 13.  
(5) 1989 c. 42; section 18 was amended by section 99 of the Local Government Act 2000 (c. 22).

### Schedule 3—Excluded Membership

7. In Schedule 3—

(a) at the end of the Table add—

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“7. Membership which is not councillor membership	Calculating total membership for a councillor member in respect of being entitled to or calculating any benefit in relation to his councillor membership or calculating NRD under regulation 25(3A).
8. Councillor membership	Calculating total membership for a person in respect of being entitled to or calculating any benefit in relation to his membership which is not councillor membership or calculating NRD under regulation 25(3A).”; and

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(b) at the end of the Notes to the Table add—

“(6) Paragraphs 7 and 8 shall be disregarded for the purposes of paragraphs 3, 4 and 5 and paragraph 7 shall be disregarded for the purposes of paragraph 1 of Schedule 8.”.

### Schedule 8—Eligible councillors

8. After Schedule 7 insert as Schedule 8 the schedule set out in the Schedule to these Regulations.

### The Local Government (Discretionary Payments) Regulations 1996 and The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

9.—(1) The Local Government (Discretionary Payments) Regulations 1996(6) shall be amended

(a) in regulation 33, by inserting after paragraph (1)—

“(1A) But “relevant employment” shall not include any period as a councillor member, the Mayor of London or a member of the London Assembly which is treated as employment for the purposes of the LGPS Regulations.”; and

(b) in regulation 39(3), by deleting “or” after sub-paragraph (e) and adding after sub-paragraph (f)—

“; or

(g) as a councillor member, the Mayor of London or a member of the London Assembly which is treated as employment for the purposes of the LGPS Regulations.”.

(2) The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000(7) shall be amended by substituting for the definition of “excluded employment” in Schedule 1 the following—

““Excluded employment” means—

(a) a period of employment—

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(6) S.I. 1996/1680; relevant amending instrument is S.I. 1997/1613.

(7) S.I. 2000/1410, to which there are amendments not relevant to these Regulations.

- (i) in an independent school (within the meaning of section 463 of the Education Act 1996)**(8)**; or
- (ii) in relation to which a pension or other benefits (other than a refund of contributions) is being or has been paid under an occupational pension scheme; or
- (b) a period as—
  - (i) the Mayor of London,
  - (ii) a member of the London Assembly, or
  - (iii) a councillor memberin respect of which the person is treated as being in employment for the purposes of the Pension Regulations.”.

Signed by authority of the Secretary of State

7th April 2003

*Nick Raynsford*  
Minister of State,  
Office of the Deputy Prime Minister

## SCHEDULE

Regulation 8

### NEW SCHEDULE 8 TO THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997

#### “SCHEDULE 8

Regulation 137A

#### COUNCILLOR MEMBERS

#### MEMBERSHIP

##### *Eligibility*

1. For regulation 6(3)(9) (latest joining age) substitute—  
“An eligible councillor may not become an active member after—
  - (a) his 70th birthday or,
  - (b) any earlier day after his 65th birthday when his total membership equals 40 years.”.

##### *Joining the Scheme*

2. In regulation 7(6) (joining the scheme), omit “or” at the end of sub-paragraph (b) and after sub-paragraph (c) add—  
“, or  
(d) to eligible councillors”.

##### *Periods of Membership*

3. In regulation 9(1A)(10) (periods of membership: “total membership”), for “65th birthday” and “65” substitute “70th birthday” and “70” respectively.

#### CONTRIBUTIONS

##### *Pay*

4. For regulation 13 (meaning of “pay”) substitute—  
“13.—(1) A councillor member’s pay in any year is the total of such of his—
  - (a) basic allowance, and
  - (b) special responsibility allowanceas may be treated as amounts in respect of which pensions under these Regulations are payable as set out in a scheme made under or by virtue of the Local Authorities (Members' Allowances) (England) Regulations 2003(11).  
(2) “Basic allowance” and “special responsibility allowance” have the same meaning as in regulations 4 and 5 respectively of the Local Authorities (Members' Allowances) (England) Regulations 2003.

(9) Regulation 6 was amended by S.I. 1999/3438, regulation 4, S.I. 2001/770, regulation 4 and S.I. 2002/819, regulation 3.

(10) Regulation 9(1A) was inserted by S.I. 1999/1212, regulation 6.

(11) S.I. 2003/1021.

(3) All references to “pay” in these Regulations in respect of a councillor member and his councillor membership shall be construed accordingly.

(4) “Career average pay” in these Regulations shall mean an amount equal to the total of a councillor member’s pay for each year or part year of his active membership divided by the number of those years or part years.

(5) When calculating a councillor member’s career average pay, the pay for any year other than the final year shall be increased in proportion to the increase in the Retail Price Index from the last day of that year up to the last day of the month in which the councillor member’s active membership ends.

(6) “Year” means the 12 months ending with 31st March save that in respect of the year ending with 31st March 2004, it means the period from the coming into force of these Regulations until 31st March 2004.

(7) “Final year” means the year during which, or at the end of which, the councillor member’s active membership ends.

(8) “Retail Price Index” means the index of retail prices for the United Kingdom published by the Office of National Statistics.

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

## BENEFITS

### *Preliminary*

5. For regulation 20 (calculations) substitute—

“**20.**—(1) The pension of a councillor member shall be

his career average pay × councillor membership  
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(2) The retirement grant of a councillor member shall be three times his pension.

(3) Where a councillor member was an active member in more than 40 years, only the 40 consecutive years (ending in the last 10 years of councillor membership) which produce the highest pension shall be taken into account.

(4) Unless otherwise indicated, references to the amounts of pensions are to their annual rate.

(5) Benefits payable to a councillor member who remains in service after his 70th birthday as referred to in regulation 25A(1) (as that regulation applies to a councillor member) shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary in respect of each day that payment of benefits is delayed between his 70th birthday and the date of his retirement.”

6. Omit regulations 21 (final pay), 22 (other final pay periods) and 23 (permanent reductions in pay).

### *Retirement benefits*

7. In regulations 19(2)(a) (general qualification for benefits), 25(3)(**12**) (normal retirement) and 25A(1)(**13**) (retirement after the normal retirement date), for “65th birthday” substitute

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(12) Regulation 25(3) was amended by S.I. 2001/770, regulation 6.

“70th birthday” and in regulation 25A(1) omit the words “with the consent of his employing authority”.

8. Omit regulation 26 (redundancy).

9. In regulation 27(14) (ill-health)—

(a) for paragraph (1) substitute—

“(1) Where a councillor member ceases to be a member of his local authority by reason of being permanently incapable of discharging efficiently the duties of that office because of ill-health or infirmity of mind or body, he is entitled to an ill-health pension and grant”; and

(b) in paragraph (5), in the definition of “permanently incapable”, for “65th birthday” substitute “70th birthday”.

10. In regulation 28(15) (amounts of ill-health pension and grant)—

(a) in paragraph (3), for “65” substitute “70”;

(b) omit paragraph (4); and

(c) for paragraph (9), substitute—

“(9) If a councillor member is entitled under regulation 27(3) to an ill-health grant (but not a pension), the amount of the grant is calculated by multiplying the member’s career average pay by—

the member’s total membership

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.”.

11. Omit regulations 29 (re-employed pensioners) and 30 (further provisions about elections under regulation 29).

12. In regulation 31(16) (other early leavers: deferred retirement benefits and elections for early payment)—

(a) in paragraph (2), for “60” substitute “65”;

(b) in paragraph (6), for “If a member who has left a local government employment” substitute “If a councillor member who has ceased to be a member of the local authority”; and

(c) in paragraph (7), for “60th” substitute “65th”.

13.—(1) Regulation 32(1) (re-employed and rejoining deferred members) shall only apply to a councillor member in respect of any councillor membership where both the former membership and the membership as an active member referred to in that paragraph are councillor membership in the same appropriate fund.

(2) In regulation 32(17)—

(a) in paragraph (5), for “Where a member who may elect under paragraph (1) does not do so or does not elect as respects all periods of his membership” substitute “In the case of a councillor member”; and

(13) Regulation 25A was inserted by S.I. 1999/1212, regulation 9.

(14) Regulation 27 was amended by S.I. 1999/1212, regulation 10.

(15) Regulation 28 was amended by S.I. 2002/206, regulation 5.

(16) Regulation 31 was amended by S.I. 1998/1238, regulation 14 and S.I. 2001/770, regulation 7.

(17) Regulation 32 was amended by S.I. 2001/770, regulation 8.

(b) omit paragraph (8).

14. Omit regulation 32A (concurrent employments).

*Death grants*

15. In regulation 38(18) (death grants), for paragraphs (3) to (5A) substitute—

“(3) The death grant of a councillor member shall be twice his career average pay.

(4) The death grant for a councillor member who is a deferred member at the date of his death is 3 times the annual pension that would have been payable to him if he had retired at the date of his death.

(5) The death grant for a councillor member who is a pensioner member at the date of his death is—

- (a) where he was in receipt of a pension at the date of his death, an amount equal to 5 times his former retirement pension less the amount of any pension paid to him, or
- (b) where he remained in service after his 70th birthday as referred to in regulation 25A(1) (as modified in respect of councillor members) and is not in receipt of a pension at his death, an amount equal to 2 times career average pay.

(5A) The amount of a deceased councillor member’s former retirement pension is the amount of the pension he would have received immediately before his death, but for—

- (a) regulation 31 (elections for early payment),
- (b) regulation 33 (surrenders),
- (c) regulation 50 (commutation in cases of exceptional ill-health), or
- (d) regulation 110 (application of abatement policy in individual cases).

(5B) A pensioner member includes a councillor member who would have been entitled to a pension but for regulation 110 (application of abatement policy in individual cases).

(5C) But paragraph (5B) does not stop a councillor member to whom it applies from also being an active member.”.

*Surviving spouses' pensions*

16. In regulation 40 (surviving spouse’s short-term pension)—

- (a) in paragraph (4), for “final pay” substitute “career average pay”; and
- (b) in paragraph (5), omit “(but see regulation 42)”.

17. In regulation 41(19) (surviving spouse’s long-term pension)—

- (a) in paragraph (5), for “the multiplier for” to the end of that paragraph, substitute—  
“the long-term pension is—

the deceased’s total membership × career average pay

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- (b) in paragraph (6), omit “(but see regulation 42)”.

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(18) Regulation 38 was amended by S.I. 1998/1238, regulation 16.

(19) Regulation 41 was amended by S.I. 2000/3025, regulation 3 and the Schedule, paragraph 4.

*Children's pensions*

18. In regulation 45(4) (children's short-term pensions) for "final pay" substitute "career average pay".

19. In regulation 46(8)(b) (children's long-term pensions), for "65th birthday" substitute "70th birthday".

20. Omit regulation 48 (dependants of re-employed pensioners).

**OPTIONAL ADDITIONAL BENEFITS**

*Increases of Membership and pensions*

21. Omit regulation 52 (power of employing authority to increase total membership of members leaving employment at or after 50), regulation 53 (power of employing authority to increase total membership of new members), and regulation 55 (payments to increase total membership).

*Additional Voluntary Contributions*

22. In regulation 66(20) (elections as to use of accumulated value of AVCs)—
- (a) in paragraph (1)(c)(i), delete "or 26 (redundancy etc.)"; and
  - (b) omit paragraphs (4) and (5).

*Shared Cost Schemes*

23. Omit regulations 67 to 72 (establishment of shared cost AVC schemes).

**ADMINISTRATION**

*Rights to return of contributions*

24. Omit paragraph (4) of regulation 87 (rights to return of contributions).

*Transfers*

25. Omit regulations 119 to 126 (bulk transfer arrangements, transfers in, community scheme transfers and payments between funds and authorities).".

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**EXPLANATORY NOTE**

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

Regulations 3 to 8 of these Regulations amend the Local Government Pension Scheme Regulations 1997 ("the principal Regulations") to make provision for members of local authorities in England

who are entitled to pensionable allowances under regulations made under section 18 of the Local Government and Housing Act 1989 (as amended by section 99 of the Local Government Act 2000).

Regulation 3 makes a consequential amendment to regulation 32 of the principal Regulations dealing with aggregation of membership. Regulation 4 amends the principal Regulations to include eligible councillors in the cases of eligibility of non-employees. Regulation 5 inserts a new regulation to provide that the principal Regulations apply to eligible councillors with the modifications set out in a new schedule. Regulation 8 adds that schedule as Schedule 8.

Regulation 6 amends Schedule 1 to the principal Regulations (interpretation), principally to include definitions for councillor members.

Regulation 7 makes amendments to the Table in Schedule 3 to set out membership that does not count for some purposes.

Regulation 9 makes amendments to the injury allowances and gratuities provisions of the Local Government (Discretionary Payments) Regulations 1996 to exclude eligible councillors, the Mayor of London and members of the London Assembly in respect of their employment as such. It also amends the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 to provide that the calculation of discretionary compensation for redundancy for a person does not include any period of membership as a councillor member, Mayor of London or member of the London Assembly that he may have in the Local Government Pension Scheme.