

2004 No. 573

PENSIONS, ENGLAND AND WALES

**The Local Government Pension Scheme (Amendment)
Regulations 2004**

<i>Made</i>	- - - -	<i>4th March 2004</i>
<i>Laid before Parliament</i>		<i>10th March 2004</i>
<i>Coming into force</i>		
<i>Regulations 1 to 26, 33 to 43</i>		<i>1st April 2004</i>
<i>Regulations 27 to 32</i>		<i>1st June 2004</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(a) 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, interpretation and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations 2004.

(2) Regulations 1 to 26 and 33 to 43 shall come into force on 1st April 2004 and regulations 27 to 32 shall come into force on 1st June 2004.

(3) In these Regulations, “the principal Regulations” means the Local Government Pension Scheme Regulations 1997(b).

(4) These Regulations extend to England and Wales(c).

Amendment of the principal Regulations

2. The principal Regulations shall be amended in accordance with regulations 3 to 41 of these Regulations.

General eligibility for membership: employees of Scheme employers etc.

3. In regulation 4—

(a) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
(b) S.I. 1997/1612; relevant amending instruments are S.I. 1998/1238; 1999/1212; 2000/1164, 1410, 3025; 2001/770, 1481, 3401; 2002/819 and 2003/1022.
(c) The Secretary of State’s functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (1998 c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

- (a) in paragraph (1), after “regulation 5” insert “, regulation 5A”(a); and
- (b) in paragraph (6), add at the end—
 - “(p) an urban development corporation.”(b).

Further restrictions on eligibility

4. For paragraph 6(11) substitute—

“(11) A person may be a member of the Scheme notwithstanding that he is entitled to be a member of the National Health Service Pension Scheme for England and Wales (“the NHS Scheme”)(c) if—

- (a) his entitlement to be a member of the NHS Scheme is by reason of his employment by—
 - (i) a Care Trust; or
 - (ii) an NHS Scheme employing authority as a result of a prescribed arrangement under section 31 of the Health Act 1999(d);
- (b) he is specified in, or within a class of employees specified in, an admission agreement made between an administering authority and a Care Trust or NHS Scheme employing authority; and
- (c) he was an active member of the Scheme immediately before his employment by the Care Trust or by the NHS Scheme employing authority.”.

Periods of membership: “total membership”

5. In regulation 9(2), after “ regulations 10, 11” insert “, 29”.

Meaning of “pay”

6. In regulation 13, omit paragraphs (5), (6) and (7).

General qualification for benefits

7. In regulation 19—

- (a) in paragraph (1)(a), for “two years” substitute “three months”; and
- (b) in paragraph (2)(a), delete “or under regulation 27(3) (ill-health grants)”.

Calculations

8. In regulation 20(6), omit sub-paragraph (a).

Final Pay

9. In regulation 21, omit paragraph (8).

Ill-health

10. In regulation 27—

- (a) omit paragraphs (3) and (4); and

(a) Regulation 5A was inserted by the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2003, S.I. 2003/3004.

(b) Urban development corporations are established under section 135 of the Local Government, Planning and Land Act 1980 (c. 65).

(c) The National Health Service Pension Scheme for England and Wales is set up under section 10 of the Superannuation Act 1972. The current regulations are the National Health Service Pension Scheme Regulations 1995, S.I. 1995/300, as amended.

(d) 1999 c. 8.

- (b) in paragraph (5), for the definition of “permanently incapable” substitute—
““permanently incapable” means that the member will, more likely than not, be incapable, until, at the earliest, his 65th birthday.”.

Amounts of ill-health pension and grant

11. In regulation 28—

- (a) for paragraphs (4) and (4A) substitute—

“(4) Where a member becomes entitled to a further ill-health pension and grant (because of having been a member in two or more employments), the multiplier for the further ill-health pension and grant will be the total membership without enhancement.

(4A) But paragraph 4 does not apply to a member who becomes entitled to a further ill-health pension and grant as a result of being in concurrent employments which cease simultaneously.”; and

- (b) omit paragraph (9).

Re-employed pensioners

12.—(1) For regulation 29, substitute—

“**29.** Where a pensioner member becomes an active member again, his former membership shall be taken into account only for the purpose of calculating—

- (a) whether he has the necessary total membership referred to in—
 - (i) regulation 19(1)(a) to be entitled to benefits under this Chapter; and
 - (ii) regulation 28(1) to be entitled to calculate his ill-health pension and grant by reference to the enhanced membership period; and
- (b) total membership in regulation 52 (power of employing authority to increase total membership).”.

- (2) Omit regulation 30.

Re-employed and rejoining deferred members

13. In regulation 32—

- (a) after paragraph (1), insert—

“(1A) But a member cannot elect to aggregate any period of former membership which he could have elected to aggregate with another period of former membership but did not before the expiry of the period in paragraph (8A).”;

- (b) in paragraph (5), for sub-paragraph (aa) substitute—

- “(aa) for the purpose only of calculating—
 - (i) whether the member has the necessary total membership referred to in regulation 19(1)(a) to be entitled to benefits under this Chapter and regulation 28(1) to be entitled to calculate his ill-health pension and grant by reference to the enhanced membership period; and
 - (ii) total membership in regulation 52 (power of employing authority to increase total membership),the unaggregated periods of membership shall be taken into account, and”;

- (c) after paragraph (8), insert—

“(8A) The notice under paragraph (7) must be given 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 his employer may allow).”.

Concurrent employments

14. In regulation 32A, in paragraph (1), for “two years” substitute “three months”.

Guaranteed minimum pensions etc.

15. In regulation 36, in paragraph (9)(c), for “two years” substitute “three months”.

Surviving spouse’s long-term pension

16. In regulation 41, in paragraphs (4) and (5), for “two years” substitute “three months”.

Dependants of re-employed pensioners

17. Omit regulation 48.

Power of employing authority to increase total membership

18.—(1) In regulation 52—

- (a) in the heading, delete “of members leaving employment at or after 50”;
- (b) in paragraph (1), for “a member who leaves his employment on or after his 50th birthday” substitute “an active member”;
- (c) for paragraph (2) substitute—

“(2) A member’s total additional membership (including additional membership in respect of different employments) must not exceed—

 - (a) 6 243/365 years;
 - (b) the period by which the member’s total membership falls short of 40 years; or
 - (c) the period by which the member’s total membership falls short of the total membership the member will have if he continues as an active member until he is 65,

whichever is the shortest.”;
- (d) omit paragraphs (3), (4) and (5);
- (e) in paragraph (7), for sub-paragraph (b) substitute—

“(b) such longer period as the employing authority and the administering authority agree.”; and
- (f) omit paragraph (9).

(2) Omit regulation 53.

Elections as to use of accumulated value of AVCs

19. In regulation 66(7), omit sub-paragraph (a).

Funding strategy statement

20. After regulation 76, insert—

“Funding strategy statement

76A.—(1) Each administering authority shall, after consultation with such persons as they consider appropriate, prepare, maintain and publish a written statement setting out their funding strategy.

(2) In preparing and maintaining the statement, the administering authority shall have regard to—

- (a) the guidance set out in the document published in March 2004 by CIPFA, the Chartered Institute of Public Finance and Accountancy 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 administering authority under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998^(a).
- (3) The first such statement shall be published on or before 31st March 2005.
- (4) The statement shall be revised and published by the administering authority following, and in accordance with, any—
- (a) material change in their policy on the matters set out in the statement; and
 - (b) material change to the statement of investment principles under regulation 9A(4) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998.”.

Actuarial valuations and certificates

21. After regulation 77(5), insert—

“(5A) The actuary must have regard to the administering authority’s funding strategy statement published under regulation 76A.”.

Employer’s further payments

22. In regulation 80—

- (a) omit paragraph (2); and
- (b) in paragraph (4)—
 - (i) for “, 52, 53 or 143” substitute “or 52”; and
 - (ii) for “(but, in the case of resolutions” to the end of the paragraph substitute “(but, in the case of a resolution under regulation 52, only so far as not paid under paragraph (1)).”.

Interest

23. In regulation 82—

- (a) in paragraph (1), for “, 125 or 126” substitute “or 125”; and
- (b) in paragraph (2), for “87(1) and (2A)” substitute “87(2A)”.

Discontinuance of additional contributions

24. In regulation 83(9)(b), delete “and has not made an election under regulation 29”.

Rights to return of contributions

25. In regulation 87—

- (a) in paragraph (1), for “2 years” substitute “three months” and delete “with interest calculated to the date he ceased to be employed”;
- (b) omit paragraph (2); and
- (c) in paragraph (2A), delete “(with interest due under paragraph (1), if applicable)”.

^(a) S.I. 1998/1831, regulation 9A was inserted by S.I. 1999/3259 and amended by S.I. 2002/1852.

Exclusion of rights to return of contributions

26. In regulation 88(3), omit sub-paragraph (a).

Notification of decisions under regulation 97

27. In regulation 98(5), for sub-paragraph (c) substitute—

“(c) specify the job title and the address of the person to whom applications under regulation 100 may be made.”.

Appropriate administering authorities

28. For the heading and text of regulation 99, substitute—

“Appropriate administering authorities

99.—(1) For this Chapter an administering authority are the appropriate administering authority for the purpose of resolving disagreements in respect of which an application is made under regulation 102 if—

- (a) where the person making the application is a member or prospective member, they are or were his last appropriate administering authority for the other purposes of these Regulations, and
- (b) where the person making the application is the widow, widower or surviving dependent of a deceased member, they were his appropriate administering authority.

(2) Each administering authority shall determine—

- (a) the procedure to be followed by them when exercising their functions as an appropriate administering authority under regulation 102; and
- (b) the manner in which those functions are to be exercised.”.

Right to apply to person to decide the disagreement

29. In regulation 100—

- (a) for the heading substitute “Right to apply to person to decide the disagreement”;
- (b) for paragraph (1), substitute—

“(1) Where there is a disagreement about a matter in relation to the Scheme between a member or an alternative applicant and a Scheme employer, the member or, as the case may be, the alternative applicant may apply to—

- (a) the person specified under regulation 98(5)(c) to decide the disagreement; or
- (b) the appropriate administering authority for them to refer the disagreement to a person to decide.”; and

- (c) in paragraph (8), for “appropriate appointed person” substitute “person deciding the disagreement”.

Notice of decisions under regulation 100

30. In regulation 101—

- (a) in the heading, delete “by appointed persons”;
- (b) in paragraph (1), for “appropriate appointed person” substitute “person deciding the disagreement”; and
- (c) in paragraph (3)(d), delete “and the Scheme employer’s right” and for “Secretary of State” substitute “ appropriate administering authority”.

Reference of disagreement to the appropriate administering authority

31. In regulation 102—

- (a) in the heading and text, for “Secretary of State” substitute “appropriate administering authority” in each place where it appears; and
- (b) in paragraph (1), delete “or the Scheme employer in question”.

Notice of decisions under regulation 102

32. In regulation 103—

- (a) in the heading, delete “by the Secretary of State”; and
- (b) in paragraph (1), for “The Secretary of State must issue his” substitute “The appropriate administering authority must issue their”.

Annual benefit statements

33. After regulation 106 insert—

“Annual benefit statements

106A.—(1) An administering authority shall issue an annual benefit statement to each of its active, deferred and pension credit members.

(2) The first such statements must be issued on or before 1st April 2005 and subsequent statements must be issued on or before each 1st April thereafter.

(3) An annual benefit statement shall contain an illustration of the amount of benefit entitlement, in respect of the 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, is capable of being accrued by the member if he remains in the Scheme until his NRD.

(4) The illustration shall be calculated—

- (a) in the case of active members, on the member’s pay (or, in the case of part-time employees, the whole-time equivalent) for the twelve-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 153, as if the “normal benefit age” is the relevant date.

(5) The relevant date—

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

Liability for combined benefits

34. Omit regulation 126.

Members employed by magistrates’ courts committees

35. In regulation 133, in paragraph (10), omit sub-paragraph (c).

Conversion of periods credited under Discretionary Payments Regulations etc. into membership

36. Omit regulation 143.

Scheme employers

37. In Schedule 2—

- (a) after “A valuation tribunal” insert “in Wales”;
- (b) for “a city academy within the meaning of the Education Act 1996” substitute—
“An Academy within the meaning of section 482 of the Education Act 1996^(a) or as a result of section 67 of the Education Act 2002 (conversion of city academies into Academies)”;
- (c) add at the end—
“The Valuation Tribunal Service”^(b).

Revenue restrictions

38. In Schedule 4—

- (a) in the heading above paragraph 8, for “regulations 53 and 55” substitute “regulation 55”;
- (b) in paragraph 8(1), delete “53 or”; and
- (c) in paragraph 8(3), delete sub-paragraph (a).

Appropriate funds

39. In Part II to Schedule 5—

- (a) add at the end of the Table—

“11. Employee of the Valuation Tribunal Service who is employed—

- (a) in the London headquarters;
 - (b) in any other location.
- (a) Fund maintained by the London Pensions Fund Authority;
 - (b) Fund maintained by the administering authority within whose local government area all or most of the relevant valuation tribunal is located.”;
- (b) add at the end of the Notes—
“4. The relevant valuation tribunal for an employee of the Valuation Tribunal Service is the valuation tribunal for which all or most of the employee’s work is performed.”.

Certain City of London employees and former contributors

40. In Schedule 6—

- (a) in paragraph 5—
 - (i) omit sub-paragraph (5); and
 - (ii) in sub-paragraph (6), delete “29,”; and
- (b) in paragraph 6(3), delete “of paragraph (d)”.

^(a) 1996 c. 56. Section 482 was substituted by section 65 of the Education Act 2002 (c. 32).
^(b) See section 105 of the Local Government Act 2003 (c. 26).

Councillor members

41. In Schedule 8—

- (a) in paragraph 10—
 - (i) for sub-paragraph (b), substitute—
“(b) in paragraph (4) for “a member” substitute “a councillor member” and delete
“(because of having been a member in two or more employments)””; and”;
 - (ii) for sub-paragraph (c), substitute—
“(c) omit paragraph (4A).””; and
- (b) in paragraph 21, delete “of members leaving employment at or after 50), regulation 53
(power of employing authority to increase total membership of new members”.

Transitional provisions

42.—(1) Nothing in regulations 6 and 9 will affect the amount of pay or final pay determined in accordance with an agreement made under regulation 13(5) of the principal Regulations prior to 1st April 2004.

(2) This paragraph applies to a member who is an active member on 1st April 2004 and who on that date—

- (a) has less than two years’ total membership, and
- (b) does not have a transfer value credited to him.

(3) Subject to paragraph (4), nothing in these Regulations shall prevent a member to whom paragraph (2) applies from opting to receive a return of contributions (with interest calculated to the date he ceased to be employed) in accordance with regulation 87 of the principal Regulations.

(4) A member to whom paragraph (2) applies is not entitled to receive a return of contributions if—

- (a) he is for the time being entitled to be paid, or has been paid, a benefit under Chapter IV of Part II of the principal Regulations; or
- (b) he is for the time being entitled to be paid, or has been paid, a benefit under regulation 27(3) of the principal Regulations (ill-health grant),

and a member is not entitled to interest if he would not have been entitled under regulation 87(2) of the principal Regulations.

(5) This paragraph applies to a member, who was a re-employed pensioner member on 1st April 2004, where the member—

- (a) has written to the appropriate administering authority within six months of that date to elect that the amendments in these Regulations in relation to regulations 29, 30 and 48 of the principal Regulations do not apply to him; and
- (b) has remained in the same employment, unless subject to a transfer, from that date until he retired or died.

(6) Nothing in these Regulations shall prevent a member to whom paragraph (5) applies from electing for a single pension in accordance with regulations 29 and 30 of the principal Regulations.

(7) Nothing in these Regulations shall affect the calculation of benefits under regulation 48 of the principal Regulations in respect of a member to whom paragraph (5) applies.

(8) In relation to deferred members who have become active members again prior to 1st April 2004 (but have not yet made an election under Regulation 32 of the principal Regulations), regulation 32(8A) of the principal Regulations (as inserted by regulation 13 of these Regulations) shall have effect as if “the date that he became an active member again” reads “1st April 2004”.

(9) Nothing in these Regulations shall affect the rights of any person who made an application to an appointed person or to the Secretary of State under regulations 100 or 102 of the principal Regulations before 1st June 2004.

(10) Nothing in these Regulations shall prevent an authority from being obliged to make payments to another authority in accordance with regulation 126 of the principal Regulations (liability for combined benefits), or, in the case of an overdue payment, to pay interest under regulation 82 of the principal Regulations.

(11) So far as it is necessary to give effect to the entitlements in this regulation and to make provision for any matters incidental to them, the principal Regulations shall be treated as if they had continued in effect without the amendments made by these Regulations.

Right to opt out

43.—(1) Where—

- (a) apart from this regulation, the amendments made by these Regulations would place any relevant beneficiary in a worse position than he would otherwise be, and
- (b) that relevant beneficiary so elects by notice in writing given to the appropriate administering authority within the period of six months beginning with the date on which these Regulations come into force,

then the principal Regulations shall have effect in relation to him as if those amendments had never been made.

(2) For the purposes of paragraph (1), a relevant beneficiary is a person to whom any benefit is or may become payable being a benefit payable to or in respect of a person who—

- (a) ceased to hold an employment in respect of which he was a member (whether or not he had subsequently recommenced any such employment), or
- (b) dies while in such employment,

before the date on which these Regulations come into force.

Signed by authority of the Secretary of State

4th March 2004

Phil Hope
Parliamentary Under Secretary of State,
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to the Local Government Pension Scheme Regulations 1997 (the “principal Regulations”) to have effect from 1st April 2004, with the exception of regulations 27 to 32 (changes to the dispute resolution procedures), which shall have effect from 1st June 2004. The main changes are as follows—

- regulation 3 adds urban development corporations to the list of resolution bodies;
- regulation 4 allows members who become employees of an NHS Pension Scheme employing authority as a result of an arrangement under section 31 of the Health Act 1999 to remain members of the Local Government Pension Scheme;
- regulation 6 deletes provisions for Scheme employers and employee representatives to agree a method for determining employees’ pay;
- regulation 7 amends regulation 19 of the principal Regulations to reduce the total membership required to become entitled to benefits from two years to three months;
- regulation 10 amends regulation 27 of the principal Regulations to provide that a member with over three months’ total membership will be entitled to an ill-health pension and grant and clarifies the definition of “permanently incapable”;
- regulation 11 amends regulation 28 of the principal Regulations to provide that where a member becomes entitled to a further ill-health pension and grant (unless by virtue of being in concurrent employments which cease simultaneously), the multiplier for that pension and grant will be his total membership without enhancement;
- regulation 12 removes provisions relating to re-employed pensioners’ entitlement to elect for a single new pension and provides for when periods of former membership may be taken into account when calculating the total membership of a re-employed pensioner;
- regulation 13 amends regulation 32 of the principal Regulations so as to provide that where a deferred member becomes an active member again and wants to elect to have his former membership aggregated with his current membership, he must give notice of his election within 12 months of the date he became an active member again or such longer period as his employer may allow and makes provision for when unaggregated periods of membership should be taken into account;
- regulation 14 amends regulation 32A of the principal Regulations to provide that a person may aggregate membership in concurrent employments where he leaves one of the employments in respect of which he has at least three months’ total membership;
- regulation 16 amends regulation 41 of the principal Regulations to alter, from two years to three months, the amount of total membership required to determine the applicable calculation for surviving spouse’s long-term pension;
- regulation 17 removes calculations in relation to re-employed pensioners;
- regulation 18 amends regulations 52 and 53 of the principal Regulations to provide that employing authorities may increase an active member’s total membership;
- regulations 20 and 21 make provision for administering authorities to prepare, maintain and publish a written funding strategy statement, which must be taken into account by the actuary in specifying the common rate of employer’s contribution;
- regulations 25 and 26 amend regulations 87 and 88 of the principal Regulations so that members with less than three months’ membership may be entitled to a refund of contributions if they cease to be employed by a Scheme employer;

- regulations 27 to 32 amend regulations 98 to 103 of the principal Regulations to make changes to the decision, notification and dispute resolution procedures;
- regulation 33 inserts provisions for the issue of annual benefit statements; and
- regulations 37 and 39 add a new body, the Valuation Tribunal Service, to the list of Scheme employers and amend the reference to city academies.

Regulation 42 makes transitional provisions and regulation 43 allows certain persons who would be placed in a worse position by amendments made in these Regulations to elect for the amendments not to apply in their case. The remaining regulations make amendments consequential to the above.

The guidance published by CIPFA, the Chartered Institute of Public Finance and Accountancy, referred to in regulation 20, can be purchased from CIPFA, 3 Robert Street, London WC2N 6RL, tel. 020 7543 5602. The publication costs £50 to members of the public, £25 to local authorities and £12.50 to an administering authority.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of businesses, charities or voluntary bodies.

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