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STATUTORY INSTRUMENTS

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**2018 No. 1366**

**PUBLIC SERVICE PENSIONS,  
ENGLAND AND WALES**

**The Local Government Pension Scheme  
(Miscellaneous Amendment) Regulations 2018**

*Made - - - - 13th December 2018*  
*Laid before Parliament 18th December 2018*  
*Coming into force - - 10th January 2019*

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972<sup>(1)</sup> and by section 1 of, and paragraph 12 of Schedule 3 to, the Public Service Pensions Act 2013<sup>(2)</sup>.

In accordance with section 7(5) of the Superannuation Act 1972, the Secretary of State consulted such associations of local authorities as appeared to the Secretary of State to be concerned; the local authorities with whom consultation appeared to the Secretary of State to be desirable; and such representatives of other persons likely to be affected by the Regulations as appeared to the Secretary of State to be appropriate.

In accordance with section 21 of the Public Service Pensions Act 2013, the Secretary of State has consulted the representatives of such persons as appeared to the Secretary of State to be likely to be affected by these Regulations.

The retrospective provisions contained in these Regulations do not appear to the Secretary of State to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme established by the Local Government Pension Scheme Regulations 2013<sup>(3)</sup> or the schemes preserved by the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014<sup>(4)</sup>, nor in any other way in relation to members of those schemes. Accordingly, the procedures set out in section 23 of the Public Service Pensions Act 2013 are not applicable in respect of these Regulations.

In accordance with section 3(5) of the Public Service Pensions Act 2013, these Regulations are made with the consent of the Treasury.

The Secretary of State makes the following Regulations:

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(1) 1972 c. 11. Section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).  
(2) 2013 c. 25.  
(3) S.I. 2013/2356.  
(4) S.I. 2014/525.

### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Miscellaneous Amendment) Regulations 2018.

(2) These Regulations come into force on 10th January 2019, save for the following regulations which have effect as follows—

- (a) regulation 4 has effect from 17th April 2018;
- (b) regulation 5 has effect from—
  - (i) 5th December 2005 in respect of a surviving civil partner of a member; and
  - (ii) 13th March 2014 in respect of a surviving spouse of a same sex marriage with a member<sup>(5)</sup>.

(3) These Regulations extend to England and Wales.

### **Amendment of the Local Government Pension Scheme Regulations 2013**

2. In regulation 2 (introductory) of the Local Government Pension Scheme Regulations 2013<sup>(6)</sup>, after paragraph (3) insert—

“(3A) The Secretary of State may issue guidance to administering authorities on the administration and management of the Scheme.

(3B) Before preparing or revising guidance under paragraph (3A), the Secretary of State must consult such persons as he considers appropriate.”.

### **Amendment of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014**

3. The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014<sup>(7)</sup> are amended in accordance with regulations 4 and 5.

4. In regulation 3 (membership before 1st April 2014) for paragraph (5A)(a) substitute—

- “(a) regulation D11 of the 1995 Regulations (entitlement to deferred retirement benefits) has effect as if—
  - (i) in paragraph (2)(d) the words “has ceased to be employed in local government employment” were omitted;
  - (ii) in paragraphs (2)(d) and (4) the references to age 60 were substituted with references to age 55;
  - (iii) in paragraph (3)—
    - (aa) the reference to employing authority were substituted with references to administering authority;
    - (bb) the words “given within the period of three months beginning with the relevant date” were omitted;
  - (iv) in paragraph (4)(a) “or after” were inserted after “on”;
  - (v) paragraph (4)(b) were omitted; and

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(5) Regulation 17(17) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, as inserted by regulation 5(e) of this instrument, defines “surviving civil partner of a member” and “surviving spouse of a same sex marriage with a member”.

(6) Those Regulations have been amended by [S.I. 2014/44](#), [S.I. 2014/525](#), [S.I. 2014/1146](#), [S.I. 2015/57](#), [S.I. 2015/755](#) and [S.I. 2018/493](#).

(7) [S.I. 2014/525](#). These Regulations have been amended by [S.I. 2015/755](#) and by [S.I. 2018/493](#).

- (vi) references to an employing authority were read as including a former employing authority which is now a Scheme employer, or where a member's employing authority or former employing authority has ceased to be a Scheme employer, the appropriate administering authority.”.

5. In regulation 17 (survivor benefits)—

(a) after paragraph (9)(b) insert—

- “(c) subject to sub-paragraphs (d) and (e), any calculation of the survivor pension payable under the Earlier Regulations to a person who is the surviving civil partner of a member or who is the surviving spouse of a same sex marriage with a member is to be on the basis that the survivor is a widow, irrespective of the sex of the member;
- (d) in respect of a calculation under sub-paragraph (c) where the member left under a scheme to which the 1995 Regulations or the 1997 Regulations apply and died before 1st April 2014, any reference to contracted out membership is to be read as including contracted in membership;
- (e) sub-paragraph (c) does not apply where the member died before 1st April 2014 and whose survivor benefit fell to be determined under the Benefits Regulations.”;

(b) omit paragraphs (11)(a) and (c);

(c) in paragraph (11)(b), for “survivor” substitute “male survivor”;

(d) for paragraphs (12) and (13) substitute—

“(12) Any calculation of any survivor pension payable under the Earlier Regulations is only to take account of membership accrued by that member after 5th April 1978 where—

- (a) a member enters into a civil partnership or same-sex marriage after leaving active membership and dies; or
- (b) a male deferred member, deferred pensioner member or pensioner member marries and dies leaving a female survivor.

(13) Notwithstanding paragraph (9)(c), for the purposes of paragraphs (10) and (12), membership includes—

- (a) any membership that would have counted for the purpose of F8(3) of the 1995 Regulations or by virtue of regulation 4A(2) of the 1997 Transitional Regulations;
- (b) relevant additional membership that would have counted as membership for the purposes of regulations 42 and 42A of the 1997 Regulations (reduction of some surviving spouses' and civil partners' pensions);
- (c) membership that would have counted under regulations F3, F4 or F5 of the 1995 Regulations by virtue of F6 of those Regulations; and;
- (d) any membership purchased under regulation 14A(59) of the Benefits Regulations (elections to pay additional contributions: survivor benefits).”;

(e) after paragraph (16) insert—

“(17) In this regulation—

“surviving civil partner of a member” means a person who, at the time of a member's death, was in a civil partnership with the member; and

“surviving spouse of a same sex marriage with a member” means a person who, at the time of a member's death, was married to the member.”.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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We consent to making of these Regulations

12th December 2018

*Craig Whittaker*  
*Rebecca Harris*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

Signed by authority of the Secretary of State for Housing, Communities and Local Government

13th December 2018

*Rishi Sunak*  
Parliamentary Under Secretary of State  
Ministry of Housing, Communities and Local  
Government

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## EXPLANATORY NOTE

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

These Regulations amend the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (“the Transitional Regulations”). Both sets of regulations came substantively into effect on 1st April 2014 and certain provisions listed in regulation 1 take effect from that date. Section 12(1) of the Superannuation Act 1972 and section 3(3)(b) of the Public Service Pensions Act 2013 provides that scheme regulations may make retrospective provision.

Regulation 2 enables the Secretary of State to issue guidance to administering authorities. Regulation 4 amends the Transitional Regulations to remove the requirement for an employer to give consent for a member to elect for early payment of benefits where that member left with deferred benefits before 1st April 1988 and is aged between 55 and 59. Regulation 5 amends the Transitional Regulations to make provision for survivor pensions in the scheme constituted by the 2013 Regulations (“the 2013 scheme”), where the survivor was a civil partner or a same sex spouse of the deceased member.

An impact assessment has not been produced for this instrument as no impact is anticipated on the private or voluntary sectors.