

2018 No. 493

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

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

<i>Made</i> - - - -	<i>17th April 2018</i>
<i>Laid before Parliament</i>	<i>19th April 2018</i>
<i>Coming into force</i> - -	<i>14th May 2018</i>

These Regulations are made in exercise of the powers conferred by sections 1, 3 and 25 of, and Schedule 3 to, the Public Service Pensions Act 2013(a).

In accordance with section 21 of that Act, 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.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

The Secretary of State makes the following Regulations:

Citation, commencement and extent

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

(2) These Regulations come into force on 14th May 2018 but the provisions listed in paragraph (3) have effect from 1st April 2014.

(3) The provisions are—

- (a) regulations 5 to 8;
- (b) regulations 10 and 11;
- (c) regulation 14;
- (d) regulation 15(b);
- (e) regulations 16 and 17;
- (f) regulation 20 apart from paragraph (b);
- (g) regulation 21 apart from paragraph (b)(i);
- (h) regulation 22;
- (i) regulation 24(b);

(a) 2013 c. 25.

- (j) regulation 26;
 - (k) regulation 28.
- (4) These Regulations extend to England and Wales.

Amendment of the Local Government Pension Scheme Regulations 2013

2. The Local Government Pension Scheme Regulations 2013(a) are amended in accordance with regulations 3 to 22.

3. In regulation 2 (introductory) after paragraph (1) insert—

“(1A) In these Regulations “local government service” means employment with a body specified in Part 1 of Schedule 2.

(1B) A person is deemed to be in local government service for the purpose of these Regulations—

- (a) if that person is employed by a body specified in Part 2 of Schedule 2 and is designated, or belongs to a class of employees that is designated, by that body as being eligible for membership of the Scheme; or
- (b) if that person is specified in column 1 of the table in Part 4 of Schedule 2.

(1C) The Scheme may potentially relate to a person employed by an admission body.”.

4.—(1) In regulation 3(b) (active membership) for paragraph (1) substitute—

“(1) Subject to regulation 4 (restriction on eligibility for active membership), a person is eligible to be an active member of the Scheme—

- (a) if working in local government service; or
- (b) if—
 - (i) by virtue of regulation 2(1C) (introductory: potential eligibility for membership) the Scheme may potentially relate to that person;
 - (ii) a determination under section 25(5) of the Public Service Pensions Act 2013 has been made in respect of that person; and
 - (iii) that person’s employer has designated that person, or a class of employees to which that person belongs, as being eligible for membership of the Scheme.”.

(2) After paragraph (1) insert—

“(1A) The following functions are delegated to administering authorities—

- (a) the function of making a determination under section 25(5) of the Public Service Pensions Act 2013 (“a determination”), in relation to persons of the description in regulation 2(1C); and
- (b) the function of publishing a list under section 25(9) of that Act of the persons to whom the Scheme relates by virtue of a determination.”.

(3) In paragraph (2) for “by virtue of paragraph 1(d)” substitute “by virtue of regulation 2(1B)(b)”.

5. In regulation 10(5) (temporary reduction in contributions) at the end of sub-paragraph (a) for “and” substitute “or”.

6. In regulation 11(4) (contributions during absence from work) omit the words after sub-paragraph (c).

7. In regulation 21(c) (assumed pensionable pay)—

(a) S.I. 2013/2356; those Regulations have been amended by S.I. 2014/44, S.I. 2014/525, S.I. 2014/1146, S.I. 2015/57 and S.I. 2015/755.
(b) There are amendments to regulation 3 which are not relevant to these Regulations.
(c) Regulation 21 was amended by S.I. 2015/755.

(a) in paragraph (4), for “Subject to paragraph (4A)” substitute “Subject to paragraphs (4A), and (5A) to (5C)”;

(b) after paragraph (5) insert—

“(5A) Where the pensionable pay received by a member during any period specified in paragraph (4)(a)(i) or (4)(b)(i) was, in the opinion of the Scheme employer, materially lower than the level of pensionable pay that member normally received, for the purposes of this regulation the Scheme employer may substitute for the pensionable pay the member received, a higher level of pensionable pay to reflect the level of pensionable pay that the member would normally have received.

(5B) In determining what the level of pensionable pay a member normally receives for the purposes of paragraph (5A) a Scheme employer must have regard to the level of pensionable pay received by the member in the previous 12 months.

(5C) Where any pensionable pay that has been received by a member includes fees of the kind listed in regulation 20(2)(j)(i) to (iv) (returning officer fees), for the purposes of paragraph (4)(a)(i) or (4)(b)(i) the annual rate of pensionable pay in respect of the fees in that employment that the member received is the annual average of the pensionable pay relating to those fees during the three years preceding the date the absence, the ill-health retirement or death occurred, or during the membership in that employment if less than three years.”.

8. In regulation 30 (retirement benefits)—

(a) in paragraph (7)(b) for “that employment” substitute “that active member’s pension account”;

(b) after paragraph (12) insert—

“(12A) In this regulation references to an employee in local government service include—

(a) a person who satisfies the conditions in regulation 3(1)(b); and

(b) a person who has been a member of the Scheme in an employment and would be eligible for membership of the Scheme in that employment but whose active membership has ceased as a consequence of a notice served under regulation 5(2) in relation to that employment.”.

9. In regulation 33(2) (election for lump sum instead of pension) for “excluding” substitute “including”.

10. In regulations 47(4)(a), 48(4)(a), 48(5)(a), 48(9)(a) and 48(10)(a) (survivor benefits: partners and children of pensioner members) after the words “earned pension” insert “(including any amount added under regulations 39(1)(a) or 39(2)(a) (enhancement of member’s Tier 1 and Tier 2 benefits))”.

11. In regulation 50(2) (limit on total amount of benefits) for “or fixed protection” substitute “, fixed protection or individual protection”.

12. In regulation 51 (guaranteed minimum pension) at the end insert—

“(9) In this regulation “local government service” includes employment in respect of which the member satisfies the conditions in regulation 3(1)(b).”.

13. In regulation 64 (special circumstances where revised actuarial valuations and certificates must be obtained)—

(a) in paragraph (1)(a) at the end add “or entitled to receive an exit credit”;

(b) in paragraph (2)(b) after “exit payment due from the exiting employer” insert “or exit credit payable to the exiting employer”;

(a) Regulation 64(1) was substituted by S.I. 2015/755.

(c) after paragraph (2) insert—

“(2ZA) If an exit credit is payable to an exiting employer, the appropriate administering authority must pay the amount payable to that employer within three months of the date on which that employer ceases to be a Scheme employer, or such longer time as the administering authority and the exiting employer may agree.

(2ZB) When an administering authority has paid an exit credit to an exiting employer, no further payments are due from that administering authority in respect of any surplus assets relating to the benefits in respect of any current or former employees of that employer as a result of these Regulations.”;

(d) in paragraph (8) after the definition of “exiting employer” insert—

““exit credit” means the amount required to be paid to the exiting employer by the administering authority to meet the excess of assets in the fund relating to that employer over the liabilities specified in paragraph (2).”.

14. In regulation 68(2) (employer’s further payments) for “regulation 30(6) (flexible retirement) or (7) (early leavers on grounds of redundancy or business efficiency)” substitute “regulation 30(5) (early retirement), (6) (flexible retirement) or (7) (early leavers on grounds of redundancy or business efficiency)”.

15. In regulation 96 (rights to payments out of pension fund) in paragraph (1)—

(a) for “Chapter 4 or 5 of Part 4” substitute “Chapters 1 or 2 of Part 4ZA(a)”; and

(b) after paragraph (1) insert—

“(1A) Where a transfer under paragraph (1) is a Club Transfer, the administering authority must comply with the provisions in the Club Memorandum in relation to that transfer.”.

16. In regulation 100 (inward transfers of pension rights), at the end insert—

“(8) Where a relevant transfer is a Club Transfer, the administering authority must comply with the provisions in the Club Memorandum in relation to that transfer.”.

17. In regulation 101 (effect of acceptance of transfer value) for paragraph (2) substitute—

“(2) The appropriate amount of earned pension for the purposes of paragraph (1) is calculated—

(a) in the case of a Club Transfer, in accordance with the Club Memorandum; and

(b) in any other case in accordance with actuarial guidance issued by the Secretary of State.”.

18. In regulation 102 (EU scheme transfers) in paragraph (3)—

(a) omit the word “and” at the end of paragraph (a);

(b) insert the word “and” at the end of paragraph (b); and

(c) at the end, insert—

“(c) “local government service” includes employment in respect of which a person satisfies the conditions in regulation 3(1)(b).”.

19. In regulation 103 (changes of administering authority) in paragraph (7) after “local government service” insert “(including employment in respect of which the member satisfies the conditions in regulation 3(1)(b))”.

20. In Schedule 1(b) (interpretation)—

(a) after the definition of “children’s pension” insert—

(a) Part 4ZA was inserted into the Pension Schemes Act 1993 (c. 48) by section 67 of and Schedule 4, Part 1, paragraphs 3 and 4 to, the Pension Schemes Act 2015 (c. 8).

(b) There are amendments to Schedule 1 which are not relevant to these Regulations.

““Club Memorandum” means—

- (a) in respect of a Club Transfer completed before 1st April 2015, the memorandum published by the Cabinet Office under the title “The Public Sector Transfer Club – memorandum by the Cabinet Office” effective from 1st March 2012;
- (b) in respect of a Club Transfer completed in the period from 1st April 2015 to 28th February 2017, the memorandum published by the Cabinet Office under the title “The Public Sector Transfer Club – memorandum by the Cabinet Office” effective from 1st April 2015;
- (c) in respect of a Club Transfer completed on or after 1st March 2017, the memorandum published by the Cabinet Office under the title “The Public Sector Transfer Club – memorandum by the Cabinet Office” effective from 1st March 2017(a);

“Club Transfer” means a transfer of employment between members of the Public Sector Transfer Club in respect of which an employee is entitled under the terms of the Club Memorandum to benefit from the terms of the Club Memorandum;”

- (b) for the definition of “local government service” substitute ““local government service” has the meaning given in regulation 2(1A)”;
- (c) in the definition of “partner” omit “in relation to an active member”;
- (d) after the definition of “permanently incapable” insert—

““Public Sector Transfer Club” means the arrangements approved by the Secretary of State and detailed in the Club Memorandum as providing reciprocal arrangements between the Scheme and other registered occupational pension schemes for making and receiving transfer value payments;”;

- (e) for the definition of “revaluation adjustment”(b) substitute—

““revaluation adjustment” means—

- (a) in the case of a balance transferred under a Club Transfer, the adjustment that would have applied to that balance if it had not been transferred; and
- (b) in any other case the percentage specified as the change in prices in the relevant Treasury order made under section 9(2) of the Public Service Pensions Act 2013 which is to be applied to a sum in a pension account at the beginning of the next scheme year.”;

- (f) in the definition of “statutory pay”(c) before “maternity” insert “sick,”.

21. In Schedule 2(d) (Scheme employers)—

- (a) in Part 2, in paragraph 5, for “local authority” substitute “body”;
- (b) In Part 3—
 - (i) omit paragraph 11; and
 - (ii) at the end add—

“**14.** An admission agreement may take effect on a date before the date on which it is executed.”.

(a) The Club Memorandums can be accessed at the following addresses http://lgpsregs.org/timelinereg/UK%20Wide%20Guidance/Public_Sector_Transfer_Club_Mar2012.pdf; <http://www.civilservicepensionscheme.org.uk/media/95419/club-memorandum-december-2015.pdf> and <http://www.civilservicepensionscheme.org.uk/media/213390/club-memorandum-march-2017.pdf>; hard copies may be obtained from : The Secretary, Public Sector Transfer Club, Cabinet Office, Lower Ground Floor, Priestley House’ Priestley Road, Basingstoke, Hampshire, RG24 9NW.

(b) The definition of “revaluation adjustment” was amended by S.I. 2015/755.

(c) The definition of “statutory pay” was amended by S.I. 2014/3255.

(d) Schedule 2 was amended by S.I. 2014/1146 and 2015/755.

22. In the table in Part 2 of Schedule 3(a) (pension funds), in the 7th row (relating to an employee of a Scheme employer listed in paragraphs 5 or 6 of Part 2 of Schedule 2), in column 2 omit the words “local authority or authorities, or”.

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

23. The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014(b) are amended in accordance with regulations 24 to 30.

24. In regulation 3 (membership before 1st April 2014)—

(a) after paragraph (5) insert—

“(5A) Notwithstanding paragraph (1)(a)—

- (a) regulation D11(2)(d) and (4) of the 1995 Regulations (entitlement to deferred retirement benefits) has effect with the substitution of the references to age 60 with references to age 55;
- (b) regulations 31(2) (other early leavers: deferred retirement benefits and elections for early payment) and 154(4) (payment of benefits: pension credit member) of the 1997 Regulations have effect with the substitution of the references to age 60 with references to age 55;
- (c) regulations 30(2) and 30A(3)(c) of the Benefits Regulations (requirements for member aged between 55 and 60 to obtain consent for early payment of pension) cease to have effect.”

(b) after paragraph (6) insert—

“(6A) Notwithstanding paragraph (1)(a), where deferred benefits are aggregated in accordance with paragraph (6), the normal pension age in relation to deferred benefits in respect of membership that ceased before 1st October 2006, is age 65”.

25. In regulation 7 (qualifying service for the 2014 Scheme) after paragraph (5) insert—

“(5A) In paragraph (5)(c) the reference to cessation of local government service includes—

- (a) cessation of employment deemed by regulation 2(1B) of the 2013 Regulations (introductory) to be local government service; and
- (b) cessation of employment in respect of which the member satisfies the conditions in regulation 3(1)(b) of the 2013 Regulations (active membership).”.

26. In regulation 9 (transfers)—

(a) in paragraph (1)—

(i) omit “before 1st April 2015”; and

(ii) at the end add “since ceasing active membership in the scheme from which the transfer payment is received”;

(b) after paragraph (1) insert—

“(1A) Regulation 4 (statutory underpin) applies to a person of the description in paragraph (1) as if that person had been an active member of the 2008 Scheme in respect of the service in the different public service pension scheme.”.

27. In regulation 10 (interfund adjustments etc) for paragraph (6) substitute—

(a) The table in Part 2 of Schedule 3 was amended by S.I. 2014/1012, S.I. 2014/1146 and S.I. 2015/755.

(b) S.I. 2014/525.

(c) Regulation 30A was inserted by S.I. 2010/2090.

“(6) A member with deferred benefits relating to the Earlier Schemes, who did not become a member of the 2014 Scheme by virtue of regulation 5(1) of these Regulations (membership of the 2014 Scheme), but who subsequently becomes an active member of the 2014 Scheme may—

- (a) within 12 months of the active member’s pension account being opened, or
- (b) such longer time as the Scheme employer permits,

elect to receive a transfer value payment in relation to the deferred benefits to be credited to the active member’s account to purchase earned pension in accordance with actuarial guidance issued by the Secretary of State.

(6A) Where the appropriate administering authority in relation to the active member’s pension account mentioned in paragraph (6) (“the current authority”) is different to the administering authority which is the appropriate administering authority in relation to the deferred benefits (“the previous authority”), the previous authority must make the transfer value payment to the current authority.”.

28. In regulation 14(2) (contributions) after “refund of contributions” insert “(including additional contributions)”.

29. In regulation 15 (additional contributions)—

- (a) omit paragraph (1)(b);
- (b) for paragraph (1)(d) substitute—

“(d) regulation 14 (election in respect of additional pension) and 14A(a) (election to pay additional contributions: survivor benefits) of the Benefits Regulations and regulations 23, 24, 24A and 24B of the Administration Regulations(b) (payment, discontinuance and use of additional contributions) as they apply to a member who has elected before 1st April 2014 to pay additional contributions under those regulations.”.

- (c) after paragraph (2) insert—

“(2A) Regulation 17 of the 2013 Regulations (additional voluntary contributions) applies to an AVC arrangement entered into before 1st April 2014 as it applies to an AVC arrangement entered into on or after that date save that—

- (a) the normal pension age in an AVC arrangement entered into before 1st April 2014 is the normal retirement age under the 2008 Scheme; and
- (b) regulation 66(8) of the 1997 Regulations (persons making elections in relation to AVCs prior to 13th November 2001) continues to have effect in relation to persons of the description in that regulation .”;

- (d) omit paragraph (4);

- (e) in paragraph (5) for “paragraph (4)” substitute “paragraph (2A)”.

30. In Schedule 2 (rule of 85)(c)—

- (a) in paragraph 1(1)(a) after “Benefits Regulations” insert “if the member was aged 60 or over at the date of making the request”;

- (b) after paragraph 1(1)(a) insert—

“(aa) regulation 30(1) (choice of early payment of pension) or 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations, if the member is aged 55 or over but aged under 60 at the date of making the request and the former Scheme employer or, where the former Scheme employer

(a) Regulation 14A was inserted by S.I. 2009/3150 and was amended by S.I. 2010/2090 and S.I. 2012/1989.

(b) Regulations 24A and 24B were inserted by S.I. 2009/3150.

(c) There are amendments to Schedule 2 which are not relevant to these Regulations.

has ceased to be a Scheme employer, the administering authority, agrees that paragraph 1(3) of this Schedule should apply;”;

- (c) in paragraph 1(1)(c) after “of the 2013 Regulations” insert “, or regulations 30(1) (choice of early pension) or 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations;”;
- (d) omit the word “or” preceding paragraph 1(1)(d) and after that paragraph insert—
 - “(e) regulation 31(1) of the 1997 Regulations (other early leavers: deferred retirement benefits and elections for early payment) if the member was aged 60 or over at the date of making the request; or
 - (f) regulation 31(1) of the 1997 Regulations (other early leavers: deferred retirement benefits and elections for early payment) if the member is aged 55 or over but aged under 60 at the date of making the request and the former employing authority or, where the former employing authority has ceased to be a Scheme employer, the administering authority, agrees that paragraph 1(3) of this Schedule should apply.”.
- (e) in paragraph 1(2), for “1(1)(c)” substitute “1(1)(aa), 1(1)(c) or 1(1)(f)”;
- (f) in paragraph 2(3)—
 - (i) omit “to the payment of benefits prior to age 60 in the circumstances described in paragraph 1(1)(a) of this Schedule, or”, and
 - (ii) for “1(1)(c)” substitute “1(1)(aa), 1(1)(c) or 1(1)(f)”.

Transitional Provision

31.—(1) Any admission agreement which subsists at the date this regulation comes into force remains in force and is treated as if it had been the subject of a determination under section 25(5) of the Public Service Pensions Act 2013(a).

(2) Each administering authority must, within 12 months of the date this regulation comes into force, include in its list published under section 25(9) of the Public Service Pensions Act 2013, details of the persons included in admission agreements to which it is a party, to whom the Scheme relates by virtue of the provision in paragraph (1).

(3) In this regulation “admission agreement” and “administering authority” have the same meaning as in the Local Government Pension Scheme Regulations 2013.

We consent to the making of these Regulations

Andrew Stephenson
David Rutley

16th April 2018

Two of the Lords Commissioners of Her Majesty’s Treasury

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

Rishi Sunak

Parliamentary Under Secretary of State

17th April 2018

Ministry of Housing, Communities and Local Government

(a) 2013 c. 25.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”) 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 3(3)(b) of the Public Service Pensions Act 2013 (“the 2013 Act”) provides that scheme regulations may make retrospective provision.

Regulations 3 and 4 make amendments to the 2013 Regulations to align the categories of person eligible for membership more closely with the regime contained in section 25 of the 2013 Act. Regulations 8(b), 12, 18, 19, 20(b) and 25 make consequential amendments.

Regulations 5 and 6 make minor clarifications to provisions in the 2013 Regulations relating to contributions.

Regulation 7 permits employers to adopt a higher reference figure for the calculation of assumed pensionable pay where it would otherwise be unfairly low and identifies how irregularly- received income from fees for acting as a returning officer are to be included in calculation of assumed pensionable pay.

Regulations 8(a), 10 and 11 make minor clarifications to provisions in the 2013 Regulations relating to the calculation of pensions.

Regulation 9 provides for pension commencement lump sums taken by members from AVC savings to be included within an overall limit applicable to such sums.

Regulation 13 makes provision for employers to receive credit for any surplus assets in a fund upon ceasing to be a Scheme employer.

Regulations 15, 16, 17 and 20(a) make provision for the Scheme to comply with its membership obligations of the Public Sector Transfer Club.

Regulation 20(c) amends the definition of “partner” and regulation 20(f) provides for statutory sick pay to come within the definition of “statutory pay”.

Regulation 21(b) clarifies that an admission agreement may be backdated and removes the requirement for details of admission agreements to be sent to the Secretary of State.

Regulation 22 amends provisions in Schedule 3 (pension funds) to clarify which is the appropriate administering authority for employees of entities wholly owned by bodies listed in paragraphs 1 to 5 of Part 1 of Schedule 2.

Regulation 24 amends the Transitional Regulations in their application to the “Earlier Regulations” as defined in the Transitional Regulations, to remove the requirement for persons aged between age 55 and 60 to obtain their employer’s consent to draw benefits early.

Regulation 26 ensures that members of other public service pension schemes who are entitled to transitional protection under those schemes and who are continuing to accrue final salary benefits can obtain final salary benefits within the Local Government Pension Scheme if they transfer those benefits in and can benefit from the statutory underpin.

Regulation 27 introduces a 12 month time limit (which is capable of extension by the employer) if a former member of the Earlier Schemes takes up active membership of the Scheme and wishes to aggregate the benefits.

Regulation 28 clarifies that the term “contributions” includes additional contributions when used in regulation 14 of the Transitional Regulations.

Regulation 29 has the effect that the administration of AVC benefits is carried out under the provisions in regulation 17 of the 2013 Regulations irrespective of when the AVC arrangement was established.

Regulation 30 makes an amendment to the provisions in Schedule 2 to the Transitional Regulations (“the rule of 85”) consequential to the amendment made by regulation 19, which removes the requirement for employer consent for members aged between 55 and 60 to draw benefits.

Regulation 31 gives administering authorities 12 months from the date of these Regulations to publish a list of existing admission agreements.

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

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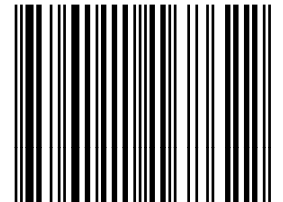
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