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STATUTORY INSTRUMENTS

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**1997 No. 578**

**PENSIONS**

**The Local Government Pension Scheme  
(Amendment) Regulations 1997**

<i>Made</i>	- - - -	<i>4th March 1997</i>
<i>Laid before Parliament</i>		<i>7th March 1997</i>
<i>Coming into force</i>	- -	<i>28th March 1997</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972<sup>(1)</sup> 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 interpretation**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations 1997 and shall come into force on 28th March 1997 but regulations 4, 12 and 14 shall have effect as from 2nd May 1995, regulation 15 shall have effect as from 1st April 1996, regulation 10 shall have effect as from 1st October 1996 and regulation 11 shall have effect as from 1st April 1997.

(2) In these regulations “the principal Regulations” means the Local Government Pension Scheme Regulations 1995<sup>(2)</sup>.

(3) In these Regulations, unless the context otherwise requires, any expression which is also used in the principal Regulations has the same meaning as in those Regulations.

**Early entitlement to retirement benefits: ill-health**

2. Regulation D7 of the principal Regulations is amended by substituting for regulation D7(1) the following—

“(1) Subject to the following provisions of this Part, where a member—

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(1) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).  
(2) S.I.1995/1019, amended by S.I. 1995/1985, 2249, 2953, 1996/185, 711, 1428, 2180, 1997/218, 329.

- (a) ceases on or after 28th March 1997 to hold a local government employment by reason of being permanently incapable of discharging efficiently the duties of that employment by reason of ill-health or infirmity of mind or body, and
  - (b) has a statutory pension entitlement,
- he is entitled—
- (i) to a standard retirement pension, and
  - (ii) to a standard retirement grant,
- which are payable immediately on his ceasing to hold that employment.”.

### **Entitlement to deferred retirement benefits**

3. Regulation D11(2)(b) of the principal Regulations is amended by inserting after the words “any date on which he becomes” the word “permanently” and deleting the word “permanent”.

### **Part-timers' pensionable remuneration for certain purposes of this Part**

4. Regulation E7 of the principal Regulations is amended by substituting for the reference “E1” the reference “E1(2)(a)”.

### **Payment of lump sum death grant**

5. The principal Regulations are amended by substituting for regulation E8(3) the following—

“E8.—(1) Subject to paragraph (5), the administering authority shall have power, at their discretion, to pay or apply the whole or any part of the lump sum death grant payable under regulation E1(1), E2(1), E3(1) or E4(1) to or for the benefit of all or any of the surviving spouse, children, dependants, relatives, personal representatives or nominated beneficiaries of the deceased member in such shares as the administering authority shall in their absolute discretion decide.

(2) The administering authority may, but without being in any way bound to do so, have regard to any nomination made by the member.

(3) A nomination shall be made by notice in writing to the administering authority in such form as the administering authority may from time to time require and shall be revocable.

(4) A nomination shall be revoked by any subsequent nomination which complies with the requirements referred to in paragraph (3).

(5) If or to the extent that the lump sum death grant has not been paid by the expiry of the period of two years following the death of the member, it shall be paid by the administering authority to his personal representatives.

(6) For the purposes of this regulation—

(a) “member” includes a former member who is a person referred to in regulation E2(1), E3(1) or E4(1);

(b) “nominated beneficiary” means an individual or an unincorporated or incorporated body nominated by the member in any nomination made by him in respect of the lump sum death grant which was in force at the time of his death; and

(c) “relative” means any living individual who is—

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(3) Regulation E8 was added by S.I. [1996/1428](#).

- (i) a parent of the member or the spouse or surviving spouse of any such person;  
or
- (ii) the child or remoter issue of such parent or the spouse or surviving spouse of any such person; or
- (iii) a former spouse of the member.”.

### **Member’s children’s long-term pension**

6. Regulation G3(3) of the principal Regulations is amended—

(a) by substituting for sub-paragraphs (a) to (d) the following—

- “(a) if there is one eligible child and a surviving spouse’s pension under Part F is for the time being payable, one quarter;
- (b) if there is one eligible child and no such surviving spouse’s pension is payable, one third;
- (c) if there are two or more eligible children and a surviving spouse’s pension under Part F is for the time being payable, one half; and
- (d) if there are two or more eligible children and no such surviving spouse’s pension is payable, two thirds;”;

(b) by inserting after the words “but references in paragraphs” the reference “(a), (b),”.

### **Interest on late payment of certain benefits**

7. Regulation H1 of the principal Regulations is amended—

(a) in paragraph (1)—

(i) by deleting “or” after sub-paragraph (d) and inserting after sub-paragraph (e) the following—

“(f) a return of contributions under regulation C8 of the 1974 regulations(4), regulation C12 of the 1986 regulations(5) or regulation C21; or

(g) a return of contributions which have been made in error;”;

(ii) by inserting after the words “shall pay the person to whom the” the words “return of contributions;”;

(b) in paragraph (2) by inserting after sub-paragraph (h) the following—

“(i) in the case of a return of contributions under regulation C8 of the 1974 regulations, regulation C12 of the 1986 regulations or regulation C21, the date when the return is due under the regulation in question; and

(j) in the case of a return of contributions which have been made in error, one month after the date on which the contributions were made;”;

(c) in paragraph (4)—

(i) by inserting in sub-paragraph (a) after the words “within paragraph (a)” the words “or a return of contributions within paragraph (g)”;

(ii) by deleting the word “and” at the end of sub-paragraph (a) and inserting the word “and” after the end of sub-paragraph (b); and

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(4) S.I. 1974/520; regulation C8 was amended by S.I. 1977/1845, 1978/266, 1738, 1979/2, 1534, 1980/234, 1981/1250, 1509, 1985/1920.

(5) S.I. 1986/24; regulation C12 was amended by S.I. 1987/293, 1988/466, 1991/2471, 1993/2531.

(iii) by adding at the end the following—

- “(c) in the case of a return of contributions within sub-paragraph (f), such period which, when added to the period beginning with the date when the person ceased to be a member of the Scheme and ending with the due date, equals twelve months.”.

### **Forfeiture of pension rights after conviction of employment-related offences**

8. Regulation H4(1) of the principal Regulations is amended by inserting after sub-paragraph (b) the following—

- “(bb) his employing body, where they have suffered a financial loss as a direct result of the offence, have taken reasonable steps to recover such loss (including the exercise of their powers under regulations L16 and L17); and”.

### **Initial decisions**

9. Regulation J1 of the principal Regulations is amended by inserting after paragraph (2) the following—

“(2A) Where a relevant LGPS employer are considering whether

- (a) a person who has ceased to hold a local government employment is entitled to a benefit under regulation D7, or  
(b) for the purposes of regulation D11, the appropriate date in relation to a person is to be ascertained under paragraph (2)(b) of that regulation,

they shall refer for decision to an independent, duly qualified medical practitioner approved by the appropriate administering authority (if different from the relevant LGPS employer) the following questions—

- (i) whether at the time that employment ceased, in the case of entitlement under regulation D7, or at the date in question, in the case of regulation D11, the person was, on the balance of probabilities, permanently incapable of discharging efficiently the duties of the local government employment he had ceased to hold and, if so,  
(ii) whether the permanent incapacity was by reason of ill-health or infirmity of mind or body.

(2B) The decision of the independent medical practitioner on the questions referred to him under paragraph (2A) shall be expressed in the form of a certificate.”.

### **Schedule B1**

10. Paragraph 5 of Part II of Schedule B1 to the principal Regulations is amended by substituting for the words “which immediately before becoming such a school was a voluntary school” the words “other than a grant-maintained school which is referred to in Part I of Schedule B1.”.

### **Appropriate pension fund**

11. Part III of Schedule C1 to the principal Regulations is amended by adding at the end—

- (a) in the column headed “Administering Authority”, the name “Leicestershire County Council”; and  
(b) opposite that name, in the column headed “Employing authority”, the names “Leicester City Council” and “Rutland District Council”.

## Limitations on contributions and benefits

12. Schedule C5 to the principal Regulations is amended—

- (a) in paragraph 1(6)(d), by substituting for the words “and he began paying contributions again under that regulation within one month of returning to work” the words “and within one month of such cessation he returned to work and began paying contributions again under regulation C4”;
- (b) by inserting at the beginning of paragraph 8(1) and paragraph 9 the words “Subject to paragraph 9A”;
- (c) by inserting after paragraph 9 the following—

“9A Where—

- (a) the calculation of any benefit in respect of a member is by reference to membership which he is entitled to count by virtue of regulation K14; and
- (b) the aggregate of
  - (i) the period mentioned in regulation K14(1)(a) which he is entitled to count as a period of membership, and
  - (ii) the period of membership in relation to the relevant employment (excluding any period in excess of 40 years)exceeds 40 years

that aggregate shall be used for the calculation of the amount of any benefit under Part D subject to any overriding limit on the maximum total benefits, whether in the form of annual pension payments or a lump sum, that may be provided on retirement for the purposes of approval by the Commissioners of Inland Revenue under Chapter 1 of Part XIV of the Income and Corporation Taxes Act 1988(6).”.

## Pensionable remuneration and fee earners

13. Paragraph 9(b) of Schedule D1 to the principal Regulations is amended by inserting after the words “more than 5 years” the words “ending with the last day of the period which is the relevant period for the purposes of regulation D1”.

## Additional membership in cases of ill-health and part-timers

14. Paragraph 4(4)(b) of Schedule D3 to the principal Regulations is amended by deleting the words “ending with his ceasing to hold the employment”.

## Environment Agency

15. Paragraph 9 of Schedule M2 to the principal Regulations is amended by adding the following—

“(18) A person to whom this paragraph applies shall be entitled to treat his relevant Environment Agency employment as if it had been a period of membership for the purposes of calculating his pensionable remuneration.

(19) “relevant Environment Agency employment” means employment by virtue of which the person was, or was deemed to be, a member of the PCSPS.”.

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(6) 1988 c. 1; the relevant parts of Part I of Chapter XIV were amended by the Finance Act 1988 (c. 39), Schedule 3, paragraph 18, Schedule 13, paragraph 6; the Finance Act 1989 (c. 26), Schedule 6, paragraphs 3(1), (2), (3), (4), 18(2), (3); the Finance Act 1991 (c. 31), section 36(2), (3) and Schedule 19, Part V and the Finance Act 1993 (c. 34), section 107(4), (5), (6), (8).

### **Payments in respect of previous part-time employment**

16.—(1) This regulation applies to a member who—

- (a) was a member on the 17th August 1993; and
- (b) was in qualifying part-time employment on or after 1st January 1993 and continuously until 17th August 1993 but was not eligible at any time during that period to elect to become a pensionable employee.

(2) A member to whom this regulation applies may, by notice in writing given to his appropriate administering authority within 6 months from the date when these Regulations come into force or such later date as the appropriate administering authority considers reasonable, elect to be treated as if he had been a member from the date he commenced qualifying part-time employment or 1st January 1993 whichever is the later, which date shall be specified in the notice.

(3) The member shall make a payment into the appropriate pension fund in order for the election to have effect from the date specified in the notice.

(4) The amount of the payment under paragraph (3) is an amount equal to the contributions which the member would have been required to make under regulation C2 of the 1986 regulations if, throughout the period from the specified date to the date he became a member, he had been a pensionable employee.

(5) A payment under paragraph (3) is to be made, unless the administering authority allow a longer period, within 6 months of the date on which the member is notified by the administering authority of its amount.

(6) A payment under paragraph (3) is to be treated for the purposes of the principal Regulations as if it consisted of contributions made by the member under regulation C4 of the principal Regulations in respect of employment in which he was a member.

(7) For the purposes of paragraph (1)(b), where a person ceased to be in pensionable employment but entered again into pensionable employment and—

- (a) the interval between those two employments does not exceed one month; or
- (b) the second of the employments results from the exercise of a right to return to work under section 79 or 81 of the Employment Rights Act 1996<sup>(7)</sup>

she shall be treated as continuously employed.

(8) For the purposes of this regulation the expressions “pensionable employee”, “qualify-ing part-time employment” and “whole time” have the same meanings as in the 1986 Regulations<sup>(8)</sup>.

### **Right to opt out**

17.—(1) This regulation shall apply in the case of any person (“a relevant beneficiary”) to whom any benefit (including a return of contributions and any pension payable to a widow, widower or any dependant by virtue of a surrender) is or may become payable, being a benefit (“a relevant benefit”) payable to, or in respect of, a person who before the date on which the relevant regulation of these Regulations has effect—

- (a) ceased to hold an employment in respect of which he was a pensionable employee (whether or not he has subsequently recommenced any such employment); or
- (b) died while in such employment.

(2) If, in relation to a relevant benefit, a relevant beneficiary—

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<sup>(7)</sup> 1996 c. 18.

<sup>(8)</sup> S.I. 1986/24; relevant amending instruments are S.I. 1986/380, 1987/293, 1988/466, 1989/372, 1462, 1990/503, 1991/2471, 1992/172, 1993/1367, 1814, 3030.

(a) would be placed by any amendment made by these Regulations in a worse position than he would have been in if that amendment had not been made, and  
(b) so elects, by notice in writing given to the appropriate administering authority within the six month period beginning with the date on which these Regulations come into force,  
then, in the case of that beneficiary and in relation to that benefit, the principal Regulations shall have effect, subject to paragraph (3), as if these Regulations had not been made.

(3) If such an election as is mentioned in paragraph (2) is made in relation to a benefit which is or may become payable in respect of a person who is employed in local government employment, or if that person subsequently recommences service in such an employment, then

(a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued—

(i) by virtue of periods of service rendered before the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the date on which the relevant regulation of these Regulations has effect); or

(ii) by virtue of contributions paid in respect of any such periods of service; and

(b) in determining entitlement to, or the amount of, the benefit to that extent, he shall (without prejudice to the application of this paragraph) be treated as if he had never recommenced service in such employment at any time after the cessation referred to in sub-paragraph (a);

and the principal Regulations shall apply accordingly.

Signed by authority of the Secretary of State

4th March 1997

*Paul Beresford*  
Parliamentary Under-Secretary of  
State, Department of the Environment

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## EXPLANATORY NOTE

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

These regulations make various amendments to the Local Government Pension Scheme Regulations 1995 (“the principal Regulations”) which constitute the Local Government Pension Scheme (“the Scheme”).

Unless otherwise stated, the regulations take effect on the date that these Regulations come into force.

Regulations 2 and 3 amend regulations D11 and D17 of the principal Regulations respectively and change the rules relating to ill-health and incapacity retirements.

Regulation 4 clarifies a cross reference in regulation E7 of the principal Regulations and has effect from 2nd May 1995, the date that the principal Regulations came into force.

Regulation 5 substitutes a new regulation E8 in the principal Regulations which deals with the procedure for the payment of death benefits and gives discretion to the appropriate administering authority.

Regulation 6 amends regulation G3 of the principal Regulations to provide that children’s long term pensions are comparable where no spouse’s long term pension is payable irrespective of who is caring for the children.

Regulation 7 amends regulation H1 of the principal Regulations to provide for the payment of interest on the late refund of contributions.

Regulation 8 amends the forfeiture provisions in regulation H4 of the principal Regulations to include a requirement for the employing body to take reasonable steps to recover financial loss.

Regulation 9 amends regulation J1 of the principal Regulations to require the employing body to refer certain questions in connection with ill-health and incapacity retirements to an independent medical examiner.

Regulation 10 amends the definition of grant-maintained schools in Part II of Schedule B1 to the principal Regulations and has effect from 1st October 1996.

Regulation 11 amends Schedule C1 to the principal Regulations with effect from 1st April 1997 to specify to which pension fund Leicester City Council and Rutland District Council and their employees contribute.

Regulation 12 amends Schedule C5 to the principal Regulations with effect from 2nd May 1995 to allow the period of membership used to calculate benefits to exceed 40 years but be subject to the Inland Revenue maximum for approval where a member has transferred-in service which allows him to accrue more than 40 years’ total period of membership before his normal retirement date.

Regulation 13 amends Schedule D1, paragraph 9(b) to clarify that provision.

Regulation 14 amends Schedule D3, paragraph 4(4)(b) to the principal Regulations with effect from 2nd May 1995 to allow for automatic additional membership in cases of part-timers and ill-health where 13 2/3 whole time years of service have been completed.

Regulation 15 amends paragraph 9 of Schedule M2 to the principal Regulations to allow members who transferred from the Principal Civil Service Pension Scheme when their employment transferred to the Environment Agency to include service before the transfer in the relevant period for the purposes of calculating pensionable remuneration and has effect from 1st April 1996.

Regulation 16 allows members who worked more than 15 hours a week in August 1993 but had been excluded from membership as part-timers prior to that date to elect (within the specified time limits)



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for the period of part-time membership from 1st January 1993 to 17th August 1993 to be treated as a period of membership on payment of the necessary contributions.

Regulation 17 provides for a right to opt out of the amendments if a person is placed in a worse position as a result of the retrospective application of any of these Regulations than he would be in if the amendments had not been made and the benefits in question are paid or payable in respect of a person who had left employment before the date these Regulations come into force or died before that date.