

2003 No. 3004

PENSIONS, ENGLAND AND WALES

**The Local Government Pension Scheme (Amendment) (No. 2)
Regulations 2003**

<i>Made</i> - - - -	<i>19th November 2003</i>
<i>Laid before Parliament</i>	<i>28th November 2003</i>
<i>Coming into force</i> - -	<i>19th December 2003</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) (No. 2) Regulations 2003.

(2) These Regulations shall come into force on 19th December 2003, but shall have effect from 1st January 2003.

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

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

Amendment of Regulations

2. The principal Regulations shall be amended in accordance with regulations 3 to 9 of these Regulations.

Employees of non-Scheme employers: community admission bodies

3. For regulation 5 substitute—

(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; the relevant amending instruments are S.I. 1999/3438, 2000/1005, 2001/770, 2001/3649 and 2002/206.

(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 (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).

“Employees of non-Scheme employers: community admission bodies

5.—(1) Subject to the requirements of this regulation and regulation 5B, an administering authority may make an admission agreement with any community admission body.

(2) These are community admission bodies—

(a) a body, other than the governors or managers of a voluntary school, which provides a public service in the United Kingdom otherwise than for the purposes of gain and which either—

(i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest, whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise, or

(ii) is approved by the Secretary of State for the purposes of admission to the Scheme;

(b) a body, other than the governors or managers of a voluntary school, to the funds of which any Scheme employer contributes;

(c) a body representative—

(i) of local authorities,

(ii) of local authorities and officers of local authorities,

(iii) of officers of local authorities which is formed for the purpose of consultation as to the common interests of local authorities and the discussion of matters relating to local government, or

(iv) of Scheme employers;

(d) the Housing Corporation;

(e) the Commission for the New Towns;

(f) a company for the time being subject to the influence of a local authority as described in section 69 of the Local Government and Housing Act 1989(a); and

(g) a company for the time being subject to the influence of a Scheme employer listed in Schedule 2 (other than a local authority) as described in section 69 of the Local Government and Housing Act 1989 as if references in that section to a local authority were references to the listed Scheme employer.

(3) Approval under paragraph (2)(a)(ii) may be subject to such conditions as the Secretary of State thinks fit and he may withdraw approval at any time if such conditions are not met.

(4) Where, at the date that the admission agreement is made with a body within paragraph (2)(b), the contributions paid to the body by any one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, it must be a term of the admission agreement that the Scheme employer who provides funding (and, if more than one, all of them) guarantees the liability of the body to pay all amounts due from it under the Regulations.

(5) For the purposes of paragraph (2)(c) and (f), “local authority” includes the Greater London Authority.

Employees of non-Scheme employers: transferee admission bodies

5A.—(1) Subject to the requirements of this regulation and regulation 5B, an administering authority may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing, or will provide—

(a) 1989 c. 42.

- (a) a service or assets in connection with the exercise of a function of a Scheme employer as a result of—
 - (i) the transfer of the service or assets by means of a contract or other arrangement;
 - (ii) a direction made under section 15 of the Local Government Act 1999^(a); or
 - (iii) directions made under section 497A of the Education Act 1996^(b); or
 - (b) a public service and which is approved by the Secretary of State for the purposes of admission to the Scheme.
- (3) Only those employees of the transferee admission body who are employed in connection with the provision of the service or assets referred to in paragraph (2) are eligible to be members of the Scheme.
- (4) In the case of an admission agreement with a transferee admission body under paragraph (2)(a) the Scheme employer, if it is not also the administering authority, must be a party to the admission agreement.
- (5) Approval under paragraph (2)(b) may be subject to such conditions as the Secretary of State thinks fit and he may withdraw approval at any time if such conditions are not met.
- (6) An admission agreement with a transferee admission body shall require that:
- (a) in the case of a body under—
 - (i) paragraph 2(a), the Scheme employer; or
 - (ii) paragraph 2(b), the transferee admission body, to the satisfaction of the administering authority,
 shall carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee admission body, and
 - (b) that where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.
- (7) The indemnity or bond must be with—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000^(c) to accept deposits or to effect and carry out contracts of general insurance;
 - (b) an EEA firm of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or
 - (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.
- (8) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 2A.
- (9) Where a transferee admission body undertakes to meet the relevant requirements of this regulation, and—
- (a) in the case of a body under paragraph 2(a), the Scheme employer undertakes to meet the relevant requirements of this regulation; or

^(a) 1999 c. 27.

^(b) 1996 c. 56; section 497A was inserted by section 8 of the School Standards and Framework Act 1998 (c. 31) and amended by section 60 of the Education Act 2002 (c. 32).

^(c) 2000 c. 8.

- (b) in the case of a body under paragraph (2)(b), the Secretary of State approves the body for admission to the Scheme and the conditions, if any, to which the approval is subject have been met;

an administering authority must admit to the Scheme the eligible employees of the transferee admission body specified by the body and where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

Requirements for admission agreements

5B.—(1) In regulations 5 and 5A an admission agreement is an agreement that all or any specified class of the admission body’s employees may be members.

(2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.

(3) When an administering authority makes an admission agreement, it must promptly inform the Secretary of State of the date the agreement takes effect, the admission body’s name and, in the case of an admission agreement with a transferee admission body under paragraph 5A(2)(a), the name of the relevant Scheme employer.

(4) An administering authority must notify the Commissioners of the Inland Revenue of the admission of an admission body within the time prescribed in regulations made under section 605 of the Taxes Act(a) and provide such information as may be so prescribed.

(5) An administering authority and an admission body may make an admission agreement despite the fact that they do not exercise their functions or provide services or assets in areas that overlap or adjoin each other.

(6) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing for determination to the Secretary of State.

(7) An employee of an admission body may not be a member if he is a member of another occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993(b)) other than where the accrual of benefits under the occupational pension scheme would not affect approval of the Scheme as an approved scheme.

(8) These Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the admission body were a Scheme employer.”.

Further restriction on eligibility

4. For regulation 6(10) substitute—

“(10) A person who is a member and is an employee of a transferee admission body is treated as leaving a local government employment when he ceases to be employed in connection with the provision of the service or assets under regulation 5A(2) as a result of which employment he became eligible to join the Scheme.”.

Re-employed and rejoining deferred members

5. For regulation 32(11) substitute—

“(11) In the case of a member who first becomes a member on or after 13th January 2000 any period of membership in the employment of a community admission body within—

- (a) regulation 5(2)(a)(ii); or

(a) 1988 c.1. The current regulations are the Retirement Benefit Schemes (Information Powers) Regulations 1995, S.I. 1995/3103, as amended.

(b) 1993 c. 48.

- (b) regulation 5(2)(b) where, at the date that the admission agreement is made, the contributions paid to the body by any one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources;

shall not be aggregated with any other periods of membership for the purpose of calculating his retirement grant.”

Special circumstances where revised actuarial valuations and certificates must be obtained

6. In regulation 78(2A)—

- (a) for “a guarantee or indemnity” substitute “an indemnity or bond”;
- (b) for “5(17)(i)” substitute “5A(2)(a)”;
- (c) delete “transferor” and “within the meaning of regulation 5(17)(j)”.

Interpretation

7. In Schedule 1—

- (a) in the definition of “Admission Agreement”, for “5(2)” substitute “5B(1)”;
- (b) in the definition of “Admission agreement employee”, for “5(16)” substitute “5B(8)”;
- (c) in the definition of “Admission body”, for “regulation 5(3)” substitute “regulations 5(2) and 5A(2)”;
- (d) in the definition of “Scheme employer”, for “5(16)” substitute “5B(8)”.

Matters to be included in an admission agreement in certain cases

- 8.** For Schedule 2A, substitute Schedule 2A as set out in the Schedule to these Regulations.

Revenue restrictions

9. In paragraph 1(1) of Schedule 4, for the definition of “continuity break” substitute—

““continuity break” is a change of employment from a Scheme employer (including an admission body) to—

- (a) a community admission body within—
 - (i) regulation 5(2)(a)(ii); or
 - (ii) regulation 5(2)(b) where, at the date that the admission agreement is made, the contributions paid to the body by any one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources; or
- (b) a transferee admission,

but does not include a change in the case of a person who was a member of the Scheme on 13th January 2000.”.

Transitional provisions

10. Nothing in these regulations shall affect any admission agreement made in accordance with the principal Regulations before the date on which these Regulations came into force and so far as it is necessary to give effect to any such agreement, the principal Regulations shall be treated as if they had continued in effect without the amendments made by these Regulations.

Signed by authority of the Secretary of State

19th November 2003

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

Regulation 8

SCHEDULE

“Regulation 5A(8)

SCHEDULE 2A

MATTERS TO BE INCLUDED IN AN ADMISSION AGREEMENT IN CERTAIN CASES

1. A requirement for the transferee admission body to pay to the administering authority all contributions and payments due under the Regulations.
2. If required by regulation 5A(6), a reference to the indemnity or bond in accordance with regulation 5A(7) and a warranty from the transferee admission body that such an indemnity or bond is in place.
3. A provision requiring the transferee admission body to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and in any employer’s guide published by the administering authority and provided to the transferee admission body.
4. An undertaking from the transferee admission body to the administering authority that it will not do anything to prejudice the status of the Scheme as an exempt approved scheme within the meaning given by section 592(1) of the Taxes Act.
5. A representation and warranty from the transferee admission body to the administering authority that all the transferee admission body’s employees or class of employees who are specified as members are employed in connection with the provision of the service or assets being carried out by the transferee admission body as a result of those matters referred to in 5A(2).
6. An undertaking from the transferee admission body that it will promptly notify the administering authority in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for its employees who are members and of any terminations of employment by virtue of redundancy or in the interests of efficiency.
7. A requirement that the transferee admission body notifies the administering authority of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion.
8. A requirement that the transferee admission body notifies the administering authority of any matter which may affect, or is likely to affect, its participation in the Scheme and that it gives immediate notice of any actual or proposed change in its status which may give rise to a termination, including take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution.
9. A minimum period of three months’ notice to terminate the admission agreement but automatic termination, as required by regulation 5B(2), in the event that the transferee admission body ceases to be such.
10. A right for the administering authority to terminate the agreement in the event of—
 - (a) the insolvency, winding up or liquidation of the transferee admission body,

- (b) a breach by the transferee admission body of any of its obligations under the admission agreement (but where the breach is capable of remedy only where it has not been remedied within a reasonable time),
- (c) the withdrawal of approval by the Commissioners of Inland Revenue to the participation of the transferee admission body as a Scheme employer, or
- (d) a failure by the transferee admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the administering authority requiring it to do so.

11. A requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the administering authority.

12. In relation to a transferee admission body under regulation 5A(2)(a)—

- (a) a reference to the date of the contract, other arrangement or direction by which the body met the requirements of that regulation,
- (b) a provision whereby the Scheme employer may set off against any payments due to the transferee admission body an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Regulations) due from the transferee admission body as an employing authority,
- (c) a provision requiring the Scheme employer to keep under assessment the level of risk arising as a result of the matters set out in regulation 5A(6),
- (d) a provision that where a representation or notification must be given to an administering authority under paragraphs 5, 6, 7 and 8 of this Schedule, that representation or notification is also given to the Scheme employer, and
- (e) a requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the Scheme employer, if different from the administering authority.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Pension Scheme Regulations 1997 (“the principal Regulations”) which comprise the Local Government Pension Scheme (“the Scheme”).

Regulation 3 amends regulation 5 of the principal Regulations by substituting new regulations 5, 5A and 5B, which provide for administering authorities to make admission agreements to enable employees of non-Scheme employers to be members of the Scheme. The main changes are—

– to separate the requirements for “community” and “transferee” admission bodies into separate regulations;

- to extend the definition of transferee admission body, to include bodies (other than community admission bodies) that carry out a public service and have been approved by the Secretary of State for admission to the Scheme; and

– to require an indemnity or bond to be entered into by the transferee admission body where it is identified as being necessary following a risk assessment.

The amended regulation 5 of the principal Regulations makes provision for the admission of community admission bodies. These are bodies that provide public services, otherwise than for the purposes of gain, and which have links with local government.

The inserted regulation 5A of the principal Regulations makes provision for the admission of transferee admission bodies. These are bodies that either provide a service or assets transferred from Scheme employers, or carry out a public service and have been approved by the Secretary of State for admission to the Scheme.

The inserted regulation 5B of the principal Regulations makes further provisions in relation to admission agreements with both types of admission bodies.

Regulation 4 makes a consequential amendment to regulation 6(10) of the principal Regulations to provide when employees of the transferee admission bodies are treated as leaving local government employment for the purposes of the Scheme.

Regulation 5 amends regulation 32(11) of the principal Regulations, which covers re-employed and rejoining deferred members, to provide that for members who have accrued Scheme membership with certain admission bodies, specified periods of such membership may not be aggregated in calculating lump sum benefits.

Regulation 6 amends regulation 78(2A) of the principal Regulations, which deals with special circumstances where revised actuarial valuations and certificates must be obtained.

Regulations 7 and 9 make consequential amendments to references to the amended provisions in Schedules 1 and 4 to the principal Regulations. Regulation 8 substitutes a new Schedule 2A to the principal Regulations, as set out in the Schedule to these Regulations.

These Regulations take effect from 1st January 2003. Section 12 of the Superannuation Act 1972 provides that regulations made under section 7 of that Act may have retrospective effect. However, regulation 10 provides that the amendments made by these Regulations do not affect admission agreements entered into before the date that these Regulations came into force.

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