
STATUTORY INSTRUMENTS

2004 No. 3372

PENSIONS, ENGLAND AND WALES

**The Local Government Pension Scheme
(Amendment) (No. 2) Regulations 2004**

<i>Made</i>	- - - -	<i>17th December 2004</i>
		<i>22nd December</i>
<i>Laid before Parliament</i>		<i>2004</i>
<i>Coming into force</i>	- -	<i>1st April 2005</i>

The First Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972⁽¹⁾ 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 2004.

(2) These Regulations shall come into force on 1st April 2005.

(3) In these Regulations, “the principal Regulations” means the Local Government Pension Scheme Regulations 1997⁽²⁾.

(4) These Regulations extend to England and Wales⁽³⁾.

Amendment of Regulations

2. The principal Regulations shall be amended in accordance with regulations 3 to 15 of these Regulations.

(1) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
(2) S.I.1997/1612; relevant amending instruments are S.I. 1997/954, 1613, 1998/1238, 1999/3438, 2001/770, 3401, 2002/206, 2003/1022 and 2004/573.
(3) 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).

Normal retirement

3. In regulation 25, delete paragraph (3A).

Redundancy etc.

4. In regulation 26(1), for “50” substitute “55”.

Other early leavers: deferred retirement benefits and elections for early payment

5. In regulation 31—
 - (a) in paragraph (1), for “50” substitute “55”;
 - (b) in paragraph (4), delete the words from the beginning of the paragraph up to and including “is less than 85 years,”; and
 - (c) in paragraph (7), delete the words from “or from such” to the end of the paragraph.

Re-employed and rejoining deferred members

6. In regulation 32(5)(a), for “29 and 31(4)” substitute “and 29”.

Power of employing authority to increase total membership

7. In regulation 52, after paragraph (10), insert—

“(11) An additional period arising from a resolution under this regulation on or after 1st April 2005 shall be treated as a period of membership after that date.”.

Payments to increase total membership

8. In regulation 55(10), for sub-paragraphs (a) and (b) substitute “his NRD”.

Employer’s further payments

9. In regulation 80, after paragraph (4), insert—

“(5) The appropriate administering authority may require the employing authority concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund resulting from a pension and retirement grant becoming immediately payable to a member under regulations 26, 31(1) or 31(6).”.

Commencement of pensions

10. In regulation 93(2), delete sub-paragraph (aa).

Right to count credited period

11. In regulation 122—
 - (a) in paragraph (4), delete the words from “or , if earlier” to the end of the paragraph; and
 - (b) after paragraph (6), insert—

“(6A) A credited period arising from a request to accept a transfer value under regulation 121 which is made by a person who was a member immediately before 1st April 2005 shall be treated as a period of membership before that date.

(6B) A credited period arising from a request to accept a transfer value under regulation 121 which is made by a person who becomes a member on or after 1st April 2005 shall be treated as a period of membership after that date.”.

Credited periods for transferring members with mis-sold pension rights

12. In regulation 122A(4), add at the end of paragraph (3) “(and regulation 122(6B) does not apply to a transfer value credited under this regulation)”.

Rights as to service not matched by credited period

13. In regulation 123(2), delete sub-paragraph (b).

Excluded membership

14. In Schedule 3, in paragraphs 7 and 8 of the Table, delete “or calculating NRD under regulation 25(3A)”.

Former members of the Metropolitan Civil Staffs Superannuation Scheme

15. In Schedule 7, in paragraph 2(4), for “for the words from the beginning of the paragraph to “is less than 85 years” substitute” substitute “add at the beginning”.

Transitional provisions and savings

16. The Schedule to these Regulations (transitional provisions and savings) shall have effect.

Right to opt out

17.—(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 1st April 2005,

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 1st April 2005.

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Signed by authority of the First Secretary of State

17th December 2004

Phil Hope
Parliamentary Under Secretary of State

SCHEDULE

Regulation 16

TRANSITIONAL PROVISIONS AND SAVINGS

Redundancy

1. Nothing in these Regulations shall affect the right of any member, who is aged 50 or more on 31st March 2005, to a pension and grant payable in accordance with regulation 26 of the principal Regulations (redundancy etc.).

Other early leavers: elections under regulation 31 where the member is aged 50 or more on 31st March 2005

2. Nothing in these Regulations shall affect the right of any member, who is aged 50 or more on 31st March 2005, to elect to receive the immediate payment of retirement benefits in accordance with regulation 31(1) of the principal Regulations (other early leavers: deferred retirement benefits and elections for early payment).

3. But a member to whom paragraph 2 of this Schedule applies shall have his retirement benefits reduced in accordance with regulation 31(4) of the principal Regulations (as amended by regulation 5 of these Regulations) except in accordance with paragraphs 4 and 5 of this Schedule. 4. Where a member to whom paragraph 2 of this Schedule applies—

- (a) elects to receive the immediate payment of retirement benefits under regulation 31(1) of the principal Regulations; and
- (b) satisfies the 85 year rule,

that part of his retirement pension and grant which is calculated by reference to any period of membership prior to the relevant date shall not be reduced in accordance with regulation 31(4) of the principal Regulations (as amended by regulation 5 of these Regulations).

5. For the purposes of paragraph 4 of this Schedule, the relevant date is—

- (a) in the case of a member who will be aged 60 or more on 31st March 2013, the earlier of—
 - (i) 1st April 2013, and
 - (ii) the date on the day after the day on which the member leaves local government employment; or
- (b) in any other case, 1st April 2005.

Other early leavers: other elections under regulation 31

6. Where a member, who was a member prior to 1st April 2005 and to whom paragraph 2 of this Schedule does not apply,—

- (a) elects to receive the immediate payment of retirement benefits under regulation 31(1) of the principal Regulations (as amended by regulation 5 of these Regulations); and
- (b) satisfies the 85 year rule,

that part of his retirement pension and grant which is calculated by reference to any period of membership prior to 1st April 2005 shall not be reduced in accordance with regulation 31(4) of the principal Regulations (as amended by regulation 5 of these Regulations).

The 85 year rule

7. For the purposes of this Schedule, a member satisfies the 85 year rule if the sum of—

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- (a) his age in whole years on the date his local government employment ends or the date he elects under regulation 31(1) if later;
- (b) his total membership in whole years;
- (c) in a case where he elects after his local government employment ends, the period beginning with the end of that employment and ending with the date he elects; and
- (d) in the case of a person who was a member immediately before 1st April 1998, any qualifying period counted by virtue of regulation 123 which was awarded before 1st April 2005,

is 85 years or more.

8. Where a member who may elect under regulation 32(1) of the principal Regulations (re-employed and rejoining deferred members) does not do so or does not elect as respects all periods of his membership, in applying paragraph 7 of this Schedule as respects any later membership, his total membership excludes unaggregated periods.

Payments to increase total membership

9.—(1) This paragraph applies to a member who—

- (a) prior to 1st April 2005 elected to make additional contributions to the Scheme to increase his total membership under regulation 55(1) of the principal Regulations (payments to increase total membership); and
- (b) was assumed to retire from a local government employment on a date prior to his 65th birthday (“the assumed date”) for the purposes of calculating his additional contributions under regulation 55(6) of the principal Regulations.

(2) Where a member to whom this paragraph applies—

- (a) continues paying the additional contributions until the assumed date; and
- (b) retires on or after the assumed date,

he shall not pay any additional contributions after that date and the whole of the additional period may be counted as part of his total membership.

(3) An additional period counted as a period of total membership as a result of this paragraph shall be treated as a period of membership prior to 1st April 2005.

Revenue restrictions

10. Nothing in these Regulations shall affect the right of any Class B or Class C member under Schedule 4 of the principal Regulations (revenue restrictions) to count more than 40 years' service in calculating his maximum benefit entitlement where, but for the changes made by these Regulations, he would have been taken as retiring after his NRD.

Saving for transitional and incidental provisions

11. So far as it is necessary to give effect to the entitlements in this Schedule 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Pension Scheme Regulations 1997 (the “principal Regulations”) to have effect from 1st April 2005. The main changes are as follows—

- to raise the normal retirement date for members who joined the scheme prior to 1st April 1998, to their 65th birthday (regulation 25 of the principal Regulations, as amended by regulation 3);
- to raise the age at which a member will be entitled to the immediate payment of retirement benefits following redundancy from 50 to 55 (regulation 26 of the principal Regulations, as amended by regulation 4);
- to raise the age at which a member can elect to receive early payment of their retirement benefits from 50 to 55 and to provide that where an early leaver retires and elects to receive benefits prior to their 65th birthday, those benefits are reduced by the amounts shown as appropriate in guidance issued by the Government Actuary (regulation 31 of the principal Regulations, as amended by regulation 5); and
- to provide that an administering authority may require an employing authority to make additional payments to the appropriate fund where there is an extra charge on the fund resulting from a pension and retirement grant becoming payable to a member under regulation 26, 31(1) or 31(6) of the principal Regulations (regulation 80 of the principal Regulations, as amended by regulation 9).

The effect of these changes is to remove the “85-year rule” from the Scheme. This allowed benefits to be paid before age 65 without being reduced to reflect the fact that they were being paid early, provided that the member’s age and period of Scheme membership totalled 85 years or more.

The Schedule to these Regulations provides for transitional arrangements for members who were members of the Scheme before 1st April 2005. These provide that:

- the minimum age that benefits may be paid will continue to be aged 50 for members who are 50 or more on 31st March 2005;
- benefits accrued prior to 1st April 2013 will not be reduced for members who will be aged 60 or more on 31st March 2013 and who satisfy the 85 year rule and elect to receive their benefits under regulation 31(1); and
- benefits accrued prior to 1st April 2005 will not be reduced for other members who meet the 85 year rule and elect to receive their benefits under regulation 31(1).

Further information and examples of how these Regulations may affect certain members can be found on the website of the Office of the Deputy Prime Minister, which is available at <http://www.xoq83.dial.pipex.com>.

Regulation 17 allows certain deferred and pensioner members and certain persons who may be in receipt of survivor benefits, 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.

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. The effect of the Regulations is to mitigate the increased financial cost arising because of average increases to the life expectancy of scheme members, and they are therefore expected to be cost neutral on public bodies participating in the Local Government Pension Scheme.

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