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STATUTORY INSTRUMENTS

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**2008 No. 238**

**The Local Government Pension Scheme  
(Transitional Provisions) Regulations 2008**

**Citation, commencement, interpretation and application**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions) Regulations 2008.

(2) These Regulations apply in relation to England and Wales<sup>(1)</sup>.

(3) These Regulations shall come into force as follows—

(a) regulation 8 on 10th March 2008; and

(b) the remainder on 1st April 2008.

(4) In these Regulations—

“the 1997 Regulations” means the Local Government Pension Scheme Regulations 1997<sup>(2)</sup>;

“the 1997 Scheme” means the occupational pension scheme constituted by the 1997 Regulations;

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008<sup>(3)</sup>;

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007<sup>(4)</sup>; and

“the Scheme” means the Local Government Pension Scheme 2008 constituted by the Benefits Regulations and the Administration Regulations.

**Revocation of Regulations**

2.—(1) Except where these Regulations provide otherwise, the Regulations listed in Schedule 1 are revoked.

(2) Accordingly, no person may become a member of the 1997 Scheme after 31st March 2008 or accrue benefits in it in respect of any service after that date.

**Membership accrued before 1st April 2008: active members**

3.—(1) This regulation applies to a person who was an active member of the 1997 Scheme and becomes a member of the Scheme by virtue of regulation 2 of the Benefits Regulations.

(2) Notwithstanding the revocations effected by regulation 2, the regulations listed in the Schedule continue to have effect, subject to regulation 4, so far as is necessary so that—

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(1) 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).

(2) [S.I. 1997/1612](#).

(3) [S.I. 2008/239](#).

(4) [S.I. 2007/1166](#).

- (a) The person's total membership accrued in the 1997 Scheme in respect of, or calculated by reference to, his service before 1st April 2008, and the pension rights accrued at that date, are preserved; and
- (b) his benefits under the 1997 Scheme are payable immediately where benefits become payable without reduction under regulations 16, 17, 19 and 20 of the Benefits Regulations, or with the appropriate actuarial reduction in line with guidance produced by the Government Actuary where benefits become payable under regulations 18 or 30 of the Benefits Regulations.

(3) But his pay, for the purposes of any calculation of benefits under paragraph (2), is calculated in accordance with regulations 8 to 11 of the Benefits Regulations.

(4) And, for the purposes of regulations 24, 33 or 36 of the Benefits Regulations as they apply to nominated cohabiting partners or civil partners, only periods of membership after 5th April 1988 are to be taken into account.

#### **Membership accrued before 1st April 2008: deferred members**

4.—(1) This regulation applies to a person—

- (a) who was a deferred member of the 1997 Scheme;
- (b) who becomes a member of the Scheme by virtue of regulation 13 of the Administration Regulations; and
- (c) whose preserved benefits under the 1997 Scheme have not yet come into payment.

(2) He may choose, by notice in writing to the appropriate administering authority within 12 months of becoming a member of the Scheme under paragraph (1)(b), to be treated as if regulation 3 applied.

#### **Membership accrued before 1<sup>st</sup> April 2008: concurrent employments**

5. Where a member to whom regulation 3 applies has membership to which regulation 17 of the Administration Regulations also applies, the calculation of any period for the purposes of the latter provision is carried out separately in respect of periods of employment before 1<sup>st</sup> April 2008 as if regulation 32A of the 1997 Regulations still applied and in respect of periods of employment after 31<sup>st</sup> March 2008 in accordance with regulation 17 of the Administration Regulations.

#### **Survivor benefits**

6.—(1) Subject to paragraphs (2) and (3), any survivor benefits payable in respect of a person to whom regulation 3 or 4 applies are calculated as if the Benefits Regulations applied to all of his membership, whether accrued before or after 1st April 2008.

(2) The survivor benefits payable in respect of a deferred member to whom regulation 4 does not apply are calculated as if his total membership before 1st April 2008 was a separate period of membership to which the conditions in force at the time he became a deferred member apply.

(3) Regulation 42 of the 1997 Regulations continues to apply to a deferred or pensioner member who marries after becoming such a member.

#### **Deferred members: limit on death grant**

7. Where a person to whom regulation 3 applies becomes a deferred member after 31<sup>st</sup> March 2008 and dies before his pension comes into payment, the sum of any death grants to which he is entitled under any provision of the Scheme or of the 1997 Scheme, as continued in effect by regulation 3, shall not exceed his retirement pension multiplied by five.

### **Members' contributions: information**

8. The employing authority of a person to whom regulation 2(3) of the Benefits Regulations applies shall inform him, before 1<sup>st</sup> April 2008, of the contribution rate applicable to him in accordance with regulation 3(2) of those Regulations.

### **Members' contributions: lower rate rights**

9.—(1) Subject to paragraph (4), the contribution rates set out in the table in regulation 3(2) of the Benefits Regulations (“the 2007 table”) do not apply to a person to whom regulation 12(3) of the 1997 Regulations, as continued in effect by regulation 3(2), applies.

(2) Instead, the contribution rate to be applied to such a member is calculated in accordance with the following table—

Year commencing	Contribution rate
1st April 2008	5.25%
1st April 2009	5.5%
1st April 2010	6.5%

(3) But if the application of the table set out in paragraph (2) would result in a member's contribution rate being greater than if the table applied, his contribution is paid at the lower rate.

(4) After 31st March 2011, such a member makes contributions in accordance with the 2007 table.

### **The 85 year rule**

10.—(1) This regulation applies to a person—

- (a) to whom regulation 3 applies; and
- (b) in respect of whom the appropriate administering authority has consented to pay retirement benefits following a request made by him under regulation 30 of the Benefits Regulations.

(2) Schedule 2 (which makes transitional provision relating to the so-called “85 year rule”) has effect in relation to such a person.

### **Appropriate funds**

11. The pension funds which are appropriate pension funds for members of the 1997 Scheme who do not become members of the Scheme (as to which see regulation 19 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997(5)) shall continue to be the appropriate funds for those members.

### **Application of abatement policy in individual cases**

12. Notwithstanding the revocation of regulation 110 of the 1997 Regulations, paragraph (5) of that regulation shall continue to apply to a person who was a member of the Local Government Pension Scheme constituted under the Local Government Pension Scheme Regulations 1995(6) immediately before 1st April 1998.

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(5) S.I. 1997/1613.

(6) S.I. 1995/1019.

### **Councillor members**

13. Notwithstanding the revocation of the 1997 Regulations, they continue to have effect in respect of councillor members and their councillor membership as applied by regulation 137A of those Regulations, with the modifications set out in Schedule 8 to those Regulations.

### **Pension sharing**

14.—(1) Regulations 147(2)(a) and 155(2) of the 1997 Regulations, as continued in effect by regulation 3, apply as if they included a reference to rights accruing under the Scheme as well as under the 1997 Scheme.

(2) But Regulations 152 and 156 do not continue to apply.

(3) In relation to any entitlement under the 1997 Scheme, a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act may be paid in accordance with the rules relating to the payment of such benefits under the Finance Act 2004.

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

*John Healey*  
Minister of State  
Department for Communities and Local  
Government

6th February 2008