
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England and Wales, amend four statutory instruments namely: The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (“the Discretionary Compensation Regulations”);

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (“the Benefits Regulations”);

The Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (“the Transitional Regulations”); and

The Local Government Pension Scheme (Administration) Regulations 2008 (“the Administration Regulations”).

Section 12 of the Superannuation Act 1972 (“the 1972 Act”) provides that regulations made under section 7 may have effect from a date earlier than the making of the Regulations.

Regulation 1 provides that the Regulations come into force on 1st October 2012 but makes provision for various provisions to have effect from different dates.

Regulation 3 makes a corrective amendment to regulation 2 (interpretation) of the Discretionary Compensation Regulations so that all the employers listed in regulation 8(1) of the Administration Regulations are covered by the definition of “employing authority”.

Regulation 4 introduces the amendments set out in regulations 5 to 17 relating to the Benefits Regulations.

Regulation 5 amends regulation 1 (which provides for the definition of certain terms) by introducing a definition for the expression “Scheme employer”.

Regulation 6 makes amendments to regulation 2 (active members) which are consequential to other provisions in these Regulations, in particular those which move the provision stipulating that automatic membership of the Scheme does not apply to a person with an employment contract of less than three months.

Regulation 7 amends regulation 8 (final pay: general) to provide clarification as to the meaning of “that employment” in regulation 8(1) of the Benefits Regulations.

Regulation 8 amends regulation 14A (election to pay additional contributions: survivor benefits) to provide that an election to pay additional survivor benefits must be made within 12 months of making a declaration to nominate a cohabiting partner under regulation 25 of the Benefits Regulations.

Regulation 9 amends regulation 18 (flexible retirement) to clarify that where a member aged 55 or over has accrued benefits under the 1997 Local Government Pension Scheme in the current membership, the member shall receive payment of those benefits but also has the choice whether to request to receive payment of benefits accrued under the Benefits Regulations.

Regulation 10 amends regulation 26 (meaning of “eligible child”) to update a statutory reference.

Regulation 11 amends regulation 28 (children’s pensions: active members) to provide that the calculation of the pension takes into account any additional contributions made by the deceased member and that in the case of a member in part-time employment, no account is taken of any reduction in the member’s membership caused as a result of the condition that led to or contributed to the member’s death. Similar amendments are made in regulation 15 and 16 which amend

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regulation 33 (survivor benefits: deferred members) and regulation 34 (children's pensions: deferred members).

Regulations 12 and 13 respectively amend regulation 30 (choice of early payment of pension) and regulation 30A (choice of payment of pension: pensioner member with deferred benefits) to provide that the appropriate administering authority for a deferred member or pensioner member with deferred benefits may consent to the early payment of pension where the member's former employing authority has ceased to be a Scheme employer.

Regulation 14 amends regulation 31 (early payment of pension: ill-health) to enable a pensioner member with deferred benefits to access their retirement pension early provided an independent registered medical practitioner ("IRMP") certifies that the member's ill-health condition has deteriorated to the extent that the member is permanently incapable of working.

Regulation 17 amends regulation 39 (commutation and small pensions) to include an authorised commutation payment prescribed in Regulations made under section 164(1)(f) of the Finance Act 2004.

Regulation 18 introduces the amendments set out in regulations 19 to 22 relating to the Transitional Regulations.

Regulation 19 amends regulation 3 (membership accrued before 1st April 2008: active members) to insert a reference to regulation 30A(1) and (4) of the Benefits Regulations.

Regulation 20 amends regulation 10 to clarify that the rule of 85 transitional provisions apply to pensioner members with deferred benefits who meet the relevant conditions. Regulation 22 makes a corresponding amendment to paragraph 1 of Schedule 2 and provides for exclusion of certain credited periods from the calculation of the total period of membership.

Regulation 21 revokes certain saved provisions of the 1997 Regulations.

Regulation 23 introduces the amendments set out in regulations 24 to 45 relating to the Administration Regulations.

Regulation 24 amends regulation 6 (employees of non-Scheme employers: transferee admission bodies) by requiring a (2)(a) transferee admission body and an administering authority to enter into separate admission agreements where the admission body is performing the functions of a Scheme employer under more than one contract.

Regulation 25 substitutes regulation 7 (admission agreements – further provisions) with a new regulation 7 which consolidates some of the provisions formerly contained in regulation 6 relating to admission agreements for transferee admission bodies so that these now apply to all categories of admission bodies. The amendments also add new requirements to be contained in admission agreements.

Regulation 26 clarifies that employees of Newcastle International Airport Limited have remained members of the Scheme by virtue of the admission agreement which first admitted them to the previous local government pension scheme, and that no regulatory change has caused that agreement to terminate.

Regulation 27 provides for elected police and crime commissioners to become members of the Scheme. It provides that they are to be treated as employees of the police and crime commissioner, but that any decisions they make in the capacity of employing authority which affect the benefits they or their predecessors are entitled to must be confirmed by the commissioner's head of staff.

Regulation 28 amends regulation 12 (further restrictions on eligibility) to include employment with a NHS Scheme employer in Wales as a result of arrangements under section 33 of the National Health Service (Wales) Act 2006. A minor consequential amendment is also made relating to regulation 7 of the Administration Regulations.

Regulation 29 substitutes a new regulation 13 (joining the Scheme) providing for automatic enrolment of eligible members apart from those with employment contracts of less than 3 months, where application for membership is required.

Regulation 30 amends regulation 18 (contributions during child related leave) so that additional paternity leave is included within the provisions.

Regulations 31, 32 and 33 respectively amend regulation 19 (contributions during reserve forces service leave), regulation 20 (contributions during trade dispute absence) and regulation 21 (contributions during absences with permission) so that additional contributions made in respect of survivor benefits under regulation 24A must continue to be paid during periods of absence.

Regulation 34 amends regulation 32 (admission agreement funds) by inserting what was formerly sub-paragraph (1) of regulation 38 (revised actuarial valuations) into regulation 32 of the Administration Regulations so that all matters relating to admission agreement funds are marshalled together.

Regulation 35 amends regulation 38 (special circumstances where revised actuarial valuations and certificates must be obtained) to clarify that it applies to all employing authorities and enables administering authorities to obtain a revised certificate in a wider range of circumstances. There are also consequential amendments relating to Schedule 3.

Regulation 36 amends regulation 56 (first instance determinations: ill-health) to enable an IRMP who has previously been involved in an ill-health retirement case to advise on the same case if a request is made to issue a further certificate in consequence of regulation 20(11)(a) or regulation 31(7) of the Benefits Regulations.

Regulation 37 amends regulation 66 (statements of policy about exercise of discretionary functions) to provide that the exercise of functions under regulation 30A of the Benefits Regulations are included in the written statements of policy. The statement must be amended to include this provision by 31st March 2013.

Regulation 38 amends regulation 68 (annual benefit statements) to adjust the timescale for the issuing of annual benefit statements in accordance with the requirements of the Finance Act 2004 (as amended by the Finance Act 2011), and inserts a new provision to enable a member to request a benefit statement.

Regulation 39 inserts a new regulation 68A (joint liability in respect of annual allowance charge) to provide that where an administering authority has discharged a member's tax charge, the authority must reduce the value of the member's accrued rights in accordance with guidance issued by the Secretary of State.

Regulation 40 makes a minor corrective amendment to regulation 83 (inward transfers of pension rights).

Regulations 41 and 42 respectively amend regulation 86 (changes of fund) and Schedule 1 (interpretation) to reflect a change of title. Regulation 42 also introduces a definition of the term "Academy".

Regulation 43 amends Schedule 2 (Scheme employers) by updating the list of Scheme employers contained in Parts 1 and 2 of that Schedule.

Regulation 44 amends Schedule 3 (matters to be included in admission agreements with Transferee admission bodies) so that the matters to be contained in an admission agreement apply to all categories of admission body.

Regulation 45 amends Schedule 4 (appropriate funds) to allow greater flexibility in the use of directions by the Secretary of State. It also amends the Table in Part 1 of the Schedule by making provisions as to the appropriate fund for a member employed by a proprietor of an Academy.

Regulation 46 provides that the amendments made by regulations 24, 25 and 44 do not affect admission agreements entered into before the date that these Regulations come into force.

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A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.